

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

FORM 10-K

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2022

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____ to _____

Commission file number: 001-37673

WORKHORSE GROUP INC.

(Exact name of registrant as specified in its charter)

Nevada

(State or other jurisdiction of
incorporation or organization)

**3600 Park 42 Drive, Suite 160E
Sharonville, Ohio 45241**

(Address of principal executive offices)

26-1394771

(I.R.S. Employer
Identification No.)

(1-888) 646-5205

(Registrant's telephone number, including area code)

Securities Registered Pursuant to Section 12(b) of the Exchange Act:

<u>Title of each Class:</u>	<u>Trading Symbol(s)</u>	<u>Name of each exchange on which registered</u>
Common Stock, \$0.001 par value per share	WKHS	The NASDAQ Capital Market

Securities Registered Pursuant to Section 12(g) of the Exchange Act: **None.**

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes No

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes No

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

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

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

Indicate by check mark whether the registrant has filed a report on and attestation to its management's assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C.7262(b)) by the registered public accounting firm that prepared or issued its audit report. Yes No

If securities are registered pursuant to Section 12(b) of the Act, indicate by check mark whether the financial statements of the registrant included in the filing reflect the correction of an error to previously issued financial statements.

Indicate by check mark whether any of those error corrections are restatements that required a recovery analysis of incentive-based compensation received by any of the registrant's executive officers during the relevant recovery period pursuant to §240.10D-1(b).

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

As of June 30, 2022, the last business day of the Registrant's most recently completed second fiscal quarter, the market value of our common stock held by non-affiliates was \$399,380,509.

The number of shares of the Registrant's common stock, \$0.001 par value per share, outstanding as of January 31, 2023, was 171,167,673.

DOCUMENTS INCORPORATED BY REFERENCE

Portions of Workhorse Group's Definitive Proxy related to the 2023 Annual Meeting of Stockholders to be filed subsequently are incorporated by reference into Part III of this Form 10-K.

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Forward-Looking Statements

The discussions in this Annual Report on Form 10-K (this "Report") contain forward-looking statements reflecting our current expectations that involve risks and uncertainties. These statements are made under the "safe harbor" provisions of the U.S. Private Securities Litigation Reform Act of 1995. When used in this Report, the words "anticipate," "expect," "plan," "believe," "seek," "estimate" and similar expressions are intended to identify forward-looking statements. These are statements that relate to future periods and include, but are not limited to, statements about the features, benefits and performance of our products, our ability to introduce new product offerings and increase revenue from existing products, expected expenses including those related to selling and marketing, product development and general and administrative, our beliefs regarding the health and growth of the market for our products, anticipated increase in our customer base, expansion of our products functionalities, expected revenue levels and sources of revenue, expected impact, if any, of legal proceedings, the adequacy of liquidity and capital resources, and expected growth in business. Forward-looking statements are statements that are not historical facts. Such forward-looking statements are subject to risks and uncertainties, which could cause actual results to differ materially from the forward-looking statements contained in this Report. Factors that could cause actual results to differ materially include, but are not limited to: our ability to develop and manufacture our new product portfolio, including the W4 CC, W750, W56 and WNext platforms; our ability to attract and retain customers for our existing and new products; risks associated with obtaining orders and executing upon such orders; supply chain disruptions, including constraints on steel, semiconductors and other material inputs and resulting cost increases impacting our Company, our customers, our suppliers or the industry; our ability to capitalize on opportunities to deliver products to meet customer requirements; our limited operations and need to expand and enhance elements of our production process to fulfill product orders; the ability to protect our intellectual property; market acceptance for our products; our ability to control our expenses; potential competition, including without limitation shifts in technology; volatility in and deterioration of national and international capital markets and economic conditions; global and local business conditions; acts of war (including without limitation the conflict in Ukraine) and/or terrorism; the prices being charged by our competitors; our inability to retain key members of our management team; our inability to raise additional capital to fund our operations and business plan; our inability to maintain our listing of our securities on the Nasdaq Capital Market; our inability to satisfy our customer warranty claims; the outcome of any regulatory or legal proceedings; our liquidity and other risks and uncertainties and other factors discussed from time to time in our filings with the Securities and Exchange Commission ("SEC"), including under the "Risk Factors" section of this Report. Forward-looking statements speak only as of the date hereof. We expressly disclaim any obligation or undertaking to release publicly any updates or revisions to any forward-looking statements contained herein to reflect any change in our expectations with regard thereto or any change in events, conditions or circumstances on which any such statement is based, except as required by law.

All references in this Report that refer to the "Company", "Workhorse Group", "Workhorse", "we," "us" or "our" are to Workhorse Group Inc.

PART I

ITEM 1. BUSINESS

Overview

We are an American technology company with a vision to pioneer the transition to zero-emission commercial vehicles. Our primary focus is to provide sustainable and cost-effective solutions to the commercial transportation sector. We design and manufacture all-electric delivery trucks and drone systems, including the technology that optimizes the way these vehicles operate. We are focused on our core competency of bringing our electric delivery vehicle platforms to serve the last mile delivery market.

Commercial Vehicles

We are an American-based Original Equipment Manufacturer (“OEM”), and our products are marketed under the Workhorse® brand. All Workhorse last-mile delivery trucks are assembled in our Union City, Indiana production facility.

We believe our all-electric commercial vehicles offer fleet operators significant benefits, which include:

- Lower total cost-of-ownership as compared to conventional gas/diesel vehicles;
- Improved profitability through lower maintenance costs and reduced fuel expenses;
- Increased package deliveries per day through use of more efficient delivery methods;
- Decreased vehicle emissions and reduced carbon footprint; and
- Improved vehicle safety and driver experience.

Electric Delivery Truck Platforms

Product Roadmap

Workhorse has made significant progress executing on its revised strategic product roadmap for our electric vehicle delivery offerings. The foundation of this plan is the development of two new truck chassis platforms, the W56 and what we call the WNext. The W56, based on long-standing Company know-how in the Class 5 and 6 truck chassis market, is a fully capable medium duty chassis, designed for last-mile delivery and high payload applications and is expected to begin production in 2023. The WNext platform will be our second generation, low floor, advanced content offering for the truck chassis market and is expected to begin production in 2025.

In order to accelerate time-to-market for customers seeking delivery of electric vehicles during 2022, we entered into a strategic supply agreement (the “Supply Agreement”) with GreenPower Motor Company Inc. (“GreenPower”). Under the agreement, we have exclusive rights to sell Class 4 step vans based on the GreenPower supplied base vehicle. Our Class 4 vehicles are a zero-emission chassis designed to be sold in either a cab chassis version (“W4 CC”) or a step van version (“W750”) made to haul various cargo and take on both mid and last-mile routes. The W4 CC became available for sale in 2022 while we expect the W750 will be available for sale in the United States and Canada in 2023. Both are sold under the Workhorse brand and with Workhorse after sales and support service.

C-Series Electric Delivery Truck

We announced the development of the C-Series electric delivery truck in 2017, a vehicle aimed at the Class 3 truck market which leveraged an ultra-low floor delivery vehicle platform. We utilized our extensive customer experience gained from working with our E-Series customers to design this product. During 2022, after thorough engineering review, durability testing and careful consideration, the Company determined the increasing time, cost and resources being devoted to the C1000 were better allocated to the development and production of its other vehicles and products. In December 2022, the Company announced that it was discontinuing the C1000 program and we are now transitioning our manufacturing focus from the C1000 to the Class 4 - 6 vehicles, W4 CC, W750, W56 and WNext platforms.

E-Series Electric Delivery Vans

Workhorse E-100 battery-electric and E-GEN range-extended delivery vans are used by our customers on daily routes across the United States. We have built and delivered approximately 360 electric and range-extended medium-duty delivery trucks,

many of which remain in active service, to our customers with a combined mileage total of more than 9 million miles. Our customers include companies such as FedEx Ground and United Parcel Service.

Stables & Stalls

In 2022, Workhorse purchased ESG Logistics Corp., a provider of package pickup and delivery services, and began operating a series of FedEx Ground delivery routes in the greater Cincinnati area under an initiative known as Stables & Stalls. Stables & Stalls provides the Company with firsthand experiences of the challenges and benefits independent fleet operators experience while executing last-mile delivery operations and making the transition to electric vehicles. This opportunity also provides the Company unique and valuable research and data into how our customers access reliable vehicles, plan for and manage adequate charging infrastructure, as well as training and maintenance services which is critical for small fleet operators that choose to make the electric vehicle ("EV") transition.

Aero

HorseFly™

As part of our growing technology portfolio, the Company has been developing small Unmanned Aerial Systems ("UAS") for several years. We have 2 product lines in the UAS space. One is a package delivery drone known as Horsefly. The other is a product designed and developed for use in more austere operating environments for humanitarian assistance and logistical operations ("HALO"). All Workhorse drone systems are designed and built in our Mason, Ohio facility.

Our HorseFly UAS includes a custom-designed, purpose-built, all-electric Unmanned Aerial Vehicle ("UAV"), a proprietary Ground Control Station ("GCS"), and equipment that supports integrating the UAS with our delivery trucks and other applications. The HorseFly UAV is an airborne work truck, that can carry a significant payload for 10 miles. Our rugged components are designed to support the high volumes, long duty days and ease of maintenance demanded by the commercial package delivery industry.

In 2020, Workhorse began the Federal Aviation Administration's ("FAA") Type Certification ("TC") process for our Horsefly UAS. Compliance with FAA regulations governing TC helps set a very high bar for system performance and we believe it is important to have a TC system in our product offerings. We believe safety, reliability and capability are the primary points of value in a commercial UAS. Presently, the FAA allows some exceptions for commercial operations to use non-certificated drone systems. As the industry matures, we expect the FAA will require certificated aircraft in most commercial operations.

We have developed subsystems and many discrete functions to improve the safety, reliability and performance of our systems. One subsystem is a proprietary winch that can lower and raise significant payloads from safe altitudes. Another is a truck integration system that allows continuous operations from a truck in the field. Our Ground Control Software software allows remote pilots in command to control more than one aircraft simultaneously.

Workhorse was granted a patent on our UAS, and though initially designed as a complimentary system delivering packages from our electric trucks, the latest iteration of our UAS supports package delivery point-to-point, enabling deliveries to and from anywhere, allowing it to serve a broader customer base.

In tests and demonstrations, Workhorse has flown thousands of missions in the National Airspace System, demonstrating package deliveries for large multi-national companies in Ohio, Michigan, Florida and California. Our aircraft has proven to be safe, reliable, and capable. In addition, we have successfully demonstrated the drone's enhanced functionality working with local, state and federal government agencies to validate other, new cases. For example, in January 2022 we received a grant from the US Department of Agriculture in support of enhanced mapping and data analysis of farmland in underserved communities in the States of Mississippi and Arkansas.

Locations and Facilities

Our company headquarters, research and development facilities are located in the Greater Cincinnati area in Ohio. We manufacture and test our electric delivery trucks at our manufacturing facility located in Union City, Indiana. During 2022, we opened an engineering and technical design center in Wixom, Michigan as well as an engineering, technical design and production facility for our drone systems in Mason, Ohio.

Marketing

There are over 350,000 last-mile delivery trucks replaced annually and the last mile delivery industry is the fastest growing vehicle industry in an approximately \$22.0 billion industry space. Our sales team is focused on building our market share in this space by targeting commercial transportation companies and developing a dealer network.

We have established the commercial delivery vehicles as our core business and strive to be the best choice for a vehicle in this industry. Our sales plan is to meet with the top potential customers and obtain purchase orders for new electric vehicles to be manufactured in our production facility.

Strategic Relationships

GreenPower Motor Company Inc.: On February 28, 2022, Workhorse entered into a strategic vehicle purchase and supply agreement with GreenPower Motor Company, Inc. to purchase base vehicles in the Class 4, medium-duty vehicle class. Under the agreement, GreenPower provides Workhorse with base vehicles for completion at our Union City, Indiana manufacturing facility. Workhorse began accepting deliveries of the base vehicles in July of 2022 and began executing on the exclusive rights to sell the vehicles under the Workhorse brand and with Workhorse after sales and support service in the United States and Canada.

Tropos Technologies, Inc. ("Tropos"): On August 8, 2022, the Company entered into an Assembly Services Agreement (the "Assembly Agreement") with Tropos. The Assembly Agreement provides for assembly services at its Union City, Indiana manufacturing facility to assemble an annual quantity of 2,000 vehicles in 2023, 2,000 vehicles in 2024, and 250 vehicles in 2025 for a total of 4,250 vehicles. Workhorse began accepting deliveries of the vehicle kits to be assembled in December of 2022.

Mitsubishi HC Capital Inc ("Mitsubishi"): Mitsubishi (formerly Hitachi Capital America) continues to be our primary financing partner to market and distribute our electric vehicles through an existing and well-established commercial vehicle dealer network throughout North America. Mitsubishi enables Workhorse to have our vehicles sold and financed from the moment they roll off the production line, into a shared pool of vehicles, where they become visible and available to every Mitsubishi connected dealer. The dealer can configure additional equipment, schedule upfit integration and delivery in a seamless manner.

Amerit Fleet Solutions ("Amerit"): Workhorse has signed a strategic agreement with Amerit to provide maintenance and repair services for Workhorse vehicles, utilizing their mobile maintenance units and technicians. This provides Workhorse with on ground maintenance and warranty service capabilities in a great majority of locations across the United States.

Technology, Research and Development

The majority of our research and development is conducted in-house at our facilities near Cincinnati, Ohio and is centered on drive train, telematics, related EV centric feature sets and drone systems. During 2022, we expanded our research and development footprint to include the addition of new staff and facilities in Wixom, MI. The Wixom facility is intended to focus additional resources for product development and validation activities for existing and future programs. Additionally, we contract with engineering firms to assist with validation and certification requirements as well as specific development and vehicle integration tasks. Our research and development activity over the past year has focused on the development of the W56 and the WNext platforms.

Metron

We continue to develop and maintain our Metron remote data management system that tracks the performance of all the vehicles we deploy, providing a service management system and the communication channel between our customers and partners. We are currently focused on adding the ability to integrate Metron Telematics with the internal telematics and data management systems of our clients, as well as expanding our ability to present and analyze data within a proprietary Workhorse interface. In 2022 we began development of Metron 2.0, a brand new software architecture that will be the base for Workhorse telematics and a suite of business applications such as fleet management and service and repair, which is expected to launch in 2023.

Workhorse also has a patented flight control system. This system enables the lowest total cost of ownership, simplifies flight planning, and provides an intuitive, easy to use flight planning and execution capability that makes operation of our aircraft safe, consistent, and reliable. The system can support one or many UAS simultaneously. The system defines vertical and lateral navigation, points of origination and destination, safety zones, no-fly zones, and other advanced operational features. Our trip log system provides operators with continuous status reports, allowing timely maintenance planning and spare parts support.

Competition

Traditional OEMs

Traditional OEM's continue to increase their electrification efforts, which have been highly focused on consumer-based vehicles. In 2022, the shift in consumer behavior continued, placing an increased focus on the commercial delivery space. To date, plans have primarily been focused on lighter and smaller last mile vehicles, such as Ford with their Transit Connect and larger Transit models, and General Motors with their recent unveiling of the Brightdrop company and EV600 product. All of these vehicles have 600 cubic foot or less of cargo capacity. In contrast, Workhorse is focused on the 650 - 1200 cubic foot category. Our market research and direct customer engagements have helped us provide value to some of the largest and most efficient last mile delivery companies in North America, through deployment of our E-Series, which was produced until 2018. Current competition in this segment from traditional chassis manufacturers include a recently released EV strip chassis product from Freightliner Custom Chassis, integrated with components from third party suppliers.

Non-Traditional OEMs

As the rapid global shift towards home delivery continues, many companies are seeking to provide delivery solutions aimed at a sub-600 cubic foot cargo area. It is our expectation that these non-traditional OEMs will compete head-to-head with the likes of GM, Daimler and Ford . We believe one of the main reasons for this race towards smaller vehicles is to provide a sub-10,000 pound gross vehicle weight ("GVW") offering, as vehicles above 10,000 pound GVW require a more expensive, commercially licensed and trained driver pool.

Supply Chain

We continue to develop relationships with suppliers of key parts, components and raw materials to be used in the manufacture of our products such as batteries, electronics, and vehicle chassis that are sourced from suppliers across the world. As we continue to execute on our new vehicle platforms, we will continue to identify supplier relationship and vehicle platform synergies which may allow us to take advantage of pricing efficiencies from economies of scale. Where available, we will utilize multiple supply sources for key parts, and we work to qualify multiple supply sources to allow us to take advantage of pricing efficiencies and minimize potential production risks related to supply chain.

Regulatory

Our electric vehicles are designed to comply with required government regulations and industry standards. Government regulations regarding the manufacture, sale and implementation of products and systems similar to our electric vehicles are subject to future change. We cannot predict what impact, if any, such changes may have on our business.

Emission and fuel economy standards

Government regulation related to climate change is in effect at the U.S. federal and state levels. The U.S. Environmental Protection Agency ("EPA") and the National Highway Traffic Safety Administration ("NHTSA") issued a final rule for greenhouse gas emissions and fuel economy requirements for trucks and heavy-duty engines on August 9, 2011, which is applicable for model years 2018 through 2020. EPA and NHTSA also issued a final rule on August 16, 2016 increasing the stringency of these standards for model years 2021 through 2027.

The rules provide emission standards for CO₂ and fuel consumption standards for three main categories of vehicles: (i) combination tractors; (ii) heavy-duty pickup trucks and vans; and (iii) vocational vehicles. We believe Workhorse vehicles would be considered "vocational vehicles" and "heavy-duty pickup trucks and vans" under the rules. According to the EPA and NHTSA, vocational vehicles consist of a wide variety of truck and bus types, including delivery, refuse, utility, dump, cement, transit bus, shuttle bus, school bus, emergency vehicles, motor homes and tow trucks, and are characterized by a complex build process, with an incomplete chassis often built with an engine and transmission purchased from other manufacturers, then sold to a body manufacturer.

The EPA and NHTSA rule also establishes multiple flexibility and incentive programs for manufacturers of alternatively fueled vehicles, such as the Workhorse vehicles, including an engine Averaging, Banking and Trading ("ABT") program, a vehicle ABT program and additional credit programs for early adoption of standards or deployment of advanced or innovative technologies. The ABT programs will allow for emission and/or fuel consumption credits to be averaged, banked or traded within defined groupings of the regulatory subcategories. The additional credit programs will allow manufacturers of engines and vehicles to be eligible to generate credits if they demonstrate improvements more than the standards established in the rule prior to the model year the standards become effective or if they introduce advanced or innovative technology engines or vehicles.

The Clean Air Act requires that we obtain a Certificate of Conformity (“CoC”) issued by the EPA and a California Executive Order issued by the California Air Resource Board (“CARB”) requires we obtain a CoC with respect to emissions and mileage requirements for our vehicles. The CoC is required for vehicles sold in states covered by the Clean Air Act’s standards and the Executive Order is required for vehicles sold in states that have sought and received a waiver from the EPA to utilize California standards. The California standards for emissions control for certain regulated pollutants for new vehicles and engines sold in California are set by CARB. States that have adopted the California standards as approved by EPA also recognize the Executive Order for sales of vehicles. Workhorse received Executive Order A-445-0003 for MY2020 vehicles and Executive Order A-445-0004 for MY2021 vehicles.

Vehicle safety and testing

The National Traffic and Motor Vehicle Safety Act of 1966 (the “Safety Act”) regulates motor vehicles and motor vehicle equipment in the United States in two primary ways. First, the Safety Act prohibits the sale in the United States of any new vehicle or equipment that does not conform to applicable motor vehicle safety standards established by NHTSA. Meeting or exceeding many safety standards is costly, in part because the standards tend to conflict with the need to reduce vehicle weight in order to meet emissions and fuel economy standards. Second, the Safety Act requires defects related to motor vehicle safety be remedied through safety recall campaigns. A manufacturer is obligated to recall vehicles if it determines the vehicles do not comply with a safety standard. Should we or NHTSA determine either a safety defect or noncompliance exists with respect to any of our vehicles, the cost of such recall campaigns could be substantial.

In the United States, the Federal Aviation Administration (“FAA”) substantially regulates our aerospace vehicles. Those regulations govern two important areas: operating rules and aircraft certification rules. The FAA’s operating rules govern all operations of all aerial vehicles in the National Airspace System of the United States. The FAA’s certification rules help define the safety and reliability requirements of certain aircraft and systems. Not every aircraft and system are required to be FAA certificated, though typically certification is required for commercial operations like package delivery.

Workhorse is applying for FAA Type Certification for its small UAS. We believe it is important to achieve FAA certification of our products. Though we believe our design and execution comply with FAA requirements for certification, should we or the FAA determine either a safety defect or noncompliance exist with respect to our aircraft or its systems, it could add substantially to the time and expense of certification. Should the FAA change its rules for either certification or operations, it could render our designs non-competitive in the marketplace.

Available Information

We file or furnish periodic reports and amendments thereto, including our Annual Reports on Form 10-K, our Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, proxy statements and other information with the Securities and Exchange Commission (“SEC”). In addition, the SEC maintains a website (www.sec.gov) that contains reports, proxy and information statements, and other information regarding issuers that file electronically. Our website is located at www.workhorse.com, and our reports, amendments thereto, proxy statements and other information are also made available on our investor relations website, free of charge, at ir.workhorse.com as soon as reasonably practicable after we electronically file or furnish such information with the SEC.

Intellectual Property

Our success depends in part upon our ability to protect our core technology and intellectual property. We protect our intellectual property rights, both in the U.S. and abroad, through a combination of patent, trademark, copyright and trade secret protection, as well as confidentiality agreements with our employees and consultants. We seek to control access to, and distribution of, our proprietary information through non-disclosure agreements with our vendors and business partners. Unpatented research, development, know-how, and engineering skills make a vital contribution to our business, and we pursue patent protection when we believe it is possible and consistent with our overall strategy for safeguarding intellectual property.

We are not aware of any infringing uses or any prior claims of ownership of our trademarks that could materially affect our business. It is our policy to pursue registration of our primary trademarks whenever possible and to vigorously defend our patents, trademarks and other proprietary marks against infringement or other threats to the extent practical under applicable laws.

Environmental, Social, and Governance (“ESG”)

Workhorse’s mission is based on the foundation of the commercial vehicle transition to zero emissions. To do this, we embrace a world with reduced carbon emissions in both energy generation and consumption. We are designing and manufacturing a key ingredient of the transportation ecosystem evolution to achieve this goal - last mile electric delivery vehicles.

We are investing to make our facilities more efficient and sustainably designed and are also driving a continuous safety mindset by focusing on worker engagement. In addition, we are focused on reducing the carbon footprint throughout our supply chain. We are committed to sourcing responsibly produced materials from suppliers who have social, environmental and sustainability best practices in their own operations.

Finally, we believe that sound corporate governance is essential to helping us achieve our goal, including with respect to ESG. We continue to evolve a governance framework that exercises appropriate oversight of responsibilities at all levels throughout the company. During 2022, we established our first ESG Committee, made up of leaders from across our company, and they began regular presentations on our related initiatives to our Board of Directors, which guides our ESG impacts, initiatives and priorities.

Human Capital

As of December 31, 2022, our full-time headcount for our employees was 331. None of our U.S. employees are represented by a labor organization or are party to any collective bargaining arrangement. We have never experienced a strike or similar work stoppage, and we consider our relations with our employees to be good.

We understand that our innovation leadership is ultimately rooted in people. Competition for qualified personnel in our space is intense, and our success depends in large part on our ability to recruit, develop and retain a productive and engaged workforce. Accordingly, investing in our employees and their well-being, offering competitive compensation and benefits, promoting diversity and inclusion, adopting progressive human capital management practices and community outreach constitute core elements of our corporate strategy.

Governance. Our Board of Directors and its committees provide important oversight on certain human capital matters. The Human Capital Management and Compensation Committee maintains responsibility to review, discuss and set strategic direction for various people-related business strategies, including compensation and benefit programs. Our collective recommendations to the Board of Directors and its committees are how we proactively manage our human capital and care for our employees in a manner that aligns with our core values.

Our management team administers all employment matters, such as recruiting and hiring, onboarding and training, compensation and rewards, performance management and professional development. We continuously evaluate and enhance our internal policies, process and practices to increase employee engagement and productivity.

We have an employee hotline, providing our employees an opportunity to report matters such as safety concerns, fraud or other misconduct. All reported matters are reviewed in accordance with established protocols by our Legal, Human Resources and Internal Audit departments, who monitor the remediation and disposition of any reported matters.

Support Employee Well-being and Engagement. We support the overall well-being of our employees from a physical, emotional, financial, and social perspective. Our well-being program includes a long-standing practice of flexible paid time off, life planning benefits, wellness platforms and employee assistance programs.

Offer Competitive Compensation and Benefits. We strive to ensure that our employees receive competitive and fair compensation and innovative benefits offerings, tying incentive compensation to both business and individual performance, offering competitive maternal/paternal leave policies and providing meaningful retirement and health benefits.

Promote Sense of Belonging through Diversity and Inclusion Initiatives. We promote an inclusive and diverse workplace, where all individuals are respected and feel they belong regardless of their age, race, national origin, gender, religion, disability, sexual orientation, or gender identity.

Provide Programs for Employee Recognition. We also offer rewards and recognition programs to our employees, including awards to recognize employees who best exemplify our values and spot awards to recognize employee contributions. We believe that these recognition programs help drive strong employee performance and retention. We conduct annual employee performance reviews, where each employee is evaluated by their personal manager and also conducts a self-assessment, a process which empowers our employees. Employee performance is assessed based on a variety of key performance metrics, including the achievement of objectives specific to the employee's department or role.

Create Opportunities for Growth and Development. We focus on creating opportunities for employee growth, development, training, and education, including opportunities to cultivate talent and identify candidates for new roles from within the Company and management and leadership development programs.

ITEM 1A. RISK FACTORS

Operational Risks

We will elect to raise additional financing in 2023 and beyond, and such financing may not be available to us on acceptable terms or at all.

Although we believe we have sufficient capital resources and capital availability to meet our needs for the remainder of 2023, we expect that we will not be able to maintain the levels of capital and operating expenditures necessary to perform our current business plan, including the development of our W56 and WNext truck chassis platforms unless we generate additional cash from operations or obtain additional financing. In light of our operating history and the expected schedule for bringing our W56 and WNext platforms to market, we expect that it will be necessary to obtain additional financing, through our At-the-Market offering program. We cannot be certain that additional financing will be available to us on favorable terms when required, or at all. Recent turmoil in the capital markets, including the tightening of credit and rise of interest rates, may cause us to face higher borrowing costs, less available capital, more stringent terms and tighter covenants. In such circumstances, if we cannot raise additional capital, our financial condition, results of operations, business and prospects could be materially and adversely affected. In addition, if we raise additional capital through issuances of equity, through the ATM or otherwise, our stockholders could experience dilution.

Uncertain global macro-economic and political conditions could materially adversely affect our results of operations and financial condition.

Our results of operations are materially affected by economic and political conditions in the United States and internationally, including inflation, deflation, interest rates, recession, availability of capital, energy and commodity prices, trade laws and the effects of governmental initiatives to manage economic conditions. Current or potential customers may delay or decrease spending on our products and services as their business and/or budgets are impacted by economic conditions. The inability of current and potential customers to pay us for our products and services may adversely affect our earnings and cash flows. In addition, deterioration of conditions in worldwide credit markets could limit our ability to obtain financing to fund our operations and capital expenditures.

The current invasion of Ukraine by Russia has escalated tensions among the United States, the North Atlantic Treaty Organization (“NATO”) and Russia. The United States and other NATO member states, as well as non-member states, have announced new sanctions against Russia and certain Russian banks, enterprises and individuals. These and any future additional sanctions and any resulting conflict between Russia, the United States and NATO countries could have an adverse impact on our current operations.

Further, such invasion, ongoing military conflict, resulting sanctions and related countermeasures by NATO states, the United States and other countries are likely to lead to market disruptions, including significant volatility in commodity prices, credit and capital markets, as well as supply chain interruptions for equipment, which could have an adverse impact on our operations and financial performance.

We cannot assure you that we will be successful in executing our business plan, which envisions the development of two new truck chassis platforms for production in 2023 and 2025 and the continued provision of a new delivery van to customers which commenced in late 2022. Our failure to execute our business plan would have a material adverse effect on the Company’s business, financial position, results of operations, cash flows and liquidity.

We have developed a revised strategic product roadmap for our electric vehicle delivery offerings. This roadmap contemplates the development of two new truck chassis platforms, the W56 and WNext, which are targeted for production in 2023 and 2025, respectively. Product development involves numerous risks and uncertainties. We cannot assure you that we will be able to develop these new truck platforms on a timely basis or at all or that, if developed, these new truck platforms will meet applicable regulatory requirements (including Federal Motor Vehicle Safety Standards). Also, in order to accelerate time-to-market for customers seeking delivery of electric vehicles during 2022 and early 2023, in 2022, we announced a strategic supply agreement with GreenPower pursuant to which we offer our customers a Class 4 delivery van. We began accepting deliveries of the base vehicles from GreenPower in July 2022 and in September 2022 began executing on the exclusive rights to sell the vehicles under the Workhorse brand and with Workhorse after sales and support service in the United States and Canada. Even if we are able to make new truck platforms that meet regulatory requirements and offer the Class 4 delivery van, we may be unable to launch and ramp up production as necessary, we may experience unexpected costs, delays or service burdens, we may be unable to deliver such vehicles on an economical basis and our customers may not find our vehicles are acceptable for their use. Any of the foregoing would have a material adverse effect on our business, financial position, results of operations, cash flows and liquidity.

We may experience delays in launching and ramping up production or we may be unable to control our manufacturing costs.

We have previously experienced and may in the future experience launch and production ramp-up delays. In addition, we may introduce in the future new or unique manufacturing processes and design features for our products including enhancements under development relating to production assembly efficiency, material component availability, cost reduction and customer feedback. There is no guarantee we will be able to successfully and timely introduce and scale such processes or features. We have relatively limited experience to date in manufacturing electric vehicles at high volumes. To be successful, we will need to implement, maintain, and ramp-up efficient and cost-effective manufacturing capabilities, processes and supply chains and achieve the design tolerances, high quality and output rates planned at our Union City manufacturing facility. We also need to hire, train, and compensate skilled employees for operations. Bottlenecks and other unexpected challenges such as those experienced in the past may arise during our production ramps, and we must address them promptly while continuing to improve manufacturing processes and reducing costs. If we are not successful in achieving these goals, we could face delays in establishing and/or sustaining our vehicle production ramp-ups or be unable to meet our related cost and profitability targets. Any delay or other complication in ramping up the production of our current products or the development, manufacture, launch and production ramp-ups of our future products, features and services, or in doing so cost-effectively and with high quality, may harm our brand, business, prospects, financial condition, and operating results.

Our results of operations have not resulted in profitability and we may not be able to achieve profitability going forward.

We had an accumulated deficit of \$627.6 million as of December 31, 2022. Except for the year ended December 31, 2020, we have had net losses every year since our inception. We will continue to incur net losses in 2023. We may incur significant losses in the future for a number of reasons, including the other risks described in “Risk Factors”, and we may encounter unforeseen expenses, difficulties, complications, delays and other unknown events. Accordingly, we may not be able to achieve or maintain profitability. Our management is developing plans to alleviate the negative trends and conditions described above and there is no guarantee such plans will be successfully implemented. Our business plan is focused on providing sustainable and cost-effective solutions to the commercial transportation sector but is still unproven. There is no assurance that even if we successfully implement our business plan, we will be able to curtail our losses or ever achieve profitable operations. If we incur additional significant operating losses, our stock price may significantly decline.

We have yet to achieve positive cash flow and, given our projected funding needs, our ability to generate positive cash flow is uncertain.

We had negative cash flow from operating activities of \$93.8 million and \$132.6 million for the years ended December 31, 2022 and 2021, respectively. We may continue to have negative cash flow from operating and investing activities for 2023 as we expect to incur research and development, sales and marketing, and general and administrative expenses and make capital expenditures in our efforts to increase sales and ramp up operations at our Union City, Indiana and Mason, Ohio facilities. Our business also will at times require significant amounts of working capital to support our growth of additional platforms. An inability to generate positive cash flow for the near term may adversely affect our ability to raise needed capital for our business on reasonable terms, diminish supplier or customer willingness to enter into transactions with us, and have other adverse effects that may decrease our long-term viability. There can be no assurance the Company will achieve positive cash flow in the near future or at all.

If our vehicles fail to perform as expected, our ability to develop, market and sell our electric vehicles could be harmed.

If our vehicles were to contain design or manufacturing defects that cause them not to perform as expected or that require repair, our ability to develop, market and sell our vehicles could be harmed. We currently have a limited frame of reference by which to evaluate the long-term quality, reliability and performance characteristics of our trucks, battery packs and other products, particularly our new chassis platforms, the W4 CC, W750, W56 and WNext. There can be no assurance that we will be able to detect and repair any defects in our products before commencing the sale of our vehicles.

In addition, the performance specifications of our vehicles may vary from our current estimates and could change over time and from vehicle to vehicle based on a number of factors, including the manner in which the vehicle is used or maintained, driving conditions and weather and other environmental conditions where the vehicle is used. While we perform extensive internal testing on our vehicles, we currently have a limited frame of reference by which to evaluate detailed long-term quality, reliability, durability and performance characteristics of our battery packs, powertrains and vehicles. There can be no assurance that any of our products will perform in accordance with our published specifications, consistently or at all.

We currently have a limited number of customers and prospective customers, we do not have long-term agreements with existing customers, and we expect that a significant portion of our future sales will be from a limited number of customers. The loss of any of these customers could materially harm our business.

A significant portion of our projected future revenue is expected to be generated from a limited number of dealers and fleet customers. Additionally, much of our business model is focused on building relationships with a few large dealers and fleet customers. Currently, we have no contracts with customers that include long-term commitments or minimum volumes to ensure future sales of vehicles. As such, a customer may take actions that negatively affect us for reasons we cannot anticipate or control, such as a customer's financial condition, changes in the customer's business strategy or operations, or the perceived performance or cost-effectiveness of our vehicles. In addition, as described above, we may not be able to meet customer requirements with the new truck chassis platforms we are developing and plan to offer to them. The loss of or a reduction in sales or anticipated sales to our most significant customers would have a material adverse effect on our business, prospects, financial condition and operating results.

Regulatory requirements may have a negative impact upon our business.

Our vehicles are subject to substantial regulation under federal, state, and local laws. In addition, these laws are subject to change. To the extent the laws change, or if we introduce new vehicles in the future (including, without limitation, the new truck chassis platforms we are developing), some or all of our vehicles may not comply with applicable federal, state, or local laws. Further, certain federal, state, and local laws and industrial standards currently regulate electrical and electronics equipment. Although standards for electric vehicles are not yet generally available or accepted as industry standards, our products may become subject to federal, state, and local regulation in the future. Compliance with these regulations could be burdensome, time consuming, and expensive.

Our products are subject to environmental and safety compliance with various federal and state regulations, including regulations promulgated by the Environmental Protection Agency, NHTSA, FAA and various state boards, and compliance certification is required for each new model year. NHTSA is active in requesting information from vehicle manufacturers regarding potential product defects and safety measures. The cost of these compliance activities and the risks, delays, and expenses incurred in connection with such compliance could be substantial.

See Note 17, *Commitment and Contingencies*, to the Consolidated Financial Statements included in this Annual Report on Form 10-K.

We may incur costs, expenses and penalties related to regulatory matters, governmental investigations, legal proceedings and other claims, which could have a material adverse effect on the Company's business, financial position, results of operations, cash flows or liquidity.

We are subject to extensive government regulations. Federal, state and local laws and regulations may change from time to time and our compliance with new or amended laws and regulations in the future may materially increase our costs and could adversely affect our results of operations and competitive position. In addition, violations of the laws and regulations to which we are subject could result in civil and criminal fines, penalties and sanctions against us, our officers or our employees, as well as prohibitions on the conduct of our business, and could also materially affect our reputation, business and results of operations. See Note 17, *Commitment and Contingencies*, to the Consolidated Financial Statements included in this Annual Report on Form 10-K.

As described in Note 17, *Commitments and Contingencies*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K, we are party to class action litigation alleging violation of the securities laws. On October 24, 2022, we entered into a binding term sheet to resolve this litigation as well as related shareholders derivative litigation. On January 13, 2023, the parties executed a Stipulation of Settlement setting forth the terms of the settlement of the class action and resolution of all claims. Under these terms, we will pay \$15 million in cash, which will be funded fully by proceeds of available insurance, and issue shares of our stock with a value of \$20 million. On February 14, 2023, the Court granted preliminary approval of the settlement and set the final approval hearing for July 24, 2023. The settlement is subject to approval by the Court and there can be no assurance that the settlement will be approved on those terms or at all. If the settlement is not approved, we cannot assure you the ultimate resolution of these claims will not have a material adverse effect on our business, financial position, results of operations, cash flows or liquidity.

Any of the foregoing factors could cause the price of the Company's equity securities to decline, thereby exposing the Company to new securities class action and/or shareholder derivative litigation. New securities class action and/or shareholder derivative suits against us and/or our officers and directors could result in substantial additional costs to the Company and divert our management's time and attention, which would otherwise be used to benefit our business.

Pandemics, epidemics, disease outbreaks and other public health crises, such as the COVID-19 pandemic, have disrupted our business and operations, and future public health crises could materially adversely impact our business, financial condition, liquidity and results of operations.

Pandemics, epidemics, or disease outbreaks in the U.S. or globally, including the COVID-19 pandemic, have disrupted, and may in the future, disrupt our business, which could materially affect our financial condition, liquidity, and results of operations as well as future expectations. Any such events may adversely impact our global supply chain in the U.S., China and elsewhere. In particular, we could experience among other things: (1) continued or additional global supply disruptions, including with our third-party manufacturers, upon whom we rely to provide certain parts incorporated into our vehicles; (2) labor disruptions; (3) an inability to manufacture our vehicles; (4) an inability to sell to our customers; (5) a decline in customer demand during and following any pandemic; (6) an impaired ability to access credit and capital markets. Any new pandemic or other public health crises, or future public health crises, could have a material impact on our business, financial condition and results of operations going forward.

Our limited operating history makes it difficult for us to evaluate our future business prospects and make decisions based on those estimates of our future performance

As we begin to implement and ramp up our manufacturing capabilities, it is difficult, if not impossible, to forecast our future results based upon our historical data. Because of the uncertainties related to our lack of historical operations in a highly regulated and rapidly evolving industry, we may be hindered in our ability to anticipate and adapt to increases or decreases in revenues or expenses. If we make poor budgetary decisions as a result of limited historical data, we could be less profitable or incur losses.

We do not receive progress payments on orders of our vehicles, and if a purchaser fails to pay upon delivery, we may not be able to recoup the costs we incurred in producing such vehicles.

Our arrangements with existing customers do not provide for progress payments as we begin to fulfill orders. Customers are only required to pay us upon delivery of vehicles. If a customer fails to take delivery of an ordered vehicle or fails to pay for such vehicle, we may not receive cash to offset the production expenses of such vehicle, which could adversely affect our cash flows.

Our business, prospects, financial condition and operating results will be adversely affected if we cannot reduce and adequately control the costs and expenses associated with operating our business, including our material and production costs.

We incur significant costs and expenses related to procuring the materials, components and services required to develop and produce our electric vehicles. We continually work on cost-down initiatives to reduce our cost structure so we may effectively compete. If we do not reduce our costs and expenses, our net losses will continue.

The demand for commercial electric vehicles depends, in part, on the continuation of current trends resulting from dependence on fossil fuels. Extended periods of low diesel or other petroleum-based fuel prices could adversely affect demand for our vehicles, which would adversely affect our business, prospects, financial condition, and operating results.

We believe much of the present and projected demand for commercial electric vehicles results from concerns about volatility in the cost of petroleum-based fuel, the dependency of the United States on oil from unstable or hostile countries, government regulations and economic incentives promoting fuel efficiency and alternative forms of energy, as well as the belief that climate change results in part from the burning of fossil fuels. If the cost of petroleum-based fuel decreased significantly, the outlook for the long-term supply of oil to the United States improved, the government eliminated or modified its regulations or economic incentives related to fuel efficiency and alternative forms of energy, or if there is a change in the perception that the burning of fossil fuels negatively impacts the environment, the demand for commercial electric vehicles could be reduced, and our business and revenue may be harmed.

Diesel and other petroleum-based fuel prices have been extremely volatile, and we believe this volatility will persist. Lower diesel or other petroleum-based fuel prices over extended periods of time may lower the perception in government and the private sector that cheaper, more readily available energy alternatives should be developed and produced. If diesel or other petroleum-based fuel prices remain at deflated levels for extended periods of time, the demand for commercial electric vehicles may decrease, which would have an adverse effect on our business, prospects, financial condition, and operating results.

Our future growth is dependent upon the willingness of operators of commercial vehicle fleets to adopt electric vehicles and on our ability to produce, sell and service vehicles that meet their needs. This often depends upon the cost for an operator adopting electric vehicle technology as compared to the cost of traditional internal combustion technology.

Our growth is dependent upon the adoption of electric vehicles by operators of commercial vehicle fleets and on our ability to produce, sell and service vehicles that meet their needs. The entry of commercial electric vehicles into the medium-duty commercial vehicle market is a relatively new development, particularly in the United States, and is characterized by rapidly changing technologies and evolving government regulation, industry standards and customer views of the merits of using electric vehicles in their businesses. This process has been slow as without including the impact of government or other subsidies and incentives, the purchase prices for our commercial electric vehicles currently is higher than the purchase prices for diesel-fueled vehicles. Our growth has also been negatively impacted by the relatively low price of oil in previous years.

If the market for commercial electric vehicles does not develop as we expect or develops more slowly than we expect, our business, prospects, financial condition and operating results will be adversely affected.

As part of our sales efforts, we must educate fleet managers as to the economical savings we believe they will achieve over the life of the vehicle. As such, we believe operators of commercial vehicle fleets should consider a number of factors when deciding whether to purchase our commercial electric vehicles (or commercial electric vehicles generally) or vehicles powered by internal combustion engines, particularly diesel-fueled or natural gas-fueled vehicles. We believe these factors include:

- the difference in the initial purchase prices of commercial electric vehicles and vehicles with comparable gross vehicle weight powered by internal combustion engines, both including and excluding the impact of government and other subsidies and incentives designed to promote the purchase of electric vehicles;
- the total cost of ownership of the vehicle over its expected life, which includes the initial purchase price and ongoing operating and maintenance costs;
- the availability and terms of financing options for purchases of vehicles and, for commercial electric vehicles, financing options for battery systems;
- the availability of tax and other governmental incentives to purchase and operate electric vehicles and future regulations requiring increased use of nonpolluting vehicles;
- government regulations and economic incentives promoting fuel efficiency and alternate forms of energy;
- fuel prices, including volatility in the cost of diesel;
- the cost and availability of other alternatives to diesel fueled vehicles, such as vehicles powered by natural gas;
- corporate sustainability initiatives;
- commercial electric vehicle quality, performance and safety (particularly with respect to lithium-ion battery packs);
- the quality and availability of service for the vehicle, including the availability of replacement parts;
- the range over which commercial electric vehicles may be driven on a single battery charge;
- access to charging stations and related infrastructure costs, and standardization of electric vehicle charging systems;
- electric grid capacity and reliability; and
- macroeconomic factors.

If, in weighing these factors, operators of commercial vehicle fleets determine there is not a compelling business justification for purchasing commercial electric vehicles, particularly those we produce and sell, then the market for commercial electric vehicles may not develop as we expect or may develop more slowly than we expect, which would adversely affect our business, prospects, financial condition and operating results.

We currently do not have and do not expect to have a significant number of long-term supply contracts with guaranteed pricing which exposes and will expose us to fluctuations in component, materials and equipment prices. Substantial increases in these prices would increase our operating costs and could adversely affect our business, financial position, results of operations, cash flows or liquidity.

Because we currently do not have and do not expect to have long-term supply contracts with guaranteed pricing, we are and will be subject to fluctuations in the prices of the raw materials, parts and components and equipment we use in the production of our vehicles. Substantial increases in the prices for such raw materials, components and equipment would increase our operating costs and could reduce our margins if we cannot recoup the increased costs through increased vehicle prices. Any attempts to increase the announced or expected prices of our vehicles in response to increased costs could be viewed negatively by our customers and could adversely affect our business, financial position, results of operations, cash flows or liquidity.

If we are unable to scale our operations at our Union City facility in an expedited manner from our limited low volume production to high volume production, our business, financial position, results of operations, cash flows and liquidity will be adversely affected.

We are assembling our vehicles at our Union City facility which has been acceptable for our historical orders. To satisfy increased demand, we will need to quickly scale operations in our Union City facility as well as scale our supply chain including access to batteries. Such a substantial and rapid increase in operations may strain our management capabilities. Our business, financial position, results of operations, cash flows and liquidity could be adversely affected if we experience disruptions in our supply chain, if we cannot obtain materials of sufficient quality at reasonable prices or if we are unable to scale our Union City facility.

We depend upon key personnel and need additional personnel. The loss of key personnel or the inability to attract additional personnel may adversely affect our business and results of operations.

Our success depends on the continuing services of our executive leadership team and top management. The loss of any of these individuals could have a material and adverse effect on our business operations. Additionally, the success of our operations will largely depend upon our ability to successfully attract and maintain other competent and qualified key management personnel. As with any company with limited resources, there can be no guarantee we will be able to attract such individuals or the presence of such individuals will necessarily translate into profitability for our company. Our inability to attract and retain key personnel may materially and adversely affect our business operations. Any failure by our management to effectively anticipate, implement, and manage the changes required to sustain our growth would have a material adverse effect on our business and results of operations.

We face intense competition. Some of our competitors have substantially greater financial or other resources, longer operating histories and greater name recognition than we do and could use their greater resources and/or name recognition to gain market share at our expense or could make it very difficult for us to establish market share.

Companies currently competing in the fleet logistics market offering alternative fuel medium-duty trucks include General Motors, Ford Motor Company and Freightliner. There are also a number of new, well capitalized entrants into the market place. Ford and Freightliner are currently selling alternative fuel fleet vehicles including hybrids and General Motors' subsidiary Brightdrop has recently brought a medium duty electric delivery van to market. General Motors, Ford and Freightliner have substantially more financial resources, established market positions, long-standing relationships with customers and dealers, and have more significant name recognition, technical, marketing, sales, financial and other resources than we do. Although we believe that HorseFly, our unmanned aerial system ("UAS"), is unique in the marketplace in that it currently does not have any competitors when it comes to a UAS that works in combination with a truck, there are better-financed competitors in this emerging industry, including Google and Amazon. These competitors have significantly more financial resources, established market positions, long-standing relationships with customers, more significant name recognition and a larger scope of resources including technical, marketing and sales than we do.

The resources available to our competitors to develop new products and introduce them into the marketplace exceed the resources currently available to us. As a result, our competitors may be able to compete more aggressively and sustain that competition over a longer period than we can. This intense competitive environment may require us to make changes in our products, pricing, licensing, services, distribution, or marketing to develop a market position. Each of these competitors has the potential to capture significant market share in our target markets, which could have an adverse effect on our position in our industry and on our business and operating results.

Our electric vehicles compete for market share with vehicles powered by other vehicle technologies that may prove to be more attractive than ours.

Our target market currently is serviced by manufacturers with existing customers and suppliers using proven and widely accepted fossil fuel technologies. Additionally, our competitors are working on developing technologies that may be introduced in our target market. If any of these alternative technology vehicles can provide lower fuel costs, greater efficiencies, greater reliability or otherwise benefit from other factors resulting in an overall lower total cost of ownership, this may negatively affect the commercial success of our vehicles or make our vehicles uncompetitive or obsolete.

Changes in the market for electric vehicles could cause our products to become obsolete or lose popularity.

The modern electric vehicle industry is in its infancy and has experienced substantial change in the last few years. To date, although there has been a recent surge in the electric vehicle industry, demand for electric vehicles has been slower than forecasted by industry experts. As a result, growth in the electric vehicle industry depends on many factors outside our control, including, but not limited to:

- continued development of product technology, especially batteries;
- perceptions about electric vehicle quality, safety, design, performance and cost;
- perceptions about the total cost of ownership of electric vehicles, including the initial purchase price and operating and maintenance costs;
- the environmental consciousness of customers;
- the ability of electric vehicles to successfully compete with vehicles powered by internal combustion engines;
- the availability of other alternative fuel vehicles, including plug-in hybrid electric vehicles; and
- the availability of tax and other governmental incentives to purchase and operate electric vehicles or future regulation requiring increased use of nonpolluting vehicles.

We cannot assume growth in the electric vehicle industry will continue. Our business will suffer if the electric vehicle industry does not grow or grows more slowly than it has in recent years or if we are unable to maintain the pace of industry demands.

The unavailability, reduction, elimination or adverse application of government subsidies, incentives and regulations could have an adverse effect on our business, prospects, financial condition and operating results.

We believe the availability of government subsidies and incentives, including those available in California and other areas, is an important factor considered by our customers when purchasing our vehicles, and our growth depends in part on the availability and amounts of these subsidies and incentives. Any reduction, elimination or discriminatory application of government subsidies and incentives because of budgetary challenges, policy changes, the reduced need for such subsidies and incentives due to the perceived success of electric vehicles or other reasons may result in the diminished price competitiveness of the alternative fuel vehicle industry.

We may be unable to keep up with changes in electric vehicle technology and, as a result, may suffer a decline in our business and competitive position.

Our products and the new products we are developing under our strategic roadmap are designed for use with, and are dependent upon, existing electric vehicle technology. As technologies change, we plan to upgrade or adapt our products to continue to provide products with the latest technology. However, our products may become obsolete or our research and development efforts may not be sufficient to adapt to changes in or to create the necessary technology. Thus, our potential inability to adapt and develop the necessary technology may harm our business and competitive position.

The failure of certain key suppliers to provide us with the necessary components of our products according to our schedule and at price, quality levels and volumes acceptable to us could have a severe and negative impact upon our business.

We rely and will rely on various suppliers to provide critical components and materials used in our vehicles, including our battery packs. However, we have a limited number of definitive supply agreements. Changes in business conditions, pandemics, wars, including the Russian invasion of Ukraine and world sanctions on Russia, Belarus, and related parties, governmental changes, and other factors beyond our control or which we do not presently anticipate could negatively affect our ability to

receive components. If component suppliers become unwilling or unable to provide components, there are a limited number of alternative suppliers who could provide them and the price for them could be substantially higher. A failure by our major suppliers to provide these components could severely restrict our ability to manufacture our products and prevent us from fulfilling customer orders in a timely fashion.

Continued disruption of supply, shortage of materials or increases in costs, in particular for battery packs or microchips, could harm our business.

Our ability to manufacture our vehicles depends on the continued supply of battery packs, including the competent battery cells, used in our products. We have in the past experienced a battery pack supply chain constraint as a result of our existing supplier's inability to keep up with volume requirements. We continue to work with our current supplier to overcome these supply constraints and have also begun collaborating with an additional supplier, subject to appropriate testing, to further expand our battery pack options.

Furthermore, due to the COVID-19 pandemic and increased demand for consumer products, a global shortage of microchips has been reported since early 2021, and the impact to us is yet unknown. As a result, our ability to source semiconductor chips may be adversely affected. Impacts of the shortage may result in increased delivery lead times, delays in the production of our vehicles, and increased costs to source available semiconductor chips.

Product liability or other claims could have a material adverse effect on our business.

The risk of product liability claims, product recalls, and associated adverse publicity is inherent in the manufacturing, marketing, and sale of electric vehicles. Although we have product liability insurance for certain of our consumer and commercial products, that insurance may be inadequate to cover all potential product claims. Any product recall or lawsuit seeking significant monetary damages either in excess of our coverage, or outside of our coverage, may have a material adverse effect on our business and financial condition. We may not be able to secure additional product liability insurance coverage on acceptable terms or at reasonable costs when needed. A successful product liability claim against us could require us to pay a substantial monetary award. Moreover, a product recall, such as the one initiated by the Company in 2021, could generate substantial negative publicity about our products and business and inhibit or prevent commercialization of other future product candidates. We cannot provide assurance such claims and/or recalls will not be made in the future.

Our success may be dependent on protecting our intellectual property rights.

We rely on trade secret protections to protect our proprietary technology as well as several registered patents and patent applications. Our patents and patent applications relate to the vehicle chassis assembly, vehicle header and drive module, manifold for electric motor drive assembly, onboard generator drive system for electric vehicles and the delivery drone. Our success will, in part, depend on our ability to obtain additional trademarks and patents. We are working on registering additional patents and trademarks with the United States Patent and Trademark Office. Although we have entered into confidentiality agreements with our employees and consultants, we cannot be certain others will not gain access to these trade secrets. Others may independently develop substantially equivalent proprietary information and technologies or otherwise gain access to our trade secrets. Therefore we may be subject to disputes with our employees over ownership of any new technologies or enhancements such employees help to develop.

An inability to successfully manage the implementation of our new commercial enterprise resource planning (ERP) system could adversely affect our operations and operating results.

We are in the process of implementing a new commercial ERP system. This system will replace many of our existing operating and financial systems. The implementation is a major undertaking, both financially and from a management and personnel perspective. Any disruptions, delays or deficiencies in the design and implementation of our new ERP system could adversely affect our ability to process orders, ship products, provide services and customer support, send invoices and track payments, fulfill contractual obligations or otherwise operate our business.

We may be exposed to liability for infringing upon the intellectual property rights of other companies.

Our success will, in part, depend on our ability to operate without infringing on the proprietary rights of others. Although we have conducted searches and are not aware of any patents and trademarks which our products or their use might infringe, we cannot be certain that infringement has not or will not occur. We could incur substantial costs, in addition to the great amount of

time lost and negative publicity, in defending any patent or trademark infringement suits or in asserting any patent or trademark rights, in a suit with another party. In the event that a claim relating to intellectual property is asserted against us, we may need to seek licenses to such intellectual property which could result in significant costs, including substantial licensing fees or royalties.

Our business may be adversely affected by union activities.

Although none of our employees are currently represented by a labor union, it is common throughout the automotive industry for many employees to belong to a union, which can result in higher employee costs and increased risk of work stoppages. Our employees may join or seek recognition to form a labor union, or we may be required to become a union signatory. Our production facility in Union City, Indiana was purchased from Navistar. Prior employees of Navistar were union members and our future work force at this facility may be inclined to vote in favor of forming a labor union. Furthermore, we are directly or indirectly dependent upon companies with unionized work forces, such as parts suppliers and trucking and freight companies, and work stoppages or strikes organized by such unions could have a material adverse impact on our business, financial condition or operating results. If a work stoppage occurs, it could delay the manufacture and sale of our trucks and have a material adverse effect on our business, prospects, operating results or financial condition. The mere fact our labor force could be unionized may harm our reputation in the eyes of some investors. Consequently, the unionization of our labor force could negatively impact our company.

Our electric vehicles make use of lithium-ion battery cells, which, if not appropriately managed and controlled, have occasionally been observed to catch fire or vent smoke and flames. If such events occur in our electric vehicles, we could face liability associated with our warranty, for damage or injury, adverse publicity and a potential safety recall, any of which would adversely affect our business, prospects, financial condition and operating results.

The battery packs in our electric vehicles use lithium-ion cells, which have been used for years in laptop computers and cell phones. On occasion, if not appropriately managed or subjected to environmental stresses, lithium-ion cells can rapidly release the energy they contain by venting smoke and flames in a manner that can ignite nearby materials. Highly publicized incidents of electric vehicles, laptop computers and cell phones bursting into flames have focused consumer attention on the safety of these cells. These events also have raised questions about the suitability of these lithium-ion cells for automotive applications. There can be no assurance that a field failure of our battery packs will not occur, which would damage the vehicle or lead to personal injury or death and may subject us to lawsuits. Furthermore, there is some risk of electrocution if individuals who attempt to repair battery packs on our vehicles do not follow applicable maintenance and repair protocols. Any such damage or injury would likely lead to adverse publicity and potentially a safety recall. Any such adverse publicity related to the suitability of lithium-ion cells for automotive applications, the social and environmental impacts of mineral mining or procurement associated with the constituents of lithium-ion cells, or any future incident involving lithium-ion cells, such as a vehicle or other fire could adversely affect our reputation, business, prospects, financial condition and operating results.

We are subject to significant corporate regulation as a public company and failure to comply with all applicable regulations could subject us to liability or negatively affect our stock price.

As a publicly traded company, we are subject to a significant body of regulation, including the Sarbanes-Oxley Act of 2002. While we have developed and instituted a corporate compliance program based on what we believe are the current best practices in corporate governance and continue to update this program in response to newly implemented or changing regulatory requirements, we cannot provide assurance that we are or will be in compliance with all potentially applicable corporate regulations. If we fail to comply with any of these regulations, we could be subject to a range of regulatory actions, fines or other sanctions or litigation. If we disclose any material weakness in our internal control over financial reporting, our stock price could decline.

We face risks associated with security breaches through cyber-attacks, cyber intrusions, or otherwise, which could pose a risk to our systems, networks and services.

We face risks associated with cyber-attacks, including hacking, viruses, malware, denial of service attacks, ransomware or other data security breaches. The risk of a security breach or disruption, particularly through cyber-attacks or cyber intrusion, including by computer hackers, foreign governments and cyber terrorists, has generally increased as the number, intensity, and sophistication of attempted attacks and intrusions around the world have increased. Our business requires the continued operation of information systems and network infrastructure. In the event of a cyber-attack that we were unable to defend against or mitigate, we could have our operations and the operations of our customers and others disrupted. We could also have our financial and other information systems and network infrastructure impaired, property damaged and customer and employee information stolen; experience substantial loss of revenues, response costs and other financial loss; and be subject to increased

regulation, litigation, penalties and damage to their reputation. While we maintain cyber insurance providing coverages, such insurance may not cover all costs associated with the consequences of personal and confidential proprietary information being compromised. A security breach or other significant disruption involving computer networks and related systems could cause substantial costs and other negative effects, including litigation, remediation costs, costs to deploy additional protection strategies, compromising of confidential information, and reputational damage adversely affecting investor confidence. As a result, in the event of a material cyber security breach, our results of operations could be materially, adversely affected.

Risks Related to Owning Our Common Stock

Our stock price and trading volume may be volatile, which could result in substantial losses for our stockholders.

The equity trading markets may experience periods of volatility, which could result in highly variable and unpredictable pricing of equity securities. The market price of our common stock could change in ways that may or may not be related to our business, our industry or our operating performance and financial condition. In addition, the trading volume in our common stock may fluctuate and cause significant price variations to occur. We have experienced significant volatility in the price of our stock. In addition, the stock markets in general can experience considerable price and volume fluctuations.

We have not paid cash dividends in the past and have no immediate plans to pay cash dividends.

We plan to reinvest all of our earnings, to the extent we have earnings, in order to develop our products, deliver on our orders and cover operating costs and to otherwise become and remain competitive. We do not plan to pay any cash dividends with respect to our securities in the foreseeable future. We cannot assure common stockholders that we would, at any time, generate sufficient surplus cash that would be available for distribution to the holders of our common stock as a dividend. Therefore, common stockholders should not expect to receive cash dividends on our common stock.

Stockholders may experience future dilution as a result of future equity offerings.

In order to raise additional capital, we may in the future offer additional shares of our common stock or other securities convertible into or exchangeable for our common stock at prices that may not be the same as the price per share in our prior offerings. We may sell shares or other securities in any future offering at a price per share that is lower than the price per share paid by historical investors, which would result in those newly issued shares being dilutive. In addition, investors purchasing shares or other securities could have rights superior to existing stockholders, which could impair the value of existing stockholders. The price per share at which we sell additional shares of our common stock, or securities convertible or exchangeable into common stock, in future transactions may be higher or lower than the price per share paid by our historical investors.

Our charter documents and Nevada law may inhibit a takeover that stockholders consider favorable.

Provisions of our certificate of incorporation and bylaws and applicable provisions of Nevada law may delay or discourage transactions involving an actual or potential change in control or change in our management, including transactions in which stockholders might otherwise receive a premium for their shares, or transactions that our stockholders might otherwise deem to be in their best interests. The provisions in our certificate of incorporation and bylaws:

- limit who may call stockholder meetings;
- do not provide for cumulative voting rights; and
- provide that all vacancies may be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum.

There are limitations on director/officer liability.

As permitted by Nevada law, our certificate of incorporation limits the liability of our directors and officers for monetary damages for breach of a director's or officer's fiduciary duty except for liability in certain instances. As a result of our charter provision and Nevada law, stockholders may have limited rights to recover against directors or officers for breach of fiduciary duty. In addition, our certificate of incorporation provides that we shall indemnify our directors and officers to the fullest extent permitted by law.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

We operate facilities in Ohio, Indiana and Michigan. Our corporate headquarters and research and development facility is located in Greater Cincinnati area in Ohio and our primary manufacturing facility is located in Union City, Indiana. We also operate an engineering and technical design center in Wixom, Michigan and an engineering, technical design and production facility for our drone systems in Mason, Ohio.

We believe our facilities are in good operating condition and that our facilities are adequate for all present and near term uses.

ITEM 3. LEGAL PROCEEDINGS

For a description of certain material legal proceedings, please see Note 17, *Commitments and Contingencies*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K. See also Management's Discussion and Analysis of Financial Condition and Results of Operations - Overview for a discussion of certain regulatory matters.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Market Information

Our common stock is traded on the NASDAQ Capital Market under the symbol "WKHS".

Holders of our Common Stock

As of February 1, 2023, we had approximately 200 shareholders of record. This does not include persons whose stock is in nominee or "street name" accounts through banks, brokers and other financial institutions.

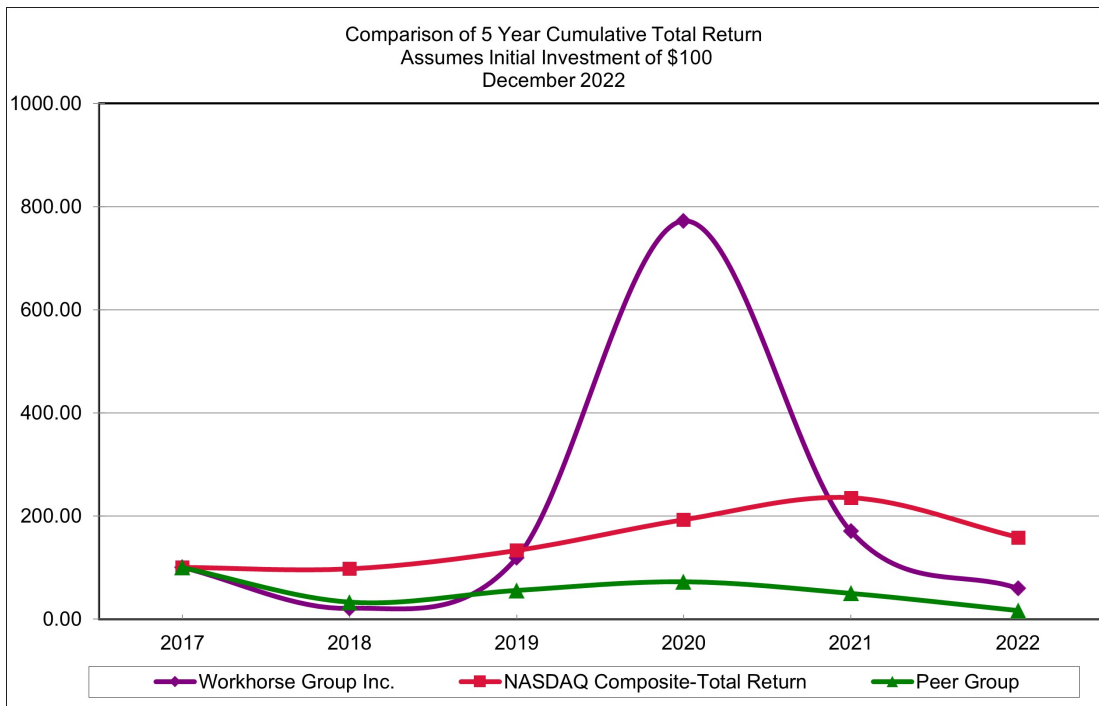
Dividend Policy

We have never declared or paid cash dividends on our common stock. We currently intend to retain future earnings, if any, to finance the expansion of our business. As a result, we do not anticipate paying any cash dividends in the foreseeable future. Any future determination to declare cash dividends will be made at the discretion of our Board of Directors, subject to applicable laws, and will depend on our financial condition, results of operations, capital requirements, general business conditions and other factors that our Board of Directors may deem relevant.

Stock Performance Graph

This performance graph shall not be deemed “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or incorporated by reference into any filing of Workhorse Group Inc. under the Securities Act of 1933, as amended (the “Securities Act”), or the Exchange Act, except as shall be expressly set forth by specific reference in such filing.

The following graph shows a comparison, from January 1, 2017 through December 31, 2022, of the cumulative total return on our common stock, The NASDAQ Composite Index and a peer group of companies determined by us. Such returns are based on historical results and are not intended to suggest future performance. Data for The NASDAQ Composite Index and the peer group companies assumes an investment of \$100 on January 1, 2017 and reinvestment of dividends. We have never declared or paid cash dividends on our common stock nor do we anticipate paying any such cash dividends in the foreseeable future.



We do not believe there is a single published industry or line of business index that is appropriate for comparing stockholder returns. As a result, we have selected a peer group comprised of companies that compete with us directly or indirectly in the electric vehicle OEM market. Our current peer group, reference in the graph above, consists of Arrival Ltd., Canoo Inc., Fisker Inc., Lightning eMotors, Inc., The Lion Electric Company, Lordstown Motors Corp., Nikola Corporation, Proterra Inc., REE Automotive Ltd., The Shyft Group, Inc., and XL Fleet Corp.

Recent Sales of Unregistered Securities and Use of Proceeds

During the quarter ended December 31, 2022, the Company issued 244,035 shares of its common stock to Mitsubishi as payment for services rendered in connection with the Stables & Stalls program, relying on the exemption set forth under Section 4(a)(2) of the Securities Act.

Purchases of Equity Securities by the Issuer

During the quarter ended December 31, 2022, no shares of our common stock were repurchased by the Company.

ITEM 6. [RESERVED]

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis should be read in conjunction with the consolidated financial statements and the related notes included elsewhere in this Annual Report on Form 10-K. For discussion related to changes in financial condition and the results of operations for fiscal year 2020-related items, refer to Part II, Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations in our Annual Report on Form 10-K for fiscal year 2021, which was filed with the Securities and Exchange Commission on March 1, 2022.

Overview

We are an American technology company with a vision to pioneer the transition to zero-emission commercial vehicles. Our primary focus is to provide sustainable and cost-effective solutions to the commercial transportation sector. We design and manufacture all-electric delivery trucks and drone systems, including the technology that optimizes the way these vehicles operate. We are focused on our core competency of bringing our electric delivery vehicle platforms to market.

During 2022, we were focused on our goals of increasing our vehicle production and capacity, increasing the affordability of our vehicles, and developing and introducing our next generation of products. We continue to focus on product quality, manufacturing capacity and operational planning, and engineering and design to enable increased deliveries and deployments of our products and future revenue growth. During the period, we began executing our revised strategic product roadmap for our electric vehicle delivery offerings. The foundation of this plan is the development of two new truck chassis platforms, the W56 and the WNext.

We continue to seek opportunities to grow the business organically, and by expanding relationships with existing and new customers. We believe we are well positioned to take advantage of long-term opportunities and continue our efforts to bring product innovations to-market.

Management Opportunities, Challenges and Risks and 2023 Outlook

Commercial Vehicles

Product Roadmap

Workhorse started executing its revised strategic product roadmap for our electric vehicle delivery offerings by laying the foundation of this plan through the development of two new truck chassis platforms, the W56 and WNext. The W56, based on long-standing Company know-how in the Class 5 and 6 truck chassis market, is expected to begin production in 2023. The WNext platform will be our second generation, low floor, advanced content offering and is expected to begin production in 2025.

During 2022, we began producing and selling the W4 CC, a Class 4 vehicle, under the Workhorse brand and with Workhorse after sales and support service, providing us with an accelerated time-to-market for customers seeking delivery of electric vehicles. We also made significant progress on the step van version, known as the W750, which will have approximately 750 cubic foot capacity and will feature up to 150 miles of all-electric range, with a payload capacity of five thousand pounds. We expect the first deliveries of the W750 will occur later in 2023.

Aerospace

HorseFly™

Our HorseFly ("HorseFly") Unmanned Aerial Vehicle ("UAV") is the first in a family of custom-built, high-efficiency delivery UAVs being designed to be integrated with our line of electric delivery trucks. The Horsefly is a 4 rotor UAV that can fly fully autonomously and is designed for safety, efficiency, and the rigors of day-to-day delivery service. The HorseFly system is designed such that a driver or driver's assistant can maintain line-of-sight operation of the UAV delivery process and to conform to the Federal Aviation Administration ("FAA") guidelines for UAV operation in the U.S.

Our patented flight control system is a custom HorseFly user control center. We built this technology to allow users a variety of planning, control and monitoring options, including monitoring locations of the truck, package and drone, and real-time onboard video of the HorseFly drone systems.

During 2022, we began executing on a pilot program with the U.S. Department of Agriculture's Natural Resources Conservation Service ("NRCS") to demonstrate our ability to provide small UAS as a service to support NRCS efforts in Mississippi. As part of the pilot program, we offer small UAS services, including monitoring via drone, data procurement and analytics. Automating the daily audits with the small UAS allows the NRCS to expedite information delivery, increase safety for auditors on the ground, be more cost-effective, increase fidelity of the data gathered, and ultimately create a more efficient procedure. The first phase of the program involved the Company collaborating with NRCS agents to gain a field-level understanding of the program's deliverables before implementing its UAS technology to gather actionable data and insights.

2022 Highlights

Discontinuation of C1000 Program

During the fourth quarter of 2022, we announced our decision to discontinue the C1000 vehicle platform as the Company determined its resources were best allocated on the development and production of its next platforms of vehicles, including the W4 CC, W750, W56 and WNext platforms.

In connection with the program discontinuation, we recorded a \$19.5 million impairment reserve during the period related to the program for excess or obsolete inventories related to the vehicle platform to bring the net balance of the C1000 inventory to zero as of December 31, 2022. The total inventory reserve as of December 31, 2022 was \$59.2 million, as compared to \$77.0 as of December 31, 2021.

We also continued to carry a \$22.2 million reserve for prepaid purchases related to deposits made on planned future purchases of inventory used in the production of the C1000 vehicle platforms, most of which was related to purchases in 2021 and prior.

Investment in Tropos

The Company has a \$10.0 million minority ownership in Tropos as of December 31, 2022. The minority investment was obtained pursuant to the transaction with Tropos as described below.

On August 8, 2022, the Company entered into an Assembly Services Agreement (the "Assembly Agreement") with Tropos. Under the Assembly Agreement, the Company will provide services at its Union City, Indiana manufacturing facility required to assemble an annual quantity of 2,000 vehicles in 2023, 2,000 vehicles in 2024, and 250 vehicles in 2025 for a total of 4,250 vehicles during the term of the agreement. In exchange for the assembly services, the Company will receive a service fee from Tropos.

On August 23, 2022, the Company entered into a Preferred Stock Purchase Agreement (the "Stock Purchase Agreement") with Tropos. Under the Stock Purchase Agreement, the Company received 605,811 shares of Series B Preferred Stock in Tropos with an option to purchase an additional 424,068 shares of Series B Preferred Stock in exchange for a cash payment of \$5.0 million, and a \$5.0 million contribution of non-cash consideration representing a deposit from Tropos for future assembly services. See Note 5, *Revenue*, of the Consolidated Financial Statements for treatment of the \$5.0 million of non-cash consideration received in 2022.

The Company utilized the measurement alternative allowed under GAAP to record the investment of the Series B Preferred Stock at cost, less any impairment. The Company recorded a \$10.0 million investment in Tropos in the Consolidated Balance Sheet as of December 31, 2022.

Stables & Stalls

During July 2022, we entered into an Asset Purchase Agreement ("APA") with ESG Logistics Corp. ("ESG Corp."), a provider of package pickup and delivery services. ESG Corp. was party to an agreement with FedEx Package System, Inc. ("FXG") under which ESG Corp. provided services to FXG on an exclusive basis in its business segments known as FedEx delivery throughout a geographic territory consisting of certain ZIP codes located in the Cincinnati, Ohio metropolitan area. Under the APA, we purchased substantially all of the assets relating to ESG's business, including ESG's rights and interests under the FXG agreement, motor vehicles, intellectual property, and other miscellaneous equipment for a purchase price of \$0.6 million.

During the third quarter of 2022, we began operating the FedEx delivery route under the FXG agreement using the historical motor vehicles and equipment acquired through the APA. This effort, known as Stables & Stalls, is designed to have the Company experience, firsthand, the challenges facing independent operators executing last mile delivery and to develop the

appropriate business model as the contractors' transition to electric vehicle fleets. As part of this effort, Workhorse is outfitting a fully functional services site, the 'Stable', and charging infrastructure, the 'Stalls', designed to support small fleet operators as they make the transition to EV's. We intend to transition the fleet of motor vehicles operating the FedEx delivery route to electric vehicles by the second quarter of 2023.

GreenPower Motor Company Inc. Supply Agreement

In February 2022, we entered into a vehicle Supply Agreement with GreenPower to facilitate the manufacturing and delivery of medium-duty Class 4 step vans into the North American market. Under the Supply Agreement, we will purchase 1,500 base vehicles from GreenPower, and complete the manufacturing process on the base vehicles. We will market two versions of the vehicle, a cab chassis version known as the W4 CC and a complete vehicle with a step van body, known as the W750, to customers in the United States and Canada. The W4 CC will have a payload capacity of 5,000 pounds and the W750 is expected to have a payload capacity of 5,000 pounds. Both the W4 CC and the W750 will feature up to 150 miles of all-electric range. Delivery of base vehicles under the Supply Agreement and production of the W4 CC began in the third quarter of 2022.

Securities Exchange Agreement

In April 2022, we entered into a Securities Exchange Agreement to exchange the remaining \$27.5 million in aggregate principal of our convertible notes for 7.8 million shares of our common stock. We recognized a loss of \$1.8 million in 2022, which included a \$0.4 million adjustment to the fair value of the convertible notes to the value of the shares issued under the exchange and a \$1.4 million adjustment related to the realization of the amount previously recognized in Accumulated Other Comprehensive Loss. The total loss was recorded in Interest Expense for the year ended December 31, 2022.

Subsequent to the exchange, we have no convertible notes outstanding, and the indenture and related security agreement under which the 2024 Notes were issued have been terminated.

Securities Litigation Settlement

On October 27, 2022, the Company entered into a binding settlement term sheet to resolve the Securities Class Action litigation as well as the related Shareholder Derivative Litigation. Under the terms of the settlement and in resolution of all claims, Workhorse will pay \$15.0 million in cash, which is expected to be funded fully by proceeds of available insurance, and the Company will issue \$20 million in Workhorse common stock. The settlement will be subject to final documentation, public notice and approval by the Court. The Company recorded a \$15.0 million insurance receivable in Other Receivable and a \$35.0 million legal reserve in Accrued Liabilities and Other in the Consolidated Balance Sheet as of December 31, 2022. The Company also recognized a \$20.0 million legal expense which was recognized in Selling, General and Administrative of the Consolidated Statements of Operations for the year ended December 31, 2022.

Shareholder Derivative Litigation Settlement

As more fully described in Note 17, *Commitments and Contingencies*, the Company and the individual defendants entered into a binding term sheet to resolve the Shareholder Derivative Litigation as well as the related Securities Class Action. The settlement will be subject to final documentation, public notice and court approval by the State District Court of Nevada.

Recent Trends and Market Conditions

We continue to monitor macroeconomic conditions to remain flexible and to optimize and evolve our business as appropriate, and we will have to accurately project demand and infrastructure requirements globally and deploy our production, workforce and other resources accordingly. For more detailed descriptions of the impact and risks to our business, please see certain risk factors described in Part I, Item 1A, Risk Factors in this Annual Report on Form 10-K.

Commodities. Prices for commodities remain volatile, and we expect to experience price increases for base metals and raw materials that are used in batteries for electric vehicles (e.g., lithium, cobalt, and nickel) as well as steel, aluminum and other material inputs. Global demand and differences in output across sectors as a result of the COVID-19 pandemic have generated divergence in price movements across different commodities. We expect the net impact on us overall will be higher material costs.

Inflation. Inflation has significantly risen during 2022, resulting from both supply and demand imbalances as economies continue to recover from the COVID-19 pandemic as well as the impact on the availability and cost of energy and other commodities resulting from Russia's invasion of Ukraine in February 2022, which is ongoing. We are seeing a near-term impact on our business due to inflationary pressure. In an effort to dampen inflationary pressures, central banks have started to raise interest rates which will likely raise the cost of any financing the Company may undertake in the future.

The Inflation Reduction Act of 2022 (the "Act") was signed into law and enacted on August 16, 2022. The Act modifies, expands and enhances incentives, tax provisions and credits to support the investment and use of clean-energy vehicles. The Act also provides incentives and tax credits for electric vehicle manufacturers to invest in domestic manufacturing supply chain production. The new tax credits for commercial EV purchases and investments in clean energy production, supply chains and manufacturing facilities are included in the Act effective beginning in 2023. We are evaluating the potential impact of the Act on our financial results.

COVID-19 Pandemic. We cannot predict the duration or direction of current global trends from the COVID-19 pandemic, the sustained impact of which is largely unknown and has varied across geographic regions. Ultimately, we continue to monitor macroeconomic conditions to remain flexible and to optimize and evolve our business as appropriate, and we will have to accurately project demand and infrastructure requirements globally and deploy our production, workforce and other resources accordingly. For more detailed descriptions of the impact and risks to our business, please see certain risk factors described in Part I, Item 1A, Risk Factors in this Annual Report on Form 10-K.

The following section provides a narrative discussion of our financial condition and results of operations. The comments should be read in conjunction with our Consolidated Financial Statements and related Notes thereto included in Part II of this Annual Report on Form 10-K.

Results of Operations

Our Consolidated Statements of Operations financial information is as follows:

	For the Years Ended December 31,		
	2022	2021	2020
Sales, net of returns and allowances	\$ 5,023,072	\$ (851,922)	\$ 1,392,519
Cost of sales	37,672,308	132,492,110	13,067,108
Gross loss	(32,649,236)	(133,344,032)	(11,674,589)
Operating expenses			
Selling, general and administrative	73,220,088	40,160,795	20,157,658
Research and development	23,213,540	11,610,027	9,148,931
Total operating expenses	96,433,628	51,770,822	29,306,589
Loss from operations	(129,082,864)	(185,114,854)	(40,981,178)
Interest expense, net	1,837,882	12,644,164	190,520,337
Other income (loss)	13,646,528	(225,432,884)	323,111,944
(Loss) income before (benefit) provision for income taxes	(117,274,218)	(423,191,902)	91,610,429
(Benefit) provision for income taxes	—	(21,847,089)	21,833,930
Net (loss) income	\$ (117,274,218)	\$ (401,344,813)	\$ 69,776,499

Revenue

Sales increased \$5.9 million in the year ended December 31, 2022 as compared to the year ended December 31, 2021, primarily due to an increase in sales volume in 2022 compared to sales returns and allowances recorded in 2021 in connection with the recall of our C1000 vehicles announced in the third quarter of 2021.

Cost of Sales

Cost of sales includes direct and indirect materials, labor costs, manufacturing overhead, including depreciation costs of tooling and machinery, shipping and logistics costs, and reserves for estimated warranty expenses. Cost of sales also includes charges to write down the carrying amount of tooling and machinery when it exceeds the fair value of the asset or asset group, charges to write down the carrying value of our inventory when it exceeds its estimated net realizable value and to provide for obsolete and on-hand inventory in excess of forecasted demand.

Cost of sales decreased \$94.8 million in the year ended December 31, 2022 as compared to the year ended December 31, 2021. The decrease was primarily due to the shift in production to new vehicle platforms at lower volumes compared to the C1000 vehicle platform in production in 2021. The Company recognized a \$19.5 million increase in the inventory reserve and prepaid purchases reserve in 2022 associated with this vehicle platform, compared to a \$105.7 million reserve initially recognized in 2021.

Additionally, consulting costs decreased approximately \$1.6 million while manufacturing overhead decreased \$0.6 million, attributable to a decrease in volume of vehicles produced during the period related to our decision to transition to new vehicle platforms paired with the Company's decision to move to a lower production of the C-Series electric delivery truck prior to discontinuing the program in December 2022.

Selling, General and Administrative Expenses

Selling, general and administrative (“SG&A”) expenses generally consist of personnel and facilities costs related to our sales, marketing, executive, finance, human resources, information technology and legal organizations as well as fees for professional and contract services and litigation settlements.

SG&A expenses increased \$33.1 million in the year ended December 31, 2022 as compared to the year ended December 31, 2021. The increase was driven by a \$23.9 million increase in legal & professional expenses, attributable to the securities and shareholder derivative litigation. The increase was also attributable to an increase of \$11.1 million in employee and related benefit expenses, including stock compensation, due to increased headcount including the new executive leadership team.

Additionally, there was a \$1.9 million increase in corporate insurance premiums, \$1.0 million of information technology costs, and \$0.7 million of travel and entertainment costs, partially offset by a \$3.1 million reduction in consulting costs.

Research and Development Expenses

Research and development (“R&D”) expenses consist primarily of personnel costs for our teams in engineering and research, manufacturing engineering and manufacturing test organizations, prototyping expense, and contract and professional services.

R&D expenses increased \$11.6 million in the year ended December 31, 2022 as compared to the year ended December 31, 2021. The increase was primarily due to a \$6.1 million increase in employee and benefit related expenses related to an increase in headcount, a \$2.4 million increase in prototype components and a \$2.2 million increase in consulting fees to support our expanding product roadmap such as the new W56 and WNext truck chassis platforms and continuing development of our HorseFly and HALO UAVs.

Other Income (Loss)

Other income (loss) in 2022 consisted primarily of gains from the sale of scrap inventory related to obsolete C1000 vehicle parts, resulting in a gain on sale of \$13.6 million, net of \$0.5 million of selling costs. During the year ended December 31, 2021, we recognized a loss of \$225.4 million, primarily attributable to unfavorable changes in fair value and sale of our Investment in LMC, which was sold during the third quarter of 2021.

Interest Expense, Net

Interest expense, net consisted of the following:

	For the Years Ended December 31,		
	2022	2021	2020
Change in fair value of convertible notes and loss on exchange for common stock	\$ 367,357	\$ 7,324,035	\$ 160,749,118
Contractual interest expense	332,707	6,737,902	4,832,128
(Gain) on extinguishment of debt	—	(1,411,000)	—
Other	(264,682)	(6,772)	355,096
Realization of accumulated other comprehensive loss	1,402,500	—	—
Change in fair value of warrant liability	—	—	12,176,690
Amortization of discount and debt issuance costs	—	—	7,696,671
Loss on extinguishment of mandatorily redeemable Series B preferred stock	—	—	4,710,634
Total interest expense, net	<u>\$ 1,837,882</u>	<u>\$ 12,644,165</u>	<u>\$ 190,520,337</u>

Interest expense, net decreased \$10.8 million in the year ended December 31, 2022 as compared to the year ended December 31, 2021, primarily due to a reduction of \$7.0 million related to fair value adjustments and losses on conversion of our convertible notes and a \$6.4 million reduction in contractual interest expense partially offset by \$0.3 million of interest income in 2022 and a nonrecurring gain of \$1.4 million on the forgiveness of our prior PPP Term Note during the year ended December 31, 2021.

Provision for Income Tax

For the years ended December 31, 2022 and 2021, the Company has taxable losses and therefore no provision for income tax has been recorded.

Liquidity and Capital Resources

From inception, we have financed our operations primarily through sales of equity securities and issuance of debt. We have utilized this capital for research and development and to fund designing, building and delivering vehicles to customers and for working capital purposes.

We had \$5.0 million of revenues for the period ended December 31, 2022. As of December 31, 2022, the Company had \$99.3 million in cash and cash equivalents, positive working capital of \$74.9 million, accumulated deficit of \$627.6 million, and during the year ended December 31, 2022 incurred a loss from operations of \$117.3 million and used \$93.8 million of cash in operating activities. As the Company has made significant progress executing on its revised strategic product roadmap for our electric vehicle delivery offerings, we expect to generate additional sales revenue within the next twelve months which will help support our operations. Additionally, Management plans to reduce its discretionary spend related to non-contracted capital expenditures and other expenses, if necessary. However, if the expected sales are not generated and Management is not able to control capital expenditures and other expenses, we will continue to incur substantial operating losses and negative cash flows from operations. There can be no assurance that the Company will be successful in implementing its plans or acquiring additional funding, that the Company's projections of its future working capital needs will prove accurate, or that any additional funding would be sufficient to continue operations in future years.

Our annual cash burn has decreased compared to prior periods, which we expect to continue in the year ending December 31, 2023, despite increased working capital requirements and research and development activities.

We will be primarily reliant upon a private or public placement of our equity securities, including the At-the-Market Program, for which there can be no assurance we will be successful in such efforts. If we are unable to maintain sufficient financial resources, our business, financial condition and results of operations, as well as our ability to continue to develop, produce and market our new vehicle platforms, will be materially and adversely affected. This could affect future vehicle program production and sales. Failure to obtain additional equity financing will have a material, adverse impact on the Company's business operations. There can be no assurance that we will be able to obtain the financing needed to achieve our goals on acceptable terms or at all. Additionally, any equity financings would likely have a dilutive effect on the holdings of the Company's existing stockholders.

Cash Requirements

From time to time in the ordinary course of business, we enter into agreements with vendors for the purchase of components and raw materials to be used in the manufacture of our products. However, due to contractual terms, variability in the precise growth curves of our development and production ramps, and opportunities to renegotiate pricing, we generally do not have binding and enforceable purchase orders under such contracts beyond the short term, and the timing and magnitude of purchase orders beyond such period is difficult to accurately project.

We currently expect our capital expenditures to upgrade our facilities in Indiana, Ohio and Michigan to be between \$15.0 and \$25.0 million in 2023.

Sources and Condition of Liquidity

With the exception of contingent and royalty payments that we may receive under our existing agreements, we do not currently have any committed future funding. To the extent we raise additional capital by issuing equity securities, our stockholders could at that time experience substantial dilution. Any debt financing that we can obtain may involve operating covenants that restrict our business.

Our future funding requirements will depend upon many factors, including, but not limited to:

- our ability to acquire or license other technologies that we may seek to pursue;
- our ability to manage our growth;
- competing technological and market developments;
- the costs and timing of obtaining, enforcing and defending our patent and other intellectual property rights; and
- expenses associated with any litigation or regulatory proceedings.

For the years ended December 31, 2022 and 2021, we maintained an investment in a bank money market fund and a cash investment account. Cash in excess of immediate requirements is invested with regard to liquidity and capital preservation. Wherever possible, we seek to minimize the potential effects of concentration and degrees of risk. We will continue to monitor

the impact of the changes in the conditions of the credit and financial markets to our investment portfolio and assess if future changes in our investment strategy are necessary.

On March 10, 2022, we entered into an At-the-Market Sales Agreement, which established an at-the-market equity program (the “ATM Program”). Under the ATM Program, we may offer and sell shares of our common stock having an aggregate sales price of up to \$175.0 million, in amounts and at times determined by management. During the year ended December 31, 2022, we issued 4.9 million shares under the ATM Program for net proceeds of \$12.9 million, leaving shares of common stock having an aggregate offering price of up to \$162.1 million available for issuance under the ATM Program.

Summary of Cash Flows

	For the Years Ended December 31,		
	2022	2021	2020
Net cash used in operating activities	\$ (93,818,664)	\$ (132,577,103)	\$ (70,278,949)
Net cash (used in) provided by investing activities	(20,019,519)	99,812,549	(5,728,130)
Net cash provided by (used in) financing activities	11,467,090	(6,817,119)	292,367,730

Cash Flows from Operating Activities

Our cash flows from operating activities are affected by our cash investments to support the business in research and development, manufacturing, selling, general and administration. Our operating cash flows are also affected by our working capital needs to support fluctuations in inventory, personnel expenses, accounts payable and other current assets and liabilities.

During the years ended December 31, 2022 and 2021, net cash used in operating activities was \$93.8 million and \$132.6 million, respectively. The decrease in net cash used in operations in 2022 as compared to 2021 was primarily attributable to a decrease in inventory build and labor related costs related to our transition to new vehicle platforms which were at lower volumes when compared to the production, inventory build and employee and labor related costs of the C1000 program in 2021.

Cash Flows from Investing Activities

During the years ended December 31, 2022, net cash used in investing activities was \$20.0 million compared to net cash provided of \$99.8 million in 2021. The net cash used in investing activities was primarily attributable to spend related to our capital expenditures and investment in Tropos.

Cash Flows from Financing Activities

During the year ended December 31, 2022, net cash provided by financing activities was \$11.5 million compared to net cash used of \$6.8 million in 2021. Net cash provided by financing activities in 2022 was primarily attributable to the issuance of common stock under our ATM Program which provided net proceeds of approximately \$12.9 million, compared to \$4.4 million used in 2021 for the exercise of stock options and warrants.

Off-Balance Sheet Arrangements

The Company does not have any off-balance sheet arrangements that have or are reasonably likely to have a current or future effect on the Company’s financial condition, changes in financial condition, revenues or expenses, results of operations, liquidity, capital expenditures or capital resources that are material to investors.

Critical Accounting Estimates

We consider an accounting estimate to be critical if: (1) the accounting estimate requires us to make assumptions about matters that were highly uncertain at the time the accounting estimate was made, and (2) changes in the estimate that are reasonably likely to occur from period to period, or use of different estimates that we reasonably could have used in the current period, would have a material impact on our financial condition or results of operations.

There are other items within our financial statements that require estimation but are not deemed critical as defined above.

The consolidated financial statements are prepared in accordance with accounting principles generally accepted in the U.S. (“GAAP”). The preparation of the consolidated financial statements in conformity with GAAP requires us to make estimates and assumptions that affect certain reported amounts and disclosures. We base our estimates on historical experience, as appropriate, and on various other assumptions that we believe to be reasonable under the circumstances. Accordingly, actual results could differ from those estimates. We evaluate our estimates and assumptions on an ongoing basis. To the extent that there are material differences between these estimates and actual results, our future financial statement presentation, financial condition, results of operations and cash flows may be affected.

Inventory Valuation

Nature of Valuation: Inventories are stated at the lower of cost or net realizable value. We write-down inventory for any excess or obsolete inventories or when we believe the net realizable value of inventories is less than the carrying value.

Assumptions and Approach Used: We review our inventory to determine whether its carrying value exceeds the net amount realizable upon the ultimate sale of the inventory. This requires us to determine the estimated selling price of our inventory based on market conditions. Once inventory is written-down, a new, lower cost basis for that inventory is established and subsequent changes in facts and circumstances do not result in the restoration or increase in that newly established cost basis.

The following are key assumptions we used in establishing inventory reserves:

- *Business projections:* We make assumptions about the demand for our products in the marketplace. These assumptions drive our planning assumptions for volume, mix, and pricing. A change in our planned production volumes can materially impact the estimate of excess and obsolete inventories.
- *Economic projections:* Assumptions regarding general economic conditions are included in and affect our assumptions regarding sales and pricing estimates for our vehicles. Additionally, these assumptions affect our ability to sell inventories on hand in the open market. These assumptions include sales volume, inflation, and prices of raw materials. A change in economic conditions can materially impact the estimate of the net realizable value of inventories.

Should our estimates of future inventory usage or selling prices change, additional and potentially material increases to this reserve may be required. A small change in our estimates may result in a material charge to our reported financial results. Refer to Note 2, *Inventory*, to the consolidated financial statements for information regarding inventory valuation.

Warranty Liability

Nature of Estimates Required: We provide base warranties on the products we sell for specific periods of time and/or mileage, which vary depending upon the type of product. Separately, we also periodically perform field service actions related to safety recalls and other product campaigns. Pursuant to these warranties and field service actions, we will repair, replace, or adjust parts on a vehicle that are defective in factory-supplied materials or workmanship. We accrue the estimated cost of both base warranty coverages and field service actions at the time of sale. In addition, from time to time, we issue extended warranties at our expense, the estimated cost of which is accrued at the time of issuance.

Assumptions and Approach Used: Provisions for estimated assurance warranties are recorded at the time of sale and are periodically adjusted to reflect actual experience. The amount of warranty liability accrued reflects management’s best estimate of the expected future cost of honoring Company obligations under the warranty plans. Historically, the cost of fulfilling the Company’s warranty obligations has principally involved replacement parts, labor and sometimes travel for any field retrofit campaigns. The Company’s estimates are based on historical experience, the extent of pre-production testing, the number of units involved and the extent of features/components included in product models. Also, each quarter, the Company reviews actual warranty claims experience to determine if there are systemic defects that would require a field campaign.

Field service actions may occur in periods beyond the base warranty coverage period. We use historical information regarding the nature, frequency, severity, and average cost of claims for each model year to establish our estimates. We assess our obligation for field service actions on a regular basis using actual claims experience and update our estimates as necessary.

Due to the uncertainty and potential volatility of the factors used in establishing our estimates, changes in our assumptions could materially affect our financial condition and results of operations. Refer to Note 1, Summary of Business and Significant Accounting Principles, to the consolidated financial statements for information regarding warranty and field service action costs.

Income Taxes

Nature of Estimates Required: We must make estimates and apply judgment in determining the provision for income taxes for financial reporting purposes. We make these estimates and judgments primarily in the following areas: (i) the calculation of tax credits, (ii) the calculation of differences in the timing of recognition of revenue and expense for tax reporting and financial statement purposes, as well as (iii) the calculation of interest and penalties related to uncertain tax positions. Changes in these estimates and judgments may result in a material increase or decrease to our tax provision, which would be recorded in the period in which the change occurs.

Assumptions and Approach Used: We are subject to the income tax laws and regulations of state and local jurisdictions in which we operate. We account for income taxes under the asset and liability method. These tax laws and regulations are complex and involve uncertainties in the application to our facts and circumstances that may be open to interpretation. We recognize benefits for these uncertain tax positions based upon a process that requires judgment regarding the technical application of the laws, regulations, and various related judicial opinions. If, in our judgment, it is more likely than not (defined as a likelihood of more than 50%) that the uncertain tax position will be settled favorably for us, we estimate an amount that ultimately will be realized. This process is inherently subjective since it requires our assessment of the probability of future outcomes. We evaluate these uncertain tax positions on a quarterly basis, including consideration of changes in facts and circumstances, such as new regulations or recent judicial opinions, as well as the status of audit activities by taxing authorities. Changes to our estimate of the amount to be realized are recorded in our provision for income taxes during the period in which the change occurred.

We must also assess the likelihood that we will be able to recover our deferred tax assets against future sources of taxable income and reduce the carrying amount of deferred tax assets by recording a valuation allowance if, based on all available evidence, it is more likely than not that all or a portion of such assets will not be realized. Refer to Note 11, Income Taxes, to the consolidated financial statements for information regarding the income tax provision.

Recent Accounting Pronouncements

See Note 14, *Recent Pronouncements*, to the consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

The primary objective of our investment activities is to preserve principal while at the same time maximizing the income we receive from our investments without significantly increasing risk. Some of the securities in which we invest may have market risk. This means that a change in prevailing interest rates may cause the fair value amount of the investment to fluctuate. For example, if we hold a security that was issued with a fixed interest rate at the then-prevailing rate and the prevailing interest rate later rises, the market value amount of our investment will decline. To minimize this risk, we maintain our portfolio of cash equivalents and short-term investments in a variety of securities, including money market funds and government and non-government debt securities and the maturities of each of these instruments is less than one year. In 2022, we maintained an investment portfolio primarily in money market funds. Due to the primarily short-term nature and low interest rate yields of these investments, we believe we do not have a material exposure to interest rate risk and market risk arising from our investments. Therefore, no quantitative tabular disclosure is provided.

We transact business primarily in the United States. Accordingly, we have not had any significant exposure to foreign currency rate fluctuations.

For further information about our equity investments, please refer to Note 3 and 5 of the Notes to Consolidated Financial Statements included in Part II of this Annual Report on Form 10-K.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

Board of Directors and Shareholders
Workhorse Group Inc.

Opinion on the financial statements

We have audited the accompanying consolidated balance sheets of Workhorse Group Inc. (a Nevada corporation) and subsidiaries (the "Company") as of December 31, 2022 and 2021, the related consolidated statements of operations, comprehensive (loss) income, stockholders' equity (deficit), and cash flows for each of the three years in the period ended December 31, 2022, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2022 and 2021, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2022, in conformity with accounting principles generally accepted in the United States of America.

Basis for opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) ("PCAOB") and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud. The Company is not required to have, nor were we engaged to perform, an audit of its internal control over financial reporting. As part of our audits we are required to obtain an understanding of internal control over financial reporting but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion.

Our audits included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical audit matters

The critical audit matter communicated below is a matter arising from the current period audit of the financial statements that was communicated or required to be communicated to the audit committee and that: (1) relates to accounts or disclosures that are material to the financial statements and (2) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

As described further in Note 1 to the consolidated financial statements, adjustments are made to inventory for any excess or obsolete inventories or when the net realizable value of inventories is less than the carrying value. The Company reviews inventory to determine whether its carrying value exceeds the net amount realizable upon the ultimate sale of the inventory. This requires the Company to determine the estimated selling price of inventory based on planned usage and market conditions. We identified the inventory reserves as a critical audit matter.

The principal considerations for our determination that the inventory reserve represents a critical audit matter is that the assessment of the valuation of inventory is complex and includes an estimate of inventory that can be used in production and estimated selling prices of finished goods. The estimates are subjective and require the Company to consider significant assumptions such as estimated selling prices of vehicles, production plans, the value of inventory on-hand to support those plans, and reserve percentages applied, all of which are subject to significant uncertainty and therefore, require significant auditor judgment.

Our audit procedures related to the inventory reserve included the following, among others:

- We obtained management's analysis of raw materials and expected use of on-hand products, recalculated inputs into the analysis, and tested for completeness and accuracy. This included, among other inputs, bills of materials and general ledger balances.
- We evaluated the appropriateness of reserve percentages applied to categories of on-hand raw materials and performed recalculations of management's analysis, including testing the completeness and accuracy of those inventory categories being reserved against.
- We made inquiries of management and evaluated the appropriateness of judgments, assumptions and documentation supporting adjustments to the net value of inventory.
- We evaluated the appropriateness of the estimated selling prices of finished goods and ensured those selling prices exceeded cost values of on-hand inventory.
- We evaluated the design of controls related the inventory reserve.

/s/ GRANT THORNTON LLP

We have served as the Company's auditor since 2018.

Cincinnati, Ohio
March 1, 2023

Workhorse Group Inc.
Consolidated Balance Sheets

	December 31,	
	2022	2021
Assets		
Current assets:		
Cash and cash equivalents	\$ 99,276,301	\$ 201,647,394
Accounts receivable, less allowance for credit losses of \$0 at December 31, 2022 and 2021	2,079,343	149,776
Other receivable	15,000,000	—
Inventory, net	8,850,142	10,067,367
Prepaid expenses and other current assets	14,152,481	4,357,829
Total current assets	139,358,267	216,222,366
Property, plant and equipment, net	21,501,095	7,897,807
Investment in Tropos	10,000,000	—
Lease right-of-use assets	11,706,803	1,538,852
Other assets	176,310	2,479,865
Total Assets	\$ 182,742,475	\$ 228,138,890
Liabilities		
Current liabilities:		
Accounts payable	\$ 11,891,279	\$ 7,849,607
Accrued liabilities and other	44,551,497	14,752,827
Deferred revenue, current	3,375,000	—
Warranty liability	2,207,674	4,583,916
Current portion of lease liability	1,285,032	363,714
Total current liabilities	63,310,482	27,550,064
Deferred revenue, long-term	2,005,000	—
Lease liability, long-term	8,840,062	1,191,053
Convertible notes, at fair value	—	24,705,000
Total Liabilities	74,155,544	53,446,117
Commitments and contingencies		
Stockholders' Equity:		
Series A preferred stock, par value of \$0.001 per share, 75,000,000 shares authorized, zero shares issued and outstanding at December 31, 2022 and 2021	—	—
Common stock, par value of \$0.001 per share, 250,000,000 shares authorized, 165,605,355 and 151,915,455 shares issued and outstanding at December 31, 2022 and 2021, respectively	165,605	151,916
Additional paid-in capital	736,070,388	686,318,201
Accumulated deficit	(627,649,062)	(510,374,844)
Accumulated other comprehensive loss	—	(1,402,500)
Total stockholders' equity	108,586,931	174,692,773
Total Liabilities and Stockholders' Equity	\$ 182,742,475	\$ 228,138,890

See accompanying notes to the consolidated financial statements.

Workhorse Group Inc.
Consolidated Statements of Operations

	For the Years Ended December 31,		
	2022	2021	2020
Sales, net of returns and allowances	\$ 5,023,072	\$ (851,922)	\$ 1,392,519
Cost of sales	37,672,308	132,492,110	13,067,108
Gross loss	<u>(32,649,236)</u>	<u>(133,344,032)</u>	<u>(11,674,589)</u>
Operating expenses			
Selling, general and administrative	73,220,088	40,160,795	20,157,658
Research and development	23,213,540	11,610,027	9,148,931
Total operating expenses	<u>96,433,628</u>	<u>51,770,822</u>	<u>29,306,589</u>
Loss from operations	(129,082,864)	(185,114,854)	(40,981,178)
Interest expense, net	1,837,882	12,644,164	190,520,337
Other income (loss)	13,646,528	(225,432,884)	323,111,944
(Loss) income before (benefit) provision for income taxes	<u>(117,274,218)</u>	<u>(423,191,902)</u>	<u>91,610,429</u>
(Benefit) provision for income taxes	—	(21,847,089)	21,833,930
Net (loss) income	<u>\$ (117,274,218)</u>	<u>\$ (401,344,813)</u>	<u>\$ 69,776,499</u>
Net (loss) income attributable to common stockholders per share - basic	<u>\$ (0.74)</u>	<u>\$ (3.12)</u>	<u>\$ 0.75</u>
Net (loss) income attributable to common stockholders per share - diluted	<u>\$ (0.74)</u>	<u>\$ (3.12)</u>	<u>\$ 0.70</u>
Weighted average number of common shares outstanding - basic	<u>158,576,305</u>	<u>128,676,131</u>	<u>92,871,936</u>
Weighted average number of common shares outstanding - diluted	<u>158,576,305</u>	<u>128,676,131</u>	<u>99,949,868</u>

See accompanying notes to the consolidated financial statements.

Workhorse Group Inc.
Consolidated Statements of Comprehensive (Loss) Income

	For the Years Ended December 31,		
	2022	2021	2020
Net (loss) income	\$ (117,274,218)	\$ (401,344,813)	\$ 69,776,499
Other comprehensive loss			
Change in fair value of convertible notes attributable to credit spread	1,402,500	(1,402,500)	—
Comprehensive (loss) income	<u>\$ (115,871,718)</u>	<u>\$ (402,747,313)</u>	<u>\$ 69,776,499</u>

See accompanying notes to the consolidated financial statements.

Workhorse Group Inc.
Consolidated Statements of Stockholders' Equity (Deficit)
For the Years Ended December 31, 2022, 2021 and 2020

	Common Stock		Series A Preferred Stock		Additional Paid-in Capital	Accumulated Deficit	Accumulated Other Comprehensive Loss	Total Stockholders' Equity (Deficit)
	Number of Shares	Amount	Number of Shares	Amount				
Balance as of December 31, 2019	67,105,000	67,105	—	—	143,826,315	(178,806,530)	—	(34,913,110)
Stock options and warrants exercised, and vesting of restricted shares	33,932,827	33,933	—	—	82,059,699	—	—	82,093,632
Common stock issued for preferred stock dividends	920,901	922	—	—	1,490,938	—	—	1,491,860
Conversion of convertible notes	19,605,013	19,605	—	—	270,775,079	—	—	270,794,684
Common stock issued for interest on convertible notes	358,791	358	—	—	1,939,606	—	—	1,939,964
Stock-based compensation	—	—	—	—	4,020,805	—	—	4,020,805
Net income for the year ended December 31, 2019	—	—	—	—	—	69,776,499	—	69,776,499
Balance as of December 31, 2020	121,922,532	121,923	—	—	504,112,442	(109,030,031)	—	395,204,334
Stock options and warrants exercised, and vesting of restricted shares*	2,281,393	2,281	—	—	(4,431,444)	—	—	(4,429,163)
Conversion of convertible notes	27,711,530	27,712	—	—	181,693,823	—	—	181,721,535
Stock-based compensation	—	—	—	—	4,943,380	—	—	4,943,380
Net loss for the year ended December 31, 2021	—	—	—	—	—	(401,344,813)	—	(401,344,813)
Other comprehensive loss	—	—	—	—	—	—	(1,402,500)	(1,402,500)
Balance as of December 31, 2021	151,915,455	151,916	—	—	686,318,201	(510,374,844)	(1,402,500)	174,692,773
Common stock issued under ATM	4,889,986	4,890	—	—	12,879,353	—	—	12,884,243
Common stock issued for service providers	244,035	244	—	—	599,738	—	—	599,982
Stock options exercised, and vesting of restricted shares *	722,213	721	—	—	(560,358)	—	—	(559,637)
Conversion of convertible notes	7,833,666	7,834	—	—	25,373,243	—	—	25,381,077
Stock-based compensation	—	—	—	—	11,460,211	—	—	11,460,211
Net loss for the year ended December 31, 2022	—	—	—	—	—	(117,274,218)	—	(117,274,218)
Other comprehensive income	—	—	—	—	—	—	1,402,500	1,402,500
Balance as of December 31, 2022	165,605,355	\$ 165,605	—	\$ —	\$ 736,070,388	\$ (627,649,062)	\$ —	\$ 108,586,931

* Net of tax payments related to shares withheld for option exercises and vested stock.

See accompanying notes to the consolidated financial statements.

Workhorse Group Inc.
Consolidated Statements of Cash Flows

	For the Years Ended December 31,		
	2022	2021	2020
Cash flows from operating activities:			
Net (loss) income	\$ (117,274,218)	\$ (401,344,813)	\$ 69,776,499
Adjustments to reconcile net (loss) income to net cash used in operations:			
Depreciation	1,945,212	1,908,419	809,645
Amortization of discount and debt issuance costs on convertible notes and long-term debt	—	—	6,550,212
Amortization of discount and loss on redemption of mandatorily redeemable Series B preferred stock	—	—	5,857,092
Change in fair value of convertible notes and loss on conversion to common stock	1,769,857	7,324,035	160,749,118
Change in fair value of warrant liability	—	—	12,176,690
Change in fair value of investment in LMC	—	225,429,997	(318,361,944)
Deferred revenue	500,000	—	—
Dividends for mandatorily redeemable Series B preferred stock paid in common stock	—	—	1,491,860
Gain on sale of property, plant & equipment	379,406	—	—
Interest on convertible notes paid in common stock	—	—	1,939,964
Stock-based compensation	11,460,211	4,943,380	4,020,805
Reserve of inventory and prepaid purchases	17,716,995	98,918,102	—
Impairment of property, plant and equipment	—	6,803,280	—
Forgiveness of PPP Term Note	—	(1,411,000)	—
Deferred tax (benefit) expense	—	(21,833,930)	21,833,930
Non-cash lease expense	1,092,473	—	—
Other non-cash items	599,982	102,858	350,500
Effects of changes in operating assets and liabilities:			
Accounts receivable	(16,929,567)	982,388	(961,966)
Inventory	(16,629,172)	(69,606,432)	(13,668,866)
Prepaid expenses and other current assets	(9,665,250)	4,489,362	(27,947,128)
Other assets	(84,401)	(91,909)	—
Accounts payable and accrued liabilities	33,676,050	11,832,284	5,499,464
Warranty liability	(2,376,242)	(816,084)	(601,864)
Other long-term liabilities	—	(207,040)	207,040
Net cash used in operating activities	(93,818,664)	(132,577,103)	(70,278,949)
Cash flows from investing activities:			
Capital expenditures	(17,496,795)	(5,314,198)	(5,728,130)
Investment in Tropos	(5,000,000)	—	—
Proceeds from sale of fixed assets	2,477,276	—	—
Proceeds from sale of Investment in LMC	—	105,126,747	—
Net cash (used in) provided by investing activities	(20,019,519)	99,812,549	(5,728,130)
Cash flows from financing activities:			
Proceeds from notes payable and debt	—	—	1,411,000
Redemptions of mandatorily redeemable Series B preferred stock	—	—	(25,000,000)
Proceeds from issuance of convertible notes	—	—	262,374,788
Proceeds from issuance of common stock	12,884,243	—	—
Exercise of warrants and options and restricted share award activity	(559,637)	(4,429,163)	53,581,942
Other	(857,516)	(2,387,956)	—
Net cash provided by (used in) financing activities	11,467,090	(6,817,119)	292,367,730
Change in cash, cash equivalents and restricted cash	(102,371,093)	(39,581,673)	216,360,651
Cash, cash equivalents and restricted cash, beginning of the year	201,647,394	241,229,067	24,868,416
Cash, cash equivalents and restricted cash, end of the year	\$ 99,276,301	\$ 201,647,394	\$ 241,229,067

See accompanying notes to the consolidated financial statements.

Supplemental disclosure of non-cash activities:

	December 31,	
	2022	2021
Investment in Tropos in exchange for non-cash deferred revenue	\$ 5,000,000	\$ —
Fee paid to service partners in common stock	599,891	—

During the year ended December 31, 2022 and 2021, cash paid for contractual interest on our convertible notes was \$0.3 and \$8.2 million, respectively.

During the year ended December 31, 2020, cash paid for interest was approximately \$2.7 million, which consisted of \$7.6 million of direct costs incurred in connection with the issuance of our convertible notes, \$4.7 million loss on redemption of our Series B Preferred Stock, and \$0.4 million of financing fees.

During the year ended December 31, 2022, the Company issued approximately 7.8 million shares of common stock in connection with the conversion of convertible notes, which were valued at approximately \$25.4 million. The Company recognized the conversion as an adjustment to Additional Paid-In Capital, with the offset as a reduction to the fair value of the convertible notes.

During the year ended December 31, 2021, the Company issued approximately 27.7 million shares of common stock in connection with the conversion of convertible notes, which were valued at approximately \$181.7 million. The Company recognized the conversion as an adjustment to Additional Paid-In Capital, with the offset as a reduction to the fair value of the convertible notes.

See accompanying notes to the consolidated financial statements.

Workhorse Group Inc.
Notes to Consolidated Financial Statements

1. SUMMARY OF BUSINESS AND SIGNIFICANT ACCOUNTING PRINCIPLES

Overview

We are an American technology company with a vision to pioneer the transition to zero-emission commercial vehicles. Our primary focus is to provide sustainable and cost-effective solutions to the commercial transportation sector. We design and manufacture all-electric delivery trucks and drone systems, including the technology that optimizes the way these vehicles operate. We are focused on our core competency of bringing our electric delivery vehicle platforms to market.

Liquidity and Capital Resources

The Company had revenues of \$5.0 million for the period ended December 31, 2022. As of December 31, 2022, the Company had \$99.3 million in cash and cash equivalents, positive working capital of \$74.9 million, accumulated deficit of \$627.6 million, and during the year ended December 31, 2022 incurred a net loss of \$17.3 million and used \$93.8 million of cash in operating activities.

As the Company has made significant progress executing on its revised strategic product roadmap for our electric vehicle delivery offerings, we expect to generate additional sales revenue within the next twelve months which will help support our operations. Additionally, Management plans to reduce its discretionary spend related to non-contracted capital expenditures and other expenses, if necessary. These plans alleviated the substantial doubt about the Company's ability to continue as a going concern caused by the significant losses from operations and cash used in operating activities. However, if the expected sales are not generated and Management is not able to control capital expenditures and other expenses, we will continue to incur substantial operating losses and negative cash flows from operations. There can be no assurance that the Company will be successful in implementing its plans or acquiring additional funding, that the Company's projections of its future working capital needs will prove accurate, or that any additional funding would be sufficient to continue operations in future years.

The Company's future liquidity and working capital requirements will depend on numerous factors, including, the ability to generate sales, the ability to control capital expenditures and other expenses, and the ability to raise funds via private or public placement of our equity securities.

The Company intends to raise additional funds through issuance of equity, including through the At-The-Market Program. If the Company is unable to maintain sufficient financial resources, its business, financial condition and results of operations will be materially and adversely affected. This could affect future vehicle program production and sales. Failure to obtain additional equity financing will have a material, adverse impact on the Company's business operations. There can be no assurance that the Company will be able to obtain the needed financing on acceptable terms or at all. Additionally, any equity financings would likely have a dilutive effect on the holdings of the Company's existing stockholders.

Principles of Consolidation

The accompanying consolidated financial statements have been prepared in conformity with U.S. generally accepted accounting principles ("GAAP") and reflect our accounts and operations and those of our wholly-owned subsidiaries. All intercompany balances and transactions have been eliminated upon consolidation.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts used for, but not limited to, collectability of accounts receivable, inventory valuation, warranties, leases and related disclosures in the accompanying notes.

We have assessed the impact of the COVID-19 pandemic and are not aware of any specific events or circumstances that required an update to our estimates and assumptions or materially affected the carrying value of our assets or liabilities as of the date of this Annual Report on Form 10-K. These estimates may change as new events occur and additional information is obtained. Actual results could differ from these estimates under different assumptions and conditions.

Cash and Cash Equivalents

All highly liquid investments with an original maturity of three months or less at the date of acquisition are considered cash equivalents.

Accounts Receivable and Allowance for Credit Loss

Accounts receivable primarily include amounts related to sales of our products and services rendered. We provide an allowance against accounts receivable for the amount we expect to be uncollectible. We write-off accounts receivable against the allowance when they are deemed uncollectible.

Inventory Valuation

Inventories are stated at the lower of cost or net realizable value. We write-down inventory for any excess or obsolete inventories or when we believe the net realizable value of inventories is less than the carrying value. We review our inventory to determine whether its carrying value exceeds the net amount realizable upon the ultimate sale of the inventory. This requires us to determine the estimated selling price of our inventory based on market conditions. Once inventory is written-down, a new, lower cost basis for that inventory is established and subsequent changes in facts and circumstances do not result in the restoration or increase in that newly established cost basis.

Should our estimates of future inventory usage or selling prices change, additional and potentially material increases to this reserve may be required. A small change in our estimates may result in a material charge to our reported financial results.

The Company has a bill and hold arrangement related to the sale of inventory during the year ended December 31, 2022. Other income was recognized when control transfers to the purchaser, as the bill-and-hold arrangement is requested from the customer, the product is identified as belonging to the customer and is ready for physical transfer, and the product cannot be directed for use by anyone other than the purchaser. See Note 2, *Inventory*, of the Consolidated Financial Statements for additional information on the sale of inventory.

Property, Plant and Equipment, Net

Property, plant and equipment, net, including leasehold improvements, are recognized at cost less accumulated depreciation. Depreciation is computed using the straight-line method over the estimated useful lives of the respective assets, as follows:

Buildings and improvements	15 - 39 years
Land improvements	15 years
Equipment and vehicles	3 - 7 years
Tooling	5 years

Leasehold improvements are depreciated on a straight-line basis over the shorter of their estimated useful lives or the term of the related leases.

Upon the retirement or sale of our property, plant and equipment, the cost and associated accumulated depreciation are removed from the consolidated balance sheet, and the resulting gain or loss is reflected on the consolidated statement of operations. Maintenance and repair expenditures are expensed as incurred while major improvements that increase the functionality, output or expected life of an asset are capitalized and depreciated ratably over the identified useful life.

Impairment of Long-Lived Assets

Long-lived assets, such as property, plant, and equipment are reviewed for potential impairment whenever events or changes in circumstances indicate the carrying amount of an asset or asset group may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset or asset group to estimated undiscounted future cash flows expected to be generated by the asset or asset group. If the carrying amount of an asset or asset group exceeds its estimated undiscounted future cash flows, an impairment charge is recognized by the amount by which the carrying amount of the asset or asset group exceeds the fair value of the asset or asset group.

Valuation of Investment

As permitted under ASC 321, *Equity Securities*, the Company has elected to account for its investment in Tropos, an equity investment without a readily determinable fair value, at its cost minus impairment, which there is none. In accordance, with ASC 321, the Company evaluates the investment for impairment each period and reassess if the equity security does not have a readily determinable fair value.

We had an investment in Class A Common Stock of Lordstown Motor Corp. (“LMC”) which began trading on the Nasdaq Global Select market under the ticker symbol “RIDE” on October 26, 2020. We sold our investment during the third quarter of 2021.

Warranty Liability

We generally offer warranty coverage for our products. We accrue warranty related costs under standard warranty terms and for certain claims outside the contractual obligation period that we choose to pay as accommodations to our customers.

Provisions for estimated assurance warranties are recorded at the time of sale and are periodically adjusted to reflect actual experience. The amount of warranty liability accrued reflects management’s best estimate of the expected future cost of honoring Company obligations under the warranty plans. Historically, the cost of fulfilling the Company’s warranty obligations has principally involved replacement parts, towing and transportation costs, labor and sometimes travel for any field retrofit campaigns. The Company’s estimates are based on historical experience, the extent of pre-production testing, the number of units involved and the extent of features/components included in product models. The Company reviews actual warranty claims experience to determine if there are systemic defects that would require a field campaign.

Although we believe the estimates and judgments discussed herein are reasonable, actual results could differ and we may be exposed to increases or decreases in our warranty liability accrual that could be material.

Activity for the Company's warranty liability accrual is as follows:

	December 31,	
	2022	2021
Balance, beginning of year	\$ 4,583,916	\$ 5,400,000
Accrual for warranty ⁽¹⁾	(987,701)	1,045,578
Warranty costs incurred	(1,388,541)	(1,861,662)
Balance, end of year	<u>\$ 2,207,674</u>	<u>\$ 4,583,916</u>

⁽¹⁾The decrease to the warranty liability accrual in 2022 primary relates to a decreased volume of vehicles covered under warranty as well as a lower liability per vehicle as compared to 2021.

Fair Value Option

As permitted under ASC 825, *Financial Instruments*, the Company elected the fair value option to account for its convertible notes. In accordance with ASC 825, the Company recorded its convertible notes at fair value with changes in fair value recorded in Interest Expense in the Consolidated Statement of Operations. As a result of applying the fair value option, direct costs and fees related to the convertible notes were recognized in earnings as incurred and not deferred. During 2022, the Company exchanged the aggregate principal of the 2024 Notes for shares of the Company’s common stock, resulting in a contractual principal balance of the 2024 Notes as of December 31, 2022 of zero.

Income Taxes

We file a consolidated U.S. federal income tax return and separate state and local income tax returns. We account for income taxes under the asset and liability method. Deferred tax assets and liabilities are recognized for the future tax consequences attributable to temporary differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and tax benefit carryforwards. Deferred tax assets and liabilities at the end of each period are determined using enacted tax rates. A valuation allowance is established or maintained when, based on currently available information, it is more likely than not all or a portion of a deferred tax asset will not be realized.

We recognize the tax benefit from an uncertain tax position claimed or expected to be claimed on a tax return only if it is more likely than not that the tax position will be sustained on examination by taxing authorities, based on the technical merits of the position. The tax benefits recognized in the Consolidated Financial Statements from such a position are measured based on the largest benefit that has a greater than fifty percent likelihood of being realized upon ultimate settlement.

Revenue Recognition

Revenue is recognized when obligations under the terms of a contract with our customer are satisfied; generally this occurs when we transfer control of our vehicles, parts, or accessories, or provide services. Revenue is measured as the amount of consideration we expect to receive in exchange for transferring goods or providing services. For the majority of sales, this occurs when products are shipped from our manufacturing facility. At the time of revenue recognition, we reduce the transaction price and record a sales return reserve against revenue for estimated variable considerations related to future product returns. Such estimates are based on an analysis of known pending returns and historical experience. We adjust our estimate of revenue at the earlier of when the value of consideration we expect to receive changes or when the consideration becomes fixed.

Sales and other taxes we collect concurrent with revenue-producing activities are excluded from revenue. Incidental items that are immaterial in the context of the contract are recognized as expense. The expected costs associated with our base warranties and field service actions are recognized as expense when the products are sold. We do not have any material significant payment terms as payment is received at or shortly after the point of sale.

Revenue related to extended service contracts are recognized over the term of the agreement in proportion to the costs we expect to incur in satisfying the contract obligations.

We have elected to recognize the cost for freight and shipping when control over vehicles, parts, or accessories have transferred to the customer as an expense in Cost of Sales.

Deferred revenue is related to any non-refundable amounts that are collected from customers related to our unsatisfied assembly services. Deferred revenue is recognized as revenue as the performance obligations are satisfied.

Deferred revenue is equivalent to the total service fee allocated to the assembly service performance obligations that are unsatisfied as of the balance sheet date.

Cost of Sales

Cost of sales include direct parts, material and labor costs, manufacturing overhead, including depreciation costs of tooling and machinery, shipping and logistics costs, and reserves for estimated warranty expenses. Cost of sales also includes charges to write down the carrying value of our inventory when it exceeds its estimated net realizable value and to provide for obsolete and on-hand inventory in excess of forecasted demand.

Research and Development Costs

Research and development costs are expensed as incurred.

Marketing, Promotional and Advertising Costs

Marketing, promotional and advertising costs are expensed as incurred and are included as an element of selling, general and administrative expense in the consolidated statement of operations.

Comprehensive Income (Loss)

Comprehensive income (loss) is comprised of adjustments to the fair value of our convertible notes due to changes in credit risk.

Stock-Based Compensation

We recognize compensation expense for costs related to all stock-based arrangements, including stock options, restricted stock awards (“RSA”) and performance-based share units (“PBSUs”). The fair value of stock option awards with only service conditions is estimated on the grant or offering date using the Black-Scholes option-pricing model. The fair value of RSAs is measured on the grant date based on the closing fair market value of our common stock. The fair value of PBSUs is estimated using a Monte-Carlo simulation model. Stock-based compensation expense is recognized on a straight-line basis over the requisite service period, net of actual forfeitures in the period.

As we issue additional employee stock-based awards over time and as we incorporate additional market data related to our common stock, we may calculate significantly different volatilities and expected lives, which could materially impact the valuation of our stock-based awards and the stock-based compensation expense that we will recognize in future periods. Stock-

based compensation expense is recorded in Selling, General and Administrative Expense in the Consolidated Statements of Operations.

Net Income (Loss) per Share of Common Stock

Basic income (loss) per share of common stock is calculated by dividing net income (loss) by the weighted-average shares outstanding for the period. Potentially dilutive shares, which are based on the weighted-average shares of common stock underlying outstanding stock-based awards and warrants using the treasury stock method, and convertible notes using the if-converted method, are included when calculating the diluted net loss per share of common stock when their effect is dilutive.

The following table presents the reconciliation of net (loss) income and reconciliation of basic and diluted weighted average shares outstanding used in computing diluted net loss per share of common stock:

	Year Ended December 31,		
	2022	2021	2020
Net (loss) income	\$ (117,274,218)	\$ (401,344,813)	\$ 69,776,499
Basic weighted average shares outstanding	158,576,305	128,676,131	92,871,936
Dilutive effect of options and warrants	—	—	1,410,605
Dilutive effect of convertible notes	—	—	5,667,327
Diluted weighted average shares outstanding	158,576,305	128,676,131	99,949,868

The following table presents the potentially dilutive shares that were excluded from the computation of diluted net (loss) income per share of common stock, because their effect was anti-dilutive:

	Year Ended December 31,		
	2022	2021	2020
Stock-based awards and warrants	6,159,285	3,152,059	1,041,531
Convertible notes	—	779,258	—

2. INVENTORY

Our inventory consisted of the following:

	December 31,	
	2022	2021
Raw materials	\$ 42,500,878	\$ 66,238,615
Work in process	25,210,131	20,826,644
Finished goods	301,645	—
	68,012,654	87,065,259
Less: inventory reserve	(59,162,512)	(76,997,892)
Inventory, net	\$ 8,850,142	\$ 10,067,367

We reserve inventory for any excess or obsolete inventories or when we believe the net realizable value of inventories is less than the carrying value. The year over year decrease to inventory reserves was primarily driven by the continued decrease in C1000 production in 2022 culminating in the Company's decision to discontinue the program at the end of 2022. As the Company began to sell and dispose of C1000 inventory, the accompanying inventory reserves also decreased.

During the year ended December 31, 2022, we sold inventory which was being carried at zero cost as it had been fully reserved for in prior periods in connection with the Company's decision regarding the future of the C1000 vehicle platform. The Company recognized a gain on the sale of \$13.4 million, net of \$0.5 million of selling costs, which is recorded in Other Income in the Consolidated Statements of Operations. The selling costs of \$0.5 million represent a commission paid to a related party who was a former executive of the Company.

3. CONTRACT MANUFACTURING SERVICES AND INVESTMENT IN TROPOS

The Company has a minority ownership in Tropos Technologies, Inc. ("Tropos") with a value of \$10.0 million as of December 31, 2022. The minority ownership was obtained pursuant to the transaction with Tropos as described below.

On August 8, 2022, the Company entered into an Assembly Services Agreement (the "Assembly Agreement") with Tropos. Under the Assembly Agreement, the Company will provide services required to assemble a minimum annual quantity of 2,000 vehicles in 2023, 2,000 vehicles in 2024, and 250 vehicles in 2025 for a total of 4,250 vehicles during the term of the agreement at our Union City, Indiana manufacturing facility. In exchange for the assembly services, the Company will receive a service fee from Tropos.

On August 23, 2022, the Company entered into a Preferred Stock Purchase Agreement (the "Stock Purchase Agreement") with Tropos. Under the Stock Purchase Agreement, the Company received 605,811 shares of Series B Preferred Stock in Tropos with an option to purchase an additional 424,068 shares of Series B Preferred Stock for an exercise price of \$16.51 per share in exchange for a cash payment of \$5.0 million, and a \$5.0 million contribution of non-cash consideration representing a deposit from Tropos for future assembly services.

During the fourth quarter of 2022, the Company received \$0.5 million cash payment from Tropos for additional assembly services. See Note 6, *Revenue*, of the Consolidated Financial Statements for treatment of the \$5.0 million of non-cash consideration and \$0.5 million of cash received as of December 31, 2022.

The Company utilized the measurement alternative allowed under GAAP to record the investment of the Series B Preferred Stock at cost, less any impairment, as of December 31, 2022.

4. **PREPAID EXPENSES AND OTHER CURRENT ASSETS**

Prepaid expenses and other current assets consisted of the following:

	December 31,	
	2022	2021
Prepaid purchases	\$ 34,611,649	\$ 24,101,695
Less: prepaid purchases reserve	(22,163,338)	(23,912,025)
Prepaid purchases, net	12,448,311	189,670
Prepaid insurance	1,198,769	2,205,608
Right of return asset	—	1,620,000
Other	505,401	342,551
Prepaid expenses and other current assets	\$ 14,152,481	\$ 4,357,829

The Company's prepaid purchases balance consists of deposits made to our suppliers for non-recurring engineering costs and production parts. As of December 31, 2022 and 2021, the prepaid purchases balances primarily consisted of deposits made in connection with the production of our W4 CC vehicles.

As of the year ended December 31, 2022 and 2021, we had reserves of \$2.2 million and \$23.9 million, respectively, which were primarily driven by the Company's decision to produce the C1000 vehicle platform at low-volume before discontinuing the program as the Company transitions to its new vehicle platforms. The reserve represents our best estimate of deposits on orders that we do not expect to recover.

5. **INVESTMENT IN LORDSTOWN MOTORS CORP. ("LMC")**

As of December 31, 2022, the Company owned zero shares of LMC Class A Common Stock. During the third quarter of 2021, the Company sold its Investment in LMC at an average price of \$6.42 per share. Proceeds from the sale, net of transaction expenses and broker commissions, were approximately \$105.1 million. The Company recognized a loss of approximately \$76.5 million in connection with the sale, which is recorded in Other Loss on the Consolidated Statements of Operations.

The following table sets forth a reconciliation of our investment in LMC:

	December 31,	
	2022	2021
Balance, beginning of year	\$ —	\$ 330,556,744
Change in fair value	—	(225,429,997)
Sales of investment	—	(105,126,747)
Balance, end of year	\$ —	\$ —

LMC Transaction

On November 7, 2019, the Company entered into a transaction with LMC (the "LMC Transaction") in which the Company granted LMC a perpetual and worldwide license to certain intellectual property relating to the Company's W-15 electric pickup truck platform and its related technology in exchange of consideration as described below:

- A ten percent ownership interest in the common stock of LMC in exchange for the Company's obligations under the Intellectual Property License Agreement (the "Agreement")
- One percent of the aggregate debt and equity commitments funded to LMC upon completion of a capital raise (the "Royalty Advance").
- A one percent royalty on the gross sales price of the first 200,000 vehicles sold by LMC, to the extent that the aggregate amount of such royalty fees exceeds the amount paid as the Royalty Advance.

The consideration included fixed and variable components. The fixed components consisted of the ten percent ownership interest in LMC and amounts received under the Royalty Advance. The variable component consists of the one percent royalty

on the gross sales price of the first 200,000 vehicles sold by LMC. Variable consideration will be recognized when each vehicle for which a royalty is sold.

On January 27, 2023, we received a letter (the "Notice") from LMC purporting to terminate the Agreement, effective March 27, 2023. The Company believes that the Agreement provides that LMC's obligation to pay the Royalties survives termination of the Agreement and that, notwithstanding LMC's termination of the Agreement, the Royalties would still be due and payable if LMC sells vehicles. LMC has not informed the Company that it has sold any applicable vehicles since the date of the Agreement. The Company cannot currently predict to what extent, if at all, LMC will sell any such vehicles, whether LMC will pay the applicable Royalties on any such vehicles it does sell, or whether the amount of any such Royalties will be material.

6. REVENUE

The following table provides a summary of sales activity:

	Years Ended December 31,		
	2022	2021	2020
Sales, net of returns and allowances	\$ 4,385,975	\$ (994,187)	\$ 1,357,157
Other sales	637,097	142,265	35,362
Total sales, net of returns and allowances	\$ 5,023,072	\$ (851,922)	\$ 1,392,519

The majority of sales recognized during 2022 relate to the Company's vehicle sales, primarily of sales of W4 CC vehicles, while the other sales consist of delivery service, parts sales and other services.

During 2021, the Company announced its decision to suspend deliveries of our C1000 vehicles and recall previously delivered vehicles. In connection with the recall, the Company agreed to refund our customers for all C1000 vehicles previously purchased by them. The Company determines its allowance for estimated returns based on known pending returns and historical trends in product returns. The refund liability as of December 31, 2022 and 2021 was zero and \$2.4 million, respectively.

The Company also records an asset for our right to recover products from customers settling a refund liability. The Company measures the asset at the asset's former carrying amount, less any expected costs to recover, and updates the measurement of the asset arising from changes in expectations about products to be returned. The asset for recovery as of December 31, 2022 and 2021 was zero and \$1.6 million, respectively.

Deferred revenue, which is equivalent to the total service fee allocated to the assembly service performance obligations that are unsatisfied as of the balance sheet date, was \$5.4 million and zero as of December 31, 2022 and 2021, respectively.

Of the total deferred revenue for assembly services, we expect to recognize \$0.4 million of revenue in the next 12 months.

7. PROPERTY, PLANT AND EQUIPMENT, NET

Property, plant and equipment, net consists of the following:

	December 31,	
	2022	2021
Land and improvements	\$ 875,182	\$ 861,175
Buildings and improvements	8,167,736	6,396,800
Equipment and vehicles	8,183,089	3,603,655
Tooling	689,286	1,467,712
Construction in progress	9,027,020	927,537
	26,942,313	13,256,879
Less: accumulated depreciation	(5,441,218)	(5,359,072)
Property, plant and equipment, net	\$ 21,501,095	\$ 7,897,807

Construction in progress is primarily comprised of equipment and tooling related to the manufacturing of our products. Completed assets are transferred to their respective asset classes, and depreciation begins when an asset is ready for its intended use.

Depreciation expense during the years ended December 31, 2022, 2021 and 2020 was \$1.9 million, \$1.9 million, and \$0.8 million respectively.

8. ACCRUED LIABILITIES AND OTHER CURRENT LIABILITIES

Accrued liabilities and other current liabilities consisted of the following:

	December 31,	
	2022	2021
Legal reserve (Note 17)	\$ 35,000,000	\$ —
Accrued commissions	—	4,000,000
Compensation and related costs	4,967,187	4,030,085
Refund liability (Note 6)	—	2,410,000
Accrued interest	—	232,222
Other	4,584,310	4,080,520
Accrued liabilities and other current liabilities	<u>\$ 44,551,497</u>	<u>\$ 14,752,827</u>

9. DEBT

A reconciliation of the fair value of the convertible notes is as follows:

	December 31,	
	2022	2021
Fair value of convertible notes, beginning of year	\$ 24,705,000	\$ 197,700,000
Change in fair value of convertible notes ⁽¹⁾	367,357	(27,600,000)
Change in fair value of convertible notes attributable to credit risk ⁽²⁾	—	10,200,000
Fair value of convertible notes exchanged for common stock	(25,072,357)	(155,595,000)
Fair value of convertible notes, end of year	<u>\$ —</u>	<u>\$ 24,705,000</u>

⁽¹⁾ The Company recognizes changes in fair value of convertible notes for common stock in Interest Expense, Net in the Consolidated Statements of Operations.

⁽²⁾ The Company recognizes changes in fair value of convertible notes attributable to credit risk in Other Comprehensive Loss. During the years ended December 31, 2022 and 2021, the Company reclassified zero and \$8.8 million, respectively, of the changes in fair value of convertible notes attributable to credit risk previously recognized in Other Comprehensive Loss to Interest Expense (Income). The net amount of changes in fair value of convertible notes attributable to credit risk recognized in Other Comprehensive Income (Loss) for the years ended December 31, 2022 and 2021 was approximately \$1.4 million and \$1.4 million loss, respectively.

4.0% Senior Secured Convertible Notes Due 2024

On October 14, 2020 the Company issued \$200.0 million par value convertible notes (the "2024 Notes") due October 14, 2024. The 2024 Notes were a senior secured obligation of the Company, and ranked senior to all unsecured debt of the Company. The 2024 Notes were guaranteed by all the Company's current and future subsidiaries and were secured by substantially all the assets of the Company and its subsidiaries. Interest was payable quarterly beginning on January 15, 2021 at a rate of 4.0% per annum. The 2024 Notes were convertible at a rate of \$35.29 per share, subject to change for anti-dilution adjustments and adjustments for certain corporate events.

The Company paid fees in connection with the issuance of the 2024 Notes of \$6.6 million, resulting in net proceeds of \$193.4 million. As we have elected to account for our convertible notes using the fair value option allowed under GAAP, all direct costs related to the issuance of our convertible notes were recognized in Interest Expense in the Consolidated Statements of Operations for the year ended December 31, 2020.

In the fourth quarter of 2021, the Company entered into securities exchange agreements with certain holders of its 2024 Notes, to exchange \$72.5 million in principal amount of the notes for 27.7 million shares of common stock. In connection with the exchanges, the Company recognized a loss on exchange of \$4.9 million, which included \$8.8 million of the fair value adjustments attributable to changes in credit risk previously recorded in Other Comprehensive Loss. The loss on exchange was recorded in Interest Expense in the Consolidated Statements of Operations.

On April 21, 2022, we exchanged the remaining \$27.5 million in aggregate principal of the 2024 Notes for 7.8 million shares of the Company's common stock. The number of shares issued was calculated by dividing \$29.4 million, which represents 107% of the principal amount of the notes, plus \$0.3 million of interest accrued on the notes, by the average of the daily VWAPS for the 10 days immediately preceding April 21, 2022. The Company recognized a loss of \$1.8 million in 2022, which included a \$0.4 million adjustment to the fair value of the convertible notes to the value of the shares issued under the exchange and a \$1.4 million adjustment related the amount previously recognized in Accumulated Other Comprehensive Loss. The total loss was recorded in Interest Expense in the Consolidated Statements of Operations.

After the exchange, the Company has no convertible notes outstanding and the indenture and related security agreement under which the 2024 Notes were issued have been terminated.

PPP Term Note

On April 14, 2020, the Company entered into a Paycheck Protection Program Term Note ("PPP Note") under the Paycheck Protection Program of the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"). The Company received proceeds of \$1.4 million from the PPP Note, which was due on April 13, 2022. In accordance with the requirements of the CARES Act, the Company used the proceeds primarily for payroll costs. Interest accrued on the PPP Note at the rate of 1.0% per annum. The Company elected to account for the PPP Term Note as debt and accrued interest over its term.

On January 15, 2021, the outstanding principal and interest accrued on the PPP Note were forgiven and the Company recognized a gain of \$1.4 million in Interest Income for the year ended December 31, 2021.

10. LEASES

We have entered into various operating and finance lease agreements for offices, manufacturing and warehouse facilities. We determine if an arrangement is a lease, or contains a lease, at inception and record the leases in our financial statements upon lease commencement, which is the date when the underlying asset is made available for our use by the lessor.

We have elected not to disclose in the Consolidated Balance Sheet leases with a lease term of 12 months or less at lease inception that do not contain a purchase option or renewal term provision we are reasonably certain to exercise. All other lease right-of-use assets and lease liabilities are recognized based on the present value of lease payments over the lease term at commencement date. Because most of our leases do not provide an implicit rate of return, we used our incremental borrowing rate based on the information available at lease commencement date in determining the present value of lease payments.

Our leases may include options to extend the lease term for up to 5 years. Some of our leases also include options to terminate the lease prior to the end of the agreed upon lease term. For purposes of calculating lease liabilities, lease terms include options to extend or terminate the lease when it is reasonably certain that we will exercise such options.

Lease expense for operating leases is recognized on a straight-line basis over the lease term as cost of sales or operating expenses depending on the nature of the lease right-of-use asset.

	Years Ended December 31,		
	2022	2021	2020
Short-term lease expense	\$ 589,969	\$ 599,129	\$ 145,585
Operating lease expense	1,782,332	58,224	—
Total lease expense	<u>\$ 2,372,301</u>	<u>\$ 657,353</u>	<u>\$ 145,585</u>

Lease right-of-use assets consisted of the following:

	December 31,	
	2022	2021
Operating leases	\$ 5,884,865	\$ 1,538,852
Finance leases	5,821,938	—
Total lease right-of-use assets	<u>\$ 11,706,803</u>	<u>\$ 1,538,852</u>

Lease liabilities consisted of the following:

	December 31,	
	2022	2021
Operating leases	\$ 6,977,896	\$ 1,554,767
Finance leases	3,147,198	—
Total lease liabilities	10,125,094	1,554,767
Less: current portion	(1,285,032)	(363,714)
Long-term portion	<u>\$ 8,840,062</u>	<u>\$ 1,191,053</u>

Other information related to leases is as follows:

	As of December 31,		
	2022	2021	2020
Weighted-average remaining lease term			
Operating leases	6.0 years	4.0 years	N/A
Financing leases	2.0 years	N/A	N/A
Weighted-average interest rate			
Operating leases	10.0 %	10.0 %	N/A
Financing leases	10.0 %	N/A	N/A

Supplemental cash flow information related to leases where we are the lessee is as follows:

	Years Ended December 31,		
	2022	2021	2020
Cash paid for amounts included in the measurement of lease liabilities:			
Operating cash outflows from operating leases	\$ 770,642	\$ 657,353	\$ 145,585
Operating cash outflows from finance leases (interest payments)	369,976	—	—
Financing cash outflows from finance leases	857,516	—	—
Leased assets obtained in exchange for finance lease liabilities	6,022,694	—	—
Leased assets obtained in exchange for operating lease liabilities	5,631,558	1,577,774	—

As of December 31, 2022, the maturities of our operating and finance lease liabilities (excluding short-term leases) are as follows:

	Operating Leases	Finance Leases
2023	\$ 1,356,374	\$ 879,444
2024	1,589,805	2,752,862
2025	1,458,783	—
2026	1,503,068	—
2027	1,316,387	—
Thereafter	2,295,179	—
Total minimum lease payments	9,519,596	3,632,306
Less: Interest	2,541,700	485,108
Present value of lease obligations	6,977,896	3,147,198
Less: Current portion	686,018	599,014
Long-term portion of lease obligations	\$ 6,291,878	\$ 2,548,184

11. INCOME TAXES

For the years ended December 31, 2022, 2021 and 2020, with the exception of the impact from non-deductible inventory and prepaid purchases reserves, the Company has taxable losses primarily due to operations and stock compensation related deductions and thus has no current federal tax expense recorded. The taxable income generated by non-deductible inventory in the current year is fully offset by available net operating losses. As of December 31, 2021, the Company has increased the valuation allowance recorded against its deferred tax assets due to the sale of LMC shares during the year and the uncertainty about our ability to utilize our remaining deferred tax assets in future years. The Company continued to record a valuation allowance against all of its deferred tax assets as of December 31, 2022.

The components of the (benefit) provision for income taxes are as follows:

	Years Ended December 31,		
	2022	2021	2020
Current:			
Federal	\$ —	\$ —	\$ —
State and Local	—	(13,159)	—
Total Current	—	(13,159)	—
Deferred:			
Federal	—	(21,864,569)	21,864,569
State and Local	—	30,639	(30,639)
Total Deferred	—	(21,833,930)	21,833,930
Total (benefit) provision for income taxes	\$ —	\$ (21,847,089)	\$ 21,833,930

The reconciliation of taxes at the federal statutory rate to our provision for income taxes was as follows:

	Years Ended December 31,		
	2022	2021	2020
Federal tax benefit at statutory rates	21.0 %	21.0 %	21.0 %
State and local tax at statutory rates	— %	0.1 %	(0.1)%
Fair value adjustments on warrant liability	— %	— %	37.1 %
Fair value adjustments on convertible notes	(0.3)%	(0.4)%	2.8 %
Tax gain on sale of investment	— %	(0.6)%	— %
Stock-based compensation deductions	(1.7)%	0.2 %	(6.6)%
Research and development credits	0.3 %	1.2 %	— %
Other permanent differences and credits	(0.5)%	(0.2)%	— %
Change in valuation allowance	(18.8)%	(16.1)%	(30.4)%
Total tax benefit	— %	5.2 %	23.8 %

Deferred income taxes reflect the net tax effects of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. When realization of the deferred tax asset is more likely than not to occur, the benefit related to the deductible temporary differences attributable to operations is recognized as a reduction of income tax expense. As of each reporting date, management considers new evidence, both positive and negative, that could affect its view of the future realization of deferred tax assets. As of December 31, 2022 and 2021, our ability to realize our net deferred tax asset is not more likely than not to occur and the valuation allowance reduces the deferred tax asset to zero.

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

	December 31	
	2022	2021
Deferred Tax (Liabilities) Assets:		
Accrued expenses and reserves	\$ 4,528,418	\$ 590,340
Warranty reserve	470,342	976,956
Inventory and prepaid purchase reserves	17,326,397	21,506,626
Non-qualified stock options	(328,410)	(160,921)
Property, plant and equipment	(1,955,842)	54,556
Research and experimental costs	4,435,891	—
Lease right-of-use assets	(2,515,792)	—
Lease liability	2,175,883	—
Issuance fees on convertible notes	343,886	687,772
Federal tax credits	5,099,750	4,873,099
Net operating losses	66,112,929	45,143,740
Total Deferred Tax (Liabilities) Assets	95,693,452	73,672,168
Valuation Allowance	(95,693,452)	(73,672,168)
Total Deferred Tax Assets (Liabilities), net of valuation allowance	\$ —	\$ —

As of December 31, 2022 and 2021, the Company has approximately \$81.8 million and \$81.8 million of federal net operating loss ("NOL") carry-forwards which expire through 2037. Additionally, at December 31, 2022 and 2021, the Company had approximately \$228.4 million and \$128.9 million of federal NOLs that carry-forward indefinitely, and approximately \$1.0 million and \$0.9 million of state and local NOL carry-forwards, which expire through 2037. The NOL carry-forwards may be limited in certain circumstances, including changes in ownership.

Under the provisions of the Internal Revenue Code, the net operating loss and tax credit carry-forwards are subject to review and possible adjustment by the Internal Revenue Service and state tax authorities. Certain tax attributes are subject to an annual limitation as a result of certain cumulative changes in ownership interest of significant shareholders which could constitute a change of ownership as defined under Internal Revenue Code Section 382. The Company completed a full analysis of historical ownership changes and determined that a portion of the NOLs to-date have a limitation on future deductibility. Approximately \$8.4 million of NOLs incurred prior to 2014 will be unable to offset future taxable income and have been reserved via a valuation allowance to reduce the deferred tax asset to the expected realizable amount.

The following table presents a reconciliation of unrecognized tax benefits:

	2022	2021
Unrecognized tax benefits - January 1	\$ 805,392	\$ 1,163,282
Gross increases - tax positions in prior period	—	—
Gross decreases - tax positions in prior period	—	(357,890)
Gross increases - tax positions in current period	—	—
Settlement	—	—
Lapse of statute of limitations	—	—
Unrecognized tax benefits - December 31	\$ 805,392	\$ 805,392

The Company recognizes interest and penalties related to uncertain tax positions in income tax expense. As of December 31, 2022, and 2021, due to the Company's continued losses, no amounts of interest and penalties have been recognized in the Company's Consolidated Statements of Operations. If the unrecognized tax benefits were reversed, a deferred tax asset and corresponding valuation allowance would be recorded, and thus the reversal would have no impact on the effective rate.

The Company files income tax returns in the U.S. federal jurisdiction, various state jurisdictions and local jurisdictions. Generally, the Company's 2019 through 2021 tax years remain open and subject to examination by federal, state and local

taxing authorities. However, federal, state, and local net operating losses from 2009 through 2021 are subject to review by taxing authorities in the year utilized.

12. FAIR VALUE MEASUREMENTS

Accounting guidance on fair value measurements for certain financial assets and liabilities requires that assets and liabilities carried at fair value be classified and disclosed in one of the following three categories:

Level 1 — Quoted market prices in active markets for identical assets or liabilities.

Level 2 — Observable market-based inputs or unobservable inputs that are corroborated by market data.

Level 3 — Unobservable inputs reflecting the reporting entity’s own assumptions or external inputs from inactive markets.

A financial asset or liability’s classification within the hierarchy is determined based on the lowest level of input that is significant to the fair value measurement. Assets and liabilities measured at fair value and fair value measurement level were as follows:

	December 31, 2022				December 31, 2021			
	Fair Value	Level 1	Level 2	Level 3	Fair Value	Level 1	Level 2	Level 3
Liabilities								
Convertible notes	\$ —	\$ —	\$ —	\$ —	\$ 24,705,000	\$ —	\$ —	\$ 24,705,000
Total liabilities at fair value	\$ —	\$ —	\$ —	\$ —	\$ 24,705,000	\$ —	\$ —	\$ 24,705,000

Convertible Notes

The Company’s convertible notes were measured at fair value using Level 3 inputs upon issuance and at each reporting date. Considerable judgment was required in interpreting market data to develop the estimates of fair value. Accordingly, the Company’s estimates are not necessarily indicative of the amounts that the Company, or holders of the instruments, could realize in a current market exchange. Significant assumptions used in the fair value model included estimates of the redemption dates, credit spreads and the market price and volatility of the Company’s common stock. The use of different assumptions and/or estimation methodologies could have a material effect on the estimated fair values.

13. STOCK-BASED COMPENSATION

The Company maintains, as approved by the board of directors, the 2017 Incentive Stock Plan and the 2019 Stock Incentive Plan (the “Plans”) providing for the issuance of stock-based awards to employees, officers, directors or consultants of the Company. Non-qualified stock options may only be granted with an exercise price equal to the market value of the Company’s common stock on the grant date. The Company may issue various types of awards under the Plans, including options, restricted stock and performance units. The Plans have authorized 13.0 million shares for issuance of stock-based awards. As of December 31, 2022 there were approximately 2.0 million shares available for issuance of future stock awards under the Plans.

Stock-based compensation expense

The following table summarizes stock-based compensation expense:

	Years Ended December 31,		
	2022	2021	2020
Stock options	\$ 978,696	\$ 526,125	\$ 792,055
Restricted stock awards	7,767,114	4,227,252	3,228,750
Performance-based restricted stock	2,714,401	190,003	—
Total stock-based compensation expense	\$ 11,460,211	\$ 4,943,380	\$ 4,020,805

Stock options

A summary of stock option activity for the year ended December 31, 2022 is as follows:

	Number of Options	Weighted Average Exercise Price	Weighted Average Grant Date Fair Value per Option	Weighted Average Remaining Contractual Life (Years)
Options outstanding as of December 31, 2021	495,836	\$ 6.8	—	6.5
Granted	—	—	—	—
Exercised	—	—	—	—
Forfeited	(69,710)	1.5	—	—
Expired	(2,500)	22.3	—	—
Options outstanding as of December 31, 2022	<u>423,626</u>	7.6	—	6.7
Options exercisable as of December 31, 2022	<u>218,006</u>	\$ 5.5	—	4.6

As of December 31, 2022, unrecognized compensation expense was \$1.6 million for unvested options, which is expected to be recognized over the next 1.7 years.

The fair value for the stock option issued in 2021 was estimated on the grant date using a Black-Scholes valuation model that uses the assumptions of expected volatility, expected term, and the expected risk-free rate of return. The expected volatility was estimated by management as 135% based on our historical results adjusted for any expected future changes. The Company uses the simplified method in determining the expected term of the stock option grant awarded in 2021. The simplified method was used because the Company does not believe its historical data provides a reasonable basis for the expected term of the 2021 grant, due primarily to the limited number of grants of stock options awarded to date. The risk-free rate of return was based on market yields in effect on the date of each grant for United States Treasury debt securities with a maturity equal to the expected term of the award.

Restricted stock awards

Restricted stock awards generally vest in equal installment periods of six months to three years. Restricted stock awards are valued based on the closing price of the Company's common stock on the date prior of grant, and compensation cost is recorded on a straight-line basis over the share vesting period net of actual forfeitures in the period.

A summary of restricted stock activity for the year ended December 31, 2022 is as follows:

	Number of Unvested Shares	Weighted Average Grant Date Fair Value per Share
Unvested restricted stock as of December 31, 2021	1,617,192	\$ 9.3
Granted	2,959,966	3.1
Vested	(883,908)	6.8
Forfeited	(167,919)	6.3
Unvested restricted stock as of December 31, 2022	<u>3,525,331</u>	\$ 4.9

As of December 31, 2022, unrecognized compensation expense was \$13.7 million for unvested restricted stock, which is expected to be recognized over the next 1.9 years.

Performance-based restricted stock awards

On February 23, 2022 the Company issued 0.9 million PSUs in addition to the 0.3 million PSUs issued on November 5, 2021 to certain executives. The vesting of the PSUs is conditioned upon achievement of certain performance objectives over a performance period ending December 31, 2024 as defined in each award agreement. Fifty percent of the PSUs vest based upon

the Company's total shareholder return as compared to a group of peer companies ("TSR PSUs"), and fifty percent of the PSUs vest based upon the Company's performance on certain measures including a cumulative adjusted EBITDA target ("EBITDA PSUs"). Depending on the actual achievement on the performance objectives, the grantee may earn between 0% and 200% of the target PSUs.

A summary of the activity for PSU awards with total shareholder return performance objectives for the year ended December 31, 2022 is as follows:

	Number of Unvested Shares	Weighted Average Grant Date Fair Value per Share
Balance, December 31, 2021	306,197	\$ 11.79
Granted	454,832	11.79
Forfeited	(22,278)	11.79
Balance, December 31, 2022	<u>738,751</u>	<u>\$ 11.79</u>

The grant date fair value of \$11.79 per TSR PSU was estimated using a Monte-Carlo simulation model using a volatility assumption of 17% and risk-free interest rate of 0.69%.

As of December 31, 2022, unrecognized compensation expense was \$5.9 million, which is expected to be recognized over the next 2.0 years.

A summary of the PSU awards with cumulative adjusted EBITDA targets for the year ended December 31, 2022 is as follows:

	Number of Unvested Shares
Balance, December 31, 2021	—
Granted	454,822
Forfeited	(22,276)
Balance, December 31, 2022	<u>432,546</u>

The fair value of performance share units is calculated based on the stock price on the date of grant. The stock-based compensation expense recognized each period is dependent upon our estimate of the number of shares that will ultimately vest based on the achievement of EBITDA-based performance conditions. Future stock-based compensation expense for unvested EBITDA PSUs will be based on the fair value of the awards as of the grant date, which has not yet occurred, as the cumulative adjusted EBITDA target condition is not yet defined.

14. **RECENT PRONOUNCEMENTS**

Accounting Standards and Pronouncements Recently Adopted

There are no accounting standards or pronouncements recently adopted impacting the Company.

Accounting Standards and Pronouncements Not Yet Adopted

There are no accounting standards or pronouncements not yet adopted impacting the Company.

15. STOCKHOLDERS' EQUITY

Preferred Stock

The Company has authorized 75.0 million shares of Series A Preferred Stock, par value \$0.001 per share. The Company's certificate of incorporation provides that shares of preferred stock may be issued from time to time in one or more series. The Company's Board of Directors is authorized to fix the voting rights, if any, designations, powers, preferences, qualification, limitations and restrictions thereof, applicable to the shares of preferred stock. As of December 31, 2022 and December 31, 2021, there were no shares of Series A Preferred Stock issued and outstanding.

Common Stock

The Company has one class of common stock, par value \$0.001 per share. Each share of the Company's common stock is entitled to one vote on all matters submitted to stockholders.

Common Stock Held in Escrow

On October 31, 2019, the Company and ST Engineering Hackney, Inc. ("Hackney") entered into an Asset Purchase Agreement to purchase certain assets and assume certain liabilities of Hackney. The purchase price for the acquired assets was \$7.0 million and the Company deposited \$1.0 million of cash and approximately 2.3 million shares of its common stock originally valued at \$6.6 million into an escrow account as collateral. The \$1.0 million of cash was paid to Hackney in January 2020, and the remaining \$6.0 million was payable in cash within 45 days if certain conditions were met. The 2.3 million shares of common stock remained in escrow as of December 31, 2022. However, as we believe the conditions were not met, we do not expect to make further payments to Hackney in connection with the Asset Purchase Agreement and we expect the shares to be released from escrow in 2023.

Warrants

In connection with the issuance of debt, common stock and preferred stock, the Company has issued warrants to purchase shares of the Company's common stock. As of December 31, 2022 and 2021, respectively, the Company has approximately 1.0 million and 1.0 million warrants outstanding.

16. RELATED PARTIES

We obtain our general liability, property and casualty, and directors and officers liability insurance through AssuredPartners NL, LLC ("Assured"). Gerald Budde, a Director of the Company, is currently the Chief Financial Officer of Accretive Insurance Solutions Inc. ("Accretive"). Assured and Accretive are both subsidiaries of AssuredPartners Capital, Inc. The placement of insurance was completed by an Assured agent and Mr. Budde did not participate in any decisions about insurance, nor was he paid any portion of the brokerage fee. Assured earned brokerage fees of approximately \$0.3 million, \$0.2 million and \$0.1 million for the years ended December 31, 2022, 2021 and 2020, respectively.

17. COMMITMENTS AND CONTINGENCIES

General Matters

The Company is party to various negotiations and legal proceedings arising in the normal course of business. The Company provides reserves for these matters when a loss is probable and reasonably estimable. The Company does not disclose a range of potential loss because the likelihood of such a loss is remote. In the opinion of management, the ultimate disposition of these matters will not have a material adverse effect on the Company's financial position, results of operations, cash flows or liquidity.

Federal Motor Vehicle Safety Standards ("FMVSS") Certification and Other Regulatory Matters

On September 22, 2021, we announced the Company decided to suspend deliveries of C1000 vehicles and recall the vehicles we had already delivered to customers. The Company determined additional testing and modifications to existing vehicles were required to bring the C1000 vehicles into full compliance with FMVSS. The Company further announced that it filed a report with the National Highway Traffic Safety Administration ("NHTSA") regarding the need for additional testing and vehicle modifications to bring our C1000 vehicles into full compliance with FMVSS. We indicated our previous statements related to the C1000's compliance with NHTSA standards cannot be relied upon and so notified the Securities and Exchange

Commission. We also disclosed we identified a number of enhancements to our production process and the design of the C1000 vehicles to address customer feedback, primarily related to payload capacity.

The certification testing was completed in February 2022. Upon completion of this review, the C1000 platform was determined to be eligible for certification and reintroduction as a limited production vehicle with constrained cargo capacity. In 2022, Workhorse decided to repurchase all of the C-1000 vehicles involved in the recall announced in September 2021 instead of repairing them and so notified NHTSA. Because the Company repurchased all of the C1000 vehicles involved in the recall, it has no further obligations under the recall.

Due to the uncertainties and many variables involved in NHTSA matters, we cannot estimate the ultimate resolution of this matter and whether it will have a material adverse effect on the Company's financial position, results of operations, cash flows or liquidity. We cooperated with NHTSA with respect to the now-completed recall announced in September 2021. However, we cannot assure that NHTSA or other government authorities will not attempt to impose potentially significant fines and penalties in response to the recall.

On October 19 and November 1, 2021, the Company received letters from the SEC requesting that it voluntarily provide information relating to (a) the events and trading in its securities leading up to the announcement of the award of a contract by the U.S. Postal Service (the "USPS") for the manufacture of a postal service vehicle fleet and (b) recognition of revenue, if any, related to purchases of vehicles by certain of the Company's customers. On November 5, 2021, the Department of Justice ("DOJ") orally informed the Company that it had a related open investigation covering the Company. On May 9, 2022, the Company received a letter from the SEC requesting that it voluntarily provide information relating to certain customer sales and customer complaints. Since the initial phone call on November 5, 2021, the Company has not received any subpoena or other request for documents or other information from the DOJ with respect to this investigation. On December 20, 2022, the SEC notified the company that it had concluded its investigation and, based on the information it had as of the date of its notice, that the SEC does not intend to recommend an enforcement action by the Commission against the Company. At this time, the Company cannot predict the ultimate scope, duration, or outcome of these matters.

During the second quarter of 2021, the Company became aware of a regulatory compliance issue related to our E-Series vehicles that will require retrofitting of such vehicles. Management continues to work on remediation of this issue and does not expect it to have a material impact on the Company's financial condition and operations. Due to the uncertainties and many variables involved in regulatory matters, we cannot estimate the ultimate resolution of this issue and actual results may differ from our expectations.

Legal Proceedings

Securities Litigation

The Company, Duane Hughes, Steve Schrader, Robert Willison and Gregory Ackerson are defendants in a putative class action (the "Securities Class Action") brought in the Central District of California (Case No.2:21-cv-02072) on behalf of purchasers of the Company's securities from March 10, 2020 through May 10, 2021. The amended complaint in this action, filed by lead plaintiff, Timothy M. Weis, on July 16, 2021, alleges the defendants violated the federal securities laws by intentionally or recklessly making material misrepresentations and/or omissions regarding the Company's participation in the bidding process to manufacture the new fleet of USPS next generation delivery vehicles, the prospect of the USPS awarding the contract to Workhorse given alleged deficiencies in Workhorse's proposal, the Company's manufacturing abilities generally and the Company's nonbinding "backlog" in its vehicles. Lead plaintiff seeks certification of a class and monetary damages in an indeterminate amount. The Court denied the Company's motion to dismiss in substantial part, and the Securities Class Action is currently scheduled to begin trial on March 19, 2024.

On October 24, 2022, the Company entered into a binding term sheet to resolve this litigation as well as the related Shareholders Derivative Litigation described below. On January 13, 2023, the parties executed a Stipulation of Settlement setting forth the terms of the settlement of the class action and resolution of all claims. Under these terms, Workhorse will pay \$15 million in cash, which is expected to be funded fully by proceeds of available insurance, and \$20 million payable in shares of Workhorse stock. A Motion for Preliminary Approval of Class Action Settlement was filed on January 13, 2023, and the Court granted preliminary approval of the settlement on February 14, 2023. The Court set the final approval hearing for July 24, 2023. The settlement is subject to approval by the Court, and there can be no assurance that the settlement will be approved on those terms or at all. The Company recorded a \$15 million insurance receivable in Other receivable and a \$35 million legal reserve in Accrued liabilities and other in the Consolidated Balance Sheet at December 31, 2022. The Company also

recognized a \$20 million expense which was recognized in Selling, general and administrative of the Consolidated Statements of Operations for the year ended December 31, 2022.

Shareholder Derivative Litigation

A total of eight substantively similar derivative actions were originally filed for breach of fiduciary duty and unjust enrichment against Duane Hughes, Steve Schrader, Stephen Fleming, Robert Willison, Anthony Furey, Gregory Ackerson, H. Benjamin Samuels, Raymond J. Chess, Harry DeMott, Gerald B. Budde, Pamela S. Mader, Michael L. Clark and Jacqueline A. Dedo in state court in Nevada, state court in Ohio, and federal courts in Nevada, Ohio and California (collectively, the "Shareholder Derivative Litigation"). In these actions, the plaintiffs allege the defendants breached their fiduciary duties by allowing or causing the Company to violate the federal securities laws as alleged in the Securities Class Action discussed above and by selling Company stock and receiving other compensation while allegedly in possession of material non-public information about the prospect of the USPS awarding the contract to an electric vehicle manufacturer given electrifying the USPS's entire fleet allegedly have been impractical and expensive. The plaintiffs seek damages and disgorgement in an indeterminate amount.

The three derivative cases filed in the Central District of California were consolidated into a single action on June 21, 2021 (under Case No. 2:21-cv-04202). On April 18, 2022, the plaintiffs filed their consolidated amended complaint in the consolidated action. On June 2, 2022, the defendants filed motions to dismiss, which the Company joined in with respect to the arguments related to the plaintiffs' lack of standing, as well as a motion to stay the case pending resolution of the Securities Class Action. On October 3, 2022, the Court granted the Defendants' motion to stay the action pending resolution of the Securities Class Action.

A fourth case, originally filed in the Southern District of Ohio, was transferred to the Central District of California on November 5, 2021 (under Case No. 2:21-cv-08734) and assigned to the same judge who presides over the Securities Class Action and the consolidated Central District of California derivative action. Plaintiffs filed their first amended complaint on May 2, 2022. On July 22, 2022, the Court granted the Defendants' motion to stay the action pending resolution of the Securities Class Action.

Two further actions, both filed in the Eight Judicial District Court of the State of Nevada in and for Clark County, were consolidated on January 7, 2022 (under Case No. A-21-833050-B). On January 24, 2022, the plaintiffs in the consolidated action in Nevada state court filed their consolidated amended complaint, which was also revised to include the additional allegations made in the Amended Complaint in the Securities Class Action discussed above. On March 22, 2022, the defendants and the Company filed a motion to stay the Nevada state court consolidated action, and the defendants filed motions to dismiss the consolidated action, which the Company joined in with respect to the arguments related to the plaintiffs' lack of standing. Plaintiffs' oppositions to these motions were filed on June 3, 2022. Defendants' replies were filed on July 15, 2022. On August 4, 2022, the court denied the defendants' motion to dismiss the consolidated action, but granted the defendants' motion to stay the action pending resolution of the Securities Class Action. While the case remains stayed, on August 25, 2022 the board member defendants, including Raymond J. Chess, Gerald B. Budde, H. Benjamin Samuels, Harry DeMott, Michael L. Clark, Pamela S. Mader, and Jacqueline A. Dedo filed a Petition for Writ of Mandamus in The Supreme Court of the State of Nevada ("Writ"), arguing that the District Court erred when it applied Delaware law in holding that the plaintiffs adequately pleaded demand futility and denied defendants' motion to dismiss. The Company filed an answer stating that it does not support or oppose the Writ on November 7, 2022. On November 18, 2022, the Court granted the parties' joint motion for stay of the Writ proceedings pending resolution of the Securities Class Action.

The seventh shareholder derivative action was filed on June 22, 2022 in the United States District Court for the District of Nevada under Case No. 2:22-cv-00980. On October 17, 2022, the Court granted the parties' stipulation to stay the case pending resolution of the Securities Class Action.

The eighth shareholder derivative action was filed on August 19, 2022 in the Common Pleas Court of Hamilton County, Ohio under Case No. A 2203019. On December 12, 2022, the trial court granted the parties' joint stipulation and order to stay the case pending consideration and final approval of the proposed settlement in the Nevada action.

On October 24, 2022, the Company and the individual defendants entered into a binding term sheet to resolve all of the shareholder derivative actions described above. The settlement will be subject to final documentation, public notice and court approval by the State District Court of Nevada. The parties have agreed to promptly request that the courts in such actions stay all proceedings and/or enter an order enjoining all other stockholders of the Company from commencing, instituting, or prosecuting any similar claims.

Although these actions purport to seek recovery on behalf of the Company, the Company will incur certain expenses due to indemnification and advancement obligations with respect to the defendants. The Company understands that defendants believe these actions are without merit and intends to support them as they pursue all legal avenues to defend themselves fully.

Products Liability Litigation

On September 20, 2022, Reinier Angulo filed a Complaint in the United States District Court for the Southern District of Florida (Civil Action No. 1:22-cv-22489-CMA) against the Company in connection with injuries suffered while operating a W-62 truck on February 5, 2020, claiming strict liability, negligence, and negligent failure to warn. The Company does not believe it manufactured the W-62 that is the subject to the Complaint. On October 27, 2022, the Company timely filed a motion to dismiss for lack of personal jurisdiction, advising the court and the Plaintiff that the Company had insufficient contacts with the state of Florida to justify the exercise of jurisdiction in Florida and was not the manufacturer of the subject W-62 truck. On October 31, the Court denied the Company's motion to dismiss, without prejudice, and granted the Plaintiff leave to file an amended complaint. The Plaintiff filed an amended complaint on November 1, 2022. On November 15, 2022, the Plaintiff voluntarily dismissed the Company from the lawsuit.

18. SUBSEQUENT EVENTS

The Company has evaluated subsequent events for potential recognition and disclosures through the date the accompanying consolidated financial statements were filed.

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures pursuant to Rule 13a-15 under the Securities Exchange Act 1934, as amended (the "Exchange Act"). In designing and evaluating the disclosure controls and procedures, our management recognizes that any controls and procedures, no matter how well designed and operated, can provide only reasonable assurance of achieving the desired control objectives. In addition, the design of disclosure controls and procedures must reflect the fact that there are resource constraints and that our management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs.

Based on this evaluation, our Chief Executive Officer and Chief Financial Officer concluded that, as of December 31, 2022, our disclosure controls and procedures were designed at a reasonable assurance level and were effective to provide reasonable assurance the information we are required to disclose in reports we file or submit under the Exchange Act is recorded, processed, summarized and reported within the time periods specific in the SEC rules and forms, and such information is accumulated and communicated to our management, including our Chief Executive Officer and our Chief Financial Officer, as appropriate, to allow timely decisions regarding required disclosures.

Management's Report on Internal Control Over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting. Internal control over financial reporting is a process designed by, or under the supervision of, our Chief Executive Officer and Chief Financial Officer to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles and includes those policies and procedures that (1) pertain to the maintenance of records in reasonable detail accurately and fairly reflect the transactions and dispositions of our assets; (2) provide reasonable assurance transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and our receipts and expenditures are being made only in accordance with authorizations of our management and directors and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets could have a material effect on the financial statements.

Under the supervision and with the participation of our management, including our Chief Executive Officer and Chief Financial Officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting based on criteria established in Internal Control - Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission. Our management concluded our internal control over financial reporting was effective as of December 31, 2022.

Limitations on the Effectiveness of Controls

Because of inherent limitations, internal control over financial reporting may not prevent or detect misstatements and projections of any evaluation of effectiveness to future periods are subject to the risk controls may become inadequate because of changes in conditions, or the degree of compliance with the policies or procedures may deteriorate.

Changes in Internal Control over Financial Reporting

There were no changes in our internal control over financial reporting that occurred during the quarter ended December 31, 2022, that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

None.

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS

Not applicable.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information required by this Item 10 of Form 10-K will be included in our 2023 Proxy Statement to be filed with the Securities and Exchange Commission in connection with the solicitation of proxies for our 2023 Annual Meeting of Stockholders and is incorporated herein by reference. The 2023 Proxy Statement will be filed with the Securities and Exchange Commission within 120 days after the end of the fiscal year to which this report relates.

ITEM 11. EXECUTIVE COMPENSATION

The information required by this Item 11 of Form 10-K will be included in our 2023 Proxy Statement and is incorporated herein by reference.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

The information required by this Item 12 of Form 10-K will be included in our 2023 Proxy Statement and is incorporated herein by reference.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS AND DIRECTOR INDEPENDENCE

The information required by this Item 13 of Form 10-K will be included in our 2023 Proxy Statement and is incorporated herein by reference.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The information required by this Item 14 of Form 10-K will be included in our 2023 Proxy Statement and is incorporated herein by reference.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

1. Financial statements (see Index to Consolidated Financial Statements in Part II, Item 8 of this report)
2. All financial statement schedules have been omitted since the required information was not applicable or was not present in amounts sufficient to require submission of the schedules, or because the information required is included in the consolidated financial statements or the accompanying notes.
3. The exhibits listed in the following Index to Exhibits are filed or incorporated by reference as part of this report.

Exhibit No.	Description	Form Incorporated From	Report Date
3.1	Certificate of Designation for Series A Preferred Stock	8-K	1/4/2010
3.2	Certificate of Change	8-K	5/25/2010
3.3	Certificate of Correction	8-K	5/25/2010
3.4	Articles of Merger	8-K	5/25/2010
3.5	Certificate of Correction (Articles of Merger)	8-K	5/25/2010
3.6	Certificate of Amendment to the Certificate of Incorporation	8-K	9/10/2010
3.7	Certificate of Incorporation	SB-2	2/4/2008
3.8	Articles of Merger between AMP Holding Inc. and Workhorse Group Inc.	8-K	4/16/2015
3.9	Certificate of Change filed December 9, 2015	8-K	12/10/2015
3.10	Certificate of Amendment to the Certificate of Incorporation dated August 8, 2017	10-Q	8/9/2017
3.11	Certificate of Amendment to the Certificate of Incorporation dated May 3, 2019	10-Q	5/7/2019
3.12	Certificate of Designation of Series B Preferred Stock	8-K	6/6/2019
3.13	First Amended and Restated Bylaws of Workhorse Group Inc.	8-K	4/4/2022
4.12	Description of Securities Registered under Section 12 of the Securities Exchange Act of 1934	10-K	3/1/2021
10.1	Director Agreement by and between Workhorse Group Inc. and Raymond Chess dated October 24, 2013	8-K	10/30/2013
10.2	Director Agreement by and between Workhorse Group Inc. and Gerald Budde dated December 17, 2015	8-K	12/21/2015
10.3	Director Agreement by and between Workhorse Group Inc. and Benjamin Samuels dated December 17, 2015	8-K	12/21/2015
10.4	Director Agreement by and between Workhorse Group Inc. and Harry DeMott dated September 15, 2016	8-K	9/9/2016
10.5	Form of Indemnification Agreement	10-K	3/1/2021
10.6	Director Agreement by and between Workhorse Group Inc. and Michael L. Clark dated September 28, 2018	8-K	10/1/2018
+ 10.7	Employment Agreement between Workhorse Group Inc. and Anthony Furey, dated November 6, 2019	8-K	11/6/2019
+ 10.8	Employment Agreement between Workhorse Group Inc. and Gregory Ackerson dated November 6, 2019	8-K	11/6/2019
+ 10.9	Employment Agreement between Workhorse Group Inc. and John Graber dated April 20, 2021	8-K	4/21/2021
+ 10.10	Employment Agreement between Workhorse Group Inc. and Ryan Gaul dated April 22, 2021	8-K	4/26/2021
+ 10.11	Employment Agreement between Workhorse Group Inc. and Richard Dauch dated July 26, 2021	8-K	7/26/2021
+ 10.12	Employment Agreement between Workhorse Group Inc. and James D. Harrington, dated August 16, 2021	10-K	3/1/2022

+ 10.13	Employment Agreement between Workhorse Group Inc. and Joshua Anderson, dated September 21, 2021	10-K	3/1/2022
+ 10.14	Employment Agreement between Robert Ginnan and Workhorse Group Inc. dated January 4, 2022	8-K	1/4/2022
10.15	Intellectual Property License Agreement between Workhorse Group Inc. and Lordstown Motors Corp. dated November 7, 2019	10-K	3/13/2020
10.16	Asset Purchase Agreement by Asset Purchase Agreement by and between ST Engineering Hackney, Inc. and Workhorse Group Inc. dated as of October 31, 2019 between ST Engineering Hackney, Inc. and Workhorse Group Inc. dated as of October 31, 2019	10-K	3/13/2020
10.17	Agreement between Workhorse Group Inc. and Lordstown Motors Corp dated August 1, 2020	8-K	8/4/2020
10.18	Vehicle Supply and Purchase Agreement, dated February 28, 2022, between the Company and GreenPower Motor Company, Inc.	8-K	2/28/2022
10.19	At-the-Market-Sales Agreement, dated March 10, 2022, between the Company and BTIG, LLC.	8-K	3/10/2022
10.20	Form of Purchase Agreement - October 2020	8-K	10/13/2020
10.21	Form of Exchange Agreement - October 2020	8-K	10/13/2020
10.22	Form of Indenture	8-K	10/16/2020
10.23	Form of Securities Exchange Agreement	8-K	10/6/2021
10.24	Form of Securities Exchange Agreement	8-K	11/2/2021
10.25	Form of Exchange Agreement - 2022	8-K	4/5/2022
+ 10.26	2017 Incentive Stock Plan	10-Q	8/9/2022
+ 10.27	2019 Incentive Stock Plan	10-K	3/13/2020
+ 10.28	Form of Non-Statutory Option Award Agreement between Workhorse Group Inc. and Richard Dauch	10-Q	11/9/2021
+ 10.29	Form of Executive Restricted Stock Award Agreement under 2019 Incentive Stock Plan	10-K	3/1/2022
+ 10.30	Form of Performance Share Unit Award Agreement under 2019 Incentive Stock Plan	10-K	3/1/2022
+ 10.31	2023 Long-Term Incentive Plan	†	
+ 10.32	Form of Executive Restricted Stock Award Agreement under 2017 Incentive Stock Plan and 2023 Long-Term Incentive Plan	†	
+ 10.33	Form of Performance Share Unit Award Agreement under 2017 Incentive Stock Plan and 2023 Long-Term Incentive Plan	†	
+ 10.34	Form of Director Restricted Stock Award Agreement under 2017 Incentive Stock Plan	†	
+ 10.35	Short-Term Incentive Plan	†	
21.1	List of Subsidiaries	†	
23.1	Consent of Grant Thornton LLP	†	
31.1	Certification of Chief Executive Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	†	
31.2	Certification of Chief Financial Officer pursuant to Rule 13a-14(a) or Rule 15d-14(a) as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.	†	
32.1	Certification of Chief Executive Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	†	
32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002	†	
101.INS	Inline XBRL INSTANCE DOCUMENT		
101.SCH	Inline XBRL Taxonomy Extension Schema Document		
101.CAL	Inline XBRL Taxonomy Extension Calculation Linkbase Document		
101.DEF	Inline XBRL Taxonomy Extension Definition Linkbase Document		
101.LAB	Inline XBRL Taxonomy Extension Labels Linkbase Document		

101.PRE	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Inline XBRL Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

† Exhibits that are filed with this report.

+ Indicates a management contract or compensatory arrangement.

ITEM 16. FORM 10-K SUMMARY

None.

Signatures

Pursuant to the requirements of Section 13 or 15(d) of the Securities and Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: March 1, 2023

WORKHORSE GROUP INC.

By: /s/ Richard Dauch
Name: Richard Dauch
Title: Chief Executive Officer, President and Director
(Principal Executive Officer)

In accordance with the Exchange Act, this report has been signed below by the following persons on March 1, 2023, on behalf of the registrant and in the capacities indicated.

<u>Signature</u>	<u>Title</u>
<u>/s/ Richard Dauch</u> Richard Dauch	Chief Executive Officer, President and Director (Principal Executive Officer)
<u>/s/ Robert M. Ginnan</u> Robert M. Ginnan	Chief Financial Officer (Principal Financial Officer)
<u>/s/ Gregory T. Ackerson</u> Gregory T. Ackerson	Chief Accounting Officer (Principal Accounting Officer)
<u>/s/ Raymond Chess</u> Raymond Chess	Director
<u>/s/ Gerald B. Budde</u> Gerald B. Budde	Director
<u>/s/ H. Benjamin Samuels</u> H. Benjamin Samuels	Director
<u>/s/ Harry DeMott</u> Harry DeMott	Director
<u>/s/ Michael L. Clark</u> Michael L. Clark	Director
<u>/s/ Pamela Mader</u> Pamela Mader	Director
<u>/s/ Jacqueline Dedo</u> Jacqueline Dedo	Director
<u>/s/ William G. Quigley III</u> William G. Quigley III	Director
<u>/s/ Austin Scott Miller</u> Austin Scott Miller	Director

WORKHORSE GROUP INC.
2023 LONG-TERM INCENTIVE PLAN
(Effective as of May 2, 2023)

1. **Purpose.** Workhorse Group Inc. (the “Company”) has established the Workhorse Group Inc. 2023 Long-Term Incentive Plan (the “Plan”) to (a) attract and retain directors, executives, employees, and consultants and reward them for making major contributions to the success of the Company, (b) promote the long-term success of the Company and its Affiliates, and (c) further align Participants’ interests with those of the Company’s other stockholders and thereby promote the growth in value of the Company’s equity and enhancement of long-term shareholder return. These objectives are accomplished by making long-term incentive awards under the Plan thereby providing Participants with a proprietary interest in the growth and performance of the Company. The Plan will be effective as of the date on which it is approved by the Company’s stockholders (and is conditioned on such approval), which date will be the “Effective Date” of the Plan as set forth herein.
 2. **Definitions.** As used in this Plan, the following capitalized terms will have the meanings set forth or referenced below.
 - (a) **“Affiliate”** means any corporation, partnership, joint venture or other entity during any period in which at least a fifty percent (50%) voting or profits interest is owned, directly or indirectly, by the Company (or by any entity that is a successor to the Company), and any other business venture designated by the Committee in which the Company (or any entity that is a successor to the Company) has a significant interest, as determined in the discretion of the Committee.
 - (b) **“Award”** means the grant of any Option, SAR, Full Value Award or other benefit granted singly, in combination, or in tandem, to an Eligible Person pursuant to such terms, conditions and limitations as the Committee may establish in accordance with the terms of the Plan.
 - (c) **“Award Agreement”** means an agreement, in the form specified by the Committee, between the Company and a Participant that sets forth the terms, conditions and limitations applicable to an Award. At the time of an Award to a Participant under the Plan, the Committee may require a Participant to enter into an Award Agreement agreeing to the terms and conditions of the Plan and to such additional terms and conditions, not inconsistent with the Plan, as the Committee may, in its sole discretion, prescribe. Any such document is an Award Agreement regardless of whether any Participant signature is required.
 - (d) **“Board”** means the Board of Directors of the Company.
 - (e) **“Cause”** means, with respect to a Participant, the Participant’s:
 - (i) substantial failure to perform his or her duties or to follow the lawful written directions of the Company’s Chief Executive Officer or Board (other than any such failure resulting from incapacity due to physical or mental illness);
 - (ii) engagement in willful misconduct or incompetence that is materially detrimental to the Company or any of its Affiliates;
 - (iii) failure to comply with any agreement to which he or she is a party with the Company or any of its Affiliates, including any invention assignment
-

and confidentiality agreement or noncompete agreement, the Company's insider trading policy, or any other policies of the Company where non-compliance would be materially detrimental to the Company or any of its Affiliates; or

- (iv) conviction of, or plea of guilty or *nolo contendere* to, a felony or crime involving moral turpitude (excluding drunk driving unless combined with aggravating circumstances or offenses), or commission of any embezzlement, misappropriation, or fraud, whether or not related to the Participant's employment or service with the Company or any of its Affiliates.

(f) **"Change in Control"** means any of the following events (but no event other than one of the following events):

- (i) any person (as such term is used in Sections 13(d) and 14(d) of the Exchange Act) becomes the "beneficial owner" (as defined in Rule 13d-3 promulgated under the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of (A) the outstanding shares of Stock, or (B) the combined voting power of the Company's outstanding securities;
- (ii) the Company is a party to a merger or consolidation or a series of related transactions, which results in the voting securities of the Company outstanding immediately prior thereto failing to continue to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity), directly or indirectly, more than fifty percent (50%) of the combined voting power of the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation; or
- (iii) the sale or disposition of all or substantially all of the Company's assets, or consummation of any transaction, or series of related transactions, having similar effect (other than to a subsidiary of the Company).

(g) **"Code"** means the Internal Revenue Code of 1986, as amended from time to time.

(h) **"Committee"** means, so long as the Company is subject to Section 16 of the Exchange Act, the committee selected by the Board and consisting of not fewer than two members of the Board or such greater number as may be required for compliance with Rule 16b-3 and comprised of persons who are independent for purposes of applicable securities exchange listing requirements. In the event a committee is selected, until said committee is removed by the Board or unless said committee no longer exists or does not satisfy the foregoing requirements or for other reasons determined by the Board, the Company's Human Capital Management and Compensation Committee will be the Committee for purposes of this Plan. For any reason determined by the Board, the Board may take any action under the Plan that would otherwise be the responsibility of the Committee; provided, however, that only members of the Board who are independent directors will take action pursuant to this sentence with respect to grants to employees.

(i) **"Company"** is defined in Section 1.

- (j) **“Disability”** means, with respect to a Participant, the date on which Participant becomes disabled within the meaning of Code Section 22(e)(3).
- (k) **“Effective Date”** is defined in Section 1.
- (l) **“Eligible Person”** means any employee of the Company or an Affiliate, any consultant or other person providing services to the Company or an Affiliate and any member of the Board; provided, however, that an Incentive Stock Option may only be granted to an employee of the Company or a Subsidiary. A consultant will be an Eligible Person if the person is not an employee or director of the Company or an Affiliate and is engaged to render services to the Company or any of its Affiliates.
- (m) **“Exchange Act”** means the Securities Exchange Act of 1934, as amended from time to time.
- (n) **“Exercise Price”** means, with respect to an Option or SAR granted under the Plan, the price per share established by the Committee or determined by a method established by the Committee at the time the Option or SAR is granted; provided, however, that the Exercise Price will not be less than one hundred percent (100%) of the Fair Market Value of a share of Stock on the date of grant (or, if greater, the par value of a share of Stock). In the case of the grant of an Incentive Stock Option to a Ten Percent Stockholder, the Exercise Price will be not less than one hundred and ten percent (110%) of the Fair Market Value of a share of Stock on the date of grant.
- (o) **“Expiration Date”** is defined in subsection 6(f).
- (p) **“Fair Market Value”** of a share of Stock as of any date means the fair market value as determined in good faith by the Board or Committee. Unless otherwise required by any applicable provision of the Code or any regulations issued thereunder or as determined by the Committee, for the purposes of determining the Exercise Price of an Option or SAR, “Fair Market Value” of a share of Stock as of any date will mean (i) if the Stock is listed on a national securities exchange, the closing price of the Stock on the principal trading market for the Stock on such date, as reported by the exchange (or on the last preceding trading date if such Stock was not traded on such date); (ii) if the Stock is not listed on a national securities exchange, but is traded in the over-the-counter market, the average of the bid and asked prices on such date, as reported by the OTC Bulletin Board or the OTC Markets Inc. or similar publisher of such quotations; and (iii) if the Fair Market Value of the Stock cannot be determined pursuant to paragraph (i) or (ii) above or if there is no or limited trading volume or limited liquidity in the Stock as determined by the Board in its sole discretion, the Fair Market Value will be determined by the Board, which determination will be conclusive and binding.
- (q) **“Full Value Award”** means the grant of one or more shares of Stock or a right to receive one or more shares of Stock (or cash based on the value of Stock) in the future (including restricted stock, restricted stock units, performance shares, and performance units).
- (r) **“Good Reason”** means the occurrence of any of the following conditions that occur without the Participant’s written consent:

- (i) a reduction in the Participant's base compensation or target cash bonus opportunity as a percentage of base salary of more than ten percent (10%) from the base compensation or target cash bonus opportunity in effect immediately prior to a Change in Control;
- (ii) a material reduction in the Participant's overall compensation and benefits package from that in effect immediately prior to a Change in Control;
- (iii) a material breach by the Company or any of its Affiliates of any employment or service agreement with the Participant;
- (iv) a material adverse change in the Participant's authority, duties or responsibilities (other than temporarily while the Participant is physically or mentally incapacitated or as required by applicable law) from those applicable immediately prior to a Change in Control, taking into account the Company's size, status as a public company, and capitalization immediately prior to the Change in Control, other than a change to a position that is a Substantial Functional Equivalent; or
- (v) a change in the Participant's principal place of employment that is greater than seventy five (75) miles from the Participant's principal place of employment immediately prior to the Change in Control.

A Qualifying Termination will not occur as a result of Good Reason unless, within ninety (90) days following the occurrence of any of the foregoing events, the Participant notifies the Company of the specific event that forms the basis for the Participant's belief that Good Reason exists, the event is not cured within thirty (30) days after receipt of such notice, and the Participant's Termination Date occurs at the end of such thirty (30) day cure period.

- (s) **"Incentive Stock Option"** means an Option that is intended to satisfy the requirements applicable to an "incentive stock option" described in Code Section 422(b).
- (t) **"Nonstatutory Stock Option"** means an Option that is not intended to be or that does not (or to the extent that it does not) satisfy the requirements of an Incentive Stock Option.
- (u) **"Option"** means an Award under the Plan that entitles Participant to purchase shares of Stock at the Exercise Price established by the Committee. Any Option granted under the Plan may be either an Incentive Stock Option or a Nonstatutory Stock Option as determined in the discretion of the Committee. Notwithstanding the foregoing, an Option will be deemed to be a Nonstatutory Stock Option unless it is specifically designated by the Committee as an Incentive Stock Option and/or to the extent that it does not otherwise satisfy the requirements for an Incentive Stock Option.
- (v) **"Outside Director"** means a director of the Company who is not an officer or employee of the Company or any of its Affiliates.
- (w) **"Participant"** means an Eligible Person to whom an Award has been granted under the Plan.

- (x) **“Plan”** means the Workhorse Group Inc. 2023 Long-Term Incentive Plan, as amended from time to time.
- (y) **“Prior Plans”** means the Workhorse Group Inc. 2017 Incentive Stock Plan and the Workhorse Group Inc. 2019 Stock Incentive Plan, each as amended from time to time.
- (z) **“Qualifying Termination”** means a Participant’s Termination Date that occurs by reason of (i) termination by the Company or any of its Affiliates (or a successor thereto) without Cause or (ii) termination by the Participant for Good Reason.
- (aa) **“Recycled Shares”** is defined in subsection 5(c).
- (ab) **“Replacement Award”** is defined in Section 8(c).
- (ac) **“Rule 16b-3”** means Rule 16b-3 promulgated under the Exchange Act.
- (ad) **“SAR”** means an Award under the Plan that entitles the Participant to receive, in cash or shares of Stock, value equal to the excess of: (i) the Fair Market Value of a specified number of shares of Stock at the time of exercise over (ii) the Exercise Price of the SAR established by the Committee.
- (ae) **“Stock”** means the common stock of the Company.
- (af) **“Subsidiary”** means a subsidiary corporation within the meaning of Code Section 424(f).
- (ag) **“Substantial Functional Equivalent”** means a position that:
 - (i) is in a substantive area of the Participant’s competence (e.g., financial or executive management) and is not materially different from the position held by the Participant immediately prior to the Change in Control;
 - (ii) allows the Participant to serve in a role and perform duties functionally equivalent to those performed immediately prior to the Change in Control; and
 - (iii) does not otherwise constitute a material adverse change in authority, title, status, responsibilities or duties from those of the Participant immediately prior to the Change in Control, causing the Participant to be of materially lesser rank or responsibility, including a material adverse change in the Participant’s reporting responsibilities from those in effect immediately prior to the Change in Control.
- (ah) **“Substitute Award”** means an Award granted or shares of Stock issued by the Company in assumption of, or in substitution or exchange for, an award previously granted, or the right or obligation to make a future award, in all cases by a company acquired by the Company or any Affiliate or with which the Company or any Affiliate combines. In no event will the issuance of Substitute Awards change the terms of such previously granted awards such that the change, if applied to a current Award, would be prohibited under the provisions of subsection 6(e).
- (ai) **“Ten Percent Stockholder”** means a person who, as of the date an Incentive Stock Option is granted, owns (or is deemed to own pursuant to Code Section

424(d)) stock possessing more than ten percent (10%) of the total combined voting power or value of all classes of stock of the Company and its Subsidiaries.

- (aj) **“Termination Date”** means, with respect to any Participant, the date on which Participant both ceases to be an employee of the Company and its Affiliates and ceases to perform material services for the Company and its Affiliates (whether as a director or otherwise), regardless of the reason for the cessation; provided, however, that a Participant’s **“Termination Date”** will not be considered to have occurred during the period in which the reason for the cessation of services is a leave of absence approved by the Company or an Affiliate which was the recipient of Participant’s services; and provided, further that, with respect to an Outside Director, **“Termination Date”** means date on which the Outside Director’s service as a director terminates for any reason.

3. **Participation.** Subject to the terms and conditions of the Plan, the Committee will determine and designate, from time to time, from among the Eligible Persons those persons who will be granted one or more Awards under the Plan, and thereby become “Participants” in the Plan.

4. **Administration.**

- (a) **Administration.** The authority to control and manage the operation and administration of the Plan will be vested in the Committee. Notwithstanding the foregoing, in no event will the Committee’s duties under the Plan exceed the duties of the Committee in the applicable charter documents and, to the extent that the Plan provides for allocation to the Committee of duties that exceed such authority, the actions of the Committee under the Plan will be taken by the Board.
- (b) **Powers of Committee.** The Committee’s administration of the Plan will be subject to the following:
- (i) Subject to the terms and conditions of the Plan, the Committee will have the authority and discretion to select from among the Eligible Persons those persons who will receive Awards, to determine the time or times of receipt of Awards, to determine the types of Awards and the number of shares of Stock or other amounts covered by the Awards, to establish the terms, conditions, performance measures and targets, restrictions and other provisions of such Awards, to cancel or suspend Awards, modify the terms of, reissue or repurchase Awards, and accelerate the exercisability or vesting of any Award. Without limiting the generality of the foregoing, unless an agreement with a Participant specifies otherwise, the Committee may cancel any unexpired, unpaid, or deferred Awards at any time if Participant is not in compliance with all applicable provisions of the Award Agreement and/or the Plan.
 - (ii) Subject to the terms and conditions of the Plan, the Committee will have the authority and discretion to conclusively interpret the Plan, to establish, amend and rescind any rules and regulations relating to the Plan, to determine the terms and provisions of any Award made pursuant to the Plan and to make all other determinations that may be necessary or advisable for the administration of the Plan.
 - (iii) Any interpretation of the Plan by the Committee and any decision made by it under the Plan is final and binding on all persons.

- (iv) In controlling and managing the operation and administration of the Plan, the Committee will take action in a manner that conforms to the articles of incorporation and by-laws of the Company, and applicable state corporate law.
 - (c) **Delegation by Committee.** Except to the extent prohibited by applicable law or the applicable rules of a securities exchange, the Committee may allocate all or any portion of its responsibilities and powers to any one or more of its members and may delegate all or any part of its responsibilities and powers to any person or persons selected by it. Any such allocation or delegation may be revoked by the Committee at any time.
 - (d) **Information to be Furnished to Committee.** The Company and Affiliates will furnish the Committee with such data and information as it determines may be required for it to discharge its duties. The records of the Company and Affiliates as to an individual's employment or service, termination of employment or service, leave of absence, reemployment or recommencement of service and compensation will be conclusive on all persons unless determined to be incorrect. Participants and other persons entitled to benefits under the Plan must furnish the Committee such evidence, data or information as the Committee considers desirable to carry out the terms of the Plan.
 - (e) **Limitation on Liability and Indemnification of Committee.** No member or authorized delegate of the Committee will be liable to any person for any action taken or omitted in connection with the administration of the Plan unless attributable to his own fraud or willful misconduct; nor will the Company or any Affiliate be liable to any person for any such action unless attributable to fraud or willful misconduct on the part of a director or employee of the Company or Affiliate. The Committee, the individual members thereof, and persons acting as the authorized delegates of the Committee under the Plan, will be indemnified by the Company against any and all liabilities, losses, costs and expenses (including legal fees and expenses) of whatsoever kind and nature which may be imposed on, incurred by or asserted against the Committee or its members or authorized delegates by reason of the performance of a Committee function if the Committee or its members or authorized delegates did not act dishonestly or in willful violation of the law or regulation under which such liability, loss, cost or expense arises. This indemnification will not duplicate but may supplement any coverage available under any applicable insurance.
5. **Shares Reserved and Limitations.**
- (a) **Authorized Stock.** Stock subject to Awards will be shares of Stock currently authorized but unissued or currently held or, to the extent permitted by applicable law, subsequently acquired by the Company as treasury shares, including shares of Stock purchased in the open market or in private transactions.
 - (b) **Maximum Number of Shares.** Subject to the terms and conditions of the Plan, including the following provisions of this Section 5, the total number of shares of Stock which may be delivered with respect to Awards under the Plan will be equal to 5,000,000. Shares of Stock covered by an Award will only be counted as used to the extent that they are actually used. A share of Stock issued in connection with any Award under the Plan will reduce the total number of shares of Common Stock available for issuance under the Plan by one. Shares of Stock covered by an Award will only be counted as used to the extent that they are actually used.

- (c) **Reuse of Shares.** Notwithstanding the provisions of Section 5(b) but subject to the other terms and conditions of the Plan:
- (i) Any shares of Stock (A) that are subject to Awards granted under the Plan or (B) that are subject to awards that were granted under the Prior Plans and that are outstanding on the Effective Date, in any case that terminate by reason of expiration, forfeiture, cancellation, or otherwise, without the issuance of such shares, or that are settled in cash (the shares described in subparagraphs (A) and (B) are collectively referred to as “**Recycled Shares**”) will again be available for grant under the Plan and will be added back to the shares reserved for issuance under the Plan on a one for one basis.
 - (ii) The following shares of Stock may not be treated as Recycled Shares and may not again be made available for issuance as Awards under the Plan pursuant to this subsection 5(c): (A) shares of Stock not issued or delivered as a result of the net settlement of an outstanding Option or SAR; (B) shares of Common Stock tendered or withheld to pay the Exercise Price of an Option or withholding taxes relating to an outstanding Award; (C) shares of Stock repurchased on the open market with the proceeds of the Exercise Price of an Option, and (D) shares subject to Substitute Awards.
- (d) **Incentive Stock Options.** The maximum number of shares of Stock that may be delivered to Participants pursuant to Incentive Stock Options is equal to the number of shares reserved for issuance under subsection 5(b); provided, however, that to the extent that shares not delivered must be counted against this limit as a condition of satisfying the rules applicable to Incentive Stock Options, such rules will apply to the limit on Incentive Stock Options granted under the Plan.
- (e) **Substitute Awards.** Substitute Awards will not reduce the number of shares of Stock that may be issued under the Plan.
- (f) **Form of Settlement.** To the extent provided by the Committee, any Award may be settled in cash rather than shares of Stock or vice versa.
- (g) **Limits on Outside Director Compensation.** Subject to subsection 5(h), the sum of any cash compensation or other compensation and the value of any Awards granted to an Outside Director as compensation for services as an Outside Director during the period beginning on the date of one regular annual meeting of the Company’s stockholders until the date of the next regular annual meeting of the Company’s stockholders may not exceed \$350,000. The Committee may make exceptions to this limit for individual Outside Directors in exceptional circumstances, as the Committee may determine in its sole discretion, provided that the Outside Director receiving such additional compensation may not participate in the decision to award such compensation. If the delivery of Stock or cash is deferred until after the Stock has been earned, any adjustment in the amount delivered to reflect actual or deemed earnings or other investment experience during the deferral period will be disregarded in applying the foregoing limitations.
- (h) **Adjustments.** In the event of a corporate transaction involving the Company (including, without limitation, any stock dividend, stock split, extraordinary cash dividend, recapitalization, reorganization, merger, consolidation, split-up, spin-off,

combination or exchange of shares), the Committee will adjust the terms of the Plan and Awards to preserve the benefits or potential benefits of the Plan or the Awards as determined in the sole discretion of the Committee. Action by the Committee with respect to the Plan or Awards under this subsection 5(h) may include, in its sole discretion: (i) adjustment of the number and kind of shares which may be delivered under the Plan (including adjustments to the number and kind of shares that may be granted to an individual during any specified time as described above); (ii) adjustment of the number and kind of shares subject to outstanding Awards; (iii) adjustment of the Exercise Price of outstanding Options and SARs; and (iv) any other adjustments that the Committee determines to be equitable (which may include, without limitation, (1) replacement of Awards with other Awards which the Committee determines have comparable value and which are based on stock of a company resulting from the transaction; and (2) cancellation of the Award in return for a cash payment of the current value of the Award, determined as though the Award is fully vested at the time of payment, provided that in the case of an Option or SAR, the amount of such payment may be the excess of the value of the Stock subject to the Option or SAR at the time of the transaction over the Exercise Price).

- (i) **Special Vesting Rules.** Subject to the other terms and conditions of the Plan, and except for Awards granted under the Plan with respect to shares of Stock which do not exceed, in the aggregate, five percent (5%) of the total number of shares of Stock reserved for issuance pursuant to subsection 5(b), or, if provided by the Committee, in the event of termination due to death, Disability, involuntary termination or retirement, the required period of service for any Award in which shares of Stock may be issued upon settlement will be at least one year.

6. **Options and SARs.**

- (a) **Eligibility.** The Committee will designate Eligible Persons to whom Options or SARs are to be granted under this Section 6 and will determine the number of shares of Stock subject to each such Option or SAR, the Exercise Price of the Option or SAR, and the other terms and conditions thereof, in any case not inconsistent with the Plan. No dividend or dividend equivalent rights may be granted with respect to an Option or SAR.
- (b) **Exercise.** An Option or SAR granted under this Section 6 will be exercisable in accordance with such terms and conditions and during such periods as may be established by the Committee not inconsistent with the Plan; provided, however, that no Option or SAR will be exercisable after the Expiration Date with respect thereto.
- (c) **Payment of Exercise Price.** The payment of the Exercise Price of an Option granted under this Section 6 will be subject to the following:
 - (i) Subject to the following provisions of this subsection 6(c), the full Exercise Price for shares of Stock purchased upon the exercise of any Option will be paid at the time of such exercise (except that, in the case of an exercise arrangement approved by the Committee and described in clause 6(c)(ii)(D), payment may be made as soon as practicable after the exercise).
 - (ii) Subject to applicable law, the Exercise Price will be payable to the Company in full in (A) cash or its equivalent; (B) by tendering (either by

actual delivery or attestation) previously acquired shares of Stock having an aggregate fair market value at the time of exercise equal to the total Exercise Price; (C) by a combination of cash or its equivalent and shares as described in clauses (A) and B); (D) by irrevocably authorizing a third party to sell shares of Stock (or a sufficient portion of the shares of Stock) acquired upon exercise of the Option and remit to the Company a sufficient portion of the sale proceeds to pay the entire Exercise Price and any tax withholding resulting from such exercise; or (E) by any other method approved by the Committee in its sole discretion at the time of grant and as set forth in the Award Agreement; provided, however, that shares of Stock may not be used to pay any portion of the Exercise Price unless the holder thereof has good title, free and clear of all liens and encumbrances.

- (d) **Delivery of Shares.** As soon as practicable following exercise of an Option or SAR (if payable in shares of Stock), including payment of the Exercise Price if applicable, shares of Stock so purchased or deliverable will be delivered to the person entitled thereto or shares of Stock so purchased or deliverable will otherwise be registered in the name of Participant on the records of the Company's transfer agent and credited to Participant's account.
- (e) **No Repricing.** Except for either adjustments pursuant to subsection 5(h) (relating to the adjustment of shares), or reductions of the Exercise Price approved by the Company's stockholders, the Exercise Price for any outstanding Option or SAR may not be decreased after the date of grant nor may an outstanding Option or SAR granted under the Plan be surrendered to the Company as consideration for the grant of a replacement Option or SAR with a lower exercise price or a Full Value Award. Except as approved by the Company's stockholders, in no event will any Option or SAR granted under the Plan be surrendered to the Company in consideration for a cash payment if, at the time of such surrender, the Exercise Price of the Option or SAR is greater than the then current Fair Market Value of a share of Stock.
- (f) **Expiration Date.** The "Expiration Date" with respect to an Option or SAR means the date established as the Expiration Date by the Committee at the time of the grant (as the same may be modified in accordance with the terms of the Plan); provided, however, that the Expiration Date with respect to any Option or SAR will not be later than the earliest to occur of the ten-year anniversary of the date on which the Option or SAR is granted or the following dates, unless the following dates are determined otherwise by the Committee:
 - (i) if Participant's Termination Date occurs by reason of death or Disability, the six (6)-month anniversary of such Termination Date;
 - (ii) if Participant's Termination Date occurs for reasons other than death, Disability, or Cause, the one (1)-month anniversary of the Termination Date; or
 - (iii) if Participant's Termination Date occurs for reasons of Cause, Participant's Termination Date.

In no event will the Expiration Date of an Option or SAR be later than the ten-year anniversary of the date on which the Option or SAR is granted (or such

shorter period required by law or the rules of any securities exchange on which the Stock is listed).

- (g) **Rights as a Stockholder.** A Participant will have no rights as a stockholder with respect to any shares of Stock covered by an Option or SAR until the effective date of the issuance of the shares following exercise of such Option or SAR by Participant.

7. **Full Value Awards.**

- (a) **Generally.** A Full Value Award will be granted to a Participant contingent on continuing service, the achievement of performance objectives during a specified period performance, or other restrictions as determined by the Committee or in consideration of a Participant's previously performed services or surrender or other compensation that may be due. The grant of Full Value Awards may also be subject to such other conditions, restrictions and contingencies, as determined by the Committee, including provisions relating to dividend or dividend equivalent rights and deferred payment or settlement.
- (b) **Dividends and Dividend Equivalents.** A Full Value Award may provide a Participant with the right to receive dividend payments, dividend equivalent payments or dividend equivalent units with respect to shares of Stock subject to the Award (both for periods before and after the shares of Stock subject to the Award are earned, vested, or acquired), which payments may be either made currently as they are earned or vested or credited to an account for Participant, and may be settled in cash or shares of Stock as determined by the Committee. Any such settlements, and any such crediting of dividends or dividend equivalents or reinvestment in shares of Stock or Stock equivalents, may be subject to such conditions, restrictions and contingencies as the Committee will establish, including the reinvestment of such credited amounts in Stock equivalents. Notwithstanding the foregoing, no dividends or dividend equivalent rights will be paid or settled on Awards that have not been earned or vested.

8. **Change in Control.**

- (a) **Generally.** Subject to the provisions of subsection 5(h) (relating to certain adjustments to shares) and unless otherwise specifically prohibited under applicable laws or by the rules and regulations of any applicable governmental agencies or national securities exchange, or unless otherwise provided by the Committee in the Award Agreement or in an individual severance, employment or other agreement between the Company (or Subsidiary) and a Participant, the provisions of this Section 8 will apply in the event of a Change in Control.
- (b) **Performance Awards.** Upon a Change in Control, (i) any performance conditions applicable to Full Value Awards outstanding under the Plan as of the date of the Change in Control will be deemed to have been achieved at the higher of (A) the target level of performance for the performance period in effect on the date of the Change in Control or (B) the actual level of performance measured as of the date of the Change in Control, and, in any case, such Awards will thereafter not be subject to any performance conditions, and (ii) subject to the terms and conditions of this Section 8, any service-based conditions applicable to such Awards will continue to apply as if the Change in Control had not occurred. The provisions of this subsection 8(b) will be applied prior to the provisions of subsection 8(c) or (d) as applicable.

- (c) **Continuation, Assumption, and/or Replacement of Awards.** If, upon a Change in Control, then outstanding Awards under the Plan are continued under the Plan or are assumed by a successor to the Company and/or awards in other shares or securities are substituted for then outstanding Awards under the Plan pursuant to subsection 5(h) or otherwise (which continued, assumed, and/or substituted awards are referred to collectively herein as “**Replacement Awards**”) then:
- (i) each Participant’s Replacement Awards will continue in accordance with their terms; and
 - (ii) with respect to any Participant whose Termination Date has not occurred as of the Change in Control, if the Participant’s Termination Date occurs by reason of a Qualifying Termination on or within twenty four (24) months following the Change in Control, then (A) all of the Participant’s outstanding Replacement Awards that are Full Value Awards will be fully vested upon his or her Termination Date and will be settled or paid within thirty (30) days after the Termination Date or, if required by Code Section 409A, on the date that settlement or payment would have otherwise occurred under the terms of the Award and (B) in the case of any Replacement Awards that are Options or SARs, the Replacement Award will be fully vested and exercisable as of the Termination Date and the exercise period will extend for twenty four (24) months following the Termination Date or, if earlier, the expiration date of the Option or SAR.

Any Replacement Award that is substituted for an Award under the Plan will be an award of the same type and of substantially equivalent value as the Award for which the Replacement Award is substituted.

- (d) **Termination/Acceleration.** If, upon a Change in Control, the provisions of subsection 8(c) do not apply, all then outstanding Awards will become fully vested immediately prior to the Change in Control and will be cancelled in exchange for a cash payment or other consideration generally provided to stockholders in the Change in Control equal to the then current value of the Award, determined as though the Award was fully vested and exercisable (as applicable) and any restrictions applicable to such Award had lapsed immediately prior to the Change in Control; provided, however, that in the case of an Option or SAR, the amount of such payment may be equal to the excess of the aggregate per share consideration to be paid with respect to the cancellation of the Option or SAR over the aggregate Exercise Price of the Option or SAR (but not less than zero). For the avoidance of doubt, in the case of any Option or SAR with an Exercise Price that is greater than the per share consideration to be paid with respect to the cancellation of the Option or SAR pursuant to this subsection 8(d), the consideration to be paid with respect to cancellation of the Option or SAR may be zero. Any payment or settlement pursuant to this subsection 8(d) will be made within thirty (30) days after the Change in Control or, if required by Code Section 409A, on the date that payment or settlement would have otherwise occurred under the terms of the Award.

9. **Miscellaneous.**

- (a) **Term.** The Plan will be unlimited in duration and, in the event of Plan termination, will remain in effect as long as any Awards under it are outstanding; provided, however, that no Awards may be made under the Plan after the tenth (10th) anniversary of the Effective Date and any Awards granted prior to the Effective Date will not be effective until the Effective Date. Any Awards made

under the Prior Plans will continue to be subject to the terms of the Prior Plans. No awards will be granted under the Prior Plans after the Effective Date.

- (b) **General Restrictions.** Delivery of shares of Stock or other amounts under the Plan will be subject to the following:
- (i) Notwithstanding any other provision of the Plan, the Company will have no liability to deliver any shares of Stock under the Plan or make any other distribution of benefits under the Plan unless such delivery or distribution would comply with all applicable laws (including, without limitation, the requirements of the Securities Act of 1933, as amended), and the applicable requirements of any securities exchange or similar entity.
 - (ii) In the case of a Participant who is subject to Section 16(a) and 16(b) of the Exchange Act, the Committee may, at any time, add such conditions and limitations to any Award to such Participant, or any feature of any such Award, as the Committee, in its sole discretion, deems necessary or desirable to comply with Section 16(a) or 16(b) and the rules and regulations thereunder or to obtain any exemption therefrom.
 - (iii) To the extent that the Plan provides for issuance of certificates to reflect the issuance of shares of Stock, the issuance may be effected on a non-certificated basis, to the extent not prohibited by applicable law or the applicable rules of any securities exchange.
- (c) **Tax Withholding.** All payments and distributions under the Plan will be subject to withholding of all applicable taxes, and the Committee may condition the delivery of any shares or other benefits under the Plan on satisfaction of the applicable withholding obligations. Except as otherwise provided by the Committee, such withholding obligations may be satisfied (i) through cash payment by Participant; (ii) through the surrender of shares of Stock which Participant already owns; or (iii) through the surrender of shares of Stock to which Participant is otherwise entitled under the Plan (including by means of net withholding); provided, however, that (A) the amount withheld in the form of shares of Stock under this subsection 9(c) may not exceed the minimum statutory withholding obligation (based on the minimum statutory withholding rates for Federal and state purposes, including, without limitation, payroll taxes) unless otherwise elected by Participant; (B) in no event will Participant be permitted to elect less than the minimum statutory withholding obligation; and (C) in no event will Participant be permitted to elect to have an amount withheld in the form of shares of Stock pursuant to this subsection 9(c) that exceeds the maximum individual tax rate for the employee in applicable jurisdictions.
- (d) **Grant and Use of Awards.** Subject to the terms and conditions of the Plan, in the discretion of the Committee, a Participant may be granted any Award permitted under the provisions of the Plan, and more than one Award may be granted to a Participant. Awards may be granted as alternatives to or replacement of Awards granted or outstanding under the Plan, or any other plan or arrangement of the Company or an Affiliate (including a plan or arrangement of a business or entity, all or a portion shares of common stock of which is acquired by the Company or an Affiliate). The Committee may use available shares of Stock hereunder as the form of payment for compensation, grants or rights earned or due under any other compensation plans or arrangements of the Company or an Affiliate, including the

plans and arrangements of the Company or an Affiliate assumed in business combinations.

- (e) **Restrictions on Shares and Awards.** The Committee, in its discretion, may impose such restrictions on shares of Stock or cash acquired pursuant to the Plan, whether pursuant to the exercise of an Option or SAR, settlement of a Full Value Award or otherwise, as it determines to be desirable, including, without limitation, restrictions relating to disposition of the shares or cash and forfeiture restrictions based on service, performance, Stock ownership by Participant, conformity with the Company's recoupment, compensation recovery, or clawback policies and such other factors as the Committee determines to be appropriate. Without limiting the generality of the foregoing, unless otherwise specified by the Committee, any awards under the Plan and any shares of Stock or cash issued pursuant to the Plan will be subject to the Company's compensation recovery, clawback, and recoupment policies as in effect from time to time.
- (f) **Settlement and Payments.** Awards may be settled through cash payments, the delivery of shares of Stock, the granting of replacement Awards, or combination thereof as the Committee will determine. Any Award settlement, including payment deferrals, may be subject to such conditions, restrictions and contingencies as the Committee will determine. The Committee may permit or require the deferral of any Award payment (other than an Option or SAR and then only to the extent permitted by Code Section 409A), subject to such rules and procedures as it may establish, which may include provisions for the payment or crediting of interest, or dividend equivalents, including converting such credits into deferred Stock equivalents. Each Affiliate will be liable for payment of cash due under the Plan with respect to any Participant to the extent that such benefits are attributable to the services rendered for that Affiliate by Participant. Any disputes relating to liability of an Affiliate for cash payments will be resolved by the Committee.
- (g) **Transferability.** Except as otherwise provided by the Committee, Awards under the Plan are not transferable except as designated by Participant by will or by the laws of descent and distribution.
- (h) **Form and Time of Elections; Notices.** Unless otherwise specified herein, each election required or permitted to be made by any Participant or other person entitled to benefits under the Plan, and any permitted modification or revocation thereof, will be in writing filed with the Committee at such times, in such form and subject to such restrictions and limitations, not inconsistent with the terms of the Plan, as the Committee will require. Any notice or document required to be filed with the Committee or the Participant under the Plan will be properly filed if delivered in person, (including by e-mail notification with receipt requested), mailed by registered mail, postage prepaid, or sent by nationally recognized courier service to the Participant at the Participant's most current address on file with the Company and, if to the Board or Committee, in care of the Company at its principal executive offices to the attention of the Company's Chief Legal Officer or Chief Human Resources Officer. The Company may, by advance written notice to affected persons, revise such notice procedure from time to time. Any notice required under the Plan (other than a notice of election) may be waived by the person entitled to notice.
- (i) **Action by Company or Affiliate.** Any action required or permitted to be taken by the Company or any Affiliate will be by resolution of its board of directors, or by

action of one or more members of the board (including a committee of the board) who are duly authorized to act for the board, or (except to the extent prohibited by applicable law or applicable rules of any securities exchange) by a duly authorized officer of such company.

- (j) **Gender and Number.** Where the context admits, words in any gender will include any other gender (or no gender), words in the singular will include the plural and the plural will include the singular.
- (k) **Limitation of Implied Rights.**
 - (i) Neither a Participant nor any other person will, by reason of participation in the Plan, acquire any right in or title to any assets, funds or property of the Company or any Affiliate whatsoever, including, without limitation, any specific funds, assets or other property which the Company or any Affiliate, in its sole discretion, may set aside in anticipation of a liability under the Plan. A Participant will have only a contractual right to the shares of Stock or amounts, if any, payable under the Plan, unsecured by any assets of the Company or any Affiliate, and nothing contained in the Plan will constitute a guarantee that the assets of the Company or any Affiliate will be sufficient to pay any benefits to any person.
 - (ii) The Plan does not constitute a contract of employment or continued service, and selection as a Participant will not give any participating individual the right to be retained in the employ or continued service of the Company or any Affiliate, nor any right or claim to any benefit under the Plan, unless such right or claim has specifically accrued under the terms of the Plan. Except as otherwise provided in the Plan, no Award under the Plan will confer upon the holder thereof any rights as a stockholder of the Company prior to the date on which the individual fulfills all conditions for receipt of such rights and shares of Stock are registered in his name.
- (l) **Evidence.** Evidence required of anyone under the Plan may be by certificate, affidavit, document or other information which the person acting on it considers pertinent and reliable, and signed, made or presented by the proper party or parties.
- (m) **Governing Law.** The Plan and all determinations made and actions taken pursuant hereto, to the extent not otherwise governed by the Code or the securities laws of the United States, will be governed by the law of the State of Nevada and construed accordingly.
- (n) **Severability.** If for any reason any provision or provisions of the Plan are determined invalid or unenforceable, the validity and effect of the other provisions of the Plan will not be affected thereby.
- (o) **Foreign Individuals.** Notwithstanding any other provision of the Plan to the contrary, the Committee may grant Awards to eligible persons who are foreign nationals on such terms and conditions different from those specified in the Plan as may, in the judgment of the Committee, be necessary or desirable to foster and promote achievement of the purposes of the Plan. In furtherance of such purposes, the Committee may make such modifications, amendments, procedures and subplans as may be necessary or advisable to comply with provisions of laws in other countries or jurisdictions in which the Company or an Affiliate operates or

has employees. The foregoing provisions of this subsection 9(o) will not be applied to increase the share limitations of Section 5 or to otherwise change any provision of the Plan that would otherwise require the approval of the Company's shareholders.

- (p) **Code Section 409A.** It is the intention of the Company that, to the extent that any provisions of this Plan or any Awards granted hereunder are subject to Code Section 409A, the Plan and the Awards comply with the requirements of Code Section 409A and that the Board shall have the authority to amend the Plan as it deems necessary or desirable to conform to Code Section 409A. Notwithstanding the foregoing, the Company does not guarantee that the Plan or Awards under the Plan will comply with Code Section 409A and the Committee is under no obligation to make any changes to the Plan or any Award to cause such compliance. Neither the Company, its Affiliates, nor their respective directors, officers, employees or advisers will be liable to any Participant (or any other individual claiming a benefit through Participant) for any tax, interest, or penalties Participant may owe as a result of participation in the Plan, and the Company and its Affiliates will have no obligation to indemnify or otherwise protect any Participant from the obligation to pay any taxes pursuant to Code Section 409A.

10. **Amendment, Modification, Suspension or Discontinuance of the Plan.** The Board may, suspend, amend, or terminate the Plan, and the Board or Committee may amend any Award; provided, however, that, except for amendments to conform the Plan or an Award to the requirements of Code Section 409A, no amendment or termination of the Plan or amendment of any Award may, in the absence of written consent to the change by the affected Participant (or, if Participant is not then living, the affected beneficiary), adversely affect the rights of any Participant or beneficiary under any Award granted under the Plan prior to the date such amendment is adopted by the Board (or Committee, as applicable). Notwithstanding the foregoing, (a) adjustments pursuant to subsection 5(h) will not be subject to the foregoing limitations of this Section 10, (b) except that without the approval of the stockholders of the Company, no such amendment of the Plan will (i) increase the number of shares subject to the Plan (including with respect to Incentive Stock Options); (ii) be made to subsection 6(e) (relating to Option and SAR repricing); (iii) change the class of persons who are Eligible Persons; or (iv) effect any other change to the Plan if approval of the Company's stockholders is required by law or the rules of any stock exchange on which the Stock is listed.

**Workhorse Group Inc. [2017] [2023] Long-Term Incentive Plan
RESTRICTED STOCK AWARD AGREEMENT**

1. **Grant of Restricted Stock Award.** In accordance with and subject to the terms and conditions of (a) the [Workhorse Group Inc. 2017 Long-Term Incentive Plan] [Workhorse Group Inc. 2023 Long-Term Incentive Plan], as it may be amended from time to time (the “**Plan**”), and (b) this Restricted Stock Award Agreement (the “**Agreement**”), Workhorse Group Inc. (the “**Company**”) grants to the Grantee identified on Schedule 1 attached hereto (the “**Grantee**”) an Award under the Plan for the number of shares of Stock set forth on Schedule 1, which shares of Stock will be subject to the terms, conditions, restrictions and limitations set forth in this Agreement (“**Restricted Stock**”). The Restricted Stock awarded under this Agreement will be deemed to have been granted on the date set forth on Schedule 1 (the “**Grant Date**”) and will constitute a Full Value Award for purposes of the Plan. Capitalized terms not otherwise defined in this Agreement will have the meanings set forth in the [2023 Plan: Plan] [2017 Plan: Workhorse Group Inc. 2023 Long-Term Incentive Plan (the “2023 Plan”).] Schedule 1 is incorporated into and forms a part of this Agreement.

2. **Acceptance by Grantee.** The Grantee is required to accept the award of Restricted Stock granted pursuant to this Agreement. If the Grantee does not (a) accept this Agreement as evidenced by the Grantee’s execution of Schedule 1 to this Agreement and delivery of an executed copy thereof to the Company by [INSERT DATE] (the “**Acceptance Date**”) and/or (b) the Grantee has not complied with the requirements of Section 7 hereof by the Acceptance Date, all shares of Restricted Stock subject to this Agreement will be automatically forfeited as of the Acceptance Date and the Grantee will have no further rights under or with respect to such shares of Restricted Stock. By executing Schedule 1 to this Agreement, the Grantee represents that the Grantee has read and understands the provisions of the Plan and this Agreement and accepts the Restricted Stock subject to all of the terms, conditions, restrictions and limitations of the Plan and this Agreement.

3. **Vesting and Forfeiture.**

- a. All shares of Restricted Stock subject to this Award will be unvested unless and until they become vested and nonforfeitable in accordance with this Section 3. The period during which shares of Restricted Stock are not vested is referred to herein as the “**Restricted Period**” and the Restricted Period with respect to a share of Restricted Stock granted hereunder will expire as of the Vesting Date applicable to such share. Subject to the terms and conditions of this Agreement, the shares of Restricted Stock will become vested and nonforfeitable as of the “**Vesting Date**” applicable to such shares as set forth in Schedule 1 provided, in any case, that the Grantee’s Termination Date has not occurred prior to the applicable Vesting Date.
- b. Except as otherwise determined by the Committee in the exercise of its discretion under the Plan and except as otherwise expressly provided in this Agreement, any shares of Restricted Stock that are not vested and nonforfeitable as of the Grantee’s Termination Date will be immediately forfeited and the Grantee will have no further rights under or with respect to such shares of Restricted Stock and the Company will have no further obligations to the Grantee under this Agreement.

- c. Notwithstanding the provisions of subsection 3(a), except as otherwise provided herein or as provided by the Board or Committee in accordance with its authority under the Plan, in the event that the Grantee's Termination Date occurs prior to the end of the Restricted Period due to his or her death, Disability or Retirement (as defined below), as of the Termination Date the Grantee will be vested in that number of shares of Restricted Stock equal to the pro rata portion (based on the portion of the vesting year in which the Termination Date occurs that has elapsed through the Termination Date) of the shares of Restricted Stock that would have become vested as of the next Vesting Date had his or her Termination Date not occurred prior to the next Vesting Date. All other shares of Restricted Stock will be forfeited as of the Grantee's Termination Date in accordance with subsection 3(b). For purposes of this Agreement, the term "**Retirement**" means the date on which a Grantee's Termination Date occurs on or after the date on which the sum of his or her age and complete years of service equals or exceeds sixty five (65), provided that the Termination Date does not occur for any other reason. The date on which shares of Restricted Stock vest pursuant to this subsection 3(c) shall be the "**Vesting Date**" with respect to such shares.
- d. In the event that a Change in Control occurs during the Restricted Period, [2023 Plan: the provisions of Section 8 of the Plan will apply to the vesting of the shares of Restricted Stock] [2017 Plan: the provisions of Exhibit A attached hereto will apply to the vesting of the shares of Restricted Stock].
- e. In the event the Grantee satisfies the requirements for Retirement (the date on which such requirements are satisfied being referred to as the "**Tax Vesting Date**"), the following shall apply:
 - (i) in the event that the Tax Vesting Date occurs prior to the Vesting Date with respect to any of the shares of Restricted Stock, the Restricted Period shall end on the applicable Tax Determination Date (as defined below) with respect to the number of shares of Restricted Stock that would have otherwise vested on such Tax Determination Date pursuant to subsection 3(c) (and for which a Tax Determination Date had not otherwise occurred) had the Grantee's Termination Date occurred on account of Retirement on such Tax Determination Date;
 - (ii) the applicable Tax Determination Date shall be treated as the "**Vesting Date**" with respect to that number of shares of Restricted Stock (the "**Tax Vesting Shares**") having a fair market value (determined as of the Tax Determination Date) equal to the amount of taxes that would be required to be withheld in connection with the vesting of such shares of Restricted Stock had the Grantee's Termination Date occurred on account of Retirement on the Tax Determination Date (as described in clause (i)) and the Tax Vesting Shares shall be withheld to satisfy the applicable withholding in accordance with Section 5; and

(iii) for purposes of this Agreement, the “**Tax Determination Date**” shall be the last payroll period in December of each year or such other date or dates during the year as determined by the Committee.

f. In the event that any of the terms contained in this Section 3 or this Agreement conflict with any employment agreement in effect between the Company or any of its Affiliates and the Grantee, then the terms of the employment agreement will govern if such terms are more favorable to the Grantee.

4. Transfer of Shares; Rights With Respect to Shares.

- a. Each share of Restricted Stock will be registered in the name of the Grantee and will, in the discretion of the Committee, be retained by the Company or entered in the name of the Grantee pursuant to a “book entry” system in which a computerized or manual entry is made on the books and records of the Company to evidence the issuance of such shares. Such Company books and records are, absent manifest error, binding on all parties.
- b. If the Grantee’s Termination Date has not occurred prior to the applicable Vesting Date with respect to shares of Restricted Stock and if all other terms, conditions, restrictions and limitations contained herein and in the Plan have been satisfied, the shares of Stock that become vested on the Vesting Date will be transferred to the Grantee free of all restrictions.
- c. Subject to the Plan and this Agreement, during the Restricted Period, the Grantee will enjoy all rights of ownership of the shares of Restricted Stock, including the right to vote and receive dividends or other distributions with respect to the shares of Restricted Stock as hereinafter set forth, with the exception that, during the Restricted Period, the Grantee will not transfer, deliver, assign, sell, or dispose of the Restricted Stock in any manner other than by will or by the laws of descent and distribution, nor pledge or otherwise hypothecate the Restricted Stock and a breach of the terms, conditions, restrictions or limitations contained herein will cause the Restricted Stock to be forfeited to the Company.
- d. Any cash or stock dividends declared on the Restricted Stock during the Restricted Period will be paid directly to the Grantee on the Vesting Date applicable to the shares to which the dividends relate (subject to any applicable tax withholding) and, if and to the extent that the shares do not become vested and are forfeited, the related dividends will be forfeited at the same time as the shares to which they relate.

5. Tax Withholding. The Company and its Affiliates will deduct from any vesting or delivery of any of the Grantee’s shares of Restricted Stock or from any other payment to the Grantee (including payment of any dividends), including wages, any Federal, state, local or provincial tax or charge that is then required to be deducted under applicable law with respect to the vesting or delivery of the shares of Restricted Stock or other payment or as determined by the Committee to be appropriate under a program for withholding. The Company’s obligation to deliver Stock (or make any payment) will be subject to the Grantee’s satisfaction of all applicable federal, state, and local income and employment tax withholding obligations. If tax withholding attributable to the vesting or delivery of the Restricted Stock or the making of any

payment is required by the Company, then, at the Board's discretion, the Company may satisfy such tax obligations by reducing the number of shares of Stock otherwise deliverable (including Tax Vesting Shares) or by accepting the delivery to the Company of shares of Stock previously owned and unencumbered by the Grantee. Any withholding with respect to cash payments will be made by a reduction of the cash payment otherwise to be paid to the Grantee. The Company will also have the right to withhold from any salary, bonus or other payments due the Grantee the amount necessary to satisfy any tax withholding obligations related to the vesting or settlement of the vested shares of Restricted Stock. If the Grantee makes an election in accordance with Code Section 83(b) to be taxed on the shares of Restricted Stock as of the Grant Date, he or she must so notify the Company in writing, file the election with the Internal Revenue Service within thirty (30) days after the Grant Date, and promptly pay the Company the amount it determines is needed to satisfy tax withholding requirements. Nothing in this Section 5 shall be applied so as to result in duplication of withholding for amounts that are subject to withholding pursuant to subsection 3(e).

6. Nonassignability. Except as otherwise provided herein and in the Plan, the right of the Grantee to the Restricted Stock will not be assignable or transferable by the Grantee other than to a designated beneficiary upon the Grantee's death pursuant to his will or by the laws of descent and distribution. Any such assignment or transfer will be null and void and without effect upon any attempted assignment or transfer, except as provided herein or in the Plan, including, without limitation, any purported assignment, whether voluntary or by operation of law, pledge, hypothecation, or other disposition contrary to the provisions hereof, or levy of execution, attachment, trustee process, or similar process, whether legal or equitable, upon the Restricted Stock.

7. Additional Conditions of Award. The Grantee understands and agrees that, as a condition to the Company granting the Restricted Stock under this Agreement, by the Acceptance Date, the Grantee must execute and deliver an Employee Non-Compete Agreement in the form specified by the Company (the "**Non-Compete Agreement**"). The Grantee further understands that the Non-Compete Agreement will become effective upon the Grantee's execution and delivery thereof and that it will remain in effect for the period described therein, which period would include a period following the Grantee's Termination Date irrespective of the whether or not the Grantee becomes vested in the Restricted Stock in accordance with this Agreement. In the Company's sole discretion, the Company may accept as a Non-Compete Agreement for purposes of this Agreement an executed employee non-compete agreement that is otherwise on file with the Company as of the Grant Date.

8. Heirs and Successors. If any benefits deliverable to the Grantee under this Agreement have not been delivered at the time of the Grantee's death, such benefits will be delivered to the legal representative of the estate of the Grantee.

9. Compliance with Law. The issuance and delivery of shares of Stock pursuant to this Agreement will be subject to compliance by the Company and the Grantee with all applicable requirements of federal and state securities laws and with all applicable requirements of any stock exchange on which the Stock may be listed. No Stock will be issued pursuant to this Agreement unless and until any then applicable requirements of state or federal laws and regulatory agencies have been fully complied with to the satisfaction of the Company and its counsel. The Grantee understands that the Company is under no obligation to register the Stock with the Securities and Exchange Commission, any state securities commission, or any stock exchange to effect such compliance.

10. Administration. The authority to administer and interpret this Award and this Agreement will be vested in the Committee, and the Committee will have all powers with respect to this Award and this Agreement as it has with respect to the Plan. Any interpretation of this

Award or this Agreement by the Committee and any decision made by it with respect to this Award or this Agreement is final and binding on all persons.

11. Adjustments. The number of shares of Restricted Stock awarded pursuant to this Award may be adjusted by the Committee in accordance with the Plan to reflect certain corporate transactions which affect the number, type or value of the Stock.

12. No Right to Continued Employment or Service. Nothing contained in the Plan or in this Agreement, nor any action taken by the Board, will confer upon the Grantee any right with respect to continuation of employment by or service with the Company as an employee, officer or director nor interfere in any way with the right of the Company to terminate the Grantee's employment or other service as an employee, officer or director at any time with or without Cause, including during the Restricted Period.

13. Governing Law; Venue; Dispute. This Agreement has been granted, executed and delivered in the State of Ohio, and the interpretation and enforcement will be governed by the laws thereof without regard to conflict of laws principles, and subject to the exclusive jurisdiction of the courts therein. Any dispute regarding the interpretation of this Agreement will be submitted by the Grantee or the Company to the Board for review. The resolution of such dispute by the Board will be final, binding and conclusive on the Grantee and the Company.

14. Notices. Any notice or document required to be filed with the Committee or the Grantee under the Plan or this Agreement will be properly filed if delivered in person, (including by e-mail notification with receipt requested), mailed by registered mail, postage prepaid, or sent by nationally recognized courier service to the Grantee at the Grantee's most current address on file with the Company and, if to the Board or Committee, in care of the Company at its principal executive offices to the attention of the Company's Chief Legal Officer or Chief Human Resources Officer. The Company may, by advance written notice to affected persons, revise such notice procedure from time to time. Any notice required under the Plan or this Agreement (other than a notice of election) may be waived by the person entitled to notice.

15. Plan Governs; Other Terms. The Award evidenced by this Agreement is granted pursuant to the Plan, and this Award and this Agreement are in all respects governed by the Plan and subject to all of the terms and provisions thereof, whether such terms and provisions are incorporated in this Agreement by reference or are expressly cited. Notwithstanding any other provision of the Plan or this Agreement, (a) this Award is subject to the Company's recoupment or clawback policies as applicable and as in effect from time to time and (b) nothing in this Agreement supersedes or limits the Committee's authority under the Plan.

16. Successors and Assigns. The Company may assign any of its rights under this Agreement. This Agreement will be binding upon and inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on assignment and transfer set forth herein, this Agreement will be binding upon the Grantee and the Grantee's beneficiaries, executors, administrators and the person(s) to whom the Restricted Stock may be transferred by will or the laws of descent or distribution.

17. Severability. The invalidity or unenforceability of any provision of the Plan or this Agreement will not affect the validity or enforceability of any other provision of the Plan or this Agreement, and each provision of the Plan and this Agreement will be severable and enforceable to the extent permitted by law.

18. Discretionary Nature of Plan. The Plan is discretionary and may be amended, cancelled or terminated by the Board at any time, in its discretion. The grant of the Restricted Stock pursuant to this Agreement does not create any contractual right or other right to receive

any Restricted Stock or other Grants in the future. Future grants, if any, will be at the sole discretion of the Board or the Committee. Any amendment, modification, or termination of the Plan will not constitute a change or impairment of the terms and conditions of the Grantee's employment or other service with the Company.

19. Amendment. The Board has the right to amend, alter, suspend, discontinue or cancel the Plan, prospectively or retroactively; provided, that, no such amendment will alter or impair the Grantee's material rights and obligations under this Agreement without the Grantee's written consent.

20. No Effect on Other Benefits. The value of the Grantee's Restricted Stock is not part of the Grantee's normal or expected compensation for purposes of calculating any severance, retirement, welfare, insurance or similar employee benefit, unless the express provisions of a written employee benefit plan provides otherwise.

21. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. Counterpart signature pages to this Agreement transmitted by facsimile transmission, by electronic mail in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original signature.

IN WITNESS WHEREOF, the parties hereto have caused this Restricted Stock Agreement to be executed as of the date set forth on Schedule 1 to this Agreement.

EXHIBIT A

In the event that a Change in Control occurs during the Restricted Period, the provisions of this Exhibit A will apply to the vesting of the shares of Restricted Stock.

Change in Control.

- (a) **Generally.** Subject to the provisions relating to certain adjustments to shares and unless otherwise specifically prohibited under applicable laws or by the rules and regulations of any applicable governmental agencies or national securities exchange, or unless otherwise provided by the Committee or in an individual severance, employment or other agreement between the Company (or Subsidiary) and a Grantee, the following provisions will apply in the event of a Change in Control.
- (b) **Continuation, Assumption, and/or Replacement of Awards.** If, upon a Change in Control, then outstanding Awards under the Agreement are continued under the Agreement or are assumed by a successor to the Company and/or awards in other shares or securities are substituted for then outstanding Awards under the Agreement (which continued, assumed, and/or substituted awards are referred to collectively herein as “**Replacement Awards**”) then:
 - (i) each Grantee’s Replacement Awards will continue in accordance with their terms; and
 - (ii) with respect to any Grantee whose Termination Date has not occurred as of the Change in Control, if the Grantee’s Termination Date occurs by reason of a Qualifying Termination on or within twenty four (24) months following the Change in Control, then (A) all of the Grantee’s outstanding Replacement Awards that are Full Value Awards will be fully vested upon his or her Termination Date and will be settled or paid within thirty (30) days after the Termination Date or, if required by Code Section 409A, on the date that settlement or payment would have otherwise occurred under the terms of the Award.

Any Replacement Award that is substituted for an Award under the Agreement will be an award of the same type and of substantially equivalent value as the Award for which the Replacement Award is substituted.

- (c) **Termination/Acceleration.** If, upon a Change in Control, the provisions of paragraph (b) do not apply, this Award will become fully vested immediately prior to the Change in Control and will be cancelled in exchange for a cash payment or other consideration generally provided to stockholders in the Change in Control equal to the then current value of the Award, determined as though the Award was fully vested and any restrictions applicable to such Award had lapsed immediately prior to the Change in Control; Any payment or settlement pursuant to this paragraph (c) will be made within thirty (30) days after the Change in Control or, if required by Code Section 409A, on the date that payment or settlement would have otherwise occurred under the terms of the Award.

Schedule 1

Restricted Stock Agreement

Name of Grantee:

Number of Shares: _____ Shares

Date of Grant:

Vesting Dates: Subject to accelerated vesting and/or forfeiture in accordance with Section 3 of the Restricted Stock Agreement, the following number of shares of Restricted Stock will vest on the following dates:

Number of Shares Vesting Date

By executing this Schedule 1, the Grantee hereby acknowledges receipt of a copy of the Plan and the Restricted Stock Agreement of which this Schedule 1 is a part. The Grantee has read and understands the provisions of the Plan and the Restricted Stock Agreement, and accepts the award of Restricted Stock subject to all of the terms, conditions, restrictions and limitations of the Plan and the Agreement. The Grantee may obtain a copy of the 2023 Plan upon request.

GRANTEE:

By: ____
(signature)

Date: ____

**Workhorse Group Inc. [2017] [2023] Long-Term Incentive Plan
PERFORMANCE SHARE UNIT AWARD AGREEMENT**

1. **Grant of Performance Share Unit Award.** In accordance with, and subject to, the terms and conditions of (a) the [Workhorse Group Inc. 2017 Long-Term Incentive Plan] [Workhorse Group Inc. 2023 Long-Term Incentive Plan], as it may be amended from time to time (the “**Plan**”), and (b) this Performance Share Unit Award Agreement (the “**Agreement**”), Workhorse Group Inc. (the “**Company**”) grants to the Grantee identified on Schedule 1 attached hereto (the “**Grantee**”) an Award under the Plan for a target number of Performance Share Units set forth on Schedule 1 (the “**Target Award**”). The Performance Share Units awarded under this Agreement will be deemed to have been granted on the date set forth on Schedule 1 (the “**Grant Date**”) [do not include if under the 2017 Plan and will constitute a Full Value Award for purposes of the Plan]. The number of Performance Share Units to which the Grantee actually becomes entitled for the Performance Period will be determined by the level of achievement of the Performance Objectives as set forth on Exhibit A. The Performance Share Units will be credited to a separate notional account maintained for the Grantee on the books and records of the Company. Schedule 1 and all Exhibits hereto are incorporated into and form a part of this Agreement.

2. **Definitions.** Capitalized terms not otherwise defined in this Agreement will have the meanings set forth in the [2023 Plan: Plan] [2017 Plan: Workhorse Group Inc. 2023 Long-Term Incentive Plan (the “2023 Plan”)]. The following capitalized terms will have the following meanings:

- a. “**Performance Objectives**” means the predetermined goals of the Company established by the Board or the Committee and reported to the Board, as more particularly set forth on Exhibit A attached hereto.
- b. “**Performance Period**” means the period commencing on January 1, [2023] and ending on December 31, [2025].
- c. “**Performance Share Unit**” means the right to receive one (1) share of Stock or the value thereof in the future based upon the satisfaction of the Performance Objectives during the Performance Period, as determined by the Board or the Committee.
- d. “**Retirement**” means the date on which a Grantee’s Termination Date occurs on or after the date on which the sum or his or her age and complete years of service equals or exceeds sixty five (65), provided that the Termination Date does not occur for any other reason.
- e. “**Settlement Date**” means the date determined by the Committee that is after the end of the Performance Period and no later than two and one-half months after the end of the Performance Period.

3. **Acceptance by Grantee.** The Grantee is required to accept the award of Performance Share Units granted pursuant to this Agreement. If the Grantee does not (a) accept this Agreement as evidenced by the Grantee’s execution of Schedule 1 to this Agreement and delivery of an executed copy thereof to the Company by [INSERT DATE] (the “**Acceptance Date**”) and/or (b) the Grantee has not complied with the requirements of Section 10 hereof by the Acceptance Date, all Performance Share Units subject to this Agreement will be

automatically forfeited as of the Acceptance Date and the Grantee will have no further rights under or with respect to such Performance Share Units. By executing Schedule 1 to this Agreement, the Grantee represents that the Grantee has read and understands the provisions of the Plan and this Agreement and accepts the Performance Share Units subject to all of the terms, conditions, restrictions and limitations of the Plan and this Agreement.

4. Performance Objectives. Except as otherwise provided in Section 5 and subject to the discretion retained by the Board and Committee pursuant to the Plan:

a. The number of Performance Share Units to which the Grantee actually will be entitled for the Performance Period will be determined at the end of the Performance Period based on the level of achievement of the Performance Objectives in accordance with Exhibit A. All determinations of whether the Performance Objectives have been achieved and the level of any such achievement, the number of Performance Share Units to which the Grantee will be entitled, and all other matters related to this Section 4 will be made by the Board or the Committee in its sole discretion.

b. Promptly following completion of the Performance Period (and no later than sixty (60) days following the end of the Performance Period), the Board or the Committee will review and certify in writing (i) whether, and to what extent, the Performance Objectives for the Performance Period have been achieved, and (ii) the number of Performance Share Units to which the Grantee will be entitled for the Performance Period, if any, subject to the requirements of Section 5. Such certification will be final, conclusive, and binding on the Grantee, and on all other persons, to the maximum extent permitted by law.

5. Vesting and Settlement of Performance Share Units.

a. The Performance Share Units are subject to forfeiture until they vest. Except as otherwise provided herein, provided that the Grantee's Termination Date does not occur prior to the Settlement Date and further provided that the "Threshold" level of the Performance Objectives set forth in Exhibit A has been achieved, the Performance Share Units will vest as of the Settlement Date. The number of Performance Share Units that vest and become nonforfeitable under this Agreement will be determined by the Board or the Committee in its discretion based on the level of achievement of the Performance Objectives set forth in Exhibit A and will be rounded to the nearest whole Performance Share Unit. The Performance Share Units that become vested pursuant to this subsection 5(a) shall be settled as of the Settlement Date.

b. Except as otherwise determined by the Committee in the exercise of its discretion under the Plan and except as otherwise expressly provided in this Agreement, if the Grantee's Termination Date occurs for any reason at any time prior to the Settlement Date, the Grantee's Performance Share Units will be automatically forfeited upon the Termination Date, the Grantee will have no further rights under or with respect to the Performance Share Units, and the Company will have no further obligations to the Grantee under this Agreement.

c. Notwithstanding the provisions of subsection 5(a) or 5(b), except as otherwise provided herein or as provided by the Board or Committee in accordance with its authority under the Plan, in the event that the Grantee's Termination Date occurs prior to the Settlement Date:

i. and on or after the end of the Performance Period and prior to the Settlement Date on account of death, Disability or Retirement, the Grantee will be vested in the number of Performance Share Units that would have become vested Performance Share Units had the Grantee's Termination

Date not occurred prior to the Settlement Date and taking into account actual performance for the Performance Period, which Performance Share Units will be settled as of the Settlement Date;

- ii. and prior to the end of the Performance Period on account of his or her death or Disability, the Grantee will be vested as of the Termination Date in Performance Share Units equal to a pro rata portion (based on the portion of the Performance Period elapsed through the Termination Date) of the Performance Share Units that would have become vested Performance Share Units had the Grantee's Termination Date not occurred prior to the Settlement Date and had the performance for the Performance Period been met at the target level of performance, which vested Performance Share Units will be settled as soon as practicable (but in no event more than thirty (30) days following) the Termination Date; and
- iii. and prior to the end of the Performance Period on account of his or her Retirement, the Grantee will be vested in Performance Share Units equal to the pro rata portion (based on the portion of the Performance Period elapsed through the Termination Date) of the Performance Share Units that would have become vested Performance Share Units had the Grantee's Termination Date not occurred prior to the last day of the Performance Period and taking into account actual performance for the Performance Period, which vested Performance Share Units will be settled as of the Settlement Date.

Any Performance Share Units that are not vested in accordance with this subsection 5(c) shall be forfeited.

d. In the event that a Change in Control occurs during the Performance Period, [2023 Plan: the provisions of Section 8 of the Plan will apply to the vesting and settlement of the Performance Shares Units.] [2017 Plan: the provisions of Exhibit B attached hereto will apply to the vesting and settlement of the Performance Share Units.]

e. In the event that any of the terms contained in this Section 5 or this Agreement conflict with any employment agreement in effect between the Company or any of its Affiliates and the Grantee, then the terms of the employment agreement will govern if such terms are more favorable to the Grantee.

6. Settlement. The Performance Share Units that become vested for the Performance Period will be settled as of the Settlement Date by delivery of to the Grantee of that number of shares of Stock equal to the number of shares subject to the vested Performance Units and the Company will enter the Grantee's name on the books and records of the Company as the shareholder of record with respect to the shares of Stock delivered to the Grantee. Notwithstanding the foregoing, the Board or Committee, in its sole discretion, and for any reason may elect to settle the vested Performance Share Units (in whole or in part) in cash, in an amount equal to the fair market value (determined as of the Settlement Date) of the number of shares of Stock represented by the Performance Share Units that are vested and payable as of the Settlement Date and which the Board or Committee elects to settle in cash.

7. Restrictions. Subject to any exceptions set forth in this Agreement or the Plan, during the Performance Period and until such time as the Performance Share Units are settled in accordance with Section 6, the Performance Share Units or the rights relating thereto may not be assigned, alienated, pledged, attached, sold or otherwise transferred or encumbered by the Grantee. Any attempt to assign, alienate, pledge, attach, sell or otherwise transfer or encumber

the Performance Share Units or the rights relating thereto will be wholly ineffective and, if any such attempt is made, the Performance Share Units will be forfeited by the Grantee and all of the Grantee's rights to such units will immediately terminate without any payment or consideration by the Company.

8. Rights as Shareholder; Dividend Equivalents.

- a. The Grantee will not have any rights of a shareholder with respect to the shares of Stock underlying the Performance Share Units unless and until the Performance Share Units vest and are settled by the issuance of such shares of Stock.
- b. Upon and following the settlement of the Performance Share Units in shares of Stock, the Grantee will be the record owner of the Stock underlying the Performance Share Units unless and until such Stock is sold or otherwise disposed of, and as record owner will be entitled to all rights of a shareholder of the Company (including voting rights).
- c. The Grantee will not be entitled to any dividend equivalents with respect to the Performance Share Units to reflect any dividends payable on shares of Stock.

9. Tax Withholding. The Company and its Affiliates will deduct from any vesting or settlement of the Grantee's Performance Share Units or from any other payment to the Grantee, including wages, any Federal, state, local or provincial tax or charge that is then required to be deducted under applicable law with respect to the vesting or settlement of the Performance Share Units or other payment or as determined by the Committee to be appropriate under a program for withholding. The Company's obligation to deliver Stock or cash, as applicable, in settlement of the vested Performance Share Units will be subject to the Grantee's satisfaction of all applicable federal, state, and local income and employment tax withholding obligations. If tax withholding attributable to the vesting or settlement of the vested Performance Share Units is required by the Company, then, at the Board's discretion, the Company may satisfy such tax obligations by reducing the number of shares of Stock otherwise deliverable (if the units are to be settled in Stock) or by accepting the delivery to the Company of shares of Stock previously owned and unencumbered by the Grantee. Any withholding with respect to cash payments will be made by a reduction of the cash payment otherwise to be paid to the Grantee. The Company will also have the right to withhold from any salary, bonus or other payments due the Grantee the amount necessary to satisfy any tax withholding obligations related to the vesting or settlement of the vested Performance Share Units.

10. Conditions of Granting Award. The Grantee understands and agrees that, as a condition to the Company granting the Performance Share Units under this Agreement, by the Acceptance Date, the Grantee must execute and deliver an Employee Non-Compete Agreement in the form specified by the Company (the "**Non-Compete Agreement**"). The Grantee further understands that the Non-Compete Agreement will become effective upon the Grantee's execution and delivery thereof and that it will remain in effect for the period described therein, which period would include a period following the Grantee's Termination Date irrespective of whether or not the Grantee becomes vested in the Performance Share Units in accordance with this Agreement. In the Company's sole discretion, the Company may accept as a Non-Compete Agreement for purposes of this Agreement an executed employee non-compete agreement that is otherwise on file with the Company as of the Grant Date.

11. Heirs and Successors. If any benefits deliverable to the Grantee under this Agreement have not been delivered at the time of the Grantee's death, such benefits will be delivered to the legal representative of the estate of the Grantee.

12. Compliance with Law. The issuance and delivery of shares of Stock pursuant to this Agreement will be subject to compliance by the Company and the Grantee with all applicable requirements of federal and state securities laws and with all applicable requirements of any stock exchange on which the Stock may be listed. No Stock will be issued pursuant to this Agreement unless and until any then applicable requirements of state or federal laws and regulatory agencies have been fully complied with to the satisfaction of the Company and its counsel. The Grantee understands that the Company is under no obligation to register the Stock with the Securities and Exchange Commission, any state securities commission, or any stock exchange to effect such compliance.

13. Administration. The authority to administer and interpret this Award and this Agreement will be vested in the Committee, and the Committee will have all powers with respect to this Award and this Agreement as it has with respect to the Plan. Any interpretation of this Award or this Agreement by the Committee and any decision made by it with respect to this Award or this Agreement is final and binding on all persons.

14. Adjustments. The number of Performance Share Units awarded pursuant to this Award may be adjusted by the Committee in accordance with the Plan to reflect certain corporate transactions which affect the number, type or value of the Performance Share Units.

15. No Right to Continued Employment. Nothing contained in the Plan or in this Agreement, nor any action taken by the Board, will confer upon the Grantee any right with respect to continuation of employment by the Company as an employee or service as an officer or director nor interfere in any way with the right of the Company to terminate the Grantee's employment or other service as an employee, officer or director at any time with or without Cause, including during the Performance Period.

16. Governing Law; Venue; Dispute. This Agreement has been granted, executed and delivered in the State of Ohio, and the interpretation and enforcement will be governed by the laws thereof without regard to conflict of laws principles, and subject to the exclusive jurisdiction of the courts therein. Any dispute regarding the interpretation of this Agreement will be submitted by the Grantee or the Company to the Board for review. The resolution of such dispute by the Board will be final, binding and conclusive on the Grantee and the Company.

17. Notices. Any notice or document required to be filed with the Committee or the Grantee under the Plan or this Agreement will be properly filed if delivered in person, (including by e-mail notification with receipt requested), mailed by registered mail, postage prepaid, or sent by nationally recognized courier service to the Grantee at the Grantee's most current address on file with the Company and, if to the Board or Committee, in care of the Company at its principal executive offices to the attention of the Company's Chief Legal Officer or Chief Human Resources Officer. The Company may, by advance written notice to affected persons, revise such notice procedure from time to time. Any notice required under the Plan or this Agreement (other than a notice of election) may be waived by the person entitled to notice.

18. Plan Governs; Other Terms. The Award evidenced by this Agreement is granted pursuant to the Plan, and this Award and this Agreement are in all respects governed by the Plan and subject to all of the terms and provisions thereof, whether such terms and provisions are incorporated in this Agreement by reference or are expressly cited. Notwithstanding any other provision of the Plan or this Agreement, (a) this Award is subject to the Company's recoupment or clawback policies as applicable and as in effect from time to time, (b) the Committee may, in its sole and absolute discretion, adjust any Performance Objective or the calculation thereof, and (x) nothing in this Agreement supersedes or limits the Committee's authority under the Plan.

19. Successors and Assigns. The Company may assign any of its rights under this Agreement. This Agreement will be binding upon and inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on assignment and transfer set forth herein, this Agreement will be binding upon the Grantee and the Grantee's beneficiaries, executors, administrators and the person(s) to whom the Performance Share Units may be transferred by will or the laws of descent or distribution.

20. Severability. The invalidity or unenforceability of any provision of the Plan or this Agreement will not affect the validity or enforceability of any other provision of the Plan or this Agreement, and each provision of the Plan and this Agreement will be severable and enforceable to the extent permitted by law.

21. Discretionary Nature of Plan. The Plan is discretionary and may be amended, cancelled or terminated by the Board at any time, in its discretion. The grant of the Performance Share Units pursuant to this Agreement does not create any contractual right or other right to receive any Performance Share Units or other Grants in the future. Future Grants, if any, will be at the sole discretion of the Board or the Committee. Any amendment, modification, or termination of the Plan will not constitute a change or impairment of the terms and conditions of the Grantee's employment or other service with the Company.

22. Amendment. The Board has the right to amend, alter, suspend, discontinue or cancel the Plan, prospectively or retroactively; provided, that, no such amendment will alter or impair the Grantee's material rights and obligations under this Agreement without the Grantee's written consent.

23. Section 409A of the Code. It is intended that any payments with respect to Performance Share Units will either be exempt from or comply with section 409A of the Code. The provisions of this Agreement will be construed and interpreted in accordance with section 409A of the Code. Notwithstanding any other provision of this Agreement to the contrary, if any payment or benefit hereunder is subject to section 409A of the Code, and if such payment or benefit is to be paid or provided on account of the Grantee's termination of employment (or other separation from service):

- a. and if the Grantee is a specified employee (within the meaning of section 409A(a)(2)(B) of the Code) and if any such payment or benefit is required to be made or provided prior to the first day of the seventh month following the Grantee's separation from service or termination of employment, such payment or benefit will be delayed until the first day of the seventh month following the Grantee's termination of employment or separation from service; and
- b. the determination as to whether the Grantee has had a termination of employment (or separation from service) will be made in accordance with the provisions of section 409A of the Code and the guidance issued thereunder without application of any alternative levels of reductions of bona fide services permitted thereunder.

24. No Effect on Other Benefits. The value of the Grantee's Performance Share Units is not part of the Grantee's normal or expected compensation for purposes of calculating any severance, retirement, welfare, insurance or similar employee benefit, unless the express provisions of a written employee benefit plan provides otherwise.

25. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

Counterpart signature pages to this Agreement transmitted by facsimile transmission, by electronic mail in portable document format (.pdf), or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original signature.

IN WITNESS WHEREOF, the parties hereto have caused this Performance Share Unit Agreement to be executed as of the date set forth on Schedule 1 to this Agreement.

Schedule 1

Performance Share Unit Agreement

Name of Grantee: _____

Target Award: _____ Performance Share Units (“Target Units”)

TSR Target Award: 50% of the Target Units

EBITDA Target Award: 50% of Target Units

Grant Date: _____, [2023]

By executing this Schedule 1, the Grantee hereby acknowledges receipt of a copy of the Plan and the Performance Share Unit Agreement of which this Schedule 1 is a part. The Grantee has read and understands the provisions of the Plan and the Performance Share Unit Agreement, and accepts the award of Performance Unit Agreement subject to all of the terms, conditions, restrictions and limitations of the Plan and the Agreement. The Grantee may obtain a copy of the 2023 Plan upon request.

GRANTEE:

By: ____
(signature)

Date: ____

Exhibit A

Performance Objectives

A. **TSR Target Award.** The Performance Share Units subject to the TSR Target Award (the “**TSR Performance Share Units**”) that will become vested for the Performance Period will be determined by reference to the Company’s TSR (as defined below) over the Performance Period relative to the TSR of each of the entities in the Peer Group (as determined in the Schedule 1 to this Exhibit A. Except as otherwise provided in the Plan or the Agreement, the number of TSR Performance Share Units that may become vested with respect to the Performance Period will be determined as follows:

Percentile Rank of Company’s TSR Compared to the TSR of the Peer Group Entities	TSR Performance Share Units Vested as a Percentage of the TSR Target Award
Less than 25 th percentile	0%
25 th percentile (Threshold)	50% of TSR Target Award
50 th percentile (Target)	100% of TSR Target Award
75 th percentile (Maximum)	200% of TSR Target Award

With respect to both the stock of the Company and the stock of each of the companies that comprise the Peer Group, TSR will be calculated (a) using a 20-trading day average of the stock price ending on January 1, 2023 and on the last day of the Performance Period, and (b) assuming all dividends declared during the Performance Period are reinvested at the closing price on the applicable ex-dividend date.

In the event the level of achievement falls between the Threshold percentile and Target percentile or between the Target percentile and Maximum percentile, the percentage of the Target Award earned will be interpolated on a straight-line basis between such applicable percentiles.

Depending on the Company’s TSR over the Performance Period relative to the TSR of the companies that comprise the Peer Group, between 0% and 200% of the Performance Share Units subject to the TSR Target Award may become vested. In the event the level of achievement of the Performance Objective is in excess of the Maximum percentile, the Grantee will not be entitled to any Performance Share Units in excess of 200% of the TSR Target Award.

“**TSR**” means with respect to the Company or a company in the Peer Group, as applicable, the cumulative return to shareholders during the Performance Period, measured by the change in Market Value Price (as defined below) (plus dividends (or other distributions) reinvested over the Performance Period, determined on January 1, 2023 and the last business day of the Performance Period. TSR will be calculated (i) using a 20-trading day average of the stock price ending on (A) January 1, [2023], and (B) the last business day of the Performance Period, and (ii) assuming all dividends declared during the Performance Period are reinvested at the closing Market Value Price on the applicable ex-dividend date. “**Market Value Price**” means the latest available closing price of a share of Stock or of a share of common stock of a company in the Peer Group, as the case may be, on the National Association of Security Dealers Automated Quotations (NASDAQ), the New York Stock Exchange, or other recognized market if the stock does not trade on either such exchanges at the relevant time.

B. EBITDA Target Award. The Performance Share Units subject to the EBITDA Target Award (“**EBITDA Performance Share Units**”) will become vested based on the sum of the Company’s EBITDA (as defined below) for each calendar year of the Performance Period (“**Cumulative EBITDA**”) based on the EBITDA Performance Objective established for the Performance Period. For each year during the Performance Period, the Committee or the Board will establish a Threshold level of EBITDA performance, a Target level of EBITDA performance and a Maximum level of EBITDA performance. The sum of the applicable level of EBITDA performance for each year of the Performance Period will be the applicable EBITDA Performance Objective for the Performance Period. Specifically, for the Performance Period, the sum of the Threshold EBITDA level of performance for each of the three years of the Performance Period will be the “**EBITDA Threshold Level**,” the sum of the Target EBITDA level of Performance will be the “**EBITDA Target Level**” and the sum of the Maximum EBITDA level of performance will be the “**EBITDA Maximum Level**”. If the Company’s EBITDA performance for any calendar year during the Performance Period is above the Maximum level of performance for that year, the Board or Committee may determine, in its discretion, that only the portion of EBITDA up to that year’s EBITDA Maximum Level will be taken into account for purposes of determining the level of EBITDA performance for the Performance Period.

The term “**EBITDA**” means, for any calendar year, the Company’s earnings before interest expense, income taxes and non-controlling interests, and depreciation and amortization expenses, as determined in accordance with normal business practices plus or minus any non-recurring items as deemed appropriate by the Board.

Except as otherwise provided in the Plan or the Agreement, the number of EBITDA Performance Share Units that may become vested with respect to the Performance Period will be determined as follows as of the end of the Performance Period by reference to the Company’s Cumulative EBITDA for the Performance Period:

Company’s Cumulative EBITDA for Performance Period	EBITDA Performance Share Units Vested as a Percentage of the EBITDA Target Award
Less than the EBITDA Threshold Level	0%
At least equal to the EBITDA Threshold Level but less than the EBITDA Target Level	50% of EBITDA Target Award
At least equal to the EBITDA Target Level but less than the EBITDA Maximum Levels	100% of EBITDA Target Award
At least equal to the EBITDA Target Level	200% of EBITDA Target Award

In the event that the level of achievement falls between the Threshold percentile and Target percentile or between the Target percentile and Maximum percentile, the percentage of the Target Award earned will be interpolated on a straight-line basis between such applicable percentiles.

In the event that EBITDA for any calendar year during the Performance Period is to be determined based on a period other than a full calendar year, EBITDA for such calendar year will be calculated on a pro rata basis to reflect the portion of the calendar year elapsed through the date of the calculation.

Schedule 1 to Exhibit A

Peer Group

The following companies will comprise the Company's Peer Group for purposes of this Performance Share Unit Award:

- Shyft Group (SHYF)
- AeroVironment (AVAV)
- Proterra Inc. (PTRA)
- Lion Electric Co. (LEV)
- Nikola Corp. (NKLA)
- Xos, Inc. (XOS)
- Fisker (FSR)
- Lordstown Motors Corp. (RIDE)
- Red Cat (RCAT)

The Peer Group of companies listed above will not be adjusted during the Performance Period except to exclude one or more of the companies listed above that during the Performance Period (i) cease to be publicly traded other than as a result of bankruptcy, or (ii) have experienced a major restructuring by reason of a spin-off of more than 50% of any such company's assets.

EXHIBIT B

In the event that a Change in Control occurs during the Restricted Period, the provisions of this Exhibit B will apply to the vesting and settlement of the Performance Share Units.

Change in Control.

- (a) **Generally.** Subject to the provisions relating to certain adjustments to shares and unless otherwise specifically prohibited under applicable laws or by the rules and regulations of any applicable governmental agencies or national securities exchange, or unless otherwise provided by the Committee or in an individual severance, employment or other agreement between the Company (or Subsidiary) and a Grantee, the provisions of this Exhibit B will apply in the event of a Change in Control.
 - (b) **Performance Awards.** Upon a Change in Control, (i) any performance conditions applicable to this Award will be deemed to have been achieved at the higher of (A) the target level of performance for the Performance Period or (B) the actual level of performance measured as of the date of the Change in Control, and, in any case, this Award will thereafter not be subject to any performance conditions, and (ii) subject to the terms and conditions of this Exhibit B, any service-based conditions applicable to this Award will continue to apply as if the Change in Control had not occurred. The provisions of this paragraph (b) will be applied prior to the provisions of paragraphs (c) and (d) as applicable.
 - (c) **Continuation, Assumption, and/or Replacement of Awards.** If, upon a Change in Control, this Award is continued or is assumed by a successor to the Company and/or awards in other shares or securities are substituted for this Award (which continued, assumed, and/or substituted awards are referred to collectively herein as **"Replacement Awards"**) then:
 - (i) each Grantee's Replacement Awards will continue in accordance with their terms; and
 - (ii) if the Grantee's Termination Date has not occurred as of the Change in Control and if the Grantee's Termination Date occurs by reason of a Qualifying Termination on or within twenty four (24) months following the Change in Control, then (A) all of the Grantee's outstanding Replacement Awards will be fully vested upon his or her Termination Date and will be settled or paid within thirty (30) days after the Termination Date or, if required by Code Section 409A, on the date that settlement or payment would have otherwise occurred under the terms of this Award.
- Any Replacement Award that is substituted for this Award will be an award of the same type and of substantially equivalent value as this Award.
- (d) **Termination/Acceleration.** If, upon a Change in Control, the provisions of paragraph (c) do not apply, this Award will become fully vested immediately prior to the Change in Control and will be cancelled in exchange for a cash payment or other consideration generally provided to stockholders in the Change in Control equal to the then current value of the Award, determined as though the Award was

fully vested and any restrictions applicable to such Award had lapsed immediately prior to the Change in Control. Any payment or settlement pursuant to this paragraph (d) will be made within thirty (30) days after the Change in Control or, if required by Code Section 409A, on the date that payment or settlement would have otherwise occurred under the terms of the Award.

**Workhorse Group Inc. 2017 Long-Term Incentive Plan
DIRECTOR RESTRICTED STOCK AWARD AGREEMENT**

1. Grant of Restricted Stock Award. In accordance with and subject to the terms and conditions of (a) the Workhorse Group Inc. 2017 Long-Term Incentive Plan, as it may be amended from time to time (the “**Plan**”), and (b) this Restricted Stock Award Agreement (the “**Agreement**”), Workhorse Group Inc. (the “**Company**”) grants to [NAME OF DIRECTOR] an Award under the Plan of _____ shares of Stock that will be subject to the terms, conditions, restrictions and limitations set forth in this Agreement (“**Restricted Stock**”). The Restricted Stock awarded under this Agreement will be deemed to have been granted on [ADD DATE] (the “**Grant Date**”). Capitalized terms not otherwise defined in this Agreement will have the meanings set forth in the 2023 Workhorse Group Inc. Long-Term Incentive Plan.

2. Vesting and Forfeiture.

- a. All shares of Restricted Stock subject to this Award will be unvested unless and until they become vested and nonforfeitable in accordance with this Section 2. The period during which shares of Restricted Stock are not vested is referred to herein as the “**Restricted Period**” and the Restricted Period with respect to the shares of Restricted Stock granted hereunder will expire as of the Vesting Date. Subject to the terms and conditions of this Agreement, the shares of Restricted Stock will become vested and nonforfeitable as of the six (6) month anniversary of the Grant Date (which date shall be referred to herein as the “**Vesting Date**”), provided in any case, that the Grantee’s Termination Date has not occurred prior to the Vesting Date.
- b. Except as otherwise determined by the Board or the Committee in the exercise of its discretion under the Plan and except as otherwise expressly provided in this Agreement, any shares of Restricted Stock that are not vested and nonforfeitable as of the Grantee’s Termination Date will be immediately forfeited and the Grantee will have no further rights under or with respect to such shares of Restricted Stock and the Company will have no further obligations to the Grantee under this Agreement.
- c. Notwithstanding the provisions of subsection 2(a) or 2(b), except as otherwise provided herein or as provided by the Board or Committee in accordance with its authority under the Plan, in the event that the Grantee’s Termination Date occurs prior to the end of the Restricted Period due to his or her not standing for re-election to the Board or his or her death or Disability, as of the Termination Date, the Grantee will be vested in that number of shares of Restricted Stock equal to the pro rata portion (based on the number of Board meetings attended by the Grantee between the Grant Date and the Termination Date (including any meeting occurring on the Termination Date) as compared to the total number of meetings scheduled for the calendar year in which the Termination Date occurs) of the shares of Restricted Stock that would have become vested as of the Vesting Date had his or her Termination Date not occurred prior to the Vesting Date. All other shares of Restricted Stock will be forfeited as of the Grantee’s Termination Date.

- d. In the event that a Change in Control occurs during the Restricted Period, the provisions of Exhibit A attached hereto will apply to the vesting of the shares of Restricted Stock.

3. Transfer of Shares; Rights With Respect to Shares.

- a. Each share of Restricted Stock will be registered in the name of the Grantee and will, in the discretion of the Committee, be retained by the Company or entered in the name of the Grantee pursuant to a “book entry” system in which a computerized or manual entry is made on the books and records of the Company to evidence the issuance of such shares. Such Company books and records are, absent manifest error, binding on all parties.
- b. If the Grantee’s Termination Date has not occurred prior to the Vesting Date and if all other terms, conditions, restrictions and limitations contained herein and in the Plan have been satisfied, the shares of Stock that become vested on the Vesting Date will be transferred to the Grantee free of all restrictions.
- c. Subject to the Plan and this Agreement, during the Restricted Period, the Grantee will enjoy all rights of ownership of the shares of Restricted Stock, including the right to vote and receive dividends or other distributions with respect to the shares of Restricted Stock as hereinafter set forth, with the exception that, during the Restricted Period, the Grantee will not transfer, deliver, assign, sell, or dispose of the Restricted Stock in any manner other than by will or by the laws of descent and distribution, nor pledge or otherwise hypothecate the Restricted Stock and a breach of the terms, conditions, restrictions or limitations contained herein will cause the Restricted Stock to be forfeited to the Company.
- d. Any cash or stock dividends declared on the Restricted Stock during the Restricted Period will be paid directly to the Grantee on the Vesting Date applicable to the shares to which the dividends relate (subject to any applicable tax withholding) and, if and to the extent that the shares do not become vested and are forfeited, the related dividends will be forfeited at the same time as the shares to which they relate. For purposes of this subsection 4(d), the “Vesting Date” of the shares that become vested pursuant to subsection 3(c) or (d) shall be the date on which the shares become vested pursuant to subsection 3(c) or (d) as applicable.

4. Tax Withholding. The Company and its Affiliates will deduct from any vesting or delivery of any of the Grantee’s shares of Restricted Stock or from any other payment to the Grantee (including payment of any dividends), including wages, any Federal, state, local or provincial tax or charge that is then required to be deducted under applicable law with respect to the vesting or delivery of the shares of Restricted Stock or other payment or as determined by the Committee to be appropriate under a program for withholding. If the Grantee makes an election in accordance with Code Section 83(b) to be taxed on the shares of Restricted Stock as of the Grant Date, he or she must so notify the Company in writing, file the election with the Internal Revenue Service within thirty (30) days after the Grant Date, and promptly pay the Company the amount it determines is needed to satisfy tax withholding requirements.

5. Nonassignability. Except as otherwise provided herein and in the Plan, the right of the Grantee to the Restricted Stock will not be assignable or transferable by the Grantee other

than to a designated beneficiary upon the Grantee's death pursuant to his will or by the laws of descent and distribution. Any such assignment or transfer will be null and void and without effect upon any attempted assignment or transfer, except as provided herein or in the Plan, including, without limitation, any purported assignment, whether voluntary or by operation of law, pledge, hypothecation, or other disposition contrary to the provisions hereof, or levy of execution, attachment, trustee process, or similar process, whether legal or equitable, upon the Restricted Stock.

6. Heirs and Successors. If any benefits deliverable to the Grantee under this Agreement have not been delivered at the time of the Grantee's death, such benefits will be delivered to the legal representative of the estate of the Grantee.

7. Compliance with Law. The issuance and delivery of shares of Stock pursuant to this Agreement will be subject to compliance by the Company and the Grantee with all applicable requirements of federal and state securities laws and with all applicable requirements of any stock exchange on which the Stock may be listed. No Stock will be issued pursuant to this Agreement unless and until any then applicable requirements of state or federal laws and regulatory agencies have been fully complied with to the satisfaction of the Company and its counsel. The Grantee understands that the Company is under no obligation to register the Stock with the Securities and Exchange Commission, any state securities commission, or any stock exchange to effect such compliance.

8. Administration. The authority to administer and interpret this Award and this Agreement will be vested in the Committee, and the Committee will have all powers with respect to this Award and this Agreement as it has with respect to the Plan. Any interpretation of this Award or this Agreement by the Committee and any decision made by it with respect to this Award or this Agreement is final and binding on all persons.

9. Adjustments. The number of shares of Restricted Stock awarded pursuant to this Award may be adjusted by the Committee in accordance with the Plan to reflect certain corporate transactions which affect the number, type or value of the Stock.

10. No Right to Continued Service. Nothing contained in the Plan or in this Agreement, nor any action taken by the Board, will confer upon the Grantee any right with respect to continuation of service with the Company nor interfere in any way with the right of the Company to terminate the Grantee's service with the Company at any time with or without Cause, including during the Restricted Period.

11. Governing Law; Venue; Dispute. This Agreement has been granted, executed and delivered in the State of Ohio, and the interpretation and enforcement will be governed by the laws thereof without regard to conflict of laws principles, and subject to the exclusive jurisdiction of the courts therein. Any dispute regarding the interpretation of this Agreement will be submitted by the Grantee or the Company to the Board for review. The resolution of such dispute by the Board will be final, binding and conclusive on the Grantee and the Company.

12. Notices. Any notice or document required to be filed with the Committee or the Grantee under the Plan or this Agreement will be properly filed if delivered in person, (including by e-mail notification with receipt requested), mailed by registered mail, postage prepaid, or sent by nationally recognized courier service to the Grantee at the Grantee's most current address on file with the Company and, if to the Board or Committee, in care of the Company at its principal executive offices to the attention of the Company's Chief Legal Officer or Chief Human Resources Officer. The Company may, by advance written notice to affected persons, revise such notice procedure from time to time. Any notice required under the Plan or this Agreement (other than a notice of election) may be waived by the person entitled to notice.

13. Plan Governs; Other Terms. The Award evidenced by this Agreement is granted pursuant to the Plan, and this Award and this Agreement are in all respects governed by the Plan and subject to all of the terms and provisions thereof, whether such terms and provisions are incorporated in this Agreement by reference or are expressly cited. Notwithstanding any other provision of the Plan or this Agreement, (a) this Award is subject to the Company's recoupment or clawback policies as applicable and as in effect from time to time and (b) nothing in this Agreement supersedes or limits the Committee's authority under the Plan.

14. Successors and Assigns. The Company may assign any of its rights under this Agreement. This Agreement will be binding upon and inure to the benefit of the successors and assigns of the Company. Subject to the restrictions on assignment and transfer set forth herein, this Agreement will be binding upon the Grantee and the Grantee's beneficiaries, executors, administrators and the person(s) to whom the Restricted Stock may be transferred by will or the laws of descent or distribution.

15. Severability. The invalidity or unenforceability of any provision of the Plan or this Agreement will not affect the validity or enforceability of any other provision of the Plan or this Agreement, and each provision of the Plan and this Agreement will be severable and enforceable to the extent permitted by law.

16. Discretionary Nature of Plan. The Plan is discretionary and may be amended, cancelled or terminated by the Board at any time, in its discretion. The grant of the Restricted Stock pursuant to this Agreement does not create any contractual right or other right to receive any Restricted Stock or other Grants in the future. Future grants, if any, will be at the sole discretion of the Board or the Committee. Any amendment, modification, or termination of the Plan will not constitute a change or impairment of the terms and conditions of the Grantee's service with the Company.

17. Amendment. The Board has the right to amend, alter, suspend, discontinue or cancel the Plan, prospectively or retroactively; provided, that, no such amendment will alter or impair the Grantee's material rights and obligations under this Agreement without the Grantee's written consent.

EXHIBIT A

In the event that a Change in Control occurs during the Restricted Period, the provisions of this Exhibit A will apply to the vesting of the shares of Restricted Stock.

Change in Control.

- (a) **Generally.** Unless otherwise specifically prohibited under applicable laws or by the rules and regulations of any applicable governmental agencies or national securities exchange, the following provisions will apply in the event of a Change in Control.
- (b) **Termination/Acceleration.** Upon a Change in Control, all then outstanding Awards will become fully vested immediately prior to the Change in Control and will be cancelled in exchange for a cash payment or other consideration generally provided to stockholders in the Change in Control equal to the then current value of the Award, determined as though the Award was fully vested and any restrictions applicable to such Award had lapsed immediately prior to the Change in Control. Any payment or settlement pursuant to this paragraph (b) will be made within thirty (30) days after the Change in Control.

WORKHORSE GROUP INC. SHORT-TERM INCENTIVE PLAN
(Effective as of January 1, 2023)

1. **Purpose.** Workhorse Group Inc. (the “Company”) has established the Workhorse Group Inc. Short-Term Incentive Plan (the “Plan”) to aid it in attracting, retaining, motivating and rewarding employees of the Company and its Affiliates (as defined herein) by providing for a cash bonus program that will serve as an incentive to foster a culture of performance and ownership, promote employee accountability, and to reward continuing improvements in stockholder value with an opportunity to participate in a portion of the wealth created.
 2. **Definitions.** Capitalized terms used herein will have the following meanings:
 - (a) “Affiliate” means a corporation or other entity that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Company. For purposes of the Plan, an ownership interest of more than fifty percent (50%) will be deemed to be a controlling interest.
 - (b) “Administrator” means the Board or the Committee. The term Administrator will include, with respect to any authority delegated to them pursuant to the Plan, officers of the Company (or committees thereof) to whom the Board or the Committee may from time to time delegate authority hereunder.
 - (c) “Annual Bonus” means the amount of the annual bonus for a given Performance Year payable to a Participant, as determined by the Administrator in accordance with the Annual Bonus Formula for the applicable Performance Year and in accordance with the terms and conditions of the Plan. An Annual Bonus is not payable to a Participant until it is earned and vested in accordance with the terms of the Plan.
 - (d) “Annual Bonus Formula” means, for a Performance Year, the methodology to be used to calculate the Annual Bonus for each Participant for such Performance Year. Application of the Annual Bonus Formula in the calculation of any Annual Bonus will be subject to the terms and conditions of the Plan. [The Annual Bonus Formula for a Performance Year will be attached hereto as Exhibit A.]
 - (e) “Annual Target Bonus Opportunity” means an amount (specified as such or determined pursuant to a formula) and denominated in local currency that a Participant potentially may earn as an Annual Bonus in respect of a specified Performance Year at the targeted level of performance. An Annual Target Bonus Opportunity constitutes only a conditional right to receive an Annual Bonus and does not guarantee receipt of an Annual Bonus or any level of Annual Bonus based on performance or otherwise.
 - (f) “Board” means the Company’s Board of Directors.
 - (g) “Code” means the Internal Revenue Code of 1986, as amended.
 - (h) “Committee” means the Human Capital Management and Compensation Committee of the Board and any successor committee of the Board thereto or, in the absence of such a committee or at the Board’s discretion, the full Board.
 - (i) “Company” has the meaning set forth in Section 1.
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- (j) “Disability” means “Disability” means, with respect to a Participant, the date on which Participant becomes disabled within the meaning of Code Section 22(e)(3).
- (k) “Eligible Employee” means any salaried or hourly employee of the Company or an Affiliate.
- (l) “Participant” means, for a Performance Year, an Eligible Employee who has been granted an Annual Target Bonus Opportunity under the Plan for the Performance Year. An individual whose Annual Bonus under the Plan for a Performance Year is earned and vested but remains outstanding will also be a Participant solely with respect to such earned and vested Annual Bonus.
- (m) “Payment Date” means the date on which the Annual Bonus for a Performance Year is paid to a Participant, which date will be in the calendar year following the last day of the Performance Year as determined by the Administrator and no later than March 15 of the year following the last day of the Performance Year.
- (n) “Performance Year” means the Company’s fiscal year or portion thereof specified by the Administrator as the period over which performance is to be measured pursuant to the Annual Bonus Formula for that period. Unless otherwise specified by the Administrator, the Performance Year will be the calendar year.
- (o) “Plan” has the meaning set forth in Section 1.
- (p) “Retirement” means the date on which a Participant’s Termination Date occurs on or after the date on which the sum of his or her age and complete years of service equal or exceed sixty five (65), provided that the Termination Date does not occur for any other reason.
- (q) “Section 409A” has the meaning set forth in Section 9.
- (r) “Termination Date” means the date on which the Participant’s employment with the Company and its Affiliates terminates for any reason. A transfer of a Participant’s employment between the Company or an Affiliate will not be deemed to constitute a termination of employment for purposes of the Plan.

3. **Administration.**

- (a) Administration. The authority to control and manage the operation and administration of the Plan will be vested in the Committee. Notwithstanding the foregoing, in no event will the Committee’s duties under the Plan exceed the duties of the Committee in the applicable charter documents and, to the extent that the Plan provides for allocation to the Committee of duties that exceed such authority, the actions of the Committee under the Plan will be taken by the Board.
- (b) Powers of Committee. The Committee’s administration of the Plan will be subject to the following:

- (i) Subject to the terms and conditions of the Plan, the Committee will have the authority and discretion to select from among the Eligible Persons those persons who will receive the grant of an Annual Target Bonus Opportunity under the Plan for a Performance Year (and thereby become a Participant in the Plan for such Performance Year), to determine the Annual Target Bonus Opportunity for each Participant and determine the amount of any Annual Bonus payable to any Participant hereunder, establish the Annual Bonus Formula for each Performance Year, to establish the terms, conditions, performance measures and targets, restrictions and other provisions relating to Annual Bonus Formula.
 - (ii) Subject to the terms and conditions of the Plan, the Committee will have the authority and discretion to conclusively interpret the Plan, to establish, amend and rescind any rules and regulations relating to the Plan, to determine the terms and provisions of any award or an Annual Target Bonus Opportunity and/or Annual Bonus made pursuant to the Plan and to make all other determinations that may be necessary or advisable for the administration of the Plan.
 - (iii) Any interpretation of the Plan by the Committee and any decision made by it under the Plan is final and binding on all persons.
 - (iv) In controlling and managing the operation and administration of the Plan, the Committee will take action in a manner that conforms to the articles of incorporation and by-laws of the Company, and applicable state corporate law.
- (c) Delegation by Committee. Except to the extent prohibited by applicable law or the applicable rules of a securities exchange, the Committee may allocate all or any portion of its responsibilities and powers to any one or more of its members and may delegate all or any part of its responsibilities and powers to any person or persons selected by it. Any such allocation or delegation may be revoked by the Committee at any time.
- (d) Information to be Furnished to Committee. The Company and Affiliates will furnish the Committee with such data and information as it determines may be required for it to discharge its duties. The records of the Company and Affiliates as to an individual's employment or service, termination of employment or service, leave of absence, reemployment or recommencement of service and compensation will be conclusive on all persons unless determined to be incorrect. Participants and other persons entitled to benefits under the Plan must furnish the Committee such evidence, data or information as the Committee considers desirable to carry out the terms of the Plan.
- (e) Limitation on Liability and Indemnification of Committee. No member or authorized delegate of the Committee will be liable to any person for any action taken or omitted in connection with the administration of the Plan unless attributable to his own fraud or willful misconduct; nor will the Company or any Affiliate be liable to any person for any such action unless attributable to fraud or willful misconduct on the part of a director or employee of the Company or Affiliate. The Committee, the individual members thereof, and persons acting as the authorized delegates of the Committee under the Plan, will be indemnified by the Company against any and all liabilities, losses, costs and expenses (including legal fees and expenses) of whatsoever kind and nature which may be imposed on, incurred by or

asserted against the Committee or its members or authorized delegates by reason of the performance of a Committee function if the Committee or its members or authorized delegates did not act dishonestly or in willful violation of the law or regulation under which such liability, loss, cost or expense arises. This indemnification will not duplicate but may supplement any coverage available under any applicable insurance.

- (f) Adjustment to Payments. Notwithstanding anything to the contrary contained herein, the Administrator will have the authority to change the Annual Target Bonus Opportunity of any Participant based upon the recommendation of the Participant's manager or any of his or her direct or indirect supervisors or as otherwise determined by the Administrator. The Company retains the right to withhold any payment amounts determined hereunder (whether or not such amounts are earned and vested) from any Participant who violates any Company policy and to treat such withheld payments as forfeited by the Participant. Notwithstanding any other provision of the Plan or the applicable Annual Bonus Formula for any Performance Year to the contrary, the Administrator may, in its sole and absolute discretion, adjust the amount of an Annual Target Bonus Opportunity or amend or cancel an Annual Bonus, in either case prior to the date on which the Annual Bonus is earned and vested; provided, however, that in no event will the amount of a Participant's Annual Bonus for any Performance Year exceed the Maximum Amount, if any, set forth in the Annual Bonus Formula for the applicable Performance Year. In addition, the Administrator, in its sole and absolute discretion, is authorized to make adjustments to the terms and conditions of, and the performance targets and other criteria included in, the Annual Bonus Formula.

4. **Participation.** The Administrator, in its sole and absolute discretion, may select any Eligible Employees to participate in the Plan for a specified Performance Year, which Eligible Employees so selected will be "Participants" for such Performance Year. An Eligible Employee who is not selected to participate in the Plan for a specified Performance Year will not be entitled to any Annual Bonus under the Plan for such Performance Year and will not be a Participant for such Performance Year. Unless otherwise provided by the Administrator, any Eligible Employee who has been selected for participation in the Plan for a Performance Year will become a Participant as of the first day of such Performance Year; provided, however, that if an individual who is selected for participation is not an Eligible Employee as of the first day of the Performance Year, such individual will become a Participant on the date specified by the Administrator (but in no event prior to the date on which such individual is an Eligible Employee).

5. **Establishment of Annual Bonus Formula and Annual Target Bonus Opportunities.**

- (a) Establishment of Annual Bonus Formula. Within the first ninety (90) days of a Performance Year, the Administrator will establish the Annual Bonus Formula for the Performance Year.
- (b) Establishment of Annual Target Bonus Opportunities. For each Performance Year, the Administrator will designate, for each Participant, such Participant's Annual Target Bonus Opportunity. Annual Target Bonus Opportunities will be denominated in cash and all Annual Bonuses will be payable in cash.

- (c) Newly Eligible Participants. In the case of an Eligible Employee who becomes a Participant after the beginning of a Performance Year, the Administrator will designate, prior to the date on which such Eligible Employee becomes a Participant, such individual's Annual Target Bonus Opportunity for the portion of the Performance Year remaining after he or she becomes a Participant. In no event will an Eligible Employee who is hired on or after October 1 of a Performance Year be eligible to become a Participant in the Plan for that Performance Year.
6. **Determination of Annual Bonus; Earning and Payment of Annual Bonus.**
- (a) Determination of Annual Bonus. As soon as practicable after the end of the Performance Year and prior to the Payment Date, the Administrator will determine the amount of the Annual Bonus to be paid to each Participant for the Performance Year. Subject to the terms and conditions of the Plan, the Annual Bonuses will be determined in accordance with the Annual Bonus Formula for the Performance Year. Unless otherwise specifically provided in the Plan or determined by the Administrator (or otherwise specifically provided under a separate agreement, plan or policy conferring rights on the Participant), the Annual Bonus will be earned and vested upon the Payment Date and only with respect to a Participant who remains actively employed by the Company or an Affiliate on the Payment Date, unless otherwise required by applicable law or the provisions of the Plan.
- (b) Payment of Annual Bonus. Any Annual Bonus for a Performance Year will be paid by the Company, or the Affiliate that employs the Participant, which payment will be made no later than the Payment Date for such Performance Year. Except as otherwise provided herein or as provided by the Administrator in accordance with its authority under the Plan, if a Participant's Termination Date occurs prior to the Payment Date for any Performance Year, the Participant will not be entitled to payment of an Annual Bonus for such Performance Year (including the Annual Bonus for any completed Performance Year for which the Payment Date has not yet occurred) and the Participant will have no further rights under the Plan.
- (c) Special Rules for Death, Disability and Retirement. Notwithstanding the provisions of subsection 6(a) or 6(b), except as otherwise provided herein or as provided by the Administrator in accordance with its authority under the Plan, in the event that a Participant's Termination Date occurs due to his or her death, Disability or Retirement:
- (i) on or after the end of the Performance Year and prior to the Payment Date for that Performance Year, the Participant's Annual Bonus for the Performance Year will be equal to the amount of the Annual Bonus that the Participant would have been entitled to receive for that Performance Year had his or her Termination Date not occurred prior to the Payment Date and will be payable on the Payment Date;
- (ii) prior to the end of the Performance Year on account of death or Disability, the Participant's Annual Bonus for the Performance Year in which the Termination Date occurs will be equal to the pro rata portion (based on the portion of the Performance Year elapsed through the Termination Date) of the Annual Target Bonus Opportunity for the Performance Year in which the Termination Date occurs and will be payable as soon as practicable, but in no event more than thirty (30) days, following the Termination Date; and

- (iii) prior to the end of the Performance Year on account of Retirement, the Participant's Annual Bonus for the Performance Year in which the Termination Date occurs will be equal to the pro rata portion (based on the portion of the Performance Year elapsed through the Termination Date) of the Annual Bonus that the Participant would have been entitled to receive for that Performance Year had his or her Termination Date not occurred prior to the Payment Date for the Performance Year in which the Termination Date occurs and will be payable on the Payment Date.
- (d) **Change in Control.** Notwithstanding the provisions of subsection 6(a) or 6(b), except as otherwise provided by the Administrator in accordance with its authority under the Plan, in the event a Change in Control occurs during a Performance Year and prior to a Participant's Termination Date, the following shall apply:
 - (i) if the Change in Control occurs after the end of a Performance Year and prior to the Payment Date for that Performance Year, a Participant's Annual Bonus for the Performance Year ending immediately prior to the date of the Change in Control will be equal to the amount of the Annual Bonus that the Participant would have been entitled to receive for that Performance Year; and
 - (ii) if the Change in Control occurs prior to the end of a Performance Year, a Participant's Annual Bonus for the Performance Year in which the Change in Control occurs will be equal to the Participant's Annual Target Bonus Opportunity for that Performance Year.

The Annual Bonus payable under this subsection 6(d) will be paid on or as soon as practicable, but in no event more than thirty (30) days, following the Change in Control.

7. **General Provisions.**

- (a) **No Right to Employment.** None of the Plan, its adoption, its operation, or any action taken under the Plan will be construed as giving any employee the right to be retained or continued in the employ or service of the Company or any of its Affiliates, nor will it interfere in any way with the right and power of the Company or any of its Affiliates to discharge any employee or take any action that has the effect of terminating any employee's employment or service at any time.
- (b) **Plan Not Funded; No Guarantee.** The Plan will be unfunded. Neither the Company nor any of its Affiliates will be required to establish any special or separate fund or to make any other segregation of assets to assure the payment of any Annual Bonus hereunder. Participation in the Plan is not a guarantee that any amounts will be paid under the Plan. Participation in the Plan is a privilege, not a right, and each individual Participant's participation in the Plan is subject to review from time to time at the discretion of the Company. Receipt of an Annual Bonus in any one year does not guarantee receipt of an Annual Bonus under the Plan in any other year.
- (c) **Governing Law.** The validity, construction, and effect of the Plan and any rules and regulations or document hereunder, to the extent not otherwise governed by the Code or the laws of the United States, will be determined in accordance with the laws of the State of Ohio, without giving effect to conflict of law principles.

- (d) Nonexclusively of the Plan. The adoption of this Plan will not be construed as creating any limitations on the power of the Company to adopt such other compensation arrangements as it may deem desirable for any Participant or non-participating employee.
- (e) Severability. The invalidity of any provision of the Plan or a document hereunder will not be deemed to render the remainder of this Plan or such document invalid.
- (f) Successors. This Plan will be binding upon, and inure to the benefit of, the Company and its successors and assigns and upon any person acquiring, whether by merger, consolidation, purchase of assets or otherwise, all or substantially all of the Company's assets and business, and the successor will be substituted for the Company under this Plan
- (g) Tax Withholding. The Company and its Affiliates will deduct from any payment of a Participant's Annual Bonus or from any other payment to the Participant, including wages, any Federal, state, local or provincial tax or charge that is then required to be deducted under applicable law with respect to the Annual Bonus or other payment or as determined by the Administrator to be appropriate under a program for withholding.
- (h) Non-Transferability. An Annual Target Bonus Opportunity, any resulting Annual Bonus and any other right hereunder will be non-assignable and non-transferable, and will not be pledged, encumbered or hypothecated to or in favor of any party or subject to any lien, obligation or liability of the Participant to any party other than the Company or an Affiliate.
- (i) Heirs and Successors. If any benefits deliverable to the Participant under the Plan have not been delivered at the time of the Participant's death, such benefits will be delivered to the legal representative of the estate of the Participant.
- (j) Recoupment. Annual Bonuses will be subject to any then-applicable policy of the Company relating to forfeiture, recoupment or clawback of incentive or performance awards to employees.
- (k) Action by Company. Unless otherwise specified herein, any action required or permitted to be taken by the Company hereunder will be by an officer of the Company or such other person authorized by the Board; provided, however, that in no event will any officer be permitted to take any action on behalf of the Company with respect to himself or herself.

8. **Amendment and Termination.** The Board or the Committee may, at any time, amend, alter, suspend, discontinue or terminate this Plan, and such action will not be subject to the approval of Participants; provided, however, that, without the consent of the Participant, no such action will materially impair the rights of a Participant with respect to an Annual Bonus that has been earned and vested in accordance with the terms of the Plan.

9. **Section 409A.** It is the intent of the Company that all Annual Bonuses under the Plan be exempt from or comply with Section 409A of the Code and all regulations, guidance and other interpretative guidance issued thereunder ("Section 409A"). The provisions of the Plan will be construed and interpreted in accordance with the foregoing. Notwithstanding the foregoing, the Company will not be required to assume any increased economic burden in connection therewith.

Although the Company intends that the Plan be administered so as to be exempt from or in compliance with the requirements of Section 409A, neither the Company nor the Administrator represents or warrants that the Plan will comply with Section 409A or any other provision of federal, state, local or non-United States law. Neither the Company, its Affiliates nor their respective directors, officers, employees or advisers will be liable to any Participant (or any other individual claiming a benefit through the Participant) for any tax, interest or penalties the Participant might owe as a result of participation in the Plan, and the Company and its Affiliates will have no obligation to indemnify or otherwise protect any Participant from the obligation to pay any taxes or penalties pursuant to Section 409A. Without limiting the generality of the foregoing:

- (a) Time and Form of Payment. Notwithstanding any other provision of the Plan to the contrary, if any payment or benefit hereunder is subject to Section 409A, and if such payment or benefit is to be paid or provided on account of the Participant's termination of employment (or other separation from service) and if the Participant is a specified employee (within the meaning of Code Section 409A(a)(2)(B)) such payment or benefit will be delayed until the first day of the seventh month following the Participant's termination of employment (or separation from service). The determination as to whether a Participant has had a termination of employment (or separation from service) will be made in accordance with the provisions of Section 409A and the guidance issued thereunder without application of any alternative levels of reductions of bona fide services permitted thereunder.
- (b) Prohibition on Acceleration of Payments. Except as otherwise permitted under Section 409A and the guidance and Treasury regulations issued thereunder, the time or schedule of any payment or amount scheduled to be paid pursuant to the Plan will not be accelerated.

EXHIBIT A

ATTACH BONUS FORMULA FOR APPLICABLE YEAR

Workhorse Group Inc.
List of Subsidiaries

- Workhorse Technologies Inc., an Ohio corporation
- Horsefly Inc., a Nevada corporation
- Workhorse Motor Works Inc., an Indiana corporation
- Workhorse Properties Inc., an Ohio corporation
- Stables & Stalls LLC, a Delaware LLC
 - Stables & Stalls Real Estate I LLC, a Delaware LLC (a Stables & Stalls LLC subsidiary)
- RouteHorse LLC, a Delaware LLC
 - ESG Logistics Corp., an Ohio corporation (a RouteHorse LLC subsidiary)

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We have issued our report dated March 1, 2023 with respect to the consolidated financial statements included in the Annual Report of Workhorse Group Inc. on Form 10-K for the year ended December 31, 2022. We consent to the incorporation by reference of said report in the Registration Statements of Workhorse Group Inc. on Forms S-3/A (File No. 333-213100 and File No. 333-226923), on Forms S-3 (File No. 333-253679, File No. 333-249707, File No. 333-237920, File No. 333-233199, File No. 333-230553 and File No. 333-229024), and on Forms S-8 (File No. 333-266729, File No. 333-237162, File No. 333-193425 and File No. 333-196631).

/s/ GRANT THORNTON LLP

Cincinnati, Ohio
March 1, 2023

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE
SARBANES-OXLEY ACT OF 2002**

I, Richard Dauch, Chief Executive Officer, certify that:

1. I have reviewed this annual report on Form 10-K of Workhorse Group Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f) for the registrant) and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures;
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal controls over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: March 1, 2023

/s/ Richard Dauch
Richard Dauch
Chief Executive Officer
(Principal Executive Officer)

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER
PURSUANT TO SECTION 302 OF THE
SARBANES-OXLEY ACT OF 2002**

I, Robert Ginnan, Chief Financial Officer, certify that:

1. I have reviewed this annual report on Form 10-K of Workhorse Group Inc.;
2. Based on my knowledge, this annual report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal controls over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant) and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting;
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal controls over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent function):
 - a) All significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: March 1, 2023

/s/ Robert Ginnan
Robert Ginnan
Chief Financial Officer
(Principal Financial Officer)

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Workhorse Group Inc. (the "Company") on Form 10-K for the period ending December 31, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Richard Dauch, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities and Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 1, 2023

/s/ Richard Dauch
Richard Dauch
Chief Executive Officer
(Principal Executive Officer)

This certification shall not be deemed "filed" by the Company for purposes of Section 18 of the Securities Exchange Act of 1934. In addition, this certification shall not be deemed to be incorporated by reference into any filing under the Securities Exchange Act of 1933 or the Securities Exchange Act of 1934.

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Workhorse Group Inc. (the "Company") on Form 10-K for the period ending December 31, 2022 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Robert Ginnan, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities and Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 1, 2023

/s/ Robert Ginnan
Robert Ginnan
Chief Financial Officer
(Principal Financial Officer)

This certification shall not be deemed "filed" by the Company for purposes of Section 18 of the Securities Exchange Act of 1934. In addition, this certification shall not be deemed to be incorporated by reference into any filing under the Securities Exchange Act of 1933 or the Securities Exchange Act of 1934.