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

**SCHEDULE 14A**

Proxy Statement Pursuant to Section 14(a) of the Securities Exchange Act of 1934  
(Amendment No. )

Filed by the Registrant ☒  
Filed by a Party other than the Registrant ☐

Check the appropriate box:

- ☐ Preliminary Proxy Statement  
☐ **Confidential, for Use of the Commission Only** (as permitted by Rule 14a-6(e)(2))  
☒ Definitive Proxy Statement  
☐ Definitive Additional Materials  
☐ Soliciting Material Under Rule 14a-12

**AYRO, INC.**

(Name of Registrant as Specified In Its Charter)

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (Check the appropriate box):

- ☒ No fee required.  
☐ Fee previously paid with preliminary materials.  
☐ Fee computed on table in exhibit required by Item 25(b) per Exchange Act Rules 14a-6(i)(1) and 0-11.
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**AYRO, INC.  
900 E. Old Settlers Boulevard, Suite 100, Round Rock, Texas 78664**

**August 18, 2023**

To Our Stockholders:

You are cordially invited to attend the special meeting of stockholders of AYRO, Inc. to be held at 12:00 p.m. Eastern Time on Thursday, September 14, 2023. We have decided to hold this special meeting virtually via live webcast on the internet because hosting a virtual special meeting enables greater stockholder attendance and participation from any location around the world, improves meeting efficiency and our ability to communicate effectively with our stockholders, and reduces the cost and environmental impact of the special meeting. You will be able to attend the special meeting, vote and submit your questions during the special meeting by visiting [www.virtualshareholdermeeting.com/AYRO2023SM](http://www.virtualshareholdermeeting.com/AYRO2023SM). You will not be able to attend the special meeting in person.

Details regarding the meeting, the business to be conducted at the meeting, and information about AYRO, Inc. that you should consider when you vote your shares are described in the accompanying proxy statement.

At the special meeting, we will ask stockholders (i) to authorize, for purposes of complying with Nasdaq Listing Rule 5635(d), the issuance of shares of our common stock, par value \$0.0001 per share ("Common Stock") underlying shares of convertible preferred stock and warrants issued by us pursuant to the terms of that certain Securities Purchase Agreement, dated August 7, 2023, by and among AYRO, Inc. and the investors named therein and an engagement agreement between the Company and Palladium Capital Group, LLC, in an amount equal to or in excess of 20% of our Common Stock outstanding before the issuance of such convertible preferred stock and warrants (including any amortization payments made to the holders of convertible preferred stock in the form of issuance of shares of Common Stock and upon the operation of anti-dilution provisions contained in such convertible preferred stock and warrants), (ii) to approve an amendment to our amended and restated certificate of incorporation, as amended (the "Charter"), to effect, at the discretion of our board of directors (the "Board") but prior to the one-year anniversary of the date of on which stockholders approve such proposal, a reverse stock split of all of the outstanding shares of our Common Stock, at a ratio in the range of 1-for-2 to 1-for-10, with such ratio to be determined by the Board in its discretion and included in a public announcement, (iii) to approve an amendment to the Charter to increase the number of authorized shares of Common Stock from 100,000,000 to 200,000,000 and to make a corresponding change to the number of authorized shares of capital stock, (iv) approve an amendment to the AYRO, Inc. 2020 Long-Term Incentive Plan to increase the aggregate number of shares available for the grant of awards by 5,750,000 shares, to a total of 9,839,650 shares of Common Stock, and (v) to adjourn the special meeting to a later date or dates, if necessary or appropriate, to permit further solicitation and vote of proxies in the event that there are insufficient votes for, or otherwise in connection with, the approval of the aforementioned proposals. The Board recommends the approval of these proposals. Such other business will be transacted as may properly come before the special meeting.

We hope you will be able to attend the special meeting. Whether or not you plan to attend the special meeting, we hope you will vote promptly. Information about voting methods is set forth in the accompanying proxy statement.

Thank you for your continued support of AYRO, Inc. We look forward to seeing you at the special meeting.

Sincerely,

*/s/ Joshua N. Silverman*

**Joshua N. Silverman**

*Chairman of the Board of Directors*

**AYRO, INC.**  
**900 E. Old Settlers Boulevard, Suite 100, Round Rock, Texas 78664**

**August 18, 2023**

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS**

TIME: 12:00 p.m. Eastern Time

DATE: Thursday, September 14, 2023

ACCESS:

The special meeting will be held at 12:00 p.m. Eastern Time on Thursday, September 14, 2023, virtually via live webcast on the Internet. You will be able to attend the special meeting, vote and submit your questions during the meeting by visiting [www.virtualshareholdermeeting.com/AYRO2023SM](http://www.virtualshareholdermeeting.com/AYRO2023SM) and entering the 16-digit control number included in the proxy card that you receive. For further information about the virtual special meeting, please see the Questions and Answers about the Meeting beginning on page 2.

**PURPOSES:**

1. A proposal to authorize, for purposes of complying with Nasdaq Listing Rule 5635(d), the issuance of shares of our common stock, par value \$0.0001 per share (“Common Stock”) underlying shares of convertible preferred stock and warrants issued by us pursuant to the terms of that certain Securities Purchase Agreement, dated August 7, 2023, by and among AYRO, Inc. (the “Company”) and the investors named therein, and an engagement agreement between the Company and Palladium Capital Group, LLC, in an amount equal to or in excess of 20% of our Common Stock outstanding before the issuance of such convertible preferred stock and warrants (including any amortization payments made to the holders of such convertible preferred stock in the form of issuance of shares of Common Stock and upon the operation of anti-dilution provisions contained in such convertible preferred stock and warrants) (the “Issuance Proposal”);
2. A proposal to approve an amendment to our amended and restated certificate of incorporation, as amended (the “Charter”), to effect, at the discretion of our board of directors (the “Board”) but prior to the one-year anniversary of the date on which the reverse stock split is approved by the Company’s stockholders at the special meeting, a reverse stock split of all of the outstanding shares of our Common Stock, at a ratio in the range of 1-for-2 to 1-for-10, with such ratio to be determined by the Board in its discretion and included in a public announcement (the “Reverse Stock Split Proposal”);
3. A proposal to approve an amendment to the Charter to authorize the Board, at the Board’s discretion, to increase the number of authorized shares of Common Stock from 100,000,000 to 200,000,000 and to make a corresponding change to the number of authorized shares of capital stock (the “Share Increase Proposal”);
4. A proposal to approve an amendment (the “Incentive Plan Amendment”) to the AYRO, Inc. 2020 Long-Term Incentive Plan (the “Plan” or the “2020 LTIP”) to increase the aggregate number of shares available for the grant of awards by 5,750,000 shares, to a total of 9,839,650 shares of common stock (the “Incentive Plan Amendment Proposal”);
5. A proposal to adjourn the special meeting to a later date or dates, if necessary or appropriate, to permit further solicitation and vote of proxies in the event that there are insufficient votes for, or otherwise in connection with, the approval of the Issuance Proposal, the Reverse Stock Split Proposal, the Share Increase Proposal or the Incentive Plan Amendment Proposal (the “Adjournment Proposal”); and
6. To transact such other business that is properly presented at the special meeting and any adjournments or postponements thereof.

**WHO MAY VOTE:**

You may vote on the Reverse Stock Split Proposal, the Share Increase Proposal, the Adjournment Proposal and the Incentive Plan Amendment Proposal if you were the record owner of AYRO, Inc. Common Stock, Series H-6 Convertible Preferred Stock, par value \$0.0001 per share (“Series H-6 Preferred Stock”), or Series H-7 Convertible Preferred Stock, par value \$0.0001 per share, at the close of business on August 14, 2023. You may vote on the Issuance Proposal if you were the record owner of AYRO, Inc. Common Stock or Series H-6 Preferred Stock at the close of business on August 14, 2023.

All stockholders are cordially invited to attend the special meeting. **Whether you plan to attend the special meeting or not, we urge you to vote and submit your proxy by the Internet, telephone or mail in order to ensure the presence of a quorum.** You may change or revoke your proxy at any time before it is voted at the special meeting. If you participate in and vote your shares at the special meeting, your proxy will not be used.

BY ORDER OF OUR BOARD OF DIRECTORS

*/s/ Joshua N. Silverman*

**Joshua N. Silverman**

*Chairman of the Board of Directors*

**TABLE OF CONTENTS**

	<b>PAGE</b>
<a href="#"><u>QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING</u></a>	2
<a href="#"><u>SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT</u></a>	9
<a href="#"><u>EXECUTIVE OFFICER AND DIRECTOR COMPENSATION</u></a>	11
<a href="#"><u>PAY VERSUS PERFORMANCE</u></a>	21
<a href="#"><u>PROPOSAL NO. 1 – ISSUANCE PROPOSAL</u></a>	23
<a href="#"><u>PROPOSAL NO. 2 – REVERSE STOCK SPLIT PROPOSAL</u></a>	28
<a href="#"><u>PROPOSAL NO. 3 – SHARE INCREASE PROPOSAL</u></a>	36
<a href="#"><u>PROPOSAL NO. 4 – INCENTIVE PLAN AMENDMENT PROPOSAL</u></a>	39
<a href="#"><u>PROPOSAL NO. 5 – ADJOURNMENT PROPOSAL</u></a>	47
<a href="#"><u>OTHER MATTERS</u></a>	48
<a href="#"><u>SUBMISSION OF FUTURE STOCKHOLDER PROPOSALS</u></a>	48

**Annex**

[ANNEX A – TEXT OF REVERSE STOCK SPLIT AMENDMENT](#)

[ANNEX B – TEXT OF SHARE INCREASE AMENDMENT](#)

[ANNEX C – TEXT OF INCENTIVE PLAN AMENDMENT](#)

[ANNEX D – FIRST AMENDMENT TO AYRO, INC. 2020 LONG-TERM INCENTIVE PLAN](#)

[ANNEX E – AYRO, INC. 2020 LONG-TERM INCENTIVE PLAN](#)

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**AYRO, INC.**  
**900 E. Old Settlers Boulevard, Suite 100, Round Rock, Texas 78664**

**PROXY STATEMENT FOR THE AYRO, INC.**  
**SPECIAL MEETING OF STOCKHOLDERS TO BE HELD ON SEPTEMBER 14, 2023**

This proxy statement, along with the accompanying notice of special meeting of stockholders, contains information about the special meeting of stockholders of AYRO, Inc., including any adjournments or postponements of the special meeting. We are holding the special meeting at 12:00 p.m. Eastern Time on Thursday, September 14, 2023. For the reasons set forth in the cover letter to which this proxy statement is attached, this special meeting will be a virtual meeting via live webcast on the Internet. You will be able to attend our special meeting, vote and submit your questions during the meeting by visiting [www.virtualshareholdermeeting.com/AYRO2023SM](http://www.virtualshareholdermeeting.com/AYRO2023SM). You will not be able to attend the special meeting in person.

In this proxy statement, we refer to AYRO, Inc. as “AYRO,” “the Company,” “we” and “us.”

This proxy statement relates to the solicitation of proxies by our board of directors for use at the special meeting.

**On or about August 23, 2023, we intend to begin sending this proxy statement, the attached Notice of Special Meeting of Stockholders and the enclosed proxy card to all stockholders entitled to vote at the special meeting.**

**IMPORTANT NOTICE REGARDING THE AVAILABILITY OF PROXY MATERIALS FOR THE  
STOCKHOLDER MEETING TO BE HELD ON SEPTEMBER 14, 2023**

**This proxy statement, the Notice of Special Meeting of Stockholders and our form of proxy card are available for viewing, printing and downloading at [www.virtualshareholdermeeting.com/AYRO2023SM](http://www.virtualshareholdermeeting.com/AYRO2023SM). To view these materials please have your 16-digit control number(s) available that appears on your proxy card. On this website, you can also elect to receive future distributions of our proxy materials to stockholders by electronic delivery.**

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1

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**QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING**

**Why is the Company Soliciting My Proxy?**

Our board of directors (the “Board”) is soliciting your proxy to vote at the special meeting of stockholders to be held virtually, on Thursday, September 14, 2023, at 12:00 p.m. Eastern Time, and any adjournments or any postponements of the meeting, which we refer to as the special meeting. This proxy statement, along with the accompanying Notice of Special Meeting of Stockholders, summarizes the purposes of the meeting and the information you need to know to vote at the special meeting.

We have made available to you on the Internet or have sent you this proxy statement, the Notice of Special Meeting of Stockholders and the proxy card because you owned shares of our common stock, par value \$0.0001 per share (“Common Stock”), Series H-6 Convertible Preferred Stock, par value \$0.0001 per share (“Series H-6 Preferred Stock”), or Series H-7 Convertible Preferred Stock, par value \$0.0001 per share (“Series H-7 Preferred Stock”), on August 14, 2023 (the Record Date). We intend to commence distribution of the proxy materials to stockholders on or about August 23, 2023.

**Why are you seeking approval for the issuance of shares of Common Stock in connection with the Offering?**

On August 7, 2023, we entered into a securities purchase agreement (the “Purchase Agreement”) with certain existing investors (the “Investors”) in a private placement, pursuant to which we agreed to sell up to (i) an aggregate of 22,000 shares of our newly-designated Series H-7 Preferred Stock (“Preferred Shares”), with a stated value of \$1,000 per share (the “Stated Value”), initially convertible into up to 22,000,000 shares of our Common Stock at a conversion price (the “Conversion Price”) of \$1.00 per share (the “Conversion Shares”), and (ii) warrants (the “Investor Warrants”) to acquire up to an aggregate of 22,000,000 shares of Common Stock (the “Investor Warrant Shares,” and the transactions contemplated by the Purchase Agreement, the “Offering”) at an initial exercise price of \$1.00 per share (as may be adjusted, the “Exercise Price”). In connection with the Offering, we also entered into an engagement agreement (the “Engagement Agreement”) between the Company and Palladium Capital Group, LLC (“Palladium”), the placement agent for the Offering, pursuant to which we agreed to issue to Palladium or its designees warrants with substantially the same terms as the Investor Warrants (“Placement Agent Warrants,” and together with the Investor Warrants, the “Warrants”) to purchase an aggregate of 440,000 shares of Common Stock at the Exercise Price (“Placement Agent Warrant Shares,” and together with the Investor Warrant Shares, the “Warrant Shares”). The Conversion Price is subject to customary adjustments for stock dividends, stock splits, reclassifications and the like, and subject to price-based adjustment in the event of any issuances of Common Stock, or securities convertible, exercisable or exchangeable for Common Stock, at a price below the then-applicable Conversion Price (subject to certain exceptions). The Conversion Price may also be voluntarily reduced by the Company to any amount and for any period of time deemed appropriate by the Board at any time with the prior written consent of the holders of at least a majority of the outstanding Preferred Shares, subject to the rules and regulations of Nasdaq. Any reduction in the Conversion Price will result in an increased number of shares of Common Stock being issuable upon the payment of dividends in respect of the Preferred Shares or upon the conversion of the Preferred Shares and additional dilution to existing investors.

We are required to redeem the Series H-7 Preferred Stock in 12 equal monthly installments, commencing on a date between February 7, 2024 and August 7, 2025, at the election of the Investor. The amortization payments due upon such redemption are payable, at our election, in cash at 105% of the Installment Redemption Amount (as defined in the Series H-7 Certificate of Designations), or subject to certain limitations, in shares of Common Stock valued at the lower of (i) the Conversion Price then in effect and (ii) the greater of (A) eighty percent (80%) of the average of the three lowest closing prices of our Common Stock during the thirty trading day period immediately prior to the date the amortization payment is due or (B) the lower of (I) \$0.144 (subject to adjustment for stock splits, stock dividends, stock combinations, recapitalizations or other similar events) and (II) 20% of the Minimum Price (as defined below) on the date of receipt of the Nasdaq Stockholder Approval (as defined below) (the lower of (I) and (II),

the “Floor Price,” and the lower of (i) and (ii), the “Installment Conversion Price”), which amortization amounts are subject to certain adjustments as set forth in the Series H-7 Certificate of Designations. Further, the holders of the Series H-7 Preferred Stock are entitled to dividends of 8% per annum, compounded monthly, which is payable in cash or shares of Common Stock at our option. Upon conversion or redemption, the holders of the Preferred Shares are also entitled to receive a dividend make-whole payment assuming for calculation purposes that the stated value remained outstanding through and including the twelve (12) month anniversary of the first installment date as elected by the respective holder. To the extent the number of shares of Common Stock issued in connection with the Offering is greater than anticipated, the market price of our Common Stock could decline further.

Nasdaq Listing Rule 5635(d) generally requires us to obtain stockholder approval prior to issuing 20% or more of our outstanding shares of Common Stock in the Offering. For more information, see “Issuance Proposal” contained elsewhere in this proxy statement.

#### **Why are you seeking approval to effect a reverse stock split?**

As previously reported, on October 3, 2022, we received a letter from the Listing Qualifications Department of The Nasdaq Stock Market (“Nasdaq”) indicating that, based upon the closing bid price of our Common Stock for the 30 consecutive business day period between August 19, 2022 and September 30, 2022, we did not meet the minimum bid price of \$1.00 per share required for continued listing on The Nasdaq Capital Market pursuant to Nasdaq Listing Rule 5550(a)(2) (the “Minimum Bid Price Requirement”). The letter also indicated that the Company would be provided with a compliance period of 180 calendar days, or until April 3, 2023 (the “Compliance Period”), in which to regain compliance pursuant to Nasdaq Listing Rule 5810(c)(3)(A).

On April 4, 2023, we received a letter from Nasdaq notifying us that the Compliance Period had been extended by an additional 180 days, or until October 2, 2023. Nasdaq’s determination was based on us meeting the continued listing requirement for market value of publicly held shares and all other applicable requirements for initial listing on the Nasdaq Capital Market, with the exception of the Minimum Bid Price Requirement, and our written notice of our intention to cure the deficiency during the extended Compliance Period by effecting a reverse stock split, if necessary. In order to regain compliance with Nasdaq’s minimum bid price requirement, our Common Stock must maintain a minimum closing bid price of \$1.00 for at least ten consecutive business days during the Compliance Period.

On August 6, 2023, subject to stockholder approval, the Board approved an amendment to our Charter to effect, at the discretion of the Board but prior to the one-year anniversary of the date of on which stockholders approved such proposal, a reverse stock split (the “Reverse Stock Split”) of all of the outstanding shares of Common Stock, at a ratio in the range of 1-for-2 to 1-for-10, with such ratio to be determined by the Board in its discretion and included in a public announcement (the “Reverse Stock Split Proposal”). The primary goal of the Reverse Stock Split is to increase the per share market price of our Common Stock to meet the minimum per share bid price requirements for continued listing on The Nasdaq Capital Market. We believe that a range of Reverse Stock Split ratios provides us with the most flexibility to achieve the desired results of the Reverse Stock Split.

We are submitting the Reverse Stock Split Proposal to our stockholders for approval in order to increase the trading price of our Common Stock to meet the minimum per share bid price requirement for continued listing on The Nasdaq Capital Market. We believe increasing the trading price of our Common Stock may also assist in our capital-raising efforts by making our Common Stock more attractive to a broader range of investors. Accordingly, we believe that the Reverse Stock Split is in our stockholders’ best interests.

#### **Why are you seeking approval to increase the number of authorized shares of Common Stock?**

Our Board has unanimously adopted a resolution declaring advisable, and recommending to our stockholders for their approval, an amendment to our Charter (the “Share Increase Amendment,” and the proposal to approve such amendment, the “Share Increase Proposal”) to authorize the Board, at the Board’s discretion, to increase the number of authorized shares of Common Stock from 100,000,000 to 200,000,000 and to make a corresponding change to the number of authorized shares of capital stock (the “Share Increase”). The form of the proposed Share Increase Amendment is attached to this proxy statement as Annex B.

Pursuant to the Purchase Agreement, we are obligated to reserve for issuance shares of Common Stock equal to the sum of (i) 150% of the maximum number of Conversion Shares issuable upon conversion of all of the shares of Series H-7 Preferred Stock then outstanding (assuming for purposes hereof that the Series H-7 Preferred Stock is convertible at the Floor Price without taking into account any limitations on the conversion of the Preferred Shares set forth in the Series H-7 Certificate of Designations), and (ii) 150% of the maximum number of Warrant Shares initially issuable upon exercise of all the Warrants then outstanding without taking into account any limitations on the exercise of the Warrants set forth therein (collectively, the “Required Reserve Amount”).

If at any time the number of shares of Common Stock authorized and reserved for issuance is not sufficient to meet the Required Reserve Amount, we are obligated pursuant to the Purchase Agreement to promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of stockholders to authorize additional shares to meet our obligations and using our best efforts to obtain stockholder approval of an increase in such authorized number of shares to meet the Required Reserve Amount. We currently do not have a sufficient number of authorized shares of Common Stock to meet the Required Reserve Amount. Accordingly, we must hold a special meeting of stockholders to increase the number of authorized shares of Common Stock in order to meet the Required Reserve Amount. The Share Increase Amendment is intended to fulfill this obligation.

#### **Why are you seeking approval for an amendment to the Plan?**

We believe that operation of the Plan is a necessary and powerful tool in enabling us to attract and retain the best available personnel for positions of substantial responsibility; to provide additional incentive to key employees, key contractors, and non-employee directors; and to promote the success of our business. The Plan is expected to provide flexibility to our compensation methods in order to adapt the compensation of such employees, contractors, and directors to a changing business environment, after giving due consideration to competitive conditions and the impact of federal tax laws. We have strived to use our Plan resources effectively and to maintain an appropriate balance between stockholder interests and the ability to recruit and retain valuable employees. However, we believe there is an insufficient number of shares remaining under our Plan to meet our current and projected needs. Accordingly, it is the judgment of the Board that the Incentive Plan Amendment is in the best interest of the Company and its stockholders. We believe that the Incentive Plan Amendment, which increases the number of shares of Common Stock available for issuance pursuant to awards under the Plan, reflects best practices in our industry and is appropriate to permit the grant of equity awards at expected levels for the future.

#### **Why Are You Holding a Virtual Special Meeting?**

This special meeting will be held in a virtual meeting format only to enhance stockholder access, participation and communication.

#### **How Do I Access the Virtual Special Meeting?**

The live webcast of the special meeting will begin promptly at 11:00 a.m. Eastern Time. Online access to the audio webcast will open 15 minutes prior to the start of the special meeting to allow time for you to log-in and test your device’s audio system. The virtual special meeting is running the most updated version of the applicable software and plugins. You should ensure you have a strong Internet connection wherever you intend to participate in the special meeting. You should also allow plenty of time to log in and ensure that you can hear streaming audio prior to the start of the special meeting.

To be admitted to the virtual special meeting, you will need to log-in at [www.virtualshareholdermeeting.com/AYRO2023SM](http://www.virtualshareholdermeeting.com/AYRO2023SM) using the 16-digit control number found on the proxy card or voting instruction card previously mailed or made available to stockholders entitled to vote at the special meeting.

### **What Happens if There Are Technical Difficulties during the Special Meeting?**

Beginning 15 minutes prior to, and during, the special meeting, we will have technicians ready to assist you with any technical difficulties you may have accessing the virtual special meeting or voting at the special meeting. If you encounter any difficulties accessing the virtual special meeting during the check-in or meeting time, please call 844-986-0822 (US) or 303-562-9302 (international).

### **Who May Vote?**

Only holders of record of our Common Stock, Series H-6 Preferred Stock and Series H-7 Preferred Stock at the close of business on the Record Date will be entitled to vote at the special meeting. On the Record Date, there were 37,732,530 shares of our Common Stock outstanding and entitled to vote on the proposals described in this proxy statement.

On the Record Date, there were 50 shares of Series H-6 Preferred Stock, which are convertible into 1,440 shares of Common Stock, issued and outstanding, and after application of the conversion price applicable for determination of the maximum number of votes a holder of Series H-6 Preferred Stock is entitled to cast pursuant to the terms of the Certificate of Designations, Preferences and Rights of the Series H-6 Preferred Stock ("Series H-6 Certificate of Designations"), subject also to the beneficial ownership limitation as set forth in the Series H-6 Certificate of Designations, holders of Series H-6 Preferred Stock are entitled to an aggregate of 1,000 votes on the proposals described in this proxy statement.

On the Record Date, there were 22,000 shares of Series H-7 Preferred Stock, which are initially convertible into 22,000,000 shares of Common Stock, issued and outstanding. Pursuant to the terms of the Series H-7 Certificate of Designations (as defined below), each share of Series H-7 Preferred Stock entitles the holder thereof to cast that number of votes per share of Series H-7 Preferred Stock equal to the number of Conversion Shares underlying the Series H-7 Preferred Stock determined by dividing the Stated Value by \$0.72 per share on the Share Increase Proposal, the Reverse Stock Split Proposal, the Incentive Plan Amendment Proposal (as defined below) and the Adjournment Proposal (as defined below). Holders of shares of Series H-7 Preferred Stock are not entitled to vote such shares on the Issuance Proposal (as defined below).

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4

If, on the Record Date, your shares of our Common Stock, Series H-6 Preferred Stock or Series H-7 Preferred Stock were registered directly in your name with our transfer agent, Issuer Direct Corporation, then you are a stockholder of record.

If, on the Record Date, your shares were held, not in your name, but rather in an account at a brokerage firm, bank, dealer or other similar organization, then you are the beneficial owner of shares held in "street name" and the proxy materials are being forwarded to you by that organization. The organization holding your account is considered to be the stockholder of record for purposes of voting at the special meeting. As a beneficial owner, you have the right to direct your broker or other agent regarding how to vote the shares in your account. You are also invited to attend the special meeting. However, since you are not the stockholder of record, you may not vote your shares at the special meeting unless you request and obtain a valid proxy from your broker or other agent.

You do not need to attend the special meeting to vote your shares. Shares represented by valid proxies, received in time for the special meeting and not revoked prior to the special meeting, will be voted at the special meeting. For instructions on how to change or revoke your proxy, see "*May I Change or Revoke My Proxy?*" below.

### **How Many Votes Do I Have?**

Each share of our Common Stock that you own entitles you to one vote.

Pursuant to the terms of the Series H-6 Certificate of Designations, each share of Series H-6 Preferred entitles the holder thereof to cast that number of votes per share of Series H-6 Preferred Stock equal to the number of whole shares of Common Stock into which the Series H-6 Preferred Stock beneficially owned by such holder are convertible as of the Record Date (subject to the 9.99% beneficial ownership limitations) on all matters presented to the stockholders, voting together with the holders of Common Stock as a single class; however, pursuant to the terms of the Series H-6 Preferred Stock as set forth in the Series H-6 Certificate of Designations, holders of Series H-6 Preferred Stock in no event shall be permitted to exercise a greater number of votes than such holders would have been entitled to cast if the Series H-6 Preferred Stock had immediately been converted into shares of Common Stock at a conversion price equal to \$3.60. Accordingly, each holder of Series H-6 Preferred Stock is entitled to exercise votes for approximately 20.0 shares for each share of Series H-6 Preferred Stock held.

Pursuant to the terms of the Series H-7 Certificate of Designations, each share of Series H-7 Preferred Stock entitles the holder thereof to cast that number of votes per share of Series H-7 Preferred Stock equal to the number of Conversion Shares underlying the Series H-7 Preferred Stock determined by dividing the Stated Value by \$0.72 per share. Accordingly, each holder of Series H-7 Preferred Stock is entitled to exercise votes for approximately 1,389 shares for each share of Series H-7 Preferred Stock held.

### **How Do I Vote?**

Whether you plan to attend the special meeting or not, we urge you to vote by proxy. All shares represented by valid proxies that we receive through this solicitation, and that are not revoked, will be voted in accordance with your instructions on the proxy card or as instructed via the Internet or telephone. If you properly submit a proxy without giving specific voting instructions, your shares will be voted in accordance with our Board's recommendations as noted below. Voting by proxy will not affect your right to attend the special meeting.

#### *Record Holders*

If your shares are registered directly in your name through our stock transfer agent, Issuer Direct Corporation, or you have stock certificates registered in your name, you may vote:

☐ **By Internet or by telephone.** Follow the instructions included in the proxy card to vote over the Internet or by telephone.

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5

☐ **By mail.** If you received a proxy card by mail, you can vote by mail by completing, signing and returning the proxy card as instructed on the card. If you sign the proxy card but do not specify how you want your shares voted, they will be voted in accordance with our Board's recommendations as noted below.

☐ **At the time of the virtual special meeting.** If you attend the virtual special meeting, you may vote your shares online at the time of the meeting.

**Telephone and Internet voting facilities for stockholders of record will be available 24 hours a day and will close at 11:59 p.m. Eastern Time on September 13, 2023.**

If your shares are held in “street name” (held in the name of a bank, broker or other holder of record), you will receive instructions from the holder of record. You must follow the instructions of the holder of record in order for your shares to be voted. Telephone and Internet voting may also be offered to stockholders owning shares through certain banks and brokers. If your shares are not registered in your own name and you plan to vote your shares in person at the special meeting, you should contact your broker or agent to obtain a legal proxy or broker’s proxy card and bring it to the special meeting in order to vote.

#### **How Does Our Board Recommend that I Vote on the Proposals?**

Our Board recommends that you vote “FOR” the approval, for purposes of complying with Nasdaq Listing Rule 5635(d), of the issuance of shares of our Common Stock underlying the Series H-7 Preferred Stock and Warrants issued by us pursuant to the terms of the Purchase Agreement and the Engagement Agreement in an amount equal to or in excess of 20% of our Common Stock outstanding before the issuance of such Preferred Shares and Warrants (including any amortization payments made to the holders of the Preferred Shares in the form of issuance of shares of Common Stock and upon the operation of anti-dilution provisions contained in such Preferred Shares and Warrants) (collectively, the “Issuance Proposal”).

Our Board also recommends that you vote “FOR” the Reverse Stock Split Proposal.

Our Board also recommends that you vote “FOR” the Share Increase Proposal.

Our Board recommends that you vote “FOR” the Incentive Plan Amendment Proposal.

Our Board also recommends that you vote “FOR” the proposal to adjourn the special meeting to a later date or dates, if necessary or appropriate, to permit further solicitation and vote of proxies in the event that there are insufficient votes for, or otherwise in connection with, the approval of the Issuance Proposal, the Reverse Stock Split Proposal, the Share Increase Proposal or the Incentive Plan Amendment Proposal (the “Adjournment Proposal”).

If any other matter is presented at the special meeting, your proxy provides that your shares will be voted by the proxy holder listed in the proxy in accordance with the proxy holder’s best judgment. At the time this proxy statement was first made available, we knew of no matters that needed to be acted on at the special meeting, other than those discussed in this proxy statement.

#### **May I Change or Revoke My Proxy?**

If you give us your proxy after receiving this proxy statement, you may change or revoke it at any time before the special meeting. You may change or revoke your proxy in any one of the following ways:

- ☐ if you received a proxy card, by signing a new proxy card with a date later than your previously delivered proxy and submitting it as instructed above;
- ☐ by re-voting by Internet or by telephone as instructed above;
- ☐ by notifying David E. Hollingsworth, Chief Financial Officer, in writing before the special meeting that you have revoked your proxy; or

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- ☐ by attending the virtual special meeting and voting your shares online at the meeting. Attending the special meeting virtually will not in and of itself revoke a previously submitted proxy.

Your most current vote, whether by proxy via telephone, Internet, proxy card, or virtually at the meeting, is the one that will be counted.

#### **What if I Receive More Than One Proxy Card?**

You may receive more than one proxy card if you hold shares of our Common Stock in more than one account, which may be in registered form or held in street name. Please vote in the manner described above under “How Do I Vote?” for each account to ensure that all of your shares are voted.

#### **Will My Shares be Voted if I Do Not Vote?**

If your shares are registered in your name or if you have stock certificates, they will not be counted if you do not vote as described above under “How Do I Vote?” If your shares are held in street name and you do not provide voting instructions to the bank, broker or other nominee that holds your shares as described above, the bank, broker or other nominee that holds your shares has the authority to vote your unvoted shares on the Reverse Stock Split Proposal and the Adjournment Proposal without receiving instructions from you. Therefore, we encourage you to provide voting instructions to your bank, broker or other nominee. This ensures your shares will be voted at the special meeting and in the manner you desire. A “broker non-vote” will occur if your broker cannot vote your shares on a particular matter because it has not received instructions from you and does not have discretionary voting authority on that matter or because your broker chooses not to vote on a matter for which it does have discretionary voting authority.

#### **What Vote is Required to Approve Each Proposal and How are Votes Counted?**

The affirmative vote of the holders of a majority of the voting power of the shares present in person or by proxy at the special meeting and entitled to vote on the Issuance Proposal is required to approve the Issuance Proposal. Abstentions will have the effect of a vote against this proposal. Brokerage firms do not have authority to vote customers’ unvoted shares held by the firms in street name on this proposal. Holders of shares of Series H-7 Preferred Stock are not entitled to vote such shares on the Issuance Proposal.

The affirmative vote of the holders of a majority of the voting power of the shares present in person or by proxy at the special meeting and entitled to vote on the Reverse Stock Split Proposal is required to approve the Reverse Stock Split Proposal. Abstentions will have the effect of a vote against this proposal. Brokerage firms have authority to vote customers’ unvoted shares held by the firms in street name on this proposal.

The affirmative vote of the holders of a majority of the voting power of the shares present in person or by proxy at the special meeting and entitled to vote on the Share Increase Proposal is required to approve the Share Increase Proposal. Abstentions will have the effect of a vote against this proposal. Brokerage firms do not have authority to vote customers’ unvoted shares held by the firms in street name on this proposal.

The affirmative vote of the holders of a majority of the voting power of the shares present in person or by proxy at the special meeting and entitled to vote on the Incentive Plan Amendment Proposal is required to approve the Incentive Plan Amendment Proposal. Abstentions will have the effect of a vote against this proposal. Brokerage firms do not have authority to vote customers’ unvoted shares held by the firms in street name on this proposal.

The affirmative vote of the holders of a majority of the voting power of the shares present, either in attendance virtually or represented by proxy, at the Special Meeting and entitled to vote on the Adjournment Proposal is necessary to approve such proposal. Abstentions will have the effect of a vote against this proposal. Brokerage firms have authority to vote customers’ unvoted shares held by the firms in street name on this proposal.

## Where Can I Find the Voting Results of the Special Meeting?

The preliminary voting results will be announced at the special meeting, and we will publish preliminary, or final results if available, in a Current Report on Form 8-K within four business days of the special meeting. If final results are unavailable at the time we file the Form 8-K, then we will file an amended report on Form 8-K to disclose the final voting results within four business days after the final voting results are known.

7

## What Are the Costs of Soliciting these Proxies?

We will pay all of the costs of soliciting these proxies. Our directors and employees may solicit proxies in person or by telephone, fax or email. We will pay these employees and directors no additional compensation for these services. We will ask banks, brokers and other institutions, nominees and fiduciaries to forward these proxy materials to their principals and to obtain authority to execute proxies. We will then reimburse them for their expenses.

We have engaged Alliance Advisors, LLC to assist in the solicitation of proxies and provide related advice and informational support, for a services fee, plus customary disbursements, which are not expected to exceed \$35,000 in total.

## What Constitutes a Quorum for the Special Meeting?

The presence, in person or by proxy, of the holders of one-third of the voting power of all outstanding shares of our capital stock issued, outstanding and entitled to vote at the special meeting is necessary to constitute a quorum at the special meeting. Votes and abstentions of stockholders of record who are present at the special meeting in person or by proxy are counted for purposes of determining whether a quorum exists.

## Who should I contact if I have any questions about how to vote?

If you have any questions about how to vote your shares, you may contact our proxy solicitor at:

Alliance Advisors, LLC  
200 Broadacres Drive, 3rd Floor Bloomfield, NJ 07003  
Telephone: 855-976-3327

## Attending the Special Meeting

The special meeting will be held in a virtual meeting format only. To attend the virtual special meeting, go to [www.virtualshareholdermeeting.com/AYRO2023SM](http://www.virtualshareholdermeeting.com/AYRO2023SM) shortly before the meeting time, and follow the instructions for downloading the Webcast. If you miss the special meeting, you can view a replay of the Webcast at [www.virtualshareholdermeeting.com/AYRO2023SM](http://www.virtualshareholdermeeting.com/AYRO2023SM) until one year from the date of the meeting. You need not attend the special meeting in order to vote.

## Householding of Disclosure Documents

Some brokers or other nominee record holders may be sending you a single set of our proxy materials if multiple AYRO stockholders live in your household. This practice, which has been approved by the SEC, is called “householding.” Once you receive notice from your broker or other nominee record holder that it will be “householding” our proxy materials, the practice will continue until you are otherwise notified or until you notify them that you no longer want to participate in the practice. Stockholders who participate in householding will continue to have access to and utilize separate proxy voting instructions.

We will promptly deliver a separate copy of our proxy materials to you if you write or call our Chief Financial Officer at: 900 E. Old Settlers Boulevard, Suite 100, Round Rock, Texas 78664. If you want to receive your own set of our proxy materials in the future or, if you share an address with another stockholder and together both of you would like to receive only a single set of proxy materials, you should contact your broker or other nominee record holder directly or you may contact us at the above address and phone number.

8

## SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

The following table sets forth information regarding the beneficial ownership of our voting securities as of the Record Date by (i) each person known to us to beneficially own five percent (5%) or more of any class of our voting securities; (ii) each of our Named Executive Officers (as defined in Item 402 of Regulation S-K) and directors; and (iii) all of our current directors and executive officers as a group.

The percentages of voting securities beneficially owned are reported on the basis of regulations of the Securities and Exchange Commission (“SEC”) governing the determination of beneficial ownership of securities. Under the rules of the SEC, a person is deemed to be a beneficial owner of a security if that person has or shares voting power, which includes the power to vote or to direct the voting of the security, or investment power, which includes the power to dispose of or to direct the disposition of the security. Shares of Common Stock beneficially owned and the respective percentages of beneficial ownership of Common Stock assumes the exercise of all options, warrants (including the Warrants issued in the Offering) and other securities convertible into Common Stock beneficially owned by such person or entity currently exercisable or exercisable within 60 days of the Record Date. The number of shares of Common Stock beneficially owned by the principal stockholders and the percentage of shares outstanding, as set forth below, take into account certain limitations on the exercise of warrants to purchase Common Stock.

Except as indicated in the footnotes to this table, to our knowledge and subject to community property laws where applicable, each beneficial owner named in the table below has sole voting and sole investment power with respect to all shares beneficially owned and each person’s address is c/o AYRO, Inc., 900 E. Old Settlers Boulevard, Suite 100, Round Rock, Texas 78664.

Name	Number of Shares of Common Stock Beneficially Owned (1)	Percentage of Class	Number of Shares of Series H-7 Preferred Stock Beneficially Owned (2)	Percentage of Class	Total Voting Power
<b>5% Beneficial Owner</b>					
Alpha Capital Anstalt <sup>(3)</sup>	3,890,883	9.55%	3,000	13.64%	11.80%
The Hewlett Fund LP <sup>(4)</sup>	2,000,000	5.03%	2,000	9.09%	7.00%
Mainfield Enterprise, Inc. <sup>(5)</sup>	1,981,742	4.99%	2,500	11.36%	7.99%



Richard Abbe/ Iroquois Capital Management L.L.C. <sup>(6)</sup>	4,060,117	9.99%	14,000	63.64%	34.42%
<i>Named Executive Officers and Directors</i>					
George Devlin <sup>(7)</sup>	216,125	*	-	-	-
Sebastian Giordano <sup>(8)</sup>	226,234	*	-	-	-
David E. Hollingsworth	-	*	-	-	-
Zvi Joseph <sup>(9)</sup>	200,953	*	-	-	-
Richard Perley <sup>(10)</sup>	59,752	*	-	-	-
Joshua Silverman <sup>(11)</sup>	395,493	1.05%	-	-	-
Greg Schiffman <sup>(12)</sup>	220,254	*	-	-	-
Curtis Smith <sup>(13)</sup>	225,313	*	-	-	-
Wayne R. Walker <sup>(14)</sup>	175,399	*	-	-	-
Thomas M. Wittenschlaeger <sup>(15)</sup>	50,000	*	-	-	-
All current executive officers and Directors as a group (8 persons)	1,484,458	3.93%	-	-	2.17%

1. Percentage of Common Stock ownership is based on 37,732,530 shares of Common Stock issued and outstanding as of the Record Date. Beneficial ownership assumes full exercise of the Warrants subject to a 4.99% or 9.99% blocker, as applicable.

2. Percentage of Series H-7 Preferred Stock ownership is based on 22,000 shares of Series H-7 Preferred Stock issued and outstanding as of the Record Date.
3. Based on a Schedule 13G/A filed on August 4, 2023 by Alpha Capital Anstalt and on certain information made available to the Company. The address of Alpha Capital Anstalt is Altenbach 8, FL-9490 Vaduz, Furstentums, Liechtenstein. Alpha Capital Anstalt is the beneficial owner of 890,883 shares of Common Stock, 3,000 shares of Series H-7 Preferred Stock and Warrants to purchase 3,000,000 shares of Common Stock exercisable within 60 days of the Record Date (subject to a 9.99% beneficial ownership blocker).
4. Based on certain information made available to the Company. The address of The Hewlett Fund LP is 100 Merrick Road, Suite 400W, Rockville Centre, NY 11570. The Hewlett Fund LP is the beneficial owner of 2,000 shares of Series H-7 Preferred Stock and Warrants to purchase 2,000,000 shares of Common Stock exercisable within 60 days of the Record Date (subject to a 9.99% beneficial ownership blocker).
5. Based on certain information made available to the Company. The address of Mainfield Enterprises Inc. is Ariel House, 74 Charlotte Street, London W1T4QJ, United Kingdom. Mainfield Enterprises is the beneficial owner of 2,500 shares of Series H-7 Preferred Stock and Warrants to purchase 2,500,000 shares of Common Stock exercisable within 60 days of the Record Date (subject to a 4.99% beneficial ownership blocker).
6. Based on a Schedule 13G/A jointly filed on February 24, 2022 by Richard Abbe ("Mr. Abbe"), Kimberly Page ("Ms. Page") and Iroquois Capital Management L.L.C. and on certain information made available to the Company. Represents (i) 1,125,000 shares of Common Stock, warrants exercisable within 60 days of the Record Date to purchase 9,829,003 shares of Common Stock, and preferred stock convertible into 963 shares of Common Stock and 9,000 shares of Series H-7 Preferred Stock held by Iroquois Capital Investment Group LLC ("ICIG") and (ii) 23,000 shares of Common Stock, warrants exercisable within 60 days of the Record Date to purchase 6,133,569 shares of Common Stock, preferred stock convertible into 1,868 shares of Common Stock and 5,000 shares of Series H-7 Preferred Stock held by Iroquois Master Fund Ltd. ("IMF"), all of which are subject to a 9.99% beneficial ownership blocker. Mr. Abbe exercises sole voting and dispositive power over the shares held by ICIG and shares voting and dispositive power over the shares held by IMF with Ms. Page. As such, Mr. Abbe may be deemed to be the beneficial owner of all shares of common stock held by and underlying the warrants and shares of preferred stock (each subject to certain beneficial ownership blockers) held by ICIG and IMF and Ms. Page may be deemed to be the beneficial owner of all shares of common stock held by and underlying the warrants and shares of preferred stock (each subject to certain beneficial ownership blockers) held by IMF.
7. Mr. Devlin's total includes 216,125 shares of Common Stock.
8. Mr. Giordano's total includes 226,234 shares of Common Stock.
9. Mr. Joseph's total includes 200,953 shares of Common Stock.
10. Mr. Perley's total includes options to purchase 59,752 shares of Common Stock that are exercisable within 60 days of the Record Date.
11. Mr. Silverman's total includes 395,493 shares of Common Stock.
12. Mr. Schiffman's total includes 220,254 shares of Common Stock.
13. Mr. Smith's total includes options to purchase 225,313 shares of commons stock that are exercisable within 60 days of the Record Date.
14. Mr. Walker's total includes 175,399 shares of Common Stock.
15. Mr. Wittenschlaeger's total includes 50,000 shares of Common Stock.

## EXECUTIVE COMPENSATION

### Compensation Philosophy and Process

The responsibility for establishing, administering and interpreting our policies governing the compensation and benefits for our executive officers and making compensation decisions with respect to such executive officers lies with our Compensation and Human Resources Committee. Prior to such amendment and restatement, compensation decisions were made by the Board following the recommendation of the Compensation and Human Resources Committee. In the fiscal year ended December 31, 2022, the Company did not retain the services of any compensation consultants.

The goals of our executive compensation program are to attract, motivate and retain individuals with the skills and qualities necessary to support and develop our business within the framework of our size and available resources. In 2021, we designed our executive compensation program to achieve the following objectives:



- attract and retain executives experienced in developing and delivering products such as our own;
- motivate and reward executives whose experience and skills are critical to our success;
- reward performance; and
- align the interests of our executive officers and other key employees with those of our stockholders by motivating our executive officers and other key employees to increase stockholder value.

### Summary Compensation Table

The following table sets forth all compensation earned, in all capacities, during the fiscal years ended December 31, 2022 and 2021 by the Company's named executive officers.

Name and Principal Position	Year	Salary (\$)	Bonus (\$)	Stock Awards (\$) <sup>(1)</sup>	Option Awards (\$) <sup>(1)</sup>	All other compensation (\$)	Total (\$)
Thomas M. Wittenschlaeger <sup>(2)</sup> Chief Executive Officer	2022	263,700	132,500	-	-	-	396,200
	2021	71,106	-	1,117,092	-	-	1,188,198
David E. Hollingsworth <sup>(3)</sup> Chief Financial Officer	2022	209,675	87,100	2,760	-	-	299,535
Curtis Smith <sup>(4)</sup> Former Chief Financial Officer	2022	-	-	-	-	245,833	245,833
	2021	226,506	50,000	-	-	-	276,506
Richard Perley <sup>(5)</sup> Former Chief Marketing Officer	2022	-	-	-	-	245,833	245,833
	2021	149,998	50,002	-	-	-	200,000

- (1) The dollar amounts in this column represent the aggregate grant date fair value computed in accordance with FASB ASC Topic 718. The assumptions underlying the determination of fair value of the awards are set forth in Note 3 of the financial statements included in our Annual Report on Form 10-K filed with the SEC on March 23, 2022.
- (2) Appointed as an officer of the Company effective as of September 23, 2021.
- (3) Appointed as an officer of the Company effective as of January 14, 2022.
- (4) Resigned effective as of January 14, 2022.
- (5) Terminated engagement with the Company effective as of January 14, 2022.

### Corporate History

On May 28, 2020, pursuant to the previously announced Agreement and Plan of Merger, dated December 19, 2019 (the "Merger Agreement"), by and among AYRO, ABC Merger Sub, Inc., a Delaware corporation and a wholly owned subsidiary of the Company ("Merger Sub"), and AYRO Operating Company, Inc., a Delaware corporation previously known as AYRO, Inc. ("AYRO Operating"), Merger Sub was merged with and into AYRO Operating, with each issued and outstanding share of AYRO Operating's common stock, including shares underlying AYRO Operating's outstanding equity awards and warrants, being converted into the right to receive 1.3634 shares of the Company's Common Stock, and with AYRO Operating continuing after the merger as the surviving entity and a wholly owned subsidiary of the Company (the "Merger").

From September 2021 through January 2022, the Company underwent a change in management. In September 2021, Mr. Wittenschlaeger joined the Company as Chief Executive Officer. Following the hiring of Mr. Wittenschlaeger, in January 2022 Messrs. Smith and Perley resigned from their respective positions as Chief Financial Officer and Chief Marketing Officer and Mr. Hollingsworth was hired as the Company's Interim Chief Financial Officer. On August 22, 2022, the Company appointed Mr. Hollingsworth as Chief Financial Officer.

The Company has entered into executive employment agreements with Messrs. Wittenschlaeger and Hollingsworth. Prior to the Merger, AYRO Operating had entered into an employment agreement with Mr. Smith. Immediately prior to the effective time of the Merger, AYRO Operating entered into an amendment to the executive employment agreement with Mr. Smith, effective upon completion of the Merger.

Mr. Perley provided services as a contractor to AYRO Operating pursuant to an independent contractor agreement AYRO Operating entered into with an entity controlled by Mr. Perley.

### Narrative Disclosure to Summary Compensation Table

The material terms of the employment agreements and the independent contractor agreements with the named executive officers of the Company are summarized below.

#### Executive Employment Agreement with Thomas M. Wittenschlaeger

On September 23, 2021, the Company entered into an executive employment agreement (the "Wittenschlaeger Employment Agreement") with Mr. Wittenschlaeger setting forth the terms and conditions of Mr. Wittenschlaeger's employment as the Company's Chief Executive Officer, effective September 23, 2021. Pursuant to the Wittenschlaeger Employment Agreement, Mr. Wittenschlaeger will serve as the Chief Executive Officer of the Company for a two-year initial term commencing on September 23, 2021, which term may be renewed for up to three successive one-year terms, unless earlier terminated by either party in accordance with the terms of the Wittenschlaeger Employment Agreement. Subject to the approval of the Company's stockholders, Mr. Wittenschlaeger also serves as a member of the Board.

The Wittenschlaeger Employment Agreement provides that Mr. Wittenschlaeger is entitled to receive an annual base salary of two hundred-eighty thousand dollars (\$280,000), payable in equal installments semi-monthly pursuant to the Company's normal payroll practices. For the 2021 fiscal year, Mr. Wittenschlaeger was eligible to receive a partial bonus as determined by the Board, based upon the achievement of short-term target objectives and performance criteria as agreed upon by Mr. Wittenschlaeger and the Board, with such partial bonus payable no later than March 15, 2022. Mr. Wittenschlaeger is also eligible to receive, for subsequent fiscal years during the term of his employment, periodic bonuses up to 50% of his annual base salary upon achievement of target objectives and performance criteria, payable on or before March 15 of the fiscal year following the fiscal year to which the bonus relates. For the fiscal year ended December 31, 2022, Mr. Wittenschlaeger was awarded a bonus of \$132,500. Targets and performance criteria shall be established by the Board after consultation with Mr. Wittenschlaeger, but the evaluation of Mr. Wittenschlaeger's performance shall be at the Board's sole discretion. The Wittenschlaeger Employment Agreement also entitles Mr. Wittenschlaeger to receive customary benefits and reimbursement for ordinary business expenses and relocation expenses of \$15,000.

In connection with Wittenschlaeger's appointment and as an inducement to enter into the Wittenschlaeger Employment Agreement, the Company granted Mr. Wittenschlaeger 450,000 shares of the Company's restricted Common Stock, pursuant to a restricted stock award agreement entered into by the Company with Mr. Wittenschlaeger on September 23, 2021, which shares shall vest in tranches of 90,000 shares upon the achievement of certain stock price, market capitalization and business milestones.

The Company may terminate Mr. Wittenschlaeger's employment due to death or disability, for cause (as defined in the Wittenschlaeger Employment Agreement) at any time after providing written notice to Mr. Wittenschlaeger, and without cause at any time upon thirty days' written notice. Mr. Wittenschlaeger may terminate his employment without good reason (as defined in the Wittenschlaeger Employment Agreement) at any time upon thirty days' written notice or with good reason, which requires delivery of a notice of termination within ninety days after Mr. Wittenschlaeger first learns of the existence of the circumstances giving rise to good reason, and failure of the Company to cure the circumstances giving rise to the good reason within thirty days following delivery of such notice.

If Mr. Wittenschlaeger's employment is terminated by the Company for cause or if Mr. Wittenschlaeger resigns, Mr. Wittenschlaeger shall receive, within thirty days of such termination, any accrued but unpaid base salary and expenses required to be reimbursed pursuant to the Wittenschlaeger Employment Agreement. If Mr. Wittenschlaeger's employment is terminated due to his death or disability, Mr. Wittenschlaeger or his estate will receive the accrued obligation Mr. Wittenschlaeger would have received upon termination by the Company for cause or by Mr. Wittenschlaeger by resignation, and any earned, but unpaid, bonus for services rendered during the year preceding the date of termination.

If Mr. Wittenschlaeger's employment is terminated by the Company without cause (as defined in the Wittenschlaeger Employment Agreement) or upon non-renewal or by Mr. Wittenschlaeger for good reason, Mr. Wittenschlaeger is entitled to receive the accrued obligation Mr. Wittenschlaeger would have received upon termination by the Company for cause or by Mr. Wittenschlaeger by resignation, and any earned, but unpaid, bonus for services rendered during the year preceding the date of termination. In addition, subject to compliance with the restrictive covenants set forth in the Wittenschlaeger Employment Agreement and the execution of a release of claims in favor of the Company, the Company will pay the following severance payments and benefits: (i) an amount equal to twelve months' base salary, payable in equal monthly installments over a twelve-month severance period; (ii) an amount equal to the greater of (x) the most recent annual bonus earned by Mr. Wittenschlaeger, (y) the average of the immediately preceding two year's annual bonuses earned by Mr. Wittenschlaeger, or (z) if Mr. Wittenschlaeger's termination of employment occurs during the first calendar year of the initial employment term before any annual bonus for a full twelve-month period of service has been paid, then the target bonus Mr. Wittenschlaeger is eligible for under the Wittenschlaeger Employment Agreement; provided that, other than the first year of the Wittenschlaeger Employment Agreement, no bonus amount shall be payable if the bonuses for the year of termination are subject to achievement of performance goals and such performance goals are not achieved by the Company for such year; and (iii) an amount intended to assist Mr. Wittenschlaeger with his post-termination health coverage, provided however, he is under no obligation to use such amounts to pay for continuation of coverage under the Company's group health plan pursuant to COBRA.

If Mr. Wittenschlaeger's employment is terminated by the Company without cause or by Mr. Wittenschlaeger for good reason or upon non-renewal within 12 months following a change in control (as defined in the Wittenschlaeger Employment Agreement), Mr. Wittenschlaeger shall receive the severance payments and benefits he would receive in the event that the Company terminates Mr. Wittenschlaeger's employment without cause or upon non-renewal or by Mr. Wittenschlaeger for good reason set forth above. In addition, certain performance milestones for his equity award will be waived, and certain unvested restricted shares shall immediately vest and no longer be subject to any holding period.

The Wittenschlaeger Employment Agreement also contains customary provisions relating to, among other things, confidentiality, non-competition, non-solicitation, non-disparagement, and assignment of inventions requirements.

#### ***Executive Employment Agreement with David E. Hollingsworth***

In connection with Mr. Hollingsworth's appointment as the Company's Chief Financial Officer, on August 23, 2022, the Company entered into an executive employment agreement (the "Hollingsworth Employment Agreement") with Mr. Hollingsworth setting forth the terms and conditions of Mr. Hollingsworth's employment, effective August 23, 2022. Pursuant to the Hollingsworth Employment Agreement, Mr. Hollingsworth will serve as the Chief Financial Officer of the Company for a two-year initial term commencing on August 23, 2022, which term may be renewed for up to two successive one-year terms, unless earlier terminated by either party in accordance with the terms of the Hollingsworth Employment Agreement.

The Hollingsworth Employment Agreement provides that Mr. Hollingsworth is entitled to receive an annual base salary of two hundred-thirty thousand dollars (\$230,000), payable in equal installments semi-monthly pursuant to the Company's normal payroll practices. For each fiscal year during the term of his employment, Mr. Hollingsworth is eligible to receive periodic bonuses of up to 40% of his annual base salary upon achievement of target objectives and performance criteria, payable on or before March 15 of the fiscal year following the fiscal year to which the bonus relates. Targets and performance criteria shall be established by the Board after consultation with Mr. Hollingsworth and the Company's Chief Executive Officer, but the evaluation of Mr. Hollingsworth's performance shall be at the Board's sole discretion. For the fiscal year ended December 31, 2022, Mr. Hollingsworth was awarded a bonus of \$87,100. The Hollingsworth Employment Agreement also entitles Mr. Hollingsworth to receive customary benefits and reimbursement for ordinary business expenses.

In connection with Mr. Hollingsworth's appointment and as an inducement to enter into the Hollingsworth Employment Agreement, the Company granted Mr. Hollingsworth 100,000 shares of the Company's restricted Common Stock, which shares shall vest in tranches of 25,000 shares upon the achievement of certain stock price, market capitalization and business milestones.

The Company may terminate Mr. Hollingsworth's employment due to death or disability, for cause (as defined in the Hollingsworth Employment Agreement) at any time after providing written notice to Mr. Hollingsworth, and without cause at any time upon thirty days' written notice. Mr. Hollingsworth may terminate his employment without good reason (as defined in the Hollingsworth Employment Agreement) at any time upon thirty days' written notice or with good reason, which requires delivery of a notice of termination within ninety days after Mr. Hollingsworth first learns of the existence of the circumstances giving rise to good reason, and failure of the Company to cure the circumstances giving rise to the good reason within thirty days following delivery of such notice.

If Mr. Hollingsworth's employment is terminated by the Company for cause, as a result of Mr. Hollingsworth's resignation or as a result of the expiration of the term of the Hollingsworth Employment Agreement, Mr. Hollingsworth shall receive, within thirty days of such termination, any accrued but unpaid base salary and expenses required to be reimbursed pursuant to the Hollingsworth Employment Agreement.

If Mr. Hollingsworth's employment is terminated due to his death or disability, Mr. Hollingsworth or his estate will receive the accrued obligations Mr. Hollingsworth would have received upon termination by the Company for cause or by Mr. Hollingsworth by resignation, and any earned, but unpaid, bonus for services rendered during the year preceding the date of termination.

If Mr. Hollingsworth's employment is terminated by the Company without cause (as defined in the Hollingsworth Employment Agreement) or by Mr. Hollingsworth for good reason, Mr. Hollingsworth is entitled to receive the accrued obligations he would have received upon termination by the Company for cause or by Mr. Hollingsworth by resignation, and any earned, but unpaid, bonus for services rendered during the year preceding the date of termination. In addition, subject to compliance with the restrictive

covenants set forth in the Hollingsworth Employment Agreement and the execution of a release of claims in favor of the Company, the Company will pay the following severance payments and benefits: (i) an amount equal to twelve months' base salary, payable in equal monthly installments over a twelve-month severance period; (ii) an amount equal to the greater of (x) the most recent annual bonus earned by Mr. Hollingsworth, (y) the average of the immediately preceding two year's annual bonuses earned by Mr. Hollingsworth, or (z) if Mr. Hollingsworth's termination of employment occurs during the first calendar year of the initial employment term before any annual bonus for a full twelve-month period of service has been paid, then the target bonus Mr. Hollingsworth is eligible for under the Hollingsworth Employment Agreement; provided that no bonus amount shall be payable if the bonuses for the year of termination are subject to achievement of performance goals and such performance goals are not achieved by the Company for such year; and (iii) an amount intended to assist Mr. Hollingsworth with his post-termination health coverage, provided, however, that he is under no obligation to use such amounts to pay for continuation of coverage under the Company's group health plan pursuant to COBRA.

The Hollingsworth Employment Agreement also contains customary provisions relating to, among other things, confidentiality, non-competition, non-solicitation, non-disparagement, and assignment of inventions requirements.

#### ***Executive Employment Agreement with Curtis Smith***

##### ***Pre-Merger Smith Employment Agreement***

Pursuant to his employment agreement, effective March 8, 2018, and to subsequent actions by AYRO Operating's board of directors, Curtis E. Smith was entitled to a base salary of \$200,000 and a target annual bonus in the amount of 25% of his annual base salary. The target annual bonus was based on Mr. Smith's performance, as determined by AYRO Operating's board of directors in its sole discretion, against fundamental corporate and/or individual objectives to be determined by AYRO Operating's board of directors. Mr. Smith was eligible to participate in the 2017 LTIP (as defined below), subject to the discretion of AYRO Operating's board of directors, if and when the board of directors determined to make a grant to him. Pursuant to Mr. Smith's employment agreement, as consideration for entering into the employment agreement, AYRO Operating granted nonqualified options to acquire 109,072 shares of AYRO Operating common stock (giving effect to the Exchange Ratio and Reverse Split) with an exercise price of \$2.446 in March 2018.

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14

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##### ***Smith Employment Agreement Amendment***

On May 28, 2020, immediately prior to the effective time of the Merger, AYRO Operating entered into an amendment to its executive employment agreement with Mr. Smith (the "Smith Amendment"). The Smith Amendment provided that if Mr. Smith's employment was terminated upon either party's failure to renew or by Mr. Smith without good reason, then all of Mr. Smith's vested, outstanding stock options would remain exercisable until the earlier of the expiration of the option's term or the date that is two years following the termination. The Smith Amendment further provided that if Mr. Smith's employment was terminated by AYRO Operating without cause or by Mr. Smith for good reason, then all outstanding equity awards granted to Mr. Smith pursuant to his employment agreement would be fully and immediately vested, to the extent not previously vested, and all of his then vested, outstanding stock options would remain exercisable until the earlier of the expiration of the options' term or the date that is two years following termination. On September 29, 2020, Mr. Smith was awarded options to purchase 169,906 shares of Common Stock, at an exercise price of \$3.17 per share. One-third of the shares underlying the options vested on the first anniversary of the date of grant, and the remaining optioned shares would vest in twenty-four substantially equal monthly installments on each of the next twenty-four monthly anniversaries of the initial vesting date, provided that Mr. Smith had remained continuously employed by or had been providing services to us through the applicable vesting date.

##### ***Resignation of Chief Financial Officer and General Release and Severance Agreement***

Effective as of January 14, 2022 (the "Smith Resignation Date"), Mr. Smith resigned from his role as an officer and employee of the Company.

On January 14, 2022, in connection with Mr. Smith's resignation, the Company and Mr. Smith entered into a General Release and Severance Agreement (the "Smith Severance Agreement"). Pursuant to the Smith Severance Agreement, Mr. Smith was entitled to receive a cash separation payment in the amount of \$237,500.00, less applicable tax deductions and withholdings, payable in a lump sum within 8 days of January 21, 2022.

The Smith Severance Agreement provided Mr. Smith the opportunity to revoke his acceptance of the Smith Severance Agreement within eight calendar days of the Smith Resignation Date, in which case the Smith Severance Agreement would not be effective and would be deemed void.

In exchange for the consideration provided to Mr. Smith in the Smith Severance Agreement, Mr. Smith and the Company agreed to mutually waive and release any claims in connection with Mr. Smith's hiring, compensation, benefits, employment, or separation from employment with the Company.

In connection with the execution of the Smith Severance Agreement, Mr. Smith's existing executive employment agreement, as amended, was terminated; provided, however, that certain surviving customary confidentiality provisions and related covenants remain in full force and effect. The Smith Severance Agreement also provides for certain customary mutual covenants regarding confidentiality, indemnification and non-disparagement.

Under the Smith Severance Agreement, the treatment of any outstanding equity awards to Mr. Smith shall be determined in accordance with the terms of the AYRO, Inc. 2017 Long Term Incentive Plan (the "2017 LTIP," and collectively with the 2020 LTIP, the "Plans") and the applicable award agreement.

##### ***Independent Contractor Agreement with Richard Perley***

On September 9, 2019, AYRO Operating appointed Mr. Perley as Chief Marketing Officer. AYRO Operating initially paid Mr. Perley \$8,333 per month, based on 50% normal business hours utilization, upon receipt of invoice, which was later increased to \$16,667 per month on October 1, 2019, when Mr. Perley became a full-time associate. Such amount may have been increased or decreased based on actual hours worked. AYRO Operating was to pay Mr. Perley quarterly management by objectives ("MBO") targeted at \$12,500 per quarter, based on MBOs mutually agreed upon by the parties, payment of which will commence after the completion of the Merger. Mr. Perley was also eligible to participate in a commission pooling plan with the other sales team participants. Pursuant to an independent contractor agreement between the Company and PerITek, a corporation owned and controlled by Mr. Perley, dated August 27, 2018 (along with any statements of work and addenda thereto, the "Perley Independent Contractor Agreement"), AYRO Operating granted Mr. Perley options to purchase 54,536 shares of AYRO Operating common stock pursuant to the 2017 LTIP, with such share numbers giving effect to the Exchange Ratio and Reverse Split.

Either Mr. Perley or AYRO Operating could terminate the Perley Independent Contractor Agreement at any time and for any reason with 90 days' advance written notice.

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15

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If AYRO Operating had terminated the contract for cause or if Mr. Perley had terminated the contract without good reason, Mr. Perley would have received his earned fees, commissions and quarterly MBO payment. If the contract was terminated by Mr. Perley for good reason or by AYRO Operating without cause, Mr. Perley would have received his earned fees, commissions and quarterly MBO payment and continued payments of fees, quarterly MBO payment and commissions owned based on the mutually agreed commission plan for six months following their termination date in an aggregate amount equal to the greater of (1) Mr. Perley's monthly fees, quarterly MBO and qualifying commissions for the year in which the termination date occurred, or (2) Mr. Perley's monthly fees, quarterly MBO and qualifying commissions averaged for 6

months prior to the termination date. In addition, pursuant to the option award agreements executed upon each option grant made to Mr. Perley, upon termination by AYRO Operating not for cause (as defined in such option agreements), Mr. Perley may have exercised the options vested as of the date of his termination by the earlier of (i) the date that was 3 months following Mr. Perley's termination or (ii) the expiration date (unless being exercised by his estate).

The Perley Independent Contractor Agreement also contained certain standard covenants regarding non-solicitation, confidentiality, indemnification and assignment of work products.

On September 29, 2020, Mr. Perley was awarded options to purchase 56,147 shares of Common Stock at an exercise price of \$3.17 per share. One-third of the shares underlying the options vested on the first anniversary of the date of grant, and the remaining optioned shares were to vest in twenty-four substantially equal monthly installments on each of the next twenty-four monthly anniversaries of the initial vesting date, provided that Mr. Perley had remained continuously employed by or had been providing services to us through the applicable vesting date.

#### *Termination of Engagement of Chief Marketing Officer and General Release Agreement*

Effective as of January 14, 2022 (the "Perley Termination Date"), Mr. Perley terminated his engagement with the Company. As such, the Perley Independent Contractor Agreement was terminated; provided, however, that certain surviving customary confidentiality provisions and related covenants remain in full force and effect.

On January 14, 2022, in connection with the termination of the Perley Independent Contractor Agreement, the Company and Mr. Perley entered into a General Release Agreement (the "Perley Release Agreement"). Pursuant to the Perley Release Agreement, Mr. Perley was entitled to receive a cash separation payment in the amount of \$237,500.00, payable in a lump sum following the expiration of 8 days following January 14, 2022.

In exchange for the consideration provided to Mr. Perley in the Perley Release Agreement, Mr. Perley and the Company agreed to mutually waive and release any claims in connection with Mr. Perley's compensation, engagement, or cessation from engagement with the Company. The Perley Release Agreement also provides for certain customary mutual covenants regarding confidentiality, indemnification and non-disparagement.

Under the Perley Release Agreement, the treatment of any outstanding equity awards to Mr. Perley shall be determined in accordance with the terms of the 2017 LTIP and the applicable award agreement.

#### **Equity Compensation**

##### *AYRO, Inc. 2020 Long-Term Incentive Plan*

On April 21, 2020, our Board adopted the 2020 LTIP, subject to stockholder approval, which was obtained on May 28, 2020. Our outside directors and our employees, including the principal executive officer, principal financial officer and other named executive officers, and certain contractors are all eligible to participate in the Plan. The Plan was amended by stockholder vote on November 9, 2020, to increase the total number of shares of Common Stock authorized for issuance under the Plan to 4,089,650 shares.

On February 1, 2022, pursuant to the Plan, the Company issued 442,249 shares of restricted stock to non-executive directors at a value of \$1.29 per share. Such shares vested in four equal installments on each quarterly anniversary of the grant date, provided that each director remained continuously employed by or provided services to the Company through the applicable vesting date subject to the terms and conditions of the Plan.

On August 23, 2022, pursuant to the Hollingsworth Employment Agreement, the Company issued 100,000 shares of restricted stock to Mr. Hollingsworth at a value of \$0.03 per share, which shares shall vest in tranches of 25,000 shares upon the achievement of certain stock price, market capitalization and business milestones.

On February 1, 2023, pursuant to the Plan, the Company issued an aggregate of 760,668 shares of restricted stock to its non-employee directors at a value of \$0.75 per share. Such shares vested in four equal installments on each quarterly anniversary of the grant date, provided that each director remained continuously employed by or provided services to the Company through the applicable vesting date subject to the terms and conditions of the Plan.

We are seeking to amend the Plan to increase the total number of shares of Common Stock authorized for issuance under the Plan by 5,750,000 shares to a total of 9,839,650 shares pursuant to the Incentive Plan Amendment Proposal. For more information about the Plan and the Incentive Plan Amendment Proposal, see "Incentive Plan Amendment Proposal (Notice Item 4)."

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

The following table includes certain information with respect to all unexercised stock options and unvested shares of Common Stock outstanding owned by the named executive officers as of December 31, 2022.

Named Executive Officer or Director	Number of securities underlying unexercised options (#) exercisable	Number of securities underlying unexercised options (#) unexercisable	Option exercise price(\$)	Option expiration date	Number of shares or units of stock that have not yet vested (#)	Market value of shares or units of stock that have not vested(\$) <sup>(3)</sup>
Thomas M. Wittenschlaeger, Chief Executive Officer and Director	-	-	-	-	450,000(1)	171,000
David E. Hollingsworth Chief Financial Officer	-	-	-	-	100,000(2)	38,000
Curtis Smith Former Chief Financial Officer	-	-	-	-	-	-
Richard Perley Former Chief Marketing Officer	-	-	-	-	-	-

(1) These shares vest in five tranches upon the achievement of certain stock price, market capitalization and business milestones.

(2) These shares vest in four tranches upon the achievement of certain stock price, market capitalization and business milestones.

(3) Calculated based on the closing price of our Common Stock on December 30, 2022, which was \$0.38.

#### **Retirement Benefits**

We do not currently have plans providing for the payment of retirement benefits to our officers or directors, other than as described under "Narrative Disclosure to Summary Compensation Table" above.

#### **Change in Control Agreements**

We do not currently have any change-of-control or severance agreements with any of our executive officers or directors, other than as described under “Narrative Disclosure to Summary Compensation Table” above. In the event of the termination of employment of the named executive officers, any and all unexercised stock options shall expire and no longer be exercisable after a specified time following the date of the termination, other than as described under “Narrative Disclosure to Summary Compensation Table” above.

## DIRECTOR COMPENSATION

The following table sets forth summary information concerning the total compensation earned by the non-employee directors during the year ended December 31, 2022, for services to the Company.

Name	Fees Earned or Paid in Cash (\$)	Stock Awards (\$) <sup>(1)</sup>	All other compensation	Total (\$)
Greg Schiffman	59,750	84,500	-	144,250
Joshua Silverman	139,250	148,000	-	287,250
Sebastian Giordano	47,250	84,500	60,000	191,750
Zvi Joseph	58,750	84,500	-	143,250
George Devlin	47,250	84,500	-	131,750
Wayne R. Walker	47,250	84,500	-	131,750

- (1) Amounts reflect the full grant-date fair value of stock awards granted during the relevant fiscal year computed in accordance with ASC Topic 718, rather than the amounts paid to or realized by the named individual. We provided information regarding the assumptions used to calculate the value of all stock awards and option awards made to our executive officers in Note 11 to the audited consolidated financial statements for the year ended December 31, 2022.

On February 1, 2022, the Board approved annual director compensation for the director compensation cycle beginning on February 1, 2022. The Board approved the following annual cash retainer fees for the members of the Board: (A) to each non-employee director, an annual cash retainer fee of \$47,250; (B) to the Chairman of the Board, an additional annual cash retainer fee of \$84,000; and (C) to the chair of each Board committee, additional cash compensation as follows: (x) \$12,500 to the Audit Committee Chair, (y) \$11,500 to the Compensation and Human Resources Committee Chair, and (z) \$8,000 to the Nominating and Corporate Governance Committee Chair. The Board further approved compensation for Mr. Giordano in the amount of \$60,000 in connection with his service on the Company’s Budget and Strategy Committee. Additionally, on February 1, 2022, pursuant to the Plan, the Company issued an aggregate of 442,249 shares of restricted stock to its non-employee directors, as shown in the following table:

Director	Awarded Shares	Vesting Schedule
Josh Silverman	114,729	See (1) below
George Devlin	65,504	See (1) below
Sebastian Giordano	65,504	See (1) below
Zvi Joseph	65,504	See (1) below
Greg Schiffman	65,504	See (1) below
Wayne Walker	65,504	See (1) below

- (1) Vests in four equal installments on each quarterly anniversary of the date of the grant, provided that the director has continuously provided services to the Company through that date.

On January 24, 2023, the Board approved annual director compensation for the director compensation cycle beginning on February 1, 2023. The Board approved the following annual cash retainer fees for the members of the Board: (A) to each non-employee director, an annual cash retainer fee of \$47,250; (B) to the Chairman of the Board, an additional annual cash retainer fee of \$84,000; and (C) to the chair of each Board committee, additional cash compensation as follows: (x) \$12,500 to the Audit Committee Chair, (y) \$11,500 to the Compensation and Human Resources Committee Chair, and (z) \$8,000 to the Nominating and Corporate Governance Committee Chair. Additionally, on February 1, 2023, pursuant to the Plan, the Company issued an aggregate of 760,668 shares of restricted stock to its non-employee directors, as shown in the following table:

Director	Awarded Shares	Vesting Schedule
Josh Silverman	197,333	See (1) below
George Devlin	112,667	See (1) below
Sebastian Giordano	112,667	See (1) below
Zvi Joseph	112,667	See (1) below
Greg Schiffman	112,667	See (1) below
Wayne Walker	112,667	See (1) below

- (1) Vests in four equal installments on each quarterly anniversary of the date of the grant, provided that the director has continuously provided services to the Company through that date.

## 2017 LTIP

Pursuant to the Merger Agreement, effective as of the effective time of the Merger, we assumed the 2017 LTIP, assuming all of AYRO Operating’s rights and obligations with respect to the options issued thereunder. Immediately thereafter, we terminated the 2017 LTIP.

The 2017 LTIP, effective as of January 1, 2017, allowed for the granting of a variety of equity-based awards to provide AYRO Operating with flexibility in attracting and retaining key employees, consultants, and nonemployee directors and to provide such persons with additional incentive opportunities designed to enhance AYRO Operating’s profitable growth. Consequently, the 2017 LTIP primarily provided for the granting of incentive stock options, non-qualified stock options, restricted stock awards, restricted stock units, stock appreciation rights, other stock-based awards, or a combination of the foregoing.

*Authorized Shares.* At inception, a total of 125,000 shares of AYRO Operating common stock (without giving effect to the Exchange Ratio or the Reverse Split) that occurred immediately after the effective time of the Merger, were authorized for issuance under the 2017 LTIP. The 2017 LTIP was amended from time to time to increase the maximum number of shares authorized for issuance under the 2017 LTIP. A total of 6,410,000 shares of common stock were authorized under the 2017 LTIP, without giving effect to the Exchange Ratio or the Reverse Split that occurred immediately after the effective time of the Merger.

*Plan Administration.* As permitted by the terms of the 2017 LTIP, the AYRO Operating board of directors delegated administration of the 2017 LTIP to the compensation committee of AYRO Operating’s board of directors (the “AYRO Operating Committee”). As used herein with respect to the 2017 LTIP, the term “AYRO Operating Committee” refers to any committee AYRO Operating’s board of directors may have appointed to administer the 2017 LTIP as well as to the board of directors itself.

Subject to the provisions of the 2017 LTIP, the AYRO Operating Committee had the power to construe and interpret the 2017 LTIP and awards granted under it and to determine the persons to whom and the dates on which awards would have been granted, the number of shares of common stock to be subject to each award, the time or times during the term of each award within which all or a portion of such award may have been exercised, the exercise price, the type of consideration to have been paid, and the other terms and provisions of each award, which need not have been identical. All decisions, determinations and interpretations by the AYRO Operating Committee regarding the 2017 LTIP and any awards granted under it were final, binding and conclusive on all participants or other persons claiming rights under the 2017 LTIP or any award.

**Options.** Options granted under the 2017 LTIP may (i) either have been “incentive stock options” within the meaning of Section 422 of the Code, or “nonqualified stock options,” and (ii) became exercisable in cumulative increments (“vest”) as determined by the AYRO Operating Committee. Such increments may have been based on continued service to AYRO Operating over a certain period of time, the occurrence of certain performance milestones, or other criteria as determined by the Committee. Options granted under the 2017 LTIP may have been subject to different vesting terms. The AYRO Operating Committee generally had the power to accelerate the time during which an option may have vested or have been exercised. Options may not have had an exercise price per share of less than 100% (110% in the case of a participant who owned more than 10% of the combined voting power of AYRO Operating or an affiliate (a “10% Stockholder”)) of the fair market value of a share of AYRO Operating common stock on the date of grant or a term longer than ten years (five years in the case of a 10% Stockholder). To the extent provided by the terms of an option, a participant may have satisfied any federal, state or local tax withholding obligation relating to the exercise of such option by a cash payment upon exercise, by authorizing AYRO Operating to withhold a portion of the stock otherwise issuable to the participant upon exercise, or by such other method as may be set forth in the option agreement or authorized by the AYRO Operating Committee. The treatment of options under the 2017 LTIP upon a participant’s termination of employment with or service to AYRO Operating were set forth in the applicable award agreement, which typically provided that the options will terminate three months after a termination of employment or service. Incentive stock options are not transferable except by will or by the laws of descent and distribution, provided that a participant may designate a beneficiary who may exercise an option following the participant’s death. Non-qualified stock options are transferable to certain permitted transferees (as provided in the 2017 LTIP) to the extent included in the option award agreement.

**Restricted Stock and Restricted Stock Unit Awards.** Subject to certain limitations, the AYRO Operating Committee was authorized to grant awards of restricted stock and restricted stock units, which were rights to receive shares of AYRO Operating common stock or cash, as determined by the AYRO Operating Committee and as set forth in the applicable award agreement, upon the settlement of the restricted stock units at the end of a specified time period. The AYRO Operating Committee may have imposed any restrictions or conditions upon the vesting of restricted stock or restricted stock unit awards, or that delay the settlement of a restricted stock unit award after it vests, that the AYRO Operating Committee deemed appropriate and in accordance with the requirements of Section 409A of the Code and the regulations and other authoritative guidance issued thereunder. Dividend equivalents may have been credited in respect of shares covered by a restricted stock or a restricted stock unit award, as determined by the AYRO Operating Committee. At the discretion of the AYRO Operating Committee, such dividend equivalents may have been converted into additional shares covered by restricted stock or restricted stock units, as applicable. If a restricted stock or restricted stock unit award recipient’s employment or service relationship with AYRO Operating terminated, any unvested portion of the restricted stock or restricted stock unit award would be forfeited, unless the participant’s award agreement provided otherwise. Restricted stock and restricted stock unit awards are generally not transferable except (i) by will or by the laws of descent and distribution or (ii) to certain permitted transferee, to the extent provided in the award agreement.

19

**Other Awards.** Other awards permitted under the 2017 LTIP included stock appreciation rights, bonus stock, dividend equivalents, and other stock-based awards that were denominated or payable in, valued in whole or in part by reference to or otherwise based on or related to AYRO Operating common stock.

**Certain Adjustments; Change in Control.** In connection with any reorganization, recapitalization, reincorporation, reclassification, stock dividend, dividend in property other than cash, stock split, liquidating dividend, combination of shares, exchange of shares, or other change in AYRO Operating’s capital structure, the AYRO Operating Committee would have appropriately adjusted the type(s), class(es) and number of shares of common stock subject to the 2017 LTIP (and the other share limits contained therein), and any outstanding awards would also be appropriately adjusted as to the type(s), class(es), number of shares and exercise price per share of common stock subject to such awards.

In the event of a “Change in Control” (as defined in the 2017 LTIP), the AYRO Operating Committee would have approved, without the consent or approval of any participant, one or more of the following alternatives with respect to outstanding awards under the 2017 LTIP: (i) accelerate the time at which outstanding awards may be exercised, whether in full or in part, or for a limited period of time on or before a specified date after which date all unexercised awards and all rights of holders thereunder shall terminate; (ii) require the surrender of some or all of a participant’s outstanding awards, upon which such awards shall be cancelled and the participant shall receive an amount in cash equal to the positive difference, if any, between the underlying stock’s then current fair market value over the award’s exercise or purchase price, as applicable; or (iii) make such adjustments to outstanding awards as the AYRO Operating Committee deemed appropriate to reflect such Change in Control. Any determination of the AYRO Operating Committee with regard to any outstanding awards under the 2017 LTIP in connection with a Change in Control would be final, binding and conclusive.

**Amendment, Termination.** AYRO Operating’s board of directors may have amended, altered, suspended, discontinued, or terminated the 2017 LTIP, provided that no such amendment would have adversely affected the rights of any participant without the participant’s consent.

## Equity Compensation Plan Information

Equity Compensation Plan Information			
	(a)	(b)	(c)
	Number of Securities to be Issued Upon Exercise of Outstanding Options, Warrants and Rights	Weighted-Average Exercise Price of Outstanding Options, Warrants and Rights (1)	Number of Securities Remaining Available for Future Issuance under Equity Compensation Plans (Excluding Securities Reflected in Column (a))
Plan Category:			
Equity compensation plans approved by security holders: 2020 LTIP (Options and Restricted Stock)(2)	2,930,751	\$ 1.97	1,158,899
Equity compensation plans not approved by security holders: 2017 LTIP (Options) (3)	477,983	\$ 5.36	-
Equity compensation plans approved by security holders: 2014 DropCar (Options) (4)	61,440	\$ 46.95	-
Other equity compensation plans not approved by security holders	-	-	-
Total	3,470,174		1,158,899

(1)The weighted-average exercise price set forth in this column is calculated excluding outstanding restricted stock awards since recipients of such awards are not required to pay an exercise price to receive shares subject to these awards.

(2)Represents 658,285 shares of Common Stock issuable upon exercise of options and 2,272,466 outstanding shares of restricted stock under the 2020 LTIP.

(3)Represents shares of common stock issuable upon exercise of options under the 2017 LTIP.



## PAY VERSUS PERFORMANCE

### Pay Versus Performance Disclosure

The following section has been prepared in accordance with Pay Versus Performance rules adopted by the SEC pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Under these new rules, the SEC has developed a definition of pay, referred to as Compensation Actually Paid ("CAP"). We are required to calculate CAP for our Named Executive Officers and then compare it with certain Company performance measures. Stockholders should refer to our compensation philosophy discussion and analysis in this Proxy Statement for a complete description of how executive compensation relates to Company performance measures. The Company did not consider this SEC-required Pay Versus Performance analysis and disclosure below in making its pay decisions for any of the years shown.

### Pay Versus Performance Table

The following table shows the past two fiscal years' total compensation for our Named Executive Officers as set forth in the Summary Compensation Table ("SCT"), the CAP to our Named Executive Officers (as determined pursuant to SEC rules), our total stockholder return ("TSR"), and our net loss. We are a "smaller reporting company," as defined in Rule 12b-2 under the Exchange Act, and have elected to provide in this proxy statement certain scaled disclosures permitted under the Exchange Act for smaller reporting companies.

SEC rules require certain adjustments be made to the SCT totals to determine CAP as reported in the Pay Versus Performance table. CAP does not necessarily represent cash and/or equity value transferred to the applicable Named Executive Officer without restriction, but rather is a valuation calculated under applicable SEC rules. The methodology for calculating CAP as required by Item 402(v) of Regulation S-K takes into account, among others, changes in share price and its impact on the fair value of equity awards.

## PAY VERSUS PERFORMANCE

Year (a)	Summary Compensation Table Total for PEO-R. Keller\$(1) (b1)	Summary Compensation Table Total for PEO-T. Wittenschlaeger \$(2) (b2)	Compensation Actually Paid to PEO-R. Keller\$(3) (c1)	Compensation Actually Paid to PEO-T. Wittenschlaeger\$( (3) (c2)	Average Summary Compensation Table Total for Non-PEO Named Executive Officers(4) (d)	Average Compensation Actually Paid to Non-PEO Named Executive Officers(5) (e)	Value of Initial Fixed \$100 Investment Based On: Total Stockholder Return(6) (f)	Net Income(7) (h)
2022	-	\$ 396,200	-	\$ 92,900	\$ 263,734	\$ 261,349	\$ 6.29	\$ -22,935,353
2021	\$ 956,931	\$ 1,188,198	\$ 1,172,855	\$ 1,106,106	\$ 238,253	\$ 291,370	\$ 26.48	\$ -33,079,414

(1) The amount listed in Column (b1) indicates all compensation received by Rod Keller in 2021. Mr. Keller was not a principal executive officer ("PEO") of AYRO in 2022.

(2) The amount listed in Column (b2) indicates all compensation received by Thomas Wittenschlaeger in 2021 and 2022. Mr. Wittenschlaeger joined AYRO as PEO at the departure of Rod Keller in 2021.

(3) The amounts disclosed in Columns (c1) and (c2) reflect the adjustments listed in the table below to the total amount reported in the SCT for the PEOs. Equity values are calculated in accordance with FASB ASC Topic 718.

(4) For the year ended December 31, 2022 as shown in Column (d), our non-PEO Named Executive Officers ("Non-PEO Named Executive Officers") were Curt Smith, Richard Perley and David Hollingsworth. For the year ended December 31, 2021, Curt Smith and Richard Perley were the only Non-PEO Named Executive Officers.

(5) The amounts disclosed in Column (e) reflect the adjustments listed in the table below to the total amount reported in the SCT for Non-PEO Named Executive Officers. Equity values are calculated in accordance with FASB ASC Topic 718.

The table below summarizes the adjustments to the total amount reported in the SCT for the PEOs in calculating CAP:

Year	Less: Grant Date Fair Value of Equity Awards(a)	Plus: Year-End Fair Value of Unvested Awards Granted During the Year(b)	Plus: Year- Over-Year Change in Fair Value of Unvested Awards(c)	Plus: Vesting Date Fair Value of Current Year Awards Vesting During the Year(d)	Plus: Change in Fair Value of Prior Year Awards Vesting During the Year(e)	Total Adjustments
2022	-	-	-	-	-	-
2021	\$ 0	\$ 0	\$ 143,949	\$ 0	\$ 71,975	\$ 215,924

### T. Wittenschlaeger

Year	Less: Grant Date Fair Value of Equity Awards(a)	Plus: Year- End Fair Value of Unvested Awards Granted During the Year(b)	Plus: Year- Over-Year Change in Fair Value of Unvested Awards(c)	Plus: Vesting Date Fair Value of Current Year Awards Vesting During the Year(d)	Plus: Change in Fair Value of Prior Year Awards Vesting During the Year(e)	Total Adjustments
2022	\$ 0	\$ 0	\$ -345,600	\$ 0	\$ 42,300	\$ -303,300
2021	\$ -1,117,092	\$ 1,035,000	\$ 0	\$ 0	\$ 0	\$ -82,092

(a) Subtract the grant date fair values of the equity awards reported in the "Option Awards" column of the Summary Compensation Table for the covered fiscal year.

(b) Add the fair values as of the end of the covered fiscal year of all equity awards granted during the fiscal year that are outstanding and unvested as of the end of the fiscal year.



- (c) Add the change in fair value as of the end of the covered fiscal year of any equity awards granted in any prior fiscal year that are outstanding and unvested as of the end of the fiscal year.
- (d) Add, for awards that are granted and vest in the same fiscal year, the fair value as of the vesting date.
- (e) Add the change in fair value as of the vesting date of any awards granted in any prior fiscal year for which all applicable vesting conditions were satisfied at the end of or during the covered fiscal year.

The table below summarizes the adjustments to the total amount reported in the SCT for Non-PEO Named Executive Officers in calculating CAP:

Year	Less: Grant Date Fair Value of Equity Awards(a)	Plus: Year-End Fair Value of Unvested Awards Granted During the Year(b)	Plus: Year-Over-Year Change in Fair Value of Unvested Awards(c)	Plus: Vesting Date Fair Value of Current Year Awards Vesting During the Year(d)	Plus: Change in Fair Value of Prior Year Awards Vesting During the Year(e)	Total Adjustments
2022	\$ -2,760	\$ 375	\$ 0	\$ 0	\$ 0	\$ -2,385
2021	\$ 0	\$ 0	\$ 70,823	\$ 0	\$ 35,411	\$ 53,117

2021: Curt Smith and Richard Perley

2022: David Hollingsworth, Curt Smith and Richard Perley

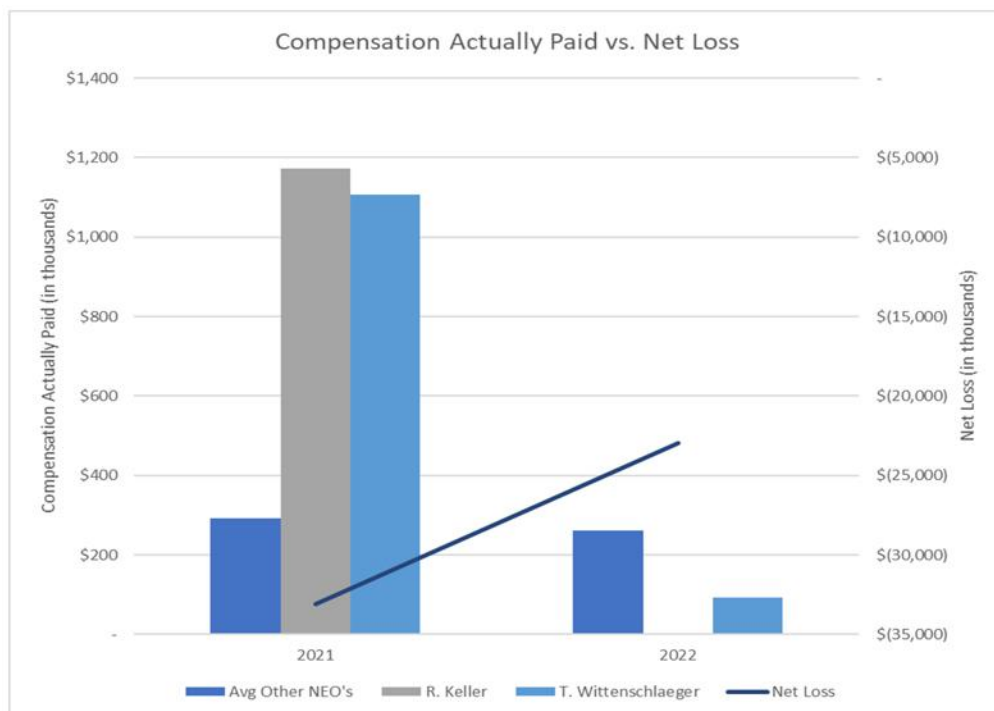
- (a) Subtract the grant date fair values of the equity awards reported in the “Option Awards” column of the Summary Compensation Table for the covered fiscal year.
- (b) Add the fair values as of the end of the covered fiscal year of all equity awards granted during the fiscal year that are outstanding and unvested as of the end of the fiscal year.
- (c) Add the change in fair value as of the end of the covered fiscal year of any equity awards granted in any prior fiscal year that are outstanding and unvested as of the end of the fiscal year.
- (d) Add, for awards that are granted and vest in the same fiscal year, the fair value as of the vesting date.
- (e) Add the change in fair value as of the vesting date of any awards granted in any prior fiscal year for which all applicable vesting conditions were satisfied at the end of or during the covered fiscal year.
- (6) The Company’s cumulative TSR, as indicated in Column (f) assumes \$100 was invested in the Company for the period starting January 1, 2021, through the end of each listed year. We did not pay dividends during the period.
- (7) Net Income presented in Column (h) reflects “Net Loss” in the Company’s Consolidated Statements of Operations included in the Company’s Annual Reports on Form 10-K for each of the years ended December 31, 2022 and 2021.

#### Analysis of the Information Presented in the Pay Versus Performance Table

We generally seek to incentivize long-term performance, and therefore do not specifically align our performance measures with “compensation actually paid” (as computed in accordance with Item 402(v) of Regulation S-K) for a particular year. In accordance with Item 402(v) of Regulation S-K, we are providing the following descriptions of the relationships between information presented in the Pay Versus Performance table.

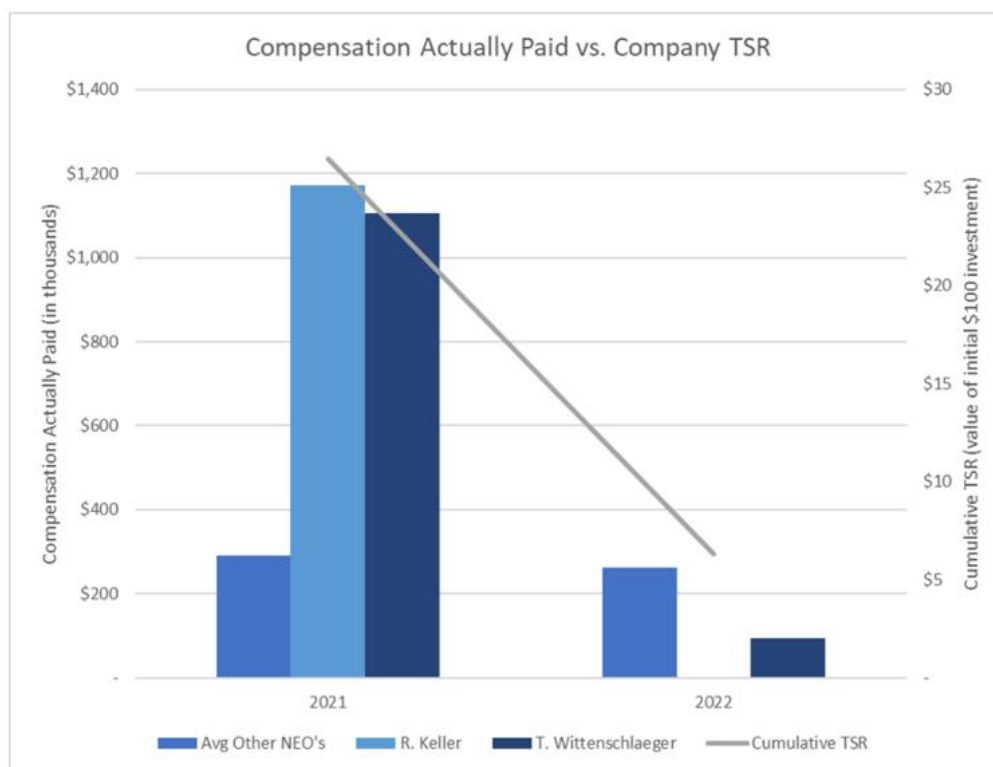
#### Compensation Actually Paid and Net (Loss) Income

The following graph shows the relationship of “compensation actually paid” to our PEOs and other Named Executive Officers in 2022 and 2021 to AYRO’s net loss.



## Compensation Actually Paid and Cumulative TSR

The following graph shows the relationship of “compensation actually paid” to our PEOs and other Named Executive Officers in 2022 and 2021 to the cumulative TSR of AYRO assuming an initial investment of \$100.



## ISSUANCE PROPOSAL

### (Notice Item 1)

#### Background and Description of Proposal

##### Offering

On August 7, 2023, we entered into the Purchase Agreement with the Investors, pursuant to which we agreed to sell to the Investors (i) an aggregate of 22,000 Preferred Shares, convertible into up to 22,000,000 Conversion Shares at the initial Conversion Price, and (ii) Investor Warrants to acquire up to an aggregate of 22,000,000 Investor Warrant Shares at the initial Exercise Price of \$1.00 per share. In connection with the Offering, we also entered into the Engagement Agreement, pursuant to which we agreed to issue to Palladium or its designees Placement Agent Warrants to purchase an aggregate of 440,000 shares of Common Stock at the Exercise Price. The Conversion Price is subject to customary adjustments for stock dividends, stock splits, reclassifications and the like, and subject to price-based adjustment in the event of any issuances of Common Stock, or securities convertible, exercisable or exchangeable for Common Stock, at a price below the then applicable Conversion Price (subject to certain exceptions). The Conversion Price may also be voluntarily reduced by the Company to any amount and for any period of time deemed appropriate by the Board at any time with the prior written consent of the holders of at least a majority of the outstanding Preferred Shares, subject to the rules and regulations of Nasdaq. Any reduction in the Conversion Price will result in an increased number of shares of Common Stock being issuable upon the payment of dividends in respect of the Preferred Shares or upon the conversion of the Preferred Shares and additional dilution to existing investors. We are required to redeem the Series H-7 Preferred Stock in 12 equal monthly installments, commencing on a date between February 7, 2024 and August 7, 2025, at the election of the Investor. The amortization payments due upon such redemption are payable, at our election, in cash at 105% of the Installment Redemption Amount or subject to certain limitations, in shares of Common Stock valued at the Installment Conversion Price, which amortization amounts are subject to certain adjustments as set forth in the Series H-7 Certificate of Designations. Further, the holders of the Series H-7 Preferred Stock are entitled to dividends of 8% per annum, compounded monthly, which is payable in cash or shares of Common Stock at our option. Upon conversion or redemption, the holders of the Preferred Shares are also entitled to receive a dividend make-whole payment assuming for calculation purposes that the stated value remained outstanding through and including the twelve (12) month anniversary of the first installment date as elected by the respective holder. To the extent the number of shares of Common Stock issued in connection with the Offering is greater than anticipated, the market price of our Common Stock could decline further. The Conversion Shares, the Warrant Shares, the shares of Common Stock issuable as amortization payments as well as any shares of Common Stock paid as dividends are collectively referred to as “Underlying Shares.”

Rule 5635 of the Rules of the Nasdaq Stock Market requires that a listed company seek stockholder approval in certain circumstances, including prior to the issuance, in a transaction other than a public offering, of 20% or more of the company’s outstanding Common Stock or voting power outstanding before the issuance, at a price that is less than the lower of (i) the Nasdaq Official Closing Price (as reflected on Nasdaq.com) immediately preceding the signing of the binding agreement in connection with such transaction; or (ii) the average Nasdaq Official Closing Price of the Common Stock (as reflected on Nasdaq.com) for the five trading days immediately preceding the signing of such binding agreement (the “Minimum Price”). In connection with the Offering, we agreed to seek approval by our stockholders for the issuance of Underlying Shares. The Series H-7 Preferred Stock is initially convertible into up to 22,000,000 shares of our Common Stock at the Conversion Price, and the Warrants are exercisable into up to 22,440,000 shares of our Common Stock at the initial Exercise Price. In the event that the Company in its sole discretion determines to make the accrued dividends and amortization payments in shares of Common Stock and the Installment Conversion Price is less than the initial Conversion Price, or the Exercise Price is reduced due to the anti-dilution provisions of the Warrants, the number of shares of Common Stock to be issued would be greater than the number of shares into which the Series H-7 Preferred Stock is initially convertible and/or the Warrants are initially exercisable. In the event that the Company in its sole discretion determines to make the accrued dividends and amortization payments in shares of Common Stock and the price per share is equal to the Floor Price, or in the event that the Exercise Price is reduced to the Floor Price due to the anti-dilution provisions of the Warrants, the number of shares of Common Stock to be issued would be substantially greater than the number of shares into which the Series H-7 Preferred Stock is initially convertible and/or the Warrants are initially exercisable.

##### Reasons for the Offering

As of June 30, 2023, our cash and cash equivalents were approximately \$33,000,000. In August 2023, our Board determined that it was necessary to raise additional funds for the development and launch of the AYRO Vanish, our lead low speed electric vehicle, and for general corporate purposes. We believe that the Offering, which yielded gross proceeds of approximately \$22 million, was necessary in light of our cash and funding requirements. We also believe that the anti-dilution protections contained in the Series H-7 Preferred Stock and Warrants were reasonable in light of market conditions and the size and type of the Offering, and that we would not have been able to complete the sale of the Series H-7 Preferred Stock and Warrants unless such anti-dilution provisions were offered.

## Securities Purchase Agreement

On August 7, 2023, we entered into the Purchase Agreement with the Investors, pursuant to which we agreed to sell to the Investors (i) an aggregate of 22,000 shares of Series H-7 Preferred Stock, convertible into up to 22,000,000 Conversion Shares at an initial Conversion Price of \$1.00 per share and (ii) Investor Warrants to acquire up to an aggregate of 22,000,000 Warrant Shares, subject to adjustment. We received total gross proceeds of approximately \$22 million from the Offering. The Purchase Agreement obligates us to indemnify the Investors and various related parties for certain losses including those resulting from (i) any misrepresentation or breach of any representation or warranty made by us, (ii) any breach of any obligation of ours, and (iii) certain claims by third parties.

The Purchase Agreement contains representations and warranties of us and the Investors, which are typical for transactions of this type. In addition, the Purchase Agreement contains customary covenants on our part that are typical for transactions of this type, as well as the following additional covenants: (i) until Preferred Shares are no longer outstanding, we agreed not to enter into any variable rate transactions; (ii) until the later of (x) the date immediately following the 180th day after the date a registration statement registering the securities sold in the Offering is declared effective and (y) the date of the Nasdaq Stockholder Approval, we agreed not to issue or sell any equity security or convertible security, subject to certain exceptions; (iii) we agreed to offer to the Investors, until the later of (x) Preferred Shares no longer outstanding and (y) the maturity date of the Preferred Shares, the opportunity to participate in any subsequent securities offerings by us; and (iv) we agreed to hold a stockholder meeting, at which we would use our reasonable best efforts to solicit our stockholders' affirmative vote for approval of our issuance of the maximum Conversion Shares upon conversion of the Series H-7 Preferred Stock and the maximum Warrant Shares upon exercise of the Warrants, each in accordance with the applicable law and rules and regulations of Nasdaq, no later than November 5, 2023. This Issuance Proposal is intended to fulfill this final covenant.

## Preferred Shares

The terms of the Series H-7 Preferred Stock are as set forth in a Certificate of Designations (the "Series H-7 Certificate of Designations"), which was filed with and became effective with the Secretary of State for the State of Delaware on August 8, 2023. The Series H-7 Certificate of Designations was filed as Exhibit 3.1 to the Company's Current Report on Form 8-K, filed with the SEC on August 8, 2023, and is incorporated herein by reference.

The Series H-7 Preferred Stock will be convertible into Conversion Shares at the election of the holder at any time at the Conversion Price. The Conversion Price is subject to customary adjustments for stock dividends, stock splits, reclassifications and the like, and subject to price-based adjustment in the event of any issuances of Common Stock, or securities convertible, exercisable or exchangeable for Common Stock, at a price below the then-applicable Conversion Price (subject to certain exceptions). The Conversion Price may also be voluntarily reduced by the Company to any amount and for any period of time deemed appropriate by the Board at any time with the prior written consent of the holders of at least a majority of the outstanding Preferred Shares, subject to the rules and regulations of Nasdaq. Any reduction in the Conversion Price will result in an increased number of shares of Common Stock being issuable upon the payment of dividends in respect of the Preferred Shares or upon the conversion of the Preferred Shares and additional dilution to existing investors. We will be required to redeem the Series H-7 Preferred Stock in 12 equal monthly installments, commencing on a date between February 7, 2024 and August 7, 2025, at the election of the Investor. The amortization payments due upon such redemption are payable, at our election, in cash at 105% of the Installment Redemption Amount, or subject to certain limitations, in shares of Common Stock valued at the Installment Conversion Price, which amortization amounts are subject to certain adjustments as set forth in the Series H-7 Certificate of Designations.

The holders of the Series H-7 Preferred Stock are entitled to dividends of 8% per annum, compounded monthly, which are payable in cash or shares of Common Stock at our option, in accordance with the terms of the Series H-7 Certificate of Designations. Upon the occurrence and during the continuance of a Triggering Event (as defined in the Series H-7 Certificate of Designations), the Series H-7 Preferred Stock will accrue dividends at the rate of 15% per annum. Upon conversion or redemption, the holders of the Preferred Shares are also entitled to receive a dividend make-whole payment assuming for calculation purposes that the stated value remained outstanding through and including the twelve (12) month anniversary of the first installment date as elected by the respective holder. Except as otherwise provided herein or as required by applicable law, the holders of Series H-7 Preferred Stock shall be entitled to vote with holders of the Common Stock on all matters that such holders of Common Stock are entitled to vote upon, in the same manner and with the same effect as the holders of Common Stock, voting together with the holders of Common Stock as a single class. Each share of Series H-7 Preferred Stock shall entitle the holder thereof to cast that number of votes per share of Series H-7 Preferred Stock equal to the number of Conversion Shares underlying the Series H-7 Preferred Stock determined by dividing the Stated Value by \$0.72 per share.

Notwithstanding the foregoing, our ability to settle conversions and make amortization and dividend make-whole payments using shares of Common Stock is subject to certain limitations set forth in the Series H-7 Certificate of Designations, including a limit on the number of shares that may be issued until the time, if any, that our stockholders have approved the issuance of more than 19.99% of our outstanding shares of Common Stock in accordance with Nasdaq listing standards (the "Nasdaq Stockholder Approval"). We agreed to seek stockholder approval of these matters at a meeting to be held no later than November 5, 2023. The special meeting is being held and this Issuance Proposal is being submitted to our stockholders in order to achieve Nasdaq Stockholder Approval. Further, the Series H-7 Certificate of Designations contains a certain beneficial ownership limitation after giving effect to the issuance of shares of Common Stock issuable upon conversion of, or as part of any amortization or dividend make-whole payment under, the Series H-7 Certificate of Designations or Warrants. Such amount may be lowered with the consent of the holder and the Company.

The Series H-7 Certificate of Designations includes certain Triggering Events (as defined in the Series H-7 Certificate of Designations), including, among other things, our failure to pay any amounts due to the holders of the Series H-7 Preferred Stock when due. In connection with a Triggering Event, each holder of Series H-7 Preferred Stock will be able to require us to redeem in cash any or all of the holder's Series H-7 Preferred Stock at a premium set forth in the Series H-7 Certificate of Designations.

We are subject to certain affirmative and negative covenants regarding the incurrence of indebtedness, the existence of liens, investment transactions, the repayment of indebtedness, the payment of cash in respect of dividends (other than dividends pursuant to the Series H-7 Certificate of Designations), distributions or redemptions, the transfer of assets and certain minimum cash requirements and establishment of a segregated deposit account for the proceeds of the Offering, among other matters.

## Warrants

The Warrants are exercisable for Warrant Shares immediately at an exercise price of \$1.00 per share (the "Exercise Price") and expire five years from the date of issuance. The Exercise Price and the number of Warrant Shares issuable upon exercise of the Warrants are subject to customary adjustments for stock dividends, stock splits, reclassifications and the like, and subject to price-based adjustment, on a "full ratchet" basis, in the event of any issuances of Common Stock, or securities convertible, exercisable or exchangeable for Common Stock, at a price below the then-applicable Exercise Price (subject to certain exceptions). Upon any such price-based adjustment to the Exercise Price, the number of Warrant Shares issuable upon exercise of the Warrants will be increased proportionately. The Exercise Price may also be voluntarily reduced by the Company to any amount and for any period of time deemed appropriate by the Board at any time with the prior written consent of the holders of at least a majority of the outstanding Warrants, subject to the rules and regulations of Nasdaq. Any reduction in the Exercise Price will result in an increased number of shares of Common Stock being issuable upon the exercise of the Warrants and additional dilution to existing investors. The Warrants may be exercised for cash, provided that, if there is no effective

registration statement available registering the exercise of the Warrants, the Warrants may be exercised on a cashless basis.

### **Registration Rights Agreement**

In connection with the Purchase Agreement, on August 7, 2023, we and the Investors entered into a Registration Rights Agreement (the “Registration Rights Agreement”). Under the terms of the Registration Rights Agreement, we agreed to register 150% of the maximum number of Conversion Shares issuable upon the conversion of the Series H-7 Preferred Stock and 150% of the maximum number of Warrant Shares issuable upon exercise of the Warrants. We also agreed to other customary obligations regarding registration, including indemnification and maintenance of the effectiveness of the registration statement.

### **Voting Agreement**

Certain stockholders, who beneficially held approximately 3.9% of our outstanding Common Stock as of the Record Date, are party to a voting agreement (the “Voting Agreement”), pursuant to which, among other things, each such stockholder agreed, solely in their capacity as a stockholder, to vote all of their shares of Common Stock in favor of the approval of the Issuance Proposal and against any actions that could adversely affect our ability to perform our obligations under the Purchase Agreement. The Voting Agreement also places certain restrictions on the transfer of the shares of Common Stock held by the signatories thereto.

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25

### **Effect of Issuance of Securities**

In connection with the Offering, we agreed to seek approval by our stockholders for the issuance of Underlying Shares. The Series H-7 Preferred Stock is initially convertible into up to 22,000,000 shares of our Common Stock at the Conversion Price, and the Warrants are exercisable into up to 22,440,000 shares of our Common Stock at the initial Exercise Price. In the event that the Company in its sole discretion determines to make the accrued dividends and amortization payments in shares of Common Stock and the Installment Conversion Price is less than the initial Conversion Price, or the Exercise Price is reduced due to the anti-dilution provisions of the Warrants, the number of shares of Common Stock to be issued would be greater than the number of shares into which the Series H-7 Preferred Stock or the Warrants are initially convertible or exercisable. In the event that the Company in its sole discretion determines to make the accrued dividends and amortization payments in shares of Common Stock and the price per share is equal to the Floor Price or in the event that the Exercise Price is reduced to the Floor Price due to the anti-dilution provisions of the Warrants, the number of shares of Common Stock to be issued would be substantially greater than the number of shares into which the Series H-7 Preferred Stock is initially convertible and/or the Warrants are initially exercisable. The potential issuance of Underlying Shares would result in an increase in the number of shares of Common Stock outstanding, and our stockholders will incur dilution of their percentage ownership to the extent that the investors convert their Series H-7 Preferred Stock or exercise their Warrants, or additional shares of Common Stock are issued pursuant to the dividend and amortization terms or anti-dilution terms of the Series H-7 Preferred Stock or the Warrants. Because of potential adjustments to the number of shares of Common Stock issuable upon conversion of the Series H-7 Preferred Stock and exercise of the Warrants issued in connection with the Offering, the exact magnitude of the dilutive effect of the Series H-7 Preferred Stock and Warrants cannot be conclusively determined. However, the dilutive effect may be material to our current stockholders.

### **Proposal to Approve Offering**

Nasdaq Listing Rule 5635(d) requires us to obtain stockholder approval prior to the issuance of securities in connection with a transaction other than a public offering involving (i) the sale, issuance or potential issuance by us of our Common Stock (or securities convertible into or exercisable for our Common Stock) at a price less than the Minimum Price. In the case of the Offering, the 20% threshold is determined based on the shares of our Common Stock outstanding immediately preceding the signing of the Purchase Agreement, which we signed August 7, 2023.

Immediately prior to the signing of the Purchase Agreement, we had 37,792,530 shares of Common Stock issued and outstanding. Therefore, the potential issuance of the Underlying Shares would have constituted greater than 20% of the shares of Common Stock outstanding prior to giving effect to the Offering. In addition, if we elect to pay each monthly installment in the form of Conversion Shares, the effective Conversion Price may be significantly lower than the initial Conversion Price, resulting in the issuance of a greater number of shares of Common Stock than would be issuable at the initial Conversion Price. We are seeking stockholder approval under Nasdaq Rule 5635(d) for the sale, issuance or potential issuance by us of our Common Stock (or securities convertible into or exercisable for our Common Stock) in excess of 7,558,506 shares, which is 20% of the shares of Common Stock outstanding on the original date of entry into the Purchase Agreement, including without limitation, as a result of the anti-dilution feature of the Preferred Shares and Warrants, since such provisions may reduce the per share Conversion Price or Exercise Price, as the case may be, and result in the issuance of shares at less than the greater of market price or book value per share.

Effectively, stockholder approval of this Issuance Proposal is one of the conditions for us to receive up to an additional approximately \$22 million upon the exercise of the Warrants, if exercised for cash. Loss of these potential funds could jeopardize our ability to execute our business plan.

We generally have no control over whether the holders of Series H-7 Preferred Stock convert their Series H-7 Preferred Stock or whether the Warrant holders exercise their Warrants. For these reasons, we are unable to accurately forecast or predict with any certainty the total amount of Underlying Shares that may be issued. Under certain circumstances, however, it is possible, that we may have to issue more than 20% of our outstanding shares of Common Stock to the Series H-7 Preferred Stock and Warrant holders under the terms of the Offering. Therefore, we are seeking stockholder approval under this proposal to issue more than 20% of our outstanding shares of Common Stock, if necessary, to the Series H-7 Preferred Stock and Warrant holders under the terms of the Offering.

Any transaction requiring approval by our stockholders under Nasdaq Listing Rule 5635(d) would likely result in a significant increase in the number of shares of our Common Stock outstanding, and, as a result, our current stockholders will own a smaller percentage of our outstanding shares of Common Stock.

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26

Future issuances of securities in connection with the Offering, if any, may cause a significant reduction in the percentage interests of our current stockholders in the voting power, any liquidation value, our book and market value, and in any future earnings. Further, the issuance or resale of Common Stock issued to the Series H-7 Preferred Stock and Warrant holders could cause the market price of our Common Stock to decline. In addition to the foregoing, the increase in the number of issued shares of Common Stock in connection with the Offering may have an incidental anti-takeover effect in that additional shares could be used to dilute the stock ownership of parties seeking to obtain control of us. The increased number of issued shares could discourage the possibility of, or render more difficult, certain mergers, tender offers, proxy contests or other change of control or ownership transactions.

Under the Nasdaq Listing Rules, we are not permitted (without risk of delisting) to undertake a transaction that could result in a change in control of us without seeking and obtaining separate stockholder approval. We are not required to obtain stockholder approval for the Offering under Nasdaq Listing Rule 5635(b) because the Series H-7 Preferred Stock and Warrant holders have agreed that, for so long as they hold any shares of our Common Stock, neither they nor any of their affiliates will acquire shares of our Common Stock which result in them and their affiliates, collectively, beneficially owning or controlling more than 9.99% (or, with respect to one holder, 4.99%) of the total outstanding shares of our Common Stock.

### **Consequences of Not Approving this Proposal**

After extensive efforts to raise capital on more favorable terms, we believed that the Offering was the only viable financing alternative available to us at the time. If our

stockholders do not approve this proposal, we will not be able to issue 20% or more of our outstanding shares of Common Stock to the Series H-7 Preferred Stock and Warrant holders in connection with the Offering. As a result, we may be unable to make some of the amortization or dividend payments due to the holders of the Series H-7 Preferred Stock in shares of our Common Stock or issue sufficient shares upon conversion of the Series H-7 Preferred Stock or exercise of the Warrants, which will, in lieu of those shares, require that we pay substantial cash amounts to the Series H-7 Preferred Stock and Warrant holders.

### **Interests of Certain Persons**

When you consider our Board's recommendation to vote in favor of this proposal, you should be aware that our directors and executive officers and existing stockholders may have interests that may be different from, or in addition to, the interests of other of our stockholders. In particular, ICIG, which owns more than 5% of our voting securities, and its affiliate IMF, participated in the Offering. ICIG and IMF may be unable to convert all of their shares of Series H-7 Preferred Stock and exercise all of the Warrants issued to them in connection with the Offering if this proposal is not approved by our stockholders. Neither ICIG nor IMF will, by virtue of the issuance of the Conversion Shares and Warrant Shares to which each is entitled upon conversion of their respective Preferred Shares and Warrants at the Initial Conversion Price and Exercise Price, as applicable, acquire rights to a majority of the voting power of the Company, based on the number of shares of Common Stock outstanding as of the Record Date.

### **Further Information**

The terms of the Securities Purchase Agreement, the Registration Rights Agreement, the Series H-7 Certificate of Designations and the Warrants are only briefly summarized above. For further information, please refer to the forms of the Securities Purchase Agreement, the Registration Rights Agreement, the Series H-7 Certificate of Designations and the Warrants, which were filed with the SEC as exhibits to our Current Report on Form 8-K filed on August 8, 2023 and are incorporated herein by reference. The discussion herein is qualified in its entirety by reference to the filed documents.

### **Vote Required and Board's Recommendation**

Nasdaq Listing Rule 5635(d) generally requires us to obtain stockholder approval prior to issuing 20% or more of our outstanding shares of Common Stock in the Offering. The approval of the Issuance Proposal requires the affirmative vote of the holders of a majority of the voting power of the shares present in person or by proxy at the special meeting and entitled to vote on the Issuance Proposal. Abstentions will have the effect of a vote against this proposal. Brokerage firms do not have authority to vote customers' unvoted shares held by the firms in street name on this proposal. As a result, any shares not voted by a customer will be treated as a broker non-vote. Such broker non-votes will have the effect of a vote against this proposal. Holders of shares of Series H-7 Preferred Stock are not entitled to vote such shares on the Issuance Proposal.

**THE BOARD RECOMMENDS THAT YOU VOTE "FOR" THE ISSUANCE OF SHARES OF OUR COMMON STOCK UNDERLYING THE SERIES H-7 PREFERRED STOCK AND WARRANTS, IN AN AMOUNT EQUAL TO OR IN EXCESS OF 20% OF OUR COMMON STOCK OUTSTANDING BEFORE THE ISSUANCE OF SUCH CONVERSION SHARES AND WARRANT SHARES, IN SATISFACTION OF THE NASDAQ LISTING RULE 5635(D), INCLUDING ANY AMORTIZATION PAYMENTS MADE TO THE HOLDERS OF CONVERTIBLE PREFERRED STOCK IN THE FORM OF ISSUANCE OF SHARES OF COMMON STOCK AND UPON THE OPERATION OF ANTI-DILUTION PROVISIONS CONTAINED IN SUCH CONVERTIBLE PREFERRED STOCK AND WARRANTS, AND PROXIES SOLICITED BY THE BOARD WILL BE VOTED IN FAVOR OF THE PROPOSAL UNLESS A STOCKHOLDER INDICATES OTHERWISE ON THE PROXY.**

27

## **REVERSE STOCK SPLIT PROPOSAL**

### **(Notice Item 2)**

### **Background and Proposed Amendment**

Our Charter currently authorizes the Company to issue a total of 120,000,000 shares of capital stock, consisting of 100,000,000 shares of Common Stock and 20,000,000 shares of preferred stock, par value \$0.0001 per share ("Preferred Stock").

On August 6, 2023, subject to stockholder approval, the Board approved an amendment to our Charter to, at the discretion of the Board, effect the Reverse Stock Split of the Common Stock at a ratio of 1-for-2 to 1-for-10, including shares held by the Company as treasury shares, with the exact ratio within such range to be determined by the Board at its discretion. The primary goal of the Reverse Stock Split is to increase the per share market price of our Common Stock to meet the minimum per share bid price requirements for continued listing on The Nasdaq Capital Market. We believe that a range of Reverse Stock Split ratios provides us with the most flexibility to achieve the desired results of the Reverse Stock Split. The Reverse Stock Split is not intended as, and will not have the effect of, a "going private transaction" covered by Rule 13e-3 promulgated under the Exchange Act. The Reverse Stock Split is not intended to modify the rights of existing stockholders in any material respect.

If the Reverse Stock Split Proposal is approved by our stockholders and the Reverse Stock Split is effected, up to every 10 shares of our outstanding Common Stock would be combined and reclassified into one share of Common Stock. The actual timing for implementation of the Reverse Stock Split would be determined by the Board based upon its evaluation as to when such action would be most advantageous to the Company and its stockholders. Notwithstanding approval of the Reverse Stock Split Proposal by our stockholders, the Board will have the sole authority to elect whether or not and when to amend our Charter to effect the Reverse Stock Split. If the Reverse Stock Split Proposal is approved by our stockholders, the Board will make a determination as to whether effecting the Reverse Stock Split is in the best interests of the Company and our stockholders in light of, among other things, the Company's ability to increase the trading price of our Common Stock to meet the minimum stock price standards of The Nasdaq Capital Market without effecting the Reverse Stock Split, the per share price of the Common Stock immediately prior to the Reverse Stock Split and the expected stability of the per share price of the Common Stock following the Reverse Stock Split. If the Board determines that it is in the best interests of the Company and its stockholders to effect the Reverse Stock Split, it will hold a Board meeting to determine the ratio of the Reverse Stock Split. For additional information concerning the factors the Board will consider in deciding whether to effect the Reverse Stock Split, see "*Determination of the Reverse Stock Split Ratio*" and "*Board Discretion to Effect the Reverse Stock Split*."

The text of the proposed amendment to the Company's Charter to effect the Reverse Stock Split is included as Annex A to this proxy statement (the "Reverse Stock Split Charter Amendment"). If the Reverse Stock Split Proposal is approved by the Company's stockholders, the Company will have the authority to file the Reverse Stock Split Charter Amendment with the Secretary of State of the State of Delaware, which will become effective upon its filing; provided, however, that the Reverse Stock Split Charter Amendment is subject to revision to include such changes as may be required by the office of the Secretary of State of the State of Delaware and as the Board deems necessary and advisable. The Board has determined that the amendment is advisable and in the best interests of the Company and its stockholders and has submitted the amendment for consideration by our stockholders at the special meeting.

### **Reasons for the Reverse Stock Split**

We are submitting this proposal to our stockholders for approval in order to increase the trading price of our Common Stock to meet the minimum per share bid price requirement for continued listing on The Nasdaq Capital Market. We believe increasing the trading price of our Common Stock may also assist in our capital-raising efforts by making our Common Stock more attractive to a broader range of investors. Accordingly, we believe that the Reverse Stock Split is in our stockholders' best interests.

As previously reported, on October 3, 2022, we received a letter from the Listing Qualifications Department of Nasdaq indicating that, based upon the closing bid price of our Common Stock for the 30 consecutive business day period between August 19, 2022 and September 30, 2022, we did not meet the Minimum Bid Price Requirement of \$1.00 per share pursuant to Nasdaq Listing Rule 5550(a)(2). The letter also indicated that the Company would be provided with a Compliance Period of 180 calendar days, or until April 3, 2023, in which to regain compliance pursuant to Nasdaq Listing Rule 5810(c)(3)(A).

On April 4, 2023, we received a letter from Nasdaq notifying us that the Compliance Period had been extended by an additional 180 days, or until October 2, 2023. Nasdaq's determination was based on us meeting the continued listing requirement for market value of publicly held shares and all other applicable requirements for initial listing on the Nasdaq Capital Market, with the exception of the Minimum Bid Price Requirement, and our written notice of our intention to cure the deficiency during the extended Compliance Period by effecting a reverse stock split, if necessary. In order to regain compliance with Nasdaq's minimum bid price requirement, our Common Stock must maintain a minimum closing bid price of \$1.00 for at least ten consecutive business days during the Compliance Period.

If our Common Stock is delisted from Nasdaq, the Board believes that the trading market for our Common Stock could become significantly less liquid, which could reduce the trading price of our Common Stock and increase the transaction costs of trading in shares of our Common Stock.

We believe that the Reverse Stock Split is our best option to meet the criteria to satisfy the minimum per share bid price requirement for continued listing on The Nasdaq Capital Market. A decrease in the number of outstanding shares of our Common Stock resulting from the Reverse Stock Split should, absent other factors, assist in ensuring that the per share market price of our Common Stock remains above the requisite price for continued listing. However, we cannot provide any assurance that our minimum bid price would remain over the minimum bid price requirement of The Nasdaq Capital Market following the Reverse Stock Split.

In addition, as noted above, we believe that the Reverse Stock Split and the resulting increase in the per share price of our Common Stock could encourage increased investor interest in our Common Stock and promote greater liquidity for our stockholders. A greater price per share of our Common Stock could allow a broader range of institutions to invest in our Common Stock (namely, funds that are prohibited or discouraged from buying stocks with a price below a certain threshold), potentially increasing marketability, trading volume and liquidity of our Common Stock. Many institutional investors view stocks trading at low prices as unduly speculative in nature and, as a result, avoid investing in such stocks. We believe that the Reverse Stock Split will provide the Board flexibility to make our Common Stock a more attractive investment for these institutional investors, which we believe will enhance the liquidity for the holders of our Common Stock and may facilitate future sales of our Common Stock. The Reverse Stock Split could also increase interest in our Common Stock for analysts and brokers who may otherwise have policies that discourage or prohibit them from following or recommending companies with low stock prices. Additionally, because brokers' commissions on transactions in low-priced stocks generally represent a higher percentage of the stock price than commissions on higher-priced stocks, the current average price per share of our Common Stock can result in individual stockholders paying transaction costs representing a higher percentage of their total share value than would be the case if the share price were substantially higher.

The Board intends to effect the Reverse Stock Split only if it believes that a decrease in the number of shares outstanding is in the best interests of the Company and our stockholders and is likely to improve the trading price of our Common Stock and improve the likelihood that we will be allowed to maintain our listing on Nasdaq. Accordingly, our Board approved the Reverse Stock Split as being in the best interests of the Company.

#### **Risks Associated with the Reverse Stock Split**

##### ***The Reverse Stock Split May Not Increase the Price of our Common Stock Over the Long-Term.***

As noted above, the principal purpose of the Reverse Stock Split is to increase the trading price of our Common Stock to meet the minimum stock price standards of The Nasdaq Capital Market. However, the effect of the Reverse Stock Split on the market price of our Common Stock cannot be predicted with any certainty, and we cannot assure you that the Reverse Stock Split will accomplish this objective for any meaningful period of time, or at all. While we expect that the reduction in the number of outstanding shares of Common Stock will proportionally increase the market price of our Common Stock, we cannot assure you that the Reverse Stock split will increase the market price of our Common Stock by a multiple of the Reverse Stock Split ratio, or result in any permanent or sustained increase in the market price of our Common Stock. The market price of our Common Stock may be affected by other factors which may be unrelated to the number of shares outstanding, including the Company's business and financial performance, general market conditions, and prospects for future success.

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29

##### ***The Reverse Stock Split May Decrease the Liquidity of our Common Stock.***

The Board believes that the Reverse Stock Split may result in an increase in the market price of our Common Stock, which could lead to increased interest in our Common Stock and possibly promote greater liquidity for our stockholders. However, the Reverse Stock Split will also reduce the total number of outstanding shares of Common Stock, which may lead to reduced trading and a smaller number of market makers for our Common Stock, particularly if the price per share of our Common Stock does not increase as a result of the Reverse Stock Split.

##### ***The Reverse Stock Split May Result in some Stockholders Owning "Odd Lots" That May Be More Difficult to Sell or Require Greater Transaction Costs per Share to Sell.***

If the Reverse Stock Split is implemented, it will increase the number of stockholders who own "odd lots" of less than 100 shares of Common Stock. A purchase or sale of less than 100 shares of Common Stock (an "odd lot" transaction) may result in incrementally higher trading costs through certain brokers, particularly "full service" brokers. Therefore, those stockholders who own fewer than 100 shares of Common Stock following the Reverse Stock Split may be required to pay higher transaction costs if they sell their Common Stock.

##### ***The Reverse Stock Split May Lead to a Decrease in our Overall Market Capitalization.***

The Reverse Stock Split may be viewed negatively by the market and, consequently, could lead to a decrease in our overall market capitalization. If the per share market price of our Common Stock does not increase in proportion to the Reverse Stock Split ratio, then the value of our Company, as measured by our market capitalization, will be reduced. Additionally, any reduction in our market capitalization may be magnified as a result of the smaller number of total shares of Common Stock outstanding following the Reverse Stock Split.

#### **Consequences of Not Approving this Proposal**

If the Reverse Stock Split Proposal is not approved by our stockholders, our Board will not have the authority to effect the Reverse Stock Split Charter Amendment to, among other things, facilitate the continued listing of our Common Stock on Nasdaq by increasing the per share trading price of our Common Stock to help ensure a share price high enough to satisfy the \$1.00 per share minimum bid price requirement. Any inability of our Board to effect the Reverse Stock Split could expose us to delisting from Nasdaq.

#### **Determination of the Reverse Stock Split Ratio**

The Board believes that stockholder approval of a range of potential Reverse Stock Split ratios is in the best interests of our Company and stockholders because it is not possible to predict market conditions at the time the Reverse Stock Split would be implemented. We believe that a range of Reverse Stock Split ratios provides us with the most flexibility to achieve the desired results of the Reverse Stock Split. The Reverse Stock Split ratio to be selected by our Board will be not more than 1-for-10.

The selection of the specific Reverse Stock Split ratio will be based on several factors, including, among other things:

- our ability to maintain the listing of our Common Stock on The Nasdaq Capital Market;
- the per share price of our Common Stock immediately prior to the Reverse Stock Split;

- the expected stability of the per share price of our Common Stock following the Reverse Stock Split;
- the likelihood that the Reverse Stock Split will result in increased marketability and liquidity of our Common Stock;
- prevailing market conditions;
- general economic conditions in our industry; and
- our market capitalization before and after the Reverse Stock Split.

We believe that granting our Board the authority to set the ratio for the Reverse Stock Split is essential because it allows us to take these factors into consideration and to react to changing market conditions. If the Board chooses to implement the Reverse Stock Split, the Company will make a public announcement regarding the determination of the Reverse Stock Split ratio.

#### **Board Discretion to Effect the Reverse Stock Split**

If the Reverse Stock Split proposal is approved by our stockholders, the Board will have the discretion to implement the Reverse Stock Split or to not effect the Reverse Stock Split at all. The Board currently intends to effect the Reverse Stock Split. If the trading price of our Common Stock increases without effecting the Reverse Stock Split, the Reverse Stock Split may not be necessary. Following the Reverse Stock Split, if implemented, there can be no assurance that the market price of our Common Stock will rise in proportion to the reduction in the number of outstanding shares resulting from the Reverse Stock Split or that the market price of the post-split Common Stock can be maintained above \$1.00. There also can be no assurance that our Common Stock will not be delisted from Nasdaq for other reasons.

If our stockholders approve the Reverse Stock Split proposal at the special meeting, the Reverse Stock Split will be effected, if at all, only upon a determination by the Board that the Reverse Stock Split is in the best interests of the Company and its stockholders at that time. No further action on the part of the stockholders will be required to either effect or abandon the Reverse Stock Split. If our Board does not implement the Reverse Stock Split prior to the one-year anniversary of the date on which the reverse stock split is approved by the Company's stockholders at the special meeting, the authority granted in this proposal to implement the Reverse Stock Split will terminate and the Reverse Stock Split Charter Amendment will be abandoned.

The market price of our Common Stock is dependent upon our performance and other factors, some of which are unrelated to the number of shares outstanding. If the Reverse Stock Split is effected and the market price of our Common Stock declines, the percentage decline as an absolute number and as a percentage of our overall market capitalization may be greater than would occur in the absence of the Reverse Stock Split. Furthermore, the reduced number of shares that will be outstanding after the Reverse Stock Split could significantly reduce the trading volume and otherwise adversely affect the liquidity of our Common Stock.

We have not proposed the Reverse Stock Split in response to any effort of which we are aware to accumulate our shares of Common Stock or obtain control of the Company, nor is it a plan by management to recommend a series of similar actions to our Board or our stockholders. Notwithstanding the decrease in the number of outstanding shares of Common Stock following the Reverse Stock Split, our Board does not intend for this transaction to be the first step in a "going private transaction" within the meaning of Rule 13e-3 of the Exchange Act.

#### **Effects of the Reverse Stock Split**

##### **Effects of the Reverse Stock Split on Issued and Outstanding Shares**

If the Reverse Stock Split is effected, it will reduce the total number of issued and outstanding shares of Common Stock, including shares held by the Company as treasury shares, by a Reverse Stock Split ratio of 1-for-2 to 1-for-10. Accordingly, each holder of our Common Stock will own fewer shares of Common Stock as a result of the Reverse Stock Split. However, the Reverse Stock Split will affect all holders of our Common Stock uniformly and will not affect any stockholder's percentage ownership interest in the Company, except to the extent that the Reverse Stock Split would result in an adjustment to a stockholder's ownership of Common Stock due to the treatment of fractional shares in the Reverse Stock Split. Therefore, voting rights and other rights and preferences of the holders of Common Stock will not be affected by the Reverse Stock Split (other than as a result of the treatment of fractional shares). Common stock issued pursuant to the Reverse Stock Split will remain fully paid and nonassessable, and the par value per share of Common Stock will remain \$0.0001.

As of the Record Date, the Company had 37,732,530 shares of Common Stock outstanding. For purposes of illustration, if the Reverse Stock Split is effected at a ratio of 1-for-2 or 1-for-10, the number of issued and outstanding shares of Common Stock after the Reverse Stock Split would be approximately 18,866,265 shares and 3,773,253 shares, respectively.

We are currently authorized to issue a maximum of 100,000,000 shares of our Common Stock and 20,000,000 shares of Preferred Stock. Although the number of authorized shares of our Common Stock will not change as a result of the Reverse Stock Split, the number of shares of our Common Stock issued and outstanding will be reduced in proportion to the ratio selected by the Board. Thus, the Reverse Stock Split will effectively increase the number of authorized and unissued shares of our Common Stock available for future issuance by the amount of the reduction effected by the Reverse Stock Split.

Following the Reverse Stock Split, the Board will have the authority, subject to applicable securities laws, to issue all authorized and unissued shares without further stockholder approval, upon such terms and conditions as the Board deems appropriate.

##### **Effects of the Reverse Stock Split on Outstanding Equity Awards and Plans**

If the Reverse Stock Split is effected, the terms of equity awards granted under the Plans and, including (i) the number of shares and type of Common Stock (or the securities or property) which thereafter may be made the subject of awards; (ii) the number of shares and type of Common Stock (or other securities or property) subject to outstanding awards; (iii) the number of shares and type of Common Stock (or other securities or property) specified as the annual per-participant limitation under the Plans; (iv) the option price of each outstanding stock option; (v) the amount, if any, paid for forfeited shares in accordance with the terms of the Plans; and (vi) the number of or exercise price of shares then subject to outstanding stock appreciation rights previously granted and unexercised under the Plans, will be proportionally adjusted to the end that the same proportion of our issued and outstanding shares of Common Stock in each instance shall remain subject to exercise at the same aggregate exercise price; subject to adjustments for any fractional shares as described herein and provided, however, that the number of shares of Common Stock (or other securities or property) subject to any award shall



always be a whole number. In addition, the total number of shares of Common Stock that may be the subject of future grants under the Plans, as well as any plan limits on the size of such grants will be adjusted and proportionately decreased as a result of the Reverse Stock Split.

#### **Effects of the Reverse Stock Split on Voting Rights**

Proportionate voting rights and other rights of our stockholders would not be affected by the Reverse Stock Split (other than as a result of the treatment of fractional shares). For example, a holder of 1% of the voting power of the outstanding Common Stock immediately prior to the effective time of the Reverse Stock Split would continue to hold 1% of the voting power of the outstanding Common Stock after the Reverse Stock Split.

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32

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#### **Effects of the Reverse Stock Split on Regulatory Matters**

The Company is subject to the periodic reporting and other requirements of the Exchange Act. The Reverse Stock Split will not affect the Company's obligation to publicly file financial and other information with the SEC.

#### **Effects of the Reverse Stock Split on Authorized Share Capital**

The total number of shares of capital stock that we are authorized to issue will not be affected by the Reverse Stock Split and will remain at 120,000,000 shares, consisting of 100,000,000 shares of Common Stock and 20,000,000 shares of Preferred Stock.

#### **Treatment of Fractional Shares in the Reverse Stock Split**

The Company does not intend to issue fractional shares in the event that a stockholder owns a number of shares of Common Stock that is not evenly divisible by the Reverse Stock Split ratio. If the Reverse Stock Split is effected, each fractional share of Common Stock will be:

- rounded up to the nearest whole share of Common Stock, if such shares of Common Stock are held directly; or
- rounded down to the nearest whole share of Common Stock, if such shares are subject to an award granted under the Plans, in order to comply with the requirements of Sections 409A and 424 of the Code.

#### **Effective Time of the Reverse Stock Split**

If the Reverse Stock Split Proposal is approved by our stockholders, the Reverse Stock Split would become effective, if at all, when the Reverse Stock Split Charter Amendment is accepted and recorded by the office of the Secretary of State of the State of Delaware. However, notwithstanding approval of the Reverse Stock Split Proposal by our stockholders, the Board will have the sole authority to elect whether or not and when to amend our Charter to effect the Reverse Stock Split.

#### **Exchange of Share Certificates**

If the Reverse Stock Split is effected, each certificate representing pre-Reverse Stock Split shares of Common Stock will be deemed for all corporate purposes to evidence ownership of post-Reverse Stock Split Common Stock at the effective time of the Reverse Stock Split. As soon as practicable after the effective time of the Reverse Stock Split, our transfer agent, Issuer Direct Corporation, will mail a letter of transmittal to the Company's stockholders containing instructions on how a stockholder should surrender its, his or her certificate(s) representing pre-Reverse Stock Split shares of Common Stock to our transfer agent in exchange for certificate(s) representing post-Reverse Stock Split shares of Common Stock. No certificate(s) representing post-Reverse Stock Split shares of Common Stock will be issued to a stockholder until such stockholder has surrendered all certificate(s) representing pre-Reverse Stock Split shares of Common Stock, together with a properly completed and executed letter of transmittal, to our transfer agent. No stockholder will be required to pay a transfer or other fee to exchange its, his or her certificate(s) representing pre-Reverse Stock Split shares of Common Stock for certificate(s) representing post-Reverse Stock Split shares of Common Stock registered in the same name.

Stockholders who hold uncertificated shares of Common Stock electronically in "book-entry" form will have their holdings electronically adjusted by our transfer agent (and, for beneficial owners, by their brokers or banks that hold in "street name" for their benefit, as the case may be) to give effect to the Reverse Stock Split. If any certificate(s) or book-entry statement(s) representing pre-Reverse Stock Split shares of Common Stock to be exchanged contain a restrictive legend or notation, as applicable, the certificate(s) or book-entry statement(s) representing post-Reverse Stock Split shares of Common Stock will contain the same restrictive legend or notation.

Any stockholder whose share certificate(s) representing pre-Reverse Stock Split shares of Common Stock has been lost, stolen or destroyed will only be issued post-Reverse Stock Split Common Stock after complying with the requirements that the Company and our transfer agent customarily apply in connection with lost, stolen or destroyed certificates.

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33

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**STOCKHOLDERS SHOULD NOT DESTROY STOCK CERTIFICATES REPRESENTING PRE-REVERSE STOCK SPLIT SHARES OF COMMON STOCK AND SHOULD NOT SUBMIT ANY STOCK CERTIFICATES REPRESENTING PRE-REVERSE STOCK SPLIT SHARES OF COMMON STOCK UNTIL THEY ARE REQUESTED TO DO SO.**

#### **Anti-Takeover Effects**

We have not proposed the Reverse Stock Split, with its corresponding increase in the authorized and unissued number of shares of Common Stock, with the intention of using the additional shares for anti-takeover purposes, although we could theoretically use the additional shares to make more difficult or to discourage an attempt to acquire control of the Company.

We do not believe that our officers or directors have interests in this proposal that are different from or greater than those of any other of our stockholders.

#### **Appraisal Rights**

Under the Delaware General Corporation Law, our stockholders are not entitled to appraisal or dissenter's rights with respect to the Reverse Stock Split, and we will not independently provide our stockholders with any such rights.

#### **Regulatory Approvals**

The Reverse Stock Split will not be consummated, if at all, until after approval of the Company's stockholders is obtained. The Company is not obligated to obtain any governmental approvals or comply with any state or federal regulations prior to consummating the Reverse Stock Split other than the filing of the Reverse Stock Split Charter Amendment with the Secretary of State of the State of Delaware.

## **Accounting Treatment of the Reverse Stock Split**

If the Reverse Stock Split is effected, the par value per share of our Common Stock will remain unchanged at \$0.0001. Accordingly, on the effective date of the Reverse Stock Split, the stated capital on the Company's consolidated balance sheets attributable to our Common Stock will be reduced in proportion to the size of the Reverse Stock Split ratio, and the additional paid-in capital account will be increased by the amount by which the stated capital is reduced. Our stockholders' equity, in the aggregate, will remain unchanged. Per share net income or loss will be increased because there will be fewer shares of Common Stock outstanding. The Common Stock held in treasury will be reduced in proportion to the Reverse Stock Split ratio. The Company does not anticipate that any other accounting consequences, including changes to the amount of stock-based compensation expense to be recognized in any period, will arise as a result of the Reverse Stock Split.

## **Certain U.S. Federal Income Tax Consequences of the Reverse Stock Split**

The following is a discussion of certain material U.S. federal income tax consequences of the Reverse Stock Split. This discussion is included for general information purposes only and does not purport to address all aspects of U.S. federal income tax law that may be relevant to stockholders in light of their particular circumstances. This discussion is based on the Internal Revenue Code of 1986, as amended (the "Code") and current Treasury Regulations, administrative rulings and court decisions, all of which are subject to change, possibly on a retroactive basis, and any such change could affect the continuing validity of this discussion.

All stockholders are urged to consult with their own tax advisors with respect to the tax consequences of the Reverse Stock Split. This discussion does not address the tax consequences to stockholders that are subject to special tax rules, such as banks, insurance companies, regulated investment companies, personal holding companies, foreign entities, partnerships, nonresident alien individuals, broker-dealers and tax-exempt entities, persons holding shares as part of a straddle, hedge, conversion transaction or other integrated investment, U.S. holders (as defined below) subject to the alternative minimum tax or the unearned income Medicare tax and U.S. holders whose functional currency is not the U.S. dollar. This summary also assumes that the pre-Reverse Stock Split shares of Common Stock were, and the post-Reverse Stock Split shares of Common Stock will be, held as a "capital asset," as defined in Section 1221 of the Code.

34

As used herein, the term "U.S. holder" means a holder that is, for U.S. federal income tax purposes:

- a citizen or resident of the United States;
- a corporation or other entity taxed as a corporation created or organized in or under the laws of the United States, any state thereof or the District of Columbia;
- an estate the income of which is subject to U.S. federal income tax regardless of its source; or
- a trust (A) if a U.S. court is able to exercise primary supervision over the administration of the trust and one or more "U.S. persons" (as defined in the Code) have the authority to control all substantial decisions of the trust or (B) that has a valid election in effect to be treated as a U.S. person.

In general, no gain or loss should be recognized by a stockholder upon the exchange of pre-Reverse Stock Split Common Stock for post-Reverse Stock Split Common Stock. The aggregate tax basis of the post-Reverse Stock Split Common Stock should be the same as the aggregate tax basis of the pre-Reverse Stock Split Common Stock exchanged in the Reverse Stock Split. A stockholder's holding period in the post-Reverse Stock Split Common Stock should include the period during which the stockholder held the pre-Reverse Stock Split Common Stock exchanged in the Reverse Stock Split.

As noted above, we will not issue fractional shares of Common Stock in connection with the Reverse Stock Split. In certain circumstances, stockholders who would be entitled to receive fractional shares of Common Stock because they hold a number of shares not evenly divisible by the Reverse Stock Split ratio will automatically be entitled to receive an additional fraction of a share of Common Stock to round up to the next whole post-Reverse Stock Split share of Common Stock. The U.S. federal income tax consequences of the receipt of such an additional fraction of a share of Common Stock is not clear.

The tax treatment of a stockholder may vary depending upon the particular facts and circumstances of such stockholder. Each stockholder is urged to consult with such stockholder's own tax advisor with respect to the tax consequences of the Reverse Stock Split.

## **Interests of Certain Persons**

When you consider our Board's recommendation to vote in favor of this proposal, you should be aware that our directors and executive officers and existing stockholders may have interests that may be different from, or in addition to, the interests of other of our stockholders. In particular, ICIG, which owns more than 5% of our voting securities, and its affiliate IMF, participated in the Offering. ICIG and IMF may be unable to convert all of their shares of Series H-7 Preferred Stock and exercise all of the Warrants issued to them in connection with the Offering if this proposal is not approved by our stockholders. Neither ICIG nor IMF will, by virtue of the issuance of the Conversion Shares and Warrant Shares to which each is entitled upon conversion of their respective Preferred Shares and Warrants at the Initial Conversion Price and Exercise Price, as applicable, acquire rights to a majority of the voting power of the Company, based on the number of shares of Common Stock outstanding as of the Record Date.

## **Vote Required and Board's Recommendation**

The approval of the Reverse Stock Split Proposal requires the affirmative vote of the holders of a majority of the total voting power of the shares present in person or by proxy at the special meeting and entitled to vote on the Reverse Stock Split Proposal. Abstentions will have the effect of a vote against this proposal. Because the Reverse Stock Split Proposal is considered a routine matter, broker non-votes are not applicable to the Reverse Stock Split Proposal because your broker has discretionary authority to vote your shares with respect to such proposal. If a bank, broker, trustee or other nominee does not exercise this authority, such broker non-votes will have the same effect as votes cast "AGAINST" the Reverse Stock Split Proposal.

**THE BOARD RECOMMENDS THAT YOU VOTE "FOR" THE APPROVAL OF THE REVERSE STOCK SPLIT PROPOSAL, AND PROXIES SOLICITED BY THE BOARD WILL BE VOTED IN FAVOR OF THE PROPOSAL UNLESS A STOCKHOLDER INDICATES OTHERWISE ON THE PROXY.**

35

## **SHARE INCREASE PROPOSAL**

### **(Notice Item 3)**

Our Board has approved, subject to stockholder approval, an amendment to our Charter to increase the number of authorized shares of Common Stock from 100,000,000 to 200,000,000 and to make a corresponding change to the number of authorized shares of capital stock. The form of the proposed Certificate of Amendment effecting the Share Increase Amendment is attached to this Proxy Statement as [Appendix B](#).

We currently have a total of 120,000,000 shares of capital stock authorized under our Certificate of Incorporation, consisting of 100,000,000 shares of Common Stock and 20,000,000 shares of Preferred Stock. If the Share Increase Proposal is approved by our stockholders, our Board will be authorized, in its discretion, to file the Share Increase Amendment with the office of the Delaware Secretary of State, which would have the effect of increasing the number of authorized shares of Common Stock from 100,000,000 to 200,000,000 and increase the number of authorized shares of all classes of stock from 120,000,000 to 220,000,000. The number of shares of authorized preferred stock would remain unchanged.

## **Background and Purpose of the Proposal**

Our Board has determined that it would be in the Company's best interests and in the best interests of our stockholders to increase the number of authorized shares of Common Stock in order to provide the Company with the flexibility to make payments due to the holders of the Preferred Shares and the Warrants in the form of Conversion Shares and Warrant Shares and to pursue all finance and corporate opportunities involving our Common Stock, which may include private or public offerings of our equity securities, without the need to obtain additional stockholder approvals. Each additional authorized share of Common Stock would have the same rights and privileges as each share of currently authorized Common Stock.

Pursuant to the Purchase Agreement, we are obligated to the Required Reserve Amount of Common Stock, equal to the sum of (i) 150% of the maximum number of Conversion Shares issuable upon conversion of all of the shares of Series H-7 Preferred Stock then outstanding (assuming for purposes hereof that the Series H-7 Preferred Stock is convertible at the Floor Price without taking into account any limitations on the conversion of the Preferred Shares set forth in the Series H-7 Certificate of Designations), and (ii) 150% of the maximum number of Warrant Shares initially issuable upon exercise of all the Warrants then outstanding without taking into account any limitations on the exercise of the Warrants set forth therein.

If at any time the number of shares of Common Stock authorized and reserved for issuance is not sufficient to meet the Required Reserve Amount, we are obligated pursuant to the Purchase Agreement to promptly take all corporate action necessary to authorize and reserve a sufficient number of shares, including, without limitation, calling a special meeting of stockholders to authorize additional shares to meet our obligations and obtaining stockholder approval of an increase in such authorized number of shares to meet the Required Reserve Amount. We currently do not have a sufficient number of authorized shares of Common Stock to meet the Required Reserve Amount. Accordingly, we must hold a special meeting of stockholders to increase the number of authorized shares of Common Stock in order to meet the Required Reserve Amount. The Share Increase Amendment is intended to fulfill this obligation.

In addition, if we are unable to make dividend or amortization payments on the Preferred Shares in shares of our Common Stock because we do not have sufficient number of authorized shares of Common Stock, we will have to satisfy such payment obligations by means of cash redemption payments to the holders of the Preferred Shares.

The Board believes that unless we obtain stockholder approval to amend the Charter to increase the number of authorized shares of Common Stock, we will be severely limited by the inability to issue additional shares in connection with future capital raising transactions or strategic transactions. This may cause a delay in our future capital raising or other strategic transactions and may have a material adverse effect on our business and financial condition. Further, unless we obtain stockholder approval for the Share Increase Proposal, we will be required to incur additional costs in order to hold additional stockholder meetings to seek such approval as is required under the Series H-7 Certificate of Designations.

As of the Record Date, 37,732,530 shares of Common Stock were outstanding, with 62,267,469 shares of authorized Common Stock remaining reserved for issuance. Thus, as of the Record Date, we had one share of authorized Common Stock remaining that were unissued and unreserved for issuance.

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36

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## **Consequences of Not Approving this Proposal**

If the Share Increase Proposal is not approved by our stockholders, our financing alternatives will be limited by the lack of any available unissued and unreserved authorized shares of Common Stock, and stockholder value may be harmed by this limitation. In addition, our future success depends upon our ability to attract, retain and motivate highly-skilled employees, and if the Share Increase Proposal is not approved by our stockholders, the lack of any available unissued and unreserved authorized shares of Common Stock to provide future equity incentive opportunities could adversely impact our ability to achieve these goals. In short, if our stockholders do not approve the Share Increase Proposal, we may not be able to access the capital markets, complete corporate collaborations, partnerships or other strategic transactions, attract, retain and motivate employees, and pursue other business opportunities integral to our growth and success.

If the Share Increase Proposal is not approved by our stockholders, we may not have enough shares to make payments due to the holders of the Preferred Shares or upon exercise of the Warrants in the form of Conversion Shares or Warrant Shares. Additionally, in the event we fail to secure the requisite stockholder approval for the increase in the number of authorized shares of Common Stock and we are thereby prevented from issuing Conversion Shares upon conversion of shares of Series H-7 Preferred Stock by the holder thereof, in lieu of delivering such Conversion Shares to such holder, we must redeem such shares of Series H-7 Preferred Stock at a price equal to the sum of (i) the product of (x) such number of Conversion Shares as are unavailable for issue and (y) the greatest closing sale price of the Common Stock on any trading day during the period commencing on the date such holder delivers the applicable conversion notice to the Company and ending on the date of our issuance and payment to such holder and (ii) certain fees.

## **Rights of Additional Authorized Shares**

If and when issued, the additional Common Stock to be authorized by adoption of the Share Increase Amendment would have rights and privileges identical to our currently outstanding Common Stock. Those rights do not include preemptive rights with respect to the future issuance of any additional shares of Common Stock.

## **Potential Adverse Effects of Increase in Authorized Common Stock**

Future issuances of Common Stock or securities convertible into Common Stock could have a dilutive effect on our earnings per share, book value per share, and the voting power and ownership interest of current stockholders.

## **Anti-Takeover Effects**

The increased proportion of unissued authorized shares, compared to issued shares could, under certain circumstances, have an anti-takeover effect (for example, by permitting issuances that would dilute the stock ownership of a person seeking to effect a change in the composition of our Board or contemplating a tender offer or other transaction for our combination with another company). However, the Share Increase Amendment is not being proposed in response to any effort of which we are aware to accumulate shares of our Common Stock or obtain control of our Company, nor is it part of a plan by management to recommend a series of similar amendments to our Board and stockholders.

## **Timing of Proposed Amendment**

If the Share Increase Proposal is approved by the stockholders, the Board will have the authority to file the Share Increase Amendment with the office of the Secretary of State of Delaware to implement the increase in the authorized number of shares of Common Stock and corresponding change to the number of authorized shares of capital stock. The actual timing for implementation of the Share Increase Amendment would be determined by the Board based upon its evaluation as to when such action would be most advantageous to the Company and its stockholders. Notwithstanding approval of the Share Increase Proposal by our stockholders, the Board will have the sole authority to elect whether or not and when to amend the Charter to effect the Share Increase Amendment. If the Board should decide to file the Share Increase Amendment with the office of the Secretary of State of Delaware, the Share Increase Amendment would become effective on the date it is filed.

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37

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## **Interests of Certain Persons**

No officer or director has any substantial interest, direct or indirect, by security holdings or otherwise, in the Share Increase Proposal that is not shared by all of our other stockholders.

## **Vote Required and Board's Recommendation**

The approval of the Share Increase Proposal requires the affirmative vote of the holders of a majority of the total voting power of the shares present in person or by proxy at the special meeting and entitled to vote on the Share Increase Proposal. Abstentions will have the effect of a vote against this proposal. Brokerage firms do not have authority to vote customers' unvoted shares held by the firms in street name on this proposal. As a result, any shares not voted by a customer will be treated as a broker non-vote. Such broker non-votes will have the effect of a vote against this proposal.

**THE BOARD RECOMMENDS THAT YOU VOTE "FOR" THE APPROVAL OF THE SHARE INCREASE PROPOSAL, AND PROXIES SOLICITED BY THE BOARD WILL BE VOTED IN FAVOR OF THE PROPOSAL UNLESS A STOCKHOLDER INDICATES OTHERWISE ON THE PROXY.**

38

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## **INCENTIVE PLAN AMENDMENT PROPOSAL**

### **(Notice Item 4)**

The Board is seeking the approval of our stockholders of a second amendment to the Plan, which was adopted by the Board on August 18, 2023, subject to stockholder approval (the "Incentive Plan Amendment"). The Plan was originally approved by the Board on April 21, 2020, and by our stockholders on May 28, 2020. Under the Plan as originally adopted, we initially reserved 2,289,650 shares of our Common Stock for issuance as awards under the Plan. The Plan was amended by the First Amendment to the Plan (the "First Amendment") to increase the total number of shares of our Common Stock for issuance under the Plan to 4,089,650 shares, which was adopted by the Board on November 6, 2020, and by our stockholders on December 17, 2020. As of the Record Date, there were 443,732 shares remaining available for future issuance as awards under the Plan. The Incentive Plan Amendment would further increase the number of shares of Common Stock available for issuance pursuant to awards under the Plan by an additional 5,750,000 shares, to a total of 9,839,650 shares of our Common Stock.

### **Background and Purpose of the Proposal**

We believe that operation of the Plan is a necessary and powerful tool in enabling us to attract and retain the best available personnel for positions of substantial responsibility; to provide additional incentive to key employees, key contractors, and non-employee directors; and to promote the success of our business. The Plan is expected to provide flexibility to our compensation methods in order to adapt the compensation of such employees, contractors, and directors to a changing business environment, after giving due consideration to competitive conditions and the impact of federal tax laws. We have strived to use our Plan resources effectively and to maintain an appropriate balance between stockholder interests and the ability to recruit and retain valuable employees. However, we believe there is an insufficient number of shares remaining under our Plan to meet our current and projected needs. Accordingly, it is the judgment of the Board that the Incentive Plan Amendment is in the best interest of the Company and its stockholders. We believe that the Incentive Plan Amendment, which increases the number of shares of Common Stock available for issuance pursuant to awards under the Plan, reflects best practices in our industry and is appropriate to permit the grant of equity awards at expected levels for the future.

A copy of the Incentive Plan Amendment, the First Amendment, and the Plan are included as Annex C, Annex D and Annex E, respectively, to this Proxy Statement. Described below is a summary of certain key provisions of the Plan, which is qualified in its entirety by reference to the full text of the Plan, as amended.

### **Summary of the Proposed Incentive Plan Amendment**

The Board adopted the Incentive Plan Amendment on August 18, 2023, subject to stockholder approval, to increase the number of shares of our Common Stock available for issuance pursuant to awards under the Plan by an additional 5,750,000 shares, to a total of 9,839,650 shares of our Common Stock.

### **Description of the Plan**

*Purpose.* The purpose of the Plan is to enable us to remain competitive and innovative in our ability to attract and retain the services of key employees, key contractors, and non-employee directors of the Company or any of our subsidiaries. The Plan provides for the granting of incentive stock options, nonqualified stock options, stock appreciation rights, restricted stock, restricted stock units, performance awards, dividend equivalent rights, and other awards, which may be granted singly, in combination, or in tandem, and which may be paid in cash or shares of our Common Stock. The Plan is expected to provide flexibility to our compensation methods in order to adapt the compensation of our key employees, key contractors, and non-employee directors to a changing business environment, after giving due consideration to competitive conditions and the impact of applicable tax laws.

*Effective Date and Expiration.* The Plan was approved by the Board on April 21, 2020 (the "Effective Date"), subject to the Plan's approval by our stockholders and the First Amendment was approved by the Board on November 6, 2020. The Plan will terminate on the tenth anniversary of the Effective Date, unless sooner terminated by the Board. No award may be made under the Plan after its termination date, but awards made prior to the termination date may extend beyond that date in accordance with their terms.

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*Share Authorization.* Subject to certain adjustments, the number of shares of our Common Stock that are reserved for issuance pursuant to awards under the Plan is currently 4,089,650 shares, 100% of which may be delivered as incentive stock options. If the Incentive Plan Amendment is approved, the total number of shares that may be issued pursuant to awards will be increased by 5,750,000 shares for a total of 9,839,650 shares, 100% of which may be delivered as incentive stock options.

Shares to be issued may be made available from authorized but unissued shares of our Common Stock, shares held by us in our treasury, or shares purchased by us on the open market or otherwise. During the term of the Plan, we will at all times reserve and keep enough shares available to satisfy the requirements of the Plan. If an award under the Plan is cancelled, forfeited, or expires, in whole or in part, the shares subject to such forfeited, expired, or cancelled award may again be awarded under the Plan. In the event that previously acquired shares are delivered to us in full or partial payment of the option price upon the exercise of a stock option or other award granted under the Plan, the number of shares available for future awards under the Plan shall be reduced only by the net number of shares issued upon the exercise of the stock option or settlement of an award. Awards that may be satisfied either by the issuance of Common Stock or by cash or other consideration shall be counted against the maximum number of shares that may be issued under the Plan only during the period that the award is outstanding or to the extent the award is ultimately satisfied by the issuance of shares. An award will not reduce the number of shares that may be issued pursuant to the Plan if the settlement of the award will not require the issuance of shares, as, for example, a stock appreciation right that can be satisfied only by the payment of cash. Only shares forfeited back to us; shares cancelled on account of termination, expiration, or lapse of an award; shares surrendered in payment of the option price of an option; or shares withheld for payment of applicable employment taxes and/or withholding obligations resulting from the exercise of a stock option shall again be available for grant as incentive stock options under the Plan, but shall not increase the maximum number of shares described above as the maximum number of shares that may be delivered pursuant to incentive stock options.

*Administration.* The Plan shall be administered by the Board or such committee of the board as it designated by it to administer the Plan (the "Committee"). At any time there is no Committee to administer the Plan, any reference to the Committee is a reference to the Board. The Committee will determine the persons to whom awards are to be made; determine the type, size, and terms of awards; interpret the Plan; establish and revise rules and regulations relating to the Plan; establish performance goals for awards and certify the extent of their achievement; and make any other determinations that it believes are necessary for the administration of the Plan. The Committee may delegate certain of its duties to one or more of our officers as provided in the Plan.

*Eligibility.* Employees (including any employee who is also a director or an officer), contractors, and non-employee directors of the Company or any of our subsidiaries, whose judgment, initiative, and efforts contributed to or may be expected to contribute to our successful performance, are eligible to participate in the Plan. As of the Record Date, we had 62 employees, one contractor and six non-employee directors who would be eligible for awards under the Plan.

*Stock Options.* The Committee may grant either incentive stock options (“ISOs”) qualifying under Section 422 of the Internal Revenue Code of 1986, as amended (the “Code”), or nonqualified stock options, provided that only employees of the Company and our subsidiaries (excluding subsidiaries that are not corporations) are eligible to receive ISOs. Stock options may not be granted with an option price less than 100% of the fair market value of a share of Common Stock on the date the stock option is granted. If an ISO is granted to an employee who owns or is deemed to own more than 10% of the combined voting power of all classes of our stock (or of any parent or subsidiary), the option price shall be at least 110% of the fair market value of a share of Common Stock on the date of grant. The Committee will determine the terms of each stock option at the time of grant, including, without limitation, the methods by or forms in which shares will be delivered to participants or registered in their names. The maximum term of each option, the times at which each option will be exercisable, and provisions requiring forfeiture of unexercised options at or following termination of employment or service generally are fixed by the Committee, except that the Committee may not grant stock options with a term exceeding 10 years or, in the case of an ISO granted to an employee who owns or is deemed to own more than 10% of the combined voting power of all classes of our stock (or of any parent or subsidiary), a term exceeding five years.

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Recipients of stock options may pay the option price (i) in cash, check, bank draft, or money order payable to the order of the Company; (ii) by delivering to us shares of Common Stock (included restricted stock) already owned by the participant having a fair market value equal to the aggregate option price and that the participant has not acquired from us within six months prior to the exercise date; (iii) by delivering to us or our designated agent an executed irrevocable option exercise form, together with irrevocable instructions from the participant to a broker or dealer, reasonably acceptable to us, to sell certain of the shares purchased upon the exercise of the option or to pledge such shares to the broker as collateral for a loan from the broker and to deliver to us the amount of sale or loan proceeds necessary to pay the purchase price; (iv) by requesting us to withhold the number of shares otherwise deliverable upon exercise of the stock option by the number of shares having an aggregate fair market value equal to the aggregate option price at the time of exercise (*i.e.*, a cashless net exercise); and (v) by any other form of valid consideration that is acceptable to the Committee in its sole discretion.

*Stock Appreciation Rights.* The Committee is authorized to grant stock appreciation rights (“SARs”) as a stand-alone award (or freestanding SARs) or in conjunction with options granted under the Plan (or tandem SARs). SARs entitle a participant to receive an amount equal to the excess of the fair market value of a share of Common Stock on the date of exercise over the fair market value of a share of our Common Stock on the date of grant. The grant price of a SAR cannot be less than 100% of the fair market value of a share of our Common Stock on the date of grant. The Committee will determine the terms of each SAR award at the time of the grant, including, without limitation, the methods by or forms in which shares will be delivered to participants or registered in their names. The maximum term of each SAR award, the times at which each SAR award will be exercisable, and provisions requiring forfeiture of unexercised SARs at or following termination of employment or service generally are fixed by the Committee, except that no freestanding SAR may have a term exceeding 10 years and no tandem SAR may have a term exceeding the term of the option granted in conjunction with the tandem SAR. Distributions to the recipient may be made in Common Stock, cash, or a combination of both as determined by the Committee.

*Restricted Stock and Restricted Stock Units.* The Committee is authorized to grant restricted stock and restricted stock units. Restricted stock consists of shares of our Common Stock that may not be sold, assigned, transferred, pledged, hypothecated, encumbered, or otherwise disposed of, and that may be forfeited in the event of certain terminations of employment or service, prior to the end of the restricted period as specified by the Committee. Restricted stock units are the right to receive shares of Common Stock at a future date in accordance with the terms of such grant upon the attainment of certain conditions specified by the Committee, which include a substantial risk of forfeiture and restrictions on their sale or other transfer by the participant. The Committee determines the eligible participants to whom, and the time or times at which, grants of restricted stock or restricted stock units will be made; the number of shares or units to be granted; the price to be paid, if any; the time or times within which the shares covered by such grants will be subject to forfeiture; the time or times at which the restrictions will terminate; and all other terms and conditions of the grants. Restrictions or conditions could include, but are not limited to, the attainment of performance goals (as described below), continuous service with us, the passage of time, or other restrictions or conditions. Except as otherwise provided in the Plan or the applicable award agreement, a participant shall have, with respect to shares of restricted stock, all of the rights of a stockholder of the Company holding the class of Common Stock that is the subject of the restricted stock, including, if applicable, the right to vote the Common Stock and the right to receive any dividends thereon.

*Dividend Equivalent Rights.* The Committee is authorized to grant a dividend equivalent right to any participant, either as a component of another award or as a separate award, conferring upon the participant the right to receive credits based on the cash dividends that would have been paid on the shares of Common Stock specified in the award as if such shares were held by the participant. The terms and conditions of the dividend equivalent right shall be specified in the grant. Dividend equivalents credited to the holder of a dividend equivalent right may be paid currently or may be deemed to be reinvested in additional shares. Any such reinvestment shall be at the fair market value at the time thereof. A dividend equivalent right may be settled in cash, shares, or a combination thereof.

*Performance Awards.* The Committee may grant performance awards payable at the end of a specified performance period in cash, shares of Common Stock, units, or other rights based upon, payable in, or otherwise related to our Common Stock. Payment will be contingent upon achieving pre-established performance goals (as described below) by the end of the applicable performance period. The Committee will determine the length of the performance period, the maximum payment value of an award, and the minimum performance goals required before payment will be made, so long as such provisions are not inconsistent with the terms of the Plan, and to the extent an award is subject to Section 409A of the Code, are in compliance with the applicable requirements of Section 409A of the Code and any applicable regulations or guidance. In certain circumstances, the Committee may, in its discretion, determine that the amount payable with respect to certain performance awards will be reduced from the maximum amount of any potential awards. If the Committee determines, in its sole discretion, that the established performance measures or objectives are no longer suitable because of a change in our business, operations, corporate structure, or for other reasons that the Committee deems satisfactory, the Committee may modify the performance measures or objectives and/or the performance period.

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*Performance Goals.* Awards of restricted stock, restricted stock units, performance awards, and other awards under the Plan may be made subject to the attainment of performance goals relating to one or more business criteria which shall consist of one or more or any combination of the following criteria (“Performance Criteria”): cash flow; cost; revenues; sales; ratio of debt to debt plus equity; net borrowing, credit quality, or debt ratings; profit before tax; economic profit; earnings before interest and taxes; earnings before interest, taxes, depreciation, and amortization; gross margin; earnings per share (whether on a pre-tax, after-tax, operational, or other basis); operating earnings; capital expenditures; expenses or expense levels; economic value added; ratio of operating earnings to capital spending or any other operating ratios; free cash flow; net profit; net sales; net asset value per share; the accomplishment of mergers, acquisitions, dispositions, public offerings, or similar extraordinary business transactions; sales growth; price of the shares; return on assets, equity, or stockholders’ equity; market share; inventory levels, inventory turn or shrinkage; or total return to stockholders. Any Performance Criteria may be used to measure our performance as a whole or of any of our business units and may be measured relative to a peer group or index. Any Performance Criteria may include or exclude (i) events that are of an unusual nature or indicate infrequency of occurrence, (ii) gains or losses on the disposition of a business; (iii) changes in tax or accounting regulations or laws; (iv) the effect of a merger or acquisition, as identified in our quarterly and annual earnings releases; or (v) other similar occurrences. In all other respects, Performance Criteria shall be calculated in accordance with our financial statements, under generally accepted accounting principles, or under a methodology established by the Committee prior to the issuance of an award, which is consistently applied and identified in the Company’s audited financial statements, including in footnotes, or the Compensation Discussion and Analysis section of the Company’s annual report.

*Other Awards.* The Committee may grant other forms of awards, based upon, payable in, or that otherwise relate to, in whole or in part, shares of our Common Stock, if the Committee determines that such other form of award is consistent with the purpose and restrictions of the Plan. The terms and conditions of such other form of award shall

be specified in the grant. Such other awards may be granted for no cash consideration, for such minimum consideration as may be required by applicable law, or for such other consideration as may be specified in the grant.

*Vesting, Forfeiture and Recoupment, Assignment.* The Committee, in its sole discretion, may determine that an award will be immediately vested, in whole or in part, or that all or any portion may not be vested until a date, or dates, subsequent to its date of grant, or until the occurrence of one or more specified events, subject in any case to the terms of the Plan. If the Committee imposes conditions upon vesting, then, subsequent to the date of grant, the Committee may, in its sole discretion, accelerate the date on which all or any portion of the award may be vested.

The Committee may impose on any award at the time of grant or thereafter, such additional terms and conditions as the Committee determines, including terms requiring forfeiture of awards in the event of a participant's termination of service. The Committee will specify the circumstances on which performance awards may be forfeited in the event of a termination of service by a participant prior to the end of a performance period or settlement of such awards. Except as otherwise determined by the Committee, restricted stock will be forfeited upon a participant's termination of service during the applicable restriction period. In addition, we may recoup all or any portion of any shares or cash paid to a participant in connection with any award in the event of a restatement of the Company's financial statements as set forth in the Company's clawback policy, if any, as such policy may be approved or modified by the Board from time to time.

Awards granted under the Plan generally are not assignable or transferable except by will or by the laws of descent and distribution, except that the Committee may, in its discretion and pursuant to the terms of an award agreement, permit transfers of nonqualified stock options or SARs to (i) the spouse (or former spouse), children, or grandchildren of the participant ("Immediate Family Members"); (ii) a trust or trusts for the exclusive benefit of such Immediate Family Members; (iii) a partnership in which the only partners are (a) such Immediate Family Members and/or (b) entities which are controlled by the participant and/or his or her Immediate Family Members; (iv) an entity exempt from federal income tax pursuant to Section 501(c)(3) of the Code or any successor provision; or (v) a split interest trust or pooled income fund described in Section 2522(c)(2) of the Code or any successor provision, provided that (x) there shall be no consideration for any such transfer, (y) the applicable award agreement pursuant to which such nonqualified stock options or SARs are granted must be approved by the Committee and must expressly provide for such transferability, and (z) subsequent transfers of transferred nonqualified stock options or SARs shall be prohibited except those by will or the laws of descent and distribution.

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42

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*Adjustments Upon Changes in Capitalization.* In the event that any dividend or other distribution (whether in the form of cash, shares of our Common Stock, other securities or other property), recapitalization, stock split, reverse stock split, rights offering, reorganization, merger, consolidation, split-up, spin-off, split-off, combination, subdivision, repurchase, or exchange of shares of Common Stock or other securities of the Company, issuance of warrants or other rights to purchase shares of Common Stock or other securities of the Company, or other similar corporate transaction or event affects the fair value of an award, then the Committee shall adjust any or all of the following so that the fair value of the award immediately after the transaction or event is equal to the fair value of the award immediately prior to the transaction or event: (i) the number of shares and type of Common Stock (or the securities or property) which thereafter may be made the subject of awards; (ii) the number of shares and type of Common Stock (or other securities or property) subject to outstanding awards; (iii) the number of shares and type of Common Stock (or other securities or property) specified as the annual per-participant limitation under the Plan; (iv) the option price of each outstanding stock option; (v) the amount, if any, we pay for forfeited shares in accordance with the terms of the Plan; and (vi) the number of or exercise price of shares then subject to outstanding SARs previously granted and unexercised under the Plan, to the end that the same proportion of our issued and outstanding shares of Common Stock in each instance shall remain subject to exercise at the same aggregate exercise price; provided, however, that the number of shares of Common Stock (or other securities or property) subject to any award shall always be a whole number. Notwithstanding the foregoing, no such adjustment shall be made or authorized to the extent that such adjustment would cause the Plan or any stock option to violate Section 422 or Section 409A of the Code. All such adjustments must be made in accordance with the rules of any securities exchange, stock market, or stock quotation system to which we are subject.

*Amendment or Discontinuance of the Plan.* The Board may, at any time and from time to time, without the consent of participants, alter, amend, revise, suspend, or discontinue the Plan in whole or in part; provided, however, that (i) no amendment that requires stockholder approval in order for the Plan and any awards under the Plan to continue to comply with Sections 421 and 422 of the Code (including any successors to such sections or other applicable law) or any applicable requirements of any securities exchange or inter-dealer quotation system on which our stock is listed or traded, shall be effective unless such amendment is approved by the requisite vote of our stockholders entitled to vote on the amendment; and (ii) unless required by law, no action by the Board regarding amendment or discontinuance of the Plan may adversely affect any rights of any participants or obligations of the Company to any participants with respect to any outstanding awards under the Plan without the consent of the affected participant.

### **Federal Income Tax Consequences**

The following is a brief summary of certain U.S. federal income tax consequences relating to the transactions described under the Plan as set forth below. This summary does not purport to address all aspects of U.S. federal income taxation and does not describe any potential state, local, or foreign tax consequences. This discussion is based upon provisions of the Code and the Treasury Regulations issued thereunder, and judicial and administrative interpretations under the Code and Treasury Regulations, all as in effect as of the date hereof, and all of which are subject to change (possibly on a retroactive basis) or different interpretation.

*Law Affecting Deferred Compensation.* In 2004, Section 409A was added to the Code to regulate all types of deferred compensation. If the requirements of Section 409A of the Code are not satisfied, deferred compensation and earnings thereon will be subject to tax as it vests, plus an interest charge at the then current underpayment rate plus 1% and a 20% penalty tax. Certain performance awards, stock options, SARs, restricted stock units, and certain types of restricted stock are subject to Section 409A of the Code.

*Incentive Stock Options.* A participant will not recognize income at the time an ISO is granted. When a participant exercises an ISO, a participant also generally will not be required to recognize income (either as ordinary income or capital gain). However, to the extent that the fair market value (determined as of the date of grant) of the shares with respect to which the participant's ISOs are exercisable for the first time during any year exceeds \$100,000, the ISOs for the shares over \$100,000 will be treated as nonqualified stock options, and not ISOs, for federal tax purposes, and the participant will recognize income as if the ISOs were nonqualified stock options (as described in more detail below). In addition to the foregoing, if the fair market value of the shares received upon exercise of an ISO exceeds the option price, then the excess may be deemed a tax preference adjustment for purposes of the federal alternative minimum tax calculation. The federal alternative minimum tax may produce significant tax repercussions depending upon the participant's particular tax status.

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43

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The tax treatment of any shares acquired upon exercise of an ISO will depend upon whether the participant disposes of his or her shares prior to the later of: (i) two years after the date the ISO was granted or (ii) one year after the shares were transferred to the participant (referred to as, the "Holding Period"). If a participant disposes of shares acquired upon exercise of an ISO after the expiration of the Holding Period, any amount received in excess of the participant's tax basis for such shares will be treated as a short-term or long-term capital gain, depending upon how long the participant has held the shares. If the amount received is less than the participant's tax basis for such shares, the loss will be treated as a short-term or long-term capital loss, depending upon how long the participant has held the shares. If the participant disposes of shares acquired upon exercise of an ISO prior to the expiration of the Holding Period, the disposition will be considered a "disqualifying disposition." If the amount received for the shares is greater than the fair market value of the shares on the exercise date, then the difference between the ISO's option price and the fair market value of the shares at the time of exercise will be treated as ordinary income for the tax year in which the disqualifying disposition occurs. The participant's basis in the shares will be increased by an amount equal to the amount treated as ordinary income due to such disqualifying disposition. In addition, the amount received in such disqualifying disposition over the participant's increased basis in the shares will be treated as capital gain. However, if the price received for shares acquired upon exercise of an ISO is less than the fair market value of the shares on the exercise date and the disposition is a transaction in which the participant sustains a loss which otherwise would be recognizable under the Code, then the amount of ordinary income that the participant will recognize is the excess, if any, of the amount realized on the disqualifying disposition over the basis of the shares.

**Nonqualified Stock Options.** A participant generally will not recognize income at the time a nonqualified stock option is granted. When a participant exercises a nonqualified stock option, the difference between the option price and any higher market value of the shares of Common Stock on the date of exercise will be treated as compensation taxable as ordinary income to the participant. The participant's tax basis for the shares acquired under a nonqualified stock option will be equal to the option price paid for such shares, plus any amounts included in the participant's income as compensation. When a participant disposes of shares acquired upon exercise of a nonqualified stock option, any amount received in excess of the participant's tax basis for such shares will be treated as short-term or long-term capital gain, depending upon how long the participant has held the shares. If the amount received is less than the participant's tax basis for such shares, the loss will be treated as a short-term or long-term capital loss, depending upon how long the participant has held the shares.

**Special Rule if Option Price is Paid for in Shares** If a participant pays the option price of a nonqualified stock option with previously-owned shares of our Common Stock and the transaction is not a disqualifying disposition of shares previously acquired under an ISO, the shares received equal to the number of shares surrendered are treated as having been received in a tax-free exchange. The participant's tax basis and holding period for these shares received will be equal to the participant's tax basis and holding period for the shares surrendered. The shares received in excess of the number of shares surrendered will be treated as compensation taxable as ordinary income to the participant to the extent of their fair market value. The participant's tax basis in these shares will be equal to their fair market value on the date of exercise, and the participant's holding period for such shares will begin on the date of exercise.

If the use of previously acquired shares to pay the option price of a nonqualified stock option constitutes a disqualifying disposition of shares previously acquired under an ISO, the participant will have ordinary income as a result of the disqualifying disposition in an amount equal to the excess of the fair market value of the shares surrendered, determined at the time such shares were originally acquired on exercise of the ISO, over the aggregate option price paid for such shares. As discussed above, a disqualifying disposition of shares previously acquired under an ISO occurs when the participant disposes of such shares before the end of the Holding Period. The other tax results from paying the option price with previously-owned shares are as described above, except that the participant's tax basis in the shares that are treated as having been received in a tax-free exchange will be increased by the amount of ordinary income recognized by the participant as a result of the disqualifying disposition.

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44

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**Restricted Stock.** A participant who receives restricted stock generally will recognize as ordinary income the excess, if any, of the fair market value of the shares granted as restricted stock at such time as the shares are no longer subject to forfeiture or restrictions, over the amount paid, if any, by the participant for such shares. However, a participant who receives restricted stock may make an election under Section 83(b) of the Code within 30 days of the date of transfer of the restricted shares to recognize ordinary income on the date of transfer of the restricted shares equal to the excess of the fair market value of such shares (determined without regard to the restrictions on such shares) over the purchase price, if any, paid for such shares. If a participant does not make an election under Section 83(b) of the Code, then the participant will recognize as ordinary income any dividends received with respect to such shares. At the time of sale of such shares, any gain or loss realized by the participant will be treated as either short-term or long-term capital gain (or loss) depending upon how long the participant has held the shares. For purposes of determining any gain or loss realized, the participant's tax basis will be the amount previously taxable as ordinary income, plus the purchase price paid by the participant, if any, for such shares.

**Stock Appreciation Rights.** Generally, a participant who receives a stand-alone SAR will not recognize taxable income at the time the stand-alone SAR is granted, provided that the SAR is exempt from or complies with Section 409A of the Code. If an employee receives the appreciation inherent in the SARs in cash, the cash will be taxed as ordinary income to the recipient at the time it is received. If a recipient receives the appreciation inherent in the SARs in stock, the spread between the then current market value and the grant price, if any, will be taxed as ordinary income to the employee at the time it is received.

**Other Awards.** In the case of an award of restricted stock units, performance awards, dividend equivalent rights, or other stock or cash awards, the recipient will generally recognize ordinary income in an amount equal to any cash received and the fair market value of any shares received on the date of payment or delivery, provided that the award is exempt from or complies with Section 409A of the Code.

**Federal Tax Withholding.** Any ordinary income realized by a participant upon the granting, vesting, exercise or conversion of an award under the Plan, as applicable, is subject to withholding of U.S. federal, state, and local income tax and to withholding of the participant's share of tax under the Federal Insurance Contribution Act and the Federal Unemployment Tax Act. To satisfy our federal income tax withholding requirements, we will have the right to require, as a condition to delivery of any certificate for shares of Common Stock or the registration of the shares in the participant's name, that the participant remit to us an amount sufficient to satisfy the withholding requirements. Alternatively, we may withhold a portion of the shares (valued at fair market value) that otherwise would be issued to the participant to satisfy all or part of the withholding tax obligations or may, if we consent, accept delivery of shares (that the participant has not acquired from us within six months prior to the date of exercise) with an aggregate fair market value that equals or exceeds the required tax withholding payment. Withholding does not represent an increase in the participant's total income tax obligation, since it is fully credited toward his or her tax liability for the year. Additionally, withholding does not affect the participant's tax basis in the shares. Compensation income realized and tax withheld will be reflected on Forms W-2 supplied by the Company to employees no later than January 31 of the succeeding year. Deferred compensation that is subject to Section 409A of the Code will be subject to certain federal income tax withholding and reporting requirements.

**Tax Consequences to Us.** To the extent that a participant recognizes ordinary income in the circumstances described above, we will be entitled to a corresponding deduction provided that, among other things, the income meets the test of reasonableness, is an ordinary and necessary business expense, is not an "excess parachute payment" within the meaning of Section 280G of the Code, and is not disallowed by the \$1,000,000 limitation on certain executive compensation under Section 162(m) of the Code.

**Million Dollar Deduction Limit and Other Tax Matters.** We may not deduct compensation of more than \$1,000,000 that is paid to "covered employees" (as defined in Section 162(m) of the Code), which include (i) an individual (or, in certain circumstances, his or her beneficiaries) who, at any time during the taxable year, is either our principal executive officer or principal financial officer; (ii) an individual who is among our three highest compensated officers for the taxable year (other than an individual who was either our principal executive officer or principal financial officer at any time during that taxable year); or (iii) anyone who was a covered employee for purposes of Section 162(m) of the Code for any tax year beginning on or after January 1, 2017. This limitation on deductions (x) only applies to compensation paid by a publicly-traded corporation (and not compensation paid by non-corporate entities) and (z) may not apply to certain types of compensation, such as qualified performance-based compensation that is payable pursuant to a written, binding contract that was in effect as of November 2, 2017, so long as the contract is not materially modified after that date.

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If an individual's rights under the Plan are accelerated as a result of a change in control and the individual is a "disqualified individual" under Section 280G of the Code, the value of any such accelerated rights received by such individual may be included in determining whether or not such individual has received an "excess parachute payment" under Section 280G of the Code, which could result in (i) the imposition of a 20% federal excise tax (in addition to federal income and employment taxes) payable by the individual on the value of such accelerated rights, and (ii) the loss by us of a compensation deduction.

#### **Interest of Certain Persons**

All members of the Board and all of our executive officers are eligible for awards under the Plan and, thus, have a personal interest in the approval of the Plan.

#### **New Plan Benefits**

With respect to the increased number of shares reserved under the Plan pursuant to the Incentive Plan Amendment, we cannot currently determine the benefits or number of shares subject to awards that may be granted in the future to eligible participants under the Plan because the grant of awards and terms of such awards are to be



determined in the sole discretion of the Committee.

The market value of our Common Stock on the Record Date was \$0.61 per share, based on the closing price of our Common Stock on the Record Date.

**Vote Required and Board's Recommendation**

The approval of the Incentive Plan Amendment Proposal requires the affirmative vote of the holders of a majority of the total voting power of the shares present in person or by proxy at the special meeting and entitled to vote on the Incentive Plan Amendment Proposal. Abstentions will have the effect of a vote against this proposal. Brokerage firms do not have authority to vote customers' unvoted shares held by the firms in street name on this proposal. As a result, any shares not voted by a customer will be treated as a broker non-vote. Such broker non-votes will have the effect of a vote against this proposal.

**THE BOARD RECOMMENDS THAT YOU VOTE "FOR" THE APPROVAL OF THE INCENTIVE PLAN AMENDMENT PROPOSAL, AND PROXIES SOLICITED BY THE BOARD WILL BE VOTED IN FAVOR OF THE PROPOSAL UNLESS A STOCKHOLDER INDICATES OTHERWISE ON THE PROXY.**

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46

**ADJOURNMENT PROPOSAL**

**(Notice Item 5)**

**Background and Description of Proposal**

Our Board has approved a proposal to adjourn the Special Meeting to a later date or dates, if necessary or appropriate, to permit further solicitation and vote of proxies in the event that there are insufficient votes for, or otherwise in connection with, the approval of the Issuance Proposal, the Reverse Stock Split Proposal, the Share Increase Proposal or the Incentive Plan Amendment Proposal.

The approval of each of the Issuance Proposal, the Reverse Stock Split Proposal, the Share Increase Proposal and the Incentive Plan Amendment Proposal requires the affirmative vote of a majority of the voting power of the shares present, either in attendance virtually or represented by proxy, at the Special Meeting and entitled to vote on such proposal. The Board believes that if the number of votes received with respect to any of these proposals is less than said majority and is therefore insufficient to approve such proposal, then it may be in the best interests of the stockholders to adjourn the Special Meeting to enable the Board to continue to seek to obtain a sufficient number of additional votes to approve the Issuance Proposal, the Reverse Stock Split Proposal, the Share Increase Proposal or the Incentive Plan Amendment Proposal, as applicable.

In the Adjournment Proposal, we are asking stockholders to authorize the holder of any proxy solicited by the Board to vote in favor of adjourning or postponing the Special Meeting or any adjournment or postponement thereof. If our stockholders approve this proposal, we could adjourn or postpone the Special Meeting, and any adjourned session of the Special Meeting, to use the additional time to solicit additional proxies in favor of the Issuance Proposal, the Reverse Stock Split Proposal, the Share Increase Proposal or the Incentive Plan Amendment Proposal, as applicable.

Additionally, approval of the Adjournment Proposal could mean that, in the event we receive proxies indicating that a majority of votes represented by the outstanding stock entitled to vote at the Special Meeting will be against the Issuance Proposal, the Reverse Stock Split Proposal, the Share Increase Proposal or the Incentive Plan Amendment Proposal, we could adjourn or postpone the Special Meeting without a vote on the Issuance Proposal, the Reverse Stock Split Proposal, the Share Increase Proposal or the Incentive Plan Amendment Proposal and use the additional time to solicit the holders of those shares to change their vote in favor of the Issuance Proposal, the Reverse Stock Split Proposal, the Share Increase Proposal or the Incentive Plan Amendment Proposal, as applicable.

**Vote Required and Board's Recommendation**

The approval of the Adjournment Proposal requires the affirmative vote of the holders of a majority of the voting power of the shares present in person or by proxy at the special meeting and entitled to vote on this proposal. Abstentions will have the effect of a vote against the Adjournment Proposal. Because the Adjournment Proposal is considered a routine matter, broker non-votes are not applicable to the Adjournment Proposal because your broker has discretionary authority to vote your shares with respect to such proposal. If a bank, broker, trustee or other nominee does not exercise this authority, such broker non-votes will have the same effect as votes cast "AGAINST" the Adjournment Proposal.

**THE BOARD RECOMMENDS THAT YOU VOTE "FOR" THE APPROVAL OF THE ADJOURNMENT PROPOSAL, AND PROXIES SOLICITED BY THE BOARD WILL BE VOTED IN FAVOR OF THE PROPOSAL UNLESS A STOCKHOLDER INDICATES OTHERWISE ON THE PROXY.**

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47

**OTHER MATTERS**

Our Board knows of no other business that will be presented to the special meeting. If any other business is properly brought before the special meeting, proxies will be voted in accordance with the judgment of the persons named therein.

**SUBMISSION OF FUTURE STOCKHOLDER PROPOSALS**

Pursuant to Rule 14a-8 under the Exchange Act ("Rule 14a-8"), a stockholder who intends to present a proposal at our 2023 annual meeting of stockholders and who wishes the proposal to be included in the proxy statement for the 2023 annual meeting must have submitted the proposal to us in writing to the attention of the Secretary at AYRO, Inc., 900 E. Old Settlers Boulevard, Suite 100, Round Rock, Texas 78664. The proposal must have been received no later than June 30, 2023. However, pursuant to Rule 14a-8, if the 2023 annual meeting is held on a date that is before November 14, 2023 or after January 13, 2024, then a stockholder proposal submitted for inclusion in our proxy statement for the 2023 annual meeting must be received by us a reasonable time before we begin to print and mail our proxy statement for the 2023 annual meeting.

Stockholders wishing to submit proposals to be presented directly at the 2023 annual meeting of stockholders instead of by inclusion in next year's proxy statement must follow the submission criteria set forth in our bylaws and applicable law concerning stockholder proposals. To be timely in connection with the 2023 annual meeting, a stockholder proposal concerning director nominations or other business must be received by our Secretary at our principal executive offices between August 14, 2023 and September 13, 2023; provided, however, if and only if the 2023 annual meeting is not scheduled to be held between November 14, 2023 and February 12, 2024, such stockholder's notice must be received by our Secretary at our principal executive offices not earlier than 120 days prior to the date of the 2023 annual meeting and not later than the later of (A) the tenth day following the date of the public announcement of the date of the 2023 annual meeting or (B) the date which is 90 days prior to the date of the 2023 annual meeting.

For our 2023 annual meeting, we will be required pursuant to Rule 14a-19 under the Exchange Act to include on our proxy card all nominees for director for whom we have received notice under the rule, which must be received no later than 60 calendar days prior to the anniversary of our 2022 annual meeting. For any such director nominee to be included on our proxy card for next year's annual meeting, notice must be received no later than October 16, 2023. Please note that the notice requirement under Rule 14a-19 is in addition to the applicable notice requirements under the advance notice provisions of our bylaws described above.

August 18, 2023

ANNEX A

**CERTIFICATE OF AMENDMENT  
OF  
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
AYRO, INC.**

AYRO, Inc. (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify that:

1. The Amended and Restated Certificate of Incorporation of this Corporation (the "Certificate of Incorporation") was filed with the Secretary of State of Delaware on May 28, 2020.
2. An amendment to the Certificate of Incorporation was filed with the Secretary of State of Delaware on May 28, 2020.
3. Resolutions were duly adopted by the Board of Directors of the Corporation setting forth this proposed Amendment to the Certificate of Incorporation and declaring said amendment to be advisable and calling for the consideration and approval thereof at a meeting of the stockholders of the Corporation.
4. Resolutions were duly adopted by the Board of Directors of the Corporation, in accordance with the provisions of the Certificate of Incorporation set forth below, providing that, effective as of [•], New York time, on [•], each [•] (#) issued and outstanding shares of the Corporation's Common Stock, par value \$0.0001 per share, shall be converted into [•] (#) share of the Corporation's Common Stock, par value \$0.0001 per share, as constituted following such date.
5. The Certificate of Incorporation is hereby amended by revising Article FOURTH to include a new paragraph E as follows:

"E. Reverse Split. Upon the effectiveness of the filing of this Certificate of Amendment (the "Effective Time") each share of the Corporation's common stock, \$0.0001 par value per share (the "Old Common Stock"), either issued or outstanding or held by the Corporation as treasury stock, immediately prior to the Effective Time, will be automatically reclassified and combined (without any further act) into a smaller number of shares such that each [•] shares of Old Common Stock issued and outstanding or held by the Company as treasury stock immediately prior to the Effective Time is reclassified into one share of Common Stock, \$0.0001 par value per share, of the Corporation (the "New Common Stock"), without increasing or decreasing the amount of stated capital or paid-in surplus of the Corporation (the "Reverse Stock Split"). The Board of Directors shall make provision for the issuance of that number of fractions of New Common Stock such that any fractional share of a holder otherwise resulting from the Reverse Stock Split shall be rounded up to the next whole number of shares of New Common Stock. Any stock certificate that, immediately prior to the Effective Time, represented shares of the Old Common Stock will, from and after the Effective Time, automatically and without the necessity of presenting the same for exchange, represent the number of shares of the New Common Stock into which such shares of Old Common Stock shall have been reclassified plus the fraction, if any, of a share of New Common Stock issued as aforesaid."

6. Pursuant to the resolution of the Board of Directors, a meeting of the stockholders of the Company was duly called and held upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware at which meeting the necessary number of shares as required by statute were voted in favor of the foregoing amendment.
7. The foregoing amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

[SIGNATURE PAGE FOLLOWS.]  
[SIGNATURE PAGE TO CERTIFICATE OF AMENDMENT]

A-1

IN WITNESS WHEREOF, AYRO, Inc. has caused this Certificate to be duly executed by the undersigned duly authorized officer as of this [•] day of [•], [•].

AYRO, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

A-2

ANNEX B

**CERTIFICATE OF AMENDMENT  
OF  
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
AYRO, INC.**

AYRO, Inc. (the "Corporation"), a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, does hereby certify that:

1. The Amended and Restated Certificate of Incorporation of this Corporation (the "Certificate of Incorporation") was filed with the Secretary of State of Delaware on May 28, 2020.
2. An amendment to the Certificate of Incorporation was filed with the Secretary of State of Delaware on May 28, 2020.

3. Resolutions were duly adopted by the Board of Directors of the Corporation setting forth this proposed Amendment to the Certificate of Incorporation and declaring said amendment to be advisable and calling for the consideration and approval thereof at a meeting of the stockholders of the Corporation.
4. The Certificate of Incorporation is hereby amended by amending the first sentence of paragraph A of Article FOURTH as follows:  
A. The total number of shares of all classes of stock which the Corporation shall have authority to issue is 220,000,000, consisting of 200,000,000 shares of Common Stock, \$0.0001 par value per share (the "**Common Stock**"), and 20,000,000 shares of Preferred Stock, \$0.0001 par value per share (the "**Preferred Stock**").
5. Pursuant to the resolution of the Board of Directors, a meeting of the stockholders of the Company was duly called and held upon notice in accordance with Section 222 of the General Corporation Law of the State of Delaware at which meeting the necessary number of shares as required by statute were voted in favor of the foregoing amendment.
6. The foregoing amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

[SIGNATURE PAGE FOLLOWS.]

B-1

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[SIGNATURE PAGE TO CERTIFICATE OF AMENDMENT]

IN WITNESS WHEREOF, AYRO, Inc. has caused this Certificate to be duly executed by the undersigned duly authorized officer as of this [●] day of [●], [●].

AYRO, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

B-2

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ANNEX C

**SECOND AMENDMENT TO  
AYRO, INC. 2020 LONG-TERM INCENTIVE PLAN**

This SECOND AMENDMENT TO AYRO, INC. 2020 LONG-TERM INCENTIVE PLAN (this "**Amendment**"), effective as of \_\_\_\_\_, 2023, is made and entered into by AYRO, Inc., a Delaware corporation (the "**Company**"). Terms used in this Amendment with initial capital letters that are not otherwise defined herein shall have the meanings ascribed to such terms in the AYRO, Inc. Long-Term Incentive Plan, as amended by the First Amendment effective December 17, 2020 (collectively, the "**Plan**").

**RECITALS**

**WHEREAS**, Article 9 of the Plan provides that the Board of Directors of the Company (the "**Board**") may amend the Plan at any time and from time to time;

**WHEREAS**, the Board desires to amend the Plan to increase the aggregate number of shares of Common Stock that may be issued under the Plan, as set forth in Article 5 of the Plan, by an additional 5,750,000 shares of Common Stock; and

**WHEREAS**, the Board intends to submit this Amendment to the Company's stockholders for their approval.

**NOW, THEREFORE**, in accordance with Article 9 of the Plan, the Company hereby amends the Plan as follows:

1. Section 5.1 of the Plan is hereby amended by deleting said section in its entirety and substituting in lieu thereof the following new Section 5.1:

5.1 Number Available for Awards. Subject to adjustment as provided in Articles 11 and 12, the maximum number of shares of Common Stock that may be delivered pursuant to Awards granted under the Plan is nine million eight hundred thirty-nine thousand six hundred fifty (9,839,650) shares, of which one hundred percent (100%) may be delivered pursuant to Incentive Stock Options. Shares to be issued may be made available from authorized but unissued Common Stock, Common Stock held by the Company in its treasury, or Common Stock purchased by the Company on the open market or otherwise. During the term of the Plan, the Company will at all times reserve and keep available the number of shares of Common Stock that shall be sufficient to satisfy the requirements of the Plan.

2. Except as expressly amended by this Amendment, the Plan shall continue in full force and effect in accordance with the provisions thereof.

C-1

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IN WITNESS WHEREOF, the Company has caused this Amendment to be duly executed as of the date first written above.

AYRO, INC.

By: \_\_\_\_\_

Name: Thomas M. Wittenschlaeger

Title: Chief Executive Officer

C-2

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ANNEX D

**FIRST AMENDMENT TO  
AYRO, INC. 2020 LONG-TERM INCENTIVE PLAN**

This FIRST AMENDMENT TO AYRO, INC. 2020 LONG-TERM INCENTIVE PLAN (this “*Amendment*”), effective as of December 17, 2020, is made and entered into by AYRO, Inc., a Delaware corporation (the “*Company*”). Terms used in this Amendment with initial capital letters that are not otherwise defined herein shall have the meanings ascribed to such terms in the AYRO, Inc. Long-Term Incentive Plan (the “*Plan*”).

## RECITALS

**WHEREAS**, Article 9 of the Plan provides that the Board of Directors of the Company (the “*Board*”) may amend the Plan at any time and from time to time;

**WHEREAS**, the Board desires to amend the Plan to increase the aggregate number of shares of Common Stock that may be issued under the Plan, as set forth in Article 5 of the Plan, by an additional 1,800,000 shares of Common Stock; and

**WHEREAS**, the Board intends to submit this Amendment to the Company’s stockholders for their approval.

**NOW, THEREFORE**, in accordance with Article 9 of the Plan, the Company hereby amends the Plan as follows:

1. Section 5.1 of the Plan is hereby amended by deleting said section in its entirety and substituting in lieu thereof the following new Section 5.1:

**5.1 Number Available for Awards** . Subject to adjustment as provided in Articles 11 and 12, the maximum number of shares of Common Stock that may be delivered pursuant to Awards granted under the Plan is four million eighty-nine thousand six hundred fifty (4,089,650) shares, of which one hundred percent (100%) may be delivered pursuant to Incentive Stock Options. Shares to be issued may be made available from authorized but unissued Common Stock, Common Stock held by the Company in its treasury, or Common Stock purchased by the Company on the open market or otherwise. During the term of the Plan, the Company will at all times reserve and keep available the number of shares of Common Stock that shall be sufficient to satisfy the requirements of the Plan.

2. Except as expressly amended by this Amendment, the Plan shall continue in full force and effect in accordance with the provisions thereof.

D-1

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**IN WITNESS WHEREOF**, the Company has caused this Amendment to be duly executed as of the date first written above.

**AYRO, INC.**

By: /s/ Rodney C. Keller, Jr.

Name: Rodney C. Keller, Jr.

Title: December 17, 2020

*Signature Page to  
First Amendment to  
AYRO, Inc. Long-Term Incentive Plan*

D-2

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**ANNEX E**

## **AYRO INC. LONG-TERM INCENTIVE PLAN**

The AYRO, Inc. Long-Term Incentive Plan (the “*Plan*”) was adopted by the Board of Directors of AYRO, Inc. a Delaware corporation (the “*Company*”), effective as of April 21, 2020 (the “*Effective Date*”), subject to approval by the Company’s stockholders.

### **ARTICLE 1. PURPOSE**

The purpose of the Plan is to attract and retain the services of key Employees, key Contractors, and Outside Directors of the Company and its Subsidiaries and to provide such persons with a proprietary interest in the Company through the granting of Incentive Stock Options, Nonqualified Stock Options, Stock Appreciation Rights, Restricted Stock, Restricted Stock Units, Performance Awards, Dividend Equivalent Rights, and Other Awards, whether granted singly, or in combination, or in tandem, that will:

- (a) increase the interest of such persons in the Company’s welfare;
- (b) furnish an incentive to such persons to continue their services for the Company or its Subsidiaries; and
- (c) provide a means through which the Company may attract able persons as Employees, Contractors, and Outside Directors.

With respect to Reporting Participants, the Plan and all transactions under the Plan are intended to comply with all applicable conditions of Rule 16b-3 promulgated under the Exchange Act. To the extent any provision of the Plan or action by the Committee fails to so comply, such provision or action shall be deemed null and void *ab initio*, to the extent permitted by law and deemed advisable by the Committee.

### **ARTICLE 2. DEFINITIONS**

For the purpose of the Plan, unless the context requires otherwise, the following terms shall have the meanings indicated:

2.1 “*Applicable Law*” means all legal requirements relating to the administration of equity incentive plans and the issuance and distribution of shares of Common Stock, if any, under applicable corporate laws, applicable securities laws, the rules of any exchange or inter-dealer quotation system upon which the Company’s securities are listed or quoted, the rules of any foreign jurisdiction applicable to Incentives granted to residents therein, and any other applicable law, rule or restriction.

2.2 “*Authorized Officer*” is defined in Section 3.2(b) hereof.

2.3 “*Award*” means the grant of any Incentive Stock Option, Nonqualified Stock Option, Restricted Stock, SAR, Restricted Stock Unit, Performance Award, Dividend Equivalent Right or Other Award, whether granted singly or in combination or in tandem (each individually referred to herein as an “*Incentive*”).

2.4 “**Award Agreement**” means a written agreement between a Participant and the Company which sets out the terms of the grant of an Award.

2.5 “**Award Period**” means the period set forth in the Award Agreement during which one or more Incentives granted under an Award may be exercised.

2.6 “**Board**” means the board of directors of the Company.

2.7 “**Change in Control**”

(a) any Person is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company (not including in the securities beneficially owned by such Person any securities acquired directly from the Company or its Affiliates) representing fifty percent (50%) or more of the combined voting power of the Company’s then outstanding securities, excluding any Person who becomes such a Beneficial Owner in connection with a transaction described in clause (a) of paragraph (c) below;

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E-1

(b) the following individuals cease for any reason to constitute a majority of the number of directors then serving: individuals who, on the effective date of this Plan, constitute the Board and any new director (other than a director 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) whose appointment or election by the Board or nomination for election by the Company’s stockholders was approved or recommended by a vote of at least two-thirds (2/3<sup>rd</sup>s) of the directors then still in office who either were directors on the effective date of this Plan or whose appointment, election or nomination for election was previously so approved or recommended;

(c) there is consummated a merger or consolidation of the Company or any direct or indirect subsidiary of the Company with any other corporation, other than (i) a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity or any parent thereof) at least fifty percent (50%) of the combined voting power of the securities of the Company or such surviving entity or any parent thereof outstanding immediately after such merger or consolidation, or (ii) a merger or consolidation effected to implement a recapitalization of the Company (or similar transaction) in which no Person is or becomes the Beneficial Owner, directly or indirectly, of securities of the Company (not including the securities Beneficially Owned by such Person any securities acquired directly from the Company or its Affiliates other than in connection with the acquisition by the Company or its Affiliates of a business) representing fifty percent (50%) or more of the combined voting power of the Company’s then outstanding securities; or

(d) the stockholders of the Company approve a plan of complete liquidation or dissolution of the Company or there is consummated an agreement for the sale or disposition by the Company of all or substantially all of the Company’s assets, other than a sale or disposition by the Company of all or substantially all of the Company’s assets to an entity, at least fifty percent (50%) of the combined voting power of the voting securities of which are owned by stockholders of the Company in substantially the same proportions as their ownership of the Company immediately prior to such sale.

For purposes hereof:

“**Affiliate**” shall have the meaning set forth in Rule 12b-2 promulgated under Section 12 of the Exchange Act.

“**Beneficial Owner**” shall have the meaning set forth in Rule 13d-3 under the Exchange Act.

“**Person**” shall have the meaning given in Section 3(a)(9) of the Exchange Act, as modified and used in Sections 13(d) and 14(d) thereof, except that such term shall not include (i) the Company or any of its Subsidiaries, (ii) a trustee or other fiduciary holding securities under an employee benefit plan of the Company or any of its Affiliates, (iii) an underwriter temporarily holding securities pursuant to an offering of such securities, or (iv) a corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

Notwithstanding the foregoing provisions of this Section 2.7, if an Award issued under the Plan is subject to Section 409A of the Code, then an event shall not constitute a Change in Control for purposes of such Award under the Plan unless such event also constitutes a change in the Company’s ownership, its effective control or the ownership of a substantial portion of its assets within the meaning of Section 409A of the Code.

2.8 “**Claim**” means any claim, liability or obligation of any nature, arising out of or relating to this Plan or an alleged breach of this Plan or an Award Agreement.

2.9 “**Code**” means the United States Internal Revenue Code of 1986, as amended.

2.10 “**Committee**” means the committee appointed or designated by the Board to administer the Plan in accordance with Article 3 of the Plan.

2.11 “**Common Stock**” means the common stock, par value \$0.0001 per share, which the Company is currently authorized to issue or may in the future be authorized to issue, or any securities into which or for which the common stock of the Company may be converted or exchanged, as the case may be, pursuant to the terms of this Plan.

2.12 “**Company**” means AYRO, Inc., a Delaware corporation, and any successor entity.

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E-2

2.13 “**Contractor**” means any natural person, who is not an Employee, rendering *bona fide* services to the Company or a Subsidiary, with compensation, pursuant to a written independent contractor agreement between such person and the Company or a Subsidiary, provided that such services are not rendered in connection with the offer or sale of securities in a capital raising transaction and do not directly or indirectly promote or maintain a market for the Company’s securities.

2.14 “**Corporation**” means any entity that (a) is defined as a corporation under Section 7701 of the Code and (b) is the Company or is in an unbroken chain of corporations (other than the Company) beginning with the Company, if each of the corporations other than the last corporation in the unbroken chain owns stock possessing a majority of the total combined voting power of all classes of stock in one of the other corporations in the chain. For purposes of clause (b) hereof, an entity shall be treated as a “corporation” if it satisfies the definition of a corporation under Section 7701 of the Code.

2.15 “**Date of Grant**” means the effective date on which an Award is made to a Participant as set forth in the applicable Award Agreement; provided, however, that solely for purposes of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder, the Date of Grant of an Award shall be the date of stockholder approval of the Plan if such date is later than the effective date of such Award as set forth in the Award Agreement.

2.16 “**Dividend Equivalent Right**” means the right of the holder thereof to receive credits based on the cash dividends that would have been paid on the shares of Common Stock specified in the Award if such shares were held by the Participant to whom the Award is made.

2.17 “**Employee**” means a common law employee (as defined in accordance with the Regulations and Revenue Rulings then applicable under Section 3401(c) of the Code) of the Company or any Subsidiary of the Company; provided, however, in the case of individuals whose employment status, by virtue of their employer or residence, is

not determined under Section 3401(c) of the Code, “Employee” shall mean an individual treated as an employee for local payroll tax or employment purposes by the applicable employer under Applicable Law for the relevant period.

2.18 “**Exchange Act**” means the United States Securities Exchange Act of 1934, as amended.

2.19 “**Exercise Date**” is defined in [Section 8.3\(b\)](#) hereof.

2.20 “**Exercise Notice**” is defined in [Section 8.3\(b\)](#) hereof.

2.21 “**Fair Market Value**” means, as of a particular date, (a) if the shares of Common Stock are listed on any established national securities exchange, the closing sales price per share of Common Stock on the consolidated transaction reporting system for the principal securities exchange for the Common Stock on that date, or, if there shall have been no such sale so reported on that date, on the last preceding date on which such a sale was so reported; (b) if the shares of Common Stock are not so listed, but are quoted on an automated quotation system, the closing sales price per share of Common Stock reported on the automated quotation system on that date, or, if there shall have been no such sale so reported on that date, on the last preceding date on which such a sale was so reported; (c) if the Common Stock is not so listed or quoted, the mean between the closing bid and asked price on that date, or, if there are no quotations available for such date, on the last preceding date on which such quotations shall be available, as reported by the National Association of Securities Dealer, Inc.’s OTC Bulletin Board or the Pink OTC Markets, Inc. (previously known as the National Quotation Bureau, Inc.); or (d) if none of the above is applicable, such amount as may be determined by the Committee (acting on the advice of an Independent Third Party, should the Committee elect in its sole discretion to utilize an Independent Third Party for this purpose), in good faith, to be the fair market value per share of Common Stock. The determination of Fair Market Value shall, where applicable, be in compliance with Section 409A of the Code.

2.22 “**Immediate Family Members**” is defined in [Section 15.7](#) hereof.

2.23 “**Incentive**” is defined in [Section 2.3](#) hereof.

2.24 “**Incentive Stock Option**” means an incentive stock option within the meaning of Section 422 of the Code, granted pursuant to this Plan.

2.25 “**Independent Third Party**” means an individual or entity independent of the Company having experience in providing investment banking or similar appraisal or valuation services and with expertise generally in the valuation of securities or other property for purposes of this Plan. The Committee may utilize one or more Independent Third Parties.

2.26 “**Nonqualified Stock Option**” means a nonqualified stock option, granted pursuant to this Plan, which is not an Incentive Stock Option.

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E-3

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2.27 “**Option Price**” means the price which must be paid by a Participant upon exercise of a Stock Option to purchase a share of Common Stock.

2.28 “**Other Award**” means an Award issued pursuant to [Section 6.9](#) hereof.

2.29 “**Outside Director**” means a director of the Company who is not an Employee or a Contractor.

2.30 “**Participant**” means an Employee, Contractor or an Outside Director to whom an Award is granted under this Plan.

2.31 “**Performance Award**” means an Award hereunder of cash, shares of Common Stock, units or rights based upon, payable in, or otherwise related to, Common Stock pursuant to [Section 6.7](#) hereof.

2.32 “**Performance Goal**” means any of the Performance Criteria set forth in [Section 6.10](#) hereof.

2.33 “**Plan**” means this AYRO, Inc. Long-Term Incentive Plan, as amended from time to time.

2.34 “**Reporting Participant**” means a Participant who is subject to the reporting requirements of Section 16 of the Exchange Act.

2.35 “**Restricted Stock**” means shares of Common Stock issued or transferred to a Participant pursuant to [Section 6.4](#) of this Plan which are subject to restrictions or limitations set forth in this Plan and in the related Award Agreement.

2.36 “**Restricted Stock Units**” means units awarded to Participants pursuant to [Section 6.6](#) hereof, which are convertible into Common Stock at such time as such units are no longer subject to restrictions as established by the Committee.

2.37 “**Restriction Period**” is defined in [Section 6.4\(b\)\(i\)](#) hereof.

2.38 “**SAR**” or “**Stock Appreciation Right**” means the right to receive an amount, in cash and/or Common Stock, equal to the excess of the Fair Market Value of a specified number of shares of Common Stock as of the date the SAR is exercised (or, as provided in the Award Agreement, converted) over the SAR Price for such shares.

2.39 “**SAR Price**” means the exercise price or conversion price of each share of Common Stock covered by a SAR, determined on the Date of Grant of the SAR.

2.40 “**Spread**” is defined in [Section 12.4\(b\)](#) hereof.

2.41 “**Stock Option**” means a Nonqualified Stock Option or an Incentive Stock Option.

2.42 “**Subsidiary**” means (a) any corporation in an unbroken chain of corporations beginning with the Company, if each of the corporations other than the last corporation in the unbroken chain owns stock possessing a majority of the total combined voting power of all classes of stock in one of the other corporations in the chain, (b) any limited partnership, if the Company or any corporation described in item (a) above owns a majority of the general partnership interest and a majority of the limited partnership interests entitled to vote on the removal and replacement of the general partner, and (c) any partnership or limited liability company, if the partners or members thereof are composed only of the Company, any corporation listed in item (a) above or any limited partnership listed in item (b) above. “**Subsidiaries**” means more than one of any such corporations, limited partnerships, partnerships or limited liability companies.

2.43 “**Termination of Service**” occurs when a Participant who is (a) an Employee of the Company or any Subsidiary ceases to serve as an Employee of the Company and its Subsidiaries, for any reason; (b) an Outside Director of the Company or a Subsidiary ceases to serve as a director of the Company and its Subsidiaries for any reason; or (c) a Contractor of the Company or a Subsidiary ceases to serve as a Contractor of the Company and its Subsidiaries for any reason. Except as may be necessary or desirable to comply with applicable federal or state law, a “Termination of Service” shall not be deemed to have occurred when a Participant who is an Employee becomes an Outside Director or Contractor or vice versa. If, however, a Participant who is an Employee and who has an Incentive Stock Option ceases to be an Employee but does not suffer a Termination of Service, and if that Participant does not exercise the Incentive Stock Option within the time required under Section 422 of the Code upon ceasing to be an Employee, the Incentive Stock Option shall thereafter become a Nonqualified Stock Option. Notwithstanding the foregoing provisions of this [Section 2.43](#), in the event an Award issued under the Plan is subject to Section 409A of the Code, then, in lieu of the foregoing definition and to the extent necessary to comply with the requirements of

2.44 “**Total and Permanent Disability**” means a Participant is qualified for long-term disability benefits under the Company’s or Subsidiary’s disability plan or insurance policy; or, if no such plan or policy is then in existence or if the Participant is not eligible to participate in such plan or policy, that the Participant, because of a physical or mental condition resulting from bodily injury, disease, or mental disorder, is unable to perform his or her duties of employment for a period of six (6) continuous months, as determined in good faith by the Committee, based upon medical reports or other evidence satisfactory to the Committee; provided that, with respect to any Incentive Stock Option, Total and Permanent Disability shall have the meaning given it under the rules governing Incentive Stock Options under the Code. Notwithstanding the foregoing provisions of this Section 2.44, in the event an Award issued under the Plan is subject to Section 409A of the Code, then, in lieu of the foregoing definition and to the extent necessary to comply with the requirements of Section 409A of the Code, the definition of “Total and Permanent Disability” for purposes of such Award shall be the definition of “disability” provided for under Section 409A of the Code and the regulations or other guidance issued thereunder.

### **ARTICLE 3. ADMINISTRATION**

**3.1 General Administration; Establishment of Committee.** Subject to the terms of this Article 3, the Plan shall be administered by the Board or such committee of the Board as is designated by the Board to administer the Plan (the “**Committee**”). The Committee shall consist of not fewer than two persons. Any member of the Committee may be removed at any time, with or without cause, by resolution of the Board. Any vacancy occurring in the membership of the Committee may be filled by appointment by the Board. At any time there is no Committee to administer the Plan, any references in this Plan to the Committee shall be deemed to refer to the Board.

Membership on the Committee shall be limited to those members of the Board who are “non-employee directors” as defined in Rule 16b-3 promulgated under the Exchange Act. The Committee shall select one of its members to act as its Chairman. A majority of the Committee shall constitute a quorum, and the act of a majority of the members of the Committee present at a meeting at which a quorum is present shall be the act of the Committee.

#### **3.2 Designation of Participants and Awards.**

(a) The Committee or the Board shall determine and designate from time to time the eligible persons to whom Awards will be granted and shall set forth in each related Award Agreement, where applicable, the Award Period, the Date of Grant, and such other terms, provisions, limitations, and performance requirements, as are approved by the Committee, but not inconsistent with the Plan. The Committee shall determine whether an Award shall include one type of Incentive or two or more Incentives granted in combination or two or more Incentives granted in tandem (that is, a joint grant where exercise of one Incentive results in cancellation of all or a portion of the other Incentive). Although the members of the Committee shall be eligible to receive Awards, all decisions with respect to any Award, and the terms and conditions thereof, to be granted under the Plan to any member of the Committee shall be made solely and exclusively by the other members of the Committee, or if such member is the only member of the Committee, by the Board.

(b) Notwithstanding Section 3.2(a), to the extent permitted by Applicable Law, the Board may, in its discretion and by a resolution adopted by the Board, authorize one or more officers of the Company (an “**Authorized Officer**”) to (i) designate one or more Employees as eligible persons to whom Nonqualified Stock Options, Incentive Stock Options or SARs will be granted under the Plan, and (ii) determine the number of shares of Common Stock that will be subject to such Nonqualified Stock Options, Incentive Stock Options or SARs; provided, however, that the resolution of the Board granting such authority shall (x) specify the total number of shares of Common Stock that may be made subject to the Nonqualified Stock Options, Incentive Stock Options or SARs, (y) set forth the price or prices (or a formula by which such price or prices may be determined) to be paid for the purchase of the Common Stock subject to such Nonqualified Stock Options, Incentive Stock Options or SARs, and (z) not authorize an officer to designate himself as a recipient of any Award.

**3.3 Authority of the Committee.** The Committee, in its discretion, shall (a) interpret the Plan and Award Agreements, (b) prescribe, amend, and rescind any rules and regulations, as necessary or appropriate for the administration of the Plan, (c) establish performance goals for an Award and certify the extent of their achievement, and (d) make such other determinations or certifications and take such other action as it deems necessary or advisable in the administration of the Plan. Any interpretation, determination, or other action made or taken by the Committee shall be final, binding, and conclusive on all interested parties. The Committee’s discretion set forth herein shall not be limited by any provision of the Plan, including any provision which by its terms is applicable notwithstanding any other provision of the Plan to the contrary.

The Committee may delegate to officers of the Company, pursuant to a written delegation, the authority to perform specified functions under the Plan. Any actions taken by any officers of the Company pursuant to such written delegation of authority shall be deemed to have been taken by the Committee.

With respect to restrictions in the Plan that are based on the requirements of Rule 16b-3 promulgated under the Exchange Act, Section 422 of the Code, the rules of any exchange or inter-dealer quotation system upon which the Company’s securities are listed or quoted, or any other Applicable Law, to the extent that any such restrictions are no longer required by Applicable Law, the Committee shall have the sole discretion and authority to grant Awards that are not subject to such mandated restrictions and/or to waive any such mandated restrictions with respect to outstanding Awards.

### **ARTICLE 4. ELIGIBILITY**

Any Employee (including an Employee who is also a director or an officer), Contractor or Outside Director of the Company whose judgment, initiative, and efforts contributed or may be expected to contribute to the successful performance of the Company is eligible to participate in the Plan; provided that only Employees of a Corporation shall be eligible to receive Incentive Stock Options. The Committee, upon its own action, may grant, but shall not be required to grant, an Award to any Employee, Contractor or Outside Director. Awards may be granted by the Committee at any time and from time to time to new Participants, or to then Participants, or to a greater or lesser number of Participants, and may include or exclude previous Participants, as the Committee shall determine. Except as required by this Plan, Awards need not contain similar provisions. The Committee’s determinations under the Plan (including without limitation determinations of which Employees, Contractors or Outside Directors, if any, are to receive Awards, the form, amount and timing of such Awards, the terms and provisions of such Awards and the agreements evidencing same) need not be uniform and may be made by it selectively among Participants who receive, or are eligible to receive, Awards under the Plan.

### **ARTICLE 5. SHARES SUBJECT TO PLAN**

**5.1 Number Available for Awards.** Subject to adjustment as provided in Articles 11 and 12, the maximum number of shares of Common Stock that may be delivered pursuant to Awards granted under the Plan is 11,448,253 shares, of which one hundred percent (100%) may be delivered pursuant to Incentive Stock Options. Shares to be issued may be made available from authorized but unissued Common Stock, Common Stock held by the Company in its treasury, or Common Stock purchased by the Company on the open market or otherwise. During the term of this Plan, the Company will at all times reserve and keep available the number of shares of Common Stock that shall be sufficient to satisfy the requirements of this Plan.

**5.2 Reuse of Shares.** To the extent that any Award under this Plan shall be forfeited, shall expire or be canceled, in whole or in part, then the number of shares of



Common Stock covered by the Award or stock option so forfeited, expired or canceled may again be awarded pursuant to the provisions of this Plan. In the event that previously acquired shares of Common Stock are delivered to the Company in full or partial payment of the exercise price for the exercise of a Stock Option granted under this Plan, the number of shares of Common Stock available for future Awards under this Plan shall be reduced only by the net number of shares of Common Stock issued upon the exercise of the Stock Option. Awards that may be satisfied either by the issuance of shares of Common Stock or by cash or other consideration shall be counted against the maximum number of shares of Common Stock that may be issued under this Plan only during the period that the Award is outstanding or to the extent the Award is ultimately satisfied by the issuance of shares of Common Stock. Awards will not reduce the number of shares of Common Stock that may be issued pursuant to this Plan if the settlement of the Award will not require the issuance of shares of Common Stock, as, for example, a SAR that can be satisfied only by the payment of cash. Notwithstanding any provisions of the Plan to the contrary, only shares forfeited back to the Company, shares canceled on account of termination, expiration or lapse of an Award, shares surrendered in payment of the exercise price of a Stock Option or shares withheld for payment of applicable employment taxes and/or withholding obligations resulting from the exercise of an option shall again be available for grant of Incentive Stock Options under the Plan, but shall not increase the maximum number of shares described in Section 5.1 above as the maximum number of shares of Common Stock that may be delivered pursuant to Incentive Stock Options.

E-6

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## **ARTICLE 6. GRANT OF AWARDS**

### **6.1 In General.**

(a) The grant of an Award shall be authorized by the Committee and shall be evidenced by an Award Agreement setting forth the Incentive or Incentives being granted, the total number of shares of Common Stock subject to the Incentive(s), the Option Price (if applicable), the Award Period, the Date of Grant, and such other terms, provisions, limitations, and performance objectives, as are approved by the Committee, but (i) not inconsistent with the Plan, and (ii) to the extent an Award issued under the Plan is subject to Section 409A of the Code, in compliance with the applicable requirements of Section 409A of the Code and the regulations or other guidance issued thereunder. The Company shall execute an Award Agreement with a Participant after the Committee approves the issuance of an Award. Any Award granted pursuant to this Plan must be granted within ten (10) years of the date of adoption of this Plan by the Board. The Plan shall be submitted to the Company's stockholders for approval; however, the Committee may grant Awards under the Plan prior to the time of stockholder approval. Any such Award granted prior to such stockholder approval shall be made subject to such stockholder approval. The grant of an Award to a Participant shall not be deemed either to entitle the Participant to, or to disqualify the Participant from, receipt of any other Award under the Plan.

(b) If the Committee establishes a purchase price for an Award, the Participant must accept such Award within a period of thirty (30) days (or such shorter period as the Committee may specify) after the Date of Grant by executing the applicable Award Agreement and paying such purchase price.

(c) Any Award under this Plan that is settled in whole or in part in cash on a deferred basis may provide for interest equivalents to be credited with respect to such cash payment. Interest equivalents may be compounded and shall be paid upon such terms and conditions as may be specified by the grant.

**6.2 Option Price.** The Option Price for any share of Common Stock which may be purchased under a Nonqualified Stock Option for any share of Common Stock must be equal to or greater than the Fair Market Value of the share on the Date of Grant. The Option Price for any share of Common Stock which may be purchased under an Incentive Stock Option must be at least equal to the Fair Market Value of the share on the Date of Grant; if an Incentive Stock Option is granted to an Employee who owns or is deemed to own (by reason of the attribution rules of Section 424(d) of the Code) more than ten percent (10%) of the combined voting power of all classes of stock of the Company (or any parent or Subsidiary), the Option Price shall be at least one hundred ten percent (110%) of the Fair Market Value of the Common Stock on the Date of Grant.

**6.3 Maximum ISO Grants.** The Committee may not grant Incentive Stock Options under the Plan to any Employee which would permit the aggregate Fair Market Value (determined on the Date of Grant) of the Common Stock with respect to which Incentive Stock Options (under this and any other plan of the Company and its Subsidiaries) are exercisable for the first time by such Employee during any calendar year to exceed \$100,000. To the extent any Stock Option granted under this Plan which is designated as an Incentive Stock Option exceeds this limit or otherwise fails to qualify as an Incentive Stock Option, such Stock Option (or any such portion thereof) shall be a Nonqualified Stock Option. In such case, the Committee shall designate which stock will be treated as Incentive Stock Option stock by causing the issuance of a separate stock certificate and identifying such stock as Incentive Stock Option stock on the Company's stock transfer records.

**6.4 Restricted Stock.** If Restricted Stock is granted to or received by a Participant under an Award (including a Stock Option), the Committee shall set forth in the related Award Agreement: (a) the number of shares of Common Stock awarded, (b) the price, if any, to be paid by the Participant for such Restricted Stock and the method of payment of the price, (c) the time or times within which such Award may be subject to forfeiture, (d) specified Performance Goals of the Company, a Subsidiary, any division thereof or any group of Employees of the Company, or other criteria, which the Committee determines must be met in order to remove any restrictions (including vesting) on such Award, and (e) all other terms, limitations, restrictions, and conditions of the Restricted Stock, which shall be consistent with this Plan, to the extent applicable and, to the extent Restricted Stock granted under the Plan is subject to Section 409A of the Code, in compliance with the applicable requirements of Section 409A of the Code and the regulations or other guidance issued thereunder. The provisions of Restricted Stock need not be the same with respect to each Participant.

E-7

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(a) **Legend on Shares.** The Company shall electronically register the Restricted Stock awarded to a Participant in the name of such Participant, which shall bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock, substantially as provided in Section 15.9 of the Plan. No stock certificate or certificates shall be issued with respect to such shares of Common Stock, unless, following the expiration of the Restriction Period (as defined in Section 6.4(b)(i)) without forfeiture in respect of such shares of Common Stock, the Participant requests delivery of the certificate or certificates by submitting a written request to the Committee (or such party designated by the Company) requesting delivery of the certificates. The Company shall deliver the certificates requested by the Participant to the Participant as soon as administratively practicable following the Company's receipt of such request.

(b) **Restrictions and Conditions.** Shares of Restricted Stock shall be subject to the following restrictions and conditions:

(i) Subject to the other provisions of this Plan and the terms of the particular Award Agreements, during such period as may be determined by the Committee commencing on the Date of Grant or the date of exercise of an Award (the "**Restriction Period**"), the Participant shall not be permitted to sell, transfer, pledge or assign shares of Restricted Stock. Except for these limitations, the Committee may in its sole discretion, remove any or all of the restrictions on such Restricted Stock whenever it may determine that, by reason of changes in Applicable Laws or other changes in circumstances arising after the date of the Award, such action is appropriate.

(ii) Except as provided in sub-paragraph (a) above or in the applicable Award Agreement, the Participant shall have, with respect to his or her Restricted Stock, all of the rights of a stockholder of the Company, including the right to vote the shares, and the right to receive any dividends thereon. Certificates for shares of Common Stock free of restriction under this Plan shall be delivered to the Participant promptly after, and only after, the Restriction Period shall expire without forfeiture in respect of such shares of Common Stock or after any other restrictions imposed on such shares of Common Stock by the applicable Award Agreement or other agreement have expired. Certificates for the shares of Common Stock forfeited under the provisions of the Plan and the applicable Award Agreement shall be promptly returned to the Company by the forfeiting Participant. Each Award Agreement shall require that each Participant, in connection with the issuance of a certificate for Restricted Stock, shall endorse such certificate in blank or execute a stock power in form satisfactory to the Company in blank and deliver such certificate and executed stock power to the Company.

(iii) The Restriction Period of Restricted Stock shall commence on the Date of Grant or the date of exercise of an Award, as specified in the Award Agreement, and, subject to Article 12 of the Plan, unless otherwise established by the Committee in the Award Agreement setting forth the terms of the Restricted Stock, shall expire upon satisfaction of the conditions set forth in the Award Agreement; such conditions may provide for vesting based on length of continuous service or such Performance Goals, as may be determined by the Committee in its sole discretion.

(iv) Except as otherwise provided in the particular Award Agreement, upon Termination of Service for any reason during the Restriction Period, the nonvested shares of Restricted Stock shall be forfeited by the Participant. In the event a Participant has paid any consideration to the Company for such forfeited Restricted Stock, the Committee shall specify in the Award Agreement that either (1) the Company shall be obligated to, or (2) the Company may, in its sole discretion, elect to, pay to the Participant, as soon as practicable after the event causing forfeiture, in cash, an amount equal to the lesser of the total consideration paid by the Participant for such forfeited shares or the Fair Market Value of such forfeited shares as of the date of Termination of Service, as the Committee, in its sole discretion shall select. Upon any forfeiture, all rights of a Participant with respect to the forfeited shares of the Restricted Stock shall cease and terminate, without any further obligation on the part of the Company.

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E-8

**6.5 SARs.** The Committee may grant SARs to any Participant, either as a separate Award or in connection with a Stock Option. SARs shall be subject to such terms and conditions as the Committee shall impose, provided that such terms and conditions are (a) not inconsistent with the Plan, and (b) to the extent a SAR issued under the Plan is subject to Section 409A of the Code, in compliance with the applicable requirements of Section 409A of the Code and the regulations or other guidance issued thereunder. The grant of the SAR may provide that the holder may be paid for the value of the SAR either in cash or in shares of Common Stock, or a combination thereof. In the event of the exercise of a SAR payable in shares of Common Stock, the holder of the SAR shall receive that number of whole shares of Common Stock having an aggregate Fair Market Value on the date of exercise equal to the value obtained by multiplying (a) the difference between the Fair Market Value of a share of Common Stock on the date of exercise over the SAR Price as set forth in such SAR (or other value specified in the agreement granting the SAR), by (b) the number of shares of Common Stock as to which the SAR is exercised, with a cash settlement to be made for any fractional shares of Common Stock. The SAR Price for any share of Common Stock subject to a SAR may be equal to or greater than the Fair Market Value of the share on the Date of Grant. The Committee, in its sole discretion, may place a ceiling on the amount payable upon exercise of a SAR, but any such limitation shall be specified at the time that the SAR is granted.

**6.6 Restricted Stock Units.** Restricted Stock Units may be awarded or sold to any Participant under such terms and conditions as shall be established by the Committee, provided, however, that such terms and conditions are (a) not inconsistent with the Plan, and (b) to the extent a Restricted Stock Unit issued under the Plan is subject to Section 409A of the Code, in compliance with the applicable requirements of Section 409A of the Code and the regulations or other guidance issued thereunder. Restricted Stock Units shall be subject to such restrictions as the Committee determines, including, without limitation, (a) a prohibition against sale, assignment, transfer, pledge, hypothecation or other encumbrance for a specified period; or (b) a requirement that the holder forfeit (or in the case of shares of Common Stock or units sold to the Participant, resell to the Company at cost) such shares or units in the event of Termination of Service during the period of restriction.

#### **6.7 Performance Awards.**

(a) The Committee may grant Performance Awards to one or more Participants. The terms and conditions of Performance Awards shall be specified at the time of the grant and may include provisions establishing the performance period, the Performance Goals to be achieved during a performance period, and the maximum or minimum settlement values, provided that such terms and conditions are (i) not inconsistent with the Plan and (ii) to the extent a Performance Award issued under the Plan is subject to Section 409A of the Code, in compliance with the applicable requirements of Section 409A of the Code and the regulations or other guidance issued thereunder. If the Performance Award is to be in shares of Common Stock, the Performance Awards may provide for the issuance of the shares of Common Stock at the time of the grant of the Performance Award or at the time of the certification by the Committee that the Performance Goals for the performance period have been met; provided, however, if shares of Common Stock are issued at the time of the grant of the Performance Award and if, at the end of the performance period, the Performance Goals are not certified by the Committee to have been fully satisfied, then, notwithstanding any other provisions of this Plan to the contrary, the Common Stock shall be forfeited in accordance with the terms of the grant to the extent the Committee determines that the Performance Goals were not met. The forfeiture of shares of Common Stock issued at the time of the grant of the Performance Award due to failure to achieve the established Performance Goals shall be separate from and in addition to any other restrictions provided for in this Plan that may be applicable to such shares of Common Stock. Each Performance Award granted to one or more Participants shall have its own terms and conditions.

If the Committee determines, in its sole discretion, that the established performance measures or objectives are no longer suitable because of a change in the Company's business, operations, corporate structure, or for other reasons that the Committee deemed satisfactory, the Committee may modify the performance measures or objectives and/or the performance period.

(b) Performance Awards may be valued by reference to the Fair Market Value of a share of Common Stock or according to any formula or method deemed appropriate by the Committee, in its sole discretion, including, but not limited to, achievement of Performance Goals or other specific financial, production, sales or cost performance objectives that the Committee believes to be relevant to the Company's business and/or remaining in the employ of the Company or a Subsidiary for a specified period of time. Performance Awards may be paid in cash, shares of Common Stock, or other consideration, or any combination thereof. If payable in shares of Common Stock, the consideration for the issuance of such shares may be the achievement of the performance objective established at the time of the grant of the Performance Award. Performance Awards may be payable in a single payment or in installments and may be payable at a specified date or dates or upon attaining the performance objective. The extent to which any applicable performance objective has been achieved shall be conclusively determined by the Committee.

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E-9

**6.8 Dividend Equivalent Rights.** The Committee may grant a Dividend Equivalent Right to any Participant, either as a component of another Award or as a separate Award. The terms and conditions of the Dividend Equivalent Right shall be specified by the grant. Dividend equivalents credited to the holder of a Dividend Equivalent Right may be paid currently or may be deemed to be reinvested in additional shares of Common Stock (which may thereafter accrue additional dividend equivalents). Any such reinvestment shall be at the Fair Market Value at the time thereof. Dividend Equivalent Rights may be settled in cash or shares of Common Stock, or a combination thereof, in a single payment or in installments. A Dividend Equivalent Right granted as a component of another Award may provide that such Dividend Equivalent Right shall be settled upon exercise, settlement, or payment of, or lapse of restrictions on, such other Award, and that such Dividend Equivalent Right granted as a component of another Award may also contain terms and conditions different from such other Award.

**6.9 Other Awards.** The Committee may grant to any Participant other forms of Awards, based upon, payable in, or otherwise related to, in whole or in part, shares of Common Stock, if the Committee determines that such other form of Award is consistent with the purpose and restrictions of this Plan. The terms and conditions of such other form of Award shall be specified by the grant. Such Other Awards may be granted for no cash consideration, for such minimum consideration as may be required by Applicable Law, or for such other consideration as may be specified by the grant.

**6.10 Performance Goals.** Awards of Restricted Stock, Restricted Stock Units, Performance Award and Other Awards (whether relating to cash or shares of Common Stock) under the Plan may be made subject to the attainment of Performance Goals relating to one or more business criteria which may consist of one or more or any combination of the following criteria: cash flow; cost; revenues; sales; ratio of debt to debt plus equity; net borrowing, credit quality or debt ratings; profit before tax; economic profit; earnings before interest and taxes; earnings before interest, taxes, depreciation and amortization; gross margin; earnings per share (whether on a pre-tax, after-tax, operational or other basis); operating earnings; capital expenditures; expenses or expense levels; economic value added; ratio of operating earnings to capital spending or any other operating ratios; free cash flow; net profit; net sales; net asset value per share; the accomplishment of mergers, acquisitions, dispositions, public offerings or similar extraordinary business transactions; sales growth; price of the Company's Common Stock; return on assets, equity or stockholders' equity; market share; inventory levels,

inventory turn or shrinkage; or total return to stockholders (“**Performance Criteria**”). Any Performance Criteria may be used to measure the performance of the Company as a whole or any business unit of the Company and may be measured relative to a peer group or index. Any Performance Criteria may include or exclude (a) events that are of an unusual nature or indicate infrequency of occurrence, (b) gains or losses on the disposition of a business, (c) changes in tax or accounting regulations or laws, (d) the effect of a merger or acquisition, as identified in the Company’s quarterly and annual earnings releases, or (e) other similar occurrences. In all other respects, Performance Criteria shall be calculated in accordance with the Company’s financial statements, under generally accepted accounting principles, or under a methodology established by the Committee prior to the issuance of an Award which is consistently applied and identified in the audited financial statements, including footnotes, or the Compensation Discussion and Analysis section of the Company’s annual report.

**6.11 Tandem Awards.** The Committee may grant two or more Incentives in one Award in the form of a “tandem Award,” so that the right of the Participant to exercise one Incentive shall be canceled if, and to the extent, the other Incentive is exercised. For example, if a Stock Option and a SAR are issued in a tandem Award, and the Participant exercises the SAR with respect to one hundred (100) shares of Common Stock, the right of the Participant to exercise the related Stock Option shall be canceled to the extent of one hundred (100) shares of Common Stock.

**6.12 Recoupment for Restatements.** Notwithstanding any other language in this Plan to the contrary, the Company may recoup all or any portion of any shares or cash paid to a Participant in connection with an Award, in the event of a restatement of the Company’s financial statements as set forth in the Company’s clawback policy, if any, approved by the Company’s Board from time to time.

## **ARTICLE 7. AWARD PERIOD; VESTING**

**7.1 Award Period.** Subject to the other provisions of this Plan, the Committee may, in its discretion, provide that an Incentive may not be exercised in whole or in part for any period or periods of time or beyond any date specified in the Award Agreement. Except as provided in the Award Agreement, an Incentive may be exercised in whole or in part at any time during its term. The Award Period for an Incentive shall be reduced or terminated upon Termination of Service. No Incentive granted under the Plan may be exercised at any time after the end of its Award Period. No portion of any Incentive may be exercised after the expiration of ten (10) years from its Date of Grant. However, if an Employee owns or is deemed to own (by reason of the attribution rules of Section 424(d) of the Code) more than ten percent (10%) of the combined voting power of all classes of stock of the Company (or any parent or Subsidiary) and an Incentive Stock Option is granted to such Employee, the term of such Incentive Stock Option (to the extent required by the Code at the time of grant) shall be no more than five (5) years from the Date of Grant.

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E-10

**7.2 Vesting.** The Committee, in its sole discretion, may determine that an Incentive will be immediately vested in whole or in part, or that all or any portion may not be vested until a date, or dates, subsequent to its Date of Grant, or until the occurrence of one or more specified events, subject in any case to the terms of the Plan. If the Committee imposes conditions upon vesting, then, subsequent to the Date of Grant, the Committee may, in its sole discretion, accelerate the date on which all or any portion of the Incentive may be vested.

## **ARTICLE 8. EXERCISE OR CONVERSION OF INCENTIVE**

**8.1 In General.** A vested Incentive may be exercised or converted, during its Award Period, subject to limitations and restrictions set forth in the Award Agreement.

**8.2 Securities Law and Exchange Restrictions.** In no event may an Incentive be exercised or shares of Common Stock issued pursuant to an Award if a necessary listing or quotation of the shares of Common Stock on a stock exchange or inter-dealer quotation system or any registration under state or federal securities laws required under the circumstances has not been accomplished.

### **8.3 Exercise of Stock Option.**

(a) **In General.** If a Stock Option is exercisable prior to the time it is vested, the Common Stock obtained on the exercise of the Stock Option shall be Restricted Stock which is subject to the applicable provisions of the Plan and the Award Agreement. If the Committee imposes conditions upon exercise, then subsequent to the Date of Grant, the Committee may, in its sole discretion, accelerate the date on which all or any portion of the Stock Option may be exercised. No Stock Option may be exercised for a fractional share of Common Stock. The granting of a Stock Option shall impose no obligation upon the Participant to exercise that Stock Option.

(b) **Notice and Payment.** Subject to such administrative regulations as the Committee may from time to time adopt, a Stock Option may be exercised by the delivery of written notice to the Committee setting forth the number of shares of Common Stock with respect to which the Stock Option is to be exercised (the “**Exercise Notice**”) and the date of exercise thereof (the “**Exercise Date**”) with respect to any Stock Option shall be the date that the Participant has delivered both the Exercise Notice and consideration to the Company with a value equal to the total Option Price of the shares to be purchased (plus any employment tax withholding or other tax payment due with respect to such Award), payable as provided in the Award Agreement, which may provide for payment in any one or more of the following ways: (i) cash or check, bank draft, or money order payable to the order of the Company, (ii) Common Stock (including Restricted Stock) owned by the Participant on the Exercise Date, valued at its Fair Market Value on the Exercise Date, and which the Participant has not acquired from the Company within six (6) months prior to the Exercise Date, (iii) by delivery (including by FAX or electronic transmission) to the Company or its designated agent of an executed irrevocable option exercise form (or, to the extent permitted by the Company, exercise instructions, which may be communicated in writing, telephonically, or electronically) together with irrevocable instructions from the Participant to a broker or dealer, reasonably acceptable to the Company, to sell certain of the shares of Common Stock purchased upon exercise of the Stock Option or to pledge such shares as collateral for a loan and promptly deliver to the Company the amount of sale or loan proceeds necessary to pay such purchase price, (iv) by requesting the Company to withhold the number of shares otherwise deliverable upon exercise of the Stock Option by the number of shares of Common Stock having an aggregate Fair Market Value equal to the aggregate Option Price at the time of exercise (*i.e.*, a cashless net exercise), and/or (v) in any other form of valid consideration that is acceptable to the Committee in its sole discretion. In the event that shares of Restricted Stock are tendered as consideration for the exercise of a Stock Option, a number of shares of Common Stock issued upon the exercise of the Stock Option equal to the number of shares of Restricted Stock used as consideration therefor shall be subject to the same restrictions and provisions as the Restricted Stock so tendered. If the Participant fails to deliver the consideration described in this Section 8.3(b) within three (3) business days of the date of the Exercise Notice, then the Exercise Notice shall be null and void and the Company will have no obligation to deliver any shares of Common Stock to the Participant in connection with such Exercise Notice.

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E-11

(c) **Issuance of Certificate.** Except as otherwise provided in Section 6.4 hereof (with respect to shares of Restricted Stock) or in the applicable Award Agreement, upon payment of all amounts due from the Participant, the Company shall cause the Common Stock then being purchased to be registered in the Participant’s name (or the person exercising the Participant’s Stock Option in the event of his or her death), but shall not issue certificates for the Common Stock unless the Participant or such other person requests delivery of the certificates for the Common Stock, in writing in accordance with the procedures established by the Committee. The Company shall deliver certificates to the Participant (or the person exercising the Participant’s Stock Option in the event of his or her death) as soon as administratively practicable following the Company’s receipt of a written request from the Participant or such other person for delivery of the certificates. Notwithstanding the forgoing, if the Participant has exercised an Incentive Stock Option, the Company may at its option retain physical possession of the certificate evidencing the shares acquired upon exercise until the expiration of the holding periods described in Section 422(a)(1) of the Code. Any obligation of the Company to deliver shares of Common Stock shall, however, be subject to the condition that, if at any time the Committee shall determine in its discretion that the listing,

registration, or qualification of the Stock Option or the Common Stock upon any securities exchange or inter-dealer quotation system or under any state or federal law, or the consent or approval of any governmental regulatory body, is necessary as a condition of, or in connection with, the Stock Option or the issuance or purchase of shares of Common Stock thereunder, the Stock Option may not be exercised in whole or in part unless such listing, registration, qualification, consent, or approval shall have been effected or obtained free of any conditions not reasonably acceptable to the Committee.

(d) **Failure to Pay.** Except as may otherwise be provided in an Award Agreement, if the Participant fails to pay for any of the Common Stock specified in such notice or fails to accept delivery thereof, that portion of the Participant's Stock Option and right to purchase such Common Stock may be forfeited by the Participant.

**8.4 SARs.** Subject to the conditions of this Section 8.4 and such administrative regulations as the Committee may from time to time adopt, a SAR may be exercised by the delivery (including by FAX) of written notice to the Committee setting forth the number of shares of Common Stock with respect to which the SAR is to be exercised and the date of exercise thereof (the "**Exercise Date**") which shall be at least three (3) days after giving such notice unless an earlier time shall have been mutually agreed upon. Subject to the terms of the Award Agreement and only if permissible under Section 409A of the Code and the regulations or other guidance issued thereunder (or, if not so permissible, at such time as permitted by Section 409A of the Code and the regulations or other guidance issued thereunder), the Participant shall receive from the Company in exchange therefor in the discretion of the Committee, and subject to the terms of the Award Agreement:

(a) cash in an amount equal to the excess (if any) of the Fair Market Value (as of the Exercise Date, or if provided in the Award Agreement, conversion, of the SAR) per share of Common Stock over the SAR Price per share specified in such SAR, multiplied by the total number of shares of Common Stock of the SAR being surrendered;

(b) that number of shares of Common Stock having an aggregate Fair Market Value (as of the Exercise Date, or if provided in the Award Agreement, conversion, of the SAR) equal to the amount of cash otherwise payable to the Participant, with a cash settlement to be made for any fractional share interests; or

(c) the Company may settle such obligation in part with shares of Common Stock and in part with cash.

The distribution of any cash or Common Stock pursuant to the foregoing sentence shall be made at such time as set forth in the Award Agreement.

**8.5 Disqualifying Disposition of Incentive Stock Option.** If shares of Common Stock acquired upon exercise of an Incentive Stock Option are disposed of by a Participant prior to the expiration of either two (2) years from the Date of Grant of such Stock Option or one (1) year from the transfer of shares of Common Stock to the Participant pursuant to the exercise of such Stock Option, or in any other disqualifying disposition within the meaning of Section 422 of the Code, such Participant shall notify the Company in writing of the date and terms of such disposition. A disqualifying disposition by a Participant shall not affect the status of any other Stock Option granted under the Plan as an Incentive Stock Option within the meaning of Section 422 of the Code.

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E-12

## **ARTICLE 9. AMENDMENT OR DISCONTINUANCE**

Subject to the limitations set forth in this Article 9, the Board may at any time and from time to time, without the consent of the Participants, alter, amend, revise, suspend, or discontinue the Plan in whole or in part; provided, however, that no amendment for which stockholder approval is required either (a) by any securities exchange or inter-dealer quotation system on which the Common Stock is listed or traded or (b) in order for the Plan and Incentives awarded under the Plan to continue to comply with Sections 421 and 422 of the Code, including any successors to such Sections, or other Applicable Law, shall be effective unless such amendment shall be approved by the requisite vote of the stockholders of the Company entitled to vote thereon. Any such amendment shall, to the extent deemed necessary or advisable by the Committee, be applicable to any outstanding Incentives theretofore granted under the Plan, notwithstanding any contrary provisions contained in any Award Agreement. In the event of any such amendment to the Plan, the holder of any Incentive outstanding under the Plan shall, upon request of the Committee and as a condition to the exercisability thereof, execute a conforming amendment in the form prescribed by the Committee to any Award Agreement relating thereto. Notwithstanding anything contained in this Plan to the contrary, unless required by law, no action contemplated or permitted by this Article 9 shall adversely affect any rights of Participants or obligations of the Company to Participants with respect to any Incentive theretofore granted under the Plan without the consent of the affected Participant.

## **ARTICLE 10. TERM**

The Plan shall be effective from the date that this Plan is adopted by the Board. Unless sooner terminated by action of the Board, the Plan will terminate on the tenth anniversary of the Effective Date, but Incentives granted before that date will continue to be effective in accordance with their terms and conditions.

## **ARTICLE 11. CAPITAL ADJUSTMENTS**

In the event that any dividend or other distribution (whether in the form of cash, Common Stock, other securities, or other property), recapitalization, stock split, reverse stock split, rights offering, reorganization, merger, consolidation, split-up, spin-off, split-off, combination, subdivision, repurchase, or exchange of Common Stock or other securities of the Company, issuance of warrants or other rights to purchase Common Stock or other securities of the Company, or other similar corporate transaction or event affects the fair value of an Award, then the Committee shall adjust any or all of the following so that the fair value of the Award immediately after the transaction or event is equal to the fair value of the Award immediately prior to the transaction or event (a) the number of shares and type of Common Stock (or the securities or property) which thereafter may be made the subject of Awards, (b) the number of shares and type of Common Stock (or other securities or property) subject to outstanding Awards, (c) the number of shares and type of Common Stock (or other securities or property) specified as the annual per-participant limitation under Section 5.1 of the Plan, (d) the Option Price of each outstanding Award, (e) the amount, if any, the Company pays for forfeited shares of Common Stock in accordance with Section 6.4, and (f) the number of or SAR Price of shares of Common Stock then subject to outstanding SARs previously granted and unexercised under the Plan, to the end that the same proportion of the Company's issued and outstanding shares of Common Stock in each instance shall remain subject to exercise at the same aggregate SAR Price; provided, however, that the number of shares of Common Stock (or other securities or property) subject to any Award shall always be a whole number. Notwithstanding the foregoing, no such adjustment shall be made or authorized to the extent that such adjustment would cause the Plan or any Stock Option to violate Section 422 of the Code or Section 409A of the Code. Such adjustments shall be made in accordance with the rules of any securities exchange, stock market, or stock quotation system to which the Company is subject.

Upon the occurrence of any such adjustment, the Company shall provide notice to each affected Participant of its computation of such adjustment which shall be conclusive and shall be binding upon each such Participant.

## **ARTICLE 12. RECAPITALIZATION, MERGER AND CONSOLIDATION**

**12.1 No Effect on Company's Authority.** The existence of this Plan and Incentives granted hereunder shall not affect in any way the right or power of the Company or its stockholders to make or authorize any or all adjustments, recapitalizations, reorganizations, or other changes in the Company's capital structure and its business, or any Change in Control, or any merger or consolidation of the Company, or any issuance of bonds, debentures, preferred or preference stocks ranking prior to or otherwise affecting the Common Stock or the rights thereof (or any rights, options, or warrants to purchase same), or the dissolution or liquidation of the Company, or any sale or transfer of all or any part of its assets or business, or any other corporate act or proceeding, whether of a similar character or otherwise.

**12.2 Conversion of Incentives Where Company Survives.** Subject to any required action by the stockholders and except as otherwise provided by Section 12.4 hereof or as may be required to comply with Section 409A of the Code and the regulations or other guidance issued thereunder, if the Company shall be the surviving or resulting corporation in any merger, consolidation or share exchange, any Incentive granted hereunder shall pertain to and apply to the securities or rights (including cash, property, or assets) to which a holder of the number of shares of Common Stock subject to the Incentive would have been entitled.

**12.3 Exchange or Cancellation of Incentives Where Company Does Not Survive.** Except as otherwise provided by Section 12.4 hereof or as may be required to comply with Section 409A of the Code and the regulations or other guidance issued thereunder, in the event of any merger, consolidation or share exchange pursuant to which the Company is not the surviving or resulting corporation, there shall be substituted for each share of Common Stock subject to the unexercised portions of outstanding Incentives, that number of shares of each class of stock or other securities or that amount of cash, property, or assets of the surviving, resulting or consolidated company which were distributed or distributable to the stockholders of the Company in respect to each share of Common Stock held by them, such outstanding Incentives to be thereafter exercisable for such stock, securities, cash, or property in accordance with their terms.

**12.4 Cancellation of Incentives.** Notwithstanding the provisions of Sections 12.2 and 12.3 hereof, and except as may be required to comply with Section 409A of the Code and the regulations or other guidance issued thereunder, all Incentives granted hereunder may be canceled by the Company, in its sole discretion, as of the effective date of any Change in Control, merger, consolidation or share exchange, or any issuance of bonds, debentures, preferred or preference stocks ranking prior to or otherwise affecting the Common Stock or the rights thereof (or any rights, options, or warrants to purchase same), or of any proposed sale of all or substantially all of the assets of the Company, or of any dissolution or liquidation of the Company, by either:

(a) giving notice to each holder thereof or his personal representative of its intention to cancel those Incentives for which the issuance of shares of Common Stock involved payment by the Participant for such shares, and permitting the purchase during the thirty (30) day period next preceding such effective date of any or all of the shares of Common Stock subject to such outstanding Incentives, including in the Board's discretion some or all of the shares as to which such Incentives would not otherwise be vested and exercisable; or

(b) in the case of Incentives that are either (i) settled only in shares of Common Stock, or (ii) at the election of the Participant, settled in shares of Common Stock, paying the holder thereof an amount equal to a reasonable estimate of the difference between the net amount per share payable in such transaction or as a result of such transaction, and the price per share of such Incentive to be paid by the Participant (hereinafter the "*Spread*"), multiplied by the number of shares subject to the Incentive. In cases where the shares constitute, or would after exercise, constitute Restricted Stock, the Company, in its discretion, may include some or all of those shares in the calculation of the amount payable hereunder. In estimating the Spread, appropriate adjustments to give effect to the existence of the Incentives shall be made, such as deeming the Incentives to have been exercised, with the Company receiving the exercise price payable thereunder, and treating the shares receivable upon exercise of the Incentives as being outstanding in determining the net amount per share. In cases where the proposed transaction consists of the acquisition of assets of the Company, the net amount per share shall be calculated on the basis of the net amount receivable with respect to shares of Common Stock upon a distribution and liquidation by the Company after giving effect to expenses and charges, including but not limited to taxes, payable by the Company before such liquidation could be completed.

An Award that by its terms would be fully vested or exercisable upon a Change in Control will be considered vested or exercisable for purposes of Section 12.4(a) hereof.

## ARTICLE 13. LIQUIDATION OR DISSOLUTION

Subject to Section 12.4 hereof, in case the Company shall, at any time while any Incentive under this Plan shall be in force and remain unexpired, (a) sell all or substantially all of its property, or (b) dissolve, liquidate, or wind up its affairs, then each Participant shall be entitled to receive, in lieu of each share of Common Stock of the Company which such Participant would have been entitled to receive under the Incentive, the same kind and amount of any securities or assets as may be issuable, distributable, or payable upon any such sale, dissolution, liquidation, or winding up with respect to each share of Common Stock of the Company. If the Company shall, at any time prior to the expiration of any Incentive, make any partial distribution of its assets, in the nature of a partial liquidation, whether payable in cash or in kind (but excluding the distribution of a cash dividend payable out of earned surplus and designated as such) and an adjustment is determined by the Committee to be appropriate to prevent the dilution of the benefits or potential benefits intended to be made available under the Plan, then the Committee shall, in such manner as it may deem equitable, make such adjustment in accordance with the provisions of Article 11 hereof.

## ARTICLE 14. INCENTIVES IN SUBSTITUTION FOR INCENTIVES GRANTED BY OTHER ENTITIES

Incentives may be granted under the Plan from time to time in substitution for similar instruments held by employees, independent contractors or directors of a corporation, partnership, or limited liability company who become or are about to become Employees, Contractors or Outside Directors of the Company or any Subsidiary as a result of a merger or consolidation of the employing corporation with the Company, the acquisition by the Company of equity of the employing entity, or any other similar transaction pursuant to which the Company becomes the successor employer. The terms and conditions of the substitute Incentives so granted may vary from the terms and conditions set forth in this Plan to such extent as the Committee at the time of grant may deem appropriate to conform, in whole or in part, to the provisions of the incentives in substitution for which they are granted.

## ARTICLE 15. MISCELLANEOUS PROVISIONS

**15.1 Investment Intent.** The Company may require that there be presented to and filed with it by any Participant under the Plan, such evidence as it may deem necessary to establish that the Incentives granted or the shares of Common Stock to be purchased or transferred are being acquired for investment and not with a view to their distribution.

**15.2 No Right to Continued Employment.** Neither the Plan nor any Incentive granted under the Plan shall confer upon any Participant any right with respect to continuance of employment by the Company or any Subsidiary.

**15.3 Indemnification of Board and Committee.** No member of the Board or the Committee, nor any officer or Employee of the Company acting on behalf of the Board or the Committee, shall be personally liable for any action, determination, or interpretation taken or made in good faith with respect to the Plan, and all members of the Board and the Committee, each officer of the Company, and each Employee of the Company acting on behalf of the Board or the Committee shall, to the extent permitted by law, be fully indemnified and protected by the Company in respect of any such action, determination, or interpretation to the fullest extent provided by law. Except to the extent required by any unwaivable requirement under applicable law, no member of the Board or the Committee (and no Subsidiary of the Company) shall have any duties or liabilities, including without limitation any fiduciary duties, to any Participant (or any Person claiming by and through any Participant) as a result of this Plan, any Award Agreement or any Claim arising hereunder and, to the fullest extent permitted under applicable law, each Participant (as consideration for receiving and accepting an Award

Agreement) irrevocably waives and releases any right or opportunity such Participant might have to assert (or participate or cooperate in) any Claim against any member of the Board or the Committee and any Subsidiary of the Company arising out of this Plan.

**15.4 Effect of the Plan.** Neither the adoption of this Plan nor any action of the Board or the Committee shall be deemed to give any person any right to be granted an Award or any other rights except as may be evidenced by an Award Agreement, or any amendment thereto, duly authorized by the Committee and executed on behalf of the Company, and then only to the extent and upon the terms and conditions expressly set forth therein.

**15.5 Compliance with Other Laws and Regulations.** Notwithstanding anything contained herein to the contrary, the Company shall not be required to sell or issue shares of Common Stock under any Incentive if the issuance thereof would constitute a violation by the Participant or the Company of any provisions of any law or regulation of any governmental authority or any national securities exchange or inter-dealer quotation system or other forum in which shares of Common Stock are quoted or traded (including without limitation Section 16 of the Exchange Act); and, as a condition of any sale or issuance of shares of Common Stock under an Incentive, the Committee may require such agreements or undertakings, if any, as the Committee may deem necessary or advisable to assure compliance with any such law or regulation. The Plan, the grant and exercise of Incentives hereunder, and the obligation of the Company to sell and deliver shares of Common Stock, shall be subject to all applicable federal and state laws, rules and regulations and to such approvals by any government or regulatory agency as may be required.

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E-15

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**15.6 Tax Requirements.** The Company or, if applicable, any Subsidiary (for purposes of this Section 15.6, the term “*Company*” shall be deemed to include any applicable Subsidiary), shall have the right to deduct from all amounts paid in cash or other form in connection with the Plan, any federal, state, local, or other taxes required by law to be withheld in connection with an Award granted under this Plan. The Company may, in its sole discretion, also require the Participant receiving shares of Common Stock issued under the Plan to pay the Company the amount of any taxes that the Company is required to withhold in connection with the Participant’s income arising with respect to the Award. Such payments shall be required to be made when requested by the Company and may be required to be made prior to the delivery of any certificate representing shares of Common Stock. Such payment may be made by (a) the delivery of cash to the Company in an amount that equals or exceeds (to avoid the issuance of fractional shares under (c) below) the required tax withholding obligations of the Company; (b) if the Company, in its sole discretion, so consents in writing, the actual delivery by the exercising Participant to the Company of shares of Common Stock that the Participant has not acquired from the Company within six (6) months prior to the date of exercise, which shares so delivered have an aggregate Fair Market Value that equals or exceeds (to avoid the issuance of fractional shares under (c) below) the required tax withholding payment; (c) if the Company, in its sole discretion, so consents in writing, the Company’s withholding of a number of shares to be delivered upon the exercise of the Stock Option, which shares so withheld have an aggregate fair market value that equals (but does not exceed) the required tax withholding payment; or (d) any combination of (a), (b), or (c). The Company may, in its sole discretion, withhold any such taxes from any other cash remuneration otherwise paid by the Company to the Participant. The Committee may in the Award Agreement impose any additional tax requirements or provisions that the Committee deems necessary or desirable.

**15.7 Assignability.** Incentive Stock Options may not be transferred, assigned, pledged, hypothecated or otherwise conveyed or encumbered other than by will or the laws of descent and distribution and may be exercised during the lifetime of the Participant only by the Participant or the Participant’s legally authorized representative, and each Award Agreement in respect of an Incentive Stock Option shall so provide. The designation by a Participant of a beneficiary will not constitute a transfer of the Stock Option. The Committee may waive or modify any limitation contained in the preceding sentences of this Section 15.7 that is not required for compliance with Section 422 of the Code.

Except as otherwise provided herein, Awards may not be transferred, assigned, pledged, hypothecated or otherwise conveyed or encumbered other than by will or the laws of descent and distribution. Notwithstanding the foregoing, the Committee may, in its discretion, authorize all or a portion of a Nonqualified Stock Option or SAR to be granted to a Participant on terms which permit transfer by such Participant to (a) the spouse (or former spouse), children or grandchildren of the Participant (“*Immediate Family Members*”), (b) a trust or trusts for the exclusive benefit of such Immediate Family Members, (c) a partnership in which the only partners are (1) such Immediate Family Members and/or (2) entities which are controlled by the Participant and/or Immediate Family Members, (d) an entity exempt from federal income tax pursuant to Section 501(c)(3) of the Code or any successor provision, or (e) a split interest trust or pooled income fund described in Section 2522(c)(2) of the Code or any successor provision, provided that (x) there shall be no consideration for any such transfer, (y) the Award Agreement pursuant to which such Nonqualified Stock Option or SAR is granted must be approved by the Committee and must expressly provide for transferability in a manner consistent with this Section, and (z) subsequent transfers of transferred Nonqualified Stock Options or SARs shall be prohibited except those by will or the laws of descent and distribution.

Following any transfer, any such Nonqualified Stock Option and SAR shall continue to be subject to the same terms and conditions as were applicable immediately prior to transfer, provided that for purposes of Articles 8, 9, 11, 13 and 15 hereof the term “*Participant*” shall be deemed to include the transferee. The events of Termination of Service shall continue to be applied with respect to the original Participant, following which the Nonqualified Stock Options and SARs shall be exercisable or convertible by the transferee only to the extent and for the periods specified in the Award Agreement. The Committee and the Company shall have no obligation to inform any transferee of a Nonqualified Stock Option or SAR of any expiration, termination, lapse or acceleration of such Stock Option or SAR. The Company shall have no obligation to register with any federal or state securities commission or agency any Common Stock issuable or issued under a Nonqualified Stock Option or SAR that has been transferred by a Participant under this Section 15.7.

**15.8 Use of Proceeds.** Proceeds from the sale of shares of Common Stock pursuant to Incentives granted under this Plan shall constitute general funds of the Company.

**15.9 Legend.** Each certificate representing shares of Restricted Stock issued to a Participant shall bear the following legend, or a similar legend deemed by the Company to constitute an appropriate notice of the provisions hereof (any such certificate not having such legend shall be surrendered upon demand by the Company and so endorsed):

On the face of the certificate:

“Transfer of this stock is restricted in accordance with conditions printed on the reverse of this certificate.”

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E-16

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On the reverse:

“The shares of stock evidenced by this certificate are subject to and transferable only in accordance with that certain AYRO, Inc. Long-Term Incentive Plan, a copy of which is on file at the principal office of the Company in Round Rock, Texas. No transfer or pledge of the shares evidenced hereby may be made except in accordance with and subject to the provisions of said Plan. By acceptance of this certificate, any holder, transferee or pledgee hereof agrees to be bound by all of the provisions of said Plan.”

The following legend shall be inserted on a certificate evidencing Common Stock issued under the Plan if the shares were not issued in a transaction registered under the applicable federal and state securities laws:

“Shares of stock represented by this certificate have been acquired by the holder for investment and not for resale, transfer or distribution, have been issued pursuant to exemptions from the registration requirements of applicable state and federal securities laws, and may not be offered for sale, sold or transferred other than pursuant to effective registration under such laws, or in transactions otherwise in compliance with such laws, and upon evidence satisfactory to the Company of compliance with such laws, as to which the Company may rely upon an opinion of counsel satisfactory to the

Company.”

**15.10 Governing Law.** The Plan shall be governed by, construed, and enforced in accordance with the laws of the State of Delaware (excluding any conflict of laws, rule or principle of Delaware law that might refer the governance, construction, or interpretation of this Plan to the laws of another state). A Participant’s sole remedy for any Claim shall be against the Company, and no Participant shall have any claim or right of any nature against any Subsidiary of the Company or any stockholder or existing or former director, officer or Employee of the Company or any Subsidiary of the Company. The individuals and entities described above in this Section 15.10 (other than the Company) shall be third-party beneficiaries of this Plan for purposes of enforcing the terms of this Section 15.10.

A copy of this Plan shall be kept on file in the principal office of the Company in Round Rock, Texas.

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E-17

IN WITNESS WHEREOF, the Company has caused this instrument to be executed as of May 28, 2020, by its Chief Executive Officer pursuant to prior action taken by the Board.

AYRO, INC.

By: /s/ Rodney Keller  
Name: Rodney Keller  
Title: Chief Executive Officer

E-18

AYRO, INC.  
900 E. OLD SETTLERS BOULEVARD  
SUITE 100  
ROUND ROCK, TX 78664



**SCAN TO**  
VIEW MATERIALS & VOTE



**VOTE BY INTERNET**  
Before The Meeting - Go to [www.proxyvote.com](http://www.proxyvote.com) or scan the QR Barcode above

Use the Internet to transmit your voting instructions and for electronic delivery of information up until 11:59 p.m. Eastern Time on September 13, 2023. Have your proxy card in hand when you access the web site and follow the instructions to obtain your records and to create an electronic voting instruction form.

During The Meeting - Go to [www.virtualshareholdermeeting.com/AYRO2023SM](http://www.virtualshareholdermeeting.com/AYRO2023SM)

You may attend the meeting via the Internet and vote during the meeting. Have the information that is printed in the box marked by the arrow available and follow the instructions.

**VOTE BY PHONE - 1-800-690-6903**  
Use any touch-tone telephone to transmit your voting instructions up until 11:59 p.m. Eastern Time on September 13, 2023. Have your proxy card in hand when you call and then follow the instructions.

**VOTE BY MAIL**  
Mark, sign and date your proxy card and return it in the postage-paid envelope we have provided or return it to Vote Processing, c/o Broadridge, 51 Mercedes Way, Edgewood, NY 11717.

TO VOTE, MARK BLOCKS BELOW IN BLUE OR BLACK INK AS FOLLOWS:

V22535-S72632

KEEP THIS PORTION FOR YOUR RECORDS  
DETACH AND RETURN THIS PORTION ONLY

THIS PROXY CARD IS VALID ONLY WHEN SIGNED AND DATED.

AYRO, INC.

The Board of Directors recommends you vote FOR the following proposals:

- To authorize, for purposes of Nasdaq Listing Rule 5635(d), the issuance of shares of our common stock underlying shares of convertible preferred stock and warrants (the "Securities") issued by us pursuant to the terms of that certain Securities Purchase Agreement, dated August 7, 2023, by and among AYRO, Inc. and the investors named therein, in an amount equal to or in excess of 20% of our common stock outstanding immediately prior to the issuance of such Securities (including upon the operation of anti-dilution provisions contained in such Securities) (the "Issuance Proposal").
- To approve an amendment to our Amended and Restated Certificate of Incorporation to effect, at the discretion of our board of directors (the "Board") but prior to the one-year anniversary of the date on which the reverse stock split is approved by the Company's stockholders at the special meeting, a reverse stock split of all of the outstanding shares of our common stock at a ratio in the range of 1-for-2 to 1-for-10, with such ratio to be determined by the Board in its discretion and included in a public announcement (the "Reverse Stock Split Proposal").
- To approve an amendment to our Amended and Restated Certificate of Incorporation to authorize the Board, at the Board's discretion, to increase the number of authorized shares of common stock from 100,000,000 to 200,000,000 and to make a corresponding change to the number of authorized shares of capital stock (the "Share Increase Proposal").
- To approve an amendment to the AYRO, Inc. 2020 Long-Term Incentive Plan to increase the aggregate number of shares available for the grant of awards by 5,750,000 shares, to a total of 9,839,650 shares of common stock (the "Incentive Plan Amendment Proposal").
- To adjourn the Special Meeting to a later date or dates, if necessary or appropriate, to permit further solicitation and vote of proxies in the event that there are insufficient votes for, or otherwise in connection with, the approval of the Issuance Proposal, the Reverse Stock Split Proposal, the Incentive Plan Amendment Proposal or the Share Increase Proposal.

For Against Abstain

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Please sign exactly as your name(s) appear(s) hereon. When signing as attorney, executor, administrator, or other fiduciary, please give full title as such. Joint owners should each sign personally. All holders must sign. If a corporation or partnership, please sign in full corporate or partnership name by authorized officer.

Signature [PLEASE SIGN WITHIN BOX] Date

Signature (Joint Owners) Date

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**Important Notice Regarding the Availability of Proxy Materials for the Special Meeting:**  
The Notice and Proxy Statement is available at [www.proxyvote.com](http://www.proxyvote.com).

V22536-572632

**AYRO, INC.**  
**Special Meeting of Stockholders**  
**September 14, 2023 12:00 PM**  
**This proxy is solicited by the Board of Directors**

The stockholder(s) hereby appoint(s) Joshua Silverman, as proxy, with the power to appoint his substitute, and hereby authorize(s) him to represent and to vote, as designated on the reverse side of this ballot, all of the shares of (Common/Preferred) stock of AYRO, INC. that the stockholder(s) is/are entitled to vote at the Special Meeting of Stockholders to be held at 12:00 PM ET on September 14, 2023, at the Special Meeting live via the Internet - please visit [www.virtualshareholdermeeting.com/AYRO2023SM](http://www.virtualshareholdermeeting.com/AYRO2023SM), and any adjournment or postponement thereof.

**This proxy, when properly executed, will be voted in the manner directed herein. If no such direction is made, this proxy will be voted in accordance with the Board of Directors' recommendations.**

Continued and to be signed on reverse side

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