

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

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 OR 15(d)
of The Securities Exchange Act of 1934

Date of Report (Date of earliest event reported)
November 3, 2025

Bakkt Holdings, Inc.
(Exact name of registrant as specified in its charter)

Delaware
(State or Other Jurisdiction of
Incorporation or Organization)

001-39544
(Commission
File Number)

41-2324812
(IRS Employer
Identification Number)

One Liberty Plaza, One Liberty St., Ste. 305-306,
New York, New York 10006

Registrant's telephone number, including area code: (678) 534-5849
(Address, including zip code, and telephone number, including area code, or registrant's principal executive offices)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2. below):

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol	Name of each exchange on which registered
Class A common stock, par value \$0.0001 per share	BKKT	The New York Stock Exchange
Warrants to purchase Class A Common Stock	BKKT WS	The New York Stock Exchange

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

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

Explanatory Note

On October 16, 2025, Bakkt Holdings, Inc., a Delaware corporation (“Old Bakkt”), announced plans to pursue a reorganization of certain entities (the “Reorganization”) in order to streamline its corporate structure and governance by eliminating Old Bakkt’s umbrella partnership-C corporation structure. On November 3, 2025, Old Bakkt implemented the Reorganization. Following the implementation of the Reorganization, Old Bakkt became a wholly owned subsidiary of a new holding company, Bakkt NewCo Holdings, Inc., a Delaware corporation (“New Bakkt” or the “Company”), which replaced Old Bakkt as the public company trading on the New York Stock Exchange (the “NYSE”) under Old Bakkt’s ticker symbol “BKKT.” In addition, New Bakkt changed its name to “Bakkt Holdings, Inc.” and Old Bakkt changed its name to “Bakkt Intermediate Holdings, Inc.” This Current Report on Form 8-K is being filed for the purpose of establishing New Bakkt as the successor issuer pursuant to Rule 12g-3(a) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and to disclose certain other matters. Pursuant to Rule 12g-3(a) under the Exchange Act, shares of New Bakkt Class A common stock, par value \$0.01 per share (“New Bakkt Class A Common Stock”), are deemed registered under Section 12(b) of the Exchange Act as the Class A common stock of the successor issuer.

Item 1.01 Entry into a Material Definitive Agreement.

Merger Agreements and Consummation of Reorganization

On November 3, 2025, as part of the Reorganization, Old Bakkt implemented a holding company reorganization (the “Holding Company Reorganization”) pursuant to an Agreement and Plan of Merger (the “PubCo Merger Agreement”), dated as of November 3, 2025, among Old Bakkt, New Bakkt and Bakkt Merger Sub 1, Inc., a Delaware corporation and a wholly owned subsidiary of New Bakkt (“Merger Sub 1”), pursuant to which Merger Sub 1 merged with and into Old Bakkt (the “PubCo Merger”), which resulted in New Bakkt becoming the direct parent company of Old Bakkt and replacing Old Bakkt as the public company trading on the NYSE. Immediately thereafter, as part of the Reorganization, pursuant to an Agreement and Plan of Merger (the “OpCo Merger Agreement”), dated as of November 3, 2025, among New Bakkt, Bakkt Opco Holdings, LLC, a Delaware limited liability company (“Bakkt OpCo”), Bakkt Management, LLC, a Delaware limited liability company (the “Management Vehicle”), and Bakkt Merger Sub 2, LLC, a Delaware limited liability company and a wholly owned subsidiary of New Bakkt (“Merger Sub 2”), Merger Sub 2 merged with and into Bakkt OpCo (the “OpCo Merger”), which resulted in New Bakkt directly and indirectly wholly owning Bakkt OpCo. The Reorganization is intended to be a tax-free transaction for U.S. federal income tax purposes for stockholders of Old Bakkt.

In accordance with the terms of the PubCo Merger Agreement, (i) each share of Class A common stock, par value \$0.0001 per share (“Old Bakkt Class A Common Stock”), of Old Bakkt issued and outstanding immediately prior to the effective time of the Holding Company Reorganization (the “Holding Company Reorganization Effective Time”) was converted automatically into the right to receive one validly issued, fully paid and non-assessable share of New Bakkt Class A Common Stock, having the same designations, rights, powers and preferences, and qualifications, limitations and restrictions as the shares of Old Bakkt Class A Common Stock being so converted, and (ii) each share of Class V common stock, par value \$0.0001

per share (“Old Bakkt Class V Common Stock”), of Old Bakkt issued and outstanding immediately prior to the Holding Company Reorganization Effective Time was converted automatically into the right to receive one validly issued, fully paid and non-assessable share of Class V common stock, par value \$0.0001 per share (“New Bakkt Class V Common Stock”), of New Bakkt, having the same designations, rights, powers and preferences, and qualifications, limitations and restrictions as the shares of Old Bakkt Class V Common Stock being so converted. Accordingly, upon consummation of the Holding Company Reorganization, Old Bakkt stockholders automatically became stockholders of New Bakkt, on a one-for-one basis.

In accordance with the terms of the OpCo Merger Agreement, (i) each outstanding common unit of OpCo (each such unit, an “OpCo Common Unit”) (excluding any OpCo Incentive Unit (as defined below) and any OpCo Common Unit owned by Old Bakkt), together with one share of New Bakkt Class V Common Stock paired therewith (together, a “Paired Interest”), issued and outstanding immediately prior to the effective time of the OpCo Merger (the “OpCo Merger Effective Time”) was exchanged for the right to receive one validly issued, fully paid and non-assessable share of New Bakkt Class A Common Stock, resulting in the elimination of the shares of New Bakkt Class V Common Stock and New Bakkt having only a single class of common stock outstanding, (ii) each member’s membership unit of the Management Vehicle issued and outstanding immediately prior to the OpCo Merger Effective Time was exchanged for the corresponding common unit of OpCo (each such unit, an “OpCo Incentive Unit”) granted under the Second Amended and Restated Bakkt Equity Incentive Plan, as amended, held by the Management Vehicle, together with the share of New Bakkt Class V Common Stock paired therewith, and (iii) each OpCo Incentive Unit, together with the share of New Bakkt Class V Common Stock paired therewith, issued and outstanding immediately prior to the OpCo Merger Effective Time was exchanged for the right to receive one validly issued, fully paid and nonassessable share of New Bakkt Class A Common Stock.

Following the consummation of the Reorganization, shares of New Bakkt Class A Common Stock continue to trade on the NYSE on an uninterrupted basis under the ticker symbol “BKKT” with the same CUSIP number (#05759B107). Immediately after the consummation of the Reorganization, New Bakkt has, on a consolidated basis, the same directors, executive officers, management, assets, business and operations as Old Bakkt had immediately prior to the consummation of the Reorganization.

The Holding Company Reorganization was conducted pursuant to Section 251(g) of the General Corporation Law of the State of Delaware (as amended, the “DGCL”), which provides for the formation of a holding company without a vote of the shareholders of the constituent corporation. The conversion of stock occurred automatically without an exchange of stock certificates.

As a result of the Holding Company Reorganization, New Bakkt became the successor issuer to Old Bakkt pursuant to Rule 12g-3(a) of the Exchange Act, and as a result, shares of New Bakkt Class A Common Stock are deemed registered under Section 12(b) of the Exchange Act as the Class A common stock of the successor issuer.

Treatment of Old Bakkt Warrants

In connection with the Holding Company Reorganization, (i) each of Old Bakkt’s Class 1 Warrants to purchase shares of Old Bakkt Class A Common Stock that was outstanding and unexercised prior to the Holding Company Reorganization Effective Time was exchanged for an equivalent warrant to purchase New Bakkt Class A Common Stock, (ii) each of Old Bakkt’s Class 2 Warrants to purchase shares of Old Bakkt Class A Common Stock that was outstanding and unexercised prior to the Holding Company Reorganization Effective Time was exchanged for an equivalent warrant to purchase New Bakkt Class A Common Stock, and (iii) each of Old Bakkt’s publicly traded warrants to purchase shares of Old Bakkt Class A Common Stock that was outstanding and unexercised prior to the Holding Company Reorganization Effective Time was replaced with an equivalent warrant to purchase shares of New Bakkt Class A Common Stock.

Assumption of Old Bakkt Equity Plan and Agreements

Pursuant to the PubCo Merger Agreement, effective as of the Holding Company Reorganization Effective Time, New Bakkt assumed, among other agreements, the Bakkt Holdings, Inc. 2021 Omnibus Incentive Plan, as amended (the “Equity Plan”), and all outstanding equity awards (including restricted stock units and performance-based restricted stock units) granted thereunder or granted by Old Bakkt outside of the Equity Plan pursuant to NYSE Listing Rule 303A.08 that is outstanding immediately prior to the Effective Time, the indemnification agreements between Old Bakkt and the directors and executive officers of Old Bakkt, and the Tax Receivable Agreement, dated as of October 15, 2021, by and among the Company and the persons named therein, as amended (collectively, the “Assumed Agreements”). On November 3, 2025, as of the Holding Company Reorganization Effective Time, each of the Assumed Agreements was automatically deemed to be amended as necessary to reflect the assumption by New Bakkt described above, to provide that references to Old Bakkt in such Assumed Agreement will be read to refer to New Bakkt and to add New Bakkt as party to the Assumed Agreements, to the extent deemed necessary or appropriate.

Amendment to Contribution Agreement

Immediately prior to the consummation of the Reorganization, Old Bakkt, Akshay Naheta, the Company’s Chief Executive Officer, and Intercontinental Exchange Holdings, Inc. (“ICE”) entered into an amendment (the “Contribution Agreement Amendment”) to the Contribution Agreement, dated as of October 16, 2025, by and among Old Bakkt, Mr. Naheta and ICE (the “Contribution Agreement”) relating to their respective rights under the Tax Receivable Agreement, dated as of October 15, 2021, by and among Old Bakkt and the persons named therein, as amended (the “TRA”), pursuant to which they agreed that both ICE and Mr. Naheta would contribute their rights under the TRA to New Bakkt in exchange for cash and (i) Mr. Naheta would further contribute such cash payable to Mr. Naheta to New Bakkt in exchange for shares of New Bakkt Class A Common Stock, as contemplated in the original Contribution Agreement, and (ii) ICE would further contribute such cash payable to ICE to New Bakkt in exchange for shares of Series A Non-Voting Convertible Preferred Stock (“New Bakkt Preferred Stock”) of New Bakkt, each convertible into one share of New Bakkt Class A Common Stock, rather than shares of New Bakkt Class A Common Stock. The conversion of shares of New Bakkt Preferred Stock into shares of New Bakkt Class A Common Stock is conditional upon the expiry or termination of the waiting period (and any extension thereof, including pursuant to any timing agreement) applicable to such conversion under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”).

The foregoing descriptions of the Reorganization, including the Holding Company Reorganization, the OpCo Merger, the PubCo Merger Agreement, the OpCo Merger Agreement and the Contribution Agreement Amendment do not purport to be complete and are qualified in their entirety by reference to the full text of the PubCo Merger Agreement, the OpCo Merger Agreement and the Contribution Agreement Amendment which are filed as Exhibits 2.1, 2.2 and 10.1, respectively, to this Current Report on Form 8-K and are incorporated by reference herein.

Item 3.01 Notice of Delisting or Failure to Satisfy a Continued Listing Rule or Standard; Transfer of Listing.

Following the consummation of the Holding Company Reorganization, New Bakkt Class A Common Stock continues to trade on the NYSE on an uninterrupted basis under the ticker symbol “BKKT”.

The information set forth in Item 1.01, Item 5.03 and Item 8.01 under the heading “Successor Issuer” of this Current Report on Form 8-K describing the succession of New Bakkt to Exchange Act Section 12(b) and reporting obligations of Old Bakkt is hereby incorporated by reference in this Item 3.01.

In connection with the Holding Company Reorganization, on November 3, 2025, Old Bakkt requested that the NYSE file with the U.S. Securities and Exchange Commission (the “Commission”) an application on Form 25 to delist the Old Bakkt Class A Common Stock from the NYSE and deregister the Old Bakkt Class A Common Stock under Section 12(b) of the Exchange Act. Subsequent to the consummation of the Holding Company Reorganization, Old Bakkt intends to file a certificate on Form 15 requesting that the Old Bakkt Class A Common Stock be deregistered under the Exchange Act and that Old Bakkt’s reporting obligations under Section 15(d) of the Exchange Act be suspended (except to the extent of the succession of New Bakkt to the Exchange Act Section 12(b) registration and reporting obligations of Old Bakkt as described under the heading, “Successor Issuer,” under Item 8.01 below).

Item 3.02 Unregistered Sales of Equity Securities

The disclosure set forth above in Item 1.01 of this Current Report on Form 8-K relating to the issuance of shares of New Bakkt Class A Common Stock to Mr. Naheta and shares of New Bakkt Preferred Stock to ICE pursuant to the TRA and the Contribution Agreement, each as amended, is incorporated by reference herein in its entirety. Such issuances were made in reliance upon the exemption from registration contained in Section 4(a)(2) of the Securities Act of 1933, as amended (the “Securities Act”), in light of the nature of the purchasers and the manner in which the sale occurred. Pursuant to these arrangements, upon the consummation of the Reorganization, New Bakkt issued 69,733 shares New Bakkt Class A Common Stock to Mr. Naheta and 465,890 shares of New Bakkt Preferred Stock to ICE (such shares of New Bakkt Preferred Stock to be automatically converted into shares of New Bakkt Class A Common Stock pursuant to their terms upon the earlier of (i) the expiry or termination of the waiting period (and any extension thereof, including pursuant to any timing agreement) applicable to such conversion under the HSR Act, or (ii) a direct transfer to an unaffiliated party of the holder thereof), at a price per share of New Bakkt Class A Common Stock of \$39.34, representing the “Minimum Price” as defined in NYSE Rule 312.04(h), which was offset against the amount of cash to which Mr. Naheta and ICE were otherwise entitled under the TRA.

In connection with the OpCo Merger, on November 3, 2025, New Bakkt issued 7,174,565 shares of New Bakkt Class A Common Stock to holders of OpCo Common Units and Management Vehicle Units immediately prior to the effective time of the OpCo Merger as described under Item 1.01 of this Current Report on Form 8-K. Such issuance was made in reliance upon the exemption from registration contained in Section 4(a)(2) of the Securities Act, in light of the nature of the purchasers and the manner in which the sale occurred.

Item 3.03 Material Modification of Rights of Security Holders.

Upon consummation of the Holding Company Reorganization, each share of Old Bakkt Class A Common Stock issued and outstanding immediately prior to the PubCo Merger automatically converted into an equivalent corresponding share of New Bakkt Class A Common Stock, having the same designations, rights, powers and preferences and qualifications, limitations and restrictions as the corresponding share of Old Bakkt Class A Common Stock that was converted.

The information set forth in Item 1.01, Item 5.03 and Item 8.01 under the heading “Successor Issuer” of this Current Report on Form 8-K is hereby incorporated by reference in this Item 3.03.

Item 5.01 Changes in Control of Registrant.

The information set forth in Item 1.01 and Item 5.02 of this Current Report on Form 8-K is hereby incorporated by reference in this Item 5.01.

Item 5.02 Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

The directors of New Bakkt and their committee memberships and titles, which are listed below, are the same as the directors of Old Bakkt immediately prior to the Reorganization.

Directors and Committee Memberships

Name	Age	Audit and Risk Committee	Compensation Committee	Nominating and Corporate Governance Committee
Sean Collins	45	X		X
Akshay Naheta	43			
Michelle Goldberg	56	Chair		X
Jill Simeone	58		X	Chair
Colleen Brown	66	X	Chair	X
Mike Alfred	45		X	
Lyn Alden	38	X		

Sean Collins will continue to serve as the Company's Chairman. Biographical information about certain of New Bakkt's directors is included in Old Bakkt's Definitive Proxy Statement for the 2025 Annual Meeting of Stockholders filed with the Commission on April 28, 2025 (the "2025 Proxy Statement") under the caption "Information on Board of Directors and Corporate Governance" and is incorporated by reference herein. Biographical information about certain of New Bakkt's directors is also included in (i) the Current Report on Form 8-K filed with the Commission on September 22, 2025 and (ii) the Current Report on Form 8-K filed with the Commission on October 21, 2025.

The executive officers of New Bakkt and their positions and titles, which are listed below, are identical to the executive officers of Old Bakkt immediately prior to the Reorganization.

Executive Officers

Name	Age	Position with Bakkt Holdings, Inc.
Akshay Naheta	43	Chief Executive Officer
Karen Alexander	54	Chief Financial Officer
Nicholas Baes	46	Chief Operating Officer
Philip Lord	53	President of Bakkt International

Biographical information about New Bakkt's executive officers is included in the 2025 Proxy Statement under the captions "Information on Board of Directors and Corporate Governance" and "Executive Officers" and is incorporated by reference herein.

The information set forth in Item 1.01 under the caption “Assumption of Old Bakkt Equity Plans and Agreements” of this Current Report on Form 8-K is hereby incorporated by reference in this Item 5.02.

Information regarding the compensation arrangements of certain of New Bakkt’s named executive officers, including those Assumed Agreements to which the named executive officers are a party, is included in the 2025 Proxy Statement under the caption “Executive Compensation” and is incorporated by reference herein. Information regarding the compensation arrangements of New Bakkt’s Chief Executive Officer, including certain Assumed Agreements to which New Bakkt’s Chief Executive Officer is a party, is included in (i) the Current Report on Form 8-K filed with the Commission on March 19, 2025 and (ii) the Current Report on Form 8-K filed with the Commission on April 21, 2025.

The information required to be disclosed pursuant to Items 401(b), (d) and (e) of Regulation S-K relating to each of such executive officers is included in the 2025 Proxy Statement and is incorporated by reference herein. Certain transactions between New Bakkt and such officers required to be disclosed pursuant to Item 404(a) of Regulation S-K are included in the 2025 Proxy Statement and is incorporated by reference herein.

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

Upon consummation of the Holding Company Reorganization, the Amended and Restated Certificate of Incorporation of New Bakkt (the “New Bakkt A&R Certificate of Incorporation”) and the Amended and Restated Bylaws of New Bakkt (the “New Bakkt A&R Bylaws”) were the same as the Certificate of Incorporation and the Bylaws of Old Bakkt in effect immediately prior to consummation of the Holding Company Reorganization, respectively, other than certain technical changes permitted by Section 251(g) of the DGCL. The New Bakkt A&R Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on November 3, 2025.

The foregoing descriptions of the New Bakkt A&R Certificate of Incorporation and the New Bakkt A&R Bylaws do not purport to be complete and are qualified in their entirety by reference to the full text of the New Bakkt A&R Certificate of Incorporation and the New Bakkt A&R Bylaws, which are filed as Exhibits 3.1 and 3.2 hereto, respectively, and each of which is incorporated by reference herein.

Item 8.01 Other Items.

Successor Issuer

In connection with the Holding Company Reorganization and by operation of Rule 12g-3(a) promulgated under the Exchange Act, New Bakkt is the successor issuer to Old Bakkt and has succeeded to the attributes of Old Bakkt as the registrant. Shares of New Bakkt Class A Common Stock are deemed to be registered under Section 12(b) of the Exchange Act, and New Bakkt is subject to the informational requirements of the Exchange Act, and the rules and regulations promulgated thereunder. New Bakkt hereby reports this succession in accordance with Rule 12g-3(f) promulgated under the Exchange Act.

Description of Company Capital Stock

The description of New Bakkt’s capital stock provided in Exhibit 99.1, which is incorporated by reference herein, modifies and supersedes any prior description of Old Bakkt’s capital stock in any registration statement or report filed with the Commission and will be available for incorporation by reference into certain of New Bakkt’s filings with the Commission pursuant to the Securities Act of 1933, as amended, the Exchange Act, and the rules and forms promulgated thereunder.

Item 9.01 Financial Statements and Exhibits.

(d) *Exhibits.*

The following documents are herewith furnished as exhibits to this report:

Exhibit No.	Description
2.1	Agreement and Plan of Merger, dated as of November 3, 2025, by and among Bakkt Holdings, Inc. (formerly Bakkt NewCo Holdings, Inc.), Bakkt Intermediate Holdings, Inc. (formerly Bakkt Holdings, Inc.) and Bakkt Merger Sub 1, Inc.
2.2	Agreement and Plan of Merger, dated as of November 3, 2025, by and among Bakkt Holdings, Inc. (formerly Bakkt NewCo Holdings, Inc.), Bakkt Opco Holdings, LLC, Bakkt Management, LLC and Bakkt Merger Sub 2, LLC
3.1	Amended and Restated Certificate of Incorporation of Bakkt Holdings, Inc. (formerly Bakkt NewCo Holdings, Inc.)
3.2	Amended and Restated Bylaws of Bakkt Holdings, Inc. (formerly Bakkt NewCo Holdings, Inc.)
10.1	Amendment No. 1 to Contribution Agreement dated October 16, 2025, by and among the Company, Intercontinental Exchange Holdings, Inc. and Akshay Naheta
99.1	Description of Capital Stock
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

FORWARD-LOOKING STATEMENTS

This Current Report on Form 8-K contains “forward-looking statements” within the meaning of Section 27A of the U.S. Securities Act of 1933, as amended, and Section 21E of the U.S. Securities and Exchange Act of 1934, as amended. Such statements include, but are not limited to, statements regarding the Company’s plans with respect to the Reorganization. Forward-looking statements can be identified by words such as “will,” “likely,” “expect,” “continue,” “anticipate,” “estimate,” “believe,” “intend,” “plan,” “projection,” “outlook,” “grow,” “progress,” “potential” or the negative of such terms or other variations thereof and words and terms of similar substance used in connection with any discussion of future plans, actions, or events identify forward-looking statements. However, the absence of these words does not mean that the statements are not forward-looking. Such forward-looking statements are based upon the current beliefs and expectations of the Company’s management and are inherently subject to significant business, economic and competitive uncertainties and contingencies, many of which are difficult to predict and beyond the Company’s control.

You are cautioned not to place undue reliance on such forward-looking statements. Such forward-looking statements relate only to events as of the date on which such statements are made and are based on information available to us as of the date of this Current Report.

Signatures

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Bakkt Holdings, Inc.

Date: November 3, 2025

By: /s/ Marc D'Annunzio

Name: Marc D'Annunzio

Title: General Counsel and Secretary

AGREEMENT AND PLAN OF MERGER

BY AND AMONG

BAKKT HOLDINGS, INC.,

BAKKT NEWCO HOLDINGS, INC.

AND

BAKKT MERGER SUB 1, INC.

DATED AS OF NOVEMBER 3, 2025

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Exhibits

Exhibit A	Form of Certificate of Merger of Old PubCo
Exhibit B	Form of Surviving Corporation Charter
Exhibit C	Form of Surviving Corporation By-laws

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (this “Agreement”), entered into as of 12:05 a.m. Eastern Time on November 3, 2025, by and among Bakkt Holdings, Inc., a Delaware corporation (“Old PubCo”), Bakkt NewCo Holdings, Inc., a Delaware corporation and a direct, wholly owned subsidiary of Old PubCo (“New PubCo”), and Bakkt Merger Sub 1, Inc., a Delaware corporation and a direct, wholly owned subsidiary of New PubCo (“Merger Sub 1”) (each a “Party” and collectively the “Parties”).

WITNESSETH

WHEREAS, as of October 30, 2025, Old PubCo has the authority to issue 571,000,000 shares, consisting of (i) 1,000,000 shares of preferred stock, par value \$0.0001 per share (the “Old PubCo Preferred Stock”), of which no share is issued and outstanding, (ii) 560,000,000 shares of Class A common stock, par value \$0.0001 per share (the “Old PubCo Class A Common Stock”), of which 16,794,136 shares are issued and outstanding, and (iii) 10,000,000 shares of Class V common stock, par value \$0.0001 per share (the “Old PubCo Class V Common Stock”), of which 7,174,575 shares are issued and outstanding;

WHEREAS, as of the Effective Time (as defined below), New PubCo will have the authority to issue 571,000,000 shares, consisting of (i) 1,000,000 shares of preferred stock, par value \$0.0001 per share (the “New PubCo Preferred Stock”), (ii) 560,000,000 shares of Class A Common Stock, par value \$0.0001 per share (the “New PubCo Class A Common Stock”), and (iii) 10,000,000 shares of Class V Common Stock, par value \$0.0001 per share (the “New PubCo Class V Common Stock”);

WHEREAS, as of the date hereof, Merger Sub 1 has the authority to issue 100 shares of common stock, par value \$0.0001 per share, of which 100 shares are issued and outstanding on the date hereof and owned by New PubCo;

WHEREAS, as of the date hereof, Old PubCo has (i) 1,153,200 Class 1 warrants to purchase shares of Old PubCo Class A Common Stock (the “Class 1 Warrants”), (ii) 864,650 Class 2 warrants to purchase shares of Old PubCo Class A Common Stock (the “Class 2 Warrants”), and (iii) 7,140,383 publicly traded warrants to purchase shares of Old PubCo Class A Common Stock (the “Public Warrants”) outstanding and unexercised;

WHEREAS, as of the Effective Time, the designations, rights, powers and preferences, and the qualifications, limitations and restrictions of the New PubCo Preferred Stock, the New PubCo Class A Common Stock and the New PubCo Class V Common Stock will be the same as those of Old PubCo Preferred Stock, the Old PubCo Class A Common Stock and the Old PubCo Class V Common Stock, respectively;

WHEREAS, the Amended and Restated Certificate of Incorporation of New PubCo and the Amended and Restated By-laws of New PubCo, which will be in effect immediately following the Effective Time, shall contain provisions identical to the Certificate of Incorporation of Old PubCo, as amended, restated, and/or amended and restated (the “Old PubCo Charter”), and the By-laws of Old PubCo, as amended, restated, and/or amended and restated (the “Old PubCo By-laws”), in each case in effect as of the date hereof and that will be in effect immediately prior to the Effective Time (other than as permitted by Section 251(g) of the General Corporation Law of the State of Delaware (as amended, the “DGCL”));

WHEREAS, the participating members of the Audit and Risk Committee of Old PubCo have determined that Old PubCo should pursue a reorganization of certain of its entities to eliminate its existing umbrella partnership-C corporation structure (the “Reorganization”) and have approved the Reorganization and the transactions contemplated thereby;

WHEREAS, a majority of disinterested members of the board of directors of Old PubCo has determined that the Reorganization and the transactions contemplated thereby would be fair, just and reasonable and in the best interests of Old PubCo and its stockholders;

WHEREAS, the Reorganization contemplates, in accordance with Section 251(g) of the DGCL, (i) the formation of New PubCo to serve as a new holding company of Old PubCo and to replace Old PubCo as the listed company, (ii) the exchange by holders of shares of Old PubCo Class A Common Stock and Old PubCo Class V Common Stock of the Company for an equivalent number of shares of New PubCo Class A Common Stock, having the same voting and economic rights as Old PubCo Class A Common Stock, (iii) the exchange of Class 1 Warrants and Class 2 Warrants for equivalent warrants to purchase shares of New PubCo Class A Common Stock, and (iv) the replacement of Public Warrants with equivalent warrants to purchase shares of New PubCo Class A Common Stock;

WHEREAS, New PubCo and Merger Sub 1 are newly formed corporations organized for the sole purpose of participating in the transactions herein contemplated and actions related and incidental thereto, own no assets (other than New PubCo’s ownership of Merger Sub 1 and nominal capital) and have taken no actions other than those necessary or advisable to organize the corporations and to effect the transactions herein contemplated and actions related and incidental thereto;

WHEREAS, the boards of directors of New PubCo and Old PubCo have approved and declared advisable this Agreement and the transactions contemplated hereby, including the Merger (as defined below);

WHEREAS, the board of directors of Merger Sub 1 has (i) approved and declared advisable this Agreement and the transactions contemplated hereby, including the Merger, (ii) resolved to submit the approval of the adoption of this Agreement and the transactions contemplated hereby, including the Merger, to its sole stockholder, and (iii) resolved to recommend to its sole stockholder that it approve the adoption of this Agreement and the transactions contemplated hereby, including the Merger; and

WHEREAS, for U.S. federal income tax purposes, it is intended that the Merger will, together with the OpCo Merger (as defined below) and the Contributions (as defined below), qualify as a transaction described in Section 351 of the Internal Revenue Code of 1986, as amended (the “Code”), and that the Merger will further qualify as a “reorganization” within the meaning of Section 368(a) of the Code and that this Agreement constitutes, and is hereby adopted as, a plan of reorganization within the meaning of Treasury Regulations Sections 1.368-2(g) and 1.368-3(a).

NOW, THEREFORE, in consideration of the premises and the covenants and agreements contained in this Agreement, and intending to be legally bound hereby, the Parties hereby agree as follows:

ARTICLE I THE MERGER

1.1 The Merger. Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time, in accordance with Section 251(g) of the DGCL, Merger Sub 1 shall merge with and into Old PubCo (such merger, the “Merger”), whereupon the separate corporate existence of Merger Sub 1 shall cease, and Old PubCo shall continue as the surviving corporation of the Merger (the “Surviving Corporation”) and a direct, wholly owned subsidiary of New PubCo. At the Effective Time, the Merger shall have the effects specified herein and in Section 259 of the DGCL. From and after the Effective Time, by virtue of the Merger and without any further action by any other person, the Surviving Corporation shall possess all the rights, powers, privileges and franchises, and be subject to all of the obligations, liabilities, restrictions, disabilities and duties of Old PubCo and Merger Sub 1, in each case, to the fullest extent provided under the DGCL.

1.2 Effective Time. As soon as practicable on or after the execution of this Agreement, Old PubCo shall file a certificate of merger, in substantially the form attached hereto as Exhibit A, executed in accordance with the relevant provisions of the DGCL, with the Secretary of State of the State of Delaware and the Parties shall make all other filings or recordings (or tender or deliver any taxes or fees) required under the DGCL to effectuate the Merger. The Merger shall become effective as of 4:01 p.m. Eastern Time on November 3, 2025 or at such other date and time as the Parties shall agree and specify in the certificate of merger (the date and time the Merger becomes effective being referred to herein as the “Effective Time”).

1.3 Certificate of Incorporation. At the Effective Time, the Old PubCo Charter shall be amended and restated in the Merger, in accordance with Section 251(g) of the DGCL, to read in its entirety in substantially the form attached hereto as Exhibit B and as so amended and restated, shall constitute the certificate of incorporation of the Surviving Corporation (the “Surviving Corporation Charter”), until thereafter amended pursuant to the terms thereof and applicable law.

1.4 By-laws. At the Effective Time, the Old PubCo By-laws shall be amended and restated to read in their entirety in substantially the form attached hereto as Exhibit C and as so amended and restated, shall constitute the by-laws of the Surviving Corporation (the “Surviving Corporation By-laws”), until thereafter amended pursuant to the terms thereof and applicable law.

1.5 Directors. The directors of Merger Sub 1 in office immediately prior to the Effective Time shall, effective as of the Effective Time, be the directors of the Surviving Corporation and will continue to hold office from the Effective Time until the earlier of their resignation or removal or death or until their successors are duly elected or appointed and qualified in the manner provided in the Surviving Corporation Charter and the Surviving Corporation By-laws and applicable law. The Parties shall take all required action, if any, so that the directors of Old PubCo immediately prior to the Merger shall be the directors of New PubCo immediately following the Merger.

1.6 Officers. The officers of Merger Sub 1 in office immediately prior to the Effective Time shall, effective as of the Effective Time, be the officers of the Surviving Corporation and will continue to hold office from the Effective Time until the earlier of their resignation or removal or death or until their successors are duly elected or appointed and qualified in the manner provided in the Surviving Corporation Charter and the Surviving Corporation By-laws and applicable law. The Parties shall take all required action, if any, so that the officers of Old PubCo immediately prior to the Merger shall be the officers of New PubCo immediately following the Merger.

ARTICLE II

EFFECT OF MERGER ON EQUITY INTERESTS OF OLD PUBCO; MERGER CONSIDERATION

2.1 Conversion of Securities. At the Effective Time, by virtue of the Merger and without any action on the part of New PubCo, Merger Sub 1, Old PubCo or any holder of any securities thereof:

(a) Conversion of Old PubCo Class A Common Stock. Each share of Old PubCo Class A Common Stock issued and outstanding immediately prior to the Effective Time shall be converted into one validly issued, fully paid and nonassessable share of New PubCo Class A Common Stock.

(b) Conversion of Old PubCo Class V Common Stock. Each share of Old PubCo Class V Common Stock issued and outstanding immediately prior to the Effective Time shall be converted into one validly issued, fully paid and nonassessable share of New PubCo Class V Common Stock.

(c) Conversion of Old PubCo Stock Held as Treasury Stock. Each share of (i) Old PubCo Preferred Stock held in Old PubCo's treasury shall be converted into one validly issued, fully paid and nonassessable share of New PubCo Preferred Stock, (ii) Old PubCo Class A Common Stock held in Old PubCo's treasury shall be converted into one validly issued, fully paid and nonassessable share of New PubCo Class A Common Stock and (iii) Old PubCo Class V Common Stock held in Old PubCo's treasury shall be converted into one validly issued, fully paid and nonassessable share of New PubCo Class V Common Stock, in each case, to be held immediately after completion of the Merger in the treasury of New PubCo.

2.2 New PubCo Shares. Prior to the Effective Time, Old PubCo and New PubCo shall take any and all actions as are necessary to ensure that each share of capital stock of New PubCo that is owned by Old PubCo immediately prior to the Effective Time shall be cancelled and cease to be outstanding at the Effective Time, and no payment shall be made therefor, and Old PubCo, by execution of this Agreement, agrees to forfeit such shares and relinquish any rights to such shares at the Effective Time.

2.3 No Appraisal Rights. In accordance with the DGCL, no appraisal rights shall be available to any holder of shares of Old PubCo Class A Common Stock or Old PubCo Class V Common Stock in connection with the Merger.

ARTICLE III
ASSIGNMENT AND ASSUMPTION OF AGREEMENTS

3.1 Equity Plan and Awards. At the Effective Time, Old PubCo will transfer to New PubCo, and New PubCo will assume, Old PubCo's Equity Plan and all of Old PubCo's Awards (as defined below), along with all of Old PubCo's rights and obligations under the Equity Plan and Awards. At the Effective Time, Old PubCo will transfer to New PubCo, and New PubCo will assume, Old PubCo's rights and obligations under each (a) stock option to purchase a share of Old PubCo capital stock (each, a "Stock Option"), (b) time-based restricted stock unit granted in respect of shares of Old PubCo capital stock (each, a "RSU"), (c) performance-based restricted stock unit granted in respect of shares of Old PubCo capital stock (each, a "PSU") and (d) right to acquire, receive or vest in a share of Old PubCo capital stock (which, for the avoidance of doubt, shall include the Class 1 Warrants, the Class 2 Warrants and the Public Warrants and shall exclude any awards granted under the OpCo Second Amended and Restated Bakkt Equity Incentive Plan) (each, a "Stock Award" and together with the Stock Options, the RSUs and the PSUs, the "Awards") issued under the Equity Plan or granted by Old PubCo outside of the Equity Plan, pursuant to NYSE Listing Rule 303A.08, or as otherwise approved by the stockholders of Old PubCo, or, in the case of the Class 1 Warrants, the Class 2 Warrants and the Public Warrants, as otherwise approved by the board of directors of Old PubCo, that is outstanding immediately prior to the Effective Time, which Awards shall be converted into a stock option to purchase, a right to acquire or vest in, or a right to vest in time-based or performance-based restricted stock units denominated in shares of New PubCo capital stock of the same class and with the same rights and privileges relative to New PubCo that such share underlying the applicable Stock Option, RSU, PSU or Stock Award had relative to Old PubCo immediately prior to the Effective Time on otherwise the same terms and conditions (including with respect to vesting, termination and forfeiture) as were applicable immediately prior to the Effective Time, and including, for Stock Options, at an exercise price per share equal to the exercise price per share for the applicable share of Old PubCo capital stock. For purposes of this Agreement, "Equity Plan" shall mean Old PubCo's 2021 Omnibus Incentive Plan, as amended. Prior to the Effective Time, Old PubCo shall take all corporate actions necessary to effectuate the treatment of the Equity Plan and Awards as contemplated by this Section 3.1. New PubCo shall take all action necessary or appropriate to have available for issuance a sufficient number of shares of New PubCo Class A Common Stock for delivery upon the exercise or settlement of the assumed Awards.

3.2 Assumption of Other Agreements. Effective as of the Effective Time, New PubCo (as successor to Old PubCo) hereby assumes and agrees to perform, all obligations of Old PubCo pursuant to any other agreements that management of Old PubCo deems necessary to be assumed by New PubCo, including the agreements listed on Schedule 1 attached hereto (collectively, the "Assumed Agreements"). At the Effective Time, the Assumed Agreements shall be deemed amended to (i) reflect the assumption by New PubCo described above, (ii) provide that references to Old PubCo shall be read to refer to New PubCo and (iii) add New PubCo as a party thereto, to the extent deemed necessary or appropriate. Old PubCo and New PubCo will take or cause to be taken all actions necessary or desirable in order to implement, confirm and effectuate the assumption by New PubCo hereof of the Assumed Agreements.

3.3 Additional Actions. If, at any time after the Effective Time, the Surviving Corporation shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm, of record or otherwise, in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of either Merger Sub 1 or Old PubCo acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger or otherwise to carry out this Agreement, the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of each of Merger Sub 1 and Old PubCo, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of each of Merger Sub 1 and Old PubCo or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Corporation or otherwise to carry out this Agreement.

ARTICLE IV TAX MATTERS

4.1 Tax Treatment. For U.S. federal income tax purposes, it is intended that the Merger will, together with the merger of Bakkt Opco Holdings, LLC (“OpCo”) and Bakkt Merger Sub 2, LLC (“Merger Sub 2”) pursuant to the Agreement and Plan of Merger effective on the date hereof by and among New PubCo, OpCo, Bakkt Management, LLC and Merger Sub 2 (such merger, the “OpCo Merger”) and the Contributions (as defined under the Contribution Agreement, dated as of October 16, 2025 and amended as of November 3, 2025, by and among Old PubCo, Intercontinental Exchange Holdings, Inc. and Akshay Naheta), qualify as a transaction described in Section 351 of the Code and that the Merger will further qualify as a “reorganization” within the meaning of Section 368(a) of the Code and that this Agreement constitutes, and is hereby adopted as, a plan of reorganization within the meaning of Treasury Regulations Sections 1.368-2(g) and 1.368-3(a).

ARTICLE V TERMINATION

5.1 Termination. This Agreement may be terminated, and the Merger and the other transactions provided for herein may be abandoned, whether before or after the adoption of this Agreement by the sole stockholder of Merger Sub 1 and, at any time prior to the Effective Time, by Old PubCo. In the event of termination of this Agreement, this Agreement shall forthwith become void and have no effect, and neither the Parties nor their respective stockholders, directors or officers shall have any liability with respect to such termination or abandonment.

ARTICLE VI MISCELLANEOUS

6.1 Amendments. At any time prior to the Effective Time, this Agreement may be supplemented, amended or modified, whether before or after the adoption of this Agreement by Merger Sub 1, by the mutual consent of the Parties by action by their respective boards of directors; provided, however, that, no amendment shall be effected subsequent to the adoption of this Agreement by the sole stockholder of Merger Sub 1 that by law requires further approval or authorization by the sole stockholder of Merger Sub 1 or the stockholders of Old PubCo without such further approval or authorization. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by all of the Parties.

6.2 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns and all such successors and permitted assigns shall be deemed to be a party hereto for all purposes hereof. No Party may assign, delegate, or otherwise transfer either this Agreement or any of their rights, interests, or obligations hereunder without the prior written consent of each of the other Parties; provided, that New PubCo may assign any of its rights or delegate any of its obligations (in whole or in part) under this Agreement to any affiliate thereof, but in no event shall any such assignment release New PubCo or Merger Sub 1 from any of their respective obligations under this Agreement.

6.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any choice or conflict of laws, provisions or rules that would cause the application of the laws of any jurisdiction other than the State of Delaware.

6.4 Counterparts. This Agreement may be executed in any number of identical counterparts, each of which for all purposes shall be deemed an original, and all of which shall constitute collectively one instrument. This Agreement may be validly executed and delivered by facsimile or other electronic transmission. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement or any document to be signed in connection with this Agreement shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, and the Parties consent to conduct the transactions contemplated hereunder by electronic means.

6.5 Entire Agreement. This Agreement, together with the Schedules, Exhibits, the other certificates, documents, instruments and writings referred to herein or delivered pursuant hereto, constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter hereof. Each of the Parties acknowledges that no other Party, nor any agent or attorney of any other Party, has made any promise, representation or warranty whatsoever not contained herein, and that such Party has not executed or authorized the execution of this Agreement in reliance upon any such promise, representation or warranty not contained herein.

6.6 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable by any applicable law or public policy, this Agreement shall be considered divisible and such provision shall be deemed inoperative to the extent it is deemed unenforceable so long as the legal substance of the transactions contemplated herein is not affected in any manner materially adverse to any Party, and in all other respects this Agreement shall remain in full force and effect; provided, however, that if any such provision may be made enforceable by limitation thereof, then such provision shall be deemed to be so limited and shall be enforceable to the maximum extent permitted by applicable law.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of 12:05 a.m. Eastern Time on November 3, 2025.

BAKKT HOLDINGS, INC.

By /s/ Marc D'Annunzio
Name: Marc D'Annunzio
Title: General Counsel

BAKKT NEWCO HOLDINGS, INC.

By /s/ Marc D'Annunzio
Name: Marc D'Annunzio
Title: General Counsel

BAKKT MERGER SUB 1, INC.

By /s/ Marc D'Annunzio
Name: Marc D'Annunzio
Title: Secretary

[Signature Page to Agreement and Plan of Merger]

Schedule 1

Assumed Agreements

1. Tax Receivable Agreement, dated as of October 15, 2021, by and among Bakkt Holdings, Inc. and each of the other persons from time to time party thereto, as amended
2. Contribution Agreement, dated as of October 16, 2025, by and among Bakkt Holdings, Inc., Akshay Sudhir Naheta and Intercontinental Exchange Holdings, Inc., as amended
3. Amended and Restated Exchange Agreement, dated as of May 3, 2022, by and among Bakkt Holdings, Inc., Bakkt Opco Holdings, LLC and each of the other persons from time to time party hereto
4. Registration Rights Agreement, dated as of October 15, 2021, by and among Bakkt Holdings, Inc., Intercontinental Exchange Holdings, Inc., and the other parties thereto
5. Securities Purchase Agreement, dated as of February 29, 2024, between Bakkt Holdings, Inc. and Intercontinental Exchange Holdings, Inc.
6. Registration Rights Agreement, dated as of June 17, 2025, by and among Bakkt Holdings, Inc. and YA II PN, Ltd.
7. Cooperation Agreement, dated March 19, 2025, by and among Bakkt Holdings, Inc., Distributed Technologies Research Global Ltd and Akshay Naheta
8. Executive Employment Agreement, dated as of March 19, 2025, between Bakkt Holdings, Inc., and Akshay Sudhir Naheta
9. Indemnification Agreement, dated as of March 19, 2025, by and between Bakkt Holdings, Inc. and Akshay Sudhir Naheta
10. Indemnification Agreement, dated as of April 21, 2022, by and between Bakkt Holdings, Inc. and Jill Simeone
11. Indemnification Agreement, dated as of May 21, 2022, by and between Bakkt Holdings, Inc. and Karen Alexander
12. Indemnification Agreement, dated as of October 15, 2021, by and between Bakkt Holdings, Inc. and Michelle Goldberg
13. Indemnification Agreement, dated as of October 15, 2021, by and between Bakkt Holdings, Inc. and Sean Collins
14. Indemnification Agreement, dated as of October 15, 2021, by and between Bakkt Holdings, Inc. and Marc D'Annunzio
15. Indemnification Agreement, dated as of July 15, 2024, by and between Bakkt Holdings, Inc. and Joseph Henderson
16. Indemnification Agreement, dated as of July 19, 2024, by and between Bakkt Holdings, Inc. and Colleen Birdnow Brown
17. Indemnification Agreement, dated as of September 17, 2025, by and between Bakkt Holdings, Inc. and Michael Alfred
18. Indemnification Agreement, dated as of October 19, 2025, by and between Bakkt Holdings, Inc. and Madelyn Schwartzer
19. Equity Plan and all Awards issued thereunder

EXHIBIT A

FORM OF CERTIFICATE OF MERGER OF OLD PUBCO

[See attached.]

**CERTIFICATE OF MERGER
MERGING
BAKKT MERGER SUB 1, INC.
WITH AND INTO
BAKKT HOLDINGS, INC.**

November 3, 2025.

Pursuant to Section 251 of the General Corporation Law of the State of Delaware (the “DGCL”), Bakkt Holdings, Inc., a Delaware corporation (the “Corporation”), hereby certifies as of the date hereof to the following information relating to the merger (the “Merger”) of Bakkt Merger Sub 1, Inc., a Delaware Corporation (“Merger Sub”), with and into the Corporation:

FIRST: The name and state of incorporation of each of the constituent corporations to the Merger (each, a “Constituent Corporation”) are as follows:

<u>Name</u>	<u>State of Incorporation</u>
Bakkt Merger Sub 1, Inc.	Delaware
Bakkt Holdings, Inc.	Delaware

SECOND: An Agreement and Plan of Merger, dated as of 12:05 a.m. Eastern Time on November 3, 2025 (as amended or otherwise modified in accordance with its terms, the “Agreement”), by and among the Corporation, Merger Sub and the other parties named therein, has been approved, adopted, executed and acknowledged by each Constituent Corporation in accordance with the requirements of Section 251 of the DGCL (and adopted by the sole stockholder of Merger Sub in accordance with Section 228 of the DGCL) and sets forth the agreement of merger of the Constituent Corporations.

THIRD: The Corporation will be the surviving corporation in the Merger (the “Surviving Corporation”) and the name of the Surviving Corporation will be: Bakkt Intermediate Holdings, Inc.

FOURTH: The certificate of incorporation of the Corporation as in effect immediately prior to the effective time of the Merger shall be amended and restated as set forth in Annex I attached hereto and, as so amended and restated, shall be the certificate of incorporation of the Surviving Corporation.

FIFTH: The executed Agreement is on file at an office of the Surviving Corporation, the address of which is: c/o Bakkt Holdings, Inc., 10000 Avalon Boulevard, Suite 1000, Alpharetta, GA 30009.

SIXTH: A copy of the Agreement will be furnished by the Surviving Corporation, on request and without cost, to any stockholder of either Constituent Corporation.

SEVENTH: This Certificate of Merger and the Merger will become effective as of 4:01 p.m. Eastern Time on November 3, 2025, pursuant to Section 103 of the DGCL.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, the Corporation has caused this Certificate of Merger to be signed by an authorized officer as of the date first written above.

BAKKT HOLDINGS, INC.

By /s/ Marc D'Annunzio
Name: Marc D'Annunzio
Title: General Counsel and Secretary

Annex I

Certificate of Incorporation of the Surviving Corporation

[See attached.]

EXHIBIT B

FORM OF SURVIVING CORPORATION CHARTER

[See attached.]

**AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
BAKKT INTERMEDIATE HOLDINGS, INC.**

FIRST. The name of the corporation is Bakkt Intermediate Holdings, Inc.

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

THIRD. The purpose of the corporation is to engage in any lawful act or activity for which corporations may now or hereafter be organized under the General Corporation Law of the State of Delaware (the "DGCL").

FOURTH. The total number of shares of stock which the corporation shall have authority to issue is 100. All such shares are to be Common Stock, par value of \$0.0001 per share, and are to be of one class.

FIFTH. Unless and except to the extent that the bylaws of the corporation shall so require, the election of directors of the corporation need not be by written ballot.

SIXTH. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors of the corporation is expressly authorized to make, alter and repeal the bylaws of the corporation.

SEVENTH. Any act or transaction by or involving the corporation, other than the election or removal of directors of the corporation, that, if taken by the corporation immediately prior to the effective time of the merger of Bakkt Merger Sub 1, Inc. with and into the corporation (the "Merger Effective Time"), would have required, for its adoption under the

DGCL or under the certificate of incorporation or bylaws of the corporation immediately prior to Merger Effective Time, the approval of the stockholders of the corporation, shall, pursuant to Section 251(g)(7)(A) of the DGCL, require, in addition to approval of the stockholders of the corporation, the approval of the stockholders of Bakkt NewCo Holdings, Inc., a Delaware corporation (or any successor by merger), by the same vote as would have been required by the DGCL and/or by the certificate of incorporation or bylaws of the corporation immediately prior to the Merger Effective Time.

EIGHTH. To the fullest extent permitted by the DGCL as the same exists or may hereafter be amended, a director or officer of this corporation shall not be liable to the corporation or its stockholders for monetary damages for a breach of fiduciary duty as a director or officer. Any repeal or modification of this ARTICLE EIGHTH shall not adversely affect any right or protection of a director of the corporation existing at the time of such repeal or modification.

NINTH. The corporation reserves the right at any time, and from time to time, to amend, alter, change or repeal any provision contained in this certificate of incorporation, and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by law; and all rights, preferences and privileges of any nature conferred upon stockholders, directors or any other persons by and pursuant to this certificate of incorporation in its present form or as hereafter amended are granted subject to the rights reserved in this article.

EXHIBIT C

FORM OF SURVIVING CORPORATION BY-LAWS

[See attached.]

**BYLAWS
OF
BAKKT INTERMEDIATE HOLDINGS, INC.**

ARTICLE I

Stockholders

Section 1.1. **Annual Meetings**. An annual meeting of stockholders of Bakkt Intermediate Holdings, Inc. (the “Corporation”) for the election of directors and for the transaction of any other proper business shall be held at such date, time and place (either within or without the State of Delaware) or may not be held at any place, but may instead be held solely by means of remote communication, as may be designated by the Corporation’s board of directors (the “Board of Directors”) from time to time.

Section 1.2. **Special Meetings**. Special meetings of stockholders of the Corporation (a) may be called at any time by the chairperson of the Board of Directors (the “Chair”), if any, the vice chairperson of the Board of Directors (the “Vice Chair”), if any, the president of the Corporation (the “President”), or the Board of Directors, to be held at such date, time and place (either within or without the State of Delaware) or may not be held at any place, but may instead be held solely by means of remote communication, as may be stated in the notice of the meeting, and (b) shall be called by the secretary of the Corporation (the “Secretary”) upon the written request, stating the purpose of the meeting, of stockholders of the Corporation who together own of record a majority of the outstanding shares of each class of stock of the Corporation entitled to vote at such meeting.

Section 1.3. **Notice of Meetings**.

(a) Whenever stockholders of the Corporation are required or permitted to take any action at a meeting, a written notice of the meeting shall be given stating the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders of the Corporation and proxyholders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders of the Corporation entitled to vote at the meeting, if such date is different from the record date for determining stockholders of the Corporation entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by applicable law, the written notice of any meeting shall be given not less than ten nor more than sixty days before the date of the meeting to each stockholder of the Corporation entitled to vote at such meeting as of the record date for determining the stockholders of the Corporation entitled to notice of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder of the Corporation at such stockholder’s address as it appears on the records of the Corporation.

(b) In addition, if a stockholder of the Corporation has consented to receive notices by a form of electronic transmission, then, so long as such consent has not been properly revoked by such stockholder or deemed revoked pursuant to Section 232(a) of the General Corporation Law of the State of Delaware, as may be amended from time to time (the “DGCL”), such notice (i) by facsimile telecommunication, or by electronic mail, shall be deemed to be given when directed to a number or an electronic mail address, respectively, at which such stockholder has consented to receive notice, (ii) by a posting on an electronic network together with separate notice to such stockholder of such specific posting shall be deemed given, upon the later of (A) such posting, and (B) the giving of such separate notice, and (iii) by any other form of electronic transmission, shall be deemed to be given when directed to such stockholder.

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

(d) Notice shall be deemed to have been given to all stockholders of the Corporation of record who share an address if notice is given in accordance with the “householding” rules set forth in the rules of the Securities and Exchange Commission under the Securities Exchange Act of 1934 and the rules and regulations promulgated thereunder, in each case as may be amended from time to time, and Section 233 of the DGCL.

Section 1.4. Adjournments and Postponements.

(a) Subject to applicable law, any meeting of stockholders of the Corporation, annual or special, may be adjourned from time to time, to reconvene at the same or some other place, if any, thereof, and the means of remote communications, if any, and notice need not be given of any such adjourned meeting if the time and place and/or means of remote communication (as applicable) thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than thirty days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each stockholder of the Corporation of record entitled to vote at such meeting.

(b) In addition, subject to applicable law, any meeting of stockholders of the Corporation, annual or special, may be postponed by the Board of Directors at any time before such meeting has been convened, and such postponement shall be considered a cancellation of the originally noticed meeting. Notice of the postponed meeting shall be given to each stockholder of the Corporation of record entitled to vote at the meeting.

Section 1.5. Quorum.

(a) At each meeting of stockholders of the Corporation, except where otherwise provided by applicable law or the certificate of incorporation, as may be amended, restated or amended and restated from time to time in accordance with its terms and applicable law (the “Charter”), or these Bylaws, the holders of a majority of the issued and outstanding shares of stock of the Corporation entitled to vote on a matter at the meeting, present in person or

represented by proxy, shall constitute a quorum. In the absence of a quorum of the holders of any class of stock of the Corporation entitled to vote on a matter, either (i) the holders of such class so present or represented may, by majority vote, adjourn the meeting of such class from time to time in the manner provided by Section 1.4(b) of these Bylaws until a quorum of such class shall be so present or represented or (ii) the chairperson of the meeting may on his or her own motion adjourn the meeting from time to time in the manner provided by Section 1.4(b) of these Bylaws until a quorum of such class shall be so present and represented without the approval of the stockholders of the Corporation who are present in person or represented by proxy and entitled to vote, without notice other than announcement at the meeting.

(b) Shares of the Corporation's own capital stock belonging, on the record date for determining stockholders of the Corporation entitled to vote at the meeting, to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes; provided, however, that the foregoing shall not limit the right of the Corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

Section 1.6. Organization. Meetings of stockholders of the Corporation shall be presided over by the Chair, if any, or, in the absence of the Chair or if the Chair is unable to act, by the Vice Chair, if any, or, in the absence of the Vice Chair or if the Vice Chair is unable to act, by the President or, in the absence of the President or if the President is unable to act, by a vice president of the Corporation or, in the absence of the foregoing persons or if the foregoing persons are unable to act, by a chairperson designated by the Board of Directors or, in the absence of such designation or if such designee is unable to act, by a chairperson chosen at the meeting. The Secretary or, in the absence of the Secretary or if the Secretary is unable to act, an assistant secretary of the Corporation, shall act as secretary of the meeting, but in the absence of the Secretary and any assistant secretary of the Corporation or if neither is able to act, the chairperson of the meeting may appoint any person to act as secretary of the meeting. The order of business at each such meeting shall be as determined by the chairperson of the meeting. The chairperson of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts and things as are necessary or desirable for the proper conduct of the meeting, including, without limitation, the establishment of procedures for the maintenance of order and safety, limitations on the time allotted to questions or comments on the affairs of the Corporation, restrictions on entry to such meeting after the time prescribed for the commencement thereof and the opening and closing of the voting polls.

Section 1.7. Voting; Proxies.

(a) Unless otherwise provided in the Charter, each stockholder of the Corporation entitled to vote at any meeting of stockholders of the Corporation shall be entitled to one vote for each share of capital stock of the Corporation held by such stockholder who has voting power upon the matter in question.

(b) Each stockholder of the Corporation entitled to vote at a meeting of stockholders of the Corporation or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period.

(c) A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power, regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally; provided, however, that a stockholder of the Corporation may revoke any proxy that is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or another duly executed proxy bearing a later date with the Secretary. Voting at meetings of stockholders of the Corporation need not be by written ballot and need not be conducted by inspectors unless the holders of a majority of the outstanding shares of all classes of stock of the Corporation entitled to vote thereon present in person or represented by proxy at such meeting shall so determine.

(d) Directors shall be elected by a plurality of the votes of the shares of the Corporation present in person or represented by proxy at the meeting and entitled to vote on the election of directors. In all other matters, unless otherwise provided by applicable law or by the Charter or these Bylaws, the affirmative vote of the holders of a majority of the shares of the Corporation present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders of the Corporation.

Section 1.8. Fixing Date for Determination of Stockholders of Record.

(a) In order that the Corporation may determine the stockholders of the Corporation entitled to notice of any meeting of stockholders of the Corporation or any adjournment thereof or, if necessary, any postponement thereof effected pursuant to Section 1.4(b) of these Bylaws, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty nor less than ten days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders of the Corporation entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders of the Corporation entitled to notice of and to vote at a meeting of stockholders of the Corporation shall be at the close of business in the State of Delaware on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business in the State of Delaware on the day next preceding the day on which the meeting is held. A determination of stockholders of the Corporation of record entitled to notice of or to vote at a meeting of stockholders of the Corporation shall apply to any adjournment of the meeting or, if necessary, any postponement of the meeting effected pursuant to Section 1.4(b) of these Bylaws; provided, however, that the Board of Directors may fix a new record date for determination of stockholders of the Corporation entitled to vote at the adjourned or, if necessary, any postponed meeting, and in such case shall also fix as the record date for stockholders of the Corporation entitled to notice of such adjourned or postponed meeting the same or an earlier date as that fixed for determination of stockholders of the Corporation entitled to vote in accordance with the foregoing provisions of this Section 1.8 at the adjourned or postponed meeting.

(b) In order that the Corporation may determine the stockholders of the Corporation entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders of the Corporation entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, to its principal place of business, to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders of the Corporation are recorded or otherwise (taking into account any processes and procedures instituted by the Corporation pursuant to Section 6.6 of these Bylaws). Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by applicable law, the record date for determining stockholders of the Corporation entitled to consent to corporate action in writing without a meeting shall be at the close of business in the State of Delaware on the day on which the Board of Directors adopts the resolution taking such prior action.

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

Section 1.9. List of Stockholders Entitled to Vote. The Secretary shall prepare, or cause to be prepared, at least ten days before every meeting of stockholders of the Corporation, a complete list of the stockholders of the Corporation entitled to vote at the meeting; provided, however, if the record date for determining the stockholders of the Corporation entitled to vote is less than ten days before the meeting date, the list shall reflect the stockholders of the Corporation entitled to vote as of the tenth day before the meeting date, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Nothing in this Section 1.9 shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder of the Corporation for any purpose germane to the meeting for a period of at least ten days prior to the meeting: (a) on a reasonably accessible electronic network; provided that the information required to gain access to such list is provided with the notice of the meeting; or (b) during ordinary business hours, at the principal place of business of the Corporation. If the meeting is to be held at a place, then a list of stockholders of the Corporation entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any

stockholder of the Corporation who is present. If the meeting is to be held solely by means of remote communication, then such list shall also be open to the examination of any stockholder of the Corporation during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation.

Section 1.10. Consent of Stockholders in Lieu of Meeting.

(a) Unless otherwise provided in the certificate of incorporation (as may be amended, restated or amended and restated from time to time in accordance with its terms and applicable law, the “Charter”), any action required by applicable law to be taken at any annual or special meeting of stockholders of the Corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock of the Corporation having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares of the Corporation entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery (i) to its registered office in the State of Delaware by hand or by certified mail or registered mail, return receipt requested, (ii) to its principal place of business, (iii) to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders of the Corporation are recorded or (iv) otherwise (taking into account any processes and procedures instituted by the Corporation pursuant to Section 6.6 of these Bylaws).

(b) No written consent shall be effective to take the corporate action referred to therein unless written consents signed by a sufficient number of holders to take action are delivered to the Corporation in the manner required by this Section 1.10 within sixty days of the first date on which a written consent is so delivered to the Corporation.

(c) A telegram, cablegram or other electronic transmission consenting to an action to be taken and transmitted by a stockholder of the Corporation or proxyholder, or by a person or persons authorized to act for a stockholder or proxyholder, shall be deemed to be written and signed for the purposes of this Section 1.10; provided, that any such telegram, cablegram or other electronic transmission sets forth or is delivered with information from which the Corporation can determine (i) that the telegram, cablegram or other electronic transmission was transmitted by the stockholder of the Corporation or proxyholder or by a person or persons authorized to act for the stockholder or proxyholder and (ii) the date on which such stockholder or proxyholder or authorized person or persons transmitted such telegram, cablegram or electronic transmission. No consent given by telegram, cablegram or other electronic transmission shall be deemed to have been delivered until such consent is reproduced in paper form and until such paper form shall be delivered to the Corporation by delivery (A) to its registered office in the State of Delaware by hand or by certified or registered mail, return receipt requested, (B) to its principal place of business, (C) to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded or (D) otherwise (taking into account any processes and procedures instituted by the Corporation

pursuant to Section 6.6 of these Bylaws). Notwithstanding the foregoing limitations on delivery, consents given by telegram, cablegram or other electronic transmission, may be otherwise delivered to the principal place of business of the Corporation, to an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded or otherwise (taking into account any processes and procedures instituted by the Corporation pursuant to Section 6.6 of these Bylaws) if, to the extent and in the manner provided by resolution of the Board of Directors, these Bylaws or the Charter. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing.

(d) Any person executing a consent may provide, whether through instruction to an agent or otherwise, that such a consent will be effective at a future time (including a time determined upon the happening of an event), no later than sixty days after such instruction is given or such provision is made, if evidence of such instruction or provision is provided to the Corporation. Unless otherwise provided, any such consent shall be revocable prior to its becoming effective.

ARTICLE II

Board of Directors

Section 2.1. Powers; Number; Qualifications. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors, except as may be otherwise provided by applicable law or the Charter. The Board of Directors shall consist of one or more members (each of whom shall be a natural person), the number thereof to be determined from time to time by the Board of Directors. Directors need not be stockholders of the Corporation.

Section 2.2. Election; Term of Office; Death; Resignation; Removal; Vacancies.

(a) Each director shall hold office until his or her successor is elected and qualified or until his or her earlier death, resignation or removal. Any director may resign at any time upon written notice to the Board of Directors or to the President or the Secretary. Such resignation shall be effective when it is delivered unless the resignation specifies a later effective date or an effectiveness determined upon the happening of an event or events, in which case it shall be effective at such later date or upon the happening of such event or events, and unless otherwise specified therein no acceptance of such resignation shall be necessary to make it effective.

(b) Unless otherwise provided in the Charter or these Bylaws, vacancies and newly created directorships resulting from any increase in the authorized number of directors elected by all of the stockholders of the Corporation having the right to vote as a single class or from any other cause may be filled by a majority of the directors then in office, although less than a quorum, or by the sole remaining director. Any director elected or appointed to fill a vacancy shall hold office until the next annual meeting of the stockholders of the Corporation and his or her successor is elected and qualified or until his or her earlier death, resignation or removal.

(c) Any director or the entire Board of Directors may be removed, with or without cause, by the holders of a majority of the shares of the Corporation then entitled to vote at an election of directors.

Section 2.3. Regular Meetings. Subject to Section 2.5 of these Bylaws, regular meetings of the Board of Directors may be held at such places within or without the State of Delaware and at such times as the Board of Directors may from time to time determine, and if so determined notice thereof need not be given.

Section 2.4. Special Meetings. Subject to Section 2.5 of these Bylaws, special meetings of the Board of Directors may be held at any time or place within or without the State of Delaware whenever called by the President, the Secretary or by any two directors. Reasonable notice thereof shall be given by the person or persons calling the meeting.

Section 2.5. Participation in Meetings by Conference Telephone Permitted. Unless otherwise restricted by the Charter or these Bylaws, members of the Board of Directors, or any committee designated by the Board of Directors, may participate in a meeting of the Board of Directors or of such committee, as the case may be, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 2.5 shall constitute presence in person at such meeting.

Section 2.6. Quorum; Vote Required for Action. Unless the Charter provides otherwise, at all meetings of the Board of Directors, one-third of the entire Board of Directors shall constitute a quorum for the transaction of business. The vote of a majority of the directors present at a meeting at which a quorum is present shall be the act of the Board of Directors unless the Charter or these Bylaws shall require a vote of a greater number. In case at any meeting of the Board of Directors a quorum shall not be present, the members of the Board of Directors present may adjourn the meeting from time to time until a quorum shall be present.

Section 2.7. Organization. Meetings of the Board of Directors shall be presided over by the President or, in the absence of the President or if the President is unable to act, by a vice president of the Corporation or, in the absence of the foregoing persons or if the foregoing persons are unable to act, by a chairperson designated by the Board of Directors at the meeting. The Secretary or, in the absence of the Secretary or if the Secretary is unable to act, an assistant secretary of the Corporation, shall act as secretary of the meeting, but in the absence of the Secretary and any assistant secretary of the Corporation, the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 2.8. Action by Directors Without a Meeting. Unless otherwise restricted by the Charter or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting if all members of the Board of Directors or of such committee, as the case may be, consent thereto in writing, or by electronic transmission and the writing or writings or electronic transmission or electronic transmissions are filed with the minutes of proceedings of the Board of Directors or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form. Any person (whether or not then a director) may provide, whether through instruction to an agent or otherwise, that a consent to action will be effective at a future time (including a time determined upon the happening of an event), no later than sixty days after such instruction is given or such provision is made and such consent shall be deemed to have been given for purposes of this Section 2.8 at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective.

ARTICLE III

Committees of the Board of Directors

Section 3.1. Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board of Directors or in these Bylaws, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation (if any) to be affixed to all papers that may require it, but no such committee shall have the power or authority in reference to the following matters: (a) approving or adopting, or recommending to the stockholders of the Corporation, any action or matter (other than the election or removal of directors) expressly required by applicable law to be submitted to stockholders of the Corporation for approval; (b) adopting, amending or repealing these Bylaws; or (c) removing or indemnifying directors.

Section 3.1. Committee Rules; Quorum. Unless the Board of Directors otherwise provides, each committee designated by the Board of Directors may adopt, amend or repeal rules for the conduct of its business. In the absence of a provision by the Board of Directors or a provision in the rules of such committee to the contrary, a majority of the directors then serving on such committee shall constitute a quorum for the transaction of business, the vote of a majority of the members present at a meeting at the time of such vote if a quorum is then present shall be the act of such committee, and in other respects each committee shall conduct its business in the same manner as the Board of Directors conducts its business pursuant to Article II of these Bylaws.

ARTICLE IV

Officers

Section 4.1. Officers; Election. From time to time, the Board of Directors shall elect a President and a Secretary. The Board of Directors may also elect one or more vice presidents, one or more assistant vice presidents, one or more assistant secretaries, a treasurer or one or more assistant treasurers or such other officers of the Corporation as the Board of Directors may deem desirable and may give any of them such further designations or alternate titles as it considers desirable. Any number of offices of the Corporation may be held by the same person unless the Charter or these Bylaws provide otherwise. The election of an officer of the Corporation shall not in and of itself create any contractual rights.

Section 4.2. Term of Office; Death; Resignation; Removal; Vacancies. Unless otherwise provided in the resolution of the Board of Directors electing any officer of the Corporation, each officer of the Corporation shall hold office until his or her successor is elected and qualified or until his or her earlier death, resignation or removal. Any officer of the Corporation may resign at any time upon written notice to the Board of Directors or to the President or the Secretary of the Corporation. Such resignation shall be effective when it is delivered unless the resignation specifies a later effective date or an effectiveness determined upon the happening of an event or events, in which case it shall be effective at such later date or upon the happening of such event or events, and unless otherwise specified therein, no acceptance of such resignation shall be necessary to make it effective. The Board of Directors may remove any officer of the Corporation with or without cause at any time. Any vacancy occurring in any office of the Corporation by death, resignation, removal or otherwise may be filled by the Board of Directors at any regular or special meeting.

Section 4.3. Powers and Duties. The officers of the Corporation shall have such powers and duties in the management of the Corporation as shall be stated in these Bylaws or in a resolution of the Board of Directors that is not inconsistent with these Bylaws and, to the extent not so stated, as generally pertain to their respective offices, subject to the control of the Board of Directors. The Secretary shall have the duty to record the proceedings of the meetings of the stockholders of the Corporation, the Board of Directors and any committees in a book to be kept for that purpose. Unless otherwise required by applicable law, all contracts or other agreements, understandings, arrangements or instruments of the Corporation shall be executed on behalf of the Corporation by the President or any vice president of the Corporation, such other employee of the Corporation authorized in writing by the President or any vice president of the Corporation, with such limitations or restrictions as may be authorized by the Board of Directors. In case any officer is absent, or for any other reason that the Board of Directors may deem necessary or desirable, the President or the Board of Directors may delegate for the time being the powers or duties of such officer to any other officer or to any director. The Board of Directors may require any employee of the Corporation (including, without limitation, any officer of the Corporation) or any agent of the Corporation to give security for the faithful performance of his or her duties.

ARTICLE V

Stock

Section 5.1. Stock Certificates. The shares of stock in the Corporation shall be represented by certificates; provided that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of the Corporation's stock shall be uncertificated shares. Any such resolution shall not apply to shares of the Corporation represented by a certificate theretofore issued until such certificate is surrendered to the Corporation. Notwithstanding the adoption of such a resolution or resolutions by the Board of Directors, every holder of stock of the Corporation represented by certificates shall be entitled to have a certificate signed by or in the name of the Corporation by any two authorized officers of the Corporation, representing the number of shares of stock in the Corporation owned by such holder. If such certificate is manually signed by one officer or manually countersigned by a transfer agent or by a registrar, any other signature on the certificate may be a facsimile or other reliable reproduction. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. Except as otherwise expressly provided by applicable law, the rights and obligations of the holders of uncertificated shares of the Corporation and the rights and obligations of the holders of certificates representing stock of the same class and series of stock of the Corporation shall be identical.

Section 5.2. Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates. The Corporation may issue a new certificate of stock or, if applicable, uncertificated shares of the Corporation in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

ARTICLE VI

Miscellaneous

Section 6.1. Fiscal Year. The fiscal year of the Corporation shall be determined by the Board of Directors.

Section 6.2. Seal. The Corporation may have a corporate seal that shall have the name of the Corporation inscribed thereon and shall be in such form as may be approved from time to time by the Board of Directors. The corporate seal may be used by causing it or a facsimile thereof to be impressed or affixed or in any other manner reproduced.

Section 6.3. Waiver of Notice of Meetings of Stockholders, Directors and Committees. Whenever notice is required to be given under applicable law or any provision of the Charter or these Bylaws, a written waiver thereof, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders of the Corporation, directors or members of a committee of directors of the Corporation need be specified in any written waiver of notice unless so required by the Charter or these Bylaws.

Section 6.4. Indemnification of Directors and Officers.

(a) To the fullest extent permitted by the applicable law, none of the individuals who is or was made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding") by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation or of a partnership, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (individually, a "Covered Person" and, collectively, the "Covered Persons") shall be liable to the Corporation or any other Covered Person for any loss, damage or claim reasonably incurred by reason of any act or omission performed or omitted by such Covered Person in good faith and in a manner believed to be within the scope of authority conferred on such Covered Person by these Bylaws, except that a Covered Person shall be liable for any such loss, damage or claim incurred by reason of such Covered Person's fraud, gross negligence, willful misconduct, bad faith or material breach of these Bylaws. Each Covered Person shall in the performance of his or her duties under these Bylaws be fully protected in relying in good faith upon the records of the Corporation and upon information, opinions, reports or statements presented to the Corporation by any of the Corporation's officers or employees, or committees designated by the Board of Directors, or by any other person (including any attorney, independent accountant, appraiser or other expert or professional employed or engaged by or on behalf of the Corporation) as to the matters the Covered Person reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

(b) To the fullest extent permitted by the applicable law, the Corporation agrees to indemnify, pay and hold each Covered Person harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including any interest and penalties, out-of-pocket expenses and the fees and disbursements of counsel for such Covered Person in connection with any investigative, administrative or judicial proceedings, whether or not such Person shall be designated a party thereto), whether absolute, accrued, conditional or otherwise and whether or not resulting from third-party claims, which may be imposed on, incurred by, or asserted against any such Covered Person, in any manner relating to or arising out of any act or omission performed or omitted by such Covered Person on behalf of the

Corporation by reason of the fact that it, he or she is or was a director, officer, employee or agent of the Corporation, or is or was serving at the request of the Corporation as a director, manager, officer, employee or agent of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, except that no Covered Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Covered Person that is determined by a final, non-appealable decision of a court of competent jurisdiction to have resulted from such Covered Person's fraud, gross negligence, willful misconduct or bad faith with respect to such acts or omissions.

(c) The Corporation shall promptly reimburse (and/or advance to the extent reasonably required) each Covered Person for reasonable legal or other expenses (as incurred) of such Covered Person in connection with investigating, preparing to defend or defending any claim, lawsuit or other proceeding relating to any Losses for which such Covered Person may be indemnified pursuant to this Section 6.4(c) so long as the Corporation shall have received an undertaking by or on behalf of such Indemnitee to promptly repay such amounts (an "Undertaking") if it shall ultimately be determined by a final and binding judicial decision rendered by a court as contemplated by Section 145(k) of the DGCL that such Covered Person is not entitled to be indemnified for such expenses under this Section 6.4 or Section 145(e) of the DGCL.

(d) The Corporation may maintain insurance, at its option and expense, to protect itself and the Covered Persons against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under Delaware law.

(e) Notwithstanding anything contained herein to the contrary, any indemnity by the Corporation relating to the matters covered in this Section 6.4(e) shall be provided out of and to the extent of the Corporation's assets only, and the sole stockholder of the Corporation shall not have personal liability on account thereof or shall be required to make additional capital contributions to satisfy such indemnity.

(f) Any amendment, repeal or modification of any provision of this Section 6.4(f) shall not adversely affect any right or protection of a Covered Person existing at the time of such amendment, repeal or modification.

Section 6.5. Interested Directors; Quorum. No contract or other agreement, understanding, arrangement or instrument or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers or equivalents, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof that authorizes the contract or other agreement, understandings arrangement or instrument or transaction, or solely because his or her or their votes are counted for such purpose, if the material facts as to his or her relationship or interest and as to the contract or other agreement, understanding, arrangement or instruments or transaction are disclosed or are known to the stockholders of the Corporation entitled to vote thereon, and the contract or other agreement, understanding, arrangement or instruments or transaction is specifically approved in good faith by vote of the stockholders of the Corporation. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors that authorizes the contract or other agreement, understanding, arrangement or instruments or transaction.

Section 6.6. Form of Records. Any records administered by or on behalf of the Corporation in the regular course of its business, including its stock ledger (as such term is defined in Section 219(c) of the DGCL), books of account, and minute books, may be kept on, or be in the form of, any information storage device or method, or one or more electronic networks or databases (including one or more distributed electronic networks or databases); provided that the records so kept can be converted into clearly legible form within a reasonable time, and with respect to the stock ledger, that the records so kept satisfy clauses (i) through (iii) of Section 224 of the DGCL. The Corporation shall so convert any records so kept upon the request of any person entitled by law to inspect such records in accordance with law.

Section 6.7. Conflict with Applicable Law or Certificate of Incorporation. These Bylaws are adopted subject to any applicable law and the Charter. Whenever these Bylaws may conflict with any applicable law or the Charter, such conflict shall be resolved in favor of such law or the Charter, as applicable.

Section 6.8. Amendment or Repeal. These Bylaws may be amended or repealed, and new bylaws adopted, by the Board of Directors, but the stockholders of the Corporation entitled to vote may adopt additional bylaws and may amend or repeal any bylaw whether or not adopted by them.

AGREEMENT AND PLAN OF MERGER

BY AND AMONG

BAKKT HOLDINGS, INC.,

BAKKT OPCO HOLDINGS, LLC,

BAKKT MANAGEMENT, LLC

AND

BAKKT MERGER SUB 2, LLC

DATED AS OF NOVEMBER 3, 2025

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Exhibits

Exhibit A	Form of Certificate of Merger of OpCo
Exhibit B	Form of Surviving Company LLCA

AGREEMENT AND PLAN OF MERGER

This AGREEMENT AND PLAN OF MERGER (the “Agreement”), entered into as of as of 4:02 p.m. Eastern Time on November 3, 2025, by and among Bakkt Holdings, Inc. (f/k/a Bakkt NewCo Holdings, Inc.), a Delaware corporation (“New PubCo”), Bakkt Opco Holdings, LLC, a Delaware limited liability company (“OpCo”), Bakkt Management, LLC, a Delaware limited liability company (the “Management Vehicle”), and Bakkt Merger Sub 2, LLC, a Delaware limited liability company and a direct, wholly owned subsidiary of New PubCo (“Merger Sub 2”) (each a “Party” and collectively the “Parties”).

WITNESSETH

WHEREAS, Section 18-209 of the Delaware Limited Liability Company Act, 6 Del. C. § 18-101, et seq., as amended (the “DLLCA”), authorizes the merger of one or more Delaware limited liability companies with and into a Delaware limited liability company;

WHEREAS, Merger Sub 2 desires to merge with and into OpCo (the “Merger”), following which OpCo shall be the surviving entity;

WHEREAS, New PubCo, as the sole and managing member of Merger Sub 2, is executing this Agreement to approve the consummation of the Merger;

WHEREAS, Bakkt Intermediate Holdings, Inc. (f/k/a Bakkt Holdings, Inc.), a Delaware corporation (“Old PubCo”), as managing member of OpCo, has approved the consummation of the Merger;

WHEREAS, OpCo, as managing member of the Management Vehicle, has approved the consummation of the Merger;

WHEREAS, as of the Effective Time (as defined below), OpCo will have the authority to issue membership units, consisting of (i) common units (the “OpCo Common Units”), of which 7,174,575 OpCo Common Units are issued and outstanding (excluding common units held by the Management Vehicle and any OpCo Common Units owned by Old PubCo) and (ii) common units (the “OpCo Incentive Units”) granted under the Second Amended and Restated Bakkt Equity Incentive Plan, as amended (the “Equity Incentive Plan”), of which 283,335 OpCo Incentive Units are issued and outstanding and held by the Management Vehicle, and with respect to which the Management Vehicle has issued an identical number of economically identical membership interests in the Management Vehicle (the “Management Vehicle Units”);

WHEREAS, as of the date hereof, New PubCo owns 100% of the limited liability company interests in Merger Sub 2;

WHEREAS, subject to the terms of the Tax Receivable Agreement, dated as of October 15, 2021, by and among Old PubCo and the persons named therein, as amended, and the terms of the Contribution Agreement, dated as of October 16, 2025 and amended as of November 3, 2025, by and among Old PubCo, Intercontinental Exchange Holdings, Inc. and Akshay Naheta (the “Contribution Agreement”), pursuant to Section 2.1 of the Amended and Restated Exchange Agreement, dated as of May 3, 2022, by and among Old PubCo, OpCo and the other parties thereto

(the “Exchange Agreement”), each holder of one or more OpCo Common Units is entitled at any time, and from time to time, upon the terms and subject to the conditions thereof, to surrender one OpCo Common Unit together with one share of Class V Common Stock, par value \$0.0001 per share, of New PubCo (each such share, a “Class V Share” and, together with a OpCo Common Unit, a “Paired Interest”) to New PubCo in exchange for the delivery to such exchanging holder of a number of shares of Class A Common Stock, par value \$0.0001 per share, of New PubCo (each such share, a “Class A Share”) that is equal to the product of the number of Paired Interests surrendered multiplied by the Exchange Rate (as defined under the Exchange Agreement), which Exchange Rate is one as of the date hereof;

WHEREAS, pursuant to Section 10.8 of the Third Amended and Restated Limited Liability Agreement of OpCo and Section 2.5 of the Exchange Agreement, each holder of one or more OpCo Common Units is required to participate in the Reorganization and deemed to have delivered an Election of Exchange (as such term is defined in the Exchange Agreement) to OpCo and Old PubCo, to be effective immediately prior to the Effective Time;

WHEREAS, as of the Effective Time, each OpCo Common Unit (excluding any OpCo Common Units owned by Old PubCo), together with the Class V Share paired therewith, issued and outstanding immediately prior to the Effective Time shall be exchanged for the right to receive one validly issued, fully paid and nonassessable Class A Share;

WHEREAS, as of the Effective Time, each Management Vehicle Unit issued and outstanding immediately prior to the Effective Time shall be exchanged for one corresponding OpCo Incentive Unit, together with the Class V Share paired therewith, and immediately thereafter, each such OpCo Incentive Unit, together with the Class V Share paired therewith, issued and outstanding immediately prior to the Effective Time shall be exchanged for the right to receive one validly issued, fully paid and nonassessable Class A Share; and

WHEREAS, for U.S. federal income tax purposes, it is intended that the Merger and the Contributions (as defined under the Contribution Agreement) will, together with the Old PubCo Merger (as defined below), qualify as a transaction described in Section 351 of the Internal Revenue Code of 1986, as amended (the “Code”).

NOW, THEREFORE, in consideration of the premises and the covenants and agreements contained in this Agreement, and intending to be legally bound hereby, New PubCo, OpCo and Merger Sub 2 hereby agree as follows:

ARTICLE I THE MERGER

1.1 The Merger. Upon the terms and subject to the conditions set forth in this Agreement, at the Effective Time, in accordance with the DLLCA, Merger Sub 2 shall merge with and into OpCo (such merger, the “Merger”), whereupon the separate corporate existence of Merger Sub 2 shall cease, and OpCo shall continue as the surviving company of the Merger (the “Surviving Company”). At the Effective Time, the Merger shall have the effects specified herein and in Section 18-209 of the DLLCA. From and after the Effective Time, by virtue of the Merger and without any further action by any other person, the Surviving Company shall possess all the rights, powers, privileges and franchises, and be subject to all of the obligations, liabilities, restrictions, disabilities and duties of OpCo and Merger Sub 2, in each case, to the fullest extent provided under the DLLCA.

1.2 Effective Time. As soon as practicable on or after the execution of this Agreement, OpCo shall file a certificate of merger, in substantially the form attached hereto as Exhibit A, executed in accordance with the relevant provisions of the DLLCA, with the Secretary of State of the State of Delaware and the Parties shall make all other filings or recordings (or tender or deliver any taxes or fees) required under the DLLCA to effectuate the Merger. The Merger shall become effective as of 4:30 p.m., Eastern Time on November 3, 2025 or at such other date and time as the Parties shall agree and specify in the certificate of merger (the date and time the Merger becomes effective being referred to herein as the “Effective Time”).

1.3 LLC Agreement. At the Effective Time, the Third Amended and Restated Limited Liability Agreement of OpCo, as amended, shall be amended and restated in the Merger to read in its entirety in the form attached hereto as Exhibit B and as so amended and restated, shall constitute the Limited Liability Company Agreement of the Surviving Company (the “Surviving Company LLCA”), until thereafter amended pursuant to the terms thereof and applicable law.

1.4 Managing Member. Old PubCo shall be the initial managing member of the Surviving Company and shall hold such position in accordance with the Surviving Company LLCA until its successor is duly elected or appointed and qualified or until its earlier resignation or removal or death.

1.5 Officers. The officers of OpCo in office immediately prior to the Effective Time shall, effective as of the Effective Time, be the officers of the Surviving Company and will continue to hold office from the Effective Time until the earlier of their resignation or removal or death or until their successors are duly elected or appointed and qualified in the manner provided in the Surviving Company LLCA and applicable law.

ARTICLE II

EFFECT OF MERGER ON EQUITY INTERESTS OF OPCO; MERGER CONSIDERATION

2.1 Conversion of Securities. At the Effective Time, by virtue of the Merger and without any action on the part of OpCo, Merger Sub 2, New PubCo or any holder of any securities thereof:

(a) Conversion and Surrender of OpCo Common Units. Each OpCo Common Unit (excluding (i) OpCo Incentive Units and (ii) any OpCo Common Unit owned by Old PubCo), together with the Class V Share paired therewith, issued and outstanding immediately prior to the Effective Time shall be exchanged for the right to receive one validly issued, fully paid and nonassessable Class A Share. The exchange provided for herein shall be deemed to constitute a transfer of the OpCo Common Unit and shall be deemed to include the transfer of the Class V Share paired therewith.

(b) Conversion and Surrender of Management Vehicle Units and Surrender of OpCo Incentive Units.

(i) Each Management Vehicle Unit issued and outstanding immediately prior to the Effective Time shall be exchanged for the corresponding OpCo Incentive Unit, together with the Class V Share paired therewith.

(ii) Each OpCo Incentive Unit, together with the Class V Share paired therewith, issued and outstanding immediately prior to the Effective Time shall be automatically converted into the right to receive one Class A Share, subject to the restrictions provided herein.

(iii) Prior to the Effective Time, each of OpCo and the Management Vehicle shall take all corporate actions necessary to effectuate the treatment of the OpCo Incentive Units, the corresponding Class V Shares and the Management Vehicle Units as contemplated by this Section 2.1(b). As of the Effective Time, all rights under the awards issued under the Equity Incentive Plan shall inure to the benefit of New PubCo.

(c) Membership Interests of Merger Sub 2. All issued and outstanding membership interests of Merger Sub 2 shall automatically be converted into and become the number of validly issued common units of the Surviving Company equal to the aggregate number of Class A Shares exchanged for Paired Interests pursuant to Section 2.1(a).

2.2 Additional Actions. If, at any time after the Effective Time, the Surviving Company shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm, of record or otherwise, in the Surviving Company its right, title or interest in, to or under any of the rights, properties or assets of either Merger Sub 2 or OpCo acquired or to be acquired by the Surviving Company as a result of, or in connection with, the Merger or otherwise to carry out this Agreement, the officers and the managing member of the Surviving Company shall be authorized to execute and deliver, in the name and on behalf of each of Merger Sub 2 and OpCo, all such deeds, bills of sale, assignments and assurances and to take and do, in the name and on behalf of each of Merger Sub 2 and OpCo or otherwise, all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Surviving Company or otherwise to carry out this Agreement.

ARTICLE III TAX MATTERS

3.1 Tax Treatment. For U.S. federal income tax purposes, it is intended that the Merger and the Contributions will, together with the merger of Old PubCo and Bakkt Merger Sub 1, Inc. pursuant to the Agreement and Plan of Merger effective on the date hereof by and among Old PubCo, New PubCo and Bakkt Merger Sub 1, Inc. (such merger, the “Old PubCo Merger” and such agreement, the “PubCo Merger Agreement”), qualify as a transaction described in Section 351 of the Code.

ARTICLE IV TERMINATION

4.1 Termination. This Agreement may be terminated, and the Merger and the other transactions provided for herein may be abandoned, whether before or after the adoption of this Agreement by OpCo and Merger Sub 2, at any time prior to the Effective Time. In the event of termination of this Agreement or the PubCo Merger Agreement, this Agreement shall forthwith become void and have no effect, and neither the Parties nor their respective unitholders, managing members or officers shall have any liability with respect to such termination or abandonment.

ARTICLE V
MISCELLANEOUS

5.1 Amendments. At any time prior to the Effective Time, this Agreement may be supplemented, amended or modified, whether before or after the adoption of this Agreement by OpCo and Merger Sub 2, by the mutual consent of the Parties by action by their respective managing members. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by all of the Parties.

5.2 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns and all such successors and permitted assigns shall be deemed to be a party hereto for all purposes hereof. No Party may assign, delegate, or otherwise transfer either this Agreement or any of their rights, interests, or obligations hereunder without the prior written consent of each of the other Parties; provided, that OpCo may assign any of its rights or delegate any of its obligations (in whole or in part) under this Agreement to any affiliate thereof, but in no event shall any such assignment release OpCo from any of its obligations under this Agreement.

5.3 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to any choice or conflict of laws, provisions or rules that would cause the application of the laws of any jurisdiction other than the State of Delaware.

5.4 Counterparts. This Agreement may be executed in any number of identical counterparts, each of which for all purposes shall be deemed an original, and all of which shall constitute collectively, one instrument. This Agreement may be validly executed and delivered by facsimile or other electronic transmission. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement or any document to be signed in connection with this Agreement shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, and the Parties consent to conduct the transactions contemplated hereunder by electronic means.

5.5 Entire Agreement. This Agreement, together with the Schedules, Exhibits, the other certificates, documents, instruments and writings referred to herein or delivered pursuant hereto constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings, both written and oral, between the Parties with respect to the subject matter hereof. Each of the Parties acknowledges that no other Party, nor any agent or attorney of any other Party, has made any promise, representation or warranty whatsoever not contained herein, and that such Party has not executed or authorized the execution of this Agreement in reliance upon any such promise, representation or warranty not contained herein.

5.6 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable by any applicable law or public policy, this Agreement shall be considered divisible and such provision shall be deemed inoperative to the extent it is deemed unenforceable so long as the legal substance of the transactions contemplated herein is not affected in any manner materially adverse to any Party, and in all other respects this Agreement shall remain in full force and effect; provided, however, that if any such provision may be made enforceable by limitation thereof, then such provision shall be deemed to be so limited and shall be enforceable to the maximum extent permitted by applicable law.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of 4:02 p.m., Eastern Time on November 3, 2025.

BAKKT HOLDINGS, INC.

By /s/ Marc D’Annunzio
Name: Marc D’Annunzio
Title: General Counsel

BAKKT OPCO HOLDINGS, LLC

By /s/ Marc D’Annunzio
Name: Marc D’Annunzio
Title: Secretary

BAKKT MANAGEMENT, LLC
(by its Managing Member, BAKKT OPCO HOLDINGS, LLC)

By /s/ Marc D’Annunzio
Name: Marc D’Annunzio
Title: Secretary

BAKKT MERGER SUB 2, LLC

By /s/ Marc D’Annunzio
Name: Marc D’Annunzio
Title: Secretary

[Signature Page to Agreement and Plan of Merger]

EXHIBIT A

FORM OF CERTIFICATE OF MERGER OF OPCO

[See attached.]

**CERTIFICATE OF MERGER
OF
BAKKT MERGER SUB 2, LLC**
a Delaware limited liability company

WITH AND INTO

BAKKT OPCO HOLDINGS, LLC
a Delaware limited liability company

Pursuant to Title 6, Section 18-209 of the Delaware Limited Liability Company Act, as amended, the undersigned limited liability company has executed the following Certificate of Merger and hereby certifies as follows:

FIRST: The name, jurisdiction of formation and type of entity of each of the constituent entities which is to merge are as follows:

Name	Jurisdiction of Formation	Type of Entity
Bakkt Merger Sub 2, LLC	Delaware	Limited Liability Company
Bakkt OpCo Holdings, LLC	Delaware	Limited Liability Company

SECOND: The Agreement and Plan of Merger, dated as of November 3, 2025, entered into by and among Bakkt Merger Sub 2, LLC, Bakkt OpCo Holdings, LLC and the other parties named therein (the “Merger Agreement”) has been approved, adopted, certified, executed and acknowledged by each of the constituent limited liability companies.

THIRD: The name of the surviving limited liability company is Bakkt OpCo Holdings, LLC.

FOURTH: This Certificate of Merger, and the merger of Bakkt Merger Sub 2, LLC with and into Bakkt OpCo Holdings, LLC (the “Merger”), shall be effective as of 4:30 p.m., Eastern Time on November 3, 2025.

FIFTH: The Merger Agreement is on file at the place of business of the surviving limited liability company at: c/o Bakkt Holdings, Inc., 10000 Avalon Boulevard, Suite 1000, Alpharetta, GA 30009.

SIXTH: A copy of the Merger Agreement will be furnished by the surviving limited liability company on request, without cost, to any member of any of the constituent limited liability companies.

SEVENTH: The certificate of formation of Bakkt OpCo Holdings, LLC, as in effect immediately prior to the effective time of the Merger, shall be the Certificate of Formation of the surviving limited liability company.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, the surviving limited liability company has caused this Certificate of Merger to be signed by an authorized person, this 3rd day of November, 2025.

BAKKT OPCO HOLDINGS, LLC

By: /s/ Marc D’Annunzio
Name: Marc D’Annunzio
Title: Secretary

[Signature Page to Certificate of Merger of Bakkt Merger Sub 2, LLC]

EXHIBIT B

FORM OF SURVIVING COMPANY LLCA

[See attached.]

BAKKT OPCO HOLDINGS, LLC

FOURTH AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

Dated as of November 3, 2025

THE COMMON UNITS OF BAKKT OPCO HOLDINGS, LLC HAVE NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE “***SECURITIES ACT***”), THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION OR ANY OTHER APPLICABLE SECURITIES LAWS AND ARE BEING SOLD IN RELIANCE UPON EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH LAWS. SUCH COMMON UNITS MUST BE ACQUIRED FOR INVESTMENT ONLY AND MAY NOT BE OFFERED FOR SALE, PLEDGED, HYPOTHECATED, SOLD, ASSIGNED OR TRANSFERRED AT ANY TIME EXCEPT IN COMPLIANCE WITH (I) THE SECURITIES ACT, ANY APPLICABLE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION, AND ANY OTHER APPLICABLE SECURITIES LAWS; (II) THE TERMS AND CONDITIONS OF THIS THIRD AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT; AND (III) ANY OTHER TERMS AND CONDITIONS AGREED TO IN WRITING BETWEEN THE MANAGING MEMBER AND THE APPLICABLE MEMBER. THE COMMON UNITS MAY NOT BE TRANSFERRED OF RECORD EXCEPT IN COMPLIANCE WITH SUCH LAWS, THIS FOURTH AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT, AND ANY OTHER TERMS AND CONDITIONS AGREED TO IN WRITING BY THE MANAGING MEMBER AND THE APPLICABLE MEMBER. THEREFORE, PURCHASERS AND OTHER TRANSFEREES OF SUCH COMMON UNITS WILL BE REQUIRED TO BEAR THE RISK OF THEIR INVESTMENT OR ACQUISITION FOR AN INDEFINITE PERIOD OF TIME.

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SCHEDULES

Exhibit A Schedule of Members

BAKKT OPCO HOLDINGS, LLC
FOURTH AMENDED AND RESTATED LIMITED LIABILITY COMPANY
AGREEMENT

This **FOURTH AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT** (this “**Agreement**”), dated as of November 3, 2025 (the “**Effective Date**”), is entered into, by and among Bakkt Opco Holdings, LLC, a Delaware limited liability company (the “**Company**”), Bakkt Intermediate Holdings, Inc. (formerly known as Bakkt Holdings, Inc.), a Delaware corporation (“**Old PubCo**”), as Managing Member and on its behalf, and the Members (as defined below).

WHEREAS, the Company was formed as a limited liability company under the Delaware Limited Liability Company Act by the filing of a certificate of formation with the Secretary of State of the State of Delaware on July 31, 2018 (the “**Certificate**”);

WHEREAS, the Company and its members entered into that certain Limited Liability Company Agreement, effective as of August 2, 2018 (the “**Initial LLC Agreement**”);

WHEREAS, the Initial LLC Agreement was amended and restated by that certain Amended and Restated Limited Liability Agreement, effective as of December 19, 2018 (the “**Amended LLC Agreement**”);

WHEREAS, the Amended LLC Agreement was amended and restated by the Second Amended LLC Agreement;

WHEREAS, the Second Amended LLC Agreement was amended and restated by that certain Third Amended and Restated Limited Liability Company Agreement, dated October 15, 2021 (the “**Third Amended LLC Agreement**”) which Third Amended LLC Agreement was amended by that certain First Amendment to Third Amended and Restated Limited Liability Agreement, dated as of April 26, 2024 (the “**Amendment**”);

WHEREAS, on October 16, 2025, the Board of Directors of Old PubCo (the “**PubCo Board**”), publicly announced its plans to pursue a reorganization of certain entities (the “**Reorganization**”) to streamline Old PubCo’s corporate structure and eliminate Old PubCo’s umbrella partnership-C corporation structure. To effect the Reorganization, the PubCo Board authorized Old PubCo to pursue a series of transactions as a result of which (i) holders of shares of Class A common stock, par value \$0.0001 per share, of Old PubCo (“**Class A Common Stock**”) ceased to hold such shares, and received an equivalent number of shares of Class A common stock, par value \$0.0001 per share, of a new parent holding company (“**New PubCo Class A Common Stock**”), (ii) each common unit of the Company (each such unit, an “**OpCo Common Unit**”) (excluding the OpCo Incentive Units (as defined below) and any OpCo Common Units owned by Old PubCo) together with each share of Class V common stock, par value \$0.0001 per share, of New PubCo (each such share, a “**Class V Common Share**” and together with an OpCo Common Unit, a “**Paired Interest**”) issued and outstanding immediately prior to the closing of the Reorganization, was exchanged for the right to receive one validly issued, fully paid and nonassessable share of New PubCo Class A Common Stock, and (iii) each membership interest in the Management Vehicle (a “**Management Vehicle Unit**”) issued and

outstanding immediately prior to closing of the Reorganization was exchanged for one corresponding OpCo Common Unit granted under the Equity Incentive Plan (“*OpCo Incentive Units*”), together with the Class V Common Share paired therewith, and immediately thereafter, each such OpCo Incentive Unit, together with the Class V Common Share paired therewith, issued and outstanding immediately prior to the closing of the Reorganization was exchanged for the right to receive one validly issued, fully paid and nonassessable share of New PubCo Class A Common Stock;

WHEREAS, in connection with the Reorganization, on October 23, 2025, Bakkt NewCo Holdings, Inc., a Delaware corporation (“*New PubCo*”), was incorporated as a direct wholly owned subsidiary of Old PubCo, and on November 3, 2025, the Certificate of Incorporation of New PubCo was amended and restated to, among other things, change the name of New PubCo to Bakkt Holdings, Inc.;

WHEREAS, in connection with the Reorganization, New PubCo, the Company, and Bakkt Merger Sub 2, LLC, a Delaware limited liability company and a direct wholly owned subsidiary of New PubCo (“*Merger Sub 2*”) entered into an Agreement and Plan of Merger, dated as of November 3, 2025 (the “*Merger Agreement*”), pursuant to which, among other things, at the Effective Time (as defined in the Merger Agreement):

- (i) Merger Sub 2 merged with and into the Company (the “*Merger*”), with the Company continuing as the surviving company in the Merger;
- (ii) each Paired Interest issued and outstanding immediately prior to Effective Time automatically exchanged for one validly issued, fully paid and nonassessable share of New PubCo Class A Common Stock;
- (iii) each Management Vehicle Unit issued and outstanding immediately prior to the Effective Time was exchanged for corresponding OpCo Incentive Units, together with the Class V Common Share paired therewith, and immediately thereafter, each OpCo Incentive Unit, together with the Class V Common Share paired therewith, issued and outstanding immediately prior to the Effective Time was exchanged for the right to receive one validly issued, fully paid and nonassessable share of New PubCo Class A Common Stock;

WHEREAS, the Managing Member has previously approved and the Required Interest has consented to this Agreement;

WHEREAS, the Company, Old PubCo, and New PubCo, as Member, desire to amend and restate the Third Amended LLC Agreement in its entirety as set forth herein effective as of the date hereof, at which time the Prior Agreement will be superseded entirely by this Agreement; and

WHEREAS, for U.S. federal and applicable state and local income tax purposes, the parties intend that the Merger be treated as a transfer of Paired Interests from the holders of such Paired Interests to New PubCo in exchange for shares of New PubCo Class A Common Stock in a transaction described in Section 351 of the Code.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree that the Third Amended LLC Agreement is amended and restated as follows:

ARTICLE I
DEFINITIONS AND DETERMINATION OF VALUATION

Section 1.1 Definitions. The following definitions shall be applied to the terms used in this Agreement for all purposes, unless otherwise clearly indicated to the contrary.

“Additional Member” means a Person admitted to the Company as a Member pursuant to Section 9.6.

“Adjusted Capital Account” means the Capital Account maintained for each Member, (a) increased by any amounts that such Member is obligated to restore or is treated as obligated to restore under Treasury Regulations Sections 1.704-1(b)(2)(ii)(c), 1.704-2(g)(1) and 1.704-2(i)(5) and (b) decreased by any amounts described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) and (6) with respect to such Member.

“Adjusted Capital Account Deficit” means with respect to any Capital Account as of the end of any Taxable Year, the amount by which the balance in such Capital Account is less than zero. For this purpose, such Person’s Capital Account balance shall be:

(a) reduced for any items described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5), and (6); and

(b) increased for any amount such Person is obligated to contribute or is treated as being obligated to contribute to the Company pursuant to Treasury Regulations Section 1.704-1(b)(2)(ii)(c) (relating to partner liabilities to a partnership) or 1.704-2(g)(1) and 1.704-2(i) (relating to Minimum Gain).

“Affiliate” of any Person means any Person that directly or indirectly Controls, is Controlled by or is under common Control with the Person in question.

“Agreement” has the meaning set forth in the preamble.

“Amended LLC Agreement” has the meaning set forth in recitals of this Agreement.

“Assignee” has the meaning set forth in Section 9.5.

“Base Rate” means, on any date, a variable rate per annum equal to the rate of interest most recently published by The Wall Street Journal as the “prime rate” at large U.S. money center banks.

“Book Value” means, with respect to any property, such property’s adjusted basis for U.S. federal income tax purposes, except as follows:

(a) The initial Book Value of any property contributed by a Member to the Company shall be the gross fair market value of such property at the time of such contribution, as reasonably determined by the Managing Member, *provided* that the Book Values of all properties of the Company shall be adjusted to equal their respective gross fair market values as reasonably determined by the Managing Member as of the date hereof;

(b) The Book Values of all properties shall be adjusted to equal their respective gross fair market values as reasonably determined by the Managing Member in connection with (i) the acquisition of an interest in the Company by any new or existing Member in exchange for more than a *de minimis* capital contribution to the Company, (ii) the grant of an interest in the Company (other than a *de minimis* interest) as consideration for the provision of services to or for the benefit of the Company by an existing Member acting in a “partner capacity” or by a new Member acting in a “partner capacity” or in anticipation of being a “partner” (in each case within the meaning of Treasury Regulations Section 1.704-1(b)(2)(iv)(f)(5)(iii)), (iii) the distribution by the Company to a Member of more than a *de minimis* amount of property as consideration for an interest in the Company, (iv) the liquidation of the Company within the meaning of Treasury Regulations Section 1.704-1(b)(2)(ii)(g)(1), (v) the grant of a Noncompensatory Option which is not treated as a partnership interest pursuant to Treasury Regulations Section 1.761-3(a); and (vi) the acquisition of a membership interest upon the exercise of a Noncompensatory Option in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv)(s); *provided, however*, that an adjustment pursuant to an event described in clause (i), (ii) or (iii) of this paragraph shall be made only if the Managing Member reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company; *provided, further*, that if any Noncompensatory Options are outstanding upon the occurrence of an event described in clauses (i) through (v), the Company shall adjust the Book Values of its properties in accordance with Treasury Regulations Sections 1.704-1(b)(2)(iv)(f) and 1.704-1(b)(2)(iv)(h)(2);

(c) The Book Value of property distributed to a Member shall be the gross fair market value of such property as reasonably determined by the Managing Member; and

(d) The Book Value of all property shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such property pursuant to Code Section 734(b) or Code Section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m) and clause (f) of the definition of Net Profits and Net Losses; *provided, however*, that Book Value shall not be adjusted pursuant to this clause (d) to the extent the Managing Member determines that an adjustment pursuant to clause (b) hereof is necessary or appropriate in connection with the transaction that would otherwise result in an adjustment pursuant to this clause (d).

If the Book Value of property has been determined or adjusted pursuant to clauses (a), (b) or (d) hereof, such Book Value shall thereafter be adjusted by the Depreciation taken into account with respect to such property for purposes of computing Net Profits and Net Losses and other items allocated pursuant to Article IV.

“**Business Day**” means a day other than a Saturday, Sunday, federal or New York State holiday or other day on which commercial banks in New York City are authorized or required by law to be closed for business; *provided* that such banks shall be deemed to be open for business in the event of a “shelter in place” order or similar closure of physical branch locations is required at the direction of any Governmental Entity if such banks’ electronic funds transfer systems (including wire transfers) are open for use by customers on such day.

“Capital Account” means the capital account maintained for a Member pursuant to Section 3.5.

“Capital Contribution” means, with respect to any Member, the amount of money and the initial Book Value of any property (other than money) contributed to the Company by such Member, net of any liabilities assumed by the Company upon contribution or to which such property is subject. Any reference in this Agreement to the Capital Contribution of a Member shall include a Capital Contribution of such Member’s predecessors in interest.

“Certificate” has the meaning set forth in the recitals of this Agreement.

“Class A Common Stock” has the meaning set forth in the recitals of this Agreement.

“Class V Common Share” has the meaning set forth in the recitals of this Agreement.

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

“Common Unit” means the limited liability company interests in the Company issued pursuant to the terms of this Agreement, having such rights, privileges, preferences, obligations and duties as are set forth in this Agreement.

“Company” has the meaning set forth in the recitals of this Agreement.

“Company Interest” means the interest of a Member in allocations of Net Profits and Net Losses (or items thereof) and Distributions.

“Confidential Information” has the meaning set forth in Section 12.2.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies whether through ownership of voting securities, by contract or otherwise.

“Delaware Act” means the Delaware Limited Liability Company Act, 6 Del. L. §18-101, et seq., as it may be amended from time to time, and any successor to the Delaware Act.

“Depreciation” means, for each Taxable Year, an amount equal to the depreciation, amortization or other cost recovery deduction allowable for U.S. federal income tax purposes with respect to property for such Taxable Year, except that (a) with respect to any property the Book Value of which differs from its adjusted tax basis for U.S. federal income tax purposes and which difference is being eliminated by use of the remedial allocation method pursuant to Treasury Regulations Section 1.704-3(d), Depreciation for such Taxable Year shall be the amount of book basis recovered for such Taxable Year under the rules prescribed by Treasury Regulations Section 1.704-3(d)(2), and (b) with respect to any other property the Book Value of which differs from its adjusted tax basis at the beginning of such Taxable Year, Depreciation shall be an amount which bears the same ratio to such beginning Book Value as the U.S. federal

income tax depreciation, amortization or other cost recovery deduction for such Taxable Year bears to such beginning adjusted tax basis; *provided* that if the adjusted tax basis of any property at the beginning of such Taxable Year is zero, Depreciation with respect to such property shall be determined with reference to such beginning value using any reasonable method selected by the Managing Member.

“Distribution” means each distribution made by the Company to a Member, whether in cash, property or securities of the Company and whether by liquidating distribution or otherwise; *provided* that any recapitalization or exchange of securities of the Company, and any subdivision (by Unit split or otherwise) or any combination (by reverse Unit split or otherwise) of any outstanding Units shall not be a Distribution.

“Economic Risk of Loss” has the meaning assigned to that term in Treasury Regulations Section 1.752-2(a).

“Effective Date” has the meaning set forth in the introduction.

“Effective Time” has the meaning set forth in the Merger Agreement.

“Equity Incentive Plan” means the Second Amended and Restated Bakkt Equity Incentive Plan, which was amended and restated effective as of May 15, 2020, as further amended and restated.

“Equity Securities” means (a) capital stock, membership interests, partnership interests, other equity interests, rights to profits or revenue and any other similar interest in any corporation, partnership, limited liability company or other business entity, (b) any security or other interest convertible into or exchangeable or exercisable for any of the foregoing, whether at the time of issuance or upon the passage of time or the occurrence of some future event and (c) any warrant, option or other right (contingent or otherwise) to acquire any of the foregoing.

“ERISA” means The Employee Retirement Income Security Act of 1974, as amended.

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

“Family Group” means, as to any particular Person, (i) such Person’s spouse, such Person’s and such Person’s spouse’s parents and descendants (whether natural or adopted) of such Person and such Person’s spouse’s parents, (ii) any trust solely for the benefit of such Person and/or any of the Persons described in clause (i), and (iii) any partnerships, corporations or limited liability companies where the only partners, shareholders or members are such Person and/or any of the Persons described in clauses (i) and (ii).

“Flow-Through Tax Return” means a Tax Return of the Company or any of its Subsidiaries that is of a type that reports income, gain, deduction or loss from the operation of a partnership or other pass-through entity and that could reflect items of income, gain, deduction or loss required to be included on a Tax Return of a Member (whether or not such items are actually reflected thereon).

“Fiscal Year” means the Company’s annual accounting period established pursuant to Section 2.8.

“Governmental Entity” means the United States of America or any other nation, any state or other political subdivision thereof, or any entity exercising executive, legislative, judicial, regulatory or administrative functions of government.

“Holder” means any Person who holds a Unit, whether as a Member or as an unadmitted Assignee of a Member.

“ICE” means Intercontinental Exchange, Inc., a Delaware corporation, together with its Affiliates, successors and assigns.

“Indemnitee” means (a) Old PubCo, (b) any additional or substitute Managing Member, (c) any Person who is or was a Partnership Representative, officer or director of Old PubCo or any additional or substitute Managing Member, (d) any Person that is required to be indemnified by Old PubCo as an “indemnitee” in accordance with the Old PubCo Charter or bylaws of Old PubCo as in effect from time to time, (e) any officer or director of Old PubCo or any additional or substitute Managing Member who is or was serving at the request of Old PubCo or any additional or substitute Managing Member as an officer, director, employee, member, Member, Partnership Representative, agent, fiduciary or trustee of another Person; *provided*, that a Person shall not be an Indemnitee by reason of providing, on a fee-for-services basis, trustee, fiduciary or custodial services, (f) any officer of the Company, (g) any other Person the Managing Member in its sole discretion designates as an “Indemnitee” for purposes of this Agreement and (h) any heir, executor or administrator with respect to Persons named in clauses (a) through (g) above.

“Indemnitee-Related Entities” means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise (other than the Company or any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise for which the Indemnitee has agreed, on behalf of the Company or at the Company’s request, to serve as a director, officer, employee or agent and which service is covered by the indemnity described herein) from whom an Indemnitee may be entitled to indemnification or advancement of expenses with respect to which, in whole or in part, the Company may also have an indemnification or advancement obligation.

“Initial LLC Agreement” has the meaning set forth in the recitals of this Agreement.

“Jointly Indemnifiable Claims” shall be broadly construed to mean, without limitation, any action, suit or proceeding for which an Indemnitee shall be entitled to indemnification or advancement of expenses from both the Indemnitee-Related Entities and the Company pursuant to applicable law, any agreement, certificate of incorporation, by-laws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or comparable organizational documents of the Company or the Indemnitee-Related Entities, as applicable.

“Law” means any statute, law, ordinance, regulation, rule, code, executive order, injunction, judgment, decree or other order issued or promulgated by any national, supranational, state, federal, provincial, local or municipal government or any administrative or regulatory body with authority therefrom with jurisdiction over the Company or any Member, as the case may be.

“Lien” means any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof), any sale of receivables with recourse against the Company, any Subsidiary or any Affiliate thereof, any filing or agreement to file a financing statement as debtor under the Uniform Commercial Code or any similar statute other than to reflect ownership by a third party of property leased to the Company, any Subsidiary or any Affiliate under a lease which is not in the nature of a conditional sale or title retention agreement, or any subordination arrangement in favor of another Person (other than any subordination arising in the ordinary course of business).

“Managing Member” means Old PubCo or any successor managing member admitted to the Company in accordance with the terms of this Agreement, in its capacity as the managing member of the Company.

“Management Vehicle” means Bakkt Management, LLC.

“Management Vehicle Unit” has the meaning set forth in the recitals of this Agreement.

“Member” means each of the members named on the Schedule of Members and any Person admitted to the Company as a Substituted Member or Additional Member, but only so long as such Person is shown on the Company’s books and records as the owner of one or more Units.

“Member Nonrecourse Debt” has the meaning assigned to the term “partner nonrecourse debt” in Treasury Regulations Section 1.704-2(b)(4).

“Member Nonrecourse Debt Minimum Gain” has the meaning assigned to the term “partner nonrecourse debt minimum gain” in Treasury Regulations Section 1.704-2(i)(2).

“Member Nonrecourse Deductions” has the meaning assigned to the term “partner nonrecourse deductions” in Treasury Regulations Section 1.704-2(i)(2).

“Merger” has the meaning set forth in the recitals of this Agreement.

“Merger Agreement” has the meaning set forth in the recitals of this Agreement.

“Merger Sub 2” has the meaning set forth in the recitals of this Agreement.

“Minimum Gain” means the partnership minimum gain determined pursuant to Treasury Regulations Section 1.704-2(d).

“Net Profit” or **“Net Loss”** means, for each Taxable Year, an amount equal to the Company’s taxable income or loss for such Taxable Year, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, deduction or credit required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments (without duplication):

(a) Any income of the Company that is exempt from U.S. federal income tax and not otherwise taken into account in computing Net Profit and Net Loss pursuant to this definition of **“Net Profit”** and **“Net Loss”** shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i) and not otherwise taken into account in computing Net Profit or Net Loss pursuant to this definition of **“Net Profit”** and **“Net Loss”** shall be subtracted from such taxable income or loss;

(c) In the event the Book Value of any asset is adjusted pursuant to clause (b) or clause (c) of the definition of Book Value, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the Book Value of the asset) or an item of loss (if the adjustment decreases the Book Value of the asset) from the disposition of such asset and shall be taken into account for purposes of computing Net Profit or Net Loss;

(d) Gain or loss resulting from any disposition of property with respect to which gain or loss is recognized for U.S. federal income tax purposes shall be computed by reference to the Book Value of the property disposed of, notwithstanding that the adjusted tax basis of such property differs from its Book Value;

(e) In lieu of the depreciation, amortization, and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Taxable Year;

(f) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Section 743(b) is required pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member's Units, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account for purposes of computing Net Profits or Net Losses; and

(g) Any items that are allocated pursuant to Section 4.3 shall be determined by applying rules analogous to those set forth in clauses (a) through (f) hereof but shall not be taken into account in computing Net Profits and Net Losses.

“Noncompensatory Option” means a “noncompensatory option” within the meaning of Treasury Regulations Sections 1.721-2(f) and 1.761-3(b)(2).

“Nonrecourse Deductions” has the meaning assigned that term in Treasury Regulations Section 1.704-2(b).

“Old PubCo Charter” means the certificate of incorporation (or equivalent organizational document) as filed with the secretary of state (or equivalent governmental body or department) of the state in which Old PubCo is incorporated or formed, as applicable, as in effect and amended from time to time.

“Paired Interest” has the meaning set forth in the recitals of this Agreement.

“Partnership Representative” has the meaning set forth in Code Section 6223.

“Percentage Interest” means, with respect to any Member, the quotient obtained by dividing the number of Common Units then owned by such Member by the number of Common Units then owned by all of the Members, in each case, whether vested or unvested.

“Permitted Transfer” means a Transfer (a) in the case of a Member that is a natural Person, pursuant to applicable laws of descent and distribution, (b) in the case of a Member that is a natural Person, to or among such Member’s Family Group, (c) in the case of a Member that is an entity, a Transfer to its Affiliates; *provided* that in each case (i) the restrictions, conditions, and obligations contained in this Agreement and any other agreement to which such Member is a party in its capacity as such shall continue to be applicable to such securities after any such Permitted Transfer, (ii) the transferee(s) of such securities shall have agreed in writing to be bound by the provisions of such agreements, and (iii) unless the transferee was a Member prior to such Permitted Transfer or has been admitted as a Substituted Member, such Member shall have retained all voting Control over such securities.

“Person” means an individual or any corporation, partnership, limited liability company, trust, unincorporated organization, association, joint venture or any other entity or organization, regardless of whether a legally-recognized person.

“Prior Merger Agreement” has the meaning set forth in Section 8.6.

“Proceeding” has the meaning set forth in Section 11.2(a).

“PubCo Board” has the meaning set forth in the recitals of this Agreement.

“Recapture Gain” has the meaning set forth in Section 4.4(d).

“Regulatory Allocations” has the meaning set forth in Section 4.3(i).

“Representative” has the meaning set forth in Section 12.2.

“Required Interest” means one or more Members (excluding the Managing Member and any Members controlled by the Managing Member) holding a majority of the Units then owned by all of the Members (excluding the Units held by the Managing Member and any Members Controlled by the Managing Members); *provided* that, in the event no Person other than the Managing Member and/or Members controlled by the Managing Member hold Units, the **“Required Interest”** shall be deemed to mean the Managing Member.

“Rights” means warrants, options or other rights to purchase or otherwise acquire Units or other Equity Securities in the Company.

“Schedule of Members” has the meaning set forth in Section 2.13.

“Second Amended LLC Agreement” means that certain Second Amended and Restated Limited Liability Company Agreement, effective February 28, 2020, among the Company and each Member listed on Schedule I attached thereto and such additional Persons who became Members of the Company from time to time in accordance with the terms thereof.

“Securities Act” means the Securities Act of 1933, as amended, and applicable rules and regulations thereunder, and any successor to such statute, rules or regulations. Any reference herein to a specific section, rule or regulation of the Securities Act shall be deemed to include any corresponding provisions of future law.

“Securities and Exchange Commission” means the United States Securities and Exchange Commission, including any governmental body or agency succeeding to the functions thereof.

“Similar Law” means any Law or regulation that could cause the underlying assets of the Company to be treated as assets of the Member by virtue of its limited liability company interest in the Company and thereby subject the Company and the Managing Member (or other persons responsible for the investment and operation of the Company’s assets) to Laws or regulations that are similar to the fiduciary responsibility or prohibited transaction provisions contained in Title I of ERISA or Code Section 4975.

“Subsidiary” means, with respect to any Person, another Person of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or Controlled, directly or indirectly, by the first Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (b) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of partnership or other similar ownership interest thereof is at the time owned or Controlled, directly or indirectly, by the first Person or one or more Subsidiaries of that Person or a combination thereof.

For purposes hereof, a Person or Persons shall be deemed to have a majority ownership interest in a limited liability company, partnership, association or other business entity (other than a corporation) if such Person or Persons shall be allocated a majority of limited liability company, partnership, association or other business entity gains or losses or shall be or Control any managing director or general partner of such limited liability company, partnership, association or other business entity. For purposes hereof, references to a “Subsidiary” of the Company shall be given effect only at such times that the Company has one or more Subsidiaries, and, unless otherwise indicated, the term “Subsidiary” refers to a Subsidiary of the Company. For the avoidance of doubt, the “Subsidiaries” of Bakkt Holding, Inc. will include the Company and its direct and indirect Subsidiaries.

“Substituted Member” means a Person that is admitted as a Member to the Company pursuant to Section 9.7.

“Taxes” means any federal, state, local or foreign income, sales and use, excise, franchise, real and personal property, gross receipt, capital stock, business and occupation, premium, disability, employment, payroll, or withholding tax or other tax, duty, fee, assessment or charge of any kind whatsoever in the nature of a tax imposed by any taxing authority, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, whether disputed or not, and any interest or penalties related to the foregoing.

“Tax Return” means any and all reports, returns (including information returns and claims for refunds), declarations, or statements relating to Taxes, including any schedule or attachment thereto and any amendment thereof filed or required to be filed with any governmental authority in connection with the determination, assessment, collection or payment of Taxes or in connection with the administration, implementation or enforcement of or compliance with any legal requirement relating to any Tax.

“Taxable Year” means the Company’s accounting period for U.S. federal income tax purposes determined pursuant to Section 8.1.

“Termination Transaction” means any direct or indirect Transfer of all or any portion of the Managing Member’s interest in the Company in connection with, or the other occurrence of, (a) a merger, consolidation or other combination involving the Managing Member, on the one hand, and any other Person, on the other, or (b) a sale, lease, exchange or other transfer of all or substantially all of the assets of the Managing Member not in the ordinary course of its business, whether in a single transaction or a series of related transactions or (c) a direct or indirect Transfer of all or substantially all of the Managing Member’s interest in the Company; *provided* that, for the avoidance of doubt, “Termination Transaction” shall be deemed to exclude any direct or indirect Transfers of Equity Securities of Old PubCo by any stockholder or other holder thereof.

“Third Amended LLC Agreement” has the meaning set forth in recitals of this Agreement.

“Transfer” means, in respect of any Common Unit, any direct or indirect transfer of ownership by sale, exchange, assignment, pledge, encumbrance, Lien, gift, donation, grant or other conveyance or disposition of any kind, whether voluntary or involuntary, including conveyances or dispositions by operation of law or legal process or otherwise (and hereby expressly includes, with respect to a Member, any voluntary or involuntary: (a) appointment of a receiver, trustee, liquidator, custodian or other similar official for such Member or all or any part of such Member’s property under any Law relating to bankruptcy, insolvency, reorganization, liquidation or other relief of debtors, including Title 11 of the United States Code, as amended; (b) gift, donation, transfer by will or intestacy or other disposition, whether *inter vivos* or *mortis causa*; and (c) transfer or other disposition to a spouse or former spouse (including by reason of a separation agreement or divorce, equitable or community or marital property distribution, judicial decree or other court order relating to the division or partition of property between spouses or former spouses or other persons)).

“Treasury Regulations” means the income tax regulations promulgated under the Code and any corresponding provisions of succeeding regulations.

“Unit” means a Company Interest of a Member or an Assignee in the Company representing a fractional part of the Company Interests of all Members and Assignees; *provided* that any class or group of Units issued shall have the relative rights, powers and duties set forth in this Agreement and the Company Interest represented by such class or group of Units shall be determined in accordance with such relative rights, powers and duties.

ARTICLE II

ORGANIZATIONAL MATTERS

Section 2.1 Formation of Company. The Company was formed as a limited liability company on July 31, 2018 pursuant to the provisions of the Delaware Act.

Section 2.2 Limited Liability Company Agreement. The Members hereby execute this Agreement for the purpose of establishing the affairs of the Company and the conduct of its business in accordance with the provisions of the Delaware Act. The Members hereby agree that during the term of the Company set forth in Section 2.6 the rights and obligations of the Members with respect to the Company will be determined in accordance with the terms and conditions of this Agreement and the Delaware Act. To the extent that the rights, powers, duties, obligations and liabilities of any Member are different by reason of any provision of this Agreement than they would be in the absence of such provision, this Agreement shall, to the extent permitted by the Delaware Act, control. No provision of this Agreement shall be in violation of the Delaware Act and to the extent any provision of this Agreement is in violation of the Delaware Act, such provision shall be void and of no effect to the extent of such violation without affecting the validity of the other provisions of this Agreement; *provided* that where the Delaware Act provides that a provision of the Delaware Act shall apply “unless otherwise provided in a limited liability company agreement” or words of similar effect, the provisions of this Agreement shall in each instance control; *provided, further*, that notwithstanding the foregoing, no contractual appraisal rights, whether pursuant to the Delaware Act or otherwise, including Section 18-210 of the Delaware Act, shall apply or be incorporated into this Agreement.

Section 2.3 Name. The name of the Company shall be “Bakkt Opco Holdings, LLC” and all Company business shall be conducted in that name or in such other names that comply with applicable law as the Managing Member, in its sole discretion may select from time to time. Subject to the Delaware Act, the Managing Member, in its sole discretion may change the name of the Company (and amend this Agreement to reflect such change) at any time and from time to time without the consent of any other Person. Notification of any such change shall be given to all of the Members.

Section 2.4 Purpose. The purpose and business of the Company shall be to engage in any business which may lawfully be conducted by a limited liability company formed pursuant to the Delaware Act.

Section 2.5 Principal Office; Registered Office.

(a) The principal office of the Company shall be at One Liberty Plaza, One Liberty St., Ste. 305-306, New York, New York 10006, or such other place as the Managing Member may from time to time designate. The Company may maintain offices at such other place or places as the Managing Member deems advisable. Notification of any such change shall be given to all of the Members. The address of the registered office of the Company in the State of Delaware shall be 1521 Concord Pike, Suite 201, Wilmington, County of New Castle, Delaware 19803, and the registered agent for service of process on the Company in the State of Delaware at such registered office shall be United Agent Group Inc.

(b) The Managing Member in its sole discretion may take all action which may be necessary or appropriate (i) for the continuation of the Company’s valid existence as a limited liability company under the Laws of the State of Delaware (and of each other jurisdiction in which such existence is necessary to enable the Company to conduct the business in which it is engaged) and (ii) for the maintenance, preservation and operation of the business of the

Company in accordance with the provisions of this Agreement and applicable laws and regulations. The Managing Member in its sole discretion may file or cause to be filed for recordation in the proper office or offices in each other jurisdiction in which the Company is formed or qualified, such certificates (including certificates of formation and fictitious name certificates) and other documents as are required by the applicable statutes, rules or regulations of any such jurisdiction or as are required to reflect the identity of the Members. The Managing Member in its sole discretion may cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the officers, with all requirements necessary to qualify the Company to do business in any jurisdiction other than the State of Delaware.

Section 2.6 Term. The term of the Company commenced upon the filing of the Certificate in accordance with the Delaware Act and shall continue in existence until termination and dissolution thereof in accordance with the provisions of Article X. The existence of the Company shall continue until cancellation of the Certificate in the manner required by the Delaware Act.

Section 2.7 No State-Law Partnership. The Members intend that the Company not be a partnership (including, without limitation, a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member by virtue of this Agreement, for any purposes other than as set forth in the last sentence of this Section 2.7, and neither this Agreement nor any other document entered into by the Company or any Member relating to the subject matter hereof shall be construed to suggest otherwise. The Members intend that the Company shall be treated as a partnership for U.S. federal and, if applicable, state or local income tax purposes, and that each Member and the Company shall file all tax returns and shall otherwise take all tax and financial reporting positions in a manner consistent with such treatment.

Section 2.8 Fiscal Year. The Fiscal Year of the Company shall end on December 31 of each year or such other annual accounting period as may be established by the Managing Member.

Section 2.9 Powers of the Company. Subject to the limitations set forth in this Agreement, the Company will possess and may exercise all of the powers and privileges granted to it by the Delaware Act including the ownership and operation of the assets and other property contributed to the Company by the Members, by any other Law or this Agreement, together with all powers incidental thereto, so far as such powers are necessary or convenient to the conduct, promotion or attainment of the purpose of the Company set forth in Section 2.4.

Section 2.10 Members; Reclassification; Admission of New Members. Each of the Persons listed in the books and records of the Company as a Member, as the same may be amended from time to time in accordance with this Agreement, by virtue of its execution of this Agreement, is admitted as a Member of the Company. The rights, duties and liabilities of the Members shall be as provided in the Delaware Act, except as is otherwise expressly provided herein, and the Members consent to the variation of such rights, duties and liabilities as provided herein. Subject to Section 9.7 with respect to Substituted Members, a Person may be admitted from time to time as a new Member with the written consent of the Managing Member in its sole

discretion. Each new Member shall execute and deliver to the Managing Member an appropriate supplement to this Agreement pursuant to which the new Member agrees to be bound by the terms and conditions of this Agreement, as it may be amended from time to time. A new Managing Member or substitute Managing Member may be admitted to the Company solely in accordance with Section 9.6.

Section 2.11 Resignation. No Member shall have the right to resign as a member of the Company other than following the Transfer of all Common Units owned by such Member in accordance with Article IX.

Section 2.12 Investment Representations of Members. Each Member hereby represents, warrants and acknowledges to the Company that: (a) such Member has such knowledge and experience in financial and business matters and is capable of evaluating the merits and risks of an investment in the Company and is making an informed investment decision with respect thereto; (b) such Member is acquiring interests in the Company for investment only and not with a view to, or for resale in connection with, any distribution to the public or public offering thereof; and (c) the execution, delivery and performance of this Agreement have been duly authorized by such Member.

Section 2.13 Schedule of Members. The Company shall maintain a schedule, from time to time amended or supplemented, setting forth the name and address of each Member, and the number of Common Units or Equity Securities in the Company owned by such Member (such schedule, the “*Schedule of Members*”). The Schedule of Members, as amended and supplemented from time to time, shall be the definitive record of ownership of each Common Unit or other Equity Security in the Company. All Members acknowledge, and hereby agree, that the Schedule of Members is confidential to the Company and that each Member is only entitled to view the portion of the Schedule of Members representing his, her or its Company Interest. The Company shall be entitled to recognize the exclusive right of a Person registered on its records as the owner of Common Units or other Equity Securities in the Company for all purposes and shall not be bound to recognize any equitable or other claim to or interest in Common Units or other Equity Securities in the Company on the part of any other Person, whether or not it shall have express or other notice thereof, except as otherwise provided by the Delaware Act and this Agreement.

ARTICLE III **CAPITAL CONTRIBUTIONS**

Section 3.1 Common Units.

(a) Limited liability company interests in the Company shall be represented by Common Units, or such other securities of the Company, in each case as the Managing Member may establish in its discretion in accordance with the terms and subject to the restrictions hereof. As of immediately following the Effective Time, each Member shall hold the number of Common Units set forth opposite such Member’s name on the Schedule of Members.

(b) Each Member named on the Schedule of Members has made Capital Contributions or provided other consideration to the Company in exchange for the Units specified thereon. Each Member named on the Schedule of Members has delivered to the Company a properly executed Internal Revenue Service Form W-8 or W-9, as applicable. Each Member acknowledges and agrees that portions of this Agreement, including the Schedule of Members, may be redacted or information herein may otherwise be aggregated to prevent disclosure of confidential information.

(c) No Member shall be required or, permitted to (i) make any Capital Contribution other than as set forth on the Schedule of Members or (ii) loan any money or property to the Company or borrow any money or property from the Company.

(d) As of the Effective Time, in connection with the Merger, all issued and outstanding membership interests of Merger Sub 2 were automatically converted into and became the number of validly issued Common Units equal to the aggregate number of shares of New PubCo Class A Common Stock issued in connection with the Merger.

Section 3.2 Authorization and Issuance of Additional Units.

(a) The Managing Member may not, without the prior written consent of a Required Interest, (i) create any new class or series of Units, or other Equity Securities of the Company, (ii) issue additional Units or other Equity Securities of the Company to any Member or Person (other than Units issued pursuant to Section 3.2(b) of this Agreement), (iii) amend the privileges, preference, duties, liabilities, obligations and rights of any existing Units, or (iv) retire or redeem any previously issued Units or other Equity Securities of the Company).

(b) The Managing Member may cause the Company to issue additional Common Units authorized under this Agreement at such times and upon such terms as the Managing Member shall determine and the Managing Member shall, and is hereby authorized to, promptly amend this Agreement and the Schedule of Members as necessary in connection with the issuance of additional Common Units and admission of additional Members under this Section 3.2 without the requirement of any consent or acknowledgement of any other Member.

Section 3.3 Non-certificated Units; Certificates; Lost, Stolen or Destroyed Certificates; Registration and Transfer of Common Units.

(a) Common Units shall not be certificated unless otherwise determined by the Managing Member. If the Managing Member determines that one or more Common Units shall be certificated, each such certificate shall be signed by or in the name of the Company and any officer designated by the Managing Member. Such certificate shall be in such form (and shall contain such legends) as the Managing Member may determine. Any or all of such signatures on any certificate representing one or more Common Units may be an electronic signature, engraved or printed, to the extent permitted by applicable Law.

(b) If Common Units are certificated, the Managing Member may direct that a new certificate representing one or more Common Units be issued in place of any certificate theretofore issued by the Company alleged to have been lost, stolen or destroyed, upon delivery to the Managing Member of an affidavit of the owner or owners of such certificate, setting forth such allegation. The Managing Member may require the owner of such lost, stolen or destroyed certificate, or such owner's legal representative, to give the Company a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of any such new certificate.

(c) Upon surrender to the Company or the transfer agent of the Company, if any, of a certificate for one or more Common Units, duly endorsed or accompanied by appropriate evidence of succession, assignment or authority to transfer, in compliance with the provisions hereof, the Company shall issue a new certificate representing one or more Common Units to the Person entitled thereto, cancel the old certificate and record the transaction upon its books. Subject to the provisions of this Agreement, the Managing Member may prescribe such additional rules and regulations as it may deem appropriate relating to the issue, Transfer and registration of Common Units.

Section 3.4 Registered Members. The Company shall be entitled to recognize the exclusive right of a Person registered on its records as the owner of Common Units for all purposes and shall not be bound to recognize any equitable or other claim to or interest in Common Units on the part of any other Person, whether or not it shall have express or other notice thereof, except as otherwise provided by the Delaware Act or other applicable Law.

Section 3.5 Capital Accounts. The Company shall maintain a separate Capital Account for each Member according to the rules of Treasury Regulations Section 1.704-1(b)(2)(iv). For this purpose, the Company may (in the discretion of the Managing Member), upon the occurrence of the events specified in Treasury Regulations Section 1.704-1(b)(2)(iv)(f), increase or decrease the Capital Accounts in accordance with the rules of such regulation and Treasury Regulations Section 1.704-1(b)(2)(iv)(g) to reflect a revaluation of Company property.

Section 3.6 Negative Capital Accounts. No Member shall be required to pay to any other Member or the Company any deficit or negative balance which may exist from time to time in such Member's Capital Account (including upon and after dissolution of the Company).

Section 3.7 No Withdrawal. No Person shall be entitled to withdraw any part of such Person's Capital Contribution or Capital Account or to receive any Distribution from the Company, except as expressly provided herein.

Section 3.8 Loans From Members. Loans by Members to the Company shall not be considered Capital Contributions. For the avoidance of doubt, no Member may make a loan or advance funds to the Company without the consent of the Managing Member.

ARTICLE IV

DISTRIBUTIONS AND ALLOCATIONS

Section 4.1 Distributions.

(a) Subject to the provisions of the Delaware Act and the provisions of this Article IV, the Managing Member, in its sole discretion, may authorize Distributions to the Members, which Distributions shall be made *pro rata* in accordance with the Members' respective Percentage Interests as of the record date of the Distribution designated by the Managing Member.

(b) Each Distribution pursuant to this Section 4.1 shall be made to the Persons shown on the Company's books and records as Members as of the record date of such Distribution.

Section 4.2 Allocations. After giving effect to the allocations set forth in Section 4.3, Net Profits and Net Losses (and to the extent necessary to achieve the resulting Capital Account balances described below, any allocable items of gross income, gain, loss and expense that would otherwise be includable in the computation of Net Profits and Net Losses) for each Taxable Year shall be allocated among the Members during such Taxable Year, in such a manner as shall cause the Capital Accounts of the Members (as adjusted to reflect all allocations set forth in Section 4.3 and all distributions through the end of such Taxable Year) to equal, as nearly as possible, (a) the amount such Members would receive if all assets of the Company on hand at the end of such Taxable Year were sold for cash equal to their Book Values, all liabilities of the Company were satisfied in cash in accordance with their terms (limited in the case of non-recourse liabilities to the Book Value of the property securing such liabilities), and all remaining or resulting cash (including any withheld amounts) were distributed to the Members under Section 10.2 minus (b) such Member's share of Minimum Gain and Member Nonrecourse Debt Minimum Gain, computed immediately prior to the hypothetical sale of assets. The Managing Member may, in its discretion, modify the manner in which allocations are made (whether or not consistent with the above and/or with Sections 4.3 and 4.4) as it deems necessary or appropriate in order to effectuate the intended economic arrangement of the Members and to comply with the rules of Section 704 of the Code and the Treasury Regulations thereunder.

Section 4.3 Special Allocations.

(a) Notwithstanding any other provision of Section 4.2 and Section 4.3, if there is a net decrease in Minimum Gain during any Taxable Year, each Member shall be allocated items of Company income and gain for such Taxable Year (and, if necessary, subsequent Taxable Years) in the manner and amounts provided in Treasury Regulations Sections 1.704-2(f)(6), (g)(2) and (j)(2)(i). For purposes of this Section 4.3, each Member's Adjusted Capital Account shall be determined and the allocation of income or gain required hereunder shall be effected, prior to the application of any other allocations pursuant to Section 4.2 or Section 4.3 with respect to such Taxable Year. This Section 4.3(a) is intended to comply with the partnership Minimum Gain chargeback requirement in Treasury Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) Notwithstanding the other provisions of Section 4.2 and Section 4.3 (other than clause (a) above), if there is a net decrease in Member Nonrecourse Debt Minimum Gain during any Taxable Year, any Member with a share of Member Nonrecourse Debt Minimum Gain at the beginning of such Taxable Year shall be allocated items of Company income and gain for such Taxable Year (and, if necessary, subsequent Taxable Years) in the manner and amounts provided in Treasury Regulations Section 1.704-2(i)(4) and (j)(2)(ii). For purposes of this Section 4.3 each Member's Adjusted Capital Account balance shall be determined, and the allocation of income and gain required hereunder shall be effected, prior to the application of any other allocations pursuant to Section 4.2 or Section 4.3 other than Section 4.3(a) above, with respect to such Taxable Year. This Section 4.3(b) is intended to comply with the partner nonrecourse debt minimum gain chargeback requirement in Treasury Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) Except as provided in Section 4.3(a) and Section 4.3(b) above, in the event any Member unexpectedly receives any adjustments, allocations or distributions described in Treasury Regulations Sections 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by such Treasury Regulations, the deficit balance, if any, in its Adjusted Capital Account created by such adjustments, allocations or distributions as quickly as possible unless such deficit balance is otherwise eliminated pursuant to Section 4.3(a) and Section 4.3(b).

(d) No allocation of Net Loss shall be made to a Member if it would cause or increase an Adjusted Capital Account Deficit of such Member. Allocations of Net Loss that would be made to a Member but for this Section 4.3(d) shall instead be made to other Members pursuant to Section 4.2 to the extent not inconsistent with this Section 4.3(d).

(e) In the event any Member has an Adjusted Capital Account Deficit at the end of any Taxable Year, such Member shall be specially allocated items of Company gross income and gain in the amount of such excess as quickly as possible; *provided, however*, that an allocation pursuant to this Section 4.3(e) shall be made only if and to the extent that such Member would have an Adjusted Capital Account Deficit after all other allocations provided in this Section 4.3 have been tentatively made as if this Section 4.3(e) were not in this Agreement.

(f) Nonrecourse Deductions for any Taxable Year shall be allocated to the Members ratably among such Members based upon the number of Units held by each Holder.

(g) Member Nonrecourse Deductions for any Taxable Year shall be allocated 100% to the Member that bears the Economic Risk of Loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treasury Regulations Section 1.704-2(i). If more than one Member bears the Economic Risk of Loss with respect to a Member Nonrecourse Debt, Member Nonrecourse Deductions attributable thereto shall be allocated between or among such Members in accordance with the ratios in which they share such Economic Risk of Loss.

(h) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Code Section 734(b) or Section 743(b) is required pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of its Company Interest, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with their interests in the Company in the event Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event Treasury Regulations Section 1.704-1(b)(2)(iv)(m)(4) applies.

(i) Curative Allocation. The allocations set forth in Section 4.3(a)-(i) (the “**Regulatory Allocations**”) are intended to comply with certain requirements of the Treasury Regulations. It is the intent of the Members that, to the extent possible, all Regulatory Allocations shall be offset either with other Regulatory Allocations or with special allocations of other items of Company income, gain, loss, deduction or credit pursuant to this Section 4.3(i). Therefore, notwithstanding any other provision of this Article IV (other than the Regulatory Allocations), but subject to the Code and the Treasury Regulations, the Managing Member shall make such offsetting special allocations of Company income, gain, loss, deduction or credit in whatever manner it determines appropriate so that, after such offsetting allocations are made, each Member’s Capital Account balance is, to the extent possible, equal to the Capital Account balance such Member would have had if the Regulatory Allocations were not part of the Agreement. In exercising its discretion under this Section 4.3(i), the Managing Member shall take into account future Regulatory Allocations that, although not yet made, are likely to offset other Regulatory Allocations previously made.

Section 4.4 Tax Allocations.

(a) Except as provided in this Section 4.4, each item of income, gain, loss, deduction and credit of the Company for U.S. federal income tax purposes shall be allocated among the Members in the same manner as such items are allocated for book purposes under Section 4.2 and Section 4.3.

(b) The Members recognize that there may be a difference between the Book Value of a Company asset and the asset’s adjusted tax basis at the time of the property’s contribution or revaluation pursuant to this Agreement. In such a case, all items of tax depreciation, cost recovery, depletion, amortization, and gain or loss with respect to such asset shall be allocated among the Members to take into account the disparities between the Book Values and the adjusted tax basis with respect to such properties in accordance with the method determined by the Managing Member; *provided, however*, that any tax items not required to be allocated under Code Sections 704(b) or 704(c) shall be allocated in the same manner as such gain or loss would be allocated for book purposes under Section 4.2 and Section 4.3.

(c) All items of income, gain, loss, deduction and credit allocated to the Members in accordance with the provisions hereof and basis allocations recognized by the Company for U.S. federal income tax purposes shall be determined without regard to any election under Code Section 754 which may be made by the Company; *provided, however*, such allocations, once made, shall be adjusted as necessary or appropriate to take into account the adjustments permitted by Code Sections 734 and 743.

(d) Subject to Section 4.4(b), if any portion of taxable gain recognized from the disposition of property by the Company represents the “recapture” of previously allocated deductions by virtue of the application of Code Section 1(h)(1)(D), 1245 or 1250 (“**Recapture Gain**”), such Recapture Gain shall be allocated as follows:

(i) First, to the Members in proportion to the lesser of each Member’s (A) allocable share of the total taxable gain recognized from the disposition of such property and (B) share of depreciation or amortization with respect to such property (as determined in the manner provided under Treasury Regulations Sections 1.1245-1(e)(2) and (3)), until each such Member has been allocated Recapture Gain equal to such lesser amount.

(ii) Second, the balance of Recapture Gain shall be allocated among the Members whose allocable shares of total taxable gain from the disposition of such property exceed their shares of depreciation or amortization with respect to such property (as determined in the manner provided under Treasury Regulations Sections 1.1245-1(e)(2) and (3)), in proportion to their shares of total taxable gain (including Recapture Gain) from the disposition of such property; *provided, however*, that no Member shall be allocated Recapture Gain under this Section 4.4(d) in excess of the total taxable gain otherwise allocated to such Member from such disposition.

(iii) Unless otherwise required by the Code, any tax credits of the Company shall be allocated among the Members ratably based upon the number of Units held by each Holder.

(e) Any recapture of tax credits shall be allocated among the Members in the same ratio as the applicable tax credits were allocated to the Members.

(f) If, as a result of an exercise of a warrant to acquire an interest in the Company, a Capital Account reallocation is required under Treasury Regulations Section 1.704-1(b)(2)(iv)(s)(3), the Company shall make corrective allocations pursuant to Treasury Regulations Section 1.704-1(b)(4)(x).

(g) For purposes of determining a Member's proportional share of the Company's "excess non-recourse liabilities" within the meaning of Treasury Regulations Section 1.752-3(a)(3), each Member's interest in income and gain shall be in proportion to the Units held by such Member.

(h) If there is a change in any Member's Percentage Interests during any Fiscal Year, the principles of Code Section 706(d) shall apply in allocating items of income, gain, loss, deduction and credit for such Fiscal Year to account for the variation. For purposes of applying Code Section 706(d), the Managing Member may adopt any method or convention permitted under applicable Treasury Regulations.

(i) Allocations pursuant to this Section 4.4 are solely for purposes of U.S. federal, state and local taxes and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Net Profits, Net Losses, Distributions or other Company items pursuant to any provision of this Agreement.

Section 4.5 Indemnification and Reimbursement for Payments on Behalf of a Member. If the Company is obligated to pay any amount to a Governmental Entity (or otherwise makes a payment to a Governmental Entity) that is specifically attributable to a Member (or former Member) or a Member's (or former Member's) status as such (including, without limitation, U.S. federal withholding taxes, any imputed underpayment as determined under Code Section 6225, state personal property taxes, and state unincorporated business taxes), but not including any such amounts attributable to a Member's (or former Member's) status as an employee of the Company or its Subsidiaries, then such Person shall indemnify the Company in full for the entire amount paid (including interest, penalties and related expenses). The Managing Member may offset Distributions to which a Person is otherwise entitled under this Agreement against such Person's obligation to indemnify the Company under this Section 4.5. A Member's obligation to indemnify the Company under this Section 4.5 shall survive the termination, dissolution, liquidation and winding up of the Company and the termination of such Member's interest, and for purposes of this Section 4.5, the Company shall be treated as continuing in existence. The Company may pursue and enforce all rights and remedies it may have against each Member under this Section 4.5, including instituting a lawsuit to collect such contribution with interest calculated at a rate equal to the Base Rate plus three (3) percentage points per annum (but not in excess of the highest rate per annum permitted by law).

ARTICLE V COVENANTS

Section 5.1 Records and Accounting.

(a) The Company shall keep, or cause to be kept, appropriate books and records with respect to the Company's business, including all books and records necessary to provide any information, lists and copies of documents required to be provided pursuant to applicable laws.

(b) Except as limited by Section 5.1(c), each Member shall have the right to inspect at the offices of the Company, for a purpose reasonably related to such Member's interest as a Member in the Company, upon reasonable written demand stating the purpose of such demand and at such Member's own expense:

(i) a copy of the Certificate and this Agreement and all amendments thereto; and

(ii) promptly after their becoming available, copies of the Company's U.S. federal income tax returns for the three most recent years.

(c) The Managing Member may keep confidential from the Members, for such period of time as the Managing Member determines in its sole discretion, (i) any information that the Managing Member reasonably believes to be in the nature of trade secrets or (ii) other information the disclosure of which the Managing Member believes is not in the best interests of the Company, could damage the Company or its business or that the Company is required by law or by agreement with any third party to keep confidential, including information as to the Common Units held by any other Member. With respect to any schedules, annexes or exhibits to this Agreement, each Member (other than Old PubCo and New PubCo) shall only be entitled to receive and review any such schedules, annexes and exhibits relating to such Member and shall not be entitled to receive or review any schedules, annexes or exhibits relating to any other Member (other than Old PubCo and New PubCo).

Section 5.2 Transmission of Communications. Each Person that owns or Controls Units on behalf of, or for the benefit of, another Person or Persons shall be responsible for conveying any report, notice or other communication received from the Managing Member to such other Person or Persons.

Section 5.3 Governmental Consents and Filings. Each Member hereby represents and warrants that no consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any federal, state or local governmental authority or regulatory authority is required on the part of the Member in connection with the consummation of the transactions contemplated by this Agreement or to hold Units.

ARTICLE VI **MANAGEMENT**

Section 6.1 Authority of the Managing Member.

(a) The Managing Member shall conduct, direct and exercise full control over all activities of the Company. All management powers over the business and affairs of the Company shall be vested in the Managing Member. The Managing Member shall have the power to bind or take any action on behalf of the Company, or to exercise in its sole discretion any rights and powers (including the rights and powers to take certain actions, give or withhold certain consents or approvals, or make certain determinations, opinions, judgments, or other decisions) granted to the Company under this Agreement, or any other agreement, instrument or other document to which the Company is a party or by virtue of its holding the equity interests of any Subsidiary thereof.

(b) Notwithstanding any provision herein to the contrary, in connection with the performance of its duties as the Managing Member of the Company under this Agreement, the Members and the Managing Member acknowledge that the Managing Member will take action through the Pubco Board and the officers of Old PubCo, and that the members of the Pubco Board and such officers of Old PubCo will owe fiduciary duties to the stockholders of the Old PubCo in respect of any such actions taken or omitted in connection with the performance of the Managing Member's duties hereunder, *provided, however* that nothing in the foregoing shall abrogate or diminish the rights of the Holders of Common Units under this Agreement or applicable law.

(c) Without limiting the foregoing provisions of this Section 6.1, the Managing Member shall have the general power to manage or cause the management of the Company (which may be delegated to officers of the Company) to, directly or indirectly, undertake any of the following:

- (i) to develop and prepare a business plan each year which will set forth the operating goals and plans for the Company;
- (ii) to execute and deliver or to authorize the execution and delivery of contracts, deeds, leases, licenses, instruments of transfer and other documents on behalf of the Company;
- (iii) to make any expenditures, to lend or borrow money, to assume or guarantee, or otherwise contract for, indebtedness and other liabilities, to issue evidences of indebtedness and to incur any other obligations;
- (iv) to establish and enforce limits of authority and internal controls with respect to all personnel and functions;
- (v) to engage attorneys, consultants and accountants for the Company;
- (vi) to develop or cause to be developed accounting procedures for the maintenance of the Company's books of account; and
- (vii) to do all such other acts as shall be authorized in this Agreement.

Section 6.2 Actions of the Managing Member. The Managing Member may act (a) through meetings and written consents and (b) through any Person or Persons to whom authority and duties have been delegated pursuant to Section 6.4.

Section 6.3 Compensation. The Managing Member shall not be entitled to any compensation for services rendered to the Company in its capacity as Managing Member except as expressly provided in this Agreement.

Section 6.4 Delegation of Authority. The Managing Member may, from time to time, delegate to one or more Persons such authority and duties as the Managing Member may deem advisable. In addition, the Managing Member may assign titles (including, without limitation, chief executive officer, president, principal, vice president, secretary, assistant secretary, treasurer or assistant treasurer) and delegate certain authority and duties to such Persons as the same may be amended, restated or otherwise modified from time to time. Any number of titles may be held by the same individual. The salaries or other compensation, if any, of such agents of the Company shall be fixed from time to time by the Managing Member. Any delegation pursuant to this Section 6.4 may be revoked at any time by the Managing Member in its sole discretion.

Section 6.5 Officers. Subject to Section 6.1 and pursuant to Section 6.4, the Managing Member hereby delegates the following authority and duties to the following respective officers of the Company:

(a) Appointment and Term of Office. The officers of the Company shall consist of a Chief Executive Officer, a Chief Financial Officer, a Chief Operating Officer and a Secretary, and there may be a Chairperson, a Vice Chairperson, one or more Presidents, one or more Vice Presidents, one or more Assistant Secretaries, a Treasurer (and one or more Assistant Treasurers), and such other officers as may be appointed by the Managing Member. Each of such officers will not be subject to periodic elections by the Managing Member, but will hold office until the earlier of his or her death, resignation, retirement, disqualification or removal from office. Two or more offices may be held by the same Person.

(b) Removal. Any officer elected or appointed by the Managing Member may be removed at any time by the Managing Member, for or without cause. Such removal will be without prejudice to the contract rights pursuant to an employment or other agreement, if any, of the Person so removed. Election or appointment of an officer will not of itself create contract rights.

(c) Vacancies. Subject to Section 6.1, whenever any vacancy shall occur in any office of any officer by death, resignation, removal, increase in the number of officers of the Company or otherwise, such vacancy shall be filled by the Managing Member.

(d) Compensation. Subject to Section 6.1, the compensation of all officers of the Company shall be determined by the Managing Member and may be altered by the Managing Member or such committee from time to time, except as otherwise provided by contract, and no officer shall be prevented from receiving such compensation by reason of the fact such officer is also a member of the Managing Member.

(e) Powers and Duties. Subject to Section 6.1, the officers of the Company shall have such titles and powers and perform such duties as shall be determined from time to time by the Managing Member and otherwise as shall customarily pertain to such offices. In its sole discretion, the Managing Member may choose not to fill any office for any period as it may deem advisable. All officers and other persons providing services to or for the benefit of the Company shall be subject to the supervision and direction of the Managing Member. No officer of the Company, in its capacity as such, shall be considered a Managing Member of the Company by agreement, as a result of the performance of its duties hereunder or otherwise.

Section 6.6 Purchase of Equity Securities. Subject to the provisions of this Agreement, the Managing Member may cause the Company to purchase or otherwise acquire Equity Securities, or may purchase or otherwise acquire Equity Securities on behalf of the Company. As long as such Equity Securities are owned by or on behalf of the Company, such Equity Securities will not be considered outstanding for any purpose.

Section 6.7 Limitation of Liability.

(a) Except as otherwise provided herein or in an agreement entered into by such Person and the Company, neither the Managing Member nor any of such Managing Member's Affiliates shall be liable to the Company or to any Member for any act or omission performed or omitted by such Managing Member in its capacity as the Managing Member pursuant to authority granted to such Person by this Agreement; *provided*, that except as otherwise provided herein, such limitation of liability shall not apply to the extent the act or omission was attributable to such Person's gross negligence, willful misconduct or knowing violation of Law or for any present or future breaches of any representations, warranties or covenants by such Person or its Affiliates contained herein or in Other Agreements with the Company. The Managing Member may exercise any of the powers granted to it by this Agreement and perform any of the duties imposed upon it hereunder either directly or by or through its agents, and neither the Managing Member nor any of such Managing Member's Affiliates shall be responsible for any misconduct or negligence on the part of any such agent appointed by the Managing Member (so long as such agent was selected in good faith and with reasonable care); *provided* that the foregoing shall not limit any responsibility the Managing Member may have as a result of a breach of fiduciary duties to its stockholders in connection with any such action. The Managing Member shall be entitled to rely upon the advice of legal counsel, independent public accountants and other experts, including financial advisors, and any act of or failure to act by the Managing Member in good faith reliance on such advice shall in no event subject the Managing Member thereof to liability to the Company or any Member.

(b) Notwithstanding anything to the contrary herein, this Section 6.7 shall not affect the liability or duties of any officer of the Company or any of its Subsidiaries in his or her capacity as such.

ARTICLE VII
RIGHTS AND OBLIGATIONS OF MEMBERS

Section 7.1 Limitation of Liability of Members and Managing Member. Except as provided in this Agreement, in an agreement entered by such Person and the Company, or in the Delaware Act, the debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company and no Member, including the Managing Member, shall be obligated personally for any such debts, obligation or liability solely by reason of being a Member or acting as a Managing Member of the Company or any combination thereof. Except as otherwise provided in this Agreement, a Member's liability (in its capacity as such) for Company liabilities and Net

Losses shall be limited to the payment of its respective Capital Contributions as and when due (which, in accordance with the definition of Capital Contribution, may be deemed to have been made) and other payments as expressly provided by the Agreement. If and to the extent a Member's Capital Contribution shall be fully paid or deemed paid, such Member shall not, except as required by the express provisions of the Delaware Act regarding repayment of sums wrongfully distributed to Members, be required to make any further contributions; *provided* that a Member shall be required to return to the Company any Distribution made to it in clear and manifest accounting or similar error. The immediately preceding sentence shall constitute a compromise to which all Members have consented within the meaning of the Delaware Act. Notwithstanding anything contained herein to the contrary, the failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business and affairs under this Agreement or the Delaware Act shall not be grounds for imposing personal liability on the Members for liabilities of the Company.

Section 7.2 Lack of Authority. No Member in its capacity as such (other than the Managing Member, in its capacity as such) has the authority or power to act for or on behalf of the Company, to do any act that would be binding on the Company or to make any expenditure on behalf of the Company, and except as expressly provided herein, the Common Units do not confer any rights upon the Members to participate in the affairs of the Company described in this Agreement. The Members hereby consent to the exercise by the Managing Member of the powers conferred on them by law and this Agreement. Except as expressly provided herein, no Member (other than the Managing Member) shall have any right to vote on any matter involving the Company, including with respect to any merger, consolidation, combination or conversion of the Company, or any other matter that a Member might otherwise have the ability to vote on or consent with respect to under the Delaware Act, at law, in equity or otherwise. The conduct, control and management of the Company shall be vested exclusively in the Managing Member. In all matters relating to or arising out of the conduct of the operation of the Company, the decision of the Managing Member shall be the decision of the Company. Except as required or permitted by Law, or expressly provided in the ultimate sentence of this Section 7.2 or by separate agreement with the Company, no Member who is not also the Managing Member (and acting in such capacity) shall take any part in the management or control of the operation or business of the Company in its capacity as a Member, nor shall any Member who is not also the Managing Member (and acting in such capacity) have any right, authority or power to act for or on behalf of or bind the Company in his or its capacity as a Member in any respect or assume any obligation or responsibility of the Company or of any other Member. Notwithstanding the foregoing, the Managing Member may from time to time appoint one or more Members as officers or employ one or more Members as employees, and such Members, in their capacity as officers or employees of the Company (and not, for clarity, in their capacity as Members of the Company), may take part in the control and management of the business of the Company to the extent such authority and power to act for or on behalf of the Company has been delegated to them by the Managing Member.

Section 7.3 No Right of Partition. No Member shall have the right to seek or obtain partition by court decree or operation of law of any Company property, or the right to own or use particular or individual assets of the Company.

Section 7.4 Members Right to Act. For matters that expressly require the approval of the Members (rather than the approval of the Managing Member on behalf of the Members), any action required or permitted to be taken by the Members pursuant to this Agreement shall be taken if the Required Interest provide a consent or ratification in writing. Any action required, required to be approved or permitted to be taken by the Managing Member pursuant to this Agreement may be taken or approved, as applicable, by the Managing Member acting pursuant to a writing which evidences its approval of or consent to such action.

ARTICLE VIII **TAX MATTERS**

Section 8.1 Preparation of Tax Returns.

(a) The Company shall arrange for the preparation and timely filing of all Tax Returns required to be filed by the Company. Each Member will, upon request, supply to the Company all pertinent information in its possession relating to the operations of the Company necessary to enable the Company's Tax Returns to be prepared and filed. The Company will provide copies of each Member's U.S. federal and applicable state tax Schedule K-1s within one hundred eighty (180) days after the end of each Taxable Year. Upon written request of a Member, the Company will provide within five (5) Business Days (i) estimated amounts to be included on such Member's federal tax Schedule K-1 for the prior Taxable Year and (ii) a list of jurisdictions where the Company intends to file Tax Returns with respect to income taxes for the prior Taxable Year; *provided, however*, that the Company shall not be required to supply such estimated amounts and list of jurisdictions prior to ninety (90) days after the end of a Taxable Year.

(b) With respect to any taxable period during which ICE owns more than twenty-percent (20%) of the Common Units, the Managing Member shall provide to ICE a draft of any U.S. federal and other material Flow-Through Tax Return of the Company or any of its Subsidiaries for any Taxable Year beginning after December 31, 2019 (together with all supporting documentation) for its review and reasonable comment no later than fifteen (15) days prior to the date on which copies of each Member's U.S. federal and applicable state tax Schedule K-1s are to be delivered pursuant to Section 8.1(a), and the Managing Member shall consider in good faith all reasonable comments received from ICE with respect thereto and shall not cause such Tax Return to be filed without the consent of ICE, such consent not to be unreasonably withheld, conditioned or delayed.

Section 8.2 Tax Elections. The Taxable Year shall be the Fiscal Year set forth in Section 2.8, unless the Managing Member shall determine otherwise in its sole discretion and in compliance with applicable Laws. Except as otherwise expressly provided in this Agreement, the Managing Member shall, in its sole discretion, determine whether to make or revoke any available election pursuant to the Code; provided the Managing Member shall cause the Company to make an election pursuant to Code Section 754 for the taxable year that includes October 15, 2021. Each Member will upon request supply any information necessary to give proper effect to any such election.

Section 8.3 Tax Classifications. The Company shall be classified as a partnership for U.S. federal income tax purposes. Each Member agrees that it shall not: (a) treat, on such Member's individual income Tax Returns, any item of income, gain, loss, deduction or credit relating to such Member's interest in the Company in a manner inconsistent with the treatment of such item by the Company as reflected on the Schedule K-1 or other information statement furnished by the Company to such Member for use in preparing its income Tax Return; *provided, however*, in the event a Member has in place, or otherwise adopts, mark-to-market accounting, such accounting methodology shall not be deemed to be inconsistent with the treatment of such item by the Company as reflected on the Schedule K-1 or other information statement furnished by the Company to such Members; or (b) file any claim for refund relating to any such item based on, or which would result in, such inconsistent treatment.

Section 8.4 Tax Controversies.

(a) ICE is hereby designated the Partnership Representative of the Company with respect to all Taxable Years ending on or prior to December 31, 2020, and the Managing Member (or its designee) is hereby designated the Partnership Representative of the Company with respect to all Taxable Years beginning after December 31, 2020. In such capacity, the Partnership Representative is hereby authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including resulting administrative and judicial proceedings, and to expend Company funds for professional services reasonably incurred in connection therewith. Each Member agrees to cooperate with the Company and to do or refrain from doing any or all things reasonably requested by the Company with respect to the conduct of such proceedings. Each Member agrees to be bound by the decisions and elections made by the Partnership Representative with respect to such examinations, controversies or administrative or judicial proceedings. Each Member and former Member shall provide such information as shall reasonably be requested by the Partnership Representative in order to reduce the amount of the Company's liability for any imputed underpayment in accordance with the procedures under Code Section 6225(c). For Taxable Years in which ICE was a Member, the Partnership Representative shall keep the Managing Member or ICE, as applicable, fully informed of the progress of any examinations, audits or other proceedings, it being agreed that no Holder of Units (other than New PubCo, Old PubCo and ICE) shall have any right to participate in any such examinations, audits or other proceedings. If an audit results in an imputed underpayment by the Company as determined under Code Section 6225, the Partnership Representative may make the election under Code Section 6226(a). If such an election is made, the Company shall furnish to each Member for the year under audit a statement reflecting the Member's or former Member's share of the adjusted items as determined in the notice of final partnership adjustment, and each such Member shall take such adjustment into account as required under Code Section 6226(b) and shall be liable for any related interest, penalty, addition to tax or additional amount. If such an election is not made, each person that was a Member of the Company during the taxable period to which such liability relates will indemnify and hold harmless the Company for such person's allocable share of the amount of such tax liability, including any interest and penalties associated therewith, as reasonably determined by the Partnership Representative, in accordance with Section 4.4(i). The Company shall reimburse and indemnify the Partnership Representative for any expenses, including reasonable legal and accounting fees, claims, liabilities, losses and damages that the Partnership Representative incurs in connection with its obligations as the Partnership Representative. For the avoidance of doubt, any former Member's obligation to provide information to the Partnership Representative pursuant to this Section 8.4 shall survive the termination of such Member's interest.

(b) The Managing Member shall promptly notify ICE in writing of the receipt of any written proposed assessment or the commencement of any Tax audit, demand, claim or administrative or judicial proceeding that relates to the Taxes of, or Tax Returns required to be filed by, the Company or any of its Subsidiaries (a “**Contest**”), to the extent such Contest relates to a taxable period beginning on or prior to October 15, 2021. ICE shall have the right, at the Company’s cost and expense (to the extent such costs and expenses are reasonable), to elect to control the conduct of such Contest; *provided*, that (i) ICE shall elect to control such Contest within thirty (30) days of receipt of notice thereof; (ii) if ICE elects to control such Contest, the Managing Member shall be entitled to participate (at the Company’s expense) in such Contest; and (iii) ICE shall not settle such Contest without first obtaining the Managing Member’s prior written consent (which consent shall not be unreasonably withheld, delayed or conditioned). Notwithstanding anything in this Agreement to the contrary, the Managing Member shall have the exclusive right to control any Contest that ICE elects not to control or fails to elect to control within the time period set forth in Section 8.4(b)(i).

Section 8.5 Certain Actions. Notwithstanding anything to the contrary in this Agreement, none of Old PubCo or any of its Affiliates (including the Company and its Subsidiaries) shall, without the prior written consent of ICE (which consent shall not be unreasonably withheld, delayed or conditioned), (i) make, change or revoke any Tax election (other an election under Code Section 754) affecting a taxable period (or portion thereof) of the Company or its Subsidiaries ending on or before October 15, 2021, (ii) amend, refile or otherwise modify (or grant an extension of any applicable statute of limitations with respect to) any Tax Return of the Company or its Subsidiaries relating to a taxable period (or portion thereof) ending on or before October 15, 2021, (iii) file or request any ruling with respect to Taxes or Tax Returns of the Company or its Subsidiaries, or enter into any voluntary disclosure with any Governmental Entity regarding any Tax or Tax Returns of the Company or its Subsidiaries, in each case relating to a taxable period (or portion thereof) ending on or before October 15, 2021 or (iv) take any action that results in any increased Tax liability or reduction of any Tax attributes of any Member in respect of a taxable period ending on or before October 15, 2021.

Section 8.6 Merger Agreement Conflicts. For the avoidance of doubt, to the extent there is any inconsistency between this Agreement and the provisions of Section 6.1 of the Agreement and Plan of Merger, dated as of January 11, 2021, by and among VPC Impact Acquisition Holdings, Pylon Merger Company LLC, and the Company (the “**Prior Merger Agreement**”), the provisions of Section 6.1 of the Prior Merger Agreement shall control.

ARTICLE IX

RESTRICTIONS ON TRANSFER OF UNITS; CERTAIN TRANSFERS

Section 9.1 Transfers by Members.

(a) No Member or Assignee thereof may Transfer all or any portion of its Common Units or other interest in the Company (or beneficial interest therein) without the prior consent of the Managing Member, which consent may be given or withheld, or made subject to such conditions (including the receipt of such legal opinions and other documents that the Managing Member may require) as are determined by the Managing Member, in each case in the Managing Member’s sole discretion, and which consent may be in the form of a plan or program entered into or approved by the Managing Member, in its sole discretion. Any such determination in the Managing Member’s sole discretion in respect of Common Units shall be final and binding. Such determinations need not be uniform and may be made selectively among Members, whether or not such Members are similarly situated, and shall not constitute the breach of any duty hereunder or otherwise existing at law, in equity or otherwise. Any purported Transfer of Common Units that is not in accordance with, or subsequently violates, this Agreement shall be, to the fullest extent permitted by law, null and void.

Section 9.2 Restricted Units Legend. The Units have not been registered under the Securities Act and, therefore, in addition to the other restrictions on Transfer contained in this Agreement, cannot be sold unless subsequently registered under the Securities Act or an exemption from such registration is then available. In the event that Units are ever certificated, each certificate evidencing Units and each certificate issued in exchange for or upon the Transfer of any Units (if such securities remain Units as defined herein after such Transfer) shall be stamped or otherwise imprinted with a legend in substantially the following form:

“THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “**ACT**”), AND MAY NOT BE SOLD OR TRANSFERRED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN EXEMPTION FROM REGISTRATION THEREUNDER. THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE ALSO SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER SPECIFIED IN THE FOURTH AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF THE COMPANY, BY AND AMONG THE COMPANY AND ITS MEMBERS AND AS MAY BE AMENDED AND MODIFIED FROM TIME TO TIME. A COPY OF SUCH AGREEMENT IS ON FILE AT THE PRINCIPAL OFFICE OF THE COMPANY. SUCH RESTRICTIONS ARE BINDING ON THE TRANSFEREES OF SUCH UNITS.”

The Company shall imprint such legend on certificates (if any) evidencing Units. The legend set forth above shall be removed from the certificates (if any) evidencing any units which cease to be Units in accordance with the definition thereof.

Section 9.3 Further Restrictions.

(a) Common Units issued from time to time after the date of this Agreement may be subject to such additional or other terms and conditions, including with regard to vesting, forfeiture, minimum retained ownership and Transfer, as may be agreed between New PubCo and the applicable Member and reflected in the books and records of the Company. Such requirements, provisions and restrictions need not be uniform and may be waived or released by New Pubco in its sole discretion with respect to all or a portion of the Common Units owned by any one or more Members at any time and from time to time, and shall not constitute the breach of any duty hereunder or otherwise existing at law, in equity or otherwise.

(b) Notwithstanding any contrary provision in this Agreement, in no event may any Transfer of a Common Unit be made by any Member or Assignee if the Managing Member determines that:

- (i) such Transfer is made to any Person who lacks the legal right, power or capacity to own such Common Unit;

(ii) such Transfer would require the registration of such transferred Common Unit pursuant to any applicable U.S. federal or state securities laws (including the Securities Act or the Exchange Act) or other non-U.S. securities laws (including Canadian provincial or territorial securities laws) or would constitute a non-exempt distribution pursuant to applicable provincial or state securities laws;

(iii) such Transfer would cause (A) all or any portion of the assets of the Company to (x) constitute “plan assets” (under ERISA, the Code or any applicable Similar Law) of any existing or contemplated Member, or (y) be subject to the provisions of ERISA, Section 4975 of the Code or any applicable Similar Law, or (B) Old PubCo to become a fiduciary with respect to any existing or contemplated Member, pursuant to ERISA, any applicable Similar Law, or otherwise;

(iv) to the extent requested by the Managing Member, the Company does not receive such legal and/or tax opinions and written instruments (including copies of any instruments of Transfer and such Assignee’s consent to be bound by this Agreement as an Assignee) that are in a form satisfactory to the Managing Member, as determined in the Managing Member’s sole discretion; or

(v) the Managing Member reasonably determines that such Transfer would pose a material risk that the Company would be treated as a “publicly traded partnership” within the meaning of Code Section 7704 and the Treasury Regulations promulgated thereunder.

All determinations with respect to this Section 9.3 shall be made by the Managing Member in its sole discretion.

(c) To the fullest extent permitted by law, any Transfer in violation of this Article IX shall be deemed null and void *ab initio* and of no effect.

Section 9.4 Transfer. Prior to Transferring any Units (other than Transfers to the Company), the Transferring Holder of such Units shall cause the prospective transferee to be bound by this Agreement, and any other agreements executed by Holders of Units relating to such Units in the aggregate (collectively, the “*Other Agreements*”) and to execute and deliver to the Company and the other Holders of Units counterparts of this Agreement and the applicable Other Agreements.

Section 9.5 Assignee’s Rights. Subject to Section 9.4, the transferee in any Permitted Transfer pursuant to this Article IX will be an assignee only (“*Assignee*”), and only will receive, to the extent transferred, the distributions and allocations of income, gain, loss, deduction, credit or similar item to which the Member which transferred its Common Units would be entitled, and such Assignee will not be entitled or enabled to exercise any other rights or powers of a Member, such other rights, and all obligations relating to, or in connection with, such interest remaining with the transferring Member. The transferring Member will remain a Member even if it has transferred all of its Common Units to one or more Assignees until such time as the Assignee(s) is admitted to the Company as a Member pursuant to Section 9.7.

Section 9.6 Admissions, Resignations and Removals.

(a) No Person may be admitted to the Company as an additional Managing Member or a substitute Managing Member without the prior written consent of each incumbent Managing Member, which consent may be given or withheld, or made subject to such conditions as are determined by each incumbent Managing Member, in each case in the sole discretion of each incumbent Managing Member. A Managing Member will not be entitled to resign as a Managing Member of the Company unless another Managing Member shall have been admitted hereunder (and not have previously been removed or resigned). The Members shall not have the right to remove or replace Old PubCo or any other Managing Member.

(b) No Member will be removed or entitled to resign from being a Member of the Company except in accordance with Section 9.8. Any additional Managing Member or substitute Managing Member admitted as a Managing Member of the Company pursuant to this Section 9.6 is hereby authorized to, and shall, continue the Company without dissolution.

(c) Except as otherwise provided in Article X or the Delaware Act, no admission, substitution, resignation or removal of a Member will cause the dissolution of the Company. To the fullest extent permitted by law, any purported admission, resignation or removal that is not in accordance with this Agreement shall be null and void.

Section 9.7 Admission of Assignees as Substitute Members. An Assignee will become a Substituted Member only if and when each of the following conditions is satisfied:

(a) the Managing Member consents in writing to such admission, which consent may be given or withheld, or made subject to such conditions as are determined by the Managing Member, in each case in the Managing Member's sole discretion;

(b) if required by the Managing Member, the Managing Member receives written instruments (including copies of any instruments of Transfer and such Assignee's consent to be bound by this Agreement as a Substituted Member) that are in a form satisfactory to the Managing Member (as determined in its sole discretion);

(c) if required by the Managing Member, the Managing Member receives an opinion of counsel satisfactory to the Managing Member to the effect that such Transfer is in compliance with this Agreement and all applicable Law; and

(d) if required by the Managing Member, the parties to the Transfer, or any one of them, pays all of the Company's reasonable expenses connected with such Transfer (including the reasonable legal and accounting fees of the Company).

Section 9.8 Resignation and Removal of Members. Subject to Section 9.3, if a Member (other than Old PubCo) ceases to hold any Common Units then such Member shall cease to be a Member and to have the power to exercise any rights or powers of a member of the Company, and shall be deemed to have resigned from the Company.

Section 9.9 Section 1445 and 1446(f) Withholding. An Assignee shall provide the Managing Member with all certifications, documentation and other information required by the Managing Member to determine that such Assignee has complied with the withholding and filing obligations under Code Sections 1445 and 1446(f) and the Treasury Regulations and other guidance issued thereunder.

ARTICLE X

ARTICLE X DISSOLUTION AND LIQUIDATION

Section 10.1 Dissolution. Except as required by the Delaware Act, the Company shall not be dissolved by the admission of Additional Members or Substituted Members or the attempted withdrawal or resignation of a Member. The Company may be dissolved, liquidated, wound up and terminated only pursuant to the provisions of this Article X, and the Members hereby irrevocably waive any and all other rights they may have to cause a dissolution of the Company or a sale or partition of any or all of the Company assets. The Company shall dissolve, and its affairs shall be wound up, upon:

(a) the entry of a decree of judicial dissolution of the Company under Section 18-802 of the Delaware Act upon the finding by a court of competent jurisdiction that it is not reasonably practicable to carry on the business of the Company in conformity with this Agreement or an administrative dissolution under Section 18-1107 of the Delaware Act;

(b) any event which makes it unlawful for the business of the Company to be carried on by the Members;

(c) the written consent of the Managing Member and the Required Interest; or

(d) at any time there are no Members, unless the Company is continued in accordance with the Delaware Act.

Except as otherwise set forth in this Article X, the Company is intended to have perpetual existence.

Section 10.2 Liquidation and Termination. Upon dissolution, the Company shall not be terminated and shall continue until the winding up of the affairs of the Company is completed. Upon the winding up of the Company, the Managing Member shall act as liquidator or may appoint one or more Persons as liquidator. The liquidators shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Delaware Act. The costs of liquidation shall be borne as a Company expense. Until final distribution, the liquidators shall continue to operate the Company properties with all of the power and authority of the Managing Member. The steps to be accomplished by the liquidators are as follows:

(a) as promptly as possible after dissolution and again after final liquidation, the liquidators shall cause a proper accounting to be made by a recognized firm of independent certified public accountants of the Company's assets, liabilities and operations through the last day of the calendar month in which the dissolution occurs or the final liquidation is completed, as applicable;

(b) the liquidators shall cause the notice described in the Delaware Act to be mailed to each known creditor of and claimant against the Company in the manner described thereunder;

(c) the liquidators shall pay, satisfy or discharge from Company funds all of the debts, liabilities and obligations of the Company or otherwise make adequate provision for payment and discharge thereof (including, without limitation, the establishment of a cash fund for contingent liabilities in such amount and for such term as the liquidators may reasonably determine); and

(d) The balance, if any, of the Company's remaining assets shall be distributed to all Members in accordance with Section 4.1(a).

The distribution of cash or property to the Members in accordance with the provisions of this Section 10.2 and Section 10.3 constitutes a complete return to the Members of their Capital Contributions and a complete distribution to the Members of their Company Interests and all of the Company's property and constitutes a compromise to which all Members have consented within the meaning of the Delaware Act. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds. If any Member's Capital Account is not equal to the amount to be distributed to such Member pursuant to Section 10.2, Net Profits and Net Losses for the Fiscal Year in which the Company is dissolved shall be allocated among the Members in such a manner as to cause, to the extent possible, each Member's Capital Account to be equal to the amount to be distributed to such Member pursuant to Section 10.2. The Members shall look solely to the Company's assets for the return of their Capital Contributions, and if the assets of the Company remaining after payment of or due provision for all debts, liabilities and obligations of the Company are insufficient to return such Capital Contributions, the Members shall have no recourse against the Company or any other Member or any other Person.

Section 10.3 Deferment; Distribution in Kind. Notwithstanding the provisions of Section 10.2, but subject to the order of priorities set forth therein, if upon dissolution of the Company the liquidators determine that an immediate sale of part or all of the Company's assets would be impractical or would result in a materially adverse economic effect (or would otherwise not be beneficial) to the Members, the liquidators may, in their sole discretion, defer for a reasonable time the liquidation of any assets except those necessary to satisfy Company liabilities (other than loans to the Company by Members) and reserves. Subject to the order of priorities set forth in Section 10.2, the liquidators may, in their sole discretion, distribute to the Members, in lieu of cash, either (a) all or any portion of such remaining Company assets in kind in accordance with the provisions of Section 10.2, (b) as tenants in common and in accordance with the provisions of Section 10.2, undivided interests in all or any portion of such Company assets or (c) a combination of the foregoing. Any such Distributions in kind shall be subject to (x) such conditions relating to the disposition and management of such assets as the liquidators deem reasonable and equitable and (y) the terms and conditions of any agreements governing such assets (or the operation thereof or the Holders thereof) at such time.

Section 10.4 Cancellation of Certificate. On completion of the distribution of Company assets as provided herein, the Company is terminated (and the Company shall not be terminated prior to such time), and the Managing Member (or such other Person or Persons as the Delaware Act may require or permit) shall file a certificate of cancellation with the Secretary of State of Delaware, cancel any other filings made pursuant to this Agreement that are or should be canceled and take such other actions as may be necessary to terminate the Company. The Company shall be deemed to continue in existence for all purposes of this Agreement until it is terminated pursuant to this Section 10.4.

Section 10.5 Reasonable Time for Winding Up. A reasonable time shall be allowed for the orderly winding up of the business and affairs of the Company and the liquidation of its assets pursuant to Sections 10.2 and 10.3 in order to minimize any losses otherwise attendant upon such winding up.

Section 10.6 Termination. The Company shall terminate when all of the assets of the Company, after payment of or due provision for all debts, liabilities and obligations of the Company, shall have been distributed to the holders of Common Units in the manner provided for in this Article X, and the Certificate shall have been cancelled in the manner required by the Delaware Act.

Section 10.7 Return of Capital. The liquidators shall not be personally liable for the return of Capital Contributions or any portion thereof to the Members (it being understood that any such return shall be made solely from Company assets).

Section 10.8 Restrictions on Termination Transactions. The Managing Member shall not engage in, or cause or permit, a Termination Transaction, without the prior written consent of the Required Interest.

ARTICLE XI

LIABILITY AND INDEMNIFICATION

Section 11.1 Liability of Members.

(a) No Member and no Affiliate, manager, member, employee or agent of a Member shall be liable for any debt, obligation or liability of the Company or of any other Member or have any obligation to restore any deficit balance in its Capital Account solely by reason of being a Member of the Company, except to the extent required by the Delaware Act.

(b) This Agreement is not intended to, and does not, create or impose any duty (including any fiduciary duty) on any of the Members hereto in their capacity as a Member (including Old PubCo in its capacity as a Member) or on their respective Affiliates. Further, notwithstanding any other provision of this Agreement or any duty otherwise existing at law or in equity, the parties hereto agree that no Member or Managing Member shall, to the fullest extent permitted by law, have duties (including fiduciary duties) to any other Member or to the Company, and in doing so, recognize, acknowledge and agree that their duties and obligations to one another and to the Company are only as expressly set forth in this Agreement; *provided, however*, that each Member shall have the duty to act in accordance with the implied contractual covenant of good faith and fair dealing.

(c) To the extent that, at law or in equity, any Member (including Old PubCo) has duties (including fiduciary duties) and liabilities relating thereto to the Company, to another Member or to another Person who is a party to or is otherwise bound by this Agreement, the Members (including Old PubCo) acting under this Agreement will not be liable to the Company, to any such other Member or to any such other Person who is a party to or is otherwise bound by this Agreement, for their good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they restrict or eliminate the duties and liabilities relating thereto of any Member (including, except as set forth in Section 6.1(b), Old PubCo) otherwise existing at law or in equity, are agreed by the Members to replace to that extent such other duties and liabilities of the Members relating thereto (including Old PubCo).

(d) The Managing Member may consult with legal counsel, accountants and financial or other advisors selected by it, and any act or omission taken by the Managing Member on behalf of the Company or in furtherance of the interests of the Company in good faith in reliance upon and in accordance with the advice of such Person as to matters the Managing Member reasonably believes to be within such Person's professional or expert competence shall be conclusively presumed to have been done or omitted in good faith and in accordance with such opinion or advice, and the Managing Member will be fully protected in so acting or omitting to act so long as such counsel or accountants or financial or other advisors were selected with reasonable care.

(e) Notwithstanding any other provision of this Agreement or other applicable provision of law or equity, whenever in this Agreement the Managing Member (including Old PubCo) is permitted or required to make a decision (i) in its "sole discretion" or under a grant of similar authority or latitude, the Managing Member shall be entitled to consider only such interests and factors as it desires (subject to Section 6.1(b)), including its own interests, and shall, to the fullest extent permitted by applicable Law, have no duty or obligation to give any consideration to any interest of or factors affecting the Company or the Members, or (ii) in its "good faith" or under another expressed standard, the Managing Member shall act under such express standard and shall not be subject to any other or different standards.

Section 11.2 Indemnification.

(a) Exculpation and Indemnification. To the fullest extent permitted by applicable Law, as the same exists or may hereafter be amended, the Company shall indemnify and hold harmless any Indemnatee who is or was made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**Proceeding**") by reason of his or her or its status as an Indemnatee against all liability and loss suffered and expenses (including, without limitation, attorneys' fees, judgments, fines and amounts paid in settlement) reasonably incurred by such Indemnatee in connection with such action, suit or Proceeding. The Company shall to the fullest extent not prohibited by applicable Law, pay the expenses (including attorneys' fees) incurred by an Indemnatee in defending or otherwise participating in any Proceeding in advance of its final disposition; *provided, however*, that, to the extent required by applicable Law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking, by or on behalf of the Indemnatee, to repay all amounts so advanced if it shall ultimately be determined that the Indemnatee is not entitled to be indemnified under this Section 11.2(a) or otherwise. Notwithstanding the foregoing provisions of this Section 11.2(a), except for Proceedings to enforce rights to indemnification and advancement of expenses, the Company shall indemnify and advance expenses to an Indemnatee in connection with a Proceeding (or part thereof) initiated by such Indemnatee only if such Proceeding (or part thereof) was authorized by the Managing Member.

(b) Right of Indemnitee to Bring Suit. If a claim for indemnification (following the final disposition of such Proceeding) or advancement of expenses under this Section 11.2 is not paid in full by the Company within (i) sixty (60) days after a written claim for indemnification has been received by the Company or (ii) twenty (20) days after a claim for an advancement of expenses has been received by the Company, such Indemnitee may at any time thereafter bring suit against the Company to recover the unpaid amount of the claim or to obtain advancement of expenses, as applicable. To the fullest extent permitted by Law, if the Indemnitee is successful in whole or in part in any such suit, or in a suit brought by the Company to recover an advancement of expenses pursuant to the terms of an undertaking, the Indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In any suit brought by the Indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Company to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the Indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article XI or otherwise shall be on the Company.

(c) Non-Exclusivity of Rights; Indemnification by Other Persons.

(i) The provisions of indemnification to or the advancement of expenses and costs to any Indemnitee under this Article XI, or the entitlement of any Indemnitee to any indemnification or advancement of expenses and costs under this Article XI, shall not limit or restrict in any way the power of the Company to indemnify or advance expenses and costs to such Indemnitee in any way other than permitted by Law or be deemed to be exclusive of, or invalidate, any right to which any indemnitee seeking indemnification or advancement of expenses and costs may be entitled under any Law, agreement, vote of Members or otherwise, both as to action in the capacity in which such Indemnitee serves and as to action in any other capacity.

(ii) Given that certain Jointly Indemnifiable Claims may arise due to the service of the Indemnitee or other enterprise at the request of the Indemnitee-Related Entities (as defined below), the Company shall be fully and primarily responsible for the payment to the Indemnitee in respect of indemnification or advancement of expenses in connection with any such Jointly Indemnifiable Claims, pursuant to and in accordance with the terms of this Article XI, irrespective of any right of recovery the Indemnitee may have from the Indemnitee-Related Entities. Under no circumstance shall the Company be entitled to any right of subrogation against or contribution by the Indemnitee-Related Entities and no right of advancement, indemnification or recovery the Indemnitee may have from the Indemnitee-Related Entities shall reduce or otherwise alter the rights of the Indemnitee or the obligations of the Company under this Article XI. In the event that any of the Indemnitee-Related Entities shall make any payment to the Indemnitee in respect of indemnification or advancement of expenses with respect to any Jointly Indemnifiable

Claim, the Indemnatee-Related Entity making such payment shall be subrogated to the extent of such payment to all of the rights of recovery of the Indemnatee against the Company, and the Indemnatee shall execute all papers reasonably required and shall do all things that may be reasonably necessary to secure such rights, including the execution of such documents as may be necessary to enable the Indemnatee-Related Entities effectively to bring suit to enforce such rights. Each of the Indemnatee-Related Entities shall be third-party beneficiaries with respect to this Section 11.2(c)(ii), entitled to enforce this Section 11.2(c)(ii).

(d) Rights. The rights conferred upon Indemnitees in this Article XI shall continue as to an Indemnatee who has ceased to have status as an Indemnatee and shall inure to the benefit of the Indemnatee's successors, heirs, executors and administrators. Any amendment, alteration or repeal of this Article XI that adversely affects any right of an Indemnatee or its successors shall be prospective only (except to the extent such amendment or change in Law permits the Company to provide broader indemnification rights to all such parties on a retroactive basis than permitted prior thereto) and shall not limit, eliminate or impair any such right with respect to any proceedings involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

(e) Insurance. The Company may purchase and maintain insurance, at its expense, on its own behalf or on behalf of any Person described in Section 11.2(a) against any expense, liability or loss asserted against such Person, whether or not the Company would have the power to indemnify such Person against such expense, liability or loss under the provisions of this Section 11.2 or otherwise.

ARTICLE XII

GENERAL PROVISIONS

Section 12.1 Amendments

(a) This Agreement (including the Exhibits and Schedules hereto) may be amended, supplemented, waived or modified by the written consent of the (i) the Managing Member, and (ii) the Required Interest; *provided* that no amendment, including any amendment effected by way of merger, consolidation or transfer of all or substantially all the assets of the Company, may adversely affect the rights of a holder of Common Units, as such, in a manner that is disproportionate to the effect on all other similarly situated holders of Common Units, without the consent of such holder (or, if there is more than one such holder that is so affected, without the consent of a majority in interest of such affected holders in accordance with their holdings of such Common Units); *provided, further*, that none of the provisions of this Agreement which inure to the benefit of ICE may be amended without first obtaining ICE's prior written consent (which consent shall not be unreasonably withheld, delayed or conditioned). If an amendment has been approved in accordance with this agreement, such amendment shall be adopted and effective with respect to all Members. Upon obtaining such approvals as may be required by this Agreement, and without further action or execution on the part of any other Member or other Person, any amendment to this Agreement may be implemented and reflected in a writing executed solely by the Managing Member and the other Members shall be deemed a party to and bound by such amendment.

(b) No failure or delay by any party in exercising any right, power or privilege hereunder (other than a failure or delay beyond a period of time specified herein) shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Law.

Section 12.2 Confidentiality. Each Member recognizes and acknowledges that it has and may in the future receive certain confidential, non- public and proprietary information and trade secrets of the Company and its Subsidiaries, including, but not limited to, confidential information of the Company and its Subsidiaries regarding identifiable, specific and discrete business opportunities being pursued by the Company or its Subsidiaries (the “**Confidential Information**”). Except as otherwise consented to in writing by the Managing Member in its sole discretion, each Member (on behalf of itself, its Affiliates and each of their respective directors, officers, shareholders, partners, employees, agents and members (the “**Representatives**”)) agrees that it will not and will cause its respective Representatives not to, during or after the term of this Agreement, whether directly or indirectly through an Affiliate or otherwise, disclose Confidential Information to any Person for any reason or purpose whatsoever, except (i) to authorized directors, officers, Representatives, agents and employees of the Company or its Subsidiaries and as otherwise may be proper in the course of performing such Member’s obligations, or enforcing such Member’s rights, under this Agreement and the agreements expressly contemplated hereby; (ii) in connection with such Member’s or such Member’s Affiliates’ normal fundraising, marketing, informational or reporting activities, or to such Member’s (or any of its Affiliates’) Affiliates, auditors, accountants, attorneys or other agents, in each case so long as the recipient is subject to a similar duty of confidentiality to such Member; (iii) subject to Article IX, to any bona fide prospective purchaser of the equity or assets of such Member or its Affiliates or the Common Units held by such Member, or prospective merger partner of such Member or its Affiliates; *provided* that such purchaser or merger partner agrees to be bound by a customary confidentiality agreement with terms comparable to the terms of this Section 12.2; or (iv) as is required to be disclosed by order of a court of competent jurisdiction, administrative body or governmental body, or by subpoena, summons or legal process, or by Law, rule or regulation, including the requirements of any national stock exchange on which its shares may be listed; *provided* that the Member required to make such disclosure pursuant to clause (iv) above shall promptly notify the Company in writing of the existence, terms, and circumstances surrounding such required disclosure so that the Company may seek a protective order or other appropriate relief from the proper authority. The Member required to make such disclosure pursuant to clause (iv) above shall also cooperate with the Company in seeking such order or other relief. If the Member required to make such disclosure pursuant to clause (iv) above is nonetheless required to disclose the Company’s Confidential Information, it will furnish only that portion of the Confidential Information that is legally required and will exercise all reasonable efforts to obtain reliable assurances that such Confidential Information will be treated confidentially to the extent possible. For purposes of this Section 12.2, the term “**Confidential Information**” shall not include any information of which (x) such Person learns from a source other than the Company or its Subsidiaries, or any of their respective Representatives, employees, agents or other service providers, and in each case who is not known by such Person to be bound by a confidentiality obligation, (y) is disclosed in a prospectus or other documents for dissemination to the public or (z) is or has been independently developed or conceived by

such Person without use of the Company's confidential information, as proved by documents and other competent evidence in the Person's possession. Nothing in this Section 12.2 shall (x) in any way limit or otherwise modify any confidentiality covenants entered into by any employee of the Company or its Subsidiaries pursuant to any other agreement entered into with the Company or any of its Subsidiaries, or (y) apply to or otherwise restrict the Managing Member, in its capacity as the Managing Member or as a Member. Notwithstanding anything to the contrary herein, (i) each Member may disclose Confidential Information to any federal, state, local or foreign regulatory or self-regulatory body, or any securities exchange or listing authority, as part of a routine audit not targeted at such Confidential Information without providing notice to any other party hereto and (ii) nothing herein shall prohibit a Member from (1) filing and, as provided for under Section 21F of the Exchange Act, maintaining the confidentiality of, a claim with the SEC, or (2) providing Confidential Information to the SEC or providing the SEC with information that would otherwise violate any part hereof to the extent permitted by Section 21F of the Exchange Act. The Company may pursue any and all rights and remedies any of them may have to enforce the obligations of the Members under this Section 12.2, including seeking specific performance and/or immediate injunctive or other equitable relief from any court of competent jurisdiction (without the necessity of showing actual money damages, or posting any bond or other security) in order to enforce or prevent any violation of the provisions of this Section 12.2.

Section 12.3 Title to Company Assets. Company assets shall be deemed to be owned by the Company as an entity, and no Member, individually or collectively, shall have any ownership interest in such Company assets or any portion thereof. Legal title to any or all Company assets may be held only in the name of the Company or a wholly owned Subsidiary of the Company. All Company assets shall be recorded as the property of the Company on its books and records, irrespective of the name in which legal title to such Company assets is held.

Section 12.4 Notices. All notices, demands or other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given or made when (a) delivered personally to the recipient, (b) facsimiled or electronically transmitted to the recipient if facsimiled or electronically transmitted before 5:00 p.m. local time of the recipient on a Business Day, and otherwise on the next Business Day, or (c) one Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid). Such notices, demands and other communications shall be sent to the address for such recipient set forth in the Company's books and records (which shall, in the case of the Members, initially be the addresses set forth on the Schedule of Members), or to such other address or to the attention of such other Person as the recipient party has specified by prior written notice to the sending party. Any notice to the Managing Member or the Company shall be deemed given if received by the Company (attention: Company Secretary) at the principal office of the Company designated from time to time pursuant to Section 2.5.

Section 12.5 Binding Effect; Third-Party Beneficiary. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their heirs, executors, administrators, successors, legal representatives and permitted assigns. ICE shall be a third-party beneficiary of this Agreement.

Section 12.6 Creditors. None of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Company or any of its Affiliates, and no creditor who makes a loan to the Company or any of its Affiliates may have or acquire (except pursuant to the terms of a separate agreement executed by the Company in favor of such creditor) at any time as a result of making the loan any direct or indirect interest in Net Profits, Net Losses, Distributions, capital or property other than as a secured creditor.

Section 12.7 Waiver. No failure by any party to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, duty, agreement or condition.

Section 12.8 Counterparts. This Agreement may be executed in separate counterparts, each of which will be an original and all of which together shall constitute one and the same agreement binding on all the parties hereto.

Section 12.9 Governing Law; Waiver of Jury Trial.

(a) This Agreement shall be governed by, and construed in accordance with, the Laws of the State of Delaware applicable to contracts executed in and to be performed in that state and without regard to any applicable conflicts of law. Notwithstanding the foregoing, the Federal Arbitration Act will govern the arbitration provisions of this Agreement.

(b) EACH PARTY HERETO HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE UNITS OR THE SUBJECT MATTER HEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO, AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

Section 12.10 Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable law or rule in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other provision or the effectiveness or validity of any provision in any other jurisdiction, and this Agreement will be reformed, construed and enforced in such jurisdiction as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 12.11 Further Action. The parties shall execute and deliver all documents, provide all information and take or refrain from taking such actions as may be necessary or appropriate to achieve the purposes of this Agreement.

Section 12.12 Delivery by Facsimile or Electronic Transmission. This Agreement, the agreements referred to herein, and each other agreement or instrument entered into in connection herewith or therewith or contemplated hereby or thereby, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine or electronic transmission, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in Person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such agreement or instrument shall raise the use of a facsimile machine or electronic transmission in pdf to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine or electronic transmission as a defense to the formation or enforceability of a contract and each such party forever waives any such defense.

Section 12.13 Entire Agreement. This Agreement, the Other Agreements, and those documents expressly referred to herein and therein and other documents of even date herewith embody the complete agreement and understanding among the parties and supersede and preempt any prior understandings, agreements or representations by or among the parties, written or oral, which may have related to the subject matter hereof in any way, including the Second Amended LLC Agreement.

Section 12.14 Remedies. Each Member shall have all rights and remedies set forth in this Agreement and all rights and remedies which such Person has been granted at any time under any Other Agreement or contract and all of the rights which such Person has under any Law. Any Person having any rights under any provision of this Agreement or any Other Agreements contemplated hereby shall be entitled to enforce such rights specifically (without posting a bond or other security), to recover damages by reason of any breach of any provision of this Agreement and to exercise all other rights granted by law.

Section 12.15 Descriptive Headings; Interpretation. The descriptive headings of this Agreement are inserted for convenience only and do not constitute a substantive part of this Agreement. Whenever required by the context, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. The use of the word “including” in this Agreement shall be by way of example rather than by limitation and shall be interpreted without limitation. The use of the words “or,” “either” and “any” shall not be exclusive. The terms “hereby,” “hereof,” “hereunder,” and any similar terms as used in this Agreement shall refer to this Agreement. Reference to any agreement, document or instrument means such agreement, document or instrument as amended or otherwise modified from time to time in accordance with the terms thereof, and if applicable hereof. Without limiting the generality of the immediately preceding sentence, no amendment or other modification to any agreement, document or instrument that requires the consent of any Person pursuant to the terms of this

Agreement or any Other Agreement will be given effect hereunder unless such Person has consented in writing to such amendment or modification. Wherever required by the context, references to a Fiscal Year shall refer to a portion thereof. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. Wherever a conflict exists between this Agreement and any Other Agreement, this Agreement shall control but solely to the extent of such conflict. A reference in this Agreement to \$ or dollars is to U.S. dollars.

Section 12.16 Attorneys' Fees. If any action, suit or proceeding is brought to enforce or interpret the terms of this Agreement or to protect the rights obtained hereunder, or to recover damages for breach of this Agreement, then, if successful in whole or in part in such action, the prevailing party or parties in such action, suit or proceeding shall be entitled to recover from the non-prevailing party or parties hereto any and all of the costs of suit and reasonable attorneys' fees incurred by the prevailing party or parties in connection therewith, including attorneys' fees on appeal, costs and disbursements, in addition to such other relief to which any such prevailing party or parties may be entitled.

* * * * *

IN WITNESS WHEREOF, the Members and the Company have executed this Fourth Amended and Restated Limited Liability Company Agreement to be effective as of the Effective Date.

BAKKT OPCO HOLDINGS, LLC

By: /s/ Marc D’Annunzio
Name: Marc D’Annunzio
Title: Secretary

[Signature Page to Fourth Amended and Restated LLCA]

IN WITNESS WHEREOF, the Members and the Company have executed this Fourth Amended and Restated Limited Liability Company Agreement to be effective as of the Effective Date.

MANAGING MEMBER:

BAKKT INTERMEDIATE HOLDINGS, INC.
(formerly known as Bakkt Holdings, Inc.)

By: /s/ Marc D’Annunzio
Name: Marc D’Annunzio
Title: General Counsel and Corporate Secretary

[Signature Page to Fourth Amended and Restated LLCA]

IN WITNESS WHEREOF, the Members and the Company have executed this Fourth Amended and Restated Limited Liability Company Agreement to be effective as of the Effective Date.

MEMBER

BAKKT HOLDINGS, INC.

By: /s/ Marc D’Annunzio
Name: Marc D’Annunzio
Title: General Counsel and Corporate Secretary

[Signature Page to Fourth Amended and Restated LLCA]

SCHEDULE OF MEMBERS

Schedule of Members to Bakkt Opco Holdings, LLC

Limited Liability Company Agreement

<u>Member</u>	<u>Common Units Held</u>
Bakkt Holdings, Inc.	7,174,575
5900 Windward Parkway, Suite 450 Alpharetta, GA 30005	
Bakkt Intermediate Holdings, Inc.	1,998,778
5900 Windward Parkway, Suite 450 Alpharetta, GA 30005	
Total	9,173,353

AMENDED AND RESTATED
CERTIFICATE OF INCORPORATION
OF
BAKKT NEWCO HOLDINGS, INC.

The present name of the corporation is Bakkt NewCo Holdings, Inc. (the “Corporation”). The Corporation was incorporated under the name “Bakkt NewCo Holdings, Inc.” by the filing of its original certificate of incorporation (the “Original Certificate of Incorporation”) with the Secretary of State of the State of Delaware on October 23, 2025. This Amended and Restated Certificate of Incorporation of the Corporation (as the same may be amended and/or restated from time to time in accordance with its terms and applicable law, the “Certificate of Incorporation”), which amends, restates and integrates the provisions of the Original Certificate of Incorporation, was duly adopted in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware and by the written consent of the stockholders in accordance with Section 228 of the General Corporation Law of the State of Delaware. The Original Certificate of Incorporation of the Corporation is hereby amended and restated to read in its entirety as set forth below.

ARTICLE I

Section 1.1 Name. The name of the Corporation is Bakkt Holdings, Inc. (the “Corporation”).

ARTICLE II

Section 2.1 Address. The address of the registered office of the Corporation in the State of Delaware is 251 Little Falls Drive, City of Wilmington, County of New Castle, Delaware 19808; and the name of the Corporation’s registered agent at such address is Corporation Service Company.

ARTICLE III

Section 3.1 Purpose. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may now or hereafter be organized under the General Corporation Law of the State of Delaware (the “DGCL”).

ARTICLE IV

Section 4.1 Capitalization. The total number of shares of all classes of capital stock that the Corporation is authorized to issue is 571,000,000 shares, consisting of (i) 1,000,000 shares of preferred stock, par value \$0.0001 per share (“Preferred Stock”), and (ii) 570,000,000 shares of common stock, par value \$0.0001 per share (the “Common Stock”), which consists of (A) 560,000,000 shares of Class A common stock (“Class A Common Stock”) and (B) 10,000,000 shares of Class V common stock (“Class V Common Stock”). The number of authorized shares of any of the Common Stock, Class A Common Stock, Class V Common

Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority in voting power of the stock of the Corporation entitled to vote thereon irrespective of the provisions of Section 242(b)(2) of the DGCL (or any successor provision thereto), and no vote of the holders of any of the Common Stock, Class A Common Stock, Class V Common Stock or Preferred Stock voting separately as a class shall be required therefor, unless a vote of any such holder is required pursuant to this Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock).

Section 4.2 Preferred Stock.

(A) The Board of Directors of the Corporation (the “Board”) is hereby expressly authorized, subject to any limitations prescribed by the DGCL, by resolution or resolutions, at any time and from time to time, to provide, out of the unissued shares of Preferred Stock, for one or more series of Preferred Stock and, with respect to each such series, to fix the number of shares constituting such series and the designation of such series, the voting powers, full or limited, or no voting powers, of the shares of such series, and the powers, preferences and relative, participating, optional or other special rights, if any, and any qualifications, limitations or restrictions thereof, of the shares of such series and to cause to be filed with the Secretary of State of the State of Delaware a certificate of designation with respect thereto. The powers, preferences and relative, participating, optional and other special rights of each series of Preferred Stock, and the qualifications, limitations or restrictions thereof, if any, may differ from those of any and all other series at any time outstanding.

(B) Except as otherwise required by law, holders of a series of Preferred Stock, as such, shall be entitled only to such voting rights, if any, as shall expressly be granted thereto by this Certificate of Incorporation (including any certificate of designations relating to such series).

Section 4.3 Common Stock.

(A) Voting Rights.

(1) Except as otherwise provided in this Certificate of Incorporation or as required by law, each holder of Class A Common Stock, as such, shall be entitled to one vote for each share of Class A Common Stock held of record by such holder on all matters on which stockholders generally or holders of Class A Common Stock as a separate class are entitled to vote, including the election or removal of directors (whether voting separately as a class or together with one or more classes of the Corporation’s capital stock).

(2) Except as otherwise provided in this Certificate of Incorporation or as required by law, each holder of Class V Common Stock, as such, shall be entitled to one vote for each share of Class V Common Stock held of record by such holder on all matters on which stockholders generally or holders of Class V Common Stock as a separate class are entitled to vote, including the election or removal of directors (whether voting separately as a class or together with one or more classes of the Corporation’s capital stock).

(3) Except as otherwise provided in this Certificate of Incorporation or required by applicable law and without limiting the rights of any party to the Stockholders Agreement, dated as of October 15, 2021, by and among the Corporation and the other parties thereto (as amended from time to time, the “Stockholders Agreement”), the holders of Common Stock having the right to vote in respect of such Common Stock shall vote together as a single class (or, if the holders of one or more series of Preferred Stock are entitled to vote together with the holders of Common Stock, as a single class with the holders of such other series of Preferred Stock) on all matters submitted to a vote of the stockholders having voting rights generally.

(B) Dividends.

(i) *Class A Common Stock*. Subject to applicable law and the rights, if any, of the holders of any outstanding shares of Preferred Stock or any class or series of stock having a preference over or the right to participate with the Class A Common Stock with respect to the payment of dividends, dividends may be declared and paid on the Class A Common Stock out of the assets of the Corporation that are by law available therefor at such times and in such amounts as the Board in its discretion shall determine.

(ii) *Class V Common Stock*. Dividends shall not be declared or paid on the Class V Common Stock.

(C) Liquidation, Dissolution or Winding Up. Subject to applicable law, and of the preferential and other amounts, if any, to which the holders of Preferred Stock or any class or series of stock having a preference over the Class A Common Stock as to distributions upon dissolution or liquidation or winding up of the affairs of the Corporation shall be entitled, in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation, the holders of all outstanding shares of Class A Common Stock shall be entitled to receive the remaining assets of the Corporation available for distribution ratably in proportion to the number of shares held by each such stockholder. The holders of shares of Class V Common Stock, as such, shall not be entitled to receive any assets of the Corporation in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

(D) Restrictions of Class V Common Stock. In the event that any outstanding share of Class V Common Stock shall cease to be held directly or indirectly by a holder of a unit of Bakkt Opco Holdings, LLC (the “LLC Units”) as set forth in the books and records of Bakkt Opco Holdings, LLC, such share shall automatically and without further action on the part of the Corporation or any holder of Class V Common Stock be transferred to the Corporation for no consideration, and any purported transfer of Class V Common Stock which does not include the simultaneous transfer of a corresponding number of such holder’s LLC Units to such transferee or is otherwise not in accordance with the Third Amended and Restated LLC Agreement of Bakkt Opco Holdings, LLC (as amended from time to time, the “LLC Agreement”), the Exchange Agreement, dated as of October 15, 2021, by and among the Corporation and the other

parties thereto (as amended from time to time, the “Exchange Agreement”) and the Stockholders Agreement (collectively, the “Restrictions”) shall be null and void and such transferee shall not obtain any rights in and to such shares of Class V Common Stock (the “Restricted Shares”), nor shall such transfer be recognized by the Corporation’s transfer agent (the “Transfer Agent”). The Corporation shall not issue additional shares of Class V Common Stock after the effectiveness of this Certificate of Incorporation other than in connection with the valid issuance or transfer of LLC Units in accordance with the LLC Agreement. Upon a determination by the Board that a person has attempted or may attempt to transfer or to acquire Restricted Shares in violation of the Restrictions, the Corporation shall refuse to give effect to such transfer or acquisition on the books and records of the Corporation. In furtherance of the foregoing, the Corporation shall cause the Transfer Agent to refuse to record the proposed transferee as the record owner of the Restricted Shares and shall institute proceedings necessary to enjoin or rescind any such transfer or acquisition. The Board may, to the extent permitted by law, from time to time establish, modify, amend or rescind, by by-law or otherwise, regulations and procedures that are consistent with the provisions of this Section 4.3(D) for determining whether any transfer or acquisition of shares of Class V Common Stock would violate the Restrictions and for the orderly application, administration and implementation of the provisions of this Section 4.3(D). Any such procedures and regulations shall be kept on file with the Secretary of the Corporation and with the Transfer Agent and shall be made available for inspection by any prospective transferee and, upon written request, shall be mailed to holders of shares of Class V Common Stock. For the avoidance of doubt, nothing herein restricts the ability of the holders of LLC Units from surrendering shares of Class V Common Stock to the Corporation or Bakkt Opco Holdings, LLC pursuant to the terms of the Exchange Agreement and in accordance with the Restrictions.

(E) Reservation of Stock; Transfer Restrictions. The Corporation shall at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock an amount equal to at least the number of then-outstanding LLC Units subject to exchange pursuant to the Exchange Agreement. No shares of Class V Common Stock may be issued except to a holder of LLC Units (other than the Corporation or any subsidiary of the Corporation that is a holder of LLC Units), such that after such issuance of Class V Common Stock such holder holds an identical number of LLC Units and shares of Class V Common Stock in accordance with the Exchange Agreement. The Corporation shall take all actions necessary so that, for so long as the Class V Common Stock is outstanding, the number of shares of Class V Common Stock outstanding (plus any shares of Class V Common Stock which have been transferred to the Corporation pursuant to Section 4.3(D), if the corresponding LLC Units have not also been removed from issuance) shall equal the number of LLC Units outstanding pursuant to the Exchange Agreement.

(F) Restrictive Legend. All certificates or book entries representing shares of Class V Common Stock, as the case may be, shall include a legend in a form determined by the Board referencing the transfer restrictions set forth herein, and in the LLC Agreement, the Exchange Agreement and the Stockholders Agreement.

(G) Retirement and Cancellation of Class V Common Stock. To the extent that any holder of Class V Common Stock exercises its right pursuant to the Exchange Agreement to exchange some or all of such holder's LLC Units for Class A Common Stock in accordance with the Exchange Agreement, then, concurrently with such exchange under the Exchange Agreement, a number of shares of Class V Common Stock registered in the name of such holder equal to the number of LLC Units that are exchanged by such holder in such transaction (subject to equitable adjustment for any event described in Section 4.3(H) below, as applicable) shall upon transfer to the Corporation in accordance with the Exchange Agreement be retired and cancelled for no consideration and such shares shall not be reissued by the Corporation.

(H) Adjustments. If the Corporation at any time combines or subdivides (by any stock split, stock dividend, recapitalization, reorganization, merger, amendment of this Certificate of Incorporation, scheme, arrangement or otherwise) the number of shares of Class A Common Stock into a greater or lesser number of shares, the shares of Class V Common Stock outstanding immediately prior to such combination or subdivision shall be proportionately similarly combined or subdivided such that the ratio of shares of outstanding Class V Common Stock to shares of outstanding Class A Common Stock immediately prior to such combination or subdivision shall be maintained immediately after such combination or subdivision. Any adjustment described in this Section 4.3(H) shall become effective at the close of business on the date the combination or subdivision becomes effective. In no event shall the shares of Class V Common Stock be combined or subdivided (including by way of any stock split, stock dividend, recapitalization, reorganization, merger, amendment of this Certificate of Incorporation, scheme, arrangement or otherwise) unless the outstanding shares of Class A Common Stock shall be proportionately similarly combined or subdivided.

Section 4.4 Rights and Options. The Corporation has the authority to create and issue rights, warrants and options entitling the holders thereof to acquire from the Corporation any shares of its capital stock of any class or classes, with such rights, warrants and options to be evidenced by or in instrument(s) approved by the Board. The Board is empowered to set the exercise price, duration, times for exercise and other terms and conditions of such rights, warrants or options; *provided, however*, that the consideration to be received for shares of capital stock issuable upon exercise thereof may not be less than the par value thereof.

ARTICLE V

Section 5.1 By-Laws. In furtherance and not in limitation of the powers conferred by the DGCL, the Board is expressly authorized to make, amend, alter, change, add to or repeal the by-laws of the Corporation (as the same may be amended from time to time, the "By-Laws") without the consent or vote of the stockholders in any manner not inconsistent with the laws of the State of Delaware or this Certificate of Incorporation and without limiting the rights of any party pursuant to the Stockholders Agreement; *provided* that any amendment, alteration, change, addition to or repeal of Article V (*Indemnification and Advancement of Expenses*) of the By-Laws shall, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to provide broader indemnification rights to all such parties on a retroactive basis than permitted prior thereto), and shall not in any way diminish or adversely affect any right or protection existing at the time of such repeal or amendment or adoption of such inconsistent provision in respect of any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding") (regardless of when such Proceeding is first threatened, commenced or completed) arising out of, or related to, any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

ARTICLE VI

Section 6.1 Board of Directors.

(A) *Board Powers; Number; Election; Term.* Except as otherwise provided in this Certificate of Incorporation or the DGCL, the business and affairs of the Corporation shall be managed by or under the direction of the Board. The total number of directors constituting the whole Board shall be determined from time to time exclusively by resolution adopted by the Board. The directors (other than those directors elected by the holders of any series of Preferred Stock, voting separately as a series or together with one or more other such series, as the case may be) shall be divided into three classes designated Class I, Class II and Class III. Each class shall consist, as nearly as possible, of one-third of the total number of such directors. Class I directors ("Class I Directors") shall initially serve for a term expiring at the first annual meeting of stockholders following the effectiveness of this Certificate of Incorporation, Class II directors ("Class II Directors") shall initially serve for a term expiring at the second annual meeting of stockholders following the effectiveness of this Certificate of Incorporation and Class III directors ("Class III Directors") shall initially serve for a term expiring at the third annual meeting of stockholders following the effectiveness of this Certificate of Incorporation. At each succeeding annual meeting, successors to the class of directors whose term expires at that annual meeting shall be elected for a term expiring at the third succeeding annual meeting of stockholders. If the number of such directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible, but in no case shall a decrease in the number of directors remove or shorten the term of any incumbent director. Subject to the rights granted to the holders of any one or more series of Preferred Stock then outstanding and without limiting the rights of any party pursuant to the Stockholders Agreement, the election of directors shall be determined by a plurality of the votes cast by the stockholders present in person or represented by proxy at the meeting and entitled to vote thereon. Any such director shall hold office until the annual meeting at which his or her term expires and until his or her successor shall be elected and qualified, or his or her earlier death, resignation, retirement or removal from office. The Board is authorized to assign members of the Board already in office to their respective class at the time such classification becomes effective.

(B) *Newly Created Directorships and Vacancies.* Subject to the rights granted to the holders of any one or more series of Preferred Stock then outstanding or the rights granted pursuant to the Stockholders Agreement, any newly created directorship on the Board that results from an increase in the number of directors or any vacancy occurring in the Board (whether by death, resignation, retirement, removal or other cause) shall be filled by the affirmative vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director (and not by the stockholders of the Corporation). Any director elected to fill a vacancy or newly created directorship shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall be elected and qualified, or until his or her earlier death, resignation, retirement or removal.

(C) *Resignation and Removal.* Any director may resign at any time upon notice to the Corporation given in writing or by any electronic transmission as permitted by the By-Laws. Any or all of the directors (other than the directors elected by the holders of any series of Preferred Stock, voting separately as a series or together with one or more other such series, as the case may be) may be removed only for cause and upon the affirmative vote of the holders of at least 66 2/3% of the total voting power of all the then-outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

(D) *Preferred Stock Directors.* Whenever the holders of any one or more series of Preferred Stock issued by the Corporation shall have the right, voting separately as a series or separately as a class with one or more such other series, to elect directors at an annual or special meeting of stockholders, the election, term of office, removal and other features of such directorships shall be governed by the terms of this Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) applicable thereto. Notwithstanding Section 6.1(A), the number of directors that may be elected by the holders of any such series of Preferred Stock shall be in addition to the number fixed pursuant to Section 6.1(A) hereof, and the total number of directors constituting the whole Board shall be automatically adjusted accordingly.

(E) *No Election by Written Ballot.* Directors of the Corporation need not be elected by written ballot unless the By-Laws shall so provide.

(F) *No Cumulative Voting.* The holders of shares of Common Stock shall not have cumulative voting rights.

ARTICLE VII

Section 7.1 Meetings of Stockholders. Any action required or permitted to be taken by the holders of stock of the Corporation must be effected at a duly called annual or special meeting of such holders in accordance with the By-Laws and may not be effected by any consent by such holders; *provided, however*, that any action required or permitted to be taken by the holders of Class V Common Stock, voting separately as a class, or, to the extent expressly permitted by the certificate of designation relating to one or more series of Preferred Stock, by the holders of such series of Preferred Stock, voting separately as a series or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, if a consent or consents, setting forth the action so taken, shall be signed by the holders of outstanding shares of the relevant class or series having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation in the manner forth in Section 228 of the DGCL. Subject to the rights of the holders of any series of Preferred Stock, special meetings of the stockholders of the Corporation for any purpose or purposes may be called only by or at the direction of the Board, the Chairman of the Board or the Chief Executive Officer of the Corporation. An annual meeting of stockholders for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held at such place, if any, on such date, and at such time as shall be fixed exclusively by resolution of the Board or a duly authorized committee thereof.

ARTICLE VIII

Section 8.1 Limited Liability of Directors. No director of the Corporation will have any personal liability to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as the same exists or hereafter may be amended. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended. Neither the amendment nor the repeal of this Article VIII shall eliminate or reduce the effect thereof in respect of any state of facts existing or act or omission occurring, or any cause of action, suit or claim that, but for this Article VIII, would accrue or arise, or otherwise adversely affect any limitation on the personal liability of a director of the Corporation existing prior to such amendment or repeal.

Section 8.2 Indemnification and Advancement of Expenses.

(A) Right to Indemnification and Advancement of Expenses. To the fullest extent permitted by applicable law, as the same exists or may hereafter be amended, the Corporation shall indemnify and hold harmless each person who is or was made a party or is threatened to be made a party to or is otherwise involved in a Proceeding by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, manager, officer, employee or agent of another corporation or of a partnership, limited liability company, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (an "Indemnatee"), whether the basis of such Proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, against all liability and loss suffered and expenses (including, without limitation, attorneys' fees, judgments, fines and amounts paid in settlement) reasonably incurred by such Indemnatee in connection with such Proceeding. The Corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys' fees) incurred by an Indemnatee in defending or otherwise participating in any Proceeding in advance of its final disposition; *provided, however*, that, to the extent required by applicable law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking, by or on behalf of the Indemnatee, to repay all amounts so advanced if it shall ultimately be determined that the Indemnatee is not entitled to be indemnified under this Section 8.2 or otherwise. The rights to indemnification and advancement of expenses conferred by this Section 8.2 shall be contract rights and such rights shall continue as to an Indemnatee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators. Notwithstanding the foregoing provisions of this Section 8.2(A), except for Proceedings to enforce rights to indemnification and advancement of expenses, the Corporation shall indemnify and advance expenses to an Indemnatee in connection with a Proceeding (or part thereof) initiated by such Indemnatee only if such Proceeding (or part thereof) was authorized by the Board.

(B) Non-Exclusivity of Rights. The rights to indemnification and advancement of expenses conferred on any Indemnitee by this Section 8.2 shall not be exclusive of any other rights that any Indemnitee may have or hereafter acquire under law, this Certificate of Incorporation, the By-Laws, an agreement, vote of stockholders or disinterested directors, or otherwise.

(C) Amendments. Any repeal or amendment of this Section 8.2 by the stockholders of the Corporation or by changes in law, or the adoption of any other provision of this Certificate of Incorporation inconsistent with this Section 8.2, shall, unless otherwise required by law, be prospective only (except to the extent such amendment or change in law permits the Corporation to provide broader indemnification rights to all such parties on a retroactive basis than permitted prior thereto), and shall not in any way diminish or adversely affect any right or protection existing at the time of such repeal or amendment or adoption of such inconsistent provision in respect of any Proceeding (regardless of when such Proceeding is first threatened, commenced or completed) arising out of, or related to, any act or omission occurring prior to such repeal or amendment or adoption of such inconsistent provision.

(D) Reliance. Persons who after the date of the adoption of this provision become or remain directors or officers of the Corporation or who, while a director or officer of the Corporation, become or remain a director, officer, employee or agent of a subsidiary, shall be conclusively presumed to have relied on the rights to indemnity, advancement of expenses and other rights contained in this Section 8.2 in entering into or continuing such service. The rights to indemnification and to the advancement of expenses conferred in this Section 8.2 shall apply to claims made against an Indemnitee arising out of acts or omissions which occurred or occur both prior and subsequent to the adoption hereof.

(E) Persons other than Indemnitees. This Section 8.2 shall not limit the right of the Corporation, to the extent and in the manner authorized or permitted by law, to indemnify and to advance expenses to persons other than Indemnitees.

ARTICLE IX

Section 9.1 DGCL Section 203 and Business Combinations.

(A) The Corporation hereby expressly elects not to be governed by Section 203 of the DGCL.

(B) Notwithstanding the foregoing, the Corporation shall not engage in any business combination (as defined below), at any point in time at which the Corporation's Common Stock is registered under Section 12(b) or 12(g) of the Exchange Act of 1934, as amended (the "Exchange Act"), with any interested stockholder (as defined below) for a period of three years following the time that such stockholder became an interested stockholder, unless:

(1) prior to such time, the Board approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder, or

(2) upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock (as defined below) of the Corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (i) persons who are directors and also officers and (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer, or

(3) at or subsequent to such time, the business combination is approved by the Board and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock of the Corporation which is not owned by the interested stockholder.

(C) For purposes of this Article IX, references to:

(1) “Affiliate” means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person.

(2) “associate”, when used to indicate a relationship with any person, means: (i) any corporation, partnership, unincorporated association or other entity of which such person is a director, officer or partner or is, directly or indirectly, the owner of 20% or more of any class of voting stock; (ii) any trust or other estate in which such person has at least a 20% beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and (iii) any relative or spouse of such person, or any relative of such spouse, who has the same residence as such person.

(3) “business combination”, when used in reference to the Corporation and any interested stockholder of the Corporation, means:

- a. any merger or consolidation of the Corporation or any direct or indirect majority-owned subsidiary of the Corporation (i) with the interested stockholder, or (ii) with any other corporation, partnership, unincorporated association or other entity if the merger or consolidation is caused by the interested stockholder and as a result of such merger or consolidation Section (B) of this Article IX is not applicable to the surviving entity;
- b. any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of the Corporation, to or with the interested stockholder, whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation which assets have an aggregate market value equal to 10% or more of either the aggregate market value of all the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the Corporation;

- c. any transaction which results in the issuance or transfer by the Corporation or by any direct or indirect majority-owned subsidiary of the Corporation of any stock of the Corporation or of such subsidiary to the interested stockholder, except: (i) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which securities were outstanding prior to the time that the interested stockholder became such; (ii) pursuant to a merger under Section 251(g) of the DGCL; (iii) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which security is distributed, pro rata to all holders of a class or series of stock of the Corporation subsequent to the time the interested stockholder became such; (iv) pursuant to an exchange offer by the Corporation to purchase stock made on the same terms to all holders of said stock; or (v) any issuance or transfer of stock by the Corporation; *provided, however*, that in no case under items (iii) through (v) of this subsection (c) shall there be an increase in the interested stockholder's proportionate share of the stock of any class or series of the Corporation or of the voting stock of the Corporation (except as a result of immaterial changes due to fractional share adjustments);
- d. any transaction involving the Corporation or any direct or indirect majority-owned subsidiary of the Corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the Corporation or of any such subsidiary which is owned by the interested stockholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested stockholder; or
- e. any receipt by the interested stockholder of the benefit, directly or indirectly (except proportionately as a stockholder of the Corporation), of any loans, advances, guarantees, pledges, or other financial benefits (other than those expressly permitted in subsections (a) through (d) above) provided by or through the Corporation or any direct or indirect majority-owned subsidiary.

(4) “control,” including the terms “controlling,” “controlled by” and “under common control with,” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who is the owner of 20% or more of the outstanding voting stock of a corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such person holds voting stock, in good faith and not for the purpose of circumventing this Section (C) of Article IX, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such entity.

(5) “interested stockholder” means any person (other than the Corporation or any direct or indirect majority-owned subsidiary of the Corporation) that (i) is the owner of 15% or more of the outstanding voting stock of the Corporation, or (ii) is an Affiliate or associate of the Corporation and was the owner of 15% or more of the outstanding voting stock of the Corporation at any time within the three-year period immediately prior to the date on which it is sought to be determined whether such person is an interested stockholder; and the Affiliates and associates of such person; but “interested stockholder” shall not include (I) any Stockholder Party, any Stockholder Party Direct Transferee, any Stockholder Party Indirect Transferee or any of their respective Affiliates or associates or successors or any “group,” or any member of any such group, to which such persons are a party under Rule 13d-5 of the Exchange Act, or (II) any person whose ownership of shares in excess of the 15% limitation set forth herein is the result of any action taken solely by the Corporation; *provided, further*, that in the case of clause (II) such person shall be an interested stockholder if thereafter such person acquires additional shares of voting stock of the Corporation, except as a result of further corporate action not caused, directly or indirectly, by such person. For the purpose of determining whether a person is an interested stockholder, the voting stock of the Corporation deemed to be outstanding shall include stock deemed to be owned by the person through application of the definition of “owner” below but shall not include any other unissued stock of the Corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(6) “owner,” including the terms “own” and “owned,” when used with respect to any stock, means a person that individually or with or through any of its Affiliates or associates:

- a. beneficially owns such stock, directly or indirectly; or
- b. has (i) the right to acquire such stock (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; *provided, however*, that a person shall not be deemed the owner of stock tendered pursuant to a tender or exchange offer made by such person or any of such person’s Affiliates or associates until such tendered stock is accepted for purchase or

exchange; or (ii) the right to vote such stock pursuant to any agreement, arrangement or understanding; *provided, however*, that a person shall not be deemed the owner of any stock because of such person's right to vote such stock if the agreement, arrangement or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to 10 or more persons; or

- c. has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in item (ii) of subsection (b) above), or disposing of such stock with any other person that beneficially owns, or whose Affiliates or associates beneficially own, directly or indirectly, such stock.

(7) "person" means any individual, corporation, partnership, unincorporated association or other entity.

(8) "stock" means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.

(9) "Stockholder Parties" means the Stockholders (as defined in the Stockholders Agreement). The term "Stockholder Party" shall have a correlative meaning to "Stockholder Parties."

(10) "Stockholder Party Direct Transferee" means any person that acquires (other than in a registered public offering) directly from any Stockholder Party or any of its successors or any "group," or any member of any such group, of which such persons are a party under Rule 13d-5 of the Exchange Act beneficial ownership of 15% or more of the then-outstanding voting stock of the Corporation.

(11) "Stockholder Party Indirect Transferee" means any person that acquires (other than in a registered public offering) directly from any Stockholder Party Direct Transferee or any other Stockholder Party Indirect Transferee beneficial ownership of 15% or more of the then-outstanding voting stock of the Corporation.

(12) "voting stock" means stock of any class or series entitled to vote generally in the election of directors and, with respect to any entity that is not a corporation, any equity interest entitled to vote generally in the election of the governing body of such entity. Every reference to a percentage of voting stock shall refer to such percentages of the votes of such voting stock.

ARTICLE X

Section 10.1 Competition and Corporate Opportunities.

(A) In recognition and anticipation that (i) certain directors, principals, officers, employees, equityholders and/or other representatives of VPC Impact Acquisition Holdings Sponsor, LLC ("Sponsor") and its Affiliates and Affiliated Entities (each, as defined below) may serve as directors, officers or agents of the Corporation, (ii) the Sponsor and its Affiliates and Affiliated Entities, including (I) any portfolio company in which they or any of their respective Affiliates or Affiliated Entities have made a debt or equity investment (and vice versa) or (II) any of their respective limited partners, non-managing members or other similar direct or indirect investors, may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other businesses that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, (iii) certain directors, principals, officers, employees, equityholders and/or other representatives of Intercontinental Exchange Holdings, Inc. ("Holdings") and its Affiliates and Affiliated Entities may serve as directors, officers or agents of the Corporation, (iv) Holdings and its Affiliates and Affiliated Entities, including (I) any portfolio company in which they or any of their respective Affiliates or Affiliated Entities have made a debt or equity investment (and vice versa) or (II) any of their respective limited partners, non-managing members or other similar direct or indirect investors, may now engage and may continue to engage in the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or other businesses that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, and (v) members of the Board who are not employees of the Corporation ("Non-Employee Directors") and their respective Affiliates and Affiliated Entities including (I) any company in which they or any of their respective Affiliates or Affiliated Entities have made a debt or equity investment (and vice versa) or (II) any of their respective direct or indirect investors, may now engage and may continue to engage in (a) the same or similar activities or related lines of business as those in which the Corporation, directly or indirectly, may engage and/or (b) other business activities that overlap with or compete with those in which the Corporation, directly or indirectly, may engage, the provisions of this Article X are set forth to regulate and define the conduct of certain affairs of the Corporation with respect to certain classes or categories of business opportunities as they may involve the Sponsor, Holdings, any of the Non-Employee Directors or their respective Affiliates or Affiliated Entities and the powers, rights, duties and liabilities of the Corporation and its directors, officers and stockholders in connection therewith.

(B) None of (i) Sponsor, (ii) Holdings or (iii) any Non-Employee Director or his, her or its respective Affiliates or Affiliated Entities (the Persons (as defined below) above being referred to, collectively, as "Identified Persons" and, individually, as an "Identified Person") shall, to the fullest extent permitted by law, have any duty to refrain from directly or indirectly (1) engaging in and possessing interests in other business ventures of every type and description, including those engaged in the same or similar business activities or lines of business in which the Corporation or any of its Affiliates now engages or proposes to engage or (2) otherwise competing with the Corporation or any of its Affiliates, on its own account, or in partnership with, or as an employee, officer, director or shareholder of any other Person and, to the fullest extent permitted by law, no Identified Person shall be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any fiduciary duty solely by reason of the fact that such Identified Person engages in any such activities. To the fullest extent permitted from time to time by the laws of the State of Delaware, the Corporation hereby renounces any interest or expectancy in, or right to be offered an opportunity to participate in, any business opportunity which may be a corporate opportunity for an Identified Person and the Corporation or any of its Affiliates, except as provided in Section 10.1(C) of this Article X.

Subject to said Section 10.1(C) of this Article X, in the event that any Identified Person acquires knowledge of a potential transaction or other business opportunity which may be a corporate opportunity for itself, herself or himself and the Corporation or any of its Affiliates, such Identified Person shall, to the fullest extent permitted by law, have no duty (fiduciary, contractual or otherwise) to communicate, present or offer such transaction or other business opportunity or matter to the Corporation or any of its Affiliates or stockholders and, to the fullest extent permitted by law, shall not be liable to the Corporation or its stockholders or to any Affiliate of the Corporation for breach of any duty (fiduciary, contractual or otherwise) as a stockholder, director or officer of the Corporation solely by reason of the fact that such Identified Person pursues or acquires such corporate opportunity for itself, herself or himself, or offers or directs such corporate opportunity to another Person or does not present such opportunity to the Corporation or any of its Affiliates or stockholders.

(C) The Corporation does not renounce its interest in any corporate opportunity offered to any Non-Employee Director if such opportunity is expressly offered to such person solely in his or her capacity as a director of the Corporation, and the provisions of Section 10.1(B) of this Article X shall not apply to any such corporate opportunity.

(D) In addition to and notwithstanding the foregoing provisions of this Article X, a corporate opportunity shall not be deemed to be a potential corporate opportunity for the Corporation if it is a business opportunity that (i) the Corporation is neither financially or legally able, nor contractually permitted to undertake, (ii) from its nature, is not in the line of the Corporation's business or is of no practical advantage to the Corporation or (iii) is one in which the Corporation has no interest or reasonable expectancy.

(E) For purposes of this Article X, (i) "Affiliate" shall mean (A) in respect of the Sponsor, any Person that, directly or indirectly, is controlled by the Sponsor (as applicable), controls the Sponsor (as applicable) or is under common control with the Sponsor (as applicable) and shall include any principal, member, director, manager, investment manager, investor, partner, stockholder, officer, employee, predecessor, successor, agent or other representative of any of the foregoing (other than the Corporation and any entity that is controlled by the Corporation), including, without limitation, funds, accounts and/or other investment vehicles managed by Victory Park Capital Advisors, LLC, (B) in respect of Holdings, any Person that, directly or indirectly, is controlled by Holdings (as applicable), controls Holdings (as applicable) or is under common control with Holdings (as applicable) and shall include any principal, member, director, investor, partner, stockholder, officer, employee, predecessor, successor, agent or other representative of any of the foregoing (other than the Corporation and any entity that is controlled by the Corporation), (C) in respect of a Non-Employee Director, any Person that, directly or indirectly, is controlled by such Non-Employee Director (other than the Corporation and any entity that is controlled by the Corporation) and (D) in respect of the Corporation, any Person that, directly or indirectly, is controlled by the Corporation; (ii) "Affiliated Entity:" shall mean (A) any Person of which a Non-Employee Director serves as an officer, director, employee, agent or other representative (other than the Corporation and any entity that is controlled by the Corporation), (B) any direct or indirect partner, stockholder, member, manager or other representative of such Person or (C) any Affiliate of any of the foregoing; and (iii) "Person" shall mean any individual, corporation, general or limited partnership, limited liability company, joint venture, trust, association or any other entity.

(F) To the fullest extent permitted by law, any Person purchasing or otherwise acquiring any interest in any shares of capital stock of the Corporation shall be deemed to have notice of and to have consented to the provisions of this Article X.

(G) Neither the alteration, amendment, addition to or repeal of this Article X, nor the adoption of any provision of this Certificate of Incorporation (including any Preferred Stock designation) inconsistent with this Article X, shall eliminate or reduce the effect of this Article X upon Sponsor, Holdings or any of their respective Affiliates or Affiliated Entities in respect of any business opportunity or any other matter occurring, or any cause of action, suit or claim that would accrue or arise, prior to, upon or following such alteration, amendment, addition, repeal or adoption. This Article X shall not limit any protections or defenses available to, or indemnification or advancement rights of, any director or officer of the Corporation under this Certificate of Incorporation, the By-Laws or applicable law.

ARTICLE XI

Section 11.1 Severability. If any provision or provisions of this Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby.

ARTICLE XII

Section 12.1 Forum. Unless the Corporation consents in writing to the selection of an alternative forum, (i) any derivative action or proceeding brought or purportedly brought on behalf of the Corporation, (ii) any action or proceeding asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, employee, stockholder or agent of the Corporation to the Corporation or the Corporation's stockholders, or any claim for aiding and abetting such alleged breach, (iii) any action or proceeding asserting a claim (a) arising pursuant to, or seeking to enforce any right, obligation or remedy under, any provision of the DGCL, the Certificate of Incorporation or the By-Laws (in each case, as they may be amended from time to time) or (b) as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware, (iv) any action or proceeding to interpret, apply, enforce or determine the validity of the Certificate of Incorporation or the By-Laws (in each case, as they may be amended from time to time) or any provision thereof, (v) any action or proceeding asserting a claim against the Corporation or any current or former director, officer, employee, stockholder or agent of the Corporation governed by the internal affairs doctrine of the law of the State of Delaware, or (vi) any action or proceeding asserting an "internal corporate claim" as defined in Section 115 of the DGCL shall, to the fullest extent permitted by law and subject to the court's having personal jurisdiction over the indispensable parties named as defendants, be solely and exclusively brought in the Court of Chancery of the State of Delaware or, if and only if such court does not have subject matter jurisdiction thereof, any other court located in the State of Delaware with subject matter jurisdiction. Unless the Corporation consents in writing to the selection of an

alternative forum, the federal district courts of the United States of America shall, to the fullest extent permitted by law, be the sole and exclusive forum for the resolution of any complaint asserting a cause of action or proceeding arising under the Securities Act of 1933, as amended. To the fullest extent permitted by law, any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XII. Failure to enforce the foregoing provisions would cause the Corporation irreparable harm and the Corporation shall be entitled to equitable relief, including injunctive relief and specific performance.

ARTICLE XIII

Section 13.1 Amendments. Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the following provisions in this Certificate of Incorporation may be amended, altered, repealed or rescinded, in whole or in part, or any provision inconsistent therewith or herewith may be adopted, only by the affirmative vote of the holders of at least 66 2/3% of the total voting power of all the then outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class: Article V, Article VI, Article VII, Article VIII, Article IX, Article X, Article XII and this Article XIII. Except as expressly provided in the foregoing sentence and the remainder of this Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock), this Certificate of Incorporation may be amended by the affirmative vote of the holders of a majority of the total voting power of all the then-outstanding shares of stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

ARTICLE XIV

Section 14.1 Facts Ascertainable. When the terms of this Certificate of Incorporation refers to a specific agreement or other document to determine the meaning or operation of a provision hereof, the Secretary of the Corporation shall maintain a copy of such agreement or document at the principal executive offices of the Corporation and a copy thereof shall be provided free of charge to any stockholder of the Corporation who makes a request therefor.

ARTICLE XV

Section 15.1 Limited Liability of Officers. No officer of the Corporation will have any personal liability to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as an officer, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as the same exists or hereafter may be amended. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of officers, then the liability of an officer of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended. No amendment, repeal or elimination of this Article XV shall eliminate or reduce the effect thereof in respect of any state of facts existing or act or omission occurring, or any cause of action, suit or claim that, but for this Article XV, would accrue or arise, or otherwise adversely affect any limitation on the personal liability of an officer of the Corporation existing prior to such amendment, repeal or elimination.

* * *

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed by Marc D'Annunzio, its Secretary, on the 3rd day of November, 2025.

By: /s/ Marc D'Annunzio

Name: Marc D'Annunzio

Title: Secretary

[Signature Page to the Amended and Restated Certificate of Incorporation of Bakkt NewCo Holdings, Inc.]

**BY-LAWS
OF
BAKKT HOLDINGS, INC.**

Effective as of November 3, 2025

* * *

**ARTICLE I
OFFICES**

Section 1.1 **Registered Office**. The registered office of Bakkt Holdings, Inc. (the “Corporation”) shall be fixed in the certificate of incorporation of the Corporation (as amended, restated, modified or supplemented from time to time, the “Certificate of Incorporation”).

Section 1.2 **Additional Offices**. The Corporation may, in addition to its registered office in the State of Delaware, have such other offices and places of business, both within and outside the State of Delaware, as the Board of Directors of the Corporation (the “Board”) may from time to time determine or as the business and affairs of the Corporation may require.

**ARTICLE II
STOCKHOLDERS**

Section 2.1 **Annual Meetings**. The annual meeting of the stockholders of the Corporation for the purpose of electing directors and for the transaction of such other business as may properly be brought before the meeting shall be held on such date, and at such time and place, if any, within or without the State of Delaware, or by means of remote communications, including by webcast, pursuant to Section 2.12(c)(ii), as may be designated from time to time by the Board and stated in the Corporation’s notice of the meeting. The Board may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled.

Section 2.2 **Special Meetings**. Except as otherwise required by the General Corporation Law of the State of Delaware (the “DGCL”) or required or permitted by the Certificate of Incorporation, and subject to the rights of the holders of any class or series of Preferred Stock (as defined in the Certificate of Incorporation), special meetings of the stockholders of the Corporation for any purpose or purposes may be called only by or at the direction of the Board. Special meetings shall be held on such date, and at such time and place, if any, within or without the State of Delaware, or by means of remote communications, including by webcast, pursuant to Section 2.12(c)(ii) as shall be designated by the Board and stated in the Corporation’s notice of the meeting. No business may be transacted at such special meeting of the stockholders of the Corporation other than the business specified in the notice to the stockholders of such meeting. The Board may postpone, reschedule or cancel any special meeting of stockholders previously scheduled.

Section 2.3 **Notice of Meetings**. Except as otherwise provided by the DGCL, the Certificate of Incorporation or these By-Laws, notice of the date, time, place (if any), the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders

entitled to notice of the meeting) and, in the case of a special meeting, the purpose or purposes of the meeting of stockholders shall be given not more than sixty (60), nor less than ten (10), days previous thereto (unless a different time is specified by law), to each stockholder entitled to vote at the meeting as of the record date for determining stockholders entitled to notice of the meeting. Such notice may be given in writing directed to such stockholders' mailing address (or by electronic transmission directed to such stockholder's electronic mail address, as applicable) as it appears on the records of the Corporation and such notice shall be deemed given: (i) if mailed, when the notice is deposited in the United States mail, postage prepaid, (ii) if delivered by courier service, the earlier of when the notice is received or left at such stockholder's address or (iii) if given by electronic mail, when directed to such stockholder's electronic mail address unless the stockholder has notified the corporation in writing or by electronic transmission of any objection to receiving notice by electronic mail or such notice is prohibited by Section 232(e) of the DGCL. Without limiting the manner by which notices of meetings otherwise may be given effectively to stockholders, any such notice may be given by electronic transmission in the manner provided in Section 232 of the DGCL.

Section 2.4 **Quorum; Adjournments**. The holders of a majority in voting power of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business, except as otherwise provided herein, by applicable law or by the Certificate of Incorporation; but if at any meeting of stockholders there shall be less than a quorum present, the chairman of the meeting or, by a majority in voting power thereof, the stockholders present (either in person or by proxy) may, to the extent permitted by law, adjourn the meeting from time to time until a quorum shall be present or represented. Notwithstanding the foregoing, where a separate vote by a class or series or classes or series is required, a majority in voting power of the outstanding shares of such class or series or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter. At any adjourned meeting at which a quorum shall be present or represented by proxy, any business may be transacted which might have been transacted at the original meeting. Notice need not be given of any adjourned meeting if the time, date and place, if any, and the means of remote communication, if any, by which stockholders may be deemed present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; provided, however, that if the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix a new record date for notice of such adjourned meeting, and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date for notice of such adjourned meeting.

Section 2.5 **Organization of Meetings**. The Chairman of the Board, or in the absence of the Chairman of the Board, or at the Chairman of the Board's discretion, the Chief Executive Officer, or in the Chief Executive Officer's absence or at the Chief Executive Officer's discretion, any officer of the Corporation, shall call all meetings of the stockholders to order and shall act as chairman of any such meetings. The Secretary of the Corporation or, in such officer's absence, an Assistant Secretary, shall act as secretary of the meeting. If neither the Secretary nor an Assistant Secretary is present, the chairman of the meeting shall appoint a secretary of the meeting. The Board may adopt such rules and regulations for the conduct of the

meeting of stockholders as it shall deem appropriate. Unless otherwise determined by the Board prior to the meeting, the chairman of the meeting shall determine the order of business and shall have the authority in his or her discretion to regulate the conduct of any such meeting, including, without limitation, convening the meeting and adjourning the meeting (whether or not a quorum is present), announcing the date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote, imposing restrictions on the persons (other than stockholders of record of the Corporation or their duly appointed proxies) who may attend any such meeting, establishing procedures for the transaction of business at the meeting (including the dismissal of business not properly presented), maintaining order at the meeting and safety of those present, restricting entry to the meeting after the time fixed for commencement thereof and limiting the circumstances in which any person may make a statement or ask questions at any meeting of stockholders. Unless and to the extent determined by the Board or the chairman over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 2.6 **Proxies**.

(a) At all meetings of stockholders, any stockholder entitled to vote thereat shall be entitled to vote in person or by proxy, subject to applicable law. A stockholder may authorize another person or persons to act for him, her or it as proxy in the manner(s) provided under Section 212(c) of the DGCL or as otherwise provided under Delaware law.

(b) A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or a new proxy bearing a later date.

(c) Proxies shall be filed with the secretary of the meeting prior to or at the commencement of the meeting to which they relate.

Section 2.7 **Voting**. When a quorum is present at any meeting, the vote of the holders of a majority of the voting power of the outstanding shares of capital stock of the Corporation present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall decide any question brought before such meeting, unless the question is one upon which by express provision of the Certificate of Incorporation, the Stockholders Agreement, dated as of October 15, 2021, by and among the Corporation and the other parties thereto (as it may be amended, supplemented or otherwise modified from time to time, the "Stockholders Agreement"), these By-Laws, the DGCL or other applicable law a different vote is required, in which case such express provision shall govern and control the decision of such question. Notwithstanding the foregoing, where a separate vote by a class or series or classes or series is required and a quorum is present, the affirmative vote of a majority of the votes cast by shares of such class or series or classes or series shall be the act of such class or series or classes or series, unless the question is one upon which by express provision of the Certificate of Incorporation, the Stockholders Agreement, these By-Laws, the DGCL or other applicable law a different vote is required, in which case such express provision shall govern and control the decision of such question.

Section 2.8 **Fixing Record Date.**

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

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

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

Section 2.9 **Consents in Lieu of Meeting.** At any time when action by one or more classes or series of stockholders of the Corporation is permitted to be taken by consent pursuant to the terms and limitations set forth in the Certificate of Incorporation, the provisions of this section shall apply. No consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered to the Corporation as

required by the DGCL, consents signed by the holders of a sufficient number of shares to take such corporate action are so delivered to the Corporation in accordance with the applicable provisions of the DGCL. Prompt notice of the taking of the corporate action without a meeting by less than unanimous consent shall be given to those stockholders who have not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that consents signed by a sufficient number of holders to take the action were delivered to the Corporation as provided in the applicable provisions of the DGCL. Any action taken pursuant to such consent or consents of the stockholders shall have the same force and effect as if taken by the stockholders at a meeting thereof.

Section 2.10 **List of Stockholders Entitled to Vote.** The Corporation shall prepare, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting (provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the tenth (10th) day before the meeting date), arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Nothing contained in this Section 2.10 shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof, and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Section 2.11 **Inspectors.** The Board, in advance of all meetings of the stockholders, may, and shall if required by law, appoint one or more inspectors of stockholder votes, who may be employees or agents of the Corporation or stockholders or their proxies, but who shall not be directors of the Corporation or candidates for election as directors. In the event that one or more inspectors of stockholder votes previously designated by the Board fails to appear or act at the meeting of stockholders, the chairman of the meeting may appoint one or more inspectors of stockholder votes to fill such vacancy or vacancies. Inspectors of stockholder votes appointed to act at any meeting of the stockholders, before entering upon the discharge of their duties, shall take and sign an oath to faithfully execute the duties of inspector of stockholder votes with strict impartiality and according to the best of their ability and the oath so taken shall be subscribed by them. The inspector or inspectors so appointed or designated shall (i) ascertain the number of shares of capital stock of the Corporation outstanding and the voting power of each such share, (ii) determine the shares of capital stock of the Corporation represented at the meeting and the validity of proxies and ballots, (iii) count all votes and ballots, (iv) determine and retain for a

reasonable period a record of the disposition of any challenges made to any determination by the inspectors, and (v) certify their determination of the number of shares of capital stock of the Corporation represented at the meeting and such inspectors' count of all votes and ballots. Such certification and report shall specify such other information as may be required by law. In determining the validity and counting of proxies and ballots cast at any meeting of stockholders of the Corporation, the inspectors may consider such information as is permitted by applicable law.

Section 2.12 **Conduct of Meetings.**

(a) **Annual Meetings of Stockholders.**

(i) Nominations of persons for election to the Board and the proposal of other business to be considered by the stockholders may be made at an annual meeting of stockholders only as provided (a) in the Corporation's notice of meeting (or any supplement thereto) delivered pursuant to Section 2.3, (b) by or at the direction of the Board or any authorized committee thereof or (c) by any stockholder of the Corporation who is entitled to vote on such election or such other business at the meeting, who has complied with the notice procedures set forth in subparagraphs (ii) and (iii) of this Section 2.12(a) and who was a stockholder of record at the time such notice was delivered to the Secretary of the Corporation.

(ii) (A) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (c) of Section 2.12(a)(i), the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation (even if such matter is already the subject of any notice to the stockholders or a public announcement from the Board), and, in the case of business other than nominations of persons for election to the Board, such other business must be a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the ninetieth (90th) day and not earlier than the close of business on the one hundred twentieth (120th) day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is scheduled for more than thirty (30) days before, or more than seventy (70) days following, such anniversary date, or if no annual meeting was held in the preceding year, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the one hundred twentieth (120th) day prior to such annual meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such annual meeting or the close of business on the tenth (10th) day following the day on which public announcement of the date of such meeting is first made. For purposes of the first annual meeting of stockholders following the adoption of these By-Laws, the date of the preceding year's annual meeting shall be deemed to be June 10, 2025. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. For the avoidance of doubt, a stockholder shall not be entitled to make additional or substitute nominations following the expiration of the time periods set forth in these By-Laws. Notwithstanding anything in this Section 2.12(a)(ii).

to the contrary, in the event that the number of directors to be elected to the Board at an annual meeting is increased, effective after the time period for which nominations would otherwise be due under this Section 2.12(a), and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board at least one hundred (100) calendar days prior to the first anniversary of the preceding year's annual meeting of stockholders, then a stockholder's notice required by this Section 2.12 shall be considered timely, but only with respect to nominees for any new positions created by such increase, if it is received by the Secretary of the Corporation not later than the close of business on the tenth (10th) day following the day on which such public announcement is first made by the Corporation.

(iii) Such stockholder's notice shall set forth (a) as to each person whom the stockholder proposes to nominate for election or re-election as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors, or is otherwise required, in each case pursuant to Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder, including such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected; (b) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and, in the event that such business includes a proposal to amend these By-Laws, the language of the proposed amendment), the reasons for conducting such business at the meeting and any substantial interest (within the meaning of Item 5 of Schedule 14A under the Exchange Act) in such business of such stockholder and the beneficial owner (within the meaning of Rule 13d-3 promulgated under the Exchange Act), if any, on whose behalf the proposal is made; (c) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (i) the name and address of such stockholder, as they appear on the Corporation's books and records, and of such beneficial owner, (ii) the class or series and number of shares of capital stock of the Corporation which are owned directly or indirectly, beneficially and of record by such stockholder and such beneficial owner, (iii) a representation that the stockholder is a holder of record of the stock of the Corporation at the time of the giving of the notice, will be entitled to vote at such meeting and will appear in person or by proxy at the meeting to propose such business or nomination, (iv) a representation whether the stockholder or the beneficial owner, if any, will be or is part of a group which will (A) deliver a proxy statement and/or form of proxy to holders of at least the percentage of the voting power of the Corporation's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (B) otherwise solicit proxies or votes from stockholders in support of such proposal or nomination, (v) a certification regarding whether such stockholder and beneficial owner, if any, have complied with all applicable federal, state and other legal requirements in connection with the stockholder's and/or beneficial owner's acquisition of shares of capital stock or other securities of the Corporation and/or the stockholder's and/or beneficial owner's acts or omissions as a stockholder of the Corporation and (vi) any other information relating to such stockholder and beneficial owner, if any, required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of

directors in an election contest pursuant to and in accordance with Section 14(a) of the Exchange Act and the rules and regulations promulgated thereunder; (d) a description of any agreement, arrangement or understanding with respect to the nomination or proposal and/or the voting of shares of any class or series of stock of the Corporation between or among the stockholder giving the notice, the beneficial owner, if any, on whose behalf the nomination or proposal is made, any of their respective affiliates or associates and/or any others acting in concert with any of the foregoing (collectively, "proponent persons"); and (e) a description of any agreement, arrangement or understanding (including without limitation any contract to purchase or sell, acquisition or grant of any option, right or warrant to purchase or sell, swap or other instrument) the intent or effect of which may be (i) to transfer to or from any proponent person, in whole or in part, any of the economic consequences of ownership of any security of the Corporation, (ii) to increase or decrease the voting power of any proponent person with respect to shares of any class or series of stock of the Corporation and/or (iii) to provide any proponent person, directly or indirectly, with the opportunity to profit or share in any profit derived from, or to otherwise benefit economically from, any increase or decrease in the value of any security of the Corporation. A stockholder providing notice of a proposed nomination for election to the Board or other business proposed to be brought before a meeting (whether given pursuant to this Section 2.12(a)(iii) or Section 2.12(b)) shall update and supplement such notice from time to time to the extent necessary so that the information provided or required to be provided in such notice shall be true and correct as of the record date for determining the stockholders entitled to notice of the meeting and as of the date that is fifteen (15) days prior to the meeting or any adjournment or postponement thereof, provided that if the record date for determining the stockholders entitled to vote at the meeting is less than fifteen (15) days prior to the meeting or any adjournment or postponement thereof, the information shall be supplemented and updated as of such later date. Any such update and supplement shall be delivered in writing to the Secretary at the principal executive offices of the Corporation not later than five (5) days after the record date for determining the stockholders entitled to notice of the meeting (in the case of any update or supplement required to be made as of the record date for determining the stockholders entitled to notice of the meeting), not later than ten (10) days prior to the date for the meeting or any adjournment or postponement thereof (in the case of any update or supplement required to be made as of fifteen (15) days prior to the meeting or any adjournment or postponement thereof) and not later than five (5) days after the record date for determining the stockholders entitled to vote at the meeting, but no later than the date prior to the meeting or any adjournment or postponement thereof (in the case of any update and supplement required to be made as of a date less than fifteen (15) days prior the date of the meeting or any adjournment or postponement thereof). The Corporation may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of the Corporation and to determine the independence of such proposed nominee under the Exchange Act and rules and regulations thereunder and applicable stock exchange rules.

(A) The foregoing notice requirements of this Section 2.12(a)(iii) shall be deemed satisfied by a stockholder as to any proposal (other than nominations) if the stockholder has notified the Corporation of such stockholder's intention to present such proposal at an annual meeting in compliance with Rule 14a-8 (or any successor thereof) of the Exchange Act, and such stockholder has complied with the requirements of such rule for inclusion of such proposal in a proxy statement prepared by the Corporation to solicit proxies for such annual meeting. Nothing in this Section 2.12(a)(iii) shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation's proxy statement pursuant to Rule 14a-8 under the Exchange Act.

(iv) Notwithstanding anything in the second sentence of Section 2.12(a)(iii) to the contrary, in the event that the number of directors to be elected to the Board is increased, effective after the time period for which nominations would otherwise be due under Section 2.12(a)(ii), and there is no public announcement naming all of the nominees for director or specifying the size of the increased Board made by the Corporation at least one hundred (100) days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 2.12 shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business on the tenth (10th) day following the day on which a public announcement of such increase is first made by the Corporation.

(b) Special Meetings of Stockholders. Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting pursuant to Section 2.3. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting only (a) by or at the direction of the Board or a committee thereof, (b) as provided in the Stockholders Agreement, or (c) provided that the Board has determined that directors shall be elected at such meeting and the Corporation's notice for such meeting states that a purpose of such meeting is the election of one or more directors to the Board, by any stockholder of the Corporation who is entitled to vote on such election at the meeting, who has complied with the notice procedures set forth in this Section 2.12 and who is a stockholder of record at the time such notice is delivered to the Secretary of the Corporation, provided, however, that a stockholder may nominate persons for election at a special meeting only to such position(s) as specified in the Corporation's notice of meeting. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting if the stockholder's notice as required by Section 2.12(a)(iii) is delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the one hundred and twentieth (120th) day prior to such special meeting and not later than the close of business on the later of the ninetieth (90th) day prior to such special meeting or the tenth (10th) day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting.

(c) General.

(i) (A) Only persons who are nominated in accordance with the procedures set forth in this Section 2.12 shall be eligible to be elected to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 2.12. Except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, the chairman of the meeting shall have the power and duty to determine whether a nomination or any business proposed to be brought before the meeting was made in accordance with the procedures set forth in this Section 2.12 and, if any proposed nomination or business is not in compliance with this Section 2.12, to declare that such defective nomination shall be disregarded or that such proposed business shall not be transacted.

(B) Notwithstanding the foregoing provisions of this Section 2.12, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 2.12, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(ii) If authorized by the Board in its sole discretion, and subject to such rules, regulations and procedures as the Board may adopt, stockholders of the Corporation and proxyholders not physically present at a meeting of stockholders of the Corporation may by means of remote communication participate in a meeting of stockholders of the Corporation and be deemed present in person and vote at a meeting of stockholders of the Corporation whether such meeting is to be held at a designated place or solely by means of remote communication; provided, however, that (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder of the Corporation or proxyholder; (ii) the Corporation shall implement reasonable measures to provide such stockholders of the Corporation and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders of the Corporation, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and (iii) if any stockholder of the Corporation or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

(iii) For purposes of this Section 2.12, “public announcement” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service, in a document publicly filed or furnished by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act or otherwise disseminated in a manner constituting “public disclosure” under Regulation FD promulgated by the Securities and Exchange Commission.

(iv) No adjournment or postponement or notice of adjournment or postponement of any meeting shall be deemed to constitute a new notice (or extend any notice time period) of such meeting for purposes of this Section 2.12, and in order for any notification required to be delivered by a stockholder pursuant to this Section 2.12 to be timely, such notification must be delivered within the periods set forth above with respect to the originally scheduled meeting.

(v) Notwithstanding the foregoing provisions of this Section 2.12, a stockholder shall also comply with all applicable requirements of the Exchange Act and the rules and regulations thereunder with respect to the matters set forth in this Section 2.12; provided, however, that, to the fullest extent permitted by law, any references in these By-Laws to the Exchange Act or the rules and regulations promulgated thereunder are not intended to and shall not limit any requirements applicable to nominations or proposals as to any other business to be considered pursuant to this Section 2.12 (including clause (c) of Section 2.12(a)(i) and Section 2.12(b) hereof), and compliance with clause (c) of Section 2.12(a)(i) and Section 2.12(b) shall be the exclusive means for a stockholder to make nominations or submit other business. Nothing in this Section 2.12 shall apply to the right, if any, of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation.

ARTICLE III BOARD OF DIRECTORS

Section 3.1 **Number; Election; Quorum; Voting**. Subject to the rights of holders of any series of Preferred Stock to elect additional directors, the Board shall consist, subject to the Certificate of Incorporation and the Stockholders Agreement, of such number of directors as shall from time to time be fixed exclusively by resolution adopted by the Board. Directors shall (except as hereinafter provided for the filling of vacancies and newly created directorships and except as otherwise expressly provided in the Certificate of Incorporation or the Stockholders Agreement) be elected by the holders of a plurality of the votes cast by the holders of shares present in person or represented by proxy at the meeting and entitled to vote on the election of such directors in accordance with the terms of the Certificate of Incorporation and the Stockholders Agreement, as applicable. A majority of the total number of directors fixed by resolution adopted by the Board pursuant to this Section 3.1 (including any vacancies and any unfilled newly created directorships) shall constitute a quorum for the transaction of business. Except as otherwise provided by law, these By-Laws, by the Certificate of Incorporation or by the Stockholders Agreement, the act of a majority of the directors present at any meeting at which there is a quorum shall be the act of the Board. Directors need not be stockholders.

Section 3.2 **Vacancies**. Subject to the rights of holders of any series of Preferred Stock to elect directors, the Certificate of Incorporation and the Stockholders Agreement, unless otherwise required by the DGCL, any newly created directorship on the Board that results from an increase in the number of directors and any vacancy occurring in the Board (whether by death, resignation, removal (including pursuant to the terms of the Certificate of Incorporation), retirement, or otherwise) shall be filled only by the affirmative vote of a majority of the directors then in office, although less than a quorum, or by a sole remaining director (and not by the stockholders of the Corporation).

Section 3.3 **Meetings of the Board**. Meetings of the Board shall be held at such place, if any, within or without the State of Delaware as may from time to time be fixed by resolution of the Board or as may be specified in the notice of any meeting. Regular meetings of the Board shall be held at such times as may from time to time be fixed by resolution of the Board and special meetings may be held at any time upon the call of the Chairman of the Board, the Chief Executive Officer, or by a majority of the total number of directors then in office, by written notice, including facsimile, e-mail or other means of electronic transmission, duly served on or sent and delivered to each director in accordance with Section 11.2. Notice of each special meeting of the Board shall be given, as provided in Section 11.2, to each director (i) at least twenty-four (24) hours before the meeting if such notice is oral notice given personally or by telephone or written notice given by hand delivery or by means of a form of electronic transmission and delivery; (ii) at least two (2) days before the meeting if such notice is sent by a nationally recognized overnight delivery service; and (iii) at least five (5) days before the meeting if such notice is sent through the United States first-class mail, postage prepaid. If the Secretary shall fail or refuse to give such notice, then the notice may be given by the officer who called the meeting or the directors who requested the meeting. The notice of any meeting need not specify the purposes thereof. A meeting of the Board may be held without notice immediately after the annual meeting of stockholders at the same place, if any, at which such meeting is held. Notice need not be given of regular meetings of the Board held at times fixed by resolution of the Board. Notice of any meeting need not be given to any director who shall attend such meeting (except when the director attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened), or who shall waive notice thereof, before or after such meeting, in writing (including by electronic transmission).

Section 3.4 **Committees**.

(a) Subject to the express terms of the Stockholders Agreement, the Board may by resolution of the Board designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Each committee shall keep regular minutes of its meetings and report the same to the Board. The Board shall have the power at any time to fill vacancies in, to change the membership of, or to dissolve any such committee.

(b) Any committee established pursuant to this Section 3.4, to the extent permitted by applicable law and by resolution of the Board, shall have and may exercise all of the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers that may require it.

(c) Subject to the express terms of the Stockholders Agreement, the Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of a member of the committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in place of any such absent or disqualified member.

(d) Unless the Board otherwise provides, the time, date, place, if any, and notice of meetings of a committee shall be determined by such committee. At meetings of a committee, a majority of the number of members of the committee (but not including any alternate member, unless such alternate member has replaced any absent or disqualified member at the time of, or in connection with, such meeting) shall constitute a quorum for the transaction of business. The act of a majority of the members present at any meeting at which a quorum is present shall be the act of the committee, except as otherwise specifically provided by applicable law, the Certificate of Incorporation, the Stockholders Agreement, these By-Laws or the Board. If a quorum is not present at a meeting of a committee, the members present may adjourn the meeting from time to time, without notice other than an announcement at the meeting, until a quorum is present. Unless the Board otherwise provides and except as provided in these By-Laws, each committee designated by the Board may make, alter, amend and repeal rules for the conduct of its business. In the absence of such rules each committee shall conduct its business in the same manner as the Board is authorized to conduct its business pursuant to this Article III.

Section 3.5 **Consent in Lieu of Meeting**. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing or by electronic transmission, which consent may be documented, signed and delivered in any manner permitted by Section 116 of the DGCL. After an action is taken, the writing or writings (including any electronic transmission or transmissions) relating thereto shall be filed with the minutes of proceedings of the Board.

Section 3.6 **Telephonic Meetings**. The members of the Board or any committee thereof may participate in a meeting of such Board or committee, as the case may be, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this subsection shall constitute presence in person at such a meeting.

Section 3.7 **Compensation**. Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, or as otherwise provided in the Stockholders Agreement, the Board shall have the authority to fix the compensation of directors, including for service on a committee of the Board, and may be paid either a fixed sum for attendance at each meeting of the Board or other compensation as director. Subject to the express terms of the Stockholders Agreement, the directors may be reimbursed their expenses, if any, of attendance at each meeting of the Board. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of committees of the Board may be allowed like compensation and reimbursement of expenses for service on the committee.

Section 3.8 **Interested Directors**. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association, or other organization in which one or more of its directors or officers are directors or officers or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board or committee thereof which authorizes the contract or transaction, or solely because his, her or their votes are counted for such purpose, if (a) the material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum, (b) the material facts as to his, her or their relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders or (c) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee which authorizes the contract or transaction.

ARTICLE IV OFFICERS

Section 4.1 **Officers**. The Board shall elect officers of the Corporation, including a Chief Executive Officer, a President and a Secretary. The Board may also from time to time elect such other officers as it may deem proper or may delegate to any elected officer of the Corporation the power to appoint and remove any such other officers and to prescribe their respective terms of office, authorities and duties. Any Vice President may be designated Executive, Senior or Corporate, or may be given such other designation or combination of designations as the Board or the Chief Executive Officer may determine. Any two (2) or more offices may be held by the same person. The Board may also elect or appoint a Chairman of the Board, who may or may not also be an officer of the Corporation. The Board may elect or appoint co-Chairmen of the Board, co-Presidents or co-Chief Executive Officers and, in such case, references in these By-Laws to the Chairman of the Board, the President or the Chief Executive Officer shall refer to either such co-Chairman of the Board, co-President or co-Chief Executive Officer, as the case may be.

Section 4.2 **Term; Removal**. All officers of the Corporation elected by the Board shall hold office for such terms as may be determined by the Board or, except with respect to his or her own office, the Chief Executive Officer, or until their respective successors are chosen and qualified or until his or her earlier resignation or removal. Any officer may be removed from office at any time either with or without cause by the Board, or, in the case of appointed officers, by the Chief Executive Officer or any elected officer upon whom such power of removal shall have been conferred by the Board.

Section 4.3 **Resignation**. Any officer may resign at any time by submitting his or her written resignation to the Corporation. Such resignation shall take effect at the time of its receipt by the Corporation, unless another time be fixed in the resignation, in which case it shall become effective at the time so fixed. The acceptance of a resignation shall not be required to make it effective unless and to the extent such condition is stated in such resignation.

Section 4.4 **Powers**. Each of the officers of the Corporation elected or appointed by the Board or appointed by an officer in accordance with these By-Laws shall have the powers and duties prescribed by law, by these By-Laws or by the Board and, in the case of appointed officers, the powers and duties prescribed by the Board or the appointing officer, and, unless otherwise prescribed by these By-Laws or by the Board or such appointing officer, shall have such further powers and duties as ordinarily pertain to that office.

Section 4.5 **Delegation**. Unless otherwise provided in these By-Laws, in the absence or disability of any officer of the Corporation, the Board or the Chief Executive Officer may, during such period, delegate such officer's powers and duties to any other officer or to any director and the person to whom such powers and duties are delegated shall, for the time being, hold such office.

ARTICLE V

INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

Section 5.1 **Limited Liability of Directors**. No director of the Corporation will have any personal liability to the Corporation or its stockholders for monetary damages for any breach of fiduciary duty as a director, except to the extent such exemption from liability or limitation thereof is not permitted under the DGCL as the same exists or hereafter may be amended. If the DGCL is amended to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended. Neither the amendment nor the repeal of this **Article V** shall eliminate or reduce the effect thereof in respect of any state of facts existing or act or omission occurring, or any cause of action, suit or claim that, but for this **Article V**, would accrue or arise, or otherwise adversely affect any limitation on the personal liability of a director of the Corporation existing prior to such amendment or repeal.

Section 5.2 **Right to Indemnification and Advancement of Expenses**. To the fullest extent permitted by applicable law, as the same exists or may hereafter be amended, the Corporation shall indemnify and hold harmless each person who is or was made a party or is threatened to be made a party to or is otherwise involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (a "**Proceeding**") by reason of the fact that he or she is or was a director or officer of the Corporation or, while a director or officer of the Corporation, is or was serving at the request of the Corporation as a director, manager, officer, employee or agent of another corporation or of a partnership, limited liability company, joint venture, trust, other enterprise or nonprofit entity, including service with respect to an employee benefit plan (an "**indemnitee**"), whether the basis of such Proceeding is alleged action in an official capacity as a director, officer, employee or agent, or in any other capacity while serving as a director, officer, employee or agent, against all liability and loss suffered and expenses (including, without limitation, attorneys' fees, judgments, fines and amounts paid in settlement) reasonably incurred by such indemnitee in connection with such Proceeding. The Corporation shall to the fullest extent not prohibited by applicable law pay the expenses (including attorneys' fees) incurred by an in defending or

otherwise participating in any Proceeding in advance of its final disposition indemnitee; provided, however, that, to the extent required by applicable law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an undertaking, by or on behalf of the indemnitee, to repay all amounts so advanced if it shall ultimately be determined that the is not entitled to be indemnified under this Section 5.2 or otherwise. The rights to indemnitee indemnification and advancement of expenses conferred by this Section 5.2 shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director, officer, employee or agent and shall inure to the benefit of his or her heirs, executors and administrators. Notwithstanding the foregoing provisions of this Section 5.2, except for Proceedings to enforce rights to indemnification and advancement of expenses, the Corporation shall indemnify and advance expenses to an indemnitee in connection with a Proceeding (or part thereof) initiated by such indemnitee only if such Proceeding (or part thereof) was authorized by the Board.

Section 5.3 Right of Indemnitee to Bring Suit. If a claim under Section 5.2 is not paid in full by the Corporation within (i) sixty (60) days after a written claim for indemnification has been received by the Corporation or (ii) twenty (20) days after a claim for an advancement of expenses has been received by the Corporation, the indemnitee may at any time thereafter bring suit against the Corporation to recover the unpaid amount of the claim or to obtain advancement of expenses, as applicable. To the fullest extent permitted by law, if the indemnitee is successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit. In (i) any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense of the Corporation that, and (ii) any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that, the indemnitee has not met any applicable standard for indemnification set forth in the DGCL. Neither the failure of the Corporation (including by its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met the applicable standard of conduct set forth in the DGCL, nor an actual determination by the Corporation (including by its directors who are not parties to such action, a committee of such directors, independent legal counsel, or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under this Article V or otherwise shall be on the Corporation.

Section 5.4 **Non-Exclusivity of Rights; Indemnification by Other Persons.**

(a) The provision of indemnification to or the advancement of expenses and costs to any indemnitee under this Article V, or the entitlement of any indemnitee to indemnification or advancement of expenses and costs under this Article V, shall not limit or restrict in any way the power of the Corporation to indemnify or advance expenses and costs to such indemnitee in any other way permitted by law or be deemed exclusive of, or invalidate, any right to which any indemnitee seeking indemnification or advancement of expenses and costs may be entitled under any law, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such indemnitee's capacity as an officer, director, employee or agent of the Corporation and as to action in any other capacity.

(b) Given that certain Jointly Indemnifiable Claims (as defined below) may arise due to the service of the indemnitee as a director and/or officer of the Corporation or as a director, officer, employee, agent or trustee of another corporation or of a partnership, joint venture, trust or other enterprise at the request of the Indemnitee-Related Entities (as defined below), the Corporation shall be fully and primarily responsible for the payment to the indemnitee in respect of indemnification or advancement of expenses in connection with any such Jointly Indemnifiable Claims, pursuant to and in accordance with the terms of this Article V, irrespective of any right of recovery the indemnitee may have from the Indemnitee-Related Entities. Under no circumstance shall the Corporation be entitled to any right of subrogation against or contribution by the Indemnitee-Related Entities and no right of advancement, indemnification or recovery the indemnitee may have from the Indemnitee-Related Entities shall reduce or otherwise alter the rights of the indemnitee or the obligations of the Corporation under this Article V. In the event that any of the Indemnitee-Related Entities shall make any payment to the indemnitee in respect of indemnification or advancement of expenses with respect to any jointly indemnifiable claim, the indemnitee-related entity making such payment shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee against the Corporation, and the indemnitee shall execute all papers reasonably required and shall do all things that may be reasonably necessary to secure such rights, including the execution of such documents as may be necessary to enable the Indemnitee-Related Entities effectively to bring suit to enforce such rights. Each of the Indemnitee-Related Entities shall be third-party beneficiaries with respect to this Section 5.4(b), entitled to enforce this Section 5.4(b). For purposes of this Section 5.4(b), the following terms shall have the following meanings:

(i) The term "Indemnitee-Related Entities" means any corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise (other than the Corporation or any other corporation, limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise for which the indemnitee has agreed, on behalf of the Corporation or at the Corporation's request, to serve as a director, officer, employee or agent and which service is covered by the indemnity described herein) from whom an indemnitee may be entitled to indemnification or advancement of expenses with respect to which, in whole or in part, the Corporation may also have an indemnification or advancement obligation.

(ii) The term "Jointly Indemnifiable Claims" shall be broadly construed and shall include, without limitation, any action, suit or proceeding for which the indemnitee shall be entitled to indemnification or advancement of expenses from both the Indemnitee-Related Entities and the Corporation pursuant to applicable law, any agreement, certificate of incorporation, by-laws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or comparable organizational documents of the Corporation or the Indemnitee-Related Entities, as applicable.

Section 5.5 **Contract Rights**. The rights conferred upon indemnitees in this **Article V** shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director or officer and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this **Article V** that adversely affects any right of an indemnitee or its successors shall be prospective only (except to the extent such amendment or change in law permits the Corporation to provide broader indemnification rights to all such parties on a retroactive basis than permitted prior thereto) and shall not limit, eliminate, or impair any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment or repeal.

Section 5.6 **Insurance**. The Corporation may purchase and maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 5.7 **Employees and Agents**. The Corporation may, to the extent authorized from time to time by the Board, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation to the fullest extent of the provisions of this **Article V** with respect to the indemnification and advancement of expenses of directors and officers of the Corporation.

Section 5.8 **Severability**. If any provision or provisions of this **Article V** shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this **Article V** shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this **Article V** (including, without limitation, each such portion of this **Article V** containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, illegal or unenforceable.

ARTICLE VI CORPORATE BOOKS

Section 6.1 **Corporate Books**. The books of the Corporation may be kept inside or outside of the State of Delaware at such place or places as the Board may from time to time determine.

ARTICLE VII CHECKS, NOTES, PROXIES, ETC.

Section 7.1 **Checks, Notes, Proxies, Etc.** All checks and drafts on the Corporation's bank accounts and all bills of exchange and promissory notes, and all acceptances, obligations and other instruments for the payment of money, shall be signed by such officer or officers or agent or agents as shall be authorized from time to time by the Board or such officer or officers

who may be delegated such authority. Proxies to vote and consents with respect to securities of other corporations or other entities owned by or standing in the name of the Corporation may be executed and delivered from time to time on behalf of the Corporation by the Chairman of the Board, the Chief Executive Officer, or by such officers as the Chairman of the Board, the Chief Executive Officer or the Board may from time to time determine.

ARTICLE VIII

SHARES AND OTHER SECURITIES OF THE CORPORATION

Section 8.1 **Certificated and Uncertificated Shares**. The shares of the Corporation may be certificated or uncertificated, subject to the sole discretion of the Board and the requirements of the DGCL.

Section 8.2 **Signatures**. Each certificate representing capital stock of the Corporation shall be signed by or in the name of the Corporation by any two (2) authorized officers of the Corporation, which authorized officers shall include, without limitation, the Chairman of the Board, the Chief Executive Officer, the President, any Vice President, the Chief Financial Officer, the Secretary or any Assistant Secretary of the Corporation. Any or all of the signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, such certificate may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar on the date of issue.

Section 8.3 **Lost, Destroyed or Wrongfully Taken Certificates**.

(a) If an owner of a certificate representing shares claims that such certificate has been lost, destroyed or wrongfully taken, the Corporation shall issue a new certificate representing such shares or such shares in uncertificated form if the owner: (i) requests such a new certificate before the Corporation has notice that the certificate representing such shares has been acquired by a protected purchaser; (ii) if requested by the Corporation, delivers to the Corporation a bond sufficient to indemnify the Corporation against any claim that may be made against the Corporation on account of the alleged loss, wrongful taking or destruction of such certificate or the issuance of such new certificate or uncertificated shares; and (iii) satisfies other reasonable requirements imposed by the Corporation.

(b) If a certificate representing shares has been lost, apparently destroyed or wrongfully taken, and the owner fails to notify the Corporation of that fact within a reasonable time after the owner has notice of such loss, apparent destruction or wrongful taking and the Corporation registers a transfer of such shares before receiving notification, the owner shall, to the fullest extent permitted by law, be precluded from asserting against the Corporation any claim for registering such transfer or a claim to a new certificate representing such shares or such shares in uncertificated form.

Section 8.4 **Transfer of Stock**

(a) Shares of the Corporation shall be transferable in the manner prescribed by law and in these By-Laws subject to any transfer restrictions contained in the Certificate of Incorporation, the Stockholders Agreement, the Third Amended and Restated LLC Agreement of Bakkt Holdings, LLC (“**Bakkt LLC**”), dated as of October 15, 2021, by and among Bakkt LLC, the Corporation and the other Bakkt LLC members that are parties thereto (as it may be amended, supplemented or otherwise modified from time to time in accordance with its terms, the “**LLC Agreement**”), and the Exchange Agreement, dated as of October 15, 2021, by and among the Corporation, Bakkt LLC and the other parties thereto (as it may be amended, supplemented or otherwise modified from time to time in accordance with its terms, the “**Exchange Agreement**”). Transfers of record of shares of stock of the Corporation shall be made only upon the books administered by or on behalf of the Corporation and only upon proper transfer instructions, including by electronic transmission, pursuant to the direction of the registered holder thereof, such person’s attorney lawfully constituted in writing, or from an individual presenting proper evidence of succession, assignment or authority to transfer the shares of stock; or, in the case of stock represented by certificate(s) upon delivery of a properly endorsed certificate(s) for a like number of shares or accompanied by a duly executed stock transfer power. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation an entry showing the names of the persons from and to whom it was transferred.

(b) The Corporation shall have power to enter into and perform any agreement with any number of stockholders of any one or more classes of stock of the corporation to restrict the transfer of shares of stock of the Corporation of any one or more classes owned by such stockholders in any manner not prohibited by the DGCL, the Stockholders Agreement, the LLC Agreement, the Exchange Agreement or the Certificate of Incorporation.

Section 8.5 **Registered Stockholders**. Before due presentment for registration of transfer of a certificate representing shares of the Corporation or of an instruction requesting registration of transfer of uncertificated shares, the Corporation may treat the registered owner as the person exclusively entitled to inspect for any proper purpose the stock ledger and the other books and records of the Corporation, vote such shares, receive dividends or notifications with respect to such shares and otherwise exercise all the rights and powers of the owner of such shares, except that a person who is the beneficial owner of such shares (if held in a voting trust or by a nominee on behalf of such person) may, upon providing documentary evidence of beneficial ownership of such shares and satisfying such other conditions as are provided under applicable law, may also so inspect the books and records of the Corporation.

Section 8.6 **Regulations**. The Board shall have power and authority to make such additional rules and regulations, subject to any applicable requirement of law, as the Board may deem necessary and appropriate with respect to the issue, transfer or registration of transfer of shares of stock or certificates representing shares. The Board may appoint one or more transfer agents or registrars and may require for the validity thereof that certificates representing shares bear the signature of any transfer agent or registrar so appointed.

**ARTICLE IX
FISCAL YEAR**

Section 9.1 **Fiscal Year**. The fiscal year of the Corporation shall be, unless otherwise determined by resolution of the Board, the calendar year ending on December 31.

**ARTICLE X
CORPORATE SEAL**

Section 10.1 **Corporate Seal**. The corporate seal shall have inscribed thereon the name of the Corporation. In lieu of the corporate seal, when so authorized by the Board or a duly empowered committee thereof, a facsimile thereof may be impressed or affixed or reproduced.

**ARTICLE XI
GENERAL PROVISIONS**

Section 11.1 **Notice**. Whenever notice is required to be given by law or under any provision of the Certificate of Incorporation or these By-Laws, notice of any meeting need not be given to any person who shall attend such meeting (except when the person attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened), or who shall waive notice thereof, before or after such meeting, in writing (including by electronic transmission).

Section 11.2 **Means of Giving Notice**. Except as otherwise set forth in any applicable law or any provision of the Certificate of Incorporation or these By-Laws, notice of any meeting shall be given by the following means:

(a) **Notice to Directors**. Whenever under applicable law, the Certificate of Incorporation or these By-Laws notice is required to be given to any director, such notice shall be given either (i) in writing and sent by mail, or by a nationally recognized delivery service, (ii) by means of facsimile telecommunication or other form of electronic transmission, or (iii) by oral notice given personally or by telephone. A notice to a director will be deemed given as follows: (i) if given by hand delivery, orally, or by telephone, when actually received by the director, (ii) if sent through the United States mail, when deposited in the United States mail, with postage and fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iii) if sent for next day delivery by a nationally recognized overnight delivery service, when deposited with such service, with fees thereon prepaid, addressed to the director at the director's address appearing on the records of the Corporation, (iv) if sent by facsimile telecommunication, when sent to the facsimile transmission number for such director appearing on the records of the Corporation, (v) if sent by electronic mail, when sent to the electronic mail address for such director appearing on the records of the Corporation, or (vi) if sent by any other form of electronic transmission, when sent to the address, location or number (as applicable) for such director appearing on the records of the Corporation.

(b) **Definitions**. An "electronic transmission" means any form of communication, not directly involving the physical transmission of paper, including the use of, or participation in, one or more electronic networks or databases (including one or more distributed electronic networks or databases), that creates a record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form

by such a recipient through an automated process. An “electronic mail” means an electronic transmission directed to a unique electronic mail address (which electronic mail shall be deemed to include any files attached thereto and any information hyperlinked to a website if such electronic mail includes the contact information of an officer or agent of the corporation who is available to assist with accessing such files and information). An “electronic mail address” means a destination, commonly expressed as a string of characters, consisting of a unique user name or mailbox (commonly referred to as the “local part” of the address) and a reference to an internet domain (commonly referred to as the “domain part” of the address), whether or not displayed, to which electronic mail can be sent or delivered.

(c) Notice to Stockholders Sharing Same Address. Without limiting the manner by which notice otherwise may be given effectively by the Corporation to stockholders, any notice to stockholders given by the Corporation under any provision of the DGCL, the Certificate of Incorporation or these By-Laws shall be effective if given by a single written notice to stockholders who share an address if consented to by the stockholders at that address to whom such notice is given. A stockholder may revoke such stockholder’s consent by delivering written notice of such revocation to the Corporation. Any stockholder who fails to object in writing to the Corporation within sixty (60) days of having been given written notice by the Corporation of its intention to send such a single written notice shall be deemed to have consented to receiving such single written notice.

(d) Exceptions to Notice Requirements.

(i) Whenever notice is required to be given, under the DGCL, the Certificate of Incorporation or these By-Laws, to any person with whom communication is unlawful, the giving of such notice to such person shall not be required and there shall be no duty to apply to any governmental authority or agency for a license or permit to give such notice to such person. Any action or meeting that shall be taken or held without notice to any such person with whom communication is unlawful shall have the same force and effect as if such notice had been duly given. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of the State of Delaware, the certificate shall state, if such is the fact and if notice is required, that notice was given to all persons entitled to receive notice except such persons with whom communication is unlawful.

(ii) Whenever notice is required to be given by the Corporation, under any provision of the DGCL, the Certificate of Incorporation or these By-Laws, to any stockholder to whom (x) notice of two (2) consecutive annual meetings of stockholders and all notices of stockholder meetings or of the taking of action by written consent of stockholders without a meeting to such stockholder during the period between such two (2) consecutive annual meetings, or (y) all, and at least two (2) payments (if sent by first-class mail) of dividends or interest on securities during a twelve (12)-month period, have been mailed addressed to such stockholder at such stockholder’s address as shown on the records of the Corporation and have been returned undeliverable, the giving of such notice to such stockholder shall not be required. Any action or meeting that shall be taken or held without notice to such stockholder shall have the same force and effect as if such notice had been duly given. If any such stockholder shall deliver to the Corporation

a written notice setting forth such stockholder's then current address, the requirement that notice be given to such stockholder shall be reinstated. In the event that the action taken by the Corporation is such as to require the filing of a certificate with the Secretary of State of the State of Delaware, the certificate need not state that notice was not given to persons to whom notice was not required to be given pursuant to Section 230(b) of the DGCL. The exception in subsection (x) of the first sentence of this paragraph to the requirement that notice be given shall not be applicable to any notice returned as undeliverable if the notice was given by electronic transmission. The exception in subsection (x) of the first sentence of this paragraph to the requirement that notice be given shall not be applicable to any stockholder whose electronic mail address appears on the records of the corporation and to whom notice by electronic transmission is not prohibited by Section 232 of the DGCL.

Section 11.3 **Headings**. Section headings in these By-Laws are for convenience of reference only and shall not be given any substantive effect in limiting or otherwise construing any provision herein.

Section 11.4 **Conflicts**. In the event that any provision of these By-Laws is or becomes inconsistent with any provision of the Certificate of Incorporation or the DGCL, the provision of the Certificate of Incorporation shall prevail.

ARTICLE XII AMENDMENTS

Section 12.1 **Amendments**. These By-Laws may be made, amended, altered, changed, added to or repealed as set forth in the Certificate of Incorporation.

AMENDMENT NO. 1 TO CONTRIBUTION AGREEMENT

This Amendment, dated as of November 3, 2025 (this “Amendment”), to the Contribution Agreement, dated as of October 16, 2025 (the “Original Agreement”), is by and among Bakkt Holdings, Inc. (the “Corporate Taxpayer”), Akshay Sudhir Naheta (“AN”) and Intercontinental Exchange Holdings, Inc. (“ICE,” and together with AN, the “Contributors”). Unless context otherwise requires, capitalized terms used herein but not defined herein shall have the meanings assigned to such terms in the Tax Receivable Agreement, dated as of October 15, 2021 (as amended or otherwise modified prior to the execution and delivery of this Amendment, the “TRA”).

WHEREAS, on October 16, 2025, the Corporate Taxpayer publicly announced a reorganization of certain of its entities that, if consummated, will result in the elimination of its umbrella partnership-C-corporation structure and the Corporate Taxpayer becoming a wholly owned subsidiary of Bakkt NewCo Holdings, Inc., a Delaware corporation and a direct, wholly owned subsidiary of the Corporate Taxpayer (“NewCo”), a new holding company that will replace the Corporate Taxpayer as the public company trading on the New York Stock Exchange (the “Up-C Collapse”);

WHEREAS, pursuant to the Up-C Collapse, (1) Bakkt Merger Sub 1, Inc., a Delaware corporation and a direct, wholly owned subsidiary of NewCo, will merge with and into the Corporate Taxpayer (the “PubCo Merger”), and in connection with the PubCo Merger, each share of Class A Common Stock of the Corporate Taxpayer issued and outstanding immediately prior to the PubCo Merger will be converted into the right to receive one share of Class A Common Stock of NewCo (“NewCo Class A Common Stock”) and each share of Class V Common Stock of the Corporate Taxpayer issued and outstanding immediately prior to the PubCo Merger will be converted into the right to receive one share of Class V Common Stock of NewCo (“NewCo Class V Common Stock”) (collectively, the “PubCo Merger Share Conversions”), and (2) Bakkt Merger Sub 2, LLC, a Delaware limited liability company and a direct, wholly owned subsidiary of NewCo, will merge with and into Bakkt Opco Holdings, LLC, a Delaware limited liability company (“Bakkt OpCo”) (the “OpCo Merger”), and in connection with the OpCo Merger, each common unit of Bakkt OpCo (excluding any such units owned by the Corporate Taxpayer), together with the share of NewCo Class V Common Stock paired therewith, issued and outstanding immediately prior to the OpCo Merger will be exchanged for the right to receive one share of NewCo Class A Common Stock (the “OpCo Merger Equity Exchange”);

WHEREAS, in connection with the Up-C Collapse, all outstanding warrants to purchase shares of Class A Common Stock of the Corporate Taxpayer will be exchanged by the holders thereof for equivalent warrants to purchase shares of NewCo Class A Common Stock (the “Warrant Exchange”);

WHEREAS, on October 16, 2025, prior to the public announcement of the Up-C Collapse, the Corporate Taxpayer and the Contributors agreed to certain amendments to the TRA, in each case to be effective only immediately prior to and subject to the consummation of the Up-C Collapse (the “TRA Amendment”);

WHEREAS, concurrently with the execution of the TRA Amendment on October 16, 2025, the Corporate Taxpayer and the Contributors entered into the Original Agreement pursuant to which the Contributors agreed that immediately prior to the effectiveness of the TRA Amendment, (a) the Contributors would contribute the Contributed Rights (as defined below) to NewCo in exchange for cash and (b) the Contributors would contribute such cash to NewCo in exchange for newly issued common shares of NewCo, in each case upon the terms described in the Original Agreement and on a net-settled basis;

WHEREAS, the Corporate Taxpayer and the Contributors wish to amend the Original Agreement to agree instead that immediately prior to the effectiveness of the TRA Amendment, (a) the Contributors shall contribute the Contributed Rights to NewCo in exchange for cash and (b) (i) AN shall contribute such cash payable to AN to NewCo in exchange for newly issued shares of NewCo Class A Common Stock and (ii) ICE shall contribute such cash payable to ICE to NewCo in exchange for newly issued shares of Class A Non-Voting Convertible Preferred Stock of NewCo with the terms set forth in the certificate of designation attached to this Amendment as Exhibit A (the “NewCo Convertible Preferred Stock”), in each case upon the terms described in this Agreement and on a net-settled basis (the “Contributions”);

WHEREAS, the shares of NewCo Convertible Preferred Stock received by ICE in the Contributions will automatically convert into shares of NewCo Class A Common Stock (the “Preferred Share Conversion”) upon the expiration or termination of the applicable waiting period (and any extension thereof, including pursuant to any timing agreement(s)) under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”) (such expiration or termination, the “Waiting Period Expiry Date”); and

WHEREAS, the parties intend that for U.S. federal income tax purposes, (x) the PubCo Merger Share Conversions, the OpCo Merger Equity Exchange and the Contributions will qualify as a nonrecognition transaction under Section 351 of the U.S. Internal Revenue Code of 1986, as amended (the “Code”); (y) the PubCo Merger Share Conversions and the Warrant Exchange will qualify as a reorganization that is a nonrecognition transaction under Sections 368(a) and 354 of the Code; and (z) the Preferred Share Conversion upon the Waiting Period Expiry Date will qualify as a reorganization that is a nonrecognition transaction under Sections 368(a) and 354 of the Code (collectively, the “Intended Tax Treatment”).

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. A new second recital is hereby added to the Original Agreement as follows:

“WHEREAS, pursuant to the Up-C Collapse, (1) Bakkt Merger Sub 1, Inc., a Delaware corporation and a direct, wholly owned subsidiary of NewCo, will merge with and into the Corporate Taxpayer (the “PubCo Merger”), and in connection with the PubCo Merger, each share of Class A Common Stock of the Corporate Taxpayer issued and outstanding immediately prior to the PubCo Merger

will be converted into the right to receive one share of Class A Common Stock of NewCo ("NewCo Class A Common Stock") and each share of Class V Common Stock of the Corporate Taxpayer issued and outstanding immediately prior to the PubCo Merger will be converted into the right to receive one share of Class V Common Stock of NewCo ("NewCo Class V Common Stock") (collectively, the "PubCo Merger Share Conversions"), and (2) Bakkt Merger Sub 2, LLC, a Delaware limited liability company and a direct, wholly owned subsidiary of NewCo, will merge with and into Bakkt Opco Holdings, LLC, a Delaware limited liability company ("Bakkt OpCo") (the "OpCo Merger"), and in connection with the Opco Merger, each common unit of Bakkt OpCo (excluding any such units owned by the Corporate Taxpayer), together with the share of NewCo Class V Common Stock paired therewith, issued and outstanding immediately prior to the OpCo Merger will be exchanged for the right to receive one share of NewCo Class A Common Stock (the "OpCo Merger Equity Exchange");"

2. A new third recital is hereby added to the Original Agreement as follows:

"WHEREAS, in connection with the Up-C Collapse, all outstanding warrants to purchase shares of Class A Common Stock of the Corporate Taxpayer will be exchanged by the holders thereof for equivalent warrants to purchase shares of NewCo Class A Common Stock (the "Warrant Exchange");"

3. The second recital of the Original Agreement is hereby deleted in its entirety and replaced with the following:

"WHEREAS, the parties intend that for U.S. federal income tax purposes, (x) the PubCo Merger Share Conversions, the OpCo Merger Equity Exchange and the Contributions will qualify as a nonrecognition transaction under Section 351 of the U.S. Internal Revenue Code of 1986, as amended (the "Code"); (y) the PubCo Merger Share Conversions and the Warrant Exchange will qualify as a reorganization that is a nonrecognition transaction under Sections 368(a) and 354 of the Code; and (z) the Preferred Share Conversion upon the Waiting Period Expiry Date will qualify as a reorganization that is a nonrecognition transaction under Sections 368(a) and 354 of the Code (collectively, the "Intended Tax Treatment");"

4. The fourth recital of the Original Agreement is hereby deleted in its entirety and replaced with the following:

"WHEREAS, the Contributors are TRA Parties and, along with the Corporate Taxpayer, desire to enter into this Agreement, pursuant to which the Contributors agree that immediately prior to the effectiveness of the TRA Amendment, (a) the Contributors shall contribute the Contributed Rights to NewCo in exchange for cash and (b) (i) AN shall contribute such cash payable to AN to NewCo in exchange for newly issued shares of NewCo Class A Common Stock and (ii) ICE shall contribute such cash payable to ICE to NewCo in exchange for newly issued shares of Class A Non-Voting Convertible Preferred Stock of NewCo with the terms set forth in the certificate of designation attached to this Agreement as Exhibit A (the "NewCo Convertible Preferred Stock"), in each case upon the terms described in this Agreement and on a net-settled basis (the "Contributions");"

5. A new sixth recital is hereby added to the Original Agreement as follows:

“WHEREAS, the shares of NewCo Convertible Preferred Stock received by ICE in the Contributions will automatically convert into shares of NewCo Class A Common Stock (the “Preferred Share Conversion”) upon the expiration or termination of the applicable waiting period (and any extension thereof, including pursuant to any timing agreement(s)) under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”) (such expiration or termination, the “Waiting Period Expiry Date”);”

6. Section 1 of the Original Agreement is hereby deleted in its entirety and replaced with the following:

“Contribution. On the terms and subject to the conditions set forth in this Agreement, (i) each Contributor hereby agrees to transfer to NewCo, and NewCo agrees to acquire and accept from each Contributor, all of such Contributor’s respective rights, title, interests, and obligations under the TRA (the “Contributed Rights”) in exchange for a payment to such Contributor by NewCo of cash in an amount equal to the Early Termination Payment to which such Contributor would otherwise be entitled under the TRA (provided, the amount of such Early Termination Payment shall not exceed the applicable Early Termination Payment Cap), (ii) AN agrees to contribute such amount of cash payable to AN to NewCo, and NewCo agrees to issue to AN in exchange therefor, such number of shares of NewCo Class A Common Stock as shall be equal to the quotient of (A) the Early Termination Payment to which AN would otherwise be entitled under the TRA (provided, the amount of such Early Termination Payment shall not exceed the applicable Early Termination Payment Cap) divided by (B) the “Minimum Price” as defined in NYSE Rule 312.04(h), and (iii) ICE agrees to contribute such amount of cash payable to ICE to NewCo, and NewCo agrees to issue to ICE in exchange therefor, such number of shares of NewCo Convertible Preferred Stock as shall be equal to the quotient of (A) the Early Termination Payment to which ICE would otherwise be entitled under the TRA (provided, the amount of such Early Termination Payment shall not exceed the applicable Early Termination Payment Cap) divided by (B) the “Minimum Price” as defined in NYSE Rule 312.04(h); provided, for purposes of determining the amount of the Early Termination Payment pursuant to this Section 1(a), the Early Termination Rate means 18% per annum, compounded annually; provided, further, that the parties hereto agree that the respective obligations of each Contributor and NewCo to transfer cash to each other in clauses (i), (ii) and (iii) above shall be net-settled and offset against one another. “Early Termination Payment Cap” means, in respect of a Contributor, the amount of an applicable Early Termination Payment in respect of such Contributor, calculated as if the applicable Early Termination Date is the date of the TRA Amendment.”

7. Section 2 of the Original Agreement is hereby deleted in its entirety and replaced with the following:
- “Intended Tax Treatment. The Corporate Taxpayer and the Contributors shall file all tax returns and information returns in a manner consistent with the Intended Tax Treatment, unless otherwise required pursuant to a final determination within the meaning of Section 1313 of the Code, and shall timely file all forms, documentation and statements required in connection with such treatment, including without limitation the statements and information required by Treasury Regulations Section 1.351-3 and Treasury Regulations Section 1.368-3(a) as well as IRS Form 8937 (Report of Organizational Actions Affecting Basis of Securities). This Agreement constitutes, and is hereby adopted as, a plan of reorganization within the meaning of Treasury Regulations Sections 1.368-2(g) and 1.368-3(a).”
8. A new Section 4 is hereby added to the Original Agreement as follows:
- “Antitrust Notifications. Each of ICE and NewCo shall (and the Corporate Taxpayer shall cause NewCo to) (a) as soon as practicable following the consummation of Up-C Collapse, file with the United States Federal Trade Commission (the “FTC”) and the United States Department of Justice (the “DOJ”) the notification and report form required to be filed by such party pursuant to the HSR Act in connection with the Preferred Share Conversion, (b) cooperate with the other party in preparing any filing or submission pursuant to the HSR Act, including but not limited to, furnishing promptly to the other party such information and assistance as the other party may reasonably request in connection with the preparation of any filing or submission as may be required to be filed by such party under the HSR Act, (c) respond as promptly as reasonably practicable after receiving any inquiries or requests for additional information from the FTC or the DOJ in connection with any filing or submission pursuant to the HSR Act, and (d) keep the other party apprised and at the other party’s request of the status of any communications with, and any inquiries or requests for additional information from, the FTC or the DOJ.”
9. Exhibit A. The certificate of designation of NewCo Convertible Preferred Stock attached to this Amendment as Exhibit A is hereby added to the Original Agreement as Exhibit A thereto.
10. Continued Validity. Unless otherwise modified or supplemented by the terms of this Amendment, all terms and conditions of the Original Agreement shall continue in full force and effect.
11. Further Assurances. Subject to the terms and conditions of this Amendment, each of the Corporate Taxpayer and the Contributors hereby agrees to promptly execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such documents and other instruments, and to take, or cause to be taken, such further actions, in each case, as may be reasonably required to carry out the provisions of this Amendment.

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12. Miscellaneous. Sections 4 and 5 of the Original Agreement are incorporated by reference into this Amendment, *mutatis mutandis*. Sections 7.2, 7.4 through 7.9, 7.12, 7.13 and 7.15 of the TRA shall apply to this Amendment, *mutatis mutandis*. No amendment to the TRA shall be required to the extent any entity becomes a successor of any of the parties thereto.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this Amendment has been duly executed and delivered by the undersigned as of the date first above written.

BAKKT HOLDINGS, INC.

By: /s/ Marc D’Annunzio
Name: Marc D’Annunzio
Title: General Counsel

INTERCONTINENTAL EXCHANGE HOLDINGS, INC.

By: /s/ Andrew Surdykowski
Name: Andrew Surdykowski
Title: General Counsel

AKSHAY SUDHIR NAHETA

By: /s/ Akshay Sudhir Naheta
Akshay Sudhir Naheta

[Signature Page to Amendment No. 1 to Contribution Agreement]

Exhibit A

Certificate of Designation of NewCo Convertible Preferred Stock

BAKKT HOLDINGS, INC.
CERTIFICATE OF DESIGNATION OF PREFERENCES,
RIGHTS AND LIMITATIONS
OF
SERIES A NON-VOTING CONVERTIBLE PREFERRED STOCK

Pursuant to Section 151 of the
General Corporation Law of the State of Delaware

THE UNDERSIGNED DOES HEREBY CERTIFY, on behalf of Bakkt Holdings, Inc., a Delaware corporation (the “**Corporation**”), that the following resolutions were duly adopted by the Board of Directors of the Corporation (the “**Board of Directors**”), in accordance with the provisions of Section 151 of the General Corporation Law of the State of Delaware (the “**DGCL**”), by unanimous written consent of the Board of Directors on November 3, 2025, which resolutions provide for the creation of a series of the Corporation’s Preferred Stock, par value \$0.0001 per share, which is designated as “**Series A Non-Voting Convertible Preferred Stock**,” with the preferences, rights and limitations set forth therein relating to dividends, conversion, redemption, dissolution and distribution of assets of the Corporation.

WHEREAS, the Corporation’s Amended and Restated Certificate of Incorporation, dated as of November 3, 2025 (as the same may be amended and/or restated from time to time in accordance with its terms and applicable law, the “**Certificate of Incorporation**”), provides for a class of its authorized stock known as Preferred Stock, consisting of 1,000,000 shares, \$0.0001 par value per share (the “**Preferred Stock**”), issuable from time to time in one or more series, and expressly authorizes the Board of Directors to provide, out of the unissued shares of Preferred Stock, for series of Preferred Stock, and, with respect to each such series, to establish and fix the number of shares constituting any series of Preferred Stock and the designations, rights, preferences, powers, restrictions and limitations of the shares of such series;

RESOLVED, that 465,890 shares of Preferred Stock are designated as Series A Non-Voting Convertible Preferred Stock; and

RESOLVED, the designations, rights, preferences, powers, restrictions and limitations of the shares of the Series A Non-Voting Convertible Preferred Stock are as follows:

TERMS OF SERIES A NON-VOTING CONVERTIBLE PREFERRED STOCK

1. **Definitions.** For the purposes hereof, the following terms shall have the following meanings:

“**Affiliate**” of any Person means any Person that directly or indirectly Controls, is Controlled by or is under common Control with the Person in question.

“**Business Day**” means any day except any Saturday, any Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of New York are authorized or required by law or other governmental action to close.

“**Buy-In**” shall have the meaning set forth in Section 6.3.3.

“Class A Common Stock” means the Corporation’s Class A Common Stock, par value \$0.0001 per share.

“Common Stock” means the Class A Common Stock, the Corporation’s Class V common stock, par value \$0.0001 per share, and stock of any other class of securities into which such securities may hereafter be reclassified or changed.

“Contribution Agreement” means the Contribution Agreement, dated as of October 16, 2025, by and among Bakkt Holdings, Inc., as predecessor to the Corporation, Akshay Sudhir Naheta and ICE, as the same may be amended and/or restated from time to time in accordance with its terms.

“Control” means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies, whether through ownership of voting securities, by contract or otherwise.

“Conversion Shares” means the shares of Class A Common Stock issuable upon conversion of the shares of Series A Non-Voting Preferred Stock (as defined herein) in accordance with the terms hereof.

“Governmental Entity” means any domestic or non-U.S. legislative, administrative or regulatory authority, agency, commission, body, court or other governmental or quasi-governmental entity of competent jurisdiction, including any supranational body, in each case with competent jurisdiction.

“Holder” means a holder of shares of Series A Non-Voting Convertible Preferred Stock.

“HSR Waiting Period” means the waiting period (and any extension thereof, including pursuant to any timing agreement(s) with a Governmental Entity applicable to the consummation of the Share Issuance) applicable to the consummation of the Share Issuance under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

“ICE” means Intercontinental Exchange Holdings, Inc.

“Non-Affiliate Transfer” means a direct transfer to a Person that is not an Affiliate of the Holder.

“Person” means an individual or corporation, partnership, trust, incorporated or unincorporated association, joint venture, limited liability company, joint stock company, government (or an agency or subdivision thereof) or other entity of any kind.

“Share Issuance” means the issuance of shares of Class A Common Stock to ICE or any of its Affiliates pursuant to the conversion provisions of this Certificate of Designation.

“TRA Amendment” means the amendment, dated as of October 16, 2025, to the Tax Receivable Agreement, dated as of October 15, 2021, by and among Bakkt Holdings, Inc., as predecessor to the Corporation, and the persons named therein.

“Trading Day” means a day on which the principal Trading Market is open for business.

“Trading Market” means any of the following markets or exchanges on which the Class A Common Stock is listed or quoted for trading on the date in question: the NYSE American, the Nasdaq Capital Market, the Nasdaq Global Market, the Nasdaq Global Select Market, or the New York Stock Exchange (or any successors to any of the foregoing).

“**Waiting Period Expiry Date**” means the date of the expiration or termination of the HSR Waiting Period.

2. Designation, Amount and Par Value. The series of Preferred Stock shall be designated as the Corporation’s Series A Non-Voting Convertible Preferred Stock (the “**Series A Non-Voting Preferred Stock**”) and the number of shares so designated shall be 465,890. The Series A Non-Voting Preferred Stock shall have a par value of \$0.0001 per share.

3. Dividends. Holders shall be entitled to receive, and the Corporation shall pay, dividends on shares of the Series A Non-Voting Preferred Stock (on an as-if-converted-to-Class-A-Common-Stock basis) equal to and in the same form, and in the same manner, as dividends (other than dividends on shares of the Class A Common Stock payable in the form of Common Stock) actually paid on shares of the Class A Common Stock when, as and if such dividends (other than dividends payable in the form of Common Stock) are paid on shares of the Class A Common Stock. Other than as set forth in the previous sentence, no other dividends shall be paid on shares of Series A Non-Voting Preferred Stock, and the Corporation shall pay no dividends (other than dividends payable in the form of Common Stock) on shares of the Class A Common Stock unless it simultaneously complies with the previous sentence.

4. Voting Rights.

4.1 Except as otherwise provided herein or as otherwise required by the DGCL, the Series A Non-Voting Preferred Stock shall have no voting rights. However, as long as any shares of Series A Non-Voting Preferred Stock are outstanding, the Corporation shall not, without the affirmative vote or written waiver of the holders of a majority of the then outstanding shares of the Series A Non-Voting Preferred Stock, alter or change adversely the powers, preferences or rights herein given to the Series A Non-Voting Preferred Stock or alter or amend this Certificate of Designation of Preferences, Rights and Limitations of Series A Non-Voting Convertible Preferred Stock (the “**Certificate of Designation**”), amend or repeal any provision of, or add any provision to, the Certificate of Incorporation or the Amended and Restated Bylaws of the Corporation, or file any articles of amendment, certificate of designations, preferences, limitations and relative rights of any series of Preferred Stock, in each case if such action would adversely alter or change the preferences, rights, privileges or powers of, or restrictions provided for the benefit of the Series A Non-Voting Preferred Stock, regardless of whether any of the foregoing actions shall be by means of amendment to the Certificate of Incorporation or by merger, consolidation, recapitalization, reclassification, conversion or otherwise. Holders of shares of Class A Common Stock acquired upon the conversion of shares of Series A Non-Voting Preferred Stock shall be entitled to the same voting rights as each other holder of Class A Common Stock.

4.2 Any vote required or permitted under Section 4.1 may be taken at a meeting of the Holders or through the execution of an action by written consent in lieu of such meeting or other written waiver by such stockholders; provided, that the consent or waiver is executed by Holders representing a majority of the outstanding shares of Series A Non-Voting Preferred Stock.

5. Rank; Liquidation.

5.1 The Series A Non-Voting Preferred Stock shall rank *pari passu* in right of payment of dividends and distributions of assets upon liquidation, dissolution or winding up of the Corporation, whether voluntarily or involuntarily (a “**Liquidation**”), with any other series of Preferred Stock of the Corporation that by its terms ranks *pari passu* in such rights with the Series A Non-Voting Preferred Stock.

5.2 Upon any Liquidation, each Holder shall be entitled to receive out of the assets, whether capital or surplus, of the Corporation the same amount that a holder of Common Stock would receive if the Series A Non-Voting Preferred Stock were fully converted to Class A Common Stock, which amounts shall be paid *pari passu* with all holders of Common Stock, including an additional amount equal to any dividends declared on but unpaid to such shares. Before any payment of proceeds shall be made or any assets distributed to the holders of shares of Common Stock or any other class or series of the Corporation's capital stock ranking junior as to liquidation rights to the Series A Non-Voting Preferred Stock, each Holder shall be entitled to receive out of the assets, whether capital or surplus, of the Corporation an amount on such date equal to \$0.01 per share of Series A Non-Voting Preferred Stock (the "**Liquidation Preference**"). If upon any Liquidation the assets available for payment of the Liquidation Preference are insufficient to permit the payment of the Liquidation Preference to the Holders as well as any preferential amounts due to any other class or series of the Corporation's capital stock ranking *pari passu* as to liquidation rights to the Series A Non-Voting Preferred Stock, then all the remaining available assets shall be distributed pro rata among the Holders and then outstanding shares of any other class or series of the Corporation's capital stock ranking *pari passu* as to liquidation rights to the Series A Non-Voting Preferred Stock in accordance with the respective liquidation preferences of any such classes or series. For the avoidance of any doubt, a Fundamental Transaction (as defined herein) shall not be deemed a Liquidation unless the Corporation expressly declares that such Fundamental Transaction shall be treated as if it were a Liquidation.

5.3 After the payment of the full preferential amount described in Section 5.2 due to Holders and any other class or series of the Corporation's capital stock ranking prior to the Common Stock as to distributions upon Liquidation, the remaining assets (if any) of the Corporation available for distribution to its stockholders shall be distributed among the Holders and holders of shares of Common Stock (and shares of any other class or series entitled to share pro rata in liquidating distributions with the Common Stock), pro rata based on the number of shares held by each such holder, treating one share of Series A Non-Voting Preferred Stock as equivalent to the number of shares of Common Stock into which such share of Series A Non-Voting Preferred Stock would convert for such purpose.

5.4 Neither the consolidation, merger or reorganization of the Corporation into or with any other entity, nor the sale or transfer by the Corporation of all or any part of its assets, nor the reduction of the capital stock of the Corporation, shall be deemed to be a Liquidation; provided, however, that in any such transaction, the holders of the Series A Non-Voting Preferred Stock will be entitled to receive the same consideration per share as holders of Common Stock as if the Series A Non-Voting Preferred Stock had fully converted to Class A Common Stock immediately prior to such transaction.

6. Conversion.

6.1 Conversion. Effective as of the earlier of 11:59 p.m. Eastern time on the Waiting Period Expiry Date or the date of any Non-Affiliate Transfer of shares of Series A Non-Voting Preferred Stock by the Holder thereof (such earlier time or date, the "**Conversion Date**"), each share of Series A Non-Voting Preferred Stock then outstanding (upon the Waiting Period Expiry Date) or transferred (in the case of a Non-Affiliate Transferred), as applicable, shall automatically convert into a number of shares of Class A Common Stock equal to the Conversion Ratio (as defined below) (the "**Conversion**"). The shares of Series A Non-Voting Preferred Stock that are converted in the Conversion are referred to as the "**Converted Stock**". The Conversion Shares shall be issued as follows:

6.2.1 Converted Stock that is registered in book entry form shall be automatically cancelled upon the Conversion and converted into the corresponding Conversion Shares, which shares shall be issued in book entry form and without any action on the part of the Holders and shall be delivered to the Holders within two Business Days of the effectiveness of the Conversion.

6.2.2 Converted Stock that is issued in certificated form shall be deemed converted into the corresponding Conversion Shares on the date of Conversion and the Holder's rights as a holder of such shares of Converted Stock shall cease and terminate on such date, excepting only the right to receive the Conversion Shares upon the Holder tendering to the Corporation (or its designated agent) the stock certificate(s) (duly endorsed) representing such certificated Converted Stock.

6.2.3 Notwithstanding the cancellation of the Converted Stock upon the Conversion, Holders of Converted Stock shall continue to have any remedies provided herein or otherwise available at law or in equity to such Holder because of a failure by the Corporation to comply with the terms of this Certificate of Designation. In all cases, the Holder shall retain all of its rights and remedies for the Corporation's failure to convert the Converted Stock.

6.2 Conversion Ratio. The "**Conversion Ratio**" for each share of Series A Non-Voting Preferred Stock shall be one share of Class A Common Stock issuable upon the conversion (the "**Conversion**") of each share of Series A Non-Voting Preferred Stock (corresponding to a ratio of 1:1), subject to adjustment as provided herein.

6.3 Mechanics of Conversion.

6.3.1 Delivery of Certificate or Electronic Issuance. Not later than two Trading Days after the Conversion Date, or if the Holder requests the issuance of physical certificate(s), two Trading Days after receipt by the Corporation of the original certificate(s) representing such shares of Series A Non-Voting Preferred Stock being converted, duly endorsed (the "**Share Delivery Date**"), the Corporation shall either: (a) deliver, or cause to be delivered, to the converting Holder physical certificates representing the number of Conversion Shares being acquired upon the conversion of shares of Series A Non-Voting Preferred Stock; or (b) at the Holder's election, credit the Conversion Shares to the account of the Holder's prime broker with DTC through its Deposit Withdrawal Agent Commission system (a "**DWAC Delivery**").

6.3.2 Obligation Absolute. The Corporation's obligation to issue and deliver the Conversion Shares upon conversion of Series A Non-Voting Preferred Stock in accordance with the terms hereof is absolute and unconditional, irrespective of any action or inaction by a Holder to enforce the same, any waiver or consent with respect to any provision hereof, the recovery of any judgment against any Person or any action to enforce the same, or any setoff, counterclaim, recoupment, limitation or termination, or any breach or alleged breach by such Holder or any other Person of any obligation to the Corporation or any violation or alleged violation of law by such Holder or any other Person, and irrespective of any other circumstance which might otherwise limit such obligation of the Corporation to such Holder in connection with the issuance of such Conversion Shares.

6.3.3 Buy-In on Failure to Timely Deliver Certificates. If the Corporation fails to deliver to a Holder the applicable certificates or to effect a DWAC Delivery, as applicable, by the Share Delivery Date pursuant to Section 6.3.1 (other than a failure caused by Holder, including materially incorrect or incomplete information provided by Holder to the Corporation), and if after such Share Delivery Date such Holder is required by its brokerage firm to purchase (in an open market transaction or otherwise), or the Holder's brokerage firm otherwise purchases, shares of Class A Common Stock to deliver in satisfaction of a sale by such Holder of the Conversion Shares which such Holder was entitled to receive upon the conversion relating to such Share Delivery Date (a "**Buy-In**"), then the Corporation shall (A) pay in cash to such Holder (in addition to any other remedies available to or elected by such Holder) the amount by which (x) such Holder's total purchase price (including any brokerage commissions) for the shares of Class A Common Stock so purchased exceeds (y) the product of (1) the

aggregate number of shares of Class A Common Stock that such Holder was entitled to receive from the conversion at issue multiplied by (2) the actual sale price at which the sell order giving rise to such purchase obligation was executed (including any brokerage commissions) and (B) at the option of such Holder, either reissue (if surrendered) the shares of Series A Non-Voting Preferred Stock equal to the number of shares of Series A Non-Voting Preferred Stock submitted for conversion or deliver to such Holder the number of shares of Class A Common Stock that would have been issued if the Corporation had timely complied with its delivery requirements under Section 6.3.1. For example, if a Holder purchases shares of Class A Common Stock having a total purchase price of \$11,000 to cover a Buy-In with respect to an attempted conversion of shares of Series A Non-Voting Preferred Stock with respect to which the actual sale price (including any brokerage commissions) giving rise to such purchase obligation was a total of \$10,000 under clause (A) of the immediately preceding sentence, the Corporation shall be required to pay such Holder \$1,000. The Holder shall provide the Corporation written notice, within three (3) Trading Days after the occurrence of a Buy-In, indicating the amounts payable to such Holder in respect of such Buy-In together with applicable confirmations and other evidence reasonably requested by the Corporation. Nothing herein shall limit a Holder's right to pursue any other remedies available to it hereunder, at law or in equity, including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Corporation's failure to timely deliver certificates representing shares of Class A Common Stock upon conversion of the shares of Series A Non-Voting Preferred Stock as required pursuant to the terms hereof.

6.3.4 Reservation of Shares Issuable Upon Conversion. The Corporation covenants that at all times until the Waiting Period Expiry Date it will reserve and keep available out of its authorized and unissued shares of Class A Common Stock for the sole purpose of issuance upon conversion of the Series A Non-Voting Preferred Stock, free from preemptive rights or any other actual contingent purchase rights of Persons other than the Holders of the Series A Non-Voting Preferred Stock, not less than such aggregate number of shares of the Class A Common Stock as shall be issuable (taking into account the adjustments of Section 7) upon the conversion of all outstanding shares of Series A Non-Voting Preferred Stock. The Corporation covenants that all shares of Class A Common Stock that shall be so issuable shall, upon issue, be duly authorized, validly issued, fully paid and non-assessable.

6.3.5 Fractional Shares. No fractional shares of Class A Common Stock shall be issued upon conversion of the Series A Non-Voting Preferred Stock, no certificates or scrip for any such fractional shares shall be issued and no cash shall be paid for any such fractional shares. Any fractional shares of Class A Common Stock that a Holder of Series A Non-Voting Preferred Stock would otherwise be entitled to receive shall be aggregated with all fractional shares of Class A Common Stock issuable to such Holder and any remaining fractional shares shall be rounded up to the nearest whole share.

6.3.6 Transfer Taxes. The issuance of certificates for shares of the Class A Common Stock upon conversion of the Series A Non-Voting Preferred Stock shall be made without charge to any Holder for any documentary stamp or similar taxes that may be payable in respect of the issue or delivery of such certificates; provided, that the Corporation shall not be required to pay any tax that may be payable in respect of any transfer involved in the issuance and delivery of any such certificate upon conversion in a name other than that of the registered Holder(s) of such shares of Series A Non-Voting Preferred Stock, and the Corporation shall not be required to issue or deliver such certificates unless or until the Person or Persons requesting the issuance thereof shall have paid to the Corporation the amount of such tax or shall have established to the satisfaction of the Corporation that such tax has been paid.

6.4 Status as Stockholder. Upon the Conversion Date, (i) the shares of Series A Non-Voting Preferred Stock being converted shall be deemed converted into shares of Class A Common Stock; and (ii) the Holder's rights as a holder of such converted shares of Series A Non-Voting Preferred Stock shall cease and terminate, excepting only the right to receive certificates for such shares of Class A Common Stock and to any remedies provided herein or otherwise available at law or in equity to such

Holder because of a failure by the Corporation to comply with the terms of this Certificate of Designation. In all cases, the Holder shall retain all of its rights and remedies for the Corporation's failure to convert Series A Non-Voting Preferred Stock. In no event shall the Series A Non-Voting Preferred Stock convert into shares of Class A Common Stock prior to the Waiting Period Expiry Date; provided, however, that the shares of Series A Non-Voting Preferred Stock shall automatically convert into shares of Class A Common Stock in the event of a Non-Affiliate Transfer by any Holder, and the Corporation shall promptly take action to effect the conversion into shares of Class A Common Stock in connection with any such Non-Affiliate Transfer.

7. Certain Adjustments.

7.1 Stock Dividends and Stock Splits. If the Corporation, at any time while this Series A Non-Voting Preferred Stock is outstanding: (A) pays a stock dividend or otherwise makes a distribution or distributions payable in shares of Class A Common Stock (which, for avoidance of doubt, shall not include any shares of Class A Common Stock issued by the Corporation upon conversion of this Series A Non-Voting Preferred Stock) with respect to the then outstanding shares of Class A Common Stock; (B) subdivides outstanding shares of Class A Common Stock into a larger number of shares; or (C) combines (including by way of a reverse stock split) outstanding shares of Class A Common Stock into a smaller number of shares, then the Conversion Ratio shall be multiplied by a fraction of which the numerator shall be the number of shares of Class A Common Stock (excluding any treasury shares of the Corporation) outstanding immediately after such event and of which the denominator shall be the number of shares of Class A Common Stock outstanding immediately before such event (excluding any treasury shares of the Corporation). Any adjustment made pursuant to this Section 7.1 shall become effective immediately after the record date for the determination of stockholders entitled to receive such dividend or distribution and shall become effective immediately after the effective date in the case of a subdivision or combination.

7.2 Fundamental Transaction. If, at any time while this Series A Non-Voting Preferred Stock is outstanding, (A) the Corporation effects any merger or consolidation of the Corporation with or into another Person or any stock sale to, or other business combination (including, without limitation, a reorganization, recapitalization, spin-off, share exchange or scheme of arrangement) with or into another Person (other than such a transaction in which the Corporation is the surviving or continuing entity and its Class A Common Stock is not exchanged for or converted into other securities, cash or property), (B) the Corporation effects any sale, lease, transfer or exclusive license of all or substantially all of its assets in one transaction or a series of related transactions, (C) any tender offer or exchange offer (whether by the Corporation or another Person) is completed pursuant to which more than 50% of the Class A Common Stock not held by the Corporation or such Person is exchanged for or converted into other securities, cash or property, or (D) any reclassification, reorganization or recapitalization of shares of Class A Common Stock or any compulsory share exchange pursuant to which the shares of Class A Common Stock are effectively converted into or exchanged for other securities, cash or property (in any such case, a "**Fundamental Transaction**"), then, upon any subsequent conversion of this Series A Non-Voting Preferred Stock the Holders shall have the right to receive, in lieu of the right to receive Conversion Shares, for each Conversion Share that would have been issuable upon such conversion immediately prior to the occurrence of such Fundamental Transaction), the same kind and amount of securities, cash or property as it would have been entitled to receive upon the occurrence of such Fundamental Transaction if it had, immediately prior to such Fundamental Transaction, converted the Series A Non-Voting Preferred Stock immediately prior to such Fundamental Transaction (the "**Alternate Consideration**"). For purposes of any such subsequent conversion, the determination of the Conversion Ratio shall be appropriately adjusted to apply to such Alternate Consideration based on the amount of Alternate Consideration issuable in respect of one share of Class A Common Stock in such Fundamental Transaction, and the Corporation shall adjust the Conversion Ratio in a reasonable manner reflecting the relative value of any different components of

the Alternate Consideration. If holders of Class A Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Transaction, then each Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Series A Non-Voting Preferred Stock following such Fundamental Transaction. To the extent necessary to effectuate the foregoing provisions, any successor to the Corporation or surviving entity in such Fundamental Transaction shall file a new certificate of designation with the same terms and conditions and issue to the Holders new preferred stock consistent with the foregoing provisions and evidencing the Holders' right to convert such preferred stock into Alternate Consideration. The terms of any agreement to which the Corporation is a party and pursuant to which a Fundamental Transaction is effected shall include terms requiring any such successor or surviving entity to comply with the provisions of this Section 7.2 and insuring that this Series A Non-Voting Preferred Stock (or any such replacement security) will be similarly adjusted upon any subsequent transaction analogous to a Fundamental Transaction. The Corporation shall cause to be delivered to each Holder, at its last address as it shall appear upon the stock books of the Corporation, written notice of any Fundamental Transaction at least 20 calendar days prior to the date on which such Fundamental Transaction is expected to become effective or close.

7.3 Calculations. All calculations under this Section 7 shall be made to the nearest cent or the nearest 1/100th of a share, as the case may be. For purposes of this Section 7, the number of shares of Class A Common Stock deemed to be issued and outstanding as of a given date shall be the number of shares of Class A Common Stock (excluding any treasury shares of the Corporation) issued and outstanding.

8. Redemption. The shares of Series A Non-Voting Preferred Stock shall not be redeemable; provided, however, that the foregoing shall not limit the ability of the Corporation to purchase or otherwise deal in such shares to the extent otherwise permitted hereby and by law.

9. Transfer. A Holder may transfer any shares of Series A Non-Voting Preferred Stock together with the accompanying rights set forth herein, held by such holder without the consent of the Corporation; provided, that such transfer is in compliance with applicable laws. The shares of Series A Non-Voting Preferred Stock shall automatically convert into shares of Class A Common Stock in the event of a Non-Affiliate Transfer by any Holder, and the Corporation shall promptly take action to effect the conversion into shares of Class A Common Stock in connection with any such Non-Affiliate Transfer. The Corporation shall in good faith (i) do and perform, or cause to be done and performed, all such further acts and things, and (ii) execute and deliver all such other agreements, certificates, instruments and documents, in each case, as any holder of Series A Non-Voting Preferred Stock may reasonably request in order to carry out the intent and accomplish the purposes of this Section 9.

10. Series A Non-Voting Preferred Stock Register. The Corporation shall maintain at its principal executive offices (or such other office or agency of the Corporation as it may designate by notice to the Holders in accordance with Section 11), a register for the Series A Non-Voting Preferred Stock, in which the Corporation shall record (i) the name, address, and electronic mail address of each Holder in whose name the shares of Series A Non-Voting Preferred Stock have been issued and (ii) the name, address, and electronic mail address of each transferee of any shares of Series A Non-Voting Preferred Stock. The Corporation may deem and treat the registered Holder of shares of Series A Non-Voting Preferred Stock as the absolute owner thereof for the purpose of any conversion thereof and for all other purposes. The Corporation shall keep the register open and available at all times during business hours for inspection by any Holder or his, her or its legal representatives.

11. Notices. Any notice required or permitted by the provisions of this Certificate of Designation to be given to a Holder shall be mailed, postage prepaid, to the post office address last shown on the records of the Corporation, or given by electronic transmission in compliance with the provisions of the DGCL, and shall be deemed sent upon such mailing or electronic transmission.

12. Book-Entry; Certificates. The Series A Non-Voting Preferred Stock will be issued in book-entry form; provided, that, if a Holder requests that such Holder's shares of Series A Non-Voting Preferred Stock be issued in certificated form, the Corporation will instead issue a stock certificate to such Holder representing such Holder's shares of Series A Non-Voting Preferred Stock. To the extent that any shares of Series A Non-Voting Preferred Stock are issued in book-entry form, references herein to "certificates" shall instead refer to the book-entry notation relating to such shares.

13. Lost or Mutilated Series A Non-Voting Preferred Stock Certificate. If a Holder's Series A Non-Voting Preferred Stock certificate shall be mutilated, lost, stolen or destroyed, the Corporation may, on such terms as to indemnity or otherwise as it may reasonably impose, execute and deliver, in exchange and substitution for and upon cancellation of a mutilated certificate, or in lieu of or in substitution for a lost, stolen or destroyed certificate, a new certificate for the shares of Series A Non-Voting Preferred Stock so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such certificate, and of the ownership hereof reasonably satisfactory to the Corporation.

14. Waiver. Any waiver by the Corporation or a Holder of a breach of any provision of this Certificate of Designation shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Certificate of Designation or a waiver by any other Holders. The failure of the Corporation or a Holder to insist upon strict adherence to any term of this Certificate of Designation on one or more occasions shall not be considered a waiver or deprive that party (or any other Holder) of the right thereafter to insist upon strict adherence to that term or any other term of this Certificate of Designation. Any waiver by the Corporation or a Holder must be in writing. Notwithstanding any provision in this Certificate of Designation to the contrary, any provision contained herein and any right of the Holders of Series A Non-Voting Preferred Stock granted hereunder may be waived as to all shares of Series A Non-Voting Preferred Stock (and the Holders thereof) upon the written consent of the Holders of not less than a majority of the shares of Series A Non-Voting Preferred Stock then outstanding; provided, however, that any proposed waiver that would, by its terms, have a disproportionate and materially adverse effect on any Holder shall require the consent of such Holder(s).

15. Severability. Whenever possible, each provision hereof shall be interpreted in a manner as to be effective and valid under applicable law, but if any provision hereof is held to be prohibited by or invalid under applicable law, then such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating or otherwise adversely affecting the remaining provisions hereof.

16. Status of Converted Series A Non-Voting Preferred Stock. If any shares of Series A Non-Voting Preferred Stock shall be converted or redeemed by the Corporation, such shares shall, to the fullest extent permitted by applicable law, be retired and cancelled upon such acquisition, and shall not be reissued as a share of Series A Non-Voting Preferred Stock. Any share of Series A Non-Voting Preferred Stock so acquired shall, upon its retirement and cancellation, and upon the taking of any action required by applicable law, resume the status of authorized but unissued shares of preferred stock and shall no longer be designated as Series A Non-Voting Preferred Stock.

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IN WITNESS WHEREOF, Bakkt Holdings, Inc. has caused this Certificate of Designation of Preferences, Rights and Limitations of Series A Non-Voting Convertible Preferred Stock to be duly executed by its General Counsel on November 3, 2025.

BAKKT HOLDINGS, INC.

By: /s/ Marc D’Annunzio
Name: Marc D’Annunzio
Title: General Counsel

[Signature Page to Certificate of Designation]

DESCRIPTION OF SECURITIES

General

The following description of the capital stock of Bakkt Holdings, Inc., a Delaware corporation (the “Company”) is a summary of the rights of the Company’s securities and certain provisions of the Company’s certificate of incorporation (as may be amended and/or amended or restated in accordance with its terms and applicable law, the “Certificate of Incorporation”) and bylaws (as may be amended and/or amended or restated in accordance with its terms and applicable law, the “By-Laws”). This summary does not purport to be complete and is qualified in its entirety by the provisions of the Certificate of Incorporation and By-Laws, copies of which have been filed as exhibits to the Current Report on Form 8-K of which this Exhibit 99.1 is a part.

Authorized Stock

The authorized capital stock of the Company consists of 571,000,000 shares of capital stock, \$0.0001 par value per share, of which:

- 560,000,000 shares are designated as Class A common stock (the “Class A Common Stock”);
- 10,000,000 shares are designated as Class V common stock (the “Class V Common Stock”); and
- 1,000,000 shares are designated as preferred stock (the “Preferred Stock” and together with the Class A Common Stock and Class V Common Stock, the “Shares”).

Each outstanding share of Class V Common Stock is paired with, and inseparable from, one common unit of Bakkt Opco Holdings, LLC, a Delaware limited liability company (“Opco”) (“Opco Common Unit”) (representing a limited liability company interest in Opco), and together they form one paired interest (“Paired Interest”). No Opco Common Unit may exist without the corresponding share of Class V Common Stock (and no Class V Common Stock shall exist other than in conjunction with an Opco Common Unit), which together comprise the Paired Interests.

Common Stock

The Certificate of Incorporation authorizes two classes of common stock: Class A Common Stock and Class V Common Stock. The rights of holders of Class A Common Stock and Class V Common Stock are identical, except as set forth below.

Dividend Rights

Subject to preferences that may be applicable to any outstanding Preferred Stock, holders of shares of Class A Common Stock are entitled to receive ratably such dividends, if any, as may be declared from time to time by the Company’s board of directors (the “Board”) out of funds legally available for such purposes.

Shares of Class V Common Stock are not entitled to dividends declared by the Board. However, holders of shares Class V Common Stock are entitled to pro rata distributions by virtue of holding Opco Common Units paired with such shares of Class V Common Stock.

Voting Rights

Except as set forth in that certain Voting Agreement, dated October 15, 2021, by and between the Company and Intercontinental Exchange Holdings, Inc., a Delaware corporation, each holder of Class A Common Stock and Class V Common Stock is entitled to one vote for each share of Class A Common Stock and each share of Class V Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote. Holders of Class A Common Stock and Class V Common Stock do not have cumulative voting rights in the election of directors. Holders of Class V Common Stock will vote together with holders of the Class A Common Stock as a single class on all matters presented to the Company's stockholders for their vote or approval, other than as required by the Delaware General Corporation Law ("DGCL"). Generally, all matters to be voted on by stockholders must be approved by a majority (or, in the case of election of directors, by a plurality) of the votes entitled to be cast by all stockholders present in person or represented by proxy, voting together as a single class.

Liquidation Rights

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company's affairs, holders of Class A Common Stock will be entitled to share ratably in all assets remaining after payment of the Company's debts and other liabilities, subject to prior distribution rights of Preferred Stock or any class or series of stock having a preference over the Class A Common Stock, then outstanding, if any.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company's affairs, holders of Class V Common Stock are not entitled to receive any assets of the Company; however, by virtue of holding Opco Common Units, such holders are entitled to share ratably in all assets of Opco remaining after payment of Opco's debts and other liabilities.

Fully Paid and Nonassessable

All shares of Class A Common Stock and Class V Common Stock are fully paid and non-assessable.

No Preemptive, Conversion or Similar Rights

The holders of Class A Common Stock and Class V Common Stock have no pre-emptive or conversion rights or other subscription rights. There are no redemption or sinking fund provisions applicable to the Class A Common Stock or the Class V Common Stock. The rights, preferences and privileges of holders of the Class A Common Stock and Class V Common Stock will be subject to those of holders of any shares of the Preferred Stock the Company may issue in the future.

Issuance and Retirement of Class V Common Stock

Outstanding shares of Class V Common Stock will be retired upon the surrender to the Company of Paired Interests in exchange for shares of Class A Common Stock or a cash amount, as specified in that certain Exchange Agreement, dated October 15, 2021, by and among the Company, Opco and Opco equity holders. The Company will not issue additional shares of Class V Common Stock other than in connection with the valid issuance or transfer of paired Opco Common Units, in accordance with Opco's Third Amended and Restated LLC Agreement.

Preferred Stock

The Certificate of Incorporation authorizes the Board to establish one or more series of Preferred Stock. Unless required by law or any stock exchange, the authorized shares of Preferred Stock are available for issuance without further action by holders of any class of common stock. The Board has the discretion to determine the powers, preferences and relative, participating, optional and other special rights, including voting rights, dividend rights, conversion rights, redemption privileges and liquidation preferences, of each series of Preferred Stock.

The issuance of Preferred Stock may have the effect of delaying, deferring or preventing a change in control of the Company without further action by the stockholders. Additionally, the issuance of Preferred Stock may adversely affect holders of shares of common stock by restricting dividends on the Class A Common Stock, diluting the voting power of the Class A Common Stock and the Class V Common Stock or subordinating the liquidation rights of the Class A Common Stock.

Warrants

As a result of the Company's deregistration under the Cayman Islands Companies Law (2020 Revision) and a domestication under Section 388 of the DGCL, pursuant to which the Company's jurisdiction of incorporation was changed from the Cayman Islands to the State of Delaware, the Warrants, which were previously exercisable for Class A ordinary shares of the Company, par value \$0.0001 per share ("Class A Ordinary Shares"), became warrants to purchase shares of Class A Common Stock.

Each Warrant entitles the registered holder to purchase one share of Class A Common Stock at a price of \$11.50 per share, subject to adjustment as discussed below. Pursuant to that certain Warrant Agreement, dated September 22, 2020, by and between the Company and the warrant agent named therein (as may be amended from time to time, the "Warrant Agreement"), a holder of Warrants ("Warrant Holder") may exercise its Warrants only for a whole number of shares. This means that only an even number of Warrants may be exercised at any given time by a holder of Warrants. However, except as set forth below, no Warrants are exercisable for cash unless the Company has an effective and current registration statement covering the Class A Common Stock issuable upon exercise of the Warrants and a current prospectus relating to such. Notwithstanding the foregoing, during any period when the Company fails to maintain an effective registration statement, Warrant Holders may exercise Warrants on a cashless basis pursuant to an available exemption from registration under the Securities Act. If an exemption from registration is not available, Warrant Holders will not be able to exercise their Warrants on a cashless basis. To the extent they are not redeemed or liquidated earlier, the Warrants will expire at 5:00 p.m., Eastern Time on October 15, 2026.

If the shares of Class A Common Stock are, at the time of any exercise of a Warrant, not listed on a national securities exchange such that they satisfy the definition of “covered securities” under the Securities Act, the Company may, at its option, require holders of Warrants who exercise Warrants to exercise such Warrants on a “cashless basis” and (i) in the event the Company so elects, the Company will not be required to file or maintain in effect a registration statement for the registration, under the Securities Act, of the shares of Class A Common Stock issuable upon exercise of the Warrants, or (ii) if the Company does not so elect, the Company must use its best efforts to register or qualify for sale the shares of Class A Common Stock issuable upon exercise of the Warrants under the blue sky laws of the state of residence of the exercising Warrant Holder to the extent an exemption is not available. If the Company requires the “cashless” exercise of Warrants, each holder would pay the exercise price by surrendering the Warrants for that number of shares of Class A Common Stock equal to the quotient obtained by dividing (x) the product of the number of shares underlying the Warrants, multiplied by the difference between the exercise price of the Warrants and the “fair market value” (defined below) by (y) the fair market value. The “fair market value” will mean the average reported last sale price of the shares of Class A Common Stock for the 10 trading days ending on the third trading day prior to the date on which the notice of redemption is sent to the holders of Warrants. Whether the Company will exercise its option to require all holders to exercise their Warrants on a “cashless basis” will depend on a variety of factors including the price of the shares of Class A Common Stock at the time the Warrants are called for redemption, the Company’s cash needs at such time and concerns regarding dilutive share issuances.

Redemption for Cash

The Company may call the Warrants for redemption, in whole and not in part, at a price of \$0.01 per Warrant:

- at any time while the Warrants are exercisable;
- upon not less than 30 days’ prior written notice of redemption to each holder of Warrants;
- if and only if, the reported last sale price of the shares of the Class A Common Stock equals or exceeds \$18.00 per share, for any 20 trading days within a 30-day trading period ending on the third business day prior to the notice of redemption to holders of Warrant; and
- if and only if, there is a current registration statement in effect with respect to the Class A Common Stock underlying such Warrants at the redemption date and for the entire 30-day trading period referred to above and continuing each day thereafter until the date of redemption.

Redemption for Shares

The Company may call the Warrants redemption of shares of Class A Common Stock, in whole and not in part, at a price of \$0.10 per Warrant:

- at any time while the Warrants are exercisable;
- upon not less than 30 days’ prior written notice of redemption to each Warrant Holder; provided that holders will be able to exercise their Warrants on a cashless basis prior to redemption and receive that number of shares determined by reference to the table below, based on the redemption date and the “fair market value” (as defined below) of the Class A Common Stock except as otherwise described below;

- the reported last sale price of the shares of the Class A Common Stock equals or exceeds \$10.00 per share, for any 20 trading days within a 30-day trading period ending on the third business day prior to the notice of redemption to Warrant Holders; and
- there is a current registration statement in effect with respect to the Class A Common Stock underlying the Warrants at the redemption date and for the entire 30-day trading period referred to above and continuing each day thereafter until the date of redemption.

Beginning on the date the notice of redemption for shares of Class A Common Stock is given and until the Warrants are redeemed or exercised, holders may elect to exercise their Warrants on a cashless basis. The numbers in the table below represent the number of shares of Class A Common Stock that a Warrant Holder will receive upon such cashless exercise in connection with a redemption by the Company pursuant to this redemption feature, based on the “fair market value” of shares of the Class A Common Stock on the corresponding redemption date (assuming holders elect to exercise their Warrants and such Warrants are not redeemed for \$0.10 per Warrant), determined for these purposes based on the volume-weighted average price of the shares of Class A Common Stock during the 10 trading days immediately following the date on which the notice of redemption is sent to the Warrant Holders, and the number of months that the corresponding redemption date precedes the expiration date of the Warrants, each as set forth in the table below. The Company will provide Warrant Holders with the final fair market value no later than one business day after the 10-trading day period described above ends.

Redemption Date	Redemption Fair Market Value of Shares of Class A Common Stock (period to expiration of Warrants)								
	≤ \$10.00	\$11.00	\$12.00	\$13.00	\$14.00	\$15.00	\$16.00	\$17.00	≥ \$18.00
60 months	0.261	0.281	0.297	0.311	0.324	0.337	0.348	0.358	0.361
57 months	0.257	0.277	0.294	0.310	0.324	0.337	0.348	0.358	0.361
54 months	0.252	0.272	0.291	0.307	0.322	0.335	0.347	0.357	0.361
51 months	0.246	0.268	0.287	0.304	0.320	0.333	0.346	0.357	0.361
48 months	0.241	0.263	0.283	0.301	0.317	0.332	0.344	0.356	0.361
45 months	0.235	0.258	0.279	0.298	0.315	0.330	0.343	0.356	0.361
42 months	0.228	0.252	0.274	0.294	0.312	0.328	0.342	0.355	0.361
39 months	0.221	0.246	0.269	0.290	0.309	0.325	0.340	0.354	0.361
36 months	0.213	0.239	0.263	0.285	0.305	0.323	0.339	0.353	0.361
33 months	0.205	0.232	0.257	0.280	0.301	0.320	0.337	0.352	0.361
30 months	0.196	0.224	0.250	0.274	0.297	0.316	0.335	0.351	0.361
27 months	0.185	0.214	0.242	0.268	0.291	0.313	0.332	0.350	0.361
24 months	0.173	0.204	0.233	0.260	0.285	0.308	0.329	0.348	0.361
21 months	0.161	0.193	0.223	0.252	0.279	0.304	0.326	0.347	0.361
18 months	0.146	0.179	0.211	0.242	0.271	0.298	0.322	0.345	0.361
15 months	0.130	0.164	0.197	0.230	0.262	0.291	0.317	0.342	0.361
12 months	0.111	0.146	0.181	0.216	0.250	0.282	0.312	0.339	0.361
9 months	0.090	0.125	0.162	0.199	0.237	0.272	0.305	0.336	0.361
6 months	0.065	0.099	0.137	0.178	0.219	0.259	0.296	0.331	0.361
3 months	0.034	0.065	0.104	0.150	0.197	0.243	0.286	0.326	0.361
0 months	—	—	0.042	0.115	0.179	0.233	0.281	0.323	0.361

The exact fair market value and redemption date may not be set forth in the table above, in which case, if the fair market value is between two values in the table or the redemption date is between two redemption dates in the table, the number of shares of Class A Common Stock to be issued for each Warrant exercised will be determined by a straight-line interpolation between the number of shares set forth for the higher and lower fair market values and the earlier and later redemption dates, as applicable, based on a 365 or 366-day year, as applicable. For example, if the volume weighted average price of shares of Class A Common Stock during the 10 trading days immediately following the date on which the notice of redemption is sent to the holders of the Warrants is \$11.00 per share, and at such time there are 57 months until the expiration of the Warrants, holders may choose to, in connection with this redemption feature, exercise their Warrants for 0.277 shares of Class A Common Stock for each whole Warrant. For an example where the exact fair market value and redemption date are not as set forth in the table above, if the volume-weighted average price of the shares of Class A Common Stock during the 10 trading days immediately following the date on which the notice of redemption is sent to the holders of the Warrants is \$13.50 per share, and at such time there are 38 months until the expiration of the Warrants, holders may choose to, in connection with this redemption feature, exercise their Warrants for 0.298 shares of Class A Common Stock for each whole Warrant. In no event will the Warrants be exercisable on a cashless basis in connection with this redemption feature for more than 0.361 shares of Class A Common Stock per Warrant (subject to adjustment). Finally, as reflected in the table above, if the Warrants are out of the money and about to expire, they cannot be exercised on a cashless basis in connection with a redemption by the Company pursuant to this redemption feature, since they will not be exercisable for any shares of Class A Common Stock.

The right to exercise will be forfeited unless the Warrants are exercised prior to the date specified in the notice of redemption. On and after the redemption date, a record holder of a Warrant will have no further rights except to receive the redemption price for such holder's Warrant upon surrender of such Warrant.

The redemption criteria for the Warrants have been established at a price that is intended to provide Warrant Holders a reasonable premium to the initial exercise price and provide a sufficient differential between the then-prevailing share price and the Warrant exercise price so that if the share price declines as a result of a redemption call, the redemption will not cause the share price to drop below the exercise price of the Warrants.

Except as described above, no Warrants will be exercisable, and the Company will not be obligated to issue shares of Class A Common Stock unless at the time a holder seeks to exercise such Warrant, a prospectus relating to the Class A Common Stock issuable upon exercise of the Warrants is current and the shares of Class A Common Stock have been registered or qualified or deemed to be exempt under the securities laws of the state of residence of the holder of the Warrants. Under the terms of the Warrant Agreement, the Company has agreed to use its best

efforts to meet these conditions and to maintain a current prospectus relating to the Class A Common Stock issuable upon exercise of the Warrants until the expiration of the Warrants. However, the Company cannot assure you that it will be able to do so and, if it does not maintain a current prospectus relating to the Class A Common Stock issuable upon exercise of the Warrants, holders will be unable to exercise their Warrants and the Company will not be required to settle any such Warrant. If the prospectus relating to the Class A Common Stock issuable upon the exercise of the Warrants is not current or if the Class A Common Stock is not qualified or exempt from qualification in the jurisdictions in which the holders of the Warrants reside, the Company will not be required to net cash settle or cash settle the Warrant exercise, the Warrants may have no value, the market for the Warrants may be limited and the Warrants may expire worthless.

Holders of Warrants may elect, at their sole option and discretion, to be subject to a restriction on the exercise of their Warrants such that an electing holder of Warrants (and his, her or its affiliates) would not be able to exercise their Warrants to the extent that, after giving effect to such exercise, such holder (and his, her or its affiliates) would beneficially own in excess of 4.9% or 9.8% (as specified by the holder) of the shares of Class A Common Stock outstanding. Notwithstanding the foregoing, any person who acquires a Warrant with the purpose or effect of changing or influencing the control of the Company, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition will be deemed to be the beneficial owner of the underlying Class A Common Stock and not be able to take advantage of this provision.

No fractional shares will be issued upon exercise of the Warrants. If, upon exercise of the Warrants, a holder would be entitled to receive a fractional interest in a share (as a result of a subsequent share dividend payable in shares of Class A Common Stock, or by a split up of the shares of Class A Common Stock or other similar event), the Company will, upon exercise, round up or down to the nearest whole number the number of Class A Common Stock to be issued to the holder of the Warrant.

Anti-Dilution Adjustments

The exercise price and number of shares of Class A Common Stock issuable on exercise of the Warrants may be adjusted in certain circumstances including in the event of a share dividend, extraordinary dividend or recapitalization, reorganization, merger or consolidation. However, the Warrants will not be adjusted for issuances of shares of Class A Common Stock at a price below their respective exercise prices. The Company is also permitted, in its sole discretion, to lower the exercise price (but not below the par value of a share of Class A Common Stock) at any time prior to the expiration date for a period of not less than 15 business days; provided, however, that the Company provides at least 5 days' prior written notice of such reduction to registered holders of the Warrants and that any such reduction will be applied consistently to all of the Warrants. Any such reduction in the exercise price will comply with any applicable regulations under the U.S. federal securities laws, including Rule 13e-4 under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), generally and Rule 13e-4(f)(1)(i) specifically.

Anti-Takeover Effects of the Certificate of Incorporation, the By-Laws and Certain Provisions of Delaware Law

The Certificate of Incorporation, the By-Laws and the DGCL contain provisions, which are summarized in the following paragraphs, which are intended to enhance the likelihood of continuity and stability in the composition of the Board and to discourage certain types of transactions that may involve an actual or threatened acquisition of the Company. These provisions are intended to avoid costly takeover battles, reduce the Company's vulnerability to a hostile change of control or other unsolicited acquisition proposal, and enhance the ability of the Board to maximize stockholder value in connection with any unsolicited offer to acquire the Company.

However, these provisions may have the effect of delaying, deterring or preventing a merger or acquisition of the Company by means of a tender offer, a proxy contest or other takeover attempt that a stockholder might consider in its best interest, including attempts that might result in a premium over the prevailing market price for the shares of Class A Common Stock. The Certificate of Incorporation provides that any action required or permitted to be taken by the Company's stockholders must be effected at a duly called annual or extraordinary general meeting of such stockholders and may not be effected by any consent in writing by such holders except that any action required or permitted to be taken by holders of Class V Common Stock, voting separately as a class, or, to the extent expressly permitted to do so by the certificate of designation relating to one or more series of Preferred Stock, voting separately as a series or separately as a class with one or more other such series, may be taken without a meeting, without prior notice and without a vote, if a consent or consents, setting forth the action so taken, are signed by holders of outstanding shares of the relevant class or series having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and are delivered to the Company in the manner forth in Section 228 of the DGCL.

Authorized but Unissued Capital Stock

Delaware law does not require stockholder approval for any issuance of authorized shares. However, the listing requirements of the New York Stock Exchange ("NYSE"), which would apply if and so long as the Class A Common Stock remains listed on NYSE, require stockholder approval of certain issuances equal to or exceeding 20% of the then outstanding voting power or then outstanding number of shares of Class A Common Stock. Additional shares that may be issued in the future may be used for a variety of corporate purposes, including future public offerings, to raise additional capital or to facilitate acquisitions.

One of the effects of the existence of unissued and unreserved common stock may be to enable the Board to issue shares to persons friendly to current management, which issuance could render more difficult or discourage an attempt to obtain control of the Company by means of a merger, tender offer, proxy contest or otherwise and thereby protect the continuity of management and possibly deprive stockholders of opportunities to sell their shares of Class A Common Stock at prices higher than prevailing market prices.

Election of Directors and Vacancies

The Certificate of Incorporation provides that the Board will determine the number of directors who will serve on the Board. The exact number of directors is fixed from time to time by a majority of the Board. The Board is divided into three classes designated as Class I, Class II and Class III. Class I directors will initially serve for a term expiring at the first annual meeting of stockholders following the closing of the business combination (the “Closing”). Class II and Class III directors will initially serve for a term expiring at the second and third annual meeting of stockholders following the Closing, respectively. At each succeeding annual meeting of stockholders, directors will be elected for a full term of three years to succeed the directors of the class whose terms expire at such annual meeting of the stockholders. There will be no limit on the number of terms a director may serve on the Board.

In addition, the Certificate of Incorporation provides that any vacancy on the Board, including a vacancy that results from an increase in the number of directors or a vacancy that results from the removal of a director with cause, may be filled only by a majority of the directors then in office, subject to the provisions of that certain Stockholders Agreement, dated as of October 15, 2021, by and among the Company, Opco equity holders and VPC Impact Acquisition Holdings Sponsor, LLC (the “Stockholders Agreement”), and any rights of holders of Preferred Stock.

Business Combinations

The Company has elected not to be governed by Section 203 of the DGCL. Notwithstanding the foregoing, the Certificate of Incorporation provides that the Company will not engage in any “business combinations” (as defined in the Certificate of Incorporation), at any point in time at which the Company’s securities are registered under Section 12(b) or 12(g) of the Exchange Act, with any “interested stockholder” (as defined in the Certificate of Incorporation) for a three-year period after the time that such person became an interested stockholder unless:

- prior to such time, the Board approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder;
- upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the Company outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (a) persons who are directors and also officers and (b) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer; or
- at or subsequent to such time, the business combination is approved by the Board and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least 66 2/3% of the outstanding voting stock of the Company which is not owned by the interested stockholder.

Under the Certificate of Incorporation, a “business combination” is defined to generally include a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. An interested stockholder is a person who, together with affiliates and associates, owns or, within three years prior to the determination of interested stockholder status, did own 15% or more of a corporation’s outstanding voting stock. The Certificate of Incorporation expressly excludes certain of the Company’s stockholders with whom the Company will enter into the Stockholders Agreement, certain of their respective direct or indirect transferees, and their respective successors and affiliates from the definition of “interested stockholder” irrespective of

the percentage ownership of the total voting power beneficially owned by them. Under certain circumstances, such provisions in the Certificate of Incorporation make it more difficult for a person who would be an “interested stockholder” to effect various business combinations with a corporation for a three-year period. Accordingly, such provisions in the Certificate of Incorporation could have an anti-takeover effect with respect to certain transactions which the Board does not approve in advance. Such provisions may encourage companies interested in acquiring the Company to negotiate in advance with the Board because the stockholder approval requirement would be avoided if the Board approves either the business combination or the transaction that results in the stockholder becoming an interested stockholder. However, such provisions also could discourage attempts that might result in a premium over the market price for the shares held by stockholders. These provisions also may make it more difficult to accomplish transactions that stockholders may otherwise deem to be in their best interests.

Quorum

The By-Laws provide that at any meeting of the Board, a majority of the total number of directors then in office constitutes a quorum for the transaction of business.

Additionally, the By-Laws provide that holders of a majority in voting power of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business.

No Cumulative Voting

Under Delaware law, the right to vote cumulatively does not exist unless the certificate of incorporation expressly authorizes cumulative voting. The Certificate of Incorporation does not authorize cumulative voting.

General Stockholder Meetings

The Certificate of Incorporation provides that special meetings of stockholders may be called only by or at the direction of the Board, the Chairman of the Board or the Chief Executive Officer.

Requirements for Advance Notification of Stockholder Meetings, Nominations and Proposals

The By-Laws establish advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors, other than nominations made by or at the direction of the Board or a committee of the Board. For any matter to be “properly brought” before a meeting, a stockholder must comply with advance notice requirements and provide the Company with certain information. Generally, to be timely, a stockholder’s notice must be received at the Company’s principal executive offices not less than 90 days nor more than 120 days prior to the first anniversary date of the immediately preceding annual meeting of stockholders (for the purposes of the first annual meeting of the stockholders of the Company, the date of the preceding annual meeting will be deemed to be May 15, 2021). The By-Laws allow the Board to adopt rules and regulations for the conduct of a meeting of the stockholders as it deems appropriate, which may have the effect of precluding the conduct of certain business at a meeting if the rules and regulations are not followed. These provisions may also defer, delay or discourage a potential acquirer from conducting a solicitation of proxies to elect the acquirer’s own slate of directors or otherwise attempting to influence or obtain control of the Company.

Supermajority Provisions

The Certificate of Incorporation and the By-Laws provide that the Board is expressly authorized to make, alter, amend, change, add to, rescind or repeal, in whole or in part, the By-Laws without a stockholder vote in any matter not inconsistent with the laws of the State of Delaware or the Certificate of Incorporation and subject to the rights of the parties to the Stockholders Agreement.

The DGCL provides generally that the affirmative vote of a majority of the outstanding shares entitled to vote thereon, voting together as a single class, is required to amend a corporation's certificate of incorporation, unless the certificate of incorporation requires a greater percentage. The Certificate of Incorporation provides that the following provisions therein may be amended, altered, repealed or rescinded only by the affirmative vote of holders of at least 66 2/3% in voting power all the then outstanding shares of the Company's stock entitled to vote thereon, voting together as a single class:

- the provision regarding the Board being authorized to amend the By-Laws without a stockholder vote;
- the provisions providing for a classified Board (the election and term of directors);
- the provisions regarding filling vacancies on the Board and newly created directorships;
- the provisions regarding resignation and removal of directors;
- the provisions regarding calling special meetings of stockholders;
- the provisions regarding stockholder action by written consent;
- the provisions eliminating monetary damages for breaches of fiduciary duty by a director;
- the provisions regarding the election not to be governed by Section 203 of the DGCL;
- the provisions regarding competition and corporate opportunities;
- the provisions regarding exclusivity of forum; and
- the amendment provision requiring that the above provisions be amended only with a 66 2/3% supermajority vote.

These provisions may have the effect of deterring hostile takeovers or delaying or preventing changes in control of the Company or its management, such as a merger, reorganization or tender offer. These provisions are intended to enhance the likelihood of continued stability in the composition of the Board and its policies and to discourage certain types of transactions that may involve an actual or threatened acquisition of the Company. These provisions are designed to reduce the Company's vulnerability to an unsolicited acquisition proposal. The provisions are also intended to discourage certain tactics that may be used in proxy fights. However, such provisions could have the effect of discouraging others from making tender offers for the Company's Shares and, as a consequence, may inhibit fluctuations in the market price of the Company's Shares that could result from actual or rumored takeover attempts. Such provisions may also have the effect of preventing changes in management.

Exclusive Forum

The Certificate of Incorporation provides that, unless the Company consents in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware, or if such court does not have subject matter jurisdiction, any other court located in the State of Delaware with subject matter jurisdiction, will be the sole and exclusive forum for (a) any derivative action or proceeding brought on behalf of the Company, (b) any action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer, other employee or stockholder of the Company to the Company or the Company's stockholders, (c) any action asserting a claim against the Company or any director or officer of the Company (i) arising pursuant to any provision of the DGCL or the Certificate of Incorporation or the By-Laws or (ii) as to which the DGCL confers jurisdiction on the Court of Chancery of the State of Delaware or (d) any action to interpret, apply, enforce or determine the validity of the Certificate of Incorporation or the By-Laws or any of their provisions, (e) any action asserting a claim against the Company or any current or former director, officer, employee, stockholder or agent of the Company governed by the internal affairs doctrine of the law of the State of Delaware, or (f) any action asserting an "internal corporate claim" as defined in Section 115 of the DGCL. To the fullest extent permitted by law, any person or entity purchasing or otherwise acquiring or holding any interest in shares of capital stock of the Company will be deemed to have notice of and consented to the forum provisions in the Certificate of Incorporation. However, it is possible that a court could find the Company's forum selection provisions to be inapplicable or unenforceable. Although the Company believes this provision benefits it by providing increased consistency in the application of Delaware law in the types of lawsuits to which it applies, the provision may have the effect of discouraging lawsuits against Company's directors and officers.

Listing

The Class A Common Stock and Warrants are listed on the NYSE under the symbols "BKKT" and "BKKT WS," respectively. The Class V Common Stock is not listed on any securities exchange.