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As filed with the Securities and Exchange Commission on March 1, 2021

Registration No. 333-

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

FORM S-1
REGISTRATION STATEMENT
Under
The Securities Act of 1933

VIZIO HOLDING CORP.
(Exact name of registrant as specified in its charter)

Delaware	3651	85-4185335
(State or other jurisdiction of incorporation or organization)	(Primary Standard Industrial Classification Code Number)	(I.R.S. Employer Identification Number)

VIZIO Holding Corp.
39 Tesla
Irvine, California 92618
(949) 428-2525
(Address, including zip code, and telephone number, including area code, of registrant's principal executive offices)

William W. Wang
Chairman and Chief Executive Officer
VIZIO Holding Corp.
39 Tesla
Irvine, California 92618
(949) 428-2525
(Name, address, including zip code, and telephone number, including area code, of agent for service)

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

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

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

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

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

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

Large accelerated filer	☐	Accelerated filer	☐
Non-accelerated filer	☒	Smaller reporting company	☐
		Emerging growth company	☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act. ☐

CALCULATION OF REGISTRATION FEE

Title of Each Class of Securities to be Registered	Proposed Maximum Aggregate Offering Price(1)(2)	Amount of Registration Fee
Class A common stock, par value $0.0001 per share	$100,000,000	$10,910

(1) Estimated solely for the purpose of computing the amount of the registration fee pursuant to Rule 457(o) under the Securities Act of 1933, as amended.
(2) Includes the aggregate offering price of additional shares of Class A common stock that the underwriters have the option to purchase.

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

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The information in this preliminary prospectus is not complete and may be changed. We and the selling stockholders may not sell these securities until the registration statement filed with the Securities and Exchange Commission is effective. This preliminary prospectus is not an offer to sell these securities, and neither we nor the selling stockholders are soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

Subject to Completion
Preliminary Prospectus dated , 2021

VIZIO Holding Corp.

Shares

Class A Common Stock

$ per share

This is the initial public offering of shares of Class A common stock of VIZIO Holding Corp. We are selling shares of Class A common stock and the selling stockholders are selling an additional shares of Class A common stock. We will not receive any proceeds from the sale of shares of our Class A common stock by any of the selling stockholders.

We anticipate the initial public offering price of our Class A common stock will be between $ and $ per share. Currently, no public market exists for our Class A common stock. We have applied to list our Class A common stock on the New York Stock Exchange under the symbol "VZIO."

We have three classes of authorized common stock, Class A common stock, Class B common stock, and Class C common stock. The rights of the holders of Class A common stock, Class B common stock and Class C common stock are identical, except with respect to voting and conversion. Each share of Class A common stock is entitled to one vote per share. Each share of Class B common stock is entitled to 10 votes per share and is convertible at any time into one share of Class A common stock. Shares of Class C common stock have no voting rights, except as otherwise required by law, and will convert into Class A common stock, on a share-for-share basis, following the conversion or exchange of all outstanding shares of Class B common stock into shares of Class A common stock and upon the date or time specified by the holders of a majority of the outstanding shares of Class A common stock voting as a separate class. Upon the completion of this offering, no shares of Class C common stock will be issued and outstanding.

Upon the completion of this offering, all shares of Class B common stock will be held by William Wang, our Founder, Chairman and Chief Executive Officer, and his affiliates. Accordingly, upon completion of this offering, assuming an offering size as set forth above, the shares beneficially owned by Mr. Wang (including shares over which he has voting control) will represent % of the total voting power of our outstanding capital stock. Mr. Wang will be able to determine or significantly influence any action requiring the approval of our stockholders, including the election of our board of directors, the adoption of amendments to our certificate of incorporation and bylaws, and the approval of any merger, consolidation, sale of all or substantially all of our assets, or other major corporate transaction. As a result, we will be a "controlled company" within the meaning of the rules of the New York Stock Exchange.

Investing in our Class A common stock involves a high degree of risk. See "Risk Factors" beginning on page 17 of this prospectus.

	Per share	Total
Initial public offering price	$	$
Underwriting discount(1)	$	$
Proceeds to VIZIO Holding Corp., before expenses	$	$
Proceeds to selling stockholders, before expenses	$	$

(1) We refer you to "Underwriting" beginning on page 176 for additional information regarding underwriter compensation.

At our request, the underwriters have reserved up to 5% of the shares offered by this prospectus for sale at the initial public offering price through a directed share program. See the section titled "Underwriting—Directed Share Program" for additional information.

The underwriters may also exercise their option to purchase up to an additional shares of Class A common stock from us and the selling shareholders, at the initial public offering price, less the underwriting discount, for 30 days after the date of this prospectus.

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

The shares of Class A common stock will be ready for delivery on or about , 2021.

J.P. Morgan **BofA Securities**

Wells Fargo Securities **Guggenheim Securities**

Needham & Company **Piper Sandler**

Roth Capital Partners

The date of this prospectus is , 2021.

VIZIO

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We take you there.

Our Mission
Create amazing experiences for all.
VIZIO

$2B+

Revenue

12M
(+61% YOY)

SmartCast Active Accounts

24B
(+117% YOY)

Total VIZIO Hours

Endless

ENTERTAINMENT

Possibilities

USA

Designed in the United States

VIZIO

Founded in 2002

Figures as of 12/31/2020 or for fiscal year 2020, as applicable. See "Management's Discussion and Analysis of Financial Condition and Results of Operations" for a discussion of how we calculate Total VIZIO Hours and SmartCast Active Accounts.

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

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

For investors outside the United States: No action is being taken in any jurisdiction outside the United States to permit a public offering of our Class A common stock or possession or distribution of this prospectus in that jurisdiction. Persons who come into possession of this prospectus in jurisdictions outside the United States are required to inform themselves about and to observe any restrictions as to this offering and the distribution of this prospectus applicable to that jurisdiction.

LETTER FROM WILLIAM WANG
FOUNDER, CHAIRMAN AND CHIEF EXECUTIVE OFFICER

The Start of a Vision

Twenty years ago, I boarded a plane in Taiwan, heading back home to Los Angeles. I had been working on a computer monitor company at the time, and had a series of long, exhausting meetings with many business partners. All I could think about was how much I wanted to go home and be with the people I love.

A little after takeoff, the plane crashed into a construction site.

The entire time, all I could think about was how I had to survive. How I would do anything to get home. I ran to the front of the plane, forced open the emergency door and jumped out. I'll save you the messy details, but let's just say that I am beyond thankful to be here today, writing you this letter.

Finally getting home after the accident was one of the best moments of my life. I remember thinking how much I loved being home, and from this thought, VIZIO was born.

Great Technology Should Be Accessible to Everyone

My dream was to make the home everyone's favorite place. I kicked off this dream by creating VIZIO to make home entertainment accessible to everyone.

For the next eighteen years, working closely with channel partners and suppliers, my team and I have built VIZIO into one of the leading entertainment brands in America. By producing quality TVs and speakers and offering them at affordable prices, we democratize the home entertainment experience. We work hard in listening to our customers and partners and fine-tuning our products to be of superb quality. Most importantly, we make sure that we offer affordable prices, so that everyone can have access to VIZIO.

The TV Can Be So Much More

At VIZIO, we find value in the home. There is something so universally comforting about being in your own space. Yet something I've noticed is that, at home, we still crave ways to connect ourselves to a larger community. The TV industry has not been focused on this connection.

We want VIZIO to be that connection, to be the portal connecting the home to the outside world. We envision the VIZIO Smart TV as the center of the connected home—where families play games together, where friends watch movies together, where work and learning happen and where all things in between take place.

Imagine if your television became a central, interactive part of your home. You could stream real-time exercise classes, with an instructor giving you real-time feedback. You could connect to family thousands of miles away. Imagine if the television was a bridge between you and everything the world has to offer.

This is our vision at VIZIO. We want to create the optimal experience that will fluidly connect people to the world, all within the comfort and convenience of the home.

The Opportunity Is Ours to Build with You

Given our large customer base, we have the perfect opportunity to make the VIZIO vision for the future a reality. Millions of people out there already love their VIZIO products. We need to act fast to bring our full vision to life for them.

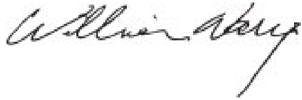
We have a lot to get done, but we are off to a quick start. We have cutting-edge products and powerful software. But we need to continually improve the software, and we must also keep up with the latest hardware technology and maintain quality products. At the same time, we have to stay ahead of the curve in predicting trends and figuring out what our customers desire in a portal-like Smart TV.

At VIZIO, we have a top-notch team to reach this vision. We have a strong culture based on tenacity and trust—we work hard and get things done, even when we encounter obstacles. What drives us is the desire to provide the best experience for our customers. We always think of the customers before everything.

To our shareholders, we promise that we will stay true to our values of tenacity and trust. We will not give up on our vision. I fought to survive in a plane crash, and I bring that tenacious spirit into the VIZIO team every single day. We will continue our successful hardware business, iterating on models as we've done before, and at the same time build our name in Smart TV software. Going public is an important milestone for us as we continue to grow and execute our goals.

The TV industry is evolving. When we started, we were simply focused on building the best possible hardware. Now, with a combination of our Smart TVs and our evolving software platform, we have a path to integrate the VIZIO experience into a lifestyle.

The evolution of TVs is calling for a revolution, and VIZIO is here to answer it. We invite you to join us on this journey!



GLOSSARY

Unless we otherwise indicate, or unless the context requires otherwise, any references in this prospectus to the following key business terms have the respective meaning set forth below:

Ad-supported Video on Demand (AVOD): Over-the-Top video services supported by serving ads. These include free platforms like YouTube TV, Pluto TV or our WatchFree and VIZIO Free Channel offerings, as well as those, like Hulu, that charge a subscription fee in addition to serving ads.

Automatic Content Recognition (ACR): Technology that tracks viewing data on connected TVs. Advertisers and content providers use this data, among other things, to measure viewership reach and ad effectiveness.

Connected home: Home electronics configuration in which appliances (such as an air conditioner or refrigerator) and devices (such as a home security system) can be controlled remotely using a mobile or other device connected to the internet.

Connected TV: A television that is connected to the internet through built-in capabilities (i.e., a Smart TV) or through another device such as a Blu-ray player, game console, or set-top box (e.g., Apple TV, Google Chromecast or Roku).

Dynamic Ad Insertion (DAI): Technology that seamlessly replaces TV ads with targeted ads from the Smart TV in real time, across multiple inputs.

HDTV: High-definition television.

Internet-of-Things (IoT): A network of devices that are connected and exchange data with other devices over the internet (e.g., connected home appliances, wearables or security systems).

Linear TV: Live, scheduled television programming distributed through cable, satellite or broadcast (antennae).

Multichannel Video Programming Distributor (MVPD): A service provider that delivers multiple television channels over cable, satellite, or wireline or wireless networks (e.g., Comcast's Xfinity cable TV and DISH satellite TV).

Over-the-Top (OTT): Any app or website that bypasses MVPD distribution and provides streaming video content directly to viewers, over the internet (e.g., Disney+, Hulu, Netflix and YouTube TV).

Pay TV: Traditional bundle of television channels typically provided over cable or satellite by MVPDs for a subscription price.

Premium Video on Demand (PVOD): Similar to TVOD, but lets consumers access premium on-demand content at a higher price point. Examples include feature films made available alongside, or in place of, a traditional movie theater release.

SmartCast: VIZIO's proprietary Smart TV operating system. The software platform where consumers can access VIZIO's WatchFree and VIZIO Free Channels as well as a wide array of third-party OTT apps (e.g. Amazon Prime Video, Apple TV+, Disney+, Hulu, Netflix, Peacock and YouTube TV).

Smart TV: A television with built-in internet capability. Often includes an operating system.

System-on-Chip (SOC): Microchip that integrates all of the necessary electronic circuits and processors needed to power devices such as Smart TVs.

Subscription Video on Demand (SVOD): OTT services that generate revenue through selling subscriptions to consumers (e.g., Disney+ and Netflix).

Transactional Video on Demand (TVOD): Distribution method by which consumers purchase video-on-demand content on a pay-per-view basis (e.g., Amazon Prime Video rentals and Fandango Now).

Virtual Multichannel Video Programming Distributor (vMVPD): An MVPD that is delivered over the internet; interchangeable with "linear OTT" (e.g., Sling TV and YouTube TV).

WatchFree: VIZIO's free, ad-supported OTT app. Offers access to news, sports, movies and general entertainment TV shows in a format similar to linear TV through programmed channels.

VIZIO Free Channels: VIZIO's free, ad-supported OTT app with linear channels. Content is sourced from a variety of providers into a curated set of channels across news, sports, movies and general entertainment.

PROSPECTUS SUMMARY

The following summary highlights selected information contained elsewhere in this prospectus and does not contain all the information that you should consider before investing in our Class A common stock. You should read the entire prospectus carefully, including the "Risk Factors," "Special Note Regarding Forward-Looking Statements," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and related notes appearing elsewhere in this prospectus before making an investment decision.

Prior to the consummation of the Reorganization Transaction (as defined below) and in reference to events which took place prior to the consummation of the Reorganization Transaction, unless the context requires otherwise, the words "VIZIO," "we," the "Company," "us" and "our" refer to VIZIO, Inc., a California corporation, and its subsidiaries. Subsequent to the consummation of the Reorganization Transaction and in reference to events which are to take place subsequent to the consummation of the Reorganization Transaction, unless the context requires otherwise, the words "VIZIO," "we," the "Company," "us" and "our" refer to VIZIO Holding Corp., a Delaware corporation, and its subsidiaries. In addition, unless otherwise stated or the context otherwise requires, "Parent" refers to VIZIO Holding Corp., a Delaware corporation, and "California VIZIO" refers to VIZIO, Inc., a California corporation. See "—Corporate Information." References to our "common stock" include our Class A common stock, Class B common stock and Class C common stock.

VIZIO Holding Corp.

Our Mission

VIZIO's mission is to deliver immersive entertainment and compelling lifestyle enhancements that make our products the center of the connected home.

Overview

VIZIO is driving the future of televisions through our integrated platform of cutting-edge Smart TVs and powerful SmartCast operating system. Every VIZIO Smart TV enables consumers to search, discover and access a broad array of content. In addition to watching cable TV, viewers can use our platform to stream a movie or show from their favorite over-the-top (OTT) service, watch hundreds of free channels through our platform, including on our WatchFree and VIZIO Free Channel offerings, enjoy an enhanced immersive experience catered to gaming or access a variety of other content options. Our platform gives content providers more ways to distribute their content and advertisers more tools to target and dynamically serve ads to a growing audience that is increasingly transitioning away from linear TV.

We currently offer:

- a broad range of high-performance Smart TVs that encompass a variety of price points, technologies, features and screen sizes, each designed to address specific consumer preferences;
- a portfolio of innovative sound bars that deliver immersive audio experiences; and
- a proprietary Smart TV operating system, SmartCast, which enhances the functionality and monetization opportunities of our devices.

And this is just the beginning. Today, a television is primarily viewed as an entertainment device – but our Smart TVs are capable of so much more. Our seamless integration of devices and software allows us to create new interactive use cases, such as personal communications, fitness and wellness, commerce, social interaction and dynamic entertainment experiences. We believe we can reshape the way consumers use the largest screen in their home.

Throughout our history, we have been an innovator and a market disruptor. Founded in Orange County, California in 2002, we saw an opportunity to bring U.S. consumers quality televisions and sound bars with a significantly greater value proposition. We are based in the United States. We believe this gives us a better understanding of U.S. consumer preferences. As of December 1, 2020, we have sold approximately 82.2 million televisions and 11.8 million sound bars over the lifetime of our company. According to OMDIA, VIZIO was #2 in television market share in North America on a unit shipment basis for the January 2018 to December 2020 combined period. In addition, according to The NPD Group Retail Tracking Service, VIZIO was the #1 sound bar brand in America on a unit sales basis for the January 2018 to December 2020 combined period.

We have both driven and benefitted from powerful secular trends that are transforming the way consumers, content providers and advertisers interact in the entertainment industry. Due to the proliferation of high-speed internet access and a growing array of content options, we foresaw that consumers would shift increasing amounts of their entertainment into the home. In 2009, we embedded the Netflix application directly on a TV, bypassing the need for additional, externally connected hardware to stream OTT content. Building on this success, we launched our upgraded operating system in 2016, known today as SmartCast, driving consumers to change the way they access and consume content. Through our acquisition of Inscape in 2015, which enhanced our data capabilities including our proprietary Automatic Content Recognition (ACR) technology, we offer valuable data-driven insights and targeting opportunities for our advertisers. Our easy-to-use and integrated platform gives content providers an additional distribution channel and offers advertisers incremental reach to a growing audience that is transitioning away from linear TV.

We have accomplished all of this by staying faithful to our founding principle that VIZIO is “Where Vision Meets Value,” and that same principle will continue to guide us as we move forward.

The success of our Device business has created a massive growth opportunity for us. Our Smart TVs provide us with the opportunity to add consumers that are actively engaged with our SmartCast operating system, which in turn, expands our Platform+ monetization opportunities. While we generate the significant majority of our total net revenue from sales of our Smart TVs and sound bars, our Platform+ net revenue has grown 304.4% from $36.4 million in 2018 to $147.2 million in 2020. We believe that Platform+ will be the key driver of our future margin growth and financial performance.

Our key financial metrics for 2018, 2019 and 2020 included:

	2018	2019	2020
		(*in thousands*)	
Total net revenue	$ 1,780,730	$ 1,836,799	$ 2,042,473
Total gross profit	$ 110,261	$ 165,165	$ 296,358
Net income (loss)	$ (156)	$ 23,086	$ 102,475
Adjusted EBITDA[1]	$ 584	$ 37,604	$ 138,971

(1) We define Adjusted EBITDA, a non-GAAP financial metric, as total net income before interest income (expense), net, other income, net, provision for (benefit from) income taxes, depreciation and amortization and stock-based compensation. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Key Business Metrics—Non-GAAP financial measure” for a reconciliation between Adjusted EBITDA and net income, the most directly comparable generally accepted accounting principle (GAAP) financial measure and a discussion about the limitations of Adjusted EBITDA.

Our key business metrics for 2018, 2019 and 2020 included:

	2018	2019	2020
		(*in millions, except dollars*)	
Smart TV Shipments[1]	4.4	5.9	7.1
SmartCast Active Accounts[1] (as of December 31)	3.6	7.6	12.2
SmartCast Average Revenue Per User (ARPU)[1][2]	N/A	$ 7.31	$ 12.99

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(1) For a discussion of how we calculate our key business metrics, see "Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Business Metrics."
(2) Prior to 2019, we did not track SmartCast ARPU and as such we do not present this metric for 2018.

Our Businesses

We operate two distinct but fully integrated businesses: Device and Platform+.

Device

We offer a portfolio of cutting-edge Smart TVs and a versatile series of sound bars that provide an immersive consumer entertainment experience and cater to a range of different consumer price segments. Our devices are sold both in stores and online, including at major national retailers, such as Amazon, Best Buy, Costco, Sam's Club, Target and Walmart. We also sell our devices through our online channel at VIZIO.com. Through our strong and long-standing relationships with our retailers, our product lines are well distributed across the country, which attracts consumers across a broad range of demographics. By working closely with our suppliers, we have been able to focus our resources on design, marketing and distribution.

Platform+

Platform+ is comprised of SmartCast, our award-winning Smart TV operating system, which enables our fully integrated entertainment solution, and Inscape, which powers our data intelligence and services.

SmartCast delivers a compelling array of content and applications through an elegant and easy-to-use interface. It supports many of the leading streaming apps, such as Amazon Prime Video, Apple TV+, Disney+, Hulu, Netflix, Peacock and YouTube TV, and hosts our own free, ad-supported apps, WatchFree and VIZIO Free Channels. SmartCast also supports Apple AirPlay 2 and Chromecast functionalities to allow users to stream additional content from their other devices to our Smart TVs. It provides broad support for third-party voice platforms, including Amazon Alexa, Apple HomeKit and Google Voice Assistant, as well as second screen viewing to offer additional interactive features and experiences.

Our proprietary Inscape technology enables ACR, which identifies most content displayed on the Smart TV screen regardless of the input. We aggregate this viewing data to increase transparency and enhance targeting abilities for our advertisers. Additionally, we are a leader in driving the innovation and development of Dynamic Ad Insertion (DAI). We launched Project OAR (Open, Accessible, Ready), an industry consortium working directly with many of the largest television networks to establish a technology standard to advance the adoption of DAI and addressable advertising. The adoption of our DAI technology is in its early stages and is an example of our innovation in the marketplace.

We monetize Platform+ through several avenues:

Advertising

- Ad-supported Video on Demand (AVOD): Ad inventory on services such as WatchFree, VIZIO Free Channels and certain third-party AVOD services
- Home screen: Ad placements on the SmartCast home screen
- Partner marketing: Images of content and available apps on our television cartons

Data licensing

- Inscape: Data licensing fees from ad technology companies, ad agencies and networks to aid ad buying decisions or to enable DAI capabilities

Content distribution, transactions and promotion

- Subscription Video on Demand (SVOD) and Virtual Multichannel Video Programming Distributor (vMVPD): Revenue shared by SVOD and vMVPD services on new user subscriptions activated or reactivated through our platform
- Premium Video on Demand (PVOD) and Transaction Video on Demand (TVOD): Revenue shared by PVOD and TVOD services for purchases made on our platform
- Branded buttons on remote controls: Dedicated shortcuts for content providers

Industry Trends

We have both driven and benefitted from powerful secular trends that are transforming the way consumers, content providers and advertisers interact in the entertainment industry, including:

- Proliferation of Smart TVs and shifting consumer viewing preferences
- Increasingly connected home ecosystem
- Linear TV ad spend shifting to OTT

Future Role of the TV in the Home

We believe we are well positioned to capitalize on these trends and drive the next big shift in the television landscape. Consider everything in a home that can currently be controlled from a smart phone—things like setting a thermostat, adjusting the lights, controlling the refrigerator or setting the alarm. Our vision is for VIZIO Smart TVs to become the center of the connected home and empower these and many other functions.

We have invested in this future, including through the introduction of our SmartCast platform, and we intend to continue to improve our innovative features, such as mobile app control, IoT voice support and our dynamic operating system to augment such connectivity. Over time, we envision consumers using their VIZIO Smart TVs for:

- *Communication:* Engaging with social networks, using messaging services and accessing telecommuting features such as video conferencing.
- *Fitness and wellness:* Connecting to interactive fitness and wellness services, such as personal training sessions and exercise tracking, from the comfort of their own living room.
- *Commerce:* Browsing online shopping services, purchasing products featured on TV as part of dynamic ads and placing food orders on delivery services through voice control.
- *Community:* Hosting virtual, integrated watch parties for the latest movie or the big game; watching live sports on TV will become an interactive experience through play-along gaming.
- *Dynamic entertainment experiences:* Attending virtual concerts or sporting events offering viewer-controlled, multi-cam experiences.

These services create opportunities for in-app transactions and we believe that by enabling these transactions we will increase monetization on our platform.

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Our Market Opportunity

We believe we have a sizable market opportunity in Smart TVs. Beyond this opportunity, we have large market opportunities spanning the television advertising and SVOD markets, as well as the developing connected home market.

- According to eMarketer, U.S. linear TV advertising spend was $70.6 billion in 2019. As viewership grows, connected TV advertising creates a more valuable audience through its targeting abilities. eMarketer forecasted that connected TV advertising will increase from $6.4 billion in 2019 to $18.3 billion in 2024.
- According to PwC, U.S. consumers spent $18.2 billion in 2019 on SVOD and TVOD services and these markets are expected to grow to $30.9 billion in 2024.

As we expand the functionalities of our Smart TVs and SmartCast operating system, we expect to generate recurring revenue by facilitating additional services.

Our Products

While our Smart TVs and sound bars continue to generate the majority of our total net revenue, we believe our advertising products offer the largest opportunity to profitably grow our business. We intend to significantly invest in expanding our advertising capabilities further accelerating the secular shift to connected TV advertising.

Advertising

Our advertising products benefit advertisers and content providers by offering a range of options to connect with our audience. Our primary advertising products include:

- Ad inventory: Through WatchFree and VIZIO Free Channels, we offer a broad range of advertising inventory across a variety of programming genres. We sell 15- and 30-second video ads for this programming and enable product sponsorships and promotional channels to drive shopping. We also negotiate inventory shares with certain AVOD apps.
- Promotional ads: Our home screen is a powerful tool that helps consumers discover new content and easily find their favorite apps and shows. We sell advertising space in our Hero Banner and Discover Banner, allowing content providers options to showcase a movie or show. We also offer content providers the opportunity to purchase buttons on our remote controls to facilitate easy access to their apps.
- Viewing data: We utilize our ACR technology to help advertisers and AVOD apps deliver more relevant ads to consumers.

Smart TVs

Our broad Smart TV portfolio consists of five series, each designed to target a specific consumer segment and their preferences for high picture quality, powerful processing and video performance, smart capabilities, a wide variety of content, streamlined connectivity and convenience features, and a stylish, modern industrial design.

Sound bars

Our broad collection of high-performance sound bars delivers the home theater experience with immersive sound, powerful performance and modern designs optimized to fit the user’s room and television size.

Our Key Differentiators

Founder-led team with clear vision

William Wang founded VIZIO in 2002, with a dream for making home entertainment accessible to everyone. As our Chairman and CEO, he leads our vision to position the Smart TV as the center of the connected home. We strive to live by his founding principle of "Where Vision Meets Value" by providing high-quality, feature-rich products at affordable pricing. Our commitment to value while delivering high performance enables us to attract consumers and deliver on our vision.

Trusted brand with history of innovation

We have built a strong and trusted brand that symbolizes premium technology, quality and value. The VIZIO platform provides consumers with cutting-edge picture and audio performance that enhances the entertainment experience, while being easy to use and connecting viewers to a broad array of content. We have developed a reputation as a visionary company and market disruptor.

Unique asset-light operating model with outsourced manufacturing and supply chain excellence

We have created and continue to leverage an asset-light operating model with outsourced manufacturing that provides scale-driven cost savings and greater flexibility. Our manufacturing partners maintain the full production process for our Smart TVs and sound bars while we focus on designs, product specifications, marketing and distribution. We work very closely with our manufacturing partners in providing exceptional service to consumers throughout the warranty period.

Integrated hardware and software solutions

We have evolved from being a designer of cutting-edge televisions to becoming a pioneer of Smart TVs. Our integrated offering enables us to have full control over the user experience. Equipped with our SmartCast operating system, our Smart TVs offer consumers a unified solution for their entertainment needs, allowing us to generate recurring revenue and deliver significant lifetime value, which further enables us to deploy competitive Smart TVs in the future.

Broad access to OTT services provide multiple revenue streams

Our platform provides consumers with seamless access to many popular OTT services, including Amazon Prime Video, Apple TV+, Disney+, Hulu, Netflix, Peacock and YouTube TV. Our largest monetization opportunity stems from third-party content through WatchFree, VIZIO Free Channels and select AVOD platforms. On these services, we receive ad inventory that we sell directly to brands, ad agencies and programmatic connected TV ad buyers. We facilitate a win-win relationship with our content providers by acting as another distribution channel for their content.

Platform+ is well-positioned to monetize the shift to OTT

The consumer shift away from linear TV has disrupted the traditional TV advertising model, which is undergoing a transition to OTT. Smart TVs offer an attractive value proposition for advertisers to reach cord-cutters who have disconnected their Pay TV subscription or consumers who have never subscribed to Pay TV in a more targeted way. Our large Smart TV footprint in the United States provides us with the scale to reach a growing audience of consumers who are shifting away from linear TV. Through WatchFree and VIZIO Free Channels, we offer ad inventory that is attractive to both programmatic and direct advertising buyers. Additionally, we effectively monetize advertising capabilities by leveraging our data and technologies, including ACR, to offer increased transparency and enhanced targeting abilities to advertisers.

The VIZIO Value Proposition

Consumers

For consumers, we deliver a premium and interactive entertainment experience at an affordable price. We offer a large portfolio of Smart TVs and sound bars, and our SmartCast operating system provides many of the leading streaming apps through an easy-to-use interface.

Retailers

For retailers, we provide quality, affordable and competitive products that attract consumers across a broad range of demographics, driving additional consumers to these retailers and helping grow their revenue.

Content providers

For content providers, our large base of Smart TVs that are in millions of homes across the United States provides an additional avenue to increase viewership and subscriptions. SmartCast enables them to reach a growing audience that is shifting away from linear TV.

Advertisers

For advertisers, we offer truly incremental reach to linear TV advertising as many VIZIO consumers either do not connect a cable or satellite box to their Smart TVs, or supplement their linear TV viewing with streaming content. Additionally, we expect our ACR and DAI capabilities to allow for more targeted advertising, including for those consumers who view linear TV on our Smart TVs.

Our Growth Strategy

Increase the sales of our Smart TVs

Our current market position reflects consumer demand for our cutting-edge technology at affordable prices. We will continue to invest in designing and developing new features, as well as in our sales and marketing, to increase the sales of our Smart TVs.

Grow awareness and adoption of SmartCast

By selling Smart TVs, we have the opportunity to bring additional consumers onto our SmartCast operating system. Through a combination of a vast array of content from leading third-party apps and expanding our platform's functionalities, we are focused on making SmartCast the primary source for content streaming and driving SmartCast Active Accounts.

Drive user engagement

Our SmartCast operating system is the gateway to a streamlined entertainment experience, and we believe that SmartCast can one day power the connected home. SmartCast provides consumers with access to a broad range of content, and our intuitive user interface can deliver a wide variety of relevant, personalized content recommendations based on user viewing behavior. By growing our content library, delivering a more personalized viewing experience and increasing the functionalities of our Smart TVs, we can enhance the consumer experience and drive user engagement.

Grow SmartCast ARPU

We expect to grow SmartCast ARPU as we increase our monetization capabilities and the hours spent on our platform. Increasing advertising on our platform is currently the largest opportunity to enhance our

SmartCast ARPU. We intend to leverage our significant market share in U.S. homes, our engaged user base on SmartCast, our Inscape data capabilities and investments in our advertising sales force to increase our advertising revenue.

Risk Factors Summary

Our ability to successfully operate our business is subject to numerous risks, including those identified in the section titled "Risk Factors" immediately following this prospectus summary. These risks include, among others:

- Decreases in average selling prices of our Smart TVs and other devices may reduce our total net revenue, gross profit and net income, particularly if we are not able to reduce our expenses commensurately.
- We depend on sales of our Smart TVs for a substantial portion of our total net revenue, and if the volume of these sales declines or is otherwise less than our expectations, we could lose market share or our Device net revenue may not grow at the rate we expect and our business, financial condition and results of operations may suffer.
- If we fail to keep pace with technological advances in our industry, or if we pursue technologies that do not become commercially accepted, consumers may not buy our devices, and our revenue and profitability may decline.
- We compete in rapidly evolving and highly competitive markets, and we expect intense competition to continue, which could result in a loss of our market share and a decrease in our revenue and profitability and may harm our growth prospects.
- If we are unable to provide a competitive entertainment offering through SmartCast, our ability to attract and retain consumers would be harmed, as they increasingly look for new ways to access, discover and view digital content.
- Platform+ has experienced recent rapid growth, and our future success depends in part on our ability to continue to grow Platform+.
- A small number of retailers account for a substantial majority of our Device net revenue, and if our relationships with any of these retailers is harmed or terminated, or the level of business with them is significantly reduced, our results of operations may be harmed.
- If we do not effectively maintain and further develop our device sales channels, including developing and supporting our retail sales channels, or if any of our retailers experience financial difficulties or fails to promote our devices, our business may be harmed.
- We depend on a limited number of manufacturers for our devices and their components. If we experience any delay or disruption, or quality control problems with our manufacturers in their operations, we may be unable to keep up with retailer and consumer demand for our devices, we could lose market share and revenue and our reputation, brand and business would be harmed.
- We and our third-party service providers collect, store, use, disclose and otherwise process information collected from or about consumers of our devices. The collection and use of personal information subjects us to legislative and regulatory burdens, and contractual obligations, and may expose us to liability.
- A breach of the confidentiality or security of information we hold or of the security of the computer systems used in and for our business could be detrimental to our business, financial condition and results of operations.

- Third parties may claim we are infringing, misappropriating or otherwise violating their intellectual property rights and we could be prevented from selling our devices, or suffer significant litigation expense, even if these claims have no merit.
- Our net revenue and net income vary significantly from quarter to quarter due to a number of factors, including changes in demand for the devices we sell, including seasonal fluctuations reflecting traditional retailer and consumer purchasing patterns.
- After this offering, you will own single-vote-per-share Class A common stock while shares of our 10-vote-per-share Class B common stock held by our Founder, Chairman and Chief Executive Officer, William Wang, and his affiliates will represent a substantial majority of the voting power of our outstanding capital stock. As a result, Mr. Wang will continue to have control over our company after this offering, which will severely limit your ability to influence or direct the outcome of key corporate actions and transactions, including a change in control.
- We are a "controlled company" within the meaning of the New York Stock Exchange rules. As a result, we qualify for, and intend to rely on, exemptions from certain corporate governance requirements that provide protection to stockholders of other companies.

Our Capital Structure

Upon the closing of this offering, we will have three classes of common stock. Our Class A common stock, which is the stock we are offering by means of this prospectus, has one vote per share, our Class B common stock has 10 votes per share, and our Class C common stock has no voting rights, except as otherwise required by law.

Upon the completion of this offering, all shares of Class B common stock will be held by William Wang, our Founder, Chairman and Chief Executive Officer and his affiliates. In addition, Mr. Wang is expected to enter into voting agreements whereby he will maintain voting control over the shares of Class B common stock held by his affiliates. Accordingly, upon completion of this offering, assuming an offering size as set forth above, the shares beneficially owned by Mr. Wang (including shares over which he has voting control) will represent % of the total voting power of our outstanding capital stock. Mr. Wang will be able to determine or significantly influence any action requiring the approval of our stockholders, including the election of our board of directors, the adoption of amendments to our certificate of incorporation and bylaws, and the approval of any merger, consolidation, sale of all or substantially all of our assets, or other major corporate transaction.

Shares of our Class C common stock, which entitle the holder to zero votes per share, will not be issued and outstanding at the closing of the offering and we have no current plans to issue shares of Class C common stock. These shares will be available to be used in the future to further strategic initiatives, such as financings or acquisitions, or issue future equity awards to our service providers. Because the shares of Class C common stock have no voting rights (except as otherwise required by law), the issuance of such shares will not result in further dilution to the voting power held by Mr. Wang. Further, one of the events that will result in the final conversion of all of the outstanding shares of Class B common stock is the date fixed by the board of directors that is no less than 61 days and more than 180 days following the first date after the completion of this offering that the number of shares of Class B common stock held by Mr. Wang and his affiliates is less than 25% of the Class B common stock held by Mr. Wang and his affiliates as of the date of the completion of this offering (the 25% Ownership Threshold).

The multi-class structure of our common stock is intended to ensure that, for the foreseeable future, Mr. Wang continues to control or significantly influence our governance which we believe will permit us to continue to prioritize our long-term goals rather than short-term results, to enhance the likelihood of stability in the composition of our board of directors and its policies, and to discourage certain types of transactions that may involve an actual or threatened acquisition of us. This multi-class structure is intended to preserve this control until Mr. Wang departs our company or the 25% Ownership Threshold is no longer met.

Controlled Company Status

Following this offering, because William Wang, our Founder, Chairman and Chief Executive Officer will control more than 50% of the voting power of our Class A and Class B common stock, we will be considered a "controlled company" under the New York Stock Exchange rules. As such, we are permitted to opt out of compliance with certain New York Stock Exchange corporate governance requirements and we intend to rely on certain of such exemptions. Accordingly, stockholders will not have the same protections afforded to stockholders of companies that are subject to all of the New York Stock Exchange corporate governance requirements. See "Risk Factors—We are a "controlled company" within the meaning of the New York Stock Exchange rules. As a result, we qualify for, and intend to rely on, exemptions from certain corporate governance requirements that provide protection to stockholders of other companies."

Corporate Information

California VIZIO was formed as a California corporation in October 2002, and we launched our principal operations in 2003. California VIZIO was originally incorporated as V, Inc. and was renamed VIZIO, Inc. in March 2007. In December 2020, we began reorganizing in Delaware by forming Parent as a Delaware corporation. We intend to enter into an agreement and plan of merger, pursuant to which, immediately prior to completion of this offering, VIZIO Reorganization Sub, LLC, a wholly owned subsidiary of Parent, will merge with and into California VIZIO with California VIZIO surviving as the wholly owned subsidiary of Parent. Following the completion of this transaction, referred to throughout this prospectus as the Reorganization Transaction:

- Parent will be a holding company with no material assets other than 100% of the equity interests of California VIZIO;
- Each share of Class A common stock and Series A convertible preferred stock, respectively, of California VIZIO will be cancelled in exchange for one share of Class A common stock and Series A convertible preferred stock, respectively, of Parent;
- Parent will consolidate the financial results of California VIZIO and its subsidiaries;
- Parent will assume the 2007 Incentive Award Plan and 2017 Incentive Award Plan of California VIZIO, and the options and other awards granted thereunder, on a one-for-one basis and on the same terms and conditions; and
- All of our business operations will continue to be conducted through California VIZIO and its subsidiaries.

Prior to the completion of the Reorganization Transaction, Parent will not conduct any activities other than those incidental to its formation and the preparation of this prospectus. Accordingly, our consolidated financial statements and other financial information included in this prospectus reflect the results of operations and financial position of California VIZIO and its subsidiaries.

Our principal executive offices are located at 39 Tesla, Irvine, California 92618, and our telephone number is (949) 428-2525. Our website is located at *www.VIZIO.com*. The information contained on, or that can be accessed through, our website is not incorporated by reference into this prospectus, and you should not consider information on our website to be part of this prospectus or in deciding to purchase our Class A common stock.

VIZIO® and our other registered or common law trademarks, service marks, or trade names appearing in this prospectus are the property of VIZIO, Inc. Solely for convenience, our trademarks, tradenames, and service marks referred to in this prospectus appear without the ®, TM, and SM symbols, but those references are not intended to indicate, in any way, that we will not assert, to the fullest extent under applicable law, our rights to these trademarks, tradenames, and service marks. This prospectus contains additional trademarks, tradenames, and service marks of other companies that are the property of their respective owners.

THE OFFERING

Class A common stock offered:	
By us	shares
By the selling stockholders	shares
Total	shares
Underwriters' option to purchase additional shares	We have granted the underwriters an option to purchase up to an additional shares of Class A common stock, and the selling stockholders have granted the underwriters an option to purchase an additional shares of Class A common stock.
Class A common stock to be outstanding after the offering	shares (or shares if the underwriters exercise in full their option to purchase additional shares from us and the selling shareholders).
Class B common stock to be outstanding after the offering	shares
Class C common stock to be outstanding after the offering	None
Class A, Class B and Class C common stock to be outstanding after the offering	shares (or shares if the underwriters exercise in full their option to purchase additional shares from us and the selling shareholders).
Use of proceeds	We estimate that the net proceeds from our sale of shares of Class A common stock in this offering at an assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the front cover of this prospectus, will be approximately $ million, or $ million if the underwriters exercise their option to purchase additional shares from us in full, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. The principal purposes of this offering are to increase our capitalization and financial flexibility, create a public market for our Class A common stock, and enable access to the public equity markets for us and our stockholders. We intend to use the net proceeds from this offering for general corporate purposes, including working capital, operating expenses, and capital expenditures. We also intend to use $14.0 million of the net proceeds from this offering to satisfy a licensing payment that will become due in connection with this offering. We will not receive any proceeds from the sale of shares by the selling stockholders. See "Use of Proceeds."

Voting rights	On all matters to be voted upon by our common stockholders, holders of our Class A common stock are entitled to one vote per share, holders of our Class B common stock are entitled to 10 votes per share and holders of our Class C common stock have no voting rights, except as otherwise required by law. Shares of our Class A and Class B common stock vote together as a single class on all matters submitted to a vote of stockholders, unless otherwise required by law or our amended and restated certificate of incorporation. See "Description of Capital Stock."
Controlled company	Immediately following completion of this offering, the shares beneficially owned by Mr. Wang (including shares over which he has voting control) will represent % of the total voting power of our outstanding capital stock, assuming the offering size set forth on the cover of this prospectus. As a result, Mr. Wang will be able to control the outcome of all matters submitted to a vote of our stockholders, including, for example, the election of directors, amendments to our certificate of incorporation and mergers or other business combinations. See "Description of Capital Stock." In addition, we are able to avail ourselves of the controlled company exemption under the corporate governance requirements of the New York Stock Exchange, so you will not have the same protections afforded to stockholders of companies that are subject to all of such requirements.
Risk factors	See "Risk Factors" and the other information included in this prospectus for a discussion of factors you should consider carefully before investing in shares of our Class A common stock.
Directed share program	At our request, the underwriters have reserved up to 5% of shares offered by this prospectus for sale at the initial public offering price through a directed share program available to directors, officers, employees and their friends and family members. The sales will be administered by J.P. Morgan Securities LLC, an underwriter in this offering. We do not know if these parties will choose to purchase all or any portion of these reserved shares, but any purchases they do make will reduce the number of shares available to the general public. Any reserved shares that are not so purchased will be offered by the underwriters to the general public on the same terms as the other shares of Class A common stock. Additionally, except in the case of shares purchased by any director or officer, shares purchased through the directed share program will not be subject to a lock-up restriction. See the section titled "Underwriting—Directed Share Program" for additional information.
Proposed New York Stock Exchange trading symbol	"VZIO"

The number of shares of Class A common stock, Class B common stock and Class C common stock that will be outstanding after this offering is based on 8,613,247 shares of our Class A common stock, 10,959,225 shares of our Class B common stock and no shares of our Class C common stock outstanding, in each case as of

December 31, 2020, after giving effect to the Reorganization Transaction, the Series A Conversion, the RSA Forfeiture and the Class B Stock Exchange described below, as if they had occurred on December 31, 2020, and includes:

- 5,244,847 shares of our Class A common stock, which reflects an actual 16,759,072 shares of Class A common stock outstanding, reduced by (i) 555,000 shares of our Class A common stock forfeited in the RSA Forfeiture (as defined below) and (ii) 10,959,225 shares exchanged in the Class B Stock Exchange (as defined below);
- 3,368,400 additional shares of our Class A common stock following the conversion of our Series A convertible preferred stock in the Series A Conversion (as defined below); and
- 10,959,225 shares of our Class B common stock, which reflects the shares to be issued in the Class B Stock Exchange.

The number of shares of our Class A common stock and Class B common stock outstanding as of December 31, 2020 excludes the following:

- 1,615,797 shares of our Class A common stock issuable upon the exercise of options outstanding under our 2017 Incentive Award Plan (2017 Plan) as of December 31, 2020 at a weighted average exercise price of $39.32 per share;
- 76,452 shares of our Class A common stock issuable upon the exercise of options granted after December 31, 2020 at an exercise price of $76.90 per share;
- 208,250 shares of our Class A common stock issuable upon the exercise of options outstanding under our 2007 Incentive Award Plan (2007 Plan) as of December 31, 2020 at a weighted average exercise price of $23.09 per share;
- 226,108 shares of our Class A common stock subject to RSUs outstanding as of December 31, 2020;
- 565,000 shares of our Class A common stock subject to RSUs granted after December 31, 2020;
- 1,603,938 shares of our Class A common stock reserved for future issuance under our 2017 Plan (reflecting 2,245,390 shares reserved as of December 31, 2020 reduced by the equity awards granted after December 31, 2020 described above); and
- shares of our Class A common stock to be reserved for future issuance under our 2021 Employee Stock Purchase Plan (our ESPP), which will become effective prior to the completion of this offering.

Our 2017 Plan and our ESPP will provide for annual automatic increases in the number of shares of our Class A common stock reserved thereunder. See the section titled "Executive Compensation—Employee Benefit and Stock Plans" for additional information.

In addition, unless otherwise indicated, all information in this prospectus assumes and reflects:

- the consummation of the Reorganization Transaction, including the issuance to the former holders of all of the outstanding shares of Class A common stock and Series A preferred stock of California VIZIO of an equivalent number of shares of Class A common stock or Series A preferred stock, as applicable, of VIZIO Holding Corp.;
- the conversion of all of the outstanding shares of our Series A convertible preferred stock into shares of our Class A common stock (the Series A Conversion);
- the filing of our amended and restated certificate of incorporation, which will occur concurrently with the completion of this offering;

- the forfeiture of 550,000 shares of our Class A common stock subject to restricted stock awards subsequent to December 31, 2020 (the RSA Forfeiture);
- the exchange of all of the shares of our Class A common stock held by William Wang, our Founder, Chairman and Chief Executive Officer and certain of his affiliated entities into an equivalent number of shares of our Class B common stock, which exchange will occur immediately prior to the completion of this offering pursuant to the terms of an exchange agreement (the Class B Stock Exchange);
- no exercise of options or vesting of RSUs subsequent to December 31, 2020; and
- no exercise of the underwriters' option to purchase additional shares from us and the selling stockholders.

SUMMARY CONSOLIDATED FINANCIAL DATA

The following table summarizes the consolidated financial data of California VIZIO for the periods presented and should be read together with "Management's Discussion and Analysis of Financial Condition and Results of Operations" and the consolidated financial statements of California VIZIO and related notes appearing elsewhere in this prospectus. Prior to the completion of the Reorganization Transaction, VIZIO Holding Corp. will not conduct any activities other than those incidental to its formation and the preparation of this prospectus. Accordingly, our consolidated financial statements and other financial information included in this prospectus reflect the results of operations and financial position of California VIZIO and its subsidiaries. See "Prospectus Summary—Corporate Information." The summary consolidated statements of income data for the years ended December 31, 2018, 2019 and 2020 are derived from our audited consolidated financial statements included elsewhere in this prospectus. The historical results presented below are not necessarily indicative of financial results to be achieved in future periods.

Consolidated Statements of Operations Data

	Year Ended December 31,		
	2018	2019	2020
	(in thousands, except per share data)		
Net revenue:			
Device	$ 1,744,353	$ 1,773,600	$ 1,895,275
Platform+	36,377	63,199	147,198
Total net revenue	1,780,730	1,836,799	2,042,473
Cost of goods sold:			
Device	1,656,082	1,648,583	1,710,776
Platform+	14,387	23,051	35,339
Total cost of goods sold	1,670,469	1,671,634	1,746,115
Gross profit:			
Device	88,271	125,017	184,499
Platform+	21,990	40,148	111,859
Total gross profit	110,261	165,165	296,358
Operating expenses:			
Selling, general and administrative	95,753	108,983	130,884
Marketing	19,161	22,656	31,279
Depreciation and amortization	5,030	4,134	2,296
Total operating expenses	119,944	135,773	164,459
Income (loss) from operations	(9,683)	29,392	131,899
Interest income (expense), net	(1,633)	1,178	12
Other income (expense), net	10,532	235	532
Total non-operating income	8,899	1,413	544
Income (loss) before income taxes	(784)	30,805	132,443
Provision for (benefit from) income taxes	(628)	7,719	29,968
Net income (loss)	$ (156)	$ 23,086	$ 102,475
Total comprehensive income (loss):			
Net income (loss)	(156)	23,086	102,475
Foreign currency translation adjustments	330	(125)	721
Comprehensive income (loss)	174	23,211	103,196
Earnings per share:			
Basic	$ (0.02)	$ 1.12	$ 5.00
Diluted	$ (0.02)	$ 1.10	$ 4.91
Weighted average shares outstanding:			
Basic	15,329	16,014	16,042
Diluted	15,329	16,340	16,334

Consolidated Balance Sheet Data

	As of December 31, 2020		
	Actual	Pro Forma(1)	Pro Forma As Adjusted(2)(3)
		(in thousands)	
Cash and cash equivalents and investments	$207,728	$ 207,141	$
Working capital(4)	64,094	63,507	
Total assets	774,982	774,395	
Total liabilities	625,751	625,751	
Convertible preferred stock	2,565	—	
Total stockholders' equity	149,231	148,644	

(1) The pro forma column in the consolidated balance sheet data table above reflects (i) the Series A Conversion upon the completion of this offering; (ii) the filing of our amended and restated certificate of incorporation prior to the completion of this offering; and (iii) the completion of the Reorganization Transaction prior to the completion of this offering.

(2) The pro forma as adjusted column in the balance sheet data table above gives effect to (i) the pro forma adjustments set forth above and (ii) the sale and issuance by us of shares of our Class A common stock in this offering at an assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

(3) Each $1.00 increase or decrease in the assumed initial public offering price of $ per share, which is the midpoint of the estimated offering price range set forth on the cover page of this prospectus, would increase or decrease the amount of our pro forma as adjusted cash and cash equivalents, working capital, total assets, and total stockholders' equity by $ million, assuming that the number of shares of common stock offered, as set forth on the cover page of this prospectus, remains the same, after deducting estimated underwriting discounts and commissions. An increase or decrease of 1.0 million shares in the number of shares offered by us would increase or decrease, as applicable, the amount of our pro forma as adjusted cash and cash equivalents, working capital, total assets, and total stockholders' equity by $ million, assuming the assumed initial public offering price remains the same, and after deducting estimated underwriting discounts and commissions.

(4) Working capital is defined as current assets less current liabilities.

Non-GAAP Financial Measure

In addition to our financial information presented in accordance with GAAP, we believe Adjusted EBITDA is useful to investors in evaluating our operating performance. We define Adjusted EBITDA, a non-GAAP financial metric, as total net income before interest income (expense), net, other income, net, provision for (benefit from) income taxes, depreciation and amortization and stock-based compensation. We use Adjusted EBITDA in conjunction with net income (loss) as part of our overall assessment of our operating performance and the management of our working capital needs. Our definition of Adjusted EBITDA may differ from the definition used by other companies and therefore comparability may be limited. In addition, other companies may not publish Adjusted EBITDA or similar metrics. Furthermore, Adjusted EBITDA has certain limitations in that it does not include the impact of certain expenses that are reflected in our consolidated statement of operations that are necessary to run our business. Thus, Adjusted EBITDA should be considered in addition to, not as a substitute for, or in isolation from, measures prepared in accordance with GAAP, including net income (loss).

	Year Ended December 31,		
	2018	2019	2020
		(in thousands)	
Net income (loss)	$ (156)	$ 23,086	$ 102,475
Adjusted EBITDA(1)	$ 584	$ 37,604	$ 138,971

(1) See the section titled "Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Business Metrics—Non-GAAP financial measure" for a reconciliation between Adjusted EBITDA and net income, the most directly comparable generally accepted accounting principle (GAAP) financial measure.

RISK FACTORS

An investment in our Class A common stock involves a high degree of risk. You should carefully consider the risks and uncertainties described below, together with Management's Discussion and Analysis of Financial Condition and Results of Operations and the financial statements and all the other information in this prospectus, before you decide to purchase any shares of our Class A common stock. Many of the risks and uncertainties described below may be exacerbated by the ongoing COVID-19 pandemic and any worsening of the global business and economic environment as a result. If any of the following risks actually occur, our business, financial condition or results of operations may be harmed and you may lose all or part of your investment.

Risks Relating to Our Industry and Business

Decreases in average selling prices of our Smart TVs and other devices may reduce our total net revenue, gross profit and net income, particularly if we are not able to reduce our expenses commensurately.

The selling prices of televisions, sound bars and other media entertainment devices typically decline over time for a variety of reasons, including increased price competition, excess manufacturing capacity and the introduction of new devices and technology. If we are unable to anticipate and counter declining selling prices during the lifecycle of our devices, our total net revenue, gross profit and results of operations may be harmed.

We sell the vast majority of our devices to various retailers that in turn sell our devices to the end consumer. In most situations, these retailers offer several brands of similar devices. The consumer's decision on which brand to purchase can be impacted by a host of factors including price, and retailers will not purchase our devices from us if they are unable to sell them to consumers at a profit. As a result, if we are unable to offer devices to retailers at competitive prices, our business, financial condition and results of operations may be harmed.

Companies that sell media entertainment devices, including us, are vulnerable to cyclical market conditions that can cause a decrease in device prices. Intense competition and expectations of growth in demand across the industry may cause media entertainment device companies or their suppliers to make additional investments in manufacturing capacity on similar schedules, resulting in a surge in production capacity. During these surges in capacity, retailers can exert strong downward pricing pressure, resulting in sharp declines in prices and significant fluctuations in Device gross margin. Furthermore, we may provide our retailers with price protection credits in the form of rebates for devices that decrease in price during the device's life cycle. While, in certain instances, we seek to pass through the costs associated with price protection rebates to our manufacturers, we may not be able to do so in full or in part, which may harm our Device gross margin.

In order to sell devices that have a declining purchase price while maintaining our Device gross margin, we need to continually reduce device and sourcing costs. To manage sourcing costs, we collaborate with our third-party manufacturers to attempt to engineer cost-effective designs for our devices. In addition, we rely on our third-party manufacturers to manage the prices paid for components used in our devices, especially key components such as LCD and OLED panels. We must also manage our logistics and other costs to reduce overall device costs. Our cost reduction efforts may not allow us to keep pace with competitive pricing pressures or declining prices. We cannot guarantee that we will be able to achieve any or sufficient cost reductions to enable us to reduce the price of our devices to remain competitive without margin declines, which could be significant.

We also need to continually introduce new devices, in particular Smart TVs, with higher gross margins in order to maintain our Device gross margin. Although we may be able to take advantage of the higher selling prices typically associated with new devices and technologies when they are first introduced in the market, such prices decline over time, and in certain cases very rapidly, as a result of market competition or otherwise. We may not be successful in improving or designing new devices, or delivering our new or improved devices to market in a timely manner.

If we are unable to effectively anticipate and counter declining prices during the lifecycle of our devices, or if the prices of our devices decrease faster than the speed at which we are able to reduce our manufacturing costs, our total net revenue, gross profit and results of operations may be harmed.

We depend on sales of our Smart TVs for a substantial portion of our total net revenue, and if the volume of these sales declines or is otherwise less than our expectations, we could lose market share or our Device net revenue may not grow at the rate we expect and our business, financial condition and results of operations may suffer.

A substantial portion of our total net revenue has been derived from the sale of Smart TVs. Sales of Smart TVs accounted for 79%, 88% and 85% of our net revenue for the years ended December 31, 2018, 2019 and 2020, respectively. A decline in the volume of sales, whether due to macroeconomic conditions, changes in consumer demand, changes in technology or consumer preferences, competition or otherwise would harm our business and results of operations more significantly than it would if our devices were more diversified across a greater variety of products and services. Sales declines may also result in the loss of market share or require us to reduce the prices of our Smart TVs, which may harm our results of operations, including our gross margin.

Demand for our Smart TVs is affected by numerous factors, including the general demand for televisions, price competition and the introduction of new technological innovations. For example, demand is, in part, affected by the rate of upgrade of new televisions. We derived a significant percentage of our past total net revenue as a result of consumers purchasing Smart TVs to replace their existing televisions, upgrading standard-definition televisions to high-definition and 4K televisions, upgrading analog receivers to digital receivers, and other upgrades to newer technologies. We cannot guarantee that current or future technological upgrades, such as OLED televisions and televisions with greater color spectrum or operating system capabilities will result in similar adoption rates, or that content providers will provide the content necessary for such technological upgrades to fulfill their full potential for consumers. For example, there was a significant amount of time between when high-definition televisions were available and high-definition content for such televisions was prevalent, and there has been minimal content available and provided for 3D televisions. Furthermore, the rate of replacement with new televisions of older televisions may be affected by macroeconomic factors such as continuing uncertainty in the global economy, or a change in the prices of televisions. If consumers do not purchase new televisions, or purchase substitute or replacement televisions at a lower rate than during prior replacement cycles, this may harm our business, financial condition and results of operations.

While we are evaluating other devices and services to add to and diversify our offerings, we may not be successful in identifying or executing on such opportunities, and we expect sales of televisions to continue to represent most of our total net revenue for the foreseeable future. Further, the success of Platform+ relies on continued sales of our Smart TVs in order to generate additional consumers who could become SmartCast Active Accounts. Because our SmartCast operating system is only available on our Smart TVs, the growth of Platform+ will be limited by the number or Smart TVs we sell. In addition, certain of our other new device offerings in the past, including sound bars, have been complementary to Smart TV purchases, and sales of such devices are correlated with Smart TV purchases. As a result, our future growth and financial performance will depend heavily on our ability to develop and sell our Smart TVs.

If we fail to keep pace with technological advances in our industry, or if we pursue technologies that do not become commercially accepted, consumers may not buy our devices, and our revenue and profitability may decline.

The markets for the media entertainment devices that we offer are characterized by rapidly changing technology, evolving technical standards, changes in consumer preferences, low margins, significant competition and the frequent introduction of new devices and software. The development and commercialization of new technologies, and the introduction of new devices and software, will often quickly make existing devices and software obsolete, unprofitable or unmarketable. We derive a substantial portion of our total net revenue from

sales of new Smart TVs, and we expect a significant percentage of our future growth to depend in part on the continued development and monetization of our SmartCast operating system. Smart TV functionality is rapidly changing, and many potential future use cases for Smart TVs are untested and may prove unsuccessful. Our failure to adequately anticipate changes in the industry and the market, and to develop attractive new devices, software or services, may reduce our future growth and profitability. Moreover, the development process can be lengthy and costly, and requires us to collaborate with our third-party manufacturers, software developers and their suppliers as well as our retailers well in advance of sales. Technology and standards may change while we are in the development stage, rendering our devices obsolete or uncompetitive before their introduction. Our devices, which typically contain both hardware and software, may contain undetected bugs, errors or other defects or deficiencies that may not be discovered until after their introduction and shipment. We have in the past experienced bugs, errors or other defects or deficiencies in new devices and device updates and delays in releasing new devices, deployment options and device enhancements, and may have similar experiences in the future. In addition, we may encounter difficulties incorporating technologies and software into our devices in accordance with our retailers' and consumers' expectations, which in turn may negatively affect our retailer and consumer relationships, and our reputation, brand and revenue. For example, at the launch of Disney+, the Disney+ application was not available for installation on our Smart TVs, which led to consumer dissatisfaction and complaints. If we fail to keep pace with rapid technological changes and changes in consumers' needs or preferences, or to predict future consumer preferences, and to offer new devices, software or software updates to new or existing devices in response to such changes, our business, financial condition and results of operations may be harmed.

We compete in rapidly evolving and highly competitive markets, and we expect intense competition to continue, which could result in a loss of our market share and a decrease in our revenue and profitability, and may harm our growth prospects.

We compete in rapidly evolving and highly competitive markets, and with existing competitors whose size and resources may allow them to compete more effectively than we can. We expect intense competition to continue as existing competitors introduce new and more competitive offerings alongside their existing devices and services, and as new market entrants introduce new devices and services into our markets. Many of our competitors have greater financial, distribution, marketing and other resources, longer operating histories, better brand recognition among some types of consumers and greater economies of scale. In addition, these competitors have long-term relationships with many of our retailers.

We compete primarily with established, well-known television manufacturers, established media entertainment device companies, as well as more recent entrants to the branded television market. Our principal competitors include: Samsung, Sony, LG, TCL and Hisense. In addition, one of our significant retailers, Walmart, has recently introduced its own brand of televisions and may choose to promote their own devices over ours or could ultimately cease selling or promoting our devices entirely. We face sound bar competition from large consumer electronics brands such as Samsung, Sony, LG, Bose, Sonos and Onn. Any reduction in our ability to place and promote our devices, or increased competition for available or desirable shelf or website placement, especially during peak retail periods, such as the holiday shopping season, would require us to increase our marketing expenditures and to seek other distribution channels to promote our devices.

Our Platform+ offerings compete both to be the entertainment hub of consumers' homes and for advertising spend. We expect advertising spend to continue to shift from linear TV to connected TV, and as such we expect new competition to continue to intensify for viewership and for advertising spend. In this respect, we compete against other television brands with Smart TV offerings, such as Samsung, as well as connected devices such as Roku, Amazon Fire TV Stick and Apple TV and traditional cable operators, which may provide their own streaming services. We compete for advertising spend with these competitors as well as with OTT streaming services such as Hulu and YouTube TV, as such services are able to monetize across a variety of devices and consumers may engage with their content through devices other than our Smart TVs. We compete with these devices and services in part on the basis of user experience and content availability, and if our competitors are

able to develop features that enhance the user experience, offer applications that are not available on our Smart TVs, or secure rights or partnerships to content, including exclusive content, consumers may prefer their offerings to ours and our business may be harmed. In addition, we compete to attract and retain advertisers, and our competitors may offer more attractive alternatives to advertisers, such as larger audiences or better ad formats. Further, to the extent consumers who purchase a VIZIO Smart TV do not engage with our SmartCast operating system and instead use their Smart TV with one of our competitors' solutions or for other purposes, our ability to generate Platform+ net revenue may be harmed.

Many of our existing and potential competitors enjoy substantial competitive advantages, such as:

- strong brand names;
- strong relationships with advertisers;
- access to greater resources in connection with research and development, including regarding development of advertising solutions;
- the ability to more easily undertake extensive marketing campaigns;
- the capacity to leverage their sales efforts and marketing expenditures across a broader portfolio of devices and services;
- the ability to implement and sustain aggressive pricing policies;
- the ability to obtain favorable pricing or allocations of key components from manufacturers or suppliers, including LCD and OLED panels, which are supplied for our devices to a significant extent by affiliates of our competitors;
- the ability to exert significant influence on sales channels;
- better access to prime shelf space at our retailers' retail locations;
- broader distribution and more established relationships with retailers;
- access to larger established retailer and consumer bases;
- access to greater resources to make acquisitions;
- a broader distribution market, by selling their devices internationally;
- the ability to rapidly develop and commercialize new technologies and services;
- the ability to bundle competitive offerings with other devices and services;
- the ability to cross-subsidize low-margin operations from their other higher-margin operations; and
- the ability to secure rights or partnerships to content, including exclusive content, that consumers may prefer over our content.

We would be at a competitive disadvantage if our competitors bring their next generation devices and services to market earlier than we do, if their devices or services have lower prices, better features, more content (or more preferable content) or are more technologically advanced than ours, or if any of our competitors' devices or services were to become preferred by retailers or consumers. To the extent we are unable to effectively compete against our competitors for any of these reasons or otherwise, our business, financial condition and results of operations may be harmed.

If we are unable to provide a competitive entertainment offering through SmartCast, our ability to attract and retain consumers would be harmed, as they increasingly look for new ways to access, discover and view digital content.

Our Smart TVs connect consumers with a user interface capable of facilitating discovery and engagement with a wide variety of content from traditional content providers, such as cable operators, and streaming content

providers, including Amazon Prime Video, Apple TV+, Disney+, Hulu, Netflix, Peacock and YouTube TV. We face increased competition from a growing number of broadband-enabled devices from providers such as Roku, AppleTV, Amazon (including Fire TV Sticks) and Google (including Chromecast) that provide broadband delivered digital content directly to a consumer's television connected to their device. In addition, we face competition from traditional cable providers and other television brands with Smart TV offerings, such as Samsung. We also face competition from online content providers and other PC software providers who deliver digital content directly to a consumer's personal computer, which in some cases may then be viewed on a consumer's television. To compete effectively, we must be able to provide premium, high-definition content at comparable speeds and quality. We must also maintain arrangements with a competitive assortment of content providers. For example, at the launch of Disney+, the Disney+ application was not available for installation on our Smart TVs, which led to consumer dissatisfaction and complaints. We do not currently have arrangements with all of the popular content providers, including some content providers that are available on competitive devices, such as HBOMax. In addition, it takes time to bring new content to our platform, as it can take time for third party content providers to design their applications in a way that is compatible with our platform, and delays or failures to reach agreement with popular content providers will harm our business. Furthermore, our arrangements with our current content providers typically do not involve long-term commitments, and we cannot guarantee we will be able to continue our relationships with our current content providers in the future.

Additionally, the manner in which consumers access streaming content is changing rapidly. As the technological infrastructure for internet access continues to improve and evolve, consumers will be presented with more opportunities to access video, music and games on-demand with interactive capabilities. Time spent on mobile devices is growing rapidly, in particular by young adults streaming video content from streaming channels and from cable or satellite providers available live or on-demand on mobile devices. If our competitors are able to respond and take advantage of changes in consumer viewing habits and technologies better than us, our business may be harmed.

If we are unable to provide a competitive entertainment offering through SmartCast, we may not maintain or increase SmartCast Active Accounts, SmartCast Hours and SmartCast ARPU, and our business, financial condition and results of operations may be harmed.

Platform+ has experienced recent rapid growth, and our future success depends in part on our ability to continue to grow Platform+.

Platform+ is at an early stage and has experienced recent rapid growth, which may not be indicative of future growth. Platform+ net revenue was $36.4 million, $63.2 million and $147.2 million in 2018, 2019 and 2020, respectively. You should not rely on our growth in any prior period as an indication of our future performance, as we may not be able to sustain our growth rate in the future. Even if our Platform+ net revenue continues to increase, we expect that our Platform+ revenue growth rate may decline in the future as a result of a variety of factors, including the saturation of our markets.

The success of our Platform+ business will depend on many factors, including our ability to increase the number of SmartCast Active Accounts, increase SmartCast Hours and increase SmartCast ARPU. To do so, we must enhance our SmartCast operating system, develop innovative advertising products, maintain relationships with advertising purchasers and develop new offerings that add additional features and capabilities. In addition, any failure to grow our data licensing revenue through Inscape may harm our Platform+ business and results of operations. We have made significant investments in our Platform+ offerings and the technological capabilities of our Smart TVs, and we may not achieve positive returns on these investments.

We intend to continue to expend substantial financial and other resources to develop our SmartCast operating system and the features and functionalities of our Smart TVs, and we may fail to allocate our resources in a manner that results in increased revenue or other growth in our business. If we are unable to maintain or increase our Platform+ net revenue at a rate sufficient to offset the expected increase in our costs, our business,

financial condition and results of operations may be harmed. Additionally, we may encounter unforeseen operating expenses, difficulties, complications, delays and other unknown factors that may result in losses in future periods. If Platform+ growth does not meet our expectations in future periods, our business, financial condition and results of operations may be harmed.

We depend in part on the continued sales of our Smart TVs for the growth of our Platform+ business and if we fail to deliver devices that our retailers and consumers want, our business, financial condition and results of operations may be harmed.

The growth of our Platform+ business depends in part on the continued sales of our Smart TVs in order to generate additional consumers who could become SmartCast Active Accounts. Because our SmartCast operating system is only available on our Smart TVs, the growth of Platform+ depends in part on the number of new Smart TVs we sell and our ability to convert those purchasers into SmartCast Active Accounts. To the extent retailers and consumers do not continue to purchase our Smart TVs, we may not be able to grow our SmartCast Active Accounts, SmartCast Hours or SmartCast ARPU, and these metrics may decline if existing consumers decide to purchase from another brand when they purchase a new television. If we fail to deliver upgraded and new Smart TVs that our retailers and consumers want, we may not be able to continue to grow our Platform+ business, and our business, financial condition and results of operations may be harmed.

We may not be successful in our efforts to expand our monetization of our SmartCast operating system, which may harm our business, financial condition and results of operations.

Our future growth depends in part on our ability to expand the capabilities of our SmartCast operating system and to monetize those capabilities. SmartCast currently generates revenue from ad inventory on our home screen, WatchFree and certain other services on our operating system and, on a transactional basis, from certain subscription purchases and content transactions that occur on our operating system. To continue to grow our business, we intend to invest in interactive features for our Smart TVs such as personal communications, commerce and fitness and wellness. We may be unable to successfully develop these features and even if we do, consumers may not choose to engage with them. The failure to develop new features and functionalities for our SmartCast operating system may harm our number of SmartCast Active Accounts, and the failure to monetize such innovations may harm our SmartCast ARPU. If we are unable to generate revenue from new features of our Smart TVs, our business, financial condition and results of operations may be harmed.

We expect our quarterly financial results to fluctuate, which may lead to volatility in our stock price.

Our net revenue and net income vary significantly from quarter to quarter due to a number of factors, including:

- changes in demand for the devices we sell, including seasonal fluctuations reflecting traditional retailer and consumer purchasing patterns;
- changes in the mix of devices we sell;
- the impact of new device introductions, including the impact of customary reset periods, or retailers and consumers choosing to forego purchases of current devices in anticipation of new devices;
- the introduction of new technologies, devices or service offerings by competitors;
- our ability to manage our device mix and consider allowances, including for price protection;
- our ability to reduce our fixed costs to compensate for any reduced net revenue or decrease in average selling prices;
- our ability to grow SmartCast Active Accounts and continue to develop our Platform+ offerings;
- changes in advertising and other marketing costs;

- aggressive pricing, marketing campaigns or other initiatives by our competitors;
- increases in the cost of the devices we sell due to the rising costs of key components such as LCD and OLED panels, chipsets and raw materials, particularly in Vietnam, China, Taiwan, Thailand and Mexico;
- costs of expanding or enhancing our supply base;
- changes and uncertainty in the legislative, regulatory and industry environment for us, our retailers or our manufacturers;
- investments in new device or service offerings, including the level of investment in our Platform+ offerings;
- changes in our capital expenditures as we acquire the hardware, equipment, technologies and other assets required to operate and scale our business; and
- costs related to acquisitions of other businesses or technologies.

As a result of the variability of these and other factors, including macroeconomic factors, our results of operations in future quarters may be below the expectations of stock analysts and investors, which could cause our stock price to fall.

Our Device business is seasonal, and if our device sales during the holiday season fall below our forecasts, our business, financial condition and results of operations may be harmed.

Our Device business is subject to seasonal fluctuations in demand due to changes in buying patterns by our retailers. Historically, we have experienced the highest levels of our sales in the fourth quarter of the year, coinciding with the holiday shopping season in the United States, including the Black Friday and Cyber Monday sales events, and, to a more limited extent, the third quarter due to pre-holiday inventory build-up and back-to-school promotions. Moreover, we often introduce our newest generation of device offerings just prior to this peak season, which may further concentrate sales in the fourth quarter. Additionally, there are other seasonal events, such as Superbowl Sunday in the first quarter, as well as retailer reset periods in the spring and fall of each year, which impact our sales volume. During device reset periods, our retailers, including Best Buy, Costco, Sam’s Club, Target and Walmart, update their device assortments, driving sales of new device introductions, while simultaneously driving down prices for pre-existing devices, as retailers seek to move older devices off of their shelves to make room for new devices.

Depending on how well we plan and execute our sales strategy during seasonal fluctuations in demand, our device sell-through and/or margins may be harmed, particularly as we provide price protection for devices in inventory at our retailers. Further, given the strong seasonal nature of our device sales, appropriate forecasting is critical to our operations. We anticipate that this seasonal impact on our results will continue, and any shortfall in seasonal sales would cause our results of operations to suffer. Achieving sales targets in the fourth quarter is particularly important, as a failure to achieve sales targets during the holiday season cannot be recovered in subsequent periods of a given year.

In contrast to total net revenue, a substantial portion of our expenses are personnel-related and include salaries, bonuses, benefits and stock-based compensation, which are not seasonal in nature. Accordingly, in the event of revenue shortfalls, we are generally unable to mitigate the negative impact on margins in the short term.

Our success depends on our ability to continue to establish, promote and strengthen the VIZIO brand.

Maintaining awareness of the VIZIO brand name in existing markets and developing and maintaining the VIZIO brand name in new markets are critical to achieving and maintaining widespread awareness of our Smart TV and other device and service offerings. The VIZIO name and brand image are integral to the growth of our

business and expansion into new markets. Maintaining, protecting, promoting and positioning our brand will largely depend on the success of our marketing efforts and our ability to consistently provide high quality devices that continue to meet the needs of our retailers and consumers at competitive prices, our ability to maintain our retailers' and consumers' trust, and our ability to successfully differentiate our devices from competitive products. If we fail to achieve these objectives or if our public image or reputation were to be tarnished by negative publicity or perception, our brand, business, financial condition and results of operations may be harmed. We also believe that brand recognition will continue to be a key factor in maintaining and expanding our retailer base and market position, strengthening our bargaining power with retailers, manufacturers and third-party service providers and growing our Platform+ offerings. Maintaining and enhancing our brand requires us to make substantial investments, and these investments may not achieve the desired goals. Marketing expenses for the years ended December 31, 2018, 2019 and 2020 were $19.2 million, $22.7 million and $31.3 million, respectively. If we are unable to continue to promote, protect and strengthen the VIZIO brand, or if our brand fails to continue to be viewed favorably by our retailers or by consumers, we may not be successful in retaining existing retailers or consumers, or in attracting and acquiring new retailers and consumers, which may harm our business, financial condition and results of operations. Additionally, we compete for retailers and consumers, as well as for favorable device selections and cooperative advertising support from our retailers. Our retailers are often the first points of contact with consumers. Moreover, these retailers provide a significant amount of device advertising, which supplements our marketing spend or may decrease the amount that we are otherwise required to spend on marketing. If these retailers reduce or cease advertising our devices, we may need to increase our own sales and marketing expenses to create and maintain the same level of brand awareness among potential consumers.

We must successfully manage frequent device introductions and transitions.

We believe that we must continually develop and introduce new devices, enhance our existing devices and effectively stimulate retailer and consumer demand for new devices. Any failure to complete device transitions effectively could harm our brand, business, financial condition and results of operations.

The success of new device introductions depends on a number of factors including, but not limited to, timely and successful development, market and consumer acceptance, the effective forecasting and management of device demand, management of purchase commitments and inventory levels, the management of manufacturing and supply costs, and the risk that new devices may have quality or other defects in the early stages of introduction. If we do not successfully manage device transitions, especially during the holiday shopping season, our Device net revenue and business may be harmed and we may not be able to grow our business.

The introduction of new devices or device enhancements may shorten the life cycle of our existing devices, or replace sales of some of our current devices, thereby offsetting the benefit of a successful device introduction. Additionally, the prices of our existing models tend to decline when new models become available. Although we attempt to pass such price declines to our manufacturers, we may need to offer our retailers price protection or other benefits in order to complete the sell-through of older models of our devices to consumers. New device offerings may also cause retailers or consumers to defer purchasing our existing devices in anticipation of the new devices and potentially lead to challenges in managing inventory of existing devices. If we fail to effectively manage new device introductions, our Device net revenue and Device gross profit may be harmed.

If we fail to effectively manage our growth, our business, financial condition and results of operations may be harmed.

Our ability to manage our growth and business operations effectively and to integrate new employees, technologies and acquisitions into our existing business will require us to continue to expand our operational and financial infrastructure and to continue to retain, attract, train, motivate and manage employees, which may be more difficult following a reduction in force in the second quarter of 2020 in response to the economic uncertainty caused by the COVID-19 pandemic. Continued growth could strain our ability to develop and

improve our operational, financial and management controls, enhance our reporting systems and procedures, recruit, train and retain highly skilled personnel and maintain consumer satisfaction. Additionally, if we do not effectively manage the growth of our business and operations, the quality of our offerings could suffer, which could negatively affect our reputation, brand, business, financial condition and results of operations.

Further, as we have grown, our business has become increasingly complex. To effectively manage and capitalize on our growth, we must continue to expand our sales and marketing infrastructure, focus on innovative device development and upgrade our management information systems and other processes. Our continued growth could strain our existing resources, and we could experience ongoing operating difficulties in managing our business across numerous jurisdictions, including difficulties in hiring, training and managing a diffuse and growing employee base. Failure to scale and preserve our company culture with growth could harm our future success, including our ability to retain and recruit personnel and to effectively focus on and pursue our corporate objectives. If we do not adapt to meet these evolving challenges, or if our management team does not effectively scale with our growth, we may experience erosion to our brand and the quality of our devices may suffer.

Our Smart TVs must operate with various offerings, technologies and systems from third party content providers that we do not control. If our Smart TVs do not operate effectively with those offerings, technologies and systems, our business may be harmed.

The success of our SmartCast operating system depends in part on its interoperability with the applications of content providers in order to provide the channels and content that consumers want. We have no control over the development priorities of these third party content providers and cannot be assured they will design their applications for our platform. For example, HBOMax is not currently available as an application on our SmartCast operating system. If content providers do not develop or maintain applications for our SmartCast operating system, our business, financial condition and results of operations may be harmed.

Our success also depends on the reliability of these offerings. If the applications on our Smart TVs experience performance issues or service interruptions, consumers may become dissatisfied with our platform. In addition, we plan to continue to develop our SmartCast operating system and innovate new features. These developments and features, however, may require content providers to update or modify their applications. To continue to grow our SmartCast Active Accounts and consumer engagement, we will need to prioritize development of our Smart TVs to work with additional offerings, technologies and systems. If we are unable to maintain consistent operability of our devices compared to other platforms, our business may be harmed. In addition, any future changes to offerings, technologies and systems from content providers may impact the accessibility, speed, functionality, and other performance aspects of our Smart TVs. We may not successfully develop Smart TVs that operate effectively with these offerings, technologies or systems. If it becomes more difficult for our consumers to access and use these offerings, technologies or systems, consumers may seek to use alternative offerings and our business, financial condition and results of operations may be harmed.

If the advertising and audience development campaigns and other promotional advertising on our platform are not relevant or not engaging to our consumers, our growth in SmartCast Active Accounts and consumer engagement may be harmed.

We have made, and are continuing to make, investments to enable advertisers and content providers to deliver relevant advertisements, audience development campaigns and other promotional advertising to our consumers. Existing and prospective advertisers and content providers may not be successful in serving ads and audience development campaigns and sponsoring other promotional advertising that lead to and maintain user engagement. Those ads and campaigns may seem irrelevant, repetitive or overly targeted and intrusive. We are continuously seeking to balance the objectives of our advertisers and content providers with our desire to provide an optimal user experience, but we may not be successful in achieving a balance that continues to attract and retain consumers, advertisers and content providers. We have invested and expect to continue to invest in developing innovative advertising technology, and those investments may not lead to capable or commercially

successful technology. If we do not introduce relevant advertisements, audience development campaigns and other promotional advertising or such advertisements, audience development campaigns and other promotional advertising are overly intrusive and impede the use of our streaming platform, our consumers may reduce using, or stop using, our platform, and advertisers or content providers may reduce or discontinue their relationships with us, any of which may harm our business.

If we are unable to maintain an adequate supply of quality video ad inventory or effectively sell our available video ad inventory, we may not be successful in further monetizing our Platform+ business and as a result, our business, financial condition and results of operations may be harmed.

We are dependent in part on our ability to monetize video ad inventory on WatchFree and VIZIO Free channels, and video ad inventory that we obtain from the publishers of ad-supported channels, and through our inventory share with certain AVOD services. We generate advertising revenue by selling ad inventory on our own services and through certain third-party AVOD services. We may fail to attract content providers for these services that generate a sufficient quantity or quality of ad-supported content hours on our streaming platform and continue to grow supply of quality video ad inventory. Our access to video ad inventory on our platform, including on WatchFree and VIZIO Free Channels, varies greatly. The amount, quality and cost of video ad inventory available to us can change at any time. If we are unable to grow and maintain a sufficient supply of quality video advertising inventory at reasonable costs to keep up with demand, we may not be able to increase our SmartCast ARPU and our business may be harmed.

Our ability to deliver more relevant advertisements to our consumers and to increase SmartCast's value to advertisers depends in part on the collection of user engagement data, which may be restricted or prevented by a number of factors, including our ability to keep SmartCast Active Accounts engaged on ad-supported content instead of harder to monetize content, contractual restrictions on our ability to use data from certain streaming services and consumers' willingness to opt into the collection of their data. Our ability to grow SmartCast ARPU depends in part on our ability to shift SmartCast Hours towards services that we are better able to monetize.

Further, we operate in a highly competitive advertising industry and we compete for revenue from advertising with OTT platforms and services, as well as traditional media, such as radio, broadcast, cable and satellite TV. These competitors offer content and other advertising mediums that may be more attractive to advertisers than our streaming platform. These competitors are often very large and have more advertising experience and financial resources than we do, which may adversely affect our ability to compete for advertisers and may result in lower revenue and gross profit from advertising. If we are unable to increase our revenue from advertising by, among other things, continuing to improve our platform's capabilities to further optimize and measure advertisers' campaigns, increase our advertising inventory and expand our advertising sales team and programmatic capabilities, our business and our growth prospects may be harmed. We may not be able to compete effectively or adapt to any such changes or trends, which would harm our ability to grow our advertising revenue and harm our business, financial condition and results of operations.

An economic downturn, or economic uncertainty in our key markets, could adversely affect consumer discretionary spending and demand for our devices and our results of operations.

Our Smart TVs and sound bars are consumer discretionary items. As such, our results of operations tend to be sensitive to changes in conditions that impact the level of consumer spending for discretionary items, including general macroeconomic conditions, consumer confidence, employment levels, interest rates, tax rates, the availability and cost of consumer credit, consumer debt levels and fuel and energy costs. As global economic conditions continue to be volatile and economic uncertainty remains, consumer discretionary spending may also remain unpredictable and subject to reductions due to credit constraints and uncertainties. These factors may lead consumers to delay or reduce purchases of our devices. Further, economic downturns may lead to a reduction in advertising spending and harm the results of operations of Platform+. Our sensitivity to economic cycles and any related fluctuation in consumer demand may harm our business, financial condition and results of operations. For

example, we believe that consumer demand has been accelerated into 2020 due to shelter-in-place orders, work-from-home policies and other measures taken in response to the COVID-19 pandemic, and we expect consumer demand could decrease in future periods, particularly to the extent a resurgence of COVID-19 causes global or regional recessions.

Changes in consumer viewing habits could harm our business.

The manner in which consumers access streaming content is changing rapidly. As the technological infrastructure for internet access continues to improve and evolve, consumers will be presented with more opportunities to access video, music and games on-demand with interactive capabilities. Time spent on mobile devices is growing rapidly, in particular by young adults streaming content as well as content from cable or satellite providers available live or on-demand on mobile devices. In addition, personal computers, streaming platforms, DVD players, Blu-ray players, gaming consoles and cable set-top boxes allow consumers to access streaming content. If other streaming or technology providers are able to respond and take advantage of changes in consumer viewing habits and technologies better than us, our business, financial condition and results of operations may be harmed.

New entrants may enter the TV streaming market with unique service offerings or approaches to providing content. In addition, our competitors may enter into business combinations or alliances that strengthen their competitive positions. If new technologies render the TV streaming market obsolete or we are unable to successfully compete with current and new competitors and technologies, our business may be harmed.

The use of Automatic Content Recognition (ACR) technology to collect viewing behavior data is emerging and may not be successful.

The utilization of viewing behavior data collected using ACR technology through Smart TVs to inform digital advertising and content delivery is an emerging industry, and future demand and market acceptance for this type of data is uncertain. If the market for the use of this data does not develop or develops more slowly than we expect, or if we are unable to successfully develop and monetize our Platform+ offerings or the viewing behavior data we collect, our growth prospects may be harmed.

Many factors may adversely affect the acceptance and growth of Platform+, including:

- developing and maintaining relationships and technology integrations with brand advertisers, advertising and media agencies, broadcast, cable and local television networks, digital publishers and streaming companies, data analytics firms and marketing technology firms;
- decisions by advertisers, media content providers, digital publishers or marketing technology companies to, or changes in their technology or rights that, restrict our ability to collect data or their refusal to implement mechanisms we request to ensure compliance with our legal obligations or technical requirements;
- changes by marketing technology companies that render inoperable the integrations we have with them;
- changes in the economic prospects of advertisers, advertising and media agencies, broadcast, cable and local television networks, digital publishers and streaming companies, data analytics firms, advertising technology firms, or the industries or verticals we expect to primarily serve with our Inscape data services;
- the failure to add, or the loss of, brand advertisers, advertising and media agencies, broadcast, cable and local television networks, digital publishers and streaming companies, data analytics firms and advertising technology firms running advertising campaigns using our services;

- the timing and amount of sales and marketing expenses incurred to attract new brand advertisers, advertising and media agencies, broadcast, cable and local television networks, digital publishers and streaming companies, data analytics firms and advertising technology firms to our services;
- changes in the demand for viewing behavior data;
- changes in consumer preferences and attitudes toward data collection, use, disclosure and other processing;
- changes in device functionality and settings, and other changes in technologies, including those that make it easier for consumers to prevent the placement monitoring technology and impact our ability to reach them online or collect and use exposure data, and decisions by consumers to opt out of being monitored or to use such technology; and
- changes in or the introduction of new laws, rules, regulations or industry standards or increased enforcement of international laws, rules, regulations or industry standards impacting the collection, use, privacy, security, sharing or other processing of data or otherwise.

Further, we currently do not collect, and might not in the future collect, viewing behavior data regarding content streamed through SmartCast or content viewed on Smart TVs located outside of the United States. Additionally, some of our agreements with third party content providers, including Netflix and Disney+, restrict us from using viewing data from consumers engaging with that third party's content. These potential limitations may impair our ability to monetize Platform+. Moreover, our Smart TV viewers must initially opt-in to data collection and can opt out of data collection at any time. Consumer attitudes toward data collection, use, disclosure, and other processing may change over time, and may result in more of our Smart TV viewers opting out of data collection.

If we are unable to adequately address these factors, we may not be able to successfully develop our Platform+ offerings and our anticipated future growth may be harmed.

Our future growth depends in part on the growth and integration of the digital and television advertising industries.

Many advertisers continue to devote a substantial portion of their advertising budgets to traditional, offline advertising, such as offline television, radio and print. The future growth of our business and, in particular, our Platform+ offerings, will depend on the continued integration of television and digital advertising, and on advertisers increasing their spend on television and digital advertising, and we cannot be certain that they will do so. We have invested to improve digital advertising, such as through our automated content recognition (ACR) and Dynamic Ad Insertion (DAI) technologies, but these technologies are still under development, and even if successfully developed, these efforts may not prove commercially successful. If advertisers do not perceive meaningful benefits from the integration of television and digital advertising, and in particular the benefit of viewing behavior data, including in terms of cost effectiveness, then the digital advertising market and our Platform+ offerings may develop more slowly than we expect, which may harm our business, financial condition and results of operations.

Changing consumer preferences towards data collection, privacy and security could cause consumers not to opt-in to or to opt-out of our data collection practices, which could harm our Platform+ business.

Certain of our data policies require consumers to opt-in to the collection, use, and disclosure of their data, including viewing data. Data collection, privacy and security have become the subject of increasing public concern and changing consumer preferences towards data collection, privacy and security could adversely affect consumer willingness to opt-in to our collection of their data. For example, prior to collection of information from a device about the content viewed on that television, we must prominently disclose to the consumer, separate and apart from any privacy policy, the types of data that will be collected, used and shared with third

parties, including the identity or specific categories of such third parties, and the purposes for sharing of such information, and then obtain the consumer's affirmative express consent. Consumers may be reluctant or unwilling to opt-in to the collecting of viewing data, and consumers that have opted-in to the collection of viewing data may opt-out of the collection of viewing data through the Smart TV user settings at any time.

In particular, the success of our Inscape data services depends in part on our ability to lawfully obtain information about the content viewed on a device through the use of ACR and other technologies from devices whose users choose to opt-in to the data collection. Furthermore, some consumers may be reluctant or unwilling to opt into our collection of their data or connect to the internet through our Smart TVs for a variety of reasons, including because they have concerns regarding the risks associated with data privacy and security. If consumers choose not to opt-in to the collection of their data as a result of these concerns, this could negatively impact the growth potential for our Platform+ business.

A breach of the confidentiality or security of information we hold or of the security of the computer systems used in and for our business could be detrimental to our business, financial condition and results of operations.

We rely on others to operate complex computer systems that store consumers' information, which they are contractually required to maintain on a confidential basis. The information we collect through our Inscape data services does not include consumers' names, addresses, phone numbers, social security numbers, credit card information or other contact information, but it does include device or other persistent identifiers, IP addresses, viewing behavior data and other personal information. We also maintain a separate database of personal information in connection with consumers who register our devices for warranty purposes or otherwise contact us, such as for consumer service assistance. More generally, in the ordinary course of our business, we collect, store, transmit and otherwise process large amounts of sensitive corporate, personal and other information, including intellectual property, proprietary business information, payment card information and other consumer data and confidential information. It is critical that we work to maintain the confidentiality, integrity and availability of such information.

Like all services that connect with the internet, our Inscape data services, and our website, as well as our information technology systems and infrastructure and those of our third-party service providers, and our databases and data centers provided by third-party service providers have in the past and may in the future be subject to security breaches, intrusions, incidents, attacks, malware and ransomware attacks, social engineering attacks, phishing attempts, attempts to overload our servers with denial-of-service, employee and contractor theft and other malfeasance, unauthorized access by third parties or internal actors, or other attacks and disruptions, any of which could lead to interruptions, delays, or shutdowns of our services, or the inadvertent or unauthorized access, destruction, modification, acquisition, release, transfer, loss, disclosure or use of information about consumers or their devices or other sensitive, personal or confidential information. Attacks of this nature are increasing in frequency, levels of persistence, sophistication and intensity, and evolving in nature, and are conducted by sophisticated and organized groups and individuals with a wide range of motives and expertise, including organized criminal groups, "hacktivists," terrorists, nation states and others. Threats to and vulnerabilities in our computer systems and those of our service providers may result from human error, fraud or malice on the part of our employees, third-party service providers and business partners or by malicious third parties, including state-sponsored organizations with significant financial and technological resources, or from accidental technological failure. Additionally, geopolitical events and resulting government activity could also lead to information security threats and attacks by affected jurisdictions and their sympathizers. For example, despite our efforts to secure our information technology systems and the data contained in those systems, including any efforts to educate or train our employees, we remain vulnerable to phishing and other types of attacks and breaches. In the past, employees have been victims of spearphishing and other phishing attacks, and we anticipate these attacks continuing, which may result in our employees and contractors being victims of these attacks in the future. The security risks we face have been heightened by an increase in our employees and service providers working remotely in response to the COVID-19 pandemic.

We cannot be certain that current or future criminal capabilities, discovery of existing or new vulnerabilities in our and our service providers' systems and attempts to exploit those vulnerabilities, physical systems or facility break-ins and data thefts or other developments will not compromise or breach the technology protecting the systems and information possessed by us and our service providers, or that this has not already occurred. Given the unpredictability of the timing, nature and scope of cybersecurity attacks and other security-related incidents, our technology may fail to adequately secure our systems and the information we maintain, and we may be unable to anticipate or prevent techniques used to obtain unauthorized access or to sabotage systems, react in a timely manner, or implement adequate preventative measures. In the event that our or our service providers' protection efforts are unsuccessful and there is unauthorized access to, or unauthorized destruction, modification, acquisition, release, transfer, loss, disclosure or use of information or the breach of the security of information, we could suffer substantial harm. A breach of our or our service providers' network security or systems could have serious negative consequences for our business and future prospects, including costs to comply with applicable breach notification laws, disruption to our business, litigation, disputes, regulatory investigation and oversight, mandatory corrective action, fines, penalties, damages, indemnity obligations, damages for contract breach, reduced consumer demand for our devices and harm to our reputation and brand. We may face difficulties or delays in identifying, mitigating or otherwise responding to any security breach or incident.

Further, a portion of our technology infrastructure is operated by third parties such as Amazon Web Services, among other providers, over which we have no direct control, and some of these third parties in turn subcontract with other third-party service providers. We are reliant in part on their security measures to protect our sensitive corporate, personal and other information, including intellectual property, proprietary business information, payment card information, consumer data and other confidential information. Third parties that we work with have in the past experienced security incidents and phishing attacks and may have similar experiences in the future. If those third parties do not adequately protect our information, it could result in decreased revenue and our reputation and brand could suffer irreparable harm, causing consumers to reject our devices in the future, our data providers not to share data with us, or advertisers or other downstream users or licensees of our viewing behavior data not to do business with us. For example, we use third-party payment processors to collect payment information for purchases on our website and through our Smart TVs. If these third parties suffer a data breach involving our consumers' payment card data, we may be subject to substantial penalties and related enforcement for failure to adhere to the technical or operational security requirements of the Payment Card Industry (PCI) Data Security Standard (DSS) imposed by the PCI Council to protect cardholder data. Penalties arising from PCI DSS enforcement are uncertain as penalties may be imposed by entities within the payment card processing chain without regard to any statutory or universally mandated framework. Such enforcement could threaten our relationship with our banks, card brands we do business with, and our third-party payment processors. Further, we could be forced to expend significant financial and operational resources in response to any actual or perceived security breach or security incident, including in repairing system damage, increasing cybersecurity protection costs by deploying additional personnel and modifying or enhancing our protection technologies, investigating and remediating any information security vulnerabilities, notifying affected individuals and providing them with identity-protection services, and litigating and resolving governmental investigations and other proceedings and legal claims and litigation, all of which could divert resources and the attention of our management and key personnel.

In addition, our remediation efforts may not be successful. The inability to implement and maintain adequate safeguards may harm our business, financial condition and results of operations. For example, we do not yet have a formally documented data retention policy or business continuity/disaster recovery plan. If we are not able to detect and identify activity on our systems that might be nefarious in nature, determine the scope of or contain the nefarious activity, or design processes or systems to reduce the impact of similar activity at a third-party provider, our business could suffer harm. In such cases, we could face exposure to legal claims, particularly if the retailer or consumer suffered actual harm. We cannot ensure that any limitations of liability provisions in our agreements with consumers or retailers, contracts with service providers and other contracts for a security lapse or breach or other security-related matter would be enforceable or adequate or would otherwise protect us

from any liabilities or damages with respect to any particular claim. In any event, an unauthorized disclosure of information or a breach of the security of our systems or data, media reports about such an incident, whether accurate or not, or our failure to make adequate or timely disclosures to the public, regulators, or law enforcement agencies following any such event, whether due to delayed discovery or a failure to follow existing protocols, may harm our reputation, brand, business, financial condition and results of operations.

Security compromises experienced by others in our industry, our retailers or us may lead to public disclosures and widespread negative publicity. Any security compromise in our industry, whether actual or perceived, could erode consumer confidence in the effectiveness of our security measures, negatively impact our ability to attract new consumers, cause existing consumers to elect not to use our devices or subject us to third-party lawsuits, regulatory fines or other actions or liabilities, which may harm our business, financial condition and results of operations.

Additionally, we cannot be certain that our insurance coverage will be adequate for data security liabilities actually incurred, will cover any indemnification claims against us relating to any incident, that insurance will continue to be available to us on economically reasonable terms, or at all, or that any insurer will not deny coverage as to any future claim. The successful assertion of one or more large claims against us that exceed available insurance coverage, or the occurrence of changes in our insurance policies, including premium increases or the imposition of large deductible or co-insurance requirements, may harm our reputation, brand, business, financial condition and results of operations.

Significant system disruptions, loss of data center capacity or interruption of telecommunication links may harm our business, financial condition and results of operations.

Our business is heavily dependent upon highly complex data processing capability. Protection of our data centers and the third-party data centers at which we collect and maintain data against damage or interruption from fire, flood, earthquakes, tornadoes, cybersecurity attacks, ransomware, power loss, telecommunications or equipment failure, infrastructure changes, human or software errors, viruses, denial of service attacks, fraud or other disasters and events beyond our control is critical to our continued success. We also rely on bandwidth providers, internet service providers and mobile networks to deliver data to us from Smart TVs and the online content available through our Smart TVs is dependent on links to telecommunication providers. Any damage to, failure of, or outages of the systems of the data centers that we utilize or the systems of our third-party providers could result in interruptions to the availability or functionality of our Inscape data services or our SmartTVs. If for any reason our arrangements with our third-party providers, including providers of our third-party data centers, are terminated, we could experience additional expense in arranging for new technology, services and support. In addition, the failure of the data centers that we utilize or any third-party providers to meet our capacity requirements could result in interruptions in the availability or functionality of our devices or impede our ability to scale our operations.

We believe we and the third parties on which we rely have taken reasonable precautions to protect necessary data centers and telecommunication links from events that could interrupt our operations. Such third parties, however, are responsible for maintaining their own network security, disaster recovery and system management procedures. Any damage to the data centers that we utilize or any failure of our telecommunications links that causes loss of data center capacity or otherwise causes interruptions in our operations, however, may materially adversely affect our ability to quickly and effectively respond to our retailers' requirements, which could result in loss of their confidence, adversely impact our ability to attract new retailers and force us to expend significant resources to repair the damage. Such events may harm our business, financial condition and results of operations.

Any material disruption of our information systems may harm our business, financial condition and results of operations.

We are increasingly dependent on information systems to process transactions, respond to retailer inquiries, provide technical support to consumers, manage our supply chain and inventory, ship goods on a timely basis and

maintain cost-efficient operations, in particular for our Inscape data services. Any material disruption, outage, failure or slowdown of our systems or those of our service providers, including a disruption or slowdown caused by our failure to successfully upgrade our systems, system failures, viruses, computer "hackers," cybersecurity attacks, denial of service attacks, ransomware or other causes, as well as fire, flood, earthquakes, tornadoes, power loss, telecommunications or equipment failure, infrastructure changes, human or software errors, fraud or other disasters and events beyond our control, could cause delays in our supply chain or cause information, including data related to retailer orders, to be lost, corrupted, altered or delayed, which could result in delays in the delivery of merchandise to retailers or lost sales, especially if the disruption or slowdown occurs during the holiday season. In some instances, we may not be able to identify the cause or causes of these performance problems within an acceptable period of time. Any of these events could reduce demand for our devices or impair our ability to complete sales through our ecommerce channels and cause our revenue to decline. If our information systems are inadequate to handle our growth, we could lose retailers or our business, financial condition and results of operations may be harmed.

As we expand our operations, we expect to utilize additional systems and service providers that may also be essential to managing our business, in particular for our Inscape data services. Although the systems and services that we require are typically available from a number of providers, it is time consuming and costly to qualify and implement these relationships. Therefore, our ability to manage our business would suffer if one or more of our providers suffers an interruption in their business, or experiences delays, disruptions or quality control problems in their operations, or we have to change or add systems and services. Furthermore, we may not be able to control the quality of the systems and services we receive from third-party service providers, which could impair our ability to implement appropriate internal controls over financial reporting.

If our devices contain defects or errors, we could incur significant unexpected expenses, experience device returns and lost sales, suffer damage to our reputation and brand, and be subject to product liability or other claims.

Our devices are complex and may contain defects, bugs, vulnerabilities, errors or failures, particularly when first introduced or when new models are released. Our devices have a one-, two- or three-year limited warranty against manufacturing defects and workmanship. While our warranty is limited to repairs and returns, warranty claims may result in significant costs and litigation, the occurrence of which may harm our business, financial condition and results of operations. If our devices contain defects or errors, we could experience decreased sales and increased device returns, and loss of our retailers, consumers and market share. If defects are not discovered until after retailers or consumers purchase our devices, our retailers and consumers could lose confidence in the quality of our devices and our reputation and brand may be harmed. If significant bugs or vulnerabilities are not discovered and patched in a timely manner, unauthorized parties could gain access to such devices. Any negative publicity related to the perceived quality of our devices could affect our brand image, decrease retailer and consumer demand, and may harm our business, financial condition and results of operations. In addition, although substantially all of our device warranty expenses are reimbursed by our manufacturers under our standard device supply agreements, if our manufacturers fail to honor these obligations, or if the indemnities in our device supply agreements are insufficient or do not cover our losses, we could incur significant service, warranty and insurance costs to correct any defects, warranty claims or other problems, including costs related to device recalls.

We may undertake acquisitions to expand our business, which may pose risks to our business, dilute the ownership of our stockholders or restrict our operations.

As part of our business and growth strategy, we have in the past acquired and made significant investments in, and may in the future acquire or make significant investments in, businesses, assets, technologies or services that we believe complement our business, although we have no present commitments or agreements to enter into any such acquisitions or investments. For example, in December 2014, we acquired Advanced Media Research Group, Inc., a software and application development company, and in August 2015, we acquired Cognitive

Media Networks, Inc., a software provider than enables our Inscape data services. We have limited experience acquiring and integrating businesses, and may not be successful in doing so. Acquisitions involve numerous risks, any of which could harm our business and negatively affect our business, financial condition and results of operations, including:

- intense competition for suitable acquisition targets, which could increase acquisition costs and adversely affect our ability to consummate deals on favorable or acceptable terms;
- failure or material delay in closing a transaction;
- transaction-related lawsuits or claims;
- difficulties in integrating the technologies, operations, existing contracts and personnel of an acquired company;
- difficulties in retaining key employees or business partners of an acquired company;
- diversion of financial and management resources from existing operations or alternative acquisition opportunities;
- failure to realize the anticipated benefits or synergies of a transaction;
- failure to identify the problems, liabilities or other shortcomings or challenges of an acquired company or technology, including issues related to intellectual property, regulatory compliance practices, litigation, revenue recognition or other accounting practices, privacy, data protection and data security practices, or employee or user issues;
- risks that regulatory bodies may enact new laws or promulgate new regulations that are adverse to an acquired company or business;
- risks that we may be required to comply with additional laws and regulations, or to engage in substantial remediation efforts to cause the acquired company to comply with applicable laws or regulations;
- costs and potential difficulties associated with the requirement to test and assimilate the internal control processes of the acquired business;
- theft of our trade secrets or confidential information that we share with potential acquisition candidates;
- risk that an acquired company or investment in new offerings cannibalizes a portion of our existing business; and
- adverse market reaction to an acquisition.

If we fail to address the foregoing risks or other problems encountered in connection with past or future acquisitions of businesses, new technologies, services and other assets and strategic investments, or if we fail to successfully integrate such acquisitions or investments, our business, financial condition and results of operations may be harmed. Acquisitions by us could also result in large write-offs or assumptions of debt and contingent liabilities, any of which could substantially harm our business, financial condition and results of operations. In addition, to finance any acquisitions, it may be necessary for us to raise additional funds through equity, equity-linked or debt financings. Additional funds may not be available on terms that are favorable to us, and in the case of equity or equity-linked financings, could result in dilution to our stockholders. Furthermore, funds obtained through debt financing could contain covenants that restrict how we operate our business or obtain other financing in the future.

We are subject to international business risks and uncertainties.

Our supply chain and manufacturing partners are based in, or have operations in countries outside of the United States including Vietnam, China, Taiwan, Thailand and Mexico. Further, we may expand our marketing

operations internationally, which may lead to operations across many additional countries. For example, we have previously established sales channels through which we sell our devices in Canada and Mexico, though we have currently suspended sales in these countries. We expect our revenue from outside of the United States to increase in the future. Accordingly, we intend to expand our relationships in these countries and may establish additional relationships in other countries to grow our operations. Operating in foreign countries requires significant resources and management attention, and we have limited experience entering new geographic markets. We cannot guarantee that our international efforts will be successful.

Some of our manufacturers of key components, including LCD and OLED panels, reside in China. The Chinese economy differs from the economies of most developed countries in many respects, including the amount of government involvement, the level of development, the growth rate, the control of foreign exchange and the allocation of resources. The Chinese government exercises significant control over China's economic growth through the allocation of resources, control of the incurrence and payment of foreign currency-denominated obligations, setting of monetary policy and provision of preferential treatment to particular industries or companies. Changes in any of these policies, laws and regulations could adversely affect the overall economy in China or our Chinese manufacturers, which could harm our business through higher device costs, reduced availability or both.

Furthermore, the global nature of our business creates various domestic and local regulatory challenges and subjects us to risks associated with our international operations. We are subject to the U.S. Foreign Corrupt Practices Act (the FCPA) and similar anti-bribery and anticorruption laws in other jurisdictions in which we conduct activities, such as China. These laws generally prohibit companies, their employees, agents, representatives, business partners and third-party intermediaries from authorizing, offering, or providing, directly or indirectly, improper payments to government officials or others in the private sector for the purpose of influencing official actions, obtaining or retaining business, directing business to another, or securing an advantage.

Our ability to maintain current relationships with our manufacturers and vendors, to conduct operations with our existing international partners and to grow our business internationally is subject to risks associated with international operations, such as:

- inability to localize our devices, including to adapt for local practices and translate into foreign languages;
- difficulties in staffing and managing foreign operations;
- burdens of complying with a wide variety of laws and regulations, including those relating to the collection, use and other processing of consumer data;
- more stringent or differing regulations relating to privacy, data protection and data security, particularly in Canada and the European Union;
- unexpected changes in regulatory requirements;
- adverse tax effects and foreign exchange controls making it difficult to repatriate earnings and cash, or reinvest earnings from operations in one country to fund the capital needs of our operations in other countries;
- exposure to political or economic instability and general economic fluctuations in specific countries or markets;
- risks resulting from changes in currency exchange rates;
- changes in diplomatic and trade relationships, including ongoing trade disputes between the United States and China;
- terrorist activities, natural disasters and pandemics, including the regional or local impacts of any such activity;

- trade restrictions;
- differing employment practices and laws and labor disruptions, including strikes and other work stoppages;
- the imposition of government controls;
- lesser degrees of intellectual property protection;
- tariffs and customs duties, or other barriers to some international markets, and the classifications of our goods by applicable governmental bodies;
- a legal system subject to undue influence or corruption; and
- a business culture in which illegal sales practices may be prevalent.

The occurrence of any of these risks could negatively affect our operations or international business expansion and consequently our business, financial condition and results of operations may be harmed.

Our Inscape data services currently focus on data generated from television content consumption in the United States. In order to expand these services internationally, we would be required to expend significant time and resources to be able to ensure that we can collect consumer and content data in other countries, and that we do so in compliance with laws in such countries. We cannot guarantee that we would be able to do so in a cost-effective manner, if at all.

We intend to run our operations in compliance with local regulations, such as tax, civil, environmental and other laws in each country where we may have presence or operations. However, there are inherent legal, financial and operational risks involved in conducting international operations, and we cannot be certain that these risks will not prevent us from being able to successfully develop and expand our international operations.

As we increase our international sales and business, we may engage with third-party intermediaries to market our devices and to obtain necessary permits, licenses and other regulatory approvals. In addition, we or our employees, agents, representatives, business partners and third-party intermediaries may have direct or indirect interactions with officials and employees of government agencies or state-owned or affiliated entities. We can be held liable for the corrupt or other illegal activities of our employees, agents, representatives, business partners and third-party intermediaries, even if we do not explicitly authorize such activities. In addition, U.S. public companies are required to maintain records that accurately and fairly represent their transactions and have an adequate system of internal accounting controls. We cannot assure you that our employees, agents, representatives, business partners and third-party intermediaries will not take actions in violation of applicable law, for which we may be ultimately held responsible.

Detecting, investigating and resolving actual or alleged violations of anti-corruption laws can require a significant diversion of time, resources, and attention from senior management, as well as significant defense costs and other professional service fees. In addition, noncompliance with anti-corruption and anti-bribery laws can subject us to whistleblower complaints, investigations, sanctions, settlements, prosecution, enforcement actions, fines, damages, other civil and/or criminal penalties and injunctions against us, our officers, or our employees, disgorgement of profits, suspension or debarment from contracting with the U.S. government or other persons, reputational harm, adverse media coverage and other collateral consequences. If any subpoenas or investigations are launched, or governmental or other sanctions are imposed, or if we do not prevail in any possible civil or criminal proceeding, our reputation, brand, business, financial condition and results of operations may be harmed.

The ongoing COVID-19 pandemic has impacted our business and resurgences of COVID-19 or additional responsive measures thereto may continue to impact our business.

Since the first quarter of 2020, the COVID-19 pandemic, the responsive measures that we and other parties have taken, and the resulting economic consequences have affected our business. We have experienced year-

over-year growth in Device net revenue; however, we also have encountered supply chain disruptions as a result of an industry-wide increase in demand for televisions and other media entertainment devices, suppliers operating at limited capacity due to regional restrictions and the temporary closing of certain retail locations. These supply chain disruptions have resulted in delays and in some cases required us to reallocate or deplete inventory. Further, increased consumer demand has led to less promotion pricing and discounting for our devices, which in turn has increased our Device gross profit margin; however, we anticipate that such increased Device gross profit margin will decrease in future periods. Additionally, some of our retailers have had to close or severely limit access to their brick-and-mortar locations, resulting in reduced sales of our Smart TVs and sound bars in these locations. While the increase in demand for televisions seen in response to shelter-in-place orders and other precautionary COVID response measures has benefitted our business and results of operations in 2020, we expect that demand in future periods may be adversely impacted due to consumers having accelerated purchasing decisions. It is also possible that continued economic uncertainty related to the COVID-19 pandemic may further reduce future sales.

The spread of COVID-19 has caused us to take precautionary measures intended to help minimize the risk of the virus to our employees, including instituting work-from-home policies, suspending non-essential business travel, shifting from in-person to virtual meetings, events and conferences, and instituting a variety of health and safety protocols. In response to the effects of COVID-19 on our business and the related economic uncertainty, we have also taken certain cost-cutting measures, including a reduction in force in the second quarter of 2020, which may adversely affect employee morale and our ability to attract and retain employees. We may take further actions as required by federal, state and local government authorities or that we determine are in the best interests of our employees, retailers and business partners, but which may also result in a slowdown of our operations. An extended period of remote work arrangements could disrupt our business or adversely impact employee productivity, introduce additional business and operational risks, including cybersecurity risks, and make it more difficult for us to effectively manage our business. For example, the prolonged work from home environment has reduced efficiencies with our engineers and may result in lower productivity in other areas of our business. Additionally, future efforts to re-open our offices safely may not be successful, could expose our personnel to health risks and will involve additional financial burdens. The pandemic may have long-term effects on the nature of the office environment and remote working, and this may present operational challenges that may harm our business. We also may incur significant operating costs and be exposed to increased liability risks as a result of the COVID-19 pandemic, both now and increasingly so once stay-at-home restrictions are lifted and employees begin to return to our offices, such as the cost of collecting additional information (including health and medical information) about our employees, contractors and visitors at our facilities; testing supplies and personal protective equipment for on-site staff; and altered office configurations or the need for additional office space.

The extent to which the COVID-19 pandemic ultimately impacts our business will depend on future developments, which are highly uncertain and cannot be predicted with confidence, including, but not limited to, the duration and spread of the outbreak, its severity, the actions taken by governmental authorities and businesses to contain the virus or treat its impacts, and how quickly and to what extent economic and operating conditions normalize. Even after the COVID-19 pandemic itself has subsided, we may continue to experience impacts to our business as a result of any global economic impact, including as a result of an ongoing recession. A prolonged economic downturn could also impact the overall financial condition of our media content providers, advertisers, retailers and services venders all of whom we depend on in order to operate our business. As a result, the current level of uncertainty over the economic and operational impacts of the COVID-19 pandemic means the impact on our business cannot be reasonably estimated at this time.

We are highly dependent on our Chief Executive Officer and senior management team, and we may fail to attract, retain, motivate or integrate highly skilled personnel, which may harm our business, financial condition and results of operations.

Our future success depends in significant part on the continued service of William Wang, our Founder, Chairman and Chief Executive Officer, and our senior management team. Mr. Wang is critical to the strategic

direction and overall management of our company as well as our research and development process. Mr. Wang and each member of our management team is an at-will employee. We do not carry key person life insurance on Mr. Wang or any other member of our senior management team. If we lose the services of any member of our senior management team, we may not be able to find a suitable replacement or integrate a replacement in a timely manner or at all, which would seriously harm our business, financial condition and results of operations.

In addition, our continuing growth will, to a large extent, depend on the attention of Mr. Wang to our daily affairs. Our future success also depends, in part, on our ability to continue to attract and retain highly skilled personnel. Competition for these personnel in the Orange County area of California, where our headquarters is located, and in other locations where we maintain offices, is intense, and the industry in which we operate is generally characterized by significant competition for skilled personnel as well as high employee attrition. We may not be successful in attracting, retaining, training or motivating qualified personnel to fulfill our current or future needs. Additionally, the former employers of our new employees may attempt to assert that our new employees or we have breached their legal obligations, which may be time-consuming, distracting to management and may divert our resources. Current and potential personnel also often consider the value of equity awards they receive in connection with their employment, and to the extent the perceived value of our equity awards declines relative to our competitors, our ability to attract and retain highly skilled personnel may be harmed. If we fail to attract and integrate new personnel or retain and motivate our current personnel, our business, financial condition and results of operations may be harmed.

The quality of our consumer support is important to our consumers, and if we fail to provide adequate levels of consumer support, we could lose consumers, which would harm our business.

Our consumers depend on our consumer support organization to resolve any issues relating to our devices and SmartCast operating system. A high level of support is critical for the successful marketing and sale of our devices. We currently outsource our consumer support operation to two third-party consumer support providers. If we do not effectively train, update and manage our third-party consumer support providers to assist our consumers, and if those support providers do not succeed in helping them quickly resolve issues or provide effective ongoing support, it could adversely affect our ability to sell our devices to consumers and harm our reputation with potential new consumers.

Our success will depend in part on our continued ability to offer devices utilizing a display technology that has broad market appeal.

Most of our total net revenue is currently derived from the sale of devices utilizing LCD display technology, which is currently the most common flat panel display technology, and OLED display technology. We do not design or manufacture either LCD or OLED display technology. Our ability to adopt or incorporate the latest LCD and OLED display technologies into our Smart TVs depends on continued advancement in the design and manufacture of LCD and OLED display technologies by others. Furthermore, technologies other than LCD and OLED technologies are also currently available or may become available. These new display technologies, which are at various stages of development and production, may gain wider market acceptance than LCD or OLED technology for use in televisions. We currently do not offer Smart TVs using displays incorporating these alternative display technologies. If consumers prefer devices manufactured by our competitors utilizing display technologies that we have not adopted, this may harm our business, financial condition and results of operations.

We have and may continue to discontinue support for older versions of our devices, resulting in consumer dissatisfaction that could negatively affect our business, financial condition and results of operations.

We have historically maintained, and we believe our consumers may expect, extensive backward compatibility for our older products and the software that supports them, allowing older products to continue to benefit from new software updates. We expect that in the near term, this backward compatibility will no longer be practical or cost-effective, and we may decrease or discontinue service for our older products. Further, certain

older products may continue to work but may no longer receive software updates (other than critical patches) and/or we may still continue to offer updates to the user interface and applications available on the platform without providing support for updating all functions of our older products. To the extent we no longer provide extensive backward compatibility for our products, we may damage our relationship with our existing consumers, as well as our reputation, brand loyalty and ability to attract new consumers.

For these reasons, any decision to decrease or discontinue backward compatibility may decrease sales, generate legal claims and may harm our business, financial condition and results of operations.

Changes in how network operators manage data that travel across their networks could harm our business.

Our business relies upon the ability of our consumers to access high-quality streaming content through the internet. As a result, the growth of our business depends on our consumers' ability to obtain and maintain low-cost, high-speed access to the internet, which relies in part on the network operators' continuing willingness to upgrade and maintain their equipment as needed to sustain a robust internet infrastructure as well as their continued willingness to preserve the open and interconnected nature of the internet. We exercise no control over network operators, which makes us vulnerable to any errors, interruptions or delays in their operations. Any material disruption or degradation in internet services may harm our business.

To the extent that the number of internet users continues to increase, network congestion could adversely affect the reliability of our over-the-top services. We may also face increased costs of doing business if network operators engage in discriminatory practices with respect to streamed video content in an effort to monetize access to their networks by data providers. In the past, internet service providers have attempted to implement usage-based pricing, bandwidth caps and traffic "shaping" or throttling. To the extent network operators were to create tiers of internet access service and either charge us or our content providers for access to these tiers or prohibit us or our content providers from having our services available on some or all of these tiers, our quality of service could decline, our operating expenses could increase and our ability to attract and retain consumers could be impaired, each of which may harm our business.

In addition, most network operators that provide consumers with access to the internet also provide these consumers with multichannel video programming. These network operators have an incentive to use their network infrastructure in a manner adverse to the continued growth and success of other companies seeking to distribute similar video programming. To the extent that network operators are able to provide preferential treatment to their own data and content, as opposed to ours, our business may be harmed.

Our financial and operating performance may be adversely affected by epidemics, adverse weather conditions, climate change, natural disasters and other catastrophes, public health crises, including the COVID-19 pandemic, and political instability.

Our headquarters is located in the Orange County area of California, an area susceptible to earthquakes. A major earthquake or other natural disaster, fire, act of terrorism or other catastrophic event, or the effects of climate change (such as sea level rise, drought, flooding, wildfires and increased storm severity), in California or elsewhere that results in the destruction or disruption of any of our critical business operations or information technology systems could severely affect our ability to conduct normal business operations and, as a result, our future results of operations may be harmed.

Our key manufacturing, supply, assembly and distribution partners have global operations, including in Vietnam, China, Taiwan, Mexico and Thailand as well as the United States. Political instability or crises, civil unrest, the effects of climate change, adverse weather conditions, natural disasters and other catastrophes, epidemics or outbreaks of disease in any of those countries, or public health crises, including the COVID-19 pandemic, may harm our business, financial condition and results of operations. Any prolonged occurrence of these or other events or conditions in any of these locations may interrupt the business operations of our

manufacturers as well as the manufacturers of key components, including LCD and OLED panels, which may harm our business and results of operations. For instance, health or other government regulations adopted in response to a natural disaster, epidemic, including the COVID-19 pandemic, or outbreak, or a severe disruption or increase in the pricing of basic food stuffs, may require closure of our manufacturers' facilities and/or our retailers' facilities, leading to reduced production, delayed or cancelled orders and decrease in demand for our devices. These regulations also could result in severe travel restrictions and closures that would restrict our ability to ship our devices.

We may require additional capital, which may not be available on terms acceptable to us, or at all.

Historically, we have funded our operations and capital expenditures primarily through equity issuances and cash generated from our operations. To support our growing business, we must have sufficient capital to continue to make significant investments in our devices. If we raise additional funds through the issuance of equity, equity-linked, or debt securities, those securities may have rights, preferences, or privileges senior to those of our Class A common stock, and our existing stockholders may experience dilution. Any debt financing secured by us in the future could involve restrictive covenants relating to our capital-raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital and to pursue business opportunities.

Our ability to obtain financing will depend on, among other things, our business plans, and operating performance, and the condition of the capital markets at the time we seek financing, including disruptions caused by external events such as COVID-19. We cannot be certain that additional financing will be available to us on favorable terms, or at all. If we are unable to obtain adequate financing or financing on terms satisfactory to us, when we require it, our ability to continue to support our business growth and to respond to business challenges could be significantly limited, and our business, financial condition and results of operations may be harmed.

Risks Relating to Our Supply Chain, Content Providers and Other Third Parties

A small number of retailers account for a substantial majority of our Device net revenue, and if our relationships with any of these retailers is harmed or terminated, or the level of business with them is significantly reduced, our results of operations may be harmed.

We depend on a small number of retailers for a substantial majority of our Device business and believe that in the future we will continue to generate a substantial majority of our Device net revenue from a small number of retailers. Our four largest retailers, measured by net revenue, accounted for 84%, 87% and 85% of our Device net revenue for the years ended December 31, 2018, 2019 and 2020, respectively. Moreover, Best Buy, Costco, Sam's Club and Walmart each accounted for more than 10% of our Device net revenue in the years ended December 31, 2018, 2019 and 2020. Walmart, Sam's Club and certain other entities purchasing from us are affiliates under common control, and while Walmart and Sam's Club have historically submitted orders to us through separate purchasing departments, their affiliation enhances the risk of our retailer concentration as, among other things, their purchasing departments could become centralized in the future.

We do not typically enter into binding long-term contracts with our retailers. We generally sell our devices on the basis of purchase orders, and our retailers may cancel or defer orders with little or no notice and without significant or any penalties. Our ability to maintain close and satisfactory relationships with our retailers is important to the ongoing success and profitability of our business. If any of our significant retailers reduces, delays, or cancels its orders, or the financial condition of our key retailers deteriorates, our business may be seriously harmed. In addition, our retailers may become competitors. For example, one of our significant retailers, Walmart, has recently introduced its own brand of televisions, Onn and may choose to promote their own devices over ours or could ultimately cease selling or promoting our devices entirely. If we were to lose one of our major retailers, or if a major retailer were to significantly reduce its volume of business with us or provide more or better shelf space to devices of our competitors, our Device net revenue and Device gross profit could be materially reduced, which could have a significant adverse impact on our business, financial condition and results of operations.

If we do not effectively maintain and further develop our device sales channels, including developing and supporting our retail sales channels, or if any of our retailers experience financial difficulties or fails to promote our devices, our business may be harmed.

We depend upon effective sales channels to reach the consumers who are the ultimate purchasers of our devices. We primarily sell our devices directly through a mix of retail channels, including big box retailers, wholesale clubs, online marketplaces and, to a much smaller extent, independent regional retailers. We depend on these retailers to provide adequate and attractive space for our devices in their stores, which will become more challenging to the extent average television sizes increase. Many of our retailers limit the shelf space they provide to any single brand, which makes future market share gains by us more difficult. We further depend on our retailers to employ, educate and motivate their sales personnel to effectively sell our media entertainment devices, and in online channels, we must ensure we and our retailers have adequate resources to educate and attract consumers to our devices. If our retailers do not adequately display our devices, choose to promote competitors' devices over ours (including through more prominent or higher-impact store displays or through in-store recommendations to consumers from their sales personnel), or do not effectively explain to consumers the advantages of our devices, our revenue could decrease and our business may be harmed. Similarly, our Device business could be adversely affected if any of our large retailers were to experience financial difficulties, or change the focus of their businesses in a way that deemphasized the sale of our devices. We are also investing heavily in providing new retailers with in-store device displays and expanding the footprint of our device displays in existing stores, and there can be no assurance that this investment will lead to increased sales.

We depend on a limited number of manufacturers for our devices and their components. If we experience any delay or disruption, or quality control problems with our manufacturers in their operations, we may be unable to keep up with retailer and consumer demand for our devices, we could lose market share and revenue and our reputation, brand and business would be harmed.

We do not have internal manufacturing or testing facilities or capabilities, and all of our devices are manufactured, assembled, tested and packaged by third-party manufacturers, who are original design manufacturers (ODMs). Our manufacturers are, in turn, responsible for procuring or manufacturing the components used in the manufacturing of our devices from a limited number of suppliers. Our four largest manufacturers accounted for 79%, 84% and 90% of our inventory purchases for the years ended December 31, 2018, 2019 and 2020, respectively.

Our reliance on our manufacturers, and indirectly, on their limited number of suppliers, involves a number of risks, including risks related to the following:

- our manufacturers and their suppliers may encounter financial or other business difficulties, change their strategic objectives, or perceive us to no longer be an attractive retailer;
- we have no long-term contracts with our manufacturers and as a result, our manufacturers could cease to provide devices to us with little or no notice;
- our manufacturers, or their suppliers, may experience disruptions in their manufacturing operations due to equipment breakdowns, cybersecurity attacks or security breaches or incidents, labor disputes or shortages, component or material shortages, cost increases or other similar problems;
- production capacity constraints;
- increases in manufacturing costs and lead times;
- untimely delivery and failures to meet production deadlines;
- errors in complying with device specifications;
- device and component quality and reliability issues;
- vessel delays and port congestion, which disrupt shipping operations;

- failure of a key manufacturer, or a key supplier to a manufacturer, to remain in business and adjust to market conditions;
- failure of our manufacturers and their suppliers to obtain timely domestic or foreign regulatory approvals or certificates for our devices;
- increases in pricing as a result of increases in tariffs and customs duties;
- our ODMs could become our competitors by selling directly to retailers, including our retailers, and discontinuing manufacturing or supplying us with their devices;
- our inability to pass price declines in the sales of our devices or price protection rebates we provide to our retailers through to our manufacturers;
- failure of manufacturers to honor indemnities in their agreements with us;
- disagreements or disputes between us and our manufacturers relating to our supply agreements or otherwise;
- delays in, or the inability to execute on, a supplier roadmap for components and technologies; and
- natural disasters, fires, pandemics, climate change, acts of terrorism or other catastrophic events which disrupt manufacturing operations or shipping routes.

The COVID-19 pandemic and responsive actions taken by government authorities and businesses may exacerbate any of these risks. For example, during certain periods in the second quarter of 2020, we experienced delays from certain manufacturers as they experienced an increase in demand and could not operate at full capacity due to physical distancing requirements. In addition, in January 2021, we experienced delays from certain suppliers as some U.S. and international ports experienced congestion and vessel delays due to an increase in demand due to the holiday season and stimulus check disbursements.

We rely on our manufacturers to procure components of our devices, particularly LCD panels and chipsets. There are a limited number of suppliers of LCD and OLED panels and chipsets, and we do not expect the number of suppliers to meaningfully increase. For instance, as of September 30, 2020, LG Display Co., Ltd. was the only significant OLED panel manufacturer. Although Samsung Display Co., Ltd. has announced its intention to introduce an OLED panel in 2021, it is unlikely that the number of OLED suppliers will significantly increase in the future. In addition, some of our manufacturers' suppliers are affiliates of certain of our competitors, which creates the risk that these suppliers may favor their affiliated companies over us or our manufacturers in allocating or pricing supplies, or may refuse to supply to our manufacturers at acceptable prices, or at all, components for use in our devices. We run the risk that these or other suppliers may choose to withhold LCD and OLED panels from our manufacturers, and they may not cooperate with us (or our manufacturers), for competitive reasons in the future.

If component shortages or delays occur, the price of certain components may increase, and we may be exposed to quality issues or the components may not be available at all. As a result, we could lose time-sensitive sales, incur additional freight costs or be unable to pass on price increases to our retailers. If we, or our manufacturers, cannot adequately address supply issues, we might have to re-design some devices, which could result in further costs and delays.

In addition, if we experience a significant increase in demand for our devices, our manufacturers might not have the capacity to, or might elect not to, meet our needs as they allocate production capacity to their other retailers. Identifying a suitable manufacturer is an involved process that requires us to become satisfied with the manufacturer's quality control, responsiveness and service, financial stability and labor and other ethical practices, and if we seek to source materials from new manufacturers there can be no assurance that we could do so in a manner that does not disrupt the manufacture and sale of our devices.

If we fail to manage our relationship with our manufacturers effectively, or if they experience operational difficulties, our ability to ship devices to our retailers could be impaired and our reputation, brand, business, financial condition and results of operations may be harmed.

If we are unable to accurately predict our future retailer demand and provide our manufacturers with an accurate forecast of our device requirements, we may experience delays in the manufacturing of the devices we sell and the costs of our devices may increase, which may harm our results of operations.

To ensure adequate inventory supply and meet the demands of our retailers, we must forecast inventory needs and place orders with our manufacturers based on our estimates of future demand for particular devices. Our ability to accurately forecast demand for our devices could be affected by a multitude of factors, including the timing of device introductions by competitors, unanticipated changes in general market demand (which we experienced earlier this year as a result of the COVID-19 pandemic), macroeconomic conditions or consumer confidence. We provide our manufacturers with a rolling forecast of demand, which they use to determine material and component requirements. Lead times for ordering materials and components, especially key components such as LCD and OLED panels, vary significantly and depend on various factors, such as the specific component manufacturer, contract terms and demand and supply for a component at any given time. We rely on our manufacturers and their suppliers to manage these lead times. If our forecasts are less than our actual requirements, our manufacturers and their suppliers may be unable to manufacture our devices or their components in sufficient quantity or in a timely manner, and we may be unable to meet retailer demand for our devices, or may be required to incur higher costs to secure the necessary production capacity and components. We experienced each of these effects in 2020, due to an unexpected increase in consumer demand due to the COVID-19 pandemic. We could also overestimate future sales of our devices and risk causing our manufacturers to carry excess device and component inventory, which could result in our providing increased price protection or other sales incentives, which may harm our Device net revenue and Device gross profit. The cost of the components used in our devices also tends to drop rapidly as volumes increase and technologies mature. Therefore, if our manufacturers or their suppliers are unable to promptly use the components purchased in anticipation of our forecasts, the cost of the devices we sell may be higher than our competitors due to an over-supply of higher priced components.

Furthermore, a failure to deliver sufficient quantities of devices to meet the demands of our retailers may cause us to lose retailers. At certain times in the past, including in 2020, we have been unable to supply the number of Smart TVs demanded by certain of our retailers. If this were to occur more frequently, our relationship with these retailers may be materially affected, and they may decide to seek other sources of supply or cease doing business with us altogether.

We rely upon third parties for technology that is critical to our devices and services, and if we are unable to continue to use this technology and future technology, our ability to sell competitive and technologically advanced devices would be limited.

We did not develop most of the technology incorporated into and necessary for the operation and functionality of our devices. We rely on non-exclusive license rights from third parties for these technologies. We also license technology on a non-exclusive basis that is necessary to comply with various data compression, broadcast and wireless standards. Because the intellectual property we license is available to our competitors from third parties, barriers to entry for our competitors are lower than if we owned exclusive rights to the technology we license and use or if we had separately developed patented technology. In some cases, the owners of the intellectual property that we license routinely license the same or similar intellectual property to our competitors, such as Dolby, and AVC/H.264 patents licensed through MPEG LA. If a competitor enters into an exclusive arrangement with any of our third-party technology providers, or we are unable to continue to license or replace technologies we use following the expiration or termination of a license, our ability to develop and sell devices or services containing that technology could be severely limited. Our ability to continue licensing technology from a licensor after the expiration or termination of a license could also become more limited in the

future for a variety of reasons, such as the licensor being acquired by one of our competitors. Even if such licenses are available, we may be required to pay the licensor substantial royalties based on sales of our devices. Our success will also depend in part on our continued ability to access these technologies on commercially reasonable terms. Upon expiration of these agreements, we are required to re-negotiate and renew them in order to continue to access these technologies. We have in the past been, and may in the future be, unable to reach a satisfactory agreement before our existing license agreements have expired. If we are unable to enter into or renew the necessary licenses on acceptable terms or at all, if any necessary licenses are subsequently terminated, our business, financial condition and results of operations may be harmed. Defense of any lawsuit or failure to obtain any of these licenses on favorable terms could prevent us from commercializing our devices, which may harm our business, financial condition and results of operations.

We rely primarily on third parties for the research and development behind the technologies underlying our devices.

We rely primarily on third-parties for the research and development of the technologies underlying our devices. The success of our devices is dependent on the research and development performed by these third parties. If our relationships with our third-party manufacturers and licensors is harmed or ends, we may need to incur additional research and development costs in order to remain competitive with our devices. In addition, our research and development providers may experience delays that are out of our control. For example, as a result of the COVID-19 pandemic, our research and development providers have experienced delays due to an inability to complete in-person research and development. Furthermore, we cannot control the amount or type of research and development done by our third-party providers. If they choose to invest less in research and development, or to invest in less relevant areas so that they fail to keep pace with the technological changes in our industries, our devices could be less competitive, and our business, financial condition and results of operations may be harmed.

Limited availability of raw materials, components and manufacturing equipment for our devices, or increases in the cost of these items, may harm our Device business, financial condition and results of operations.

We depend on our manufacturers obtaining adequate supplies of quality raw materials and components on a timely basis, and we have no long-term agreements with our manufacturers with fixed prices or quantities. As a result, it is important for them to control raw material and component costs and reduce the effects of fluctuations in price and availability. We do not have ultimate control over how or from whom our manufacturers, or their suppliers, source the raw materials or key components, such as glass substrates, liquid crystal material, driver integrated circuits, polarizers and color filters, used in our devices and key components. Our manufacturers, or their suppliers, may establish a working relationship with a single materials supplier if they believe it is advantageous to do so due to performance, quality, support, delivery, capacity, price or other considerations. Our manufacturers, or their suppliers, have experienced and may in the future experience a shortage of, or a delay in receiving, certain components as a result of strong demand, capacity constraints, including constraints due to the COVID-19 pandemic, financial weakness of the manufacturer or their suppliers, inability of manufacturers or their suppliers to borrow funds in the credit markets, disputes with other manufacturers or suppliers (some of whom are also competitors) or disruptions in the operations of component suppliers, or problems faced during the transition to a new component supplier. Our results of operations would be adversely affected if our manufacturers, or their suppliers, were unable to obtain adequate supplies of high-quality raw materials or components in a timely manner or make alternative arrangements for such supplies in a timely manner.

Furthermore, we may be limited in our ability to pass on increases in the cost of raw materials and components to our retailers. Our contracts with our retailers provide that price and quantity terms are contained in purchase orders, which are generally agreed upon two weeks in advance of delivery. Except under certain special circumstances, the price terms in the purchase orders are not subject to change. If we become subject to any significant increase in the price our manufacturers charge us due to increases in the price of raw materials or components that were not anticipated, we may be unable to pass on such cost increases to our retailers, particularly when we offer price protection, where we offer rebates to our retailers so that they can decrease the retail price of devices during the devices' life cycles to move such devices off their shelves.

In addition, certain manufacturing equipment used by our manufacturers, and their suppliers, is only available from a limited number of vendors. From time to time, increased demand for such equipment may cause lead times to extend beyond those normally required. The unavailability of such equipment could hinder the manufacturing capacity of our manufacturers, which could in turn impair our ability to meet our retailer orders. This could result in a loss of revenue, and our business, financial condition and results of operations may be harmed.

We do not control our manufacturers, or require them to comply with a formal code of conduct, and actions that they might take could harm our reputation, brand, and sales.

We do not control our manufacturers, including their labor, environmental or other practices, or require them to comply with a formal code of conduct. A violation of labor, environmental or other laws by our manufacturers or their suppliers, or a failure of these parties to follow ethical business practices, could lead to negative publicity and harm our reputation and brand. In addition, we may choose to seek alternative manufacturers if these violations or failures were to occur. Identifying and qualifying new manufacturers can be time consuming and we might not be able to substitute suitable alternatives in a timely manner or at an acceptable cost. In the past, other consumer device companies have faced significant criticism for the actions of their manufacturers and suppliers, and we could face such criticism ourselves. Any of these events could adversely affect our brand, harm our reputation and brand, reduce demand for our devices and harm our ability to meet demand if we need to identify alternative manufacturers.

We are dependent on logistics services provided by our third-party logistics providers, and failure to properly manage these relationships, or the failure of our logistics providers to perform as expected, may harm our results of operations.

We currently rely primarily on only two third-party logistics providers for our warehousing and transportation needs that are not already handled by our manufacturers. We have no assurance that business interruptions will not occur as a result of the failure by these providers to perform as expected or that either of these logistics providers will meet the needs of our Device business. Further, if we are unable to properly manage our relationships with our logistics providers, including by accurately forecasting our requirements, our revenue, results of operations and gross profit may be harmed. We cannot ensure that our logistics providers will continue to perform services to our satisfaction, in a manner satisfactory to our retailers, manufacturers and their suppliers, or on commercially reasonable terms. Our manufacturers could become dissatisfied with our logistics providers or their cost levels and refuse to utilize either of these logistics providers. Our retailers could become dissatisfied and cancel their orders, impose charges on us or decline to make future purchases from us if a logistics provider fails to deliver devices on a timely basis and in compliance with retailers' shipping and packaging requirements, thereby increasing our costs and/or potentially causing our reputation and brand to suffer. If one of our logistics providers is not able to provide the agreed services at the level of quality we require or becomes unable to handle our existing or higher volumes, we may not be able to replace such logistics provider on short notice, which may harm our business.

Our logistics providers may also fail to perform as expected for reasons outside their control. For example, as a result of the COVID-19 pandemic, there has been an increase in logistics costs and occasional delays in the performance of our logistics providers. Such failure by our logistics providers to perform as expected may harm our business, financial condition and results of operations.

In addition, because we currently rely primarily on only two third-party logistics providers for our warehousing and transportation needs, if we encounter problems with either of these logistics providers, we may not be able to quickly shift to a new provider of these services, or shift the allocation of services between our existing providers, and our ability to meet retailer expectations, manage inventory, complete sales and achieve objectives for operating efficiencies may be harmed.

Most of our agreements with content providers are not long-term and can be terminated by the content providers under certain circumstances. Any disruption in the renewal of such agreements may result in the removal of certain channels from our streaming platform and may harm our SmartCast Active Account growth and engagement.

We enter into agreements with all our content providers, which have varying terms and conditions, including expiration dates. Our agreements with content providers generally have terms of one to three years and can be terminated before the end of the term by the content provider under certain circumstances, such as if we materially breach the agreement, or occasionally without cause. Upon expiration of these agreements, we are required to re-negotiate and renew them in order to continue providing content from these content providers on our streaming platform. We have in the past and in the future may not be able to reach a satisfactory agreement before our existing agreements have expired. If we are unable to renew such agreements on a timely basis on mutually agreeable terms, we may be required to temporarily or permanently remove certain channels from our streaming platform. The loss of any services from our streaming platform for any period of time may harm our business. More broadly, if we fail to maintain our relationships with the content providers on terms favorable to us, or at all, if these content providers face problems in delivering their content across our platform, or if these content providers do not prioritize development applications for our platforms, then we may lose advertisers or consumers and our business may be harmed.

A small number of content providers represent a disproportionate amount of content consumed on our Smart TVs, and if we fail to monetize these relationships, directly or indirectly, our business, financial condition and results of operations may be harmed.

Historically, a small number of content providers have accounted for a significant portion of the content streamed across our connected entertainment platform and the terms and conditions of our relationships with content providers vary. However, revenue generated from our largest content provider across our platform was not material to our total net revenue during the year ended December 31, 2020, and we do not expect a material amount of revenue from our largest content provider for the foreseeable future. If we fail to maintain our relationships with the content providers that account for a significant amount of the content streamed by our consumers or if these content providers face problems in delivering their content across our platform, our ability to attract and retain consumers would be harmed.

Additionally, some of our agreements with third party content providers, including Netflix and Disney+, restrict us from using viewing data from consumers engaging with that third party's content. Accordingly, our contractual arrangements with third party content providers may limit our ability to monetize our relationships with them, and as a result, our business, financial condition and results of operations may be harmed.

The success of Platform+ depends in part on developing and maintaining relationships and technology integrations with a variety of third parties.

The success of Platform+ depends in part on developing and maintaining relationships and technology integrations with brand advertisers, advertising and media agencies, broadcast, cable and local television networks, digital publishers and streaming companies, data analytics firms and advertising technology firms. The television and digital advertising industries continue to evolve and we cannot ensure that we will be able to maintain and expand our existing relationships as well as develop relationships with additional constituents as they emerge. We also depend in part on marketing technology companies to collect and make data useful to advertisers. If these marketing technology companies fail to properly and securely collect user data from our devices, or if we fail to maintain and expand our relationships with these marketing technology companies, our business may be harmed.

Additionally, television content providers, digital publishers and marketing technology companies may begin to develop products supplementing their current product offerings to compete with our Platform+

offerings. For example, certain cable operators are vertically integrated with content providers and may choose to invest in alternate platforms. If we cannot maintain or expand our relationships with these constituents, our business, financial condition and results of operations may be harmed.

Risks Relating to Legal and Regulatory Matters

We are subject to a variety of federal, state and foreign laws and regulatory regimes. Failure to comply with governmental laws and regulations could subject us to, among other things, mandatory device recalls, penalties and legal expenses that may harm our business.

Our business is subject to regulation by various federal and state governmental agencies. Such regulation includes the radio frequency emission regulatory activities of the Federal Communications Commission, the anti-trust regulatory activities of the Federal Trade Commission and Department of Justice, the consumer protection laws of the Federal Trade Commission, the import/export regulatory activities of the Department of Commerce, the product safety regulatory activities of the Consumer Products Safety Commission, the regulatory activities of the Occupational Safety and Health Administration and the International Trade Commission, the environmental regulatory activities of the Environmental Protection Agency, the labor regulatory activities of the Equal Employment Opportunity Commission, laws related to privacy, data protection and security, and tax and other regulations by a variety of regulatory authorities in each of the areas in which we conduct business. We are also subject to regulation in other countries where we conduct business. In certain jurisdictions, such regulatory requirements may be more stringent than in the United States. In addition, we are subject to a variety of federal and state employment and labors laws and regulations, including the Americans with Disabilities Act, the Federal Fair Labor Standards Act, the WARN Act and other regulations related to working conditions, wage-hour pay, over-time pay, employee benefits, anti-discrimination, and termination of employment. Noncompliance with applicable regulations or requirements could subject us to investigations, sanctions, mandatory device recalls, enforcement actions, disgorgement of profits, fines, damages, civil and criminal penalties, or injunctions.

We are subject to governmental export and import controls and economic sanctions laws that could subject us to liability and impair our ability to compete in international markets if we or our partners violate these laws or the laws are amended to restrict our ability to do business internationally. The United States and various foreign governments have imposed controls, license requirements and restrictions on the import or export of some technologies, including devices and services. Our devices are subject to U.S. export controls, including the Commerce Department’s Export Administration Regulations and our business activities are subject to various economic and trade sanctions regulations established by the Treasury Department’s Office of Foreign Assets Controls. These laws and regulations have in the past impacted, and we expect in the future will impact, our business, and any future changes in laws, regulations, policies or trade relations could harm our business. Exports and other transfers of our devices, technologies and services must be made in compliance with these laws. Furthermore, U.S. export control laws and economic sanctions prohibit the provision of devices and services to countries, governments, and persons subject to U.S. sanctions. Even though we attempt to ensure that we, our retailers and partners comply with the applicable export, sanctions and import laws, including preventing our devices from being provided to sanctioned persons or sanctioned countries, we cannot guarantee full compliance by all. Actions of our retailers and partners are not within our complete control, and our devices could be re-exported to those sanctioned persons or countries, or provided by our retailers to third persons in contravention of our requirements or instructions or the laws. Any such potential violation could have negative consequences, including government investigations, penalties, and our reputation, brand and revenue may be harmed.

Further, any government enforcement action may harm our business, financial condition and results of operations. If we are subject to any sanctions, penalties or restrictions by governmental agencies, or if we do not prevail in any possible governmental civil or criminal litigation matter in the future, our business, financial condition and results of operations may be harmed. In addition, responding to any action will likely result in a significant diversion of management’s attention and resources and an increase in professional service fees and our reputation and brand may be harmed.

We and our third-party service providers collect, store, use, disclose and otherwise process information collected from or about consumers of our devices. The collection and use of personal information subjects us to legislative and regulatory burdens, and contractual obligations, and may expose us to liability.

We collect, store, use, disclose and otherwise process personal information (including data that can be used to identify or contact a person) and other data supplied by consumers when, for example, consumers register our devices for warranty purposes, as well as personal information of our employees and third parties, and share this data with certain third parties. We also disclose viewing data to third parties when consumers opt-in to the collection, use and disclosure of viewing data. A wide variety of local, state, national and international laws and regulations, and industry standards and contractual obligations, apply to the collection, use, retention, protection, security, sharing, disclosure, transfer and other processing of personal information and data collected from or about individuals, including consumers and devices, and the regulatory frameworks and industry standards for privacy and security issues are evolving worldwide. In many cases, these laws and regulations apply not only to third-party transactions, but also to transfers of information between or among us, our subsidiaries and other parties with which we have commercial relationships.

For example, the European Union (EU) General Data Protection Regulation (GDPR) imposes stringent operational requirements for entities processing personal information and significant penalties for non-compliance. In particular, under the GDPR, fines of up to 20 million euros or up to 4% of the annual global revenue of the noncompliant company, whichever is greater, could be imposed for violations of certain of the GDPR's requirements. Such penalties are in addition to any civil litigation claims by data subjects. Numerous legislative proposals also are pending before the U.S. Congress, various state legislative bodies and foreign governments concerning content regulation and data privacy and protection that could affect us, including Bill C-11 (the Digital Charter Implementation Act) introduced by the Canadian government in November 2020. We expect that there will continue to be new proposed and adopted laws, regulations and industry standards concerning privacy, data protection and security in the United States and other jurisdictions in which we operate.

In the United States, we are subject to the supervisory and enforcement authority of the Federal Trade Commission with regard to the collection, use, sharing, and disclosure of certain data collected from or about consumers or their devices. Additionally, many states in which we operate have laws that protect the privacy and security of personal information. Certain state laws may be more stringent, broader in scope, or offer greater individual rights, with respect to personal information than federal, international or other state laws, and such laws may differ from each other, which may complicate compliance efforts. For example, California has adopted the California Consumer Privacy Act (CCPA), which provides new data privacy rights for California consumers and new operational requirements for covered companies. The CCPA provides that covered companies must provide new disclosures to California consumers and afford such consumers new data privacy rights that include the right to request a copy from a covered company of the personal information collected about them, the right to request deletion of such personal information, and the right to request to opt-out of certain sales of such personal information. The CCPA became operative in January 2020, and its implementing regulations took effect in August 2020. The California Attorney General can enforce the CCPA, including seeking an injunction and civil penalties for violations. The CCPA provides a private right of action for certain data breaches that is expected to increase data breach litigation. The CCPA may require us to modify our data practices and policies and to incur substantial costs and expenses in an effort to comply. California voters also passed a new privacy law, the California Privacy Rights Act (CPRA), in the November 2020 election. The CPRA significantly modifies the CCPA, including by imposing additional obligations on covered companies and expanding consumers' rights with respect to certain sensitive personal information, potentially resulting in further uncertainty and requiring us to incur additional costs and expenses in an effort to comply prior to the 2023 effective date. The CPRA also creates a new state agency that will be vested with authority to implement and enforce the CCPA and the CPRA. In addition, all 50 states have laws including obligations to provide notification of security breaches of computer databases that contain personal information to affected individuals, state officers and others. Aspects of the CCPA, the CPRA, and other laws and regulations relating to data protection, privacy, and information security, as well as their enforcement, remain unclear, and we may be required to modify our practices in an effort to comply with them.

The CCPA and CPRA could mark the beginning of a trend toward more stringent privacy legislation in the United States. The CCPA has prompted a number of proposals for federal and state privacy legislation that, if passed, could increase our potential liability, add layers of complexity to compliance in the U.S. market, increase our compliance costs and adversely affect our business.

While we strive to publish and prominently display privacy policies that are accurate, comprehensive, compliant with applicable laws, orders and settlements, regulations and industry standards, and fully implemented, we cannot assure you that our privacy policies and other statements regarding our practices will be sufficient to protect us from claims, proceedings, liability or adverse publicity relating to the privacy and security of information about consumers or their devices. Although we endeavor to comply with our privacy policies, we may at times fail to do so or be alleged to have failed to do so. The publication of our privacy policies and other documentation that provide promises and assurances about privacy and security can subject us to potential state and federal action if they are found to be deceptive, unfair, or misrepresentative of our actual practices, which may harm our business, financial condition and results of operations. Any failure or perceived failure by us to comply with our privacy policies, our privacy-related obligations to consumers or other third parties, including retailers, advertisers, service providers or developers, or any other legal or regulatory obligations, standards, orders or contractual or other obligations relating to privacy, data protection, data security, or consumer protection, or any compromise of security that results in unauthorized access to, or unauthorized loss, destruction, use, modification, acquisition, disclosure, release or transfer of personal information or other consumer data, has in the past resulted, and in the future may result, in the expenditure of substantial costs, time and other resources, proceedings or actions against us, legal liability, governmental investigations, enforcement actions and other proceedings, and claims, fines, judgments, awards, penalties and costly litigation (including class actions). Such proceedings or actions could hurt our reputation, force us to spend significant amounts in defense of and responses to such actions and proceedings, distract our management and technical personnel, increase our costs of doing business, adversely affect the demand for our devices, and ultimately result in the imposition of liability. Furthermore, any public statements against us by consumer advocacy groups or others, could cause our consumers to lose trust in us and otherwise harm our reputation, brand and market position, which may harm our business, financial condition and results of operations.

We use information collected from or about consumers of our devices, and from the devices themselves, for analysis and licensing purposes, including to inform advertising or analyze viewing behaviors. If laws or government regulations relating to digital advertising, the use of location or behavioral data, or collection and use of internet user data and unique identifiers change, we may need to alter our business, or our business may be harmed.

Our business currently relies in part upon users opting-in to allow their Smart TV to detect viewing data. We license certain of this viewing data to authorized data partners, including analytics companies, media companies and advertisers. We may use viewing data for a number of purposes, including to provide, maintain, monitor and analyze usage, to improve services, to personalize our services and to deliver recommendations, advertisements, content and features that match viewer interests. Our data partners may use viewing data for summary analytics and reports, audience measurement, and to deliver tailored advertisements. Data about content viewed on a device is sometimes enhanced with household demographic data and data about digital actions (e.g., digital purchases and other consumer behavior taken by the Smart TV or other devices associated with the IP address we collect). This data also enables authorized data partners to deliver interest-based advertising both on the Smart TV and other devices, for example, devices sharing the same IP address.

U.S. federal and state governments, and foreign governments, have enacted or are considering legislation related to digital advertising, consumer privacy, and the collection, use, disclosure and other processing of data relating to individuals, including the GDPR and the CCPA, and we expect to see an increase in legislation and regulation related to digital advertising, the use of location or behavioral data, the collection and use of internet user data and unique device identifiers, such as IP address, and other privacy and data protection legislation and regulation. Such laws and regulations could affect our costs of doing business, and may adversely affect the

demand for, or effectiveness and value of, our Inscape data services and our other devices and services. It is also possible that existing laws and regulations may be interpreted in new ways that would affect our business, including with respect to definitions of "personal data" or similar concepts, or the classification of IP addresses, machine, device or other persistent identifiers, location data, behavioral data and other similar information. Such laws and regulations may be inconsistent between countries and jurisdictions or conflict with other laws, regulations or other obligations to which we are or may become subject. Such new laws and regulations, or new interpretations of laws and regulations, may hamper our ability to expand our offerings into the EU or other jurisdictions outside of the United States, may prove inconsistent with our current or future business practices or the functionality of our Smart TVs, Inscape data services or other devices or services, and may diminish the volume or quality of our data by restricting our information collection methods or decreasing the amount and utility of the information that we would be permitted to collect, share and license.

The costs of compliance with, and the other burdens imposed by, these and other laws, regulations, standards, practices, contractual obligations or other obligations may be costly and onerous, which in turn may prevent us from offering or selling our devices or existing or planned features, products, or services, or may increase the costs of doing so, and may affect our ability to invest in or jointly develop devices or services. Such new laws and regulations, or new interpretations of laws and regulations, also may cause us to find it necessary or appropriate to change our business practices. We may be unable to change our business practices in a timely or cost-effective manner or at all, and doing so may harm our financial performance. Some of our competitors may have more access to lobbyists or governmental officials and may use such access to effect statutory or regulatory changes in a manner to commercially harm us while favoring their solutions. In addition, a determination by a court or government agency that any of our practices, or those of our agents, do not meet applicable standards could result in liability, or result in negative publicity, and may harm our business, financial condition and results of operations.

Our consumers may also object to or opt-out of the collection and use of data about the content viewed on a VIZIO device, which may harm our business. Other businesses have been criticized by privacy groups and governmental bodies for attempts to link personal identities and other information to data collected on the internet regarding users' browsing and other habits. We are aware of several lawsuits filed against companies in the electronics or digital advertising industries alleging various violations of consumer protection and computer crime laws, asserting privacy-related theories, and regulatory authorities in the United States and other jurisdictions have pursued investigations of and enforcement actions against companies relating to their use and other processing of data relating to individuals. Any such claims, proceedings or investigations brought against us could hurt our reputation, brand and market position, force us to spend significant amounts to defend ourselves and otherwise respond to the action or other proceeding, distract our management and technical personnel, increase our costs of doing business, lower demand for our services and ultimately result in the imposition of monetary liability or restrict our ability to conduct our Inscape data services.

We have been subject to regulatory proceedings and orders related to the collection, use, and sharing of information from or about consumers and their devices, and continued compliance with regulators and regulatory orders will require additional costs and expenses.

In February 2017, we stipulated to the entry of a judgment in federal district court with, and paid certain penalties to, the Federal Trade Commission, the New Jersey Attorney General, and Director of the New Jersey Division of Consumer Affairs to settle alleged violations of Section 5 of the Federal Trade Commission Act and New Jersey Consumer Fraud Act (the Order). The Order requires us to provide additional notices (separate and apart from our privacy policies) to consumers when our devices are collecting viewing data Under the Order, VIZIO devices connected to the internet may only collect viewing data from devices whose users have expressly consented to this practice, after receiving notice of the collection, use and sharing of viewing data, and we must provide instructions on how consumers may revoke such consent for our devices.

The Order also required us to delete certain viewing data we collected, prohibits us from misrepresenting our practices with respect to the privacy, security, or confidentiality of consumer information we collect, use or

maintain and requires us to maintain a privacy program with biennial assessments of that program and maintain certain records regarding our collection and use of consumer information. The obligations under the Order remain in effect until 2037. Violation of existing or future regulatory orders, settlements, or consent decrees could subject us to substantial monetary fines and other penalties that could negatively affect our business, financial condition and results of operations.

While we have incurred, and will continue to incur, expenses to maintain privacy and security standards and protocols imposed by the Order, as well as applicable laws, regulations, judgments, settlements, industry standards and contractual obligations, increased regulation of data collection, use and security practices, including self-regulation and industry standards, changes in existing laws, enactment of new laws, increased enforcement activity, and changes in interpretation of laws, could increase our costs of compliance and operations, limit our ability to grow our business or otherwise harm our business.

Our actual or perceived failure to adequately protect information from or about consumers of our devices could harm our reputation, brand and business.

In January 2020, the California Consumer Privacy Act (CCPA), a California law regulating the security of connected devices and data contained on connected devices, came into force. This law requires manufacturers that sell or offer to sell connected devices in California to equip each device with reasonable security features that are appropriate to the nature of the device, appropriate to the information it may collect, contain or transmit, and designed to protect the device and information on the device from unauthorized access, destruction, use, modification or disclosure. In addition, we are subject to other laws and regulations that obligate us to employ reasonable security measures.

We also are subject to certain contractual obligations to indemnify and hold harmless third parties, including advertisers, digital publishers, marketing technology companies and other users or buyers of our data from and against the costs or consequences of our noncompliance with laws, regulations, self-regulatory requirements or other legal obligations relating to privacy, data protection or data security, or inadvertent or unauthorized use or disclosure of these third parties' data that we process in connection with providing our devices.

We have implemented security measures in an effort to comply with applicable laws, regulations and other obligations, but given the evolving nature of security threats and evolving safeguards and the lack of prescriptive measures in many applicable laws, regulations, and other obligations, we cannot be sure that our chosen safeguards will protect against security threats to our business, including the personal information that we process, or that a regulator or other third party may not consider our security measures to be appropriate, reasonable, and/or in accordance with applicable legal requirements. Even security measures that are appropriate, reasonable, and/or in accordance with applicable legal requirements may not be able to fully protect our information technology systems and the data contained in those systems, or our data that is contained in third parties' systems. Moreover, certain data protection laws impose on us responsibility for our employees and third parties that assist with aspects of our data processing. Our employees' or third parties' intentional, unintentional or inadvertent actions may increase our vulnerability or expose us to security threats, such as phishing or spearphishing attacks, and we may remain responsible for access to, loss or alteration of, or unauthorized disclosure or other processing of our data despite our security measures. Any actual or perceived failure to adequately protect information may subject us to legal, regulatory and contractual actions and may harm our reputation, brand, business, financial condition and results of operations.

From time to time, we have been and may be subject to legal proceedings, regulatory disputes, and governmental inquiries that could cause us to incur significant expenses, divert our management's attention, and may harm our business, financial condition and results of operations.

From time to time, we have been and may be subject to claims, lawsuits, government investigations and other proceedings involving products liability, competition and antitrust, intellectual property, privacy, consumer

protection, securities, tax, labor and employment, environmental, commercial disputes and other matters that may harm our business, financial condition and results of operations. As we have grown, we have seen a rise in the number and significance of these disputes and inquiries. Litigation and regulatory proceedings may be protracted and expensive, and the results are difficult to predict. Certain of these matters include speculative claims for substantial or indeterminate amounts of damages and include claims for injunctive relief. Additionally, our litigation costs could be significant. Adverse outcomes with respect to litigation or any of these legal proceedings may result in significant settlement costs or judgments, penalties and fines, or require us to modify our products or services, make content unavailable, or require us to stop offering certain features, all of which may harm our business, financial condition and results of operations.

The results of litigation, investigations, claims, and regulatory proceedings cannot be predicted with certainty, and determining reserves for pending litigation and other legal and regulatory matters requires significant judgment. There can be no assurance that our expectations will prove correct, and even if these matters are resolved in our favor or without significant cash settlements, these matters, and the time and resources necessary to litigate or resolve them, may harm our business, financial condition and results of operations.

Regulations related to conflict minerals may cause us to incur additional expenses and could limit the supply and increase the costs of certain metals used in the manufacturing of our devices.

As a public company, we will be subject to the requirements under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the Dodd-Frank Act) that will require us to diligence, disclose and report whether or not our devices contain conflict minerals. The implementation of these requirements could adversely affect the sourcing, availability and pricing of the materials used in the manufacture of components used in our devices. In addition, we will incur additional costs to comply with the disclosure requirements, including costs related to conducting diligence procedures to determine the sources of conflict minerals that may be used or necessary to the production of our devices and, if applicable, potential changes to devices, processes or sources of supply as a consequence of such verification activities. It is also possible that we may face reputational harm if we determine that certain of our devices contain minerals not determined to be conflict-free or if we are unable to alter our devices, processes or sources of supply to avoid such materials.

Compliance or the failure to comply with current and future environmental, device stewardship and producer responsibility laws or regulations could result in significant expense to us.

As a seller of consumer electronic devices, we are subject to a variety of state, local and foreign environmental, device stewardship and manufacturer responsibility laws and regulations, primarily relating to the collection, reuse and recycling of electronic waste, including the Smart TVs we sell, as well as regulations regarding the consumption of electricity and the hazardous material contents of electronic devices, device components and device packaging.

The cost of complying with recycling programs is difficult to predict because of the inability to reliably estimate the timing and quantity of our devices, at various sizes, that will be recycled in any given jurisdiction. Most of the states with television recycling programs assess fees based upon weight of the units recycled, by market share or a combination of the two. Some states also impose a charge on us for the cost of recycling televisions manufactured by companies which are no longer in business, usually based upon our current market share. Such orphaned televisions are predominately based on older, heavier CRT technology. We expect our expenses for compliance with recycling programs to be between approximately $6 million and $10 million each year, and if our sales or market share increases, the future cost of complying with the existing recycling programs could increase. Changes to laws regulating electronics recycling programs could increase our operational costs for funding these programs and result in increased regulatory oversight and a larger administrative burden. If more states adopt similar recycling plans, our costs of compliance and associated administrative burden will grow. Currently, we do not pass these costs on to our manufacturers and we may have a limited ability to pass

these costs along to our retailers. If states offer consumer incentives for the return of televisions to recycling facilities, which has occurred in the past, our costs could increase unexpectedly. If the costs of compliance with these recycling programs increase beyond our estimates, our margins would be reduced and our business, financial condition and results of operations would be harmed. We believe that we are currently in compliance, and will be able to continue to comply, with such existing and emerging requirements, however we have in the past and may in the future experience disputes with such state or local authorities, and if we are found to not be in compliance with any present and future regulations, we could become subject to additional fines and liabilities, or prohibitions on sales of our Smart TVs or could otherwise jeopardize our ability to conduct business in the jurisdiction in which we are not compliant, which in turn may harm our business, financial condition and results of operations.

Our devices are subject to laws in some jurisdictions which ban the use of certain hazardous materials such as lead, mercury and cadmium in the manufacture of electrical equipment. Similar laws and regulations have been passed, are pending, or may be enacted in China and other regions, and we are, or may in the future be, subject to these laws and regulations. Also, changes to regulations relating to certain chemicals and flame retardants used in our devices have been proposed or are being considered by federal and state regulators. If these measures are implemented, we could face significant increased costs from suppliers who may be using such chemicals in component parts and would be required to remove them. Although we generally seek contractual provisions requiring our manufacturers to comply with device content requirements, we cannot guarantee that our manufacturers will consistently comply with these requirements. In addition, if there are changes to these or other laws (or their interpretation) or if new similar laws are passed in other jurisdictions, we may be required to re-engineer our devices to use components compatible with these regulations. This re-engineering and component substitution could result in additional costs to us or disrupt our operations or logistics.

Issues related to climate change may result in regulatory requirements that would have an adverse impact on the financial condition of the business. At the federal level, a new administration could place new requirements to reduce greenhouse gases on our operations, including manufacturing, transportation and distribution, resulting in increased costs. Recently proposed changes to laws at the state and local levels targeting reductions in greenhouse gases would also result in increased administrative costs to the business.

From time to time new environmental, device stewardship and producer responsibility regulations are enacted, or existing requirements are changed, and it is difficult to anticipate how such regulations and changes will be implemented and enforced. We continue to evaluate the necessary steps for compliance with regulations as they are enacted and are actively looking to alternative methods of compliance in the event certain proposed changes in law may materially impact our operations. We also expect that our devices will be affected by new environmental laws and regulations on an ongoing basis, including content of device components. Although we cannot predict the future impact of such laws or regulations, they will likely result in additional costs and may increase penalties associated with violations or require us to change the content of our devices and packaging or how these are manufactured. As a result, we may experience negative consequences from these emerging requirements including, but not limited to, supply shortages or delays, increased raw material and component costs, accelerated obsolescence of certain raw materials used in our components and devices, and the need to modify or create new designs for our existing and future devices, all of which may harm our business, financial condition and results of operations.

We are subject to taxation-related risks in multiple jurisdictions.

We are a U.S.-based multinational company subject to tax in multiple U.S. and foreign tax jurisdictions. Significant judgment is required in determining our global provision for income taxes, value added and other similar taxes, deferred tax assets or liabilities and in evaluating our tax positions on a worldwide basis. It is possible that our tax positions may be challenged by jurisdictional tax authorities, which may have a significant impact on our global provision for income taxes.

Tax laws are regularly re-examined and evaluated globally. New laws and interpretations of the law are taken into account for financial statement purposes in the quarter or year that they become applicable. Tax authorities are increasingly scrutinizing the tax positions of multinational companies. If U.S. or other foreign tax authorities change applicable tax laws, our overall liability could increase, and our business, financial condition and results of operations may be harmed.

In December 2017, the legislation commonly referred to as the Tax Cuts and Jobs Act (the Tax Act) was enacted, which contains significant changes to U.S. tax law, including a reduction in the corporate tax rate and a transition to a new territorial system of taxation. The primary impact of the new legislation on our provision for income taxes was a reduction of the future tax benefits of our deferred tax assets as a result of the reduction in the corporate tax rate. Certain provisions of the Tax Act were modified by legislation enacted in March 2020, entitled the Coronavirus Aid, Relief, and Economic Security Act (the CARES Act) and the impact of the Tax Act will likely be subject to ongoing technical guidance and accounting interpretation, which we will continue to monitor and assess. As we expand the scale of our business activities, any changes in U.S. or foreign taxation of such activities may increase our worldwide effective tax rate and harm our business, financial condition and results of operations.

Risks Relating to Intellectual Property

Third parties may claim we are infringing, misappropriating or otherwise violating their intellectual property rights and we could be prevented from selling our devices, or suffer significant litigation expense, even if these claims have no merit.

The media entertainment devices industry, and especially the television industry, is characterized by the existence of a large number of patents and frequent claims and litigation regarding patent, trade secret and other intellectual property rights. There is no easy mechanism through which we can ascertain a list of all patent applications that have been filed in the United States or elsewhere and whether, if any applications are granted, such patents would harm our business. Furthermore, the rapid technological changes that characterize our industry require that we quickly implement new processes and components with respect to our devices. Often with respect to recently developed processes and components, a degree of uncertainty exists as to who may rightfully claim ownership rights in such processes and components. Uncertainty of this type increases the risk that claims alleging that such components or processes infringe, misappropriate or otherwise violate third-party rights may be brought against us. We may also be unaware of intellectual property rights of others that may cover some of our devices.

Leading companies in the television industry, some of which are our competitors, have extensive patent portfolios with respect to television technology. From time to time, third parties, including these leading companies, have asserted and currently are asserting patent, copyright, trademark and other intellectual property related claims against us and demand license or royalty payments or payment for damages, seek injunctive relief and pursue other remedies including, but not limited to, an order barring the import of our devices. We expect to continue to receive such communications and be subject to such claims, and we review the merits of each claim as they are received.

The cost to us of any patent litigation or other proceeding, even if resolved in our favor, could be substantial. Claims of intellectual property infringement, misappropriation or other violation against us or our manufacturers have required and might in the future require us to redesign our devices, rebrand our services, enter into costly settlement or license agreements, pay costly damage awards, potentially including treble damages and attorneys' fees, if we are found to have willfully infringed a party's intellectual property, or require us to face a temporary or permanent injunction prohibiting us from marketing or selling our devices or services. As a result of patent infringement claims, or to avoid potential claims, we have in the past and may in the future choose or be required to seek licenses from third parties. These licenses may not be available on acceptable terms, or at all. Even if we are able to obtain a license, the license would likely obligate us to pay license fees or

royalties or both, which may be substantial, and the rights granted to us might be nonexclusive, which could result in our competitors gaining access to the same intellectual property rights.

Litigation against us, even if without merit, can be time consuming, could divert management attention and resources, require us or our manufacturers to incur significant legal expense, prevent us from using or selling the challenged technology, damage our reputation and brand, require us or our manufacturers to design around the challenged technology and cause the price of our stock to decline. In addition, these third-party claimants, some of which are potential competitors, may initiate litigation against the manufacturers of our devices or key components, including LCD and OLED panels, or our retailers, alleging infringement, misappropriation or other violation of their proprietary rights with respect to existing or future devices. Also, third parties may make infringement claims against us that relate to technology developed and owned by one of our manufacturers for which our manufacturers may or may not indemnify us. Even if we are indemnified against such costs, the indemnifying party may be unable to uphold its contractual obligations and determining the scope of these obligations could require additional litigation. Moreover, our agreements with our retailers generally contain intellectual property indemnification obligations, and we may be responsible for indemnifying our retailers against certain intellectual property claims or liability they may face relating to our devices or offerings. Additionally, our retailers may not purchase our offerings if they are concerned that they may infringe, misappropriate or otherwise violate third-party intellectual property rights.

The complexity of the technology involved and inherent uncertainty and cost of intellectual property litigation increases our risks. In the event of a meritorious or successful claim of infringement, and our failure or inability to license or independently develop or acquire access to alternative technology on a timely basis and on commercially reasonable terms, or substitute similar intellectual property from another source, we may be required to:

- discontinue making, using, selling or importing substantially all or some of our devices as currently engineered;
- offer less competitive devices with reduced or limited functionality;
- pay substantial monetary damages for the prior use of third-party intellectual property;
- change how our devices are manufactured or the design of our devices;
- shift significant liabilities to our manufacturers who may not be financially able to absorb them;
- enter into licensing arrangements with third parties on economically unfavorable or impractical terms and conditions; and/or
- pay higher prices for the devices we sell.

As a result of the occurrence of any of the foregoing, we may be unable to offer competitive devices, suffer a material decrease or interruption in sales and our business, financial condition and results of operations may be harmed.

If we become subject to liability for content that we distribute through our devices, our business, financial condition and results of operations may be harmed.

As a distributor of content, we face potential liability for negligence, copyright, patent or trademark infringement, public performance royalties or other claims based on the nature and content of materials that we distribute. The Digital Millennium Copyright Act (DMCA) is intended, in part, to limit the liability of eligible service providers for caching, hosting, or linking to, user content that include materials that infringe copyrights or other rights of others. We rely on the protections provided by the DMCA in conducting our business, and may be adversely impacted by future legislation and future judicial decisions altering these safe harbors or if international jurisdictions refuse to apply similar protections. If we become liable for these types of claims as a

result of the content that is streamed through our technology, then our business may suffer. Litigation to defend these claims could be costly and the expenses and damages arising from any liability could harm our business, financial condition and results of operations. We cannot assure that we are insured or indemnified to cover claims of these types or liability that may be imposed on us.

Some of our consumer devices contain "open source" software, and any failure to comply with the terms of one or more of these open source licenses could negatively affect our business.

Some of our devices are, or may be distributed with, software licensed by its authors or other third parties under so-called "open source" licenses, including, for example, the GNU General Public License, GNU Lesser General Public License, the Mozilla Public License, the BSD License and the Apache License.

Some of those licenses may require, as a condition of the license, that:

- we release the source code for our proprietary software, or modifications or derivative works we create based upon, incorporating, or using the open source software,
- we provide notices with our devices, and/or
- we license the modifications or derivative works we create based upon, incorporating, or using the open source software under the terms of a particular open source license or other license granting third parties certain rights of further use, including that the licensee publicly release all or part of the source code to such software and/or make available any derivative works of the open source code on unfavorable terms or at no cost.

From time to time, companies that incorporate open source software into their devices have faced claims challenging the ownership of open source software and/or compliance with open source license terms. Additionally, the terms of certain open source licenses to which we are subject have not been interpreted by U.S. or foreign courts, and there is a risk that open source software licenses could be construed in a manner that imposes unanticipated conditions or restrictions on our ability to provide the open source software subject to those licenses. Accordingly, we could be subject to suits and liability for copyright infringement claims and breach of contract by parties claiming ownership of, or demanding release of, what we believe to be open source software or noncompliance with open source licensing terms. While we monitor our use of open source software and try to ensure that none is used in a manner that would require us to disclose the source code or that would otherwise breach the terms of an open source agreement, such use could nevertheless occur, or could be claimed to have occurred, and we may be required to release our proprietary source code, pay damages for breach of contract, purchase a costly license, re-engineer our applications, discontinue sales in the event re-engineering cannot be accomplished on a timely basis or take other remedial action that may divert resources away from our development efforts, any of which may harm our business, financial condition and results of operations. This reengineering process could require us to expend significant additional research and development resources, and we may not be able to complete the re-engineering process successfully. In addition to risks related to license requirements, use of certain open source software can lead to greater risks than use of third-party commercial software, as open source licensors generally do not provide warranties or controls on the origin of software. If an author or other third-party that distributes such open source software were to allege that we had not complied with the conditions of one or more of those open source licenses, we could be required to incur legal expenses in defending against such allegations, and if our defenses were not successful we could be enjoined from distribution of the devices that contained the open source software and required to either make the source code for the open source software available, to grant third parties certain rights of further use of our software, or to remove the open source software from our devices, which could disrupt our distribution and sale of some of our devices, or help third parties, including our competitors, develop products and services that are similar to or better than ours, any of which may harm our business, financial condition and results of operations.

We rely upon trade secrets and other intellectual property rights, including unpatented proprietary know-how and expertise to maintain our competitive position in the television industry. Our intellectual proprietary rights may be difficult to establish, maintain, enforce and protect, which could enable others to copy or use aspects of our devices without compensating us, thereby eroding our competitive advantages and harming our business.

We rely on a combination of copyright, trademark, patent and trade secret laws, nondisclosure agreements with employees, contractors and manufacturers and other contractual provisions to establish, maintain, protect and enforce our intellectual property and other proprietary rights. Our success depends, in part, on our ability to protect our intellectual property and proprietary rights under the intellectual property laws of the United States and other countries. The laws of some foreign countries may not be as protective of intellectual property rights as those of the United States, and mechanisms for enforcement of our intellectual property and proprietary rights in such countries may be inadequate. Despite our efforts to protect our intellectual property, unauthorized parties may attempt to copy aspects of our device design, to obtain and use technology and other intellectual property that we regard as proprietary, or to adopt names, trademarks and logos similar to the VIZIO name, trademark and logo, especially in international markets where intellectual property rights may be less protected. Furthermore, our competitors may independently develop similar technology or duplicate our intellectual property. Policing the unauthorized use of our intellectual property and proprietary rights is difficult and expensive. Pursuing infringers of our intellectual property and proprietary rights could result in significant costs and diversion of resources, and any failure to pursue infringers could result in our competitors utilizing our technology and offering similar devices, potentially resulting in loss of a competitive advantage and decreased sales. Furthermore, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential and proprietary information could be compromised by disclosure during this type of litigation. If we fail to protect and enforce our intellectual property rights adequately, our competitors might gain access to our technology, we may not receive any return on the resources expended to create or acquire the intellectual property or generate any competitive advantage based on it, and our brand, business, financial condition and results of operations may be harmed.

Additionally, various factors outside our control pose a threat to our intellectual property rights, as well as to our devices. For example, we may fail to obtain effective intellectual property protection, or the efforts we have taken to protect our intellectual property rights may not be sufficient or effective, and any of our intellectual property rights may be challenged, which could result in them being narrowed in scope or declared invalid or unenforceable. Despite our efforts to protect our intellectual property proprietary rights, there can be no assurance our intellectual property rights will be sufficient to protect against others offering products or services that are substantially similar to ours. For example, it is possible that third parties, including our competitors, may obtain patents relating to technologies that overlap or compete with our technology. If third parties obtain patent protection with respect to such technologies, they may assert, and have in the past asserted, that our technology infringes their patents and seek to charge us a licensing fee or otherwise preclude the use of our technology.

We rely heavily on trade secrets, unpatented proprietary know-how, expertise and information, as well as continuing technological innovation in our business and confidentiality to protect our intellectual property. We seek to protect our proprietary information by entering into confidentiality and/or license agreements with our employees, consultants, service providers and advertisers. We also enter into confidentiality and invention assignment agreements with our employees and consultants. We also seek to preserve the integrity and confidentiality of our trade secrets and proprietary information by the use of measures designed to maintain physical security of our premises and physical and electronic security of our information technology systems, but it is possible that the security measures of the premises or information technology systems used in our business and operations, some of which are supported by third parties, could be breached. However, policing unauthorized use of our trade secrets, technology and proprietary information is difficult and we cannot assure you that any steps taken by us will prevent misappropriation of our trade secrets, technology and proprietary information. We cannot be certain that we have entered into confidentiality, invention assignment and/or license agreements with all relevant parties, and we cannot be certain that our trade secrets, technology and other proprietary information

will not be disclosed or that competitors will not otherwise gain access to our trade secrets or independently develop substantially equivalent information and techniques. There can be no assurance that we will be able to effectively maintain the secrecy and confidentiality of this intellectual property. Such agreements may be insufficient or breached and we also cannot be certain that we will have adequate remedies for any breach. Individuals not subject to invention assignment agreements may make adverse ownership claims to our current and future intellectual property. Additionally, to the extent that our employees, consultants or other third parties with whom we do business use intellectual property owned by others in their work for us, disputes may arise as to the rights in related or resulting know-how and inventions. We may have employees leave us and work for competitors. Attempts may be made to copy or reverse-engineer aspects of our devices or to obtain and use information that we regard as proprietary. The disclosure of our trade secrets or other know-how as a result of such a breach may harm our business. If any of our trade secrets, technology or other proprietary information were to be lawfully obtained or independently developed by a competitor, we would have no right to prevent such competitor from using that technology or information to compete with us, which could harm our competitive position.

To a lesser extent, we rely on patent laws to protect our proprietary methods and technologies. While we have issued patents and pending patent applications in the United States and other jurisdictions, the claims eventually allowed on any of our patents may not be sufficiently broad to protect our technology or offerings and services. Any issued patents may be challenged or invalidated in litigation and/or in other adversarial proceedings such as opposition, *inter partes* review, post-grant review, reissue, reexamination or other post-issuance proceedings, or may be circumvented, and any rights granted under these patents may not actually provide adequate defensive protection or competitive advantages to us. Additionally, the process of obtaining patent protection is expensive and time-consuming, and we may not be able to prosecute all necessary or desirable patent applications at a reasonable cost or in a timely manner. Additional uncertainty may result from changes to intellectual property legislation enacted in the United States, including the Leahy-Smith America Invents Act, and other national governments and from interpretations of the intellectual property laws of the United States and other countries by applicable courts and agencies. Accordingly, despite our efforts, we may be unable to obtain adequate patent protection, or to prevent third parties from infringing upon or misappropriating our intellectual property.

Any additional investment in protecting our intellectual property through additional trademark, patent or other intellectual property filings could be expensive or time-consuming. We may not be able to obtain protection for our technology and even if we are successful in obtaining effective patent, trademark, trade secret and copyright protection, it is expensive to maintain these rights, both in terms of application and maintenance costs, and the time and cost required to defend our rights could be substantial. Moreover, our failure to develop and properly manage new intellectual property could hurt our market position and business opportunities.

If we fail to comply with our obligations under license or technology agreements with third parties, we may be required to pay damages and we could lose license rights that are critical to our business.

We license certain intellectual property, including patents and technology, from third parties, that is important to our business, and in the future we may enter into additional agreements that provide us with licenses to valuable intellectual property or technology. If we fail to comply with any of the obligations under our license agreements, we may be required to pay damages and the licensor may have the right to terminate the license. Termination by the licensor would cause us to lose valuable rights, and could prevent us from selling our devices, or inhibit our ability to commercialize future devices. Our business would suffer if any current or future licenses terminate, if the licensors fail to abide by the terms of the license, if the licensors fail to enforce licensed patents against infringing third parties, if the licensed intellectual property rights are found to be invalid or unenforceable, or if we are unable to enter into necessary licenses on acceptable terms. In addition, our rights to certain technologies are licensed to us on a non-exclusive basis. The owners of these non-exclusively licensed technologies are therefore free to license them to third parties, including our competitors, on terms that may be superior to those offered to us, which could place us at a competitive disadvantage. Moreover, our licensors may

own or control intellectual property that has not been licensed to us and, as a result, we may be subject to claims, regardless of their merit, that we are infringing or otherwise violating the licensor's rights. In addition, the agreements under which we license intellectual property or technology from third parties are generally complex, and certain provisions in such agreements may be susceptible to multiple interpretations. The resolution of any contract interpretation disagreement that may arise could narrow what we believe to be the scope of our rights to the relevant intellectual property or technology, or increase what we believe to be our financial or other obligations under the relevant agreement. Any of the foregoing may harm our competitive position, business, financial condition and results of operations.

Risks Relating to this Offering and Ownership of Our Class A Common Stock

After this offering, you will own single-vote-per-share Class A common stock while shares of our 10-vote-per-share Class B common stock held by our Founder, Chairman and Chief Executive Officer, William Wang, and his affiliates will represent a substantial majority of the voting power of our outstanding capital stock. As a result, Mr. Wang will continue to have control over our company after this offering, which will severely limit your ability to influence or direct the outcome of key corporate actions and transactions, including a change in control.

Following this offering, you and certain other stockholders will own Class A common stock, which entitles each holder of such stock to one vote per share. William Wang, our Founder, Chairman and Chief Executive Officer and his affiliates will hold all shares of Class B common stock that are entitled to ten votes per share. In addition, Mr. Wang is expected to enter into voting agreements whereby he will maintain voting control over the shares of Class B common stock held by his affiliates.

Following the offering, the shares beneficially owned by Mr. Wang (including shares over which he has voting control) will represent % of the voting power of all our shares based on our capitalization as of December 31, 2020. As a result, for the foreseeable future, Mr. Wang will be able to control matters requiring approval by our stockholders, including the election of directors, amendments of our organizational documents, and any merger, consolidation, sale of all or substantially all of our assets, or other major transaction requiring stockholder approval. Mr. Wang may have interests that differ from yours and may vote in a way with which you disagree and which may be adverse to your interest. The concentration of control will limit or preclude your ability to influence corporate matters for the foreseeable future and could have the effect of delaying, preventing or deterring a change in control of our company, could deprive you and other holders of Class A common stock of an opportunity to receive a premium for your Class A common stock as part of a sale of our company and could negatively affect the market price of our Class A common stock. In addition, this may prevent or discourage unsolicited acquisition proposals or offers for our capital stock that you may feel are in your best interest as one of our stockholders.

Future transfers by Mr. Wang and his affiliates of the Class B common stock they hold will generally result in those shares converting into shares of Class A common stock, subject to limited exceptions, such as certain transfers effected for estate planning or charitable purposes. In addition, each share of Class B common stock will convert automatically into one share of Class A common stock upon the date fixed by the board of directors that is no less than 61 days and more than 180 days following (i) the first date after the completion of this offering that the number of shares of Class B common stock held by Mr. Wang and his affiliates is less than 25% of the Class B common stock held by Mr. Wang and his affiliates as of immediately prior to the completion of this offering (the 25% Ownership Threshold); (ii) the date on which Mr. Wang is terminated for cause (as defined in our amended and restated certificate of incorporation); or (iii) the date upon which (A) Mr. Wang is no longer providing services to us as chief executive officer and (B) Mr. Wang is no longer a member of our board of directors, either as a result of Mr. Wang's voluntary resignation or as a result of a request or agreement by Mr. Wang not to be re-nominated as a member of our board of directors at a meeting of our stockholders. Additionally, shares of Class B common stock will convert automatically at the close of business on the date that is 12 months after the death or permanent and total disability of Mr. Wang, during which 12-month period the

shares of our Class B common stock shall be voted as directed by a person designated by Mr. Wang and approved by our board of directors (or if there is no such person, then our secretary then in office). We refer to the date on which such final conversion of all outstanding shares of Class B common stock pursuant to the terms of our amended and restated certificate of incorporation occurs as the Final Conversion Date. For information about our multi-class structure, see the section titled "Description of Capital Stock."

There has been no public market for our Class A common stock prior to this offering, and an active trading market may not develop, which may affect the price of our Class A common stock and your ability to resell it.

There has been no public market for our Class A common stock prior to this offering, and an active public market for our Class A common stock may not develop or be sustained after the completion of this offering. We will negotiate and determine the initial public offering price with representatives of the underwriters and this price may not be indicative of prices that will prevail in the trading market. As a result, you may not be able to sell your shares of Class A common stock at or above the offering price. Following the completion of this offering, the market price for our Class A common stock is likely to be volatile, in part because our shares have not been previously traded publicly. In addition, the market price of our Class A common stock may fluctuate significantly in response to a number of factors, most of which we cannot predict or control, including:

- announcements or introductions of new devices or technologies, commercial relationships, acquisitions, strategic partnerships, joint ventures, capital commitments or other events by us or our competitors;
- failure of any of our new devices or services to achieve commercial success;
- developments by us or our competitors with respect to patents or other intellectual property rights;
- variations and actual or anticipated fluctuations in our total net revenue and other results of operations, or the results of operations of our competitors;
- fluctuations in the operating performance, stock market prices or trading volumes of securities of similar companies;
- failure by us to reach an agreement or renew an agreement with an important content provider;
- changes in operating performance and stock market valuations of competitors;
- general market conditions and overall fluctuations in U.S. equity markets, including fluctuations related to the COVID-19 pandemic;
- changes in accounting principles;
- sales of our Class A common stock, including sales by our executive officers, directors and significant stockholders, short selling of our Class A common stock, or the anticipation of sales or lock-up expirations;
- actual or perceived cybersecurity attacks or security breaches or incidents;
- additions or departures of any of our key personnel;
- lawsuits threatened or filed by us or against us, and announcements related to any such litigation;
- changing legal or regulatory developments in the United States and other countries, including with respect to data privacy, data protection and security;
- the financial projections we may provide to the public, any changes in these projections or our failure to meet these projections;
- changes in recommendations by securities analysts, failure to obtain or maintain analyst coverage of our Class A common stock or our failure to achieve analyst earnings estimates;
- discussion of us or our stock price by the financial press and in online investor communities;

- changes in financial estimates by any securities analysts who follow our company, or our failure to meet these estimates or the expectations of investors; and
- other events or factors, including those resulting from war, incidents of terrorism or responses to these events.

In addition, the stock market has experienced substantial price and volume volatility that is often seemingly unrelated to the operating performance of particular companies. These broad market fluctuations may cause the trading price of our Class A common stock to decline. Furthermore, the trading price of our Class A common stock may be adversely affected by third-parties trying to drive down the price. Short sellers and others, some of whom post anonymously on social media, may be positioned to profit if the trading price of our Class A common stock declines and their activities can negatively affect the trading price of our Class A common stock. In the past, securities class action litigation has often been brought against a company after a period of volatility in the market price of its common stock. We may become involved in this type of litigation in the future. Any securities litigation claims brought against us could result in substantial expenses and the diversion of our management's attention from our business.

A large number of additional shares may be sold in the near future, which may cause the market price of our Class A common stock to decline significantly, even if our business is doing well.

Sales of a substantial amount of our Class A common stock in the market, or the perception that these sales may occur, could adversely affect the market price of our Class A common stock. After this offering, we will have outstanding shares of Class A common stock and shares of Class B common stock (after giving effect to the Series A Conversion, the RSA Forfeiture and the Class B Stock Exchange). The total number of shares outstanding includes the shares of Class A common stock we are selling in this offering, which may be resold immediately, and shares of Class A common stock and shares of Class B common stock which will become available for sale 180 days after the date of this prospectus under the terms of a lock-up agreement (or earlier pursuant to the early release scenarios described below) entered into between the holders of those shares and the underwriters of this offering.

However, the terms of the lock-up agreements will expire for 25% of each stockholder's shares of common stock subject to the lock-up agreement if certain conditions are met (the Early Lock-Up Expiration). If such conditions are met, these shares will become available for sale immediately prior to the opening of trading on the fourth trading day following the date on which all of the below conditions are satisfied (the Early Lock-Up Expiration Date):

(1) 90 days have passed since the date of this prospectus;

(2) we have furnished at least one earnings release on Form 8-K or have filed at least one quarterly report on Form 10-Q or annual report on Form 10-K with the SEC;

(3) the last reported closing price of our Class A Common Stock on the New York Stock Exchange is at least 25% greater than the initial public offering price per share set forth on the cover page of this prospectus for 5 out of any 10 consecutive trading days ending on or after the 90th day following the date of this prospectus; and

(4) such date occurs in a broadly applicable period during which trading in our securities is permitted under our insider trading policy, or an open trading window, and there are at least 5 trading days remaining in the open trading window.

If we are in a blackout period or within five trading days prior to a blackout period at the time of such Early Lock-Up Expiration Date, the date of the Early Lock-Up Expiration will be delayed until immediately prior to the opening of trading on the fourth trading day following the first date that (i) we are no longer in a blackout period under our insider trading policy and (ii) the closing price is at least greater than the price on the cover of this prospectus.

In addition, to the extent not released on the Early Lock-Up Expiration Date, if (i) at least 120 days have elapsed since the date of this prospectus, and (ii) the lock-up period is scheduled to end during or within five trading days prior to a blackout period, the lock-up period will end 10 trading days prior to the commencement of such blackout period. In addition, the representatives of the underwriters of this offering can waive this restriction and allow these stockholders to sell their shares at any time after this offering.

As these lock-up restrictions end, the market price of the Class A common stock could drop significantly if the holders of these restricted shares sell them or are perceived by the market as intending to sell them.

In addition, we intend to file a registration statement to register shares reserved for future issuance under our equity compensation plans. Upon effectiveness of that registration statement, subject to the satisfaction of applicable exercise periods and the expiration or waiver of the lock-up agreements referred to above, the shares issued upon exercise of outstanding stock options will be available for immediate resale in the United States in the open market. If a large number of these shares are sold in the public market, the sales could reduce our trading price.

We cannot predict the impact our multi-class structure may have on our stock price.

We cannot predict whether our multi-class structure will result in a lower or more volatile market price of our Class A common stock or in adverse publicity or other adverse consequences. For example, certain index providers have announced restrictions on including companies with multiple-class share structures in certain of their indexes. In July 2017, FTSE Russell and S&P Dow Jones announced that they would cease to allow most newly public companies utilizing dual or multi-class capital structures to be included in their indices. Affected indices include the Russell 2000 and the S&P 500, S&P MidCap 400 and S&P SmallCap 600, which together make up the S&P Composite 1500. Beginning in 2017, MSCI, a leading stock index provider, opened public consultations on their treatment of no-vote and multi-class structures and temporarily barred new multi-class listings from certain of its indices; however, in October 2018, MSCI announced its decision to include equity securities "with unequal voting structures" in its indices and to launch a new index that specifically includes voting rights in its eligibility criteria. Under the announced policies, our multi-class capital structure makes us ineligible for inclusion in certain indices, and as a result, mutual funds, exchange-traded funds and other investment vehicles that attempt to passively track those indices are not expected to invest in our stock. These policies are still fairly new and it is as of yet unclear what effect, if any, they will have on the valuations of publicly traded companies excluded from the indices, but it is possible that they may depress these valuations compared to those of other similar companies that are included. Because of our multi-class structure, we will likely be excluded from certain of these indexes and we cannot assure you that other stock indexes will not take similar actions. Given the sustained flow of investment funds into passive strategies that seek to track certain indexes, exclusion from stock indexes would likely preclude investment by many of these funds and could make our Class A common stock less attractive to other investors. As a result, the market price of our Class A common stock could be adversely affected.

We are a "controlled company" within the meaning of the New York Stock Exchange rules. As a result, we qualify for, and intend to rely on, exemptions from certain corporate governance requirements that provide protection to stockholders of other companies.

After completion of this offering, William Wang, our Founder, Chairman and Chief Executive Officer will continue to control a majority of the voting power of our outstanding capital stock. As a result, we will be a "controlled company" within the meaning of the corporate governance standards of the New York Stock Exchange. Under these rules, a company of which more than 50% of the voting power is held by an individual, group or another company is a "controlled company" and may elect not to comply with certain corporate governance requirements, including:

- the requirement that a majority of our board of directors consist of "independent directors" as defined under the New York Stock Exchange rules;

- the requirement that we have a compensation committee that is composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities;
- the requirement that we have a nominating and corporate governance committee that is composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities; and
- the requirement for an annual performance evaluation of the compensation and nominating and corporate governance committees.

Following this offering, we intend to utilize certain of these exemptions. Accordingly, you will not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance requirements of the New York Stock Exchange.

In addition, the New York Stock Exchange has developed listing standards regarding compensation committee independence requirements and the role and disclosure of compensation consultants and other advisers to the compensation committee that, among other things, requires:

- compensation committees be composed of independent directors, as determined pursuant to new independence requirements;
- compensation committees be explicitly charged with hiring and overseeing compensation consultants, legal counsel and other committee advisors; and
- compensation committees be required to consider, when engaging compensation consultants, legal counsel or other advisors, certain independence factors, including factors that examine the relationship between the consultant or advisor's employer and us.

As a controlled company, we will not be subject to these compensation committee independence requirements.

Some provisions of our amended and restated certificate of incorporation and Delaware law inhibit potential acquisition bids and other actions that you may consider favorable.

Upon completion of this offering, our corporate documents and Delaware law will contain provisions that may enable our board of directors to resist a change in control of our company even if a change in control were to be considered favorable by you and other stockholders. These provisions include, among other things, the authorization of undesignated preferred stock, the terms of which may be established and shares of which may be issued without stockholder approval.

These provisions, our multi-class common stock structure and Mr. Wang's overall voting power, could discourage, delay or prevent a transaction involving a change in control of our company. These provisions could also discourage proxy contests and make it more difficult for you and other stockholders to take certain corporate actions such as the election of directors of your choosing. For example, following the first date on which the outstanding shares of our Class B common stock represent less than a majority of the total combined voting power of our Class A common stock and our Class B common stock (the Voting Threshold Date), our stockholders will only be able to take action by written consent. See the section titled "Description of Capital Stock—Anti-Takeover Provisions—Amended and Restated Certificate of Incorporation and Amended and Restated Bylaw Provisions—Stockholder Action; Special Meeting of Stockholders."

In addition, we will be subject to Section 203 of the Delaware General Corporation Law. In general, Section 203 prohibits a Delaware corporation from engaging in any broad range of business combinations with any stockholder who owns, or at any time in the last three years owned, 15% or more of our outstanding voting stock for a period of three years following the date on which the stockholder became an interested stockholder. This provision could have the effect of delaying or preventing a change of control, whether or not it is desired by or beneficial to our stockholders.

We have broad discretion as to the use of proceeds from this offering and may not use the proceeds effectively.

We estimate the net proceeds to us of this offering to be approximately $ million after deducting estimated underwriting discounts and offering expenses payable by us. We intend to use $14.0 million of the net proceeds from this offering to satisfy a licensing payment that will become due in connection with this offering. Our management will retain broad discretion as to the allocation of the proceeds and may spend these proceeds in ways in which our stockholders may not agree. The failure of our management to apply these funds effectively could result in unfavorable returns and uncertainty about our prospects, both of which could cause the price of our shares of Class A common stock to decline.

We do not expect to pay any dividends on our Class A common stock for the foreseeable future.

We do not anticipate that we will pay any dividends to holders of our Class A common stock in the foreseeable future. Accordingly, investors must rely on sales of their Class A common stock as the only way to realize any gains on their investment. Investors seeking or expecting cash dividends should not purchase our Class A common stock. Further, in the event we do pay any cash dividends to holders of our Class A common stock, certain holders of options under our 2017 Plan also hold dividend equivalent rights, which entitle them to cash payments based on the number of unexercised shares subject to such options.

Our amended and restated bylaws will designate a state or federal court located within the State of Delaware and the federal district courts of the United States as the exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders' ability to choose the judicial forum for disputes with us or our directors, officers, or employees.

Our amended and restated bylaws, which will become effective immediately prior to the completion of this offering, will provide that, unless we consent in writing to the selection of an alternative forum, to the fullest extent permitted by law, the sole and exclusive forum for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers, or other employees to us or our stockholders, (iii) any action arising pursuant to any provision of the Delaware General Corporation Law, our amended and restated certificate of incorporation, or our amended and restated bylaws, or (iv) any other action asserting a claim that is governed by the internal affairs doctrine shall be the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, the federal district court for the District of Delaware), in all cases subject to the court having jurisdiction over indispensable parties named as defendants. Our amended and restated bylaws further provide that the federal district courts of the United States will be the exclusive forum for resolving any complaints asserting a cause of action arising under the Securities Act of 1933, as amended (the Securities Act). Nothing in our amended and restated bylaws precludes stockholders that assert claims under the Securities Exchange Act of 1934, as amended (the Exchange Act) from bringing such claims in state or federal court, subject to applicable law.

Any person or entity purchasing or otherwise acquiring any interest in any of our securities shall be deemed to have notice of and consented to this provision. This exclusive-forum provision may limit a stockholder's ability to bring a claim in a judicial forum of its choosing for disputes with us or our directors, officers, or other employees, which may discourage lawsuits against us and our directors, officers, and other employees. This exclusive forum provision will not apply to any causes of action arising under the Securities Act or the Exchange Act or any other claim for which the federal courts have exclusive jurisdiction. We also note that stockholders cannot waive compliance (or consent to noncompliance) with the federal securities laws and the rules and regulations thereunder. Further, the enforceability of similar choice of forum provisions in other companies' charter documents has been challenged in legal proceedings, and it is possible that a court could find these types of provisions to be inapplicable or unenforceable. For example, in December 2018, the Court of Chancery of the State of Delaware determined that a provision stating that U.S. federal district courts are the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act is not enforceable. Although this decision was reversed by the Delaware Supreme Court in March 2020, other courts may still find these provisions to be inapplicable or unenforceable.

General Risk Factors

Our management team has limited experience managing a public company.

Most members of our management team have limited experience managing a publicly-traded company, interacting with public company investors, and complying with the increasingly complex laws pertaining to public companies. Our management team may not successfully or efficiently manage our transition to being a public company subject to significant regulatory oversight and reporting obligations under the federal securities laws and the continuous scrutiny of securities analysts and investors. These new obligations and constituents will require significant attention from our senior management and could divert their attention away from the day-to-day management of our business, which may harm our business, financial condition and results of operations.

We are exposed to increased regulatory oversight and will incur increased costs as a result of being a public company.

As a public company, we are required to satisfy the listing requirements and rules of the New York Stock Exchange and will incur significant legal, accounting and other expenses that we did not incur as a private company. We will also incur costs associated with public company reporting requirements and corporate governance requirements, including additional directors' and officers' liability insurance and requirements under the Sarbanes-Oxley Act of 2002 (the SOX Act) as well as rules implemented by the Securities and Exchange Commission (SEC) and the New York Stock Exchange. These rules and regulations have increased, and will continue to increase, our legal and financial compliance costs, and have made, and will continue to make, certain activities more time consuming and costly. Further, we have incurred costs in connection with hiring additional legal, accounting, financial and compliance staff with appropriate public company experience and technical accounting knowledge. Any of these expenses may harm our business, financial condition and results of operations.

If we fail to maintain effective internal controls, we may not be able to report financial results accurately or on a timely basis, or to detect fraud, which may harm our business or share price.

Effective internal controls are necessary for us to provide reasonable assurance with respect to our financial reports and to effectively prevent financial fraud. Pursuant to the SOX Act, we will be required to periodically evaluate the effectiveness of the design and operation of our internal controls. Internal controls over financial reporting may not prevent or detect misstatements because of inherent limitations, including the possibility of human error or collusion, the circumvention or overriding of controls or fraud. If we fail to maintain an effective system of internal controls, our business, financial condition and results of operations may be harmed, and we could fail to meet our reporting obligations, which may harm our business and our share price.

As a public company, we will be required to maintain internal controls over financial reporting and to report any material weaknesses in such internal controls. Section 404 of the SOX Act requires annual management assessments of the effectiveness of our internal controls over financial reporting and a report by our independent auditors addressing these assessments. We are not currently required to comply with the SEC rules that implement Section 404 of the SOX Act and are therefore not required to make a formal assessment of the effectiveness of our internal control over financial reporting for that purpose. As a public company, we are required to provide an annual management report on the effectiveness of our internal control over financial reporting commencing with our second annual report on Form 10-K. Both our independent auditors and we will be testing our internal controls pursuant to the requirements of Section 404 of the SOX Act and could, as part of that documentation and testing, identify areas for further attention or improvement. We are in the process of designing, implementing, and testing the internal control over financial reporting required to comply with this obligation, which process is time consuming, costly, and complicated. If we identify material weaknesses in our internal control over financial reporting, if we are unable to comply with the requirements of Section 404 in a timely manner or assert that our internal control over financial reporting is effective, or if our independent

registered public accounting firm is unable to express an opinion as to the effectiveness of our internal control over financial reporting, investors may lose confidence in the accuracy and completeness of our financial reports and the market price of our Class A common stock could be negatively affected, and we could become subject to investigations by the stock exchange on which our securities are listed, the SEC, or other regulatory authorities, which could require additional financial and management resources.

We need to maintain operational and financial systems that can support our expected growth, increasingly complex business arrangements, and rules governing revenue and expense recognition and any inability or failure to do so could adversely affect our financial reporting, billing and payment services.

We have a complex business that is growing in size and complexity. To manage our growth and our increasingly complex business operations, especially as we move into new markets internationally or acquire new businesses, we will need to maintain and may need to upgrade our operational and financial systems and procedures, which requires management time and may result in significant additional expense. Our business arrangements with our content providers and advertisers, and the rules that govern revenue and expense recognition in our data services business are increasingly complex. To manage the expected growth of our operations and increasing complexity, we must maintain operational and financial systems, procedures and controls and continue to increase systems automation to reduce reliance on manual operations. An inability to do so will negatively affect our financial reporting, billing and payment services. Our current and planned systems, procedures and controls may not be adequate to support our complex arrangements and the rules governing revenue and expense recognition for our future operations and expected growth. Delays or problems associated with any improvement or expansion of our operational and financial systems and controls could adversely affect our relationships with our consumers and partners, cause harm to our reputation and brand, and could also result in errors in our financial and other reporting.

If our estimates or judgments relating to our critical accounting policies prove to be incorrect, our results of operations may be harmed.

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the amounts reported in the consolidated financial statements and accompanying notes. We base our estimates on historical experience and on various other assumptions that we believe to be reasonable under the circumstances, as provided in "Management's Discussion and Analysis of Financial Condition and Results of Operations." The results of these estimates form the basis for making judgments about the carrying values of assets, liabilities and equity, and the amount of revenue and expenses that are not readily apparent from other sources. Our results of operations may be adversely affected if our assumptions change or if actual circumstances differ from those in our assumptions, which could cause our results of operations to fall below the expectations of securities analysts and investors, resulting in a decline in our stock price. Significant assumptions and estimates used in preparing our consolidated financial statements include those related to revenue recognition, sales incentives, accounts receivable and allowance for doubtful accounts, stock-based compensation expense, excess and obsolete inventory write-downs, warranty reserves, long-lived assets and accounting for income taxes including deferred tax assets and liabilities.

Our results of operations may be adversely affected by changes in accounting principles applicable to us.

Generally accepted accounting principles (GAAP) in the United States are subject to interpretation by the Financial Accounting Standards Board (FASB), the SEC, and other various bodies formed to promulgate and interpret appropriate accounting principles. Changes in accounting principles applicable to us, or varying interpretations of current accounting principles, in particular, with respect to revenue recognition, could have a significant effect on our reported results of operations. Further, any difficulties in the implementation of changes in accounting principles, including the ability to modify our accounting systems, could cause us to fail to meet our financial reporting obligations, which could result in regulatory discipline and harm investors' confidence in us.

SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus, including the sections entitled "Prospectus Summary," "Risk Factors," "Use of Proceeds," "Management's Discussion and Analysis of Financial Condition and Results of Operations" and "Business," contains forward-looking statements. Forward-looking statements include all statements that are not historical facts. In some cases, you can identify forward-looking statements by terminology such as "anticipates," "believes," "continue," "estimates," "expects," "intends," "may," "plans," "potential," "predicts," "should," "could," "would," "will" or the negative of these terms or other comparable terminology. In particular, statements regarding our plans, strategies, prospects and expectations regarding our business are forward-looking statements. These forward-looking statements include, but are not limited to, statements concerning the following:

- our ability to keep pace with technological advances in our industry and successfully compete in highly competitive markets;
- our expectations regarding future financial and operating performance, including our Device business, and the growth of our Platform+ business;
- our ability to continue to increase the sales of our Smart TVs;
- our ability to attract and maintain SmartCast Active Accounts;
- our ability to increase SmartCast Hours, including to attract and maintain popular content on our platform;
- our ability to attract and maintain relationships with advertisers;
- our ability to adapt to changing market conditions and technological developments, including with respect to our platform's compatibility with applications developed by content providers;
- the impact of the COVID-19 pandemic on our business, operations and results of operations;
- our anticipated capital expenditures and our estimates regarding our capital requirements;
- the size of our addressable markets, market share, category positions and market trends;
- our ability to identify, recruit and retain skilled personnel, including key members of senior management;
- our ability to promote our brand and maintain our reputation;
- our ability to maintain, protect and enhance our intellectual property rights;
- our ability to introduce new devices and offerings and enhance existing devices and offerings;
- our ability to successfully defend litigation brought against us;
- our ability to comply with existing, modified or new laws and regulations applying to our business, including with respect to data privacy and security laws;
- our ability to implement, maintain and improve effective internal controls;
- our ability to maintain the security and functionality of our information systems or to defend against or otherwise prevent a cybersecurity attack or breach and to prevent system failures; and
- our planned use of the net proceeds from this offering.

These statements relate to future events or our future financial performance and involve known and unknown risks, uncertainties and other factors that may cause our actual results, levels of activity, performance or achievements to differ materially from any future results, levels of activity, performance or achievements expressed or implied by these forward-looking statements. These risks, uncertainties and other factors include

those we discuss in the section of this prospectus entitled “Risk Factors.” Although we believe that the expectations reflected in the forward-looking statements are reasonable, we cannot guarantee future results, levels of activity, performance or achievements. Except as required by law, we undertake no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise after the date of this prospectus.

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

MARKET AND INDUSTRY DATA

This prospectus contains estimates and information concerning our industry, including market position and the size and growth rates of the markets in which we participate, that are based on industry publications and reports. This information involves a number of assumptions and limitations, and you are cautioned not to give undue weight to these estimates. We have not independently verified the accuracy or completeness of the data contained in these industry publications and reports. The industry in which we operate is subject to a high degree of uncertainty and risk due to a variety of factors, including those described in "Risk Factors." These and other factors could cause results to differ materially from those expressed in these publications and reports.

Certain information in the text of this prospectus is contained in independent industry publications. The source of these independent industry publications is provided below:

- Comscore OTT Intelligence, Custom Reporting, September 2020, U.S.
- Comscore OTT Intelligence, September 2020, U.S.
- eMarketer: Connected TV Advertising, November 2020
- eMarketer: Pay TV Households, August 2020
- eMarketer: Smart TV Households, August 2020
- eMarketer: Smart TV Users, August 2020
- eMarketer: Television Update Fall 2020: Why TV Measurement Must Change, November 2020
- eMarketer: US Connected TV Advertising, November 2020
- gap intelligence, Television Price & Promotion Reports, January 1 – January 31, 2021
- IAB: U.S. 2020 Digital Video Advertising Spend Report: Putting COVID in Context, June 2020
- Innovid: U.S. Video Benchmarks Report – Fall 2020 Edition
- Kagan, a media research group within S&P Global Market Intelligence: USA | Global Forecast Table, 2020
- OMDIA: TV Design & Features Tracker Q4 2020, February 2021
- PwC Global Entertainment and Media Outlook: 2020-2024, www.pwc.com/outlook
- The NPD Group, Inc., U.S. Retail Tracking Service, Sound Bars, Based on Units, Jan. 2018 – Dec. 2020 Combined

Other information contained in this prospectus is based on our own internal estimates and research, which are derived from our review of internal surveys and studies conducted by third parties, and our management's knowledge and experience in the markets in which we operate. Our estimates have also been based on information obtained from our retailers, suppliers and other contacts in the markets in which we operate. While we believe our internal company research is reliable and the definitions of our market and industry are appropriate, neither this research nor these definitions have been verified by any independent source.

USE OF PROCEEDS

We estimate that the net proceeds from our sale of shares of our Class A common stock in this offering at an assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the front cover of this prospectus, will be approximately $ million, or $ million if the underwriters exercise their option to purchase additional shares from us in full, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. We will not receive any proceeds from the sale of shares of Class A common stock by the selling stockholders.

A $1.00 increase (decrease) in the assumed initial public offering price of $ per share would increase (decrease) the net proceeds from this offering by approximately $ million, assuming that the number of shares we are offering, as set forth on the cover page of this prospectus, remains the same, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. We may also increase or decrease the number of shares we are offering. An increase (decrease) of 1,000,000 shares in the number of shares we are offering would increase (decrease) the net proceeds to us from this offering by approximately $ million, assuming that the assumed initial public offering price remains the same, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

The principal purposes of this offering are to increase our capitalization and financial flexibility, create a public market for our Class A common stock, and enable access to the public equity markets for us and our stockholders. We intend to use the net proceeds from this offering for general corporate purposes, including working capital, operating expenses, and capital expenditures. We also intend to use $14.0 million of the net proceeds from this offering to satisfy a licensing payment that will become due in connection with this offering.

The amount actually expended for the purposes listed above will depend upon a number of factors, including the growth of our sales and consumer base, competitive developments, the actual cost of capital expenditures and our cash flow from operations and the growth of our business. Our management will have broad discretion over the uses of the net proceeds from this offering.

DIVIDEND POLICY

Historically, we have declared and paid cash dividends to holders of our capital stock from time to time. Notwithstanding our historical practice of issuing such dividends, we currently intend to retain any future earnings to finance the operations, growth and development of our business. Accordingly, we do not anticipate that we will declare or pay any cash dividends on any of our capital stock in the foreseeable future. Any future determination to pay cash dividends will be at the discretion of our board of directors and will be dependent upon our financial condition, results of operations, capital requirements, restrictions under any existing indebtedness and other factors our board of directors deems relevant. Additionally, our ability to pay cash dividends is limited by restrictions under the terms of our loan and security agreement to the extent we have indebtedness outstanding under such agreement.

CAPITALIZATION

The following table presents a summary of our cash and cash equivalents and investments and capitalization as of December 31, 2020:

- on an actual basis;
- on a pro forma basis to give effect to (i) the consummation of the Reorganization Transaction prior to the completion of this offering; (ii) the occurrence of the Series A Conversion upon the completion of this offering; (iii) the payment of dividends totaling an aggregate of $0.6 million to holders of our Series A preferred stock accruing through the consummation of this offering, substantially all of which had been accrued as of December 31, 2020 (the Series A Dividends); (iv) the filing of our amended and restated certificate of incorporation prior to the completion of this offering; (v) the RSA Forfeiture and (vi) the occurrence of the Class B Stock Exchange immediately prior to the completion of this offering; and
- on a pro forma as adjusted basis to give further effect to (i) the sale by us of shares of Class A common stock in this offering at an assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us and (ii) the application of the estimated net proceeds from the offering, as described in the section entitled “Use of Proceeds.”

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

	As of December 31, 2020		
	Actual	**Pro Forma**	**Pro Forma As Adjusted(1)**
	(in thousands, except share data)		
Cash and cash equivalents and investments	$207,728	$207,141	$
Stockholders’ equity:			
California VIZIO			
Series A convertible preferred stock, $0.0001 par value; 250,000 shares authorized and 134,736 shares issued and outstanding, actual; no shares authorized, issued and outstanding, pro forma and pro forma as adjusted	2,565	—	—
Class A common stock, $0.0001 par value; 75,000,000 shares authorized and 16,759,072 shares issued and outstanding, actual; no shares authorized, issued and outstanding, pro forma and pro forma as adjusted	2	—	—
Class B common stock, $0.0001 par value; 10,862,225 shares authorized, and no shares issued and outstanding, actual; no shares authorized, issued and outstanding, pro forma and pro forma as adjusted	—	—	—
Common stock, $0.0001 par value; no shares authorized, issued and outstanding, actual; 1,000 shares authorized, issued and outstanding, pro forma and pro forma as adjusted	—	—	—
Parent			
Preferred stock, $0.0001 par value; no shares authorized, issued and outstanding, actual; shares authorized, pro forma and pro forma as adjusted; no shares issued and outstanding, pro forma and pro forma as adjusted	—	—	—

	As of December 31, 2020		
	Actual	Pro Forma	Pro Forma As Adjusted(1)
	(in thousands, except share data)		
Class A common stock, $0.0001 par value; no shares authorized, issued and outstanding, actual; shares authorized, pro forma and pro forma as adjusted; 8,613,247 shares issued and outstanding, pro forma; shares issued and outstanding, pro forma as adjusted	—	1	
Class B common stock, $0.0001 par value; no shares authorized, issued and outstanding, actual; shares authorized and 10,959,225 shares issued and outstanding, pro forma and pro forma as adjusted	—	1	
Class C common stock, $0.0001 par value; no shares authorized, issued and outstanding, actual; shares authorized, no shares issued and outstanding, pro forma and pro forma as adjusted	—	—	—
Common stock, $0.0001 par value; 1,000 shares authorized, issued and outstanding, actual; no shares authorized, issued and outstanding, pro forma and pro forma as adjusted	—	—	—
Additional paid-in capital	98,898	103,776	
Accumulated other comprehensive income	873	873	
Retained earnings	46,893	43,994	
Total stockholders' equity	$149,231	$148,644	$
Total capitalization	$149,231	$148,644	$

(1) Each $1.00 increase (decrease) in the assumed initial price to the public of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) each of cash and cash equivalents and investments, additional paid-in capital, total stockholders' equity and total capitalization by approximately $ million, assuming that the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same, and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. We may also increase or decrease the number of shares we are offering. Each increase (decrease) of 1,000,000 shares in the number of shares offered by us would increase (decrease) each of cash and cash equivalents and investments, additional paid-in capital, total stockholders' equity and total capitalization by approximately $ million, assuming that the assumed initial price to the public remains the same, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. If the underwriters' option to purchase additional shares of Class A common stock from us is exercised in full, the pro forma as adjusted amount of each of cash and cash equivalents and investments, additional paid-in capital, total stockholders' equity and total capitalization would increase by approximately $ million, after deducting estimated underwriting discounts and commissions, and we would have shares of our Class A common stock and shares of our Class B common stock issued and outstanding, pro forma as adjusted. The pro forma as adjusted information discussed above is illustrative only and will be adjusted based on the actual initial public offering price, number of shares offered and other terms of this offering determined at pricing.

The table and discussion above exclude the following:

- 1,615,797 shares of our Class A common stock issuable upon the exercise of options outstanding under our 2017 Plan as of December 31, 2020 at a weighted average exercise price of $39.32 per share;
- 76,452 shares of our Class A common stock issuable upon the exercise of options granted after December 31, 2020 at an exercise price of $76.90 per share;
- 208,250 shares of our Class A common stock issuable upon the exercise of options outstanding under our 2007 Plan as of December 31, 2020 at a weighted average exercise price of $23.09 per share;
- 226,108 shares of our Class A common stock subject to RSUs outstanding as of December 31, 2020;

- 565,000 shares of our Class A common stock subject to RSUs granted after December 31, 2020;
- 1,603,938 shares of our Class A common stock reserved for future issuance under our 2017 Plan (reflecting 2,245,390 shares reserved as of December 31, 2020 reduced by the RSUs granted after December 31, 2020 described above); and
- shares of our Class A common stock to be reserved for future issuance under our ESPP, which will become effective prior to the completion of this offering.

Our 2017 Plan and our ESPP will provide for annual automatic increases in the number of shares of our Class A common stock reserved thereunder. See the section titled “Executive Compensation—Employee Benefit and Stock Plans” for additional information.

DILUTION

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

Our net tangible book value as of December 31, 2020 was $112.5 million, or $0.01 per share of common stock. Net tangible book value per share represents our total tangible assets less total liabilities divided by the number of shares of Class A and Class B common stock outstanding as of December 31, 2020. Historical net tangible book value per share represents historical net tangible book value divided by the number of shares of our Class A and Class B common stock outstanding as of December 31, 2020.

Our pro forma net tangible book value as of December 31, 2020 was approximately $111.9 million, or $0.01 per share of common stock. Pro forma net tangible book value per share represents our total tangible assets less total liabilities divided by the number of shares of Class A and Class B common stock outstanding as December 31, 2020, after giving effect to the consummation of the Reorganization Transaction and to the Series A Conversion, the Series A Dividends, the RSA Forfeiture and the Class B Stock Exchange upon the closing of this offering.

Our pro forma as adjusted net tangible book value as of December 31, 2020 would have been $ million, or $ per share of common stock after giving effect to the sale of shares of our Class A common stock in this offering at an assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us, and the application of the estimated net proceeds from the offering, as described in the section entitled “Use of Proceeds.” This represents an immediate increase in pro forma net tangible book value of $ per share to existing stockholders and an immediate dilution in pro forma net tangible book value of $ per share to investors purchasing Class A common stock in this offering.

The following table illustrates this per share dilution:

Assumed initial public offering price per share of Class A common stock		$
Net tangible book value per share as of December 31, 2020	$0.01	
Decrease in net tangible book value per share attributable to the pro forma adjustments described above	—	
Pro forma net tangible book value per share as of December 31, 2020	$0.01	
Increase in net tangible book value per share attributable to this offering		
Pro forma as adjusted net tangible book value per share after this offering		$
Dilution per share to new investors in this offering		$

A $1.00 increase (decrease) in the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) our pro forma as adjusted net tangible book value by $ million, or $ per share, and the dilution per share to investors in this offering by $ per share, assuming that the number of shares offered by us, as set forth on the front cover of this prospectus, remains the same and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.

If the underwriters exercise their option to purchase additional shares of Class A common stock from us in full, our pro forma as adjusted net tangible book value per share after giving effect to this offering would be $ per share, representing an immediate increase to existing stockholders of $ per share, and immediate dilution to new investors in this offering of $ per share.

We may also increase or decrease the number of shares we are offering. An increase of 1,000,000 shares in the number of shares offered by us would result in a pro forma as adjusted net tangible book value of $ million, or $ per share, and the dilution per share to investors in this offering would be approximately $ per share, assuming the assumed initial public offering price of $ per share, remains the same and after deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. Conversely, a decrease of 1,000,000 shares in the number of shares offered by us would result in a pro forma as adjusted net tangible book value of $ million, or $ per share, and the dilution per share to investors in this offering would be $ per share, assuming the assumed initial public offering price of $ per share, remains the same and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. The pro forma as adjusted information discussed above is illustrative only and will adjust based on the actual initial public offering price and other terms of this offering.

The following table summarizes as of December 31, 2020, on the pro forma as adjusted basis described above, the total number of shares of Class A and Class B common stock purchased from us, the total consideration paid to us and the average price per share of Class A and Class B common stock paid to us by existing stockholders and by new investors purchasing shares of Class A common stock in this offering from us, assuming an initial offering price of $ per share, the midpoint of the price range on the cover page of this prospectus, and before deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us:

	Shares Purchased		Total Consideration		Average Price per Share
	Number	Percent	Amount	Percent	
Existing stockholders		%		%	$
New investors					$
Total		100%		100%	

The foregoing table does not reflect any sales by existing stockholders in this offering. Sales by the selling stockholders in this offering will cause the number of shares held by existing stockholders to be reduced to shares, or approximately % of the total number of shares of our common stock outstanding after this offering, and will increase the number of shares held by new investors to shares, or approximately % of the total number of shares of our common stock outstanding after this offering.

Each $1.00 increase (decrease) in the assumed initial public offering price of $ per share, the midpoint of the price range set forth on the cover page of this prospectus, would increase (decrease) total consideration paid by new investors by $ million and increase (decrease) the percent of total consideration paid by new investors by %, assuming the number of shares we are offering, as set forth on the cover page of this prospectus, remains the same, before deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us. We may also increase or decrease the number of shares we are offering. An increase (decrease) of 1,000,000 in the number of shares offered by us would increase (decrease) total consideration paid by new investors by $ million, assuming that the assumed initial price to the public remains the same, and before deducting estimated underwriting discounts and commissions and estimated offering expenses payable by us.

If the underwriters exercise their option to purchase additional shares of Class A common stock from us and the selling stockholders in full, our existing stockholders would own % and our new investors would own % of the total number of shares of our common stock outstanding after this offering.

The foregoing discussion and tables above are based on 8,613,247 shares of our Class A common stock, 10,959,225 shares of our Class B common stock and no shares of our Class C common stock outstanding as of

December 31, 2020, after giving effect to the Reorganization Transaction, the Series A Conversion, the RSA Forfeiture and the Class B Stock Exchange, as if they had occurred on December 31, 2020, and exclude the following:

- 1,615,797 shares of our Class A common stock issuable upon the exercise of options outstanding under our 2017 Plan as of December 31, 2020 at a weighted average exercise price of $39.32 per share;
- 76,452 shares of our Class A common stock issuable upon the exercise of options granted after December 31, 2020 at an exercise price of $76.90 per share;
- 208,250 shares of our Class A common stock issuable upon the exercise of options outstanding under our 2007 Plan as of December 31, 2020 at a weighted average exercise price of $23.09 per share;
- 226,108 shares of our Class A common stock subject to RSUs outstanding as of December 31, 2020;
- 565,000 shares of our Class A common stock subject to RSUs granted after December 31, 2020;
- 1,603,938 shares of our Class A common stock reserved for future issuance under our 2017 Plan (reflecting 2,245,390 shares reserved as of December 31, 2020 reduced by the RSUs granted after December 31, 2020 described above); and
- shares of our Class A common stock to be reserved for future issuance under our ESPP, which will become effective prior to the completion of this offering.

Our 2017 Plan and our ESPP will provide for annual automatic increases in the number of shares of our Class A common stock reserved thereunder. To the extent that any outstanding options are exercised, new options are issued under our stock-based compensation plans or we issue additional shares of common stock in the future, there will be further dilution to investors participating in this offering. For a more complete discussion of our stock option plans, see "Executive Compensation—Employee Benefit and Stock Plans."

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

The following discussion and analysis of our consolidated results of operations and financial condition should be read in conjunction with the consolidated financial statements, related notes and other financial information of California VIZIO appearing elsewhere in this prospectus. Prior to the completion of the Reorganization Transaction, VIZIO Holding Corp. will not conduct any activities other than those incidental to its formation and the preparation of this prospectus. Accordingly, our consolidated financial statements and other financial information included in this prospectus reflect the results of operations and financial position of California VIZIO and its subsidiaries. See "Prospectus Summary—Corporate Information." In addition to historical consolidated financial information, the following discussion contains forward-looking statements that reflect our plans, estimates and beliefs. Our actual results could differ materially from those discussed in the forward-looking statements as a result of a variety of factors, including but not limited to, those discussed in "Risk Factors," "Special Note Regarding Forward-Looking Statements" and "Market and Industry Data" and elsewhere in this prospectus.

Overview

VIZIO is driving the future of televisions through our integrated platform of cutting-edge Smart TVs and powerful SmartCast operating system. Every VIZIO Smart TV enables consumers to search, discover and access a broad array of content. In addition to watching cable TV, viewers can use our platform to stream a movie or show from their favorite over-the-top (OTT) service, watch hundreds of free channels through our platform, including on our WatchFree and VIZIO Free Channel offerings, enjoy an enhanced immersive experience catered to gaming or access a variety of other content options. Our platform gives content providers more ways to distribute their content and advertisers more tools to target and dynamically serve ads to a growing audience that is increasingly transitioning away from linear TV.

We currently offer:

- a broad range of high-performance Smart TVs that encompass a variety of price points, technologies, features and screen sizes, each designed to address specific consumer preferences;
- a portfolio of innovative sound bars that deliver immersive audio experiences; and
- a proprietary Smart TV operating system, SmartCast, which enhances the functionality and monetization opportunities of our devices.

Our Company History

We have carefully built the VIZIO platform over time to drive the future of television and believe that our Smart TVs can become the center of the connected home. There are numerous key milestones in the progression of the VIZIO platform, including:

- *In 2002*, William Wang founded VIZIO with the goal of disrupting the television market by making high quality televisions at an affordable price
- *In 2007,* we became the largest seller of flat panel TVs in America
- *In 2009*, we launched Netflix as a streaming app on a TV rather than through an additional external device, continuing to embrace our role as an innovator and a market disruptor
- *In 2012,* we launched VIZIO V.I.A. Plus (VIZIO Internet Apps Plus), our first generation Smart TV operating system, to connect consumers with popular streaming apps such as Hulu and Netflix
- *In 2013*, we leveraged our technology and design expertise to introduce home theater sound bars to diversify into complementary audio products
- *In 2014,* we acquired Advanced Media Research Group, Inc. (d/b/a BuddyTV), which operated an entertainment destination website in order to expand our content and service offerings within our Smart TV applications platform

- *In 2015*, we acquired Cognitive Media Networks (renamed Inscape) to develop our data services business and accelerate our Automatic Content Recognition (ACR) technology
- *In 2016,* we launched our SmartCast operating system, an intuitive interface where consumers can access an array of entertainment applications and other interactive experiences, to replace VIZIO V.I.A. Plus
- *In 2016*, we launched our SmartCast mobile app and enabled Chromecast compatibility to help increase ease of access and simplify control of our Smart TVs.
- *In 2018*, we released our first Quantum Dot LED 4K TV and our first Dolby Atmos sound bar, demonstrating our focus on market and technology leadership.
- *In 2018*, we launched WatchFree, our free, ad-supported streaming service, which introduced additional monetization opportunities for our platform.
- *In 2018,* we launched Project OAR to enable addressable ads for linear and on-demand video as well as our connected TV advertising business, in addition to VIZIO Free Channels
- *In 2019*, we integrated our Smart TVs with Apple AirPlay 2 as well as Google Voice Assistant and Apple HomeKit, thus enabling our Smart TVs to work with all three major voice assistants (having already integrated Amazon Alexa in 2018)
- *In 2020,* we launched our first OLED Smart TVs, the groundbreaking automatically-rotating "Elevate" sound bar and our 85" LED HDTV P Series Quantum X

Our Business Model

How we make money

We generate revenue primarily from (1) selling our Smart TVs, sound bars and remote controls and (2) monetizing our digital platform. While the substantial majority of our current total net revenue comes from the sales of our devices, our Platform+ business, including our advertising services, is growing at a rapid pace. Given the growing number of use cases for Smart TVs, we expect to increase our revenue from connected TV advertising, subscription video on demand (SVOD) services and other monetizable transactions made on our platform that extend beyond traditional entertainment content.

Device

We offer a range of high-performance Smart TVs designed to address specific consumer preferences, as well as a portfolio of sound bars that deliver immersive audio experiences. We generate revenue from the shipment of these devices to retailers and distributors across the United States, as well as directly to consumers through our website, VIZIO.com.

Platform+

Our state-of-the-art Smart TV operating system, SmartCast, delivers a vast amount of content and applications through an elegant and easy-to-use interface. SmartCast supports many leading streaming content apps such as Amazon Prime Video, Apple TV+, Disney+, Hulu, Netflix, Peacock and YouTube TV, and hosts our own free, ad-supported apps, WatchFree and VIZIO Free Channels.

Our Inscape technology is able to identify the content displayed on the screen of our Smart TVs, providing first-hand data, regardless of input source. We aggregate this data to increase transparency and enhance targeting abilities for our advertisers, while adhering to our strict consumer privacy policies. This first-hand data allows us to monetize our own ad inventory and provides the potential for a better user experience through more relevant advertisements. We also license a portion of this data to advertising agencies, networks and ad tech companies.

We monetize these capabilities through:

- Advertising
  - Ad-supported Video on Demand (AVOD): Ad inventory on services such as WatchFree, VIZIO Free Channels and certain third-party AVOD services. In exchange for distributing their content, we gain a portion of the advertising inventory to sell ourselves, or in some cases we sell all of the ad inventory and share a portion of the revenue with the content providers
  - Home screen: Ad placements on our SmartCast home screen by streaming services, studios and other consumer brands
  - Partner marketing: Branding opportunities through our large, in-store presence where our Smart TV cartons provide a highly-visible, physical space to showcase our partners' content images and streaming service logos
- Data licensing
  - Inscape: Fees from ad tech companies, advertising agencies and networks to license data generated from our Inscape technology to inform their ad buying decisions
- Content distribution, transactions and promotion
  - SVOD and Virtual Multichannel Video Programming Distributor (vMVPD): Revenue shared by SVOD and vMVPD services on new user subscriptions activated or reactivated through our platform
  - PVOD and TVOD: Revenue shared by PVOD and TVOD services for purchases made on our platform
  - Branded buttons on remote controls: Partners who want to place a button for their service on our VIZIO remote controls so that consumers can have quick access to their service

As the Smart TV evolves to take on a more prominent role in the connected home, we believe new monetization opportunities will develop. For example, we expect:

- A growing user base will lead to higher advertising revenue, especially as our user base increasingly includes audiences no longer reachable through linear TV
- The vast amount of data obtained through our platform will improve the effectiveness of advertisement, generating higher returns for advertisers and potentially increasing ad rates for us
- That data will be used to create more personalized content recommendations and drive higher user engagement
- Additionally, interactive ads and improved subscription billing can increase the number of purchases made on our platform, including subscriptions, content rentals, ecommerce, food delivery and other microtransactions, for which we will receive a portion of the sales

These features create a flywheel which enhances the quality of our platform, drives SmartCast Active Account growth and engagement, and increases monetization opportunities, which together help drive SmartCast ARPU.

Our Powerful Flywheel

Our flywheel can be summarized as follows:

Sell more Smart TVs

- By continuing to offer cutting-edge technologies at affordable prices we are able to sell more Smart TVs.
- In 2020, we shipped 7.1 million Smart TVs, a 20% increase over 2019.

Grow SmartCast Active Accounts

- SmartCast's broad content offering and easy-to-use interface draws VIZIO consumers onto the platform.
- In 2020, we converted 65% of Smart TV shipments into SmartCast Active Accounts, for a total of 4.6 million new Active Accounts.

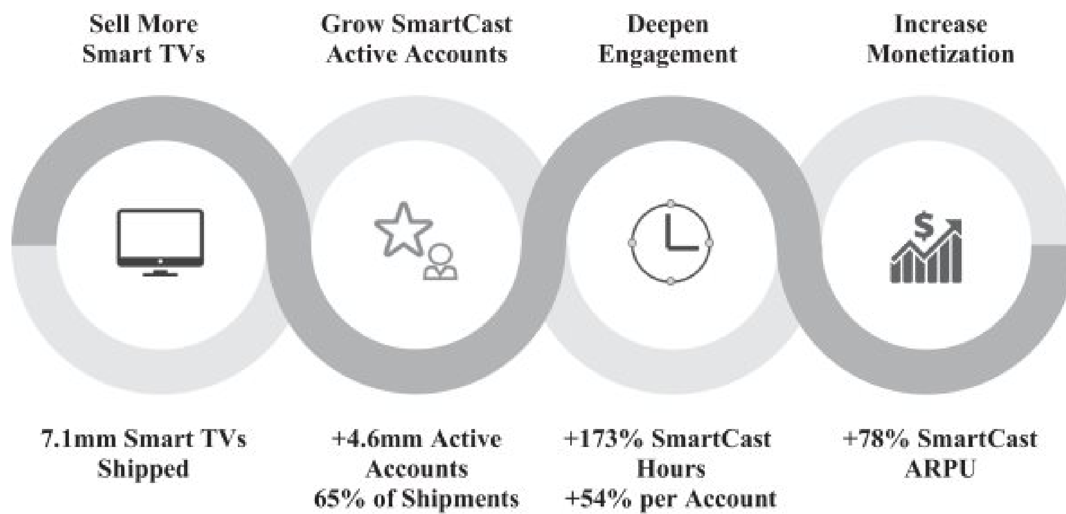
Deepen engagement

- As we continue to introduce new features and services on SmartCast, we increase the amount of time consumers spend on the platform.
- In 2020, total SmartCast Hours increased 173%, representing a 54% increase in SmartCast Hours per Active Account.[1]

Increase monetization

- As we scale SmartCast, both in number of users and engagement, it enhances our monetization capabilities.
- By enabling more targeted ads with greater reach, we will attract more ad dollars onto our platform.
- Additionally, as we increase engagement on content where we have higher ad monetization opportunities (e.g., WatchFree), we will be able to attract higher ad rates.
- This effect is demonstrated through the 78% increase in SmartCast ARPU in 2020.

Our flywheel can be illustrated as follows:



Note: Represent figures for the year ended December 31, 2020; increases represent year-over-year change from December 31, 2019 to 2020.

(1) Defined as SmartCast Hours over the year divided by the average number of Active Accounts at year-end and the prior year-end period.

Overview of our supply chain

We design our products in-house in California and we work closely with our ODMs, panel suppliers and chipset suppliers for product design and technical specifications. Through this collaborative process, we leverage the manufacturing scale of these partners, as well as their research and development functions in the development of new product introductions. Our ODM partners provide shipping and logistics support to move finished products from their manufacturing facilities to the United States. The title of the finished goods transfers from the ODM to us once we ship the product to a retailer. We believe that our asset-light business model fosters efficient operations with a low fixed-cost structure; coupled with careful management of marketing, selling, general and administrative expenses, which has enabled us to manage our working capital effectively and improve operating leverage. Through these efficiencies, we are able to offer consumers high quality products at affordable prices.

Our sales and marketing approach

Retailers

We have maintained long-standing relationships with many of the leading retailers. According to gap intelligence, as of December 31, 2020, VIZIO held the #1 or #2 HDTV shelf share at many major consumer electronics retailers, such as Sam’s Club, Target and Walmart. Our sales and marketing team works closely with these retailers to develop marketing and promotion plans, manage inventory, deploy go-to-market strategies, educate their salesforce and optimize the effectiveness of retail space for our devices.

Consumers

Our marketing team is focused on building our brand reputation and awareness to drive consumer demand for our products. Our marketing approach is to emphasize value, which is to deliver quality products with leading technology at affordable prices, which enhance the entertainment experience. Our products and value proposition have earned numerous awards and accolades from popular press.

Advertisers

We offer an attractive value proposition for advertisers to reach consumers who are increasingly “cutting the cord.” As we continue to build out our Platform+ advertising sales force, we intend to significantly increase our presence and recognition among advertising agencies, advertisers and content providers through the television advertising ecosystem. In addition, we expect our audience size and data capabilities to continue to resonate with ad buyers looking to increase their connected TV ad spend.

Key Business Metrics

We review the following key operational and financial metrics and non-GAAP financial measure to evaluate our business, measure our performance, identify trends affecting our business, formulate business plans and make strategic decisions.

Operational metrics

Smart TV Shipments

We define Smart TV Shipments as the number of Smart TV units shipped to retailers or direct to consumers in a given period. Smart TV Shipments drive the majority of our revenue currently, and provide the foundation for increased adoption of our SmartCast operating system and the growth of our Platform+ revenue. The growth rate between Smart TV units shipped and Device net revenue is not directly correlated because our Device net revenue can be impacted by other variables, such as the series and sizes of Smart TVs sold during the period, the introduction of new products as well as the number of sound bars shipped. For the year ended December 31, 2020, we shipped 7.1 million Smart TVs, a 20% year-over-year increase. We expect Smart TV shipments will fluctuate in the near term and increase in the long term as consumers replace outdated televisions and we innovate new use cases for the Smart TV to help it become the center of the connected home.

SmartCast Active Accounts

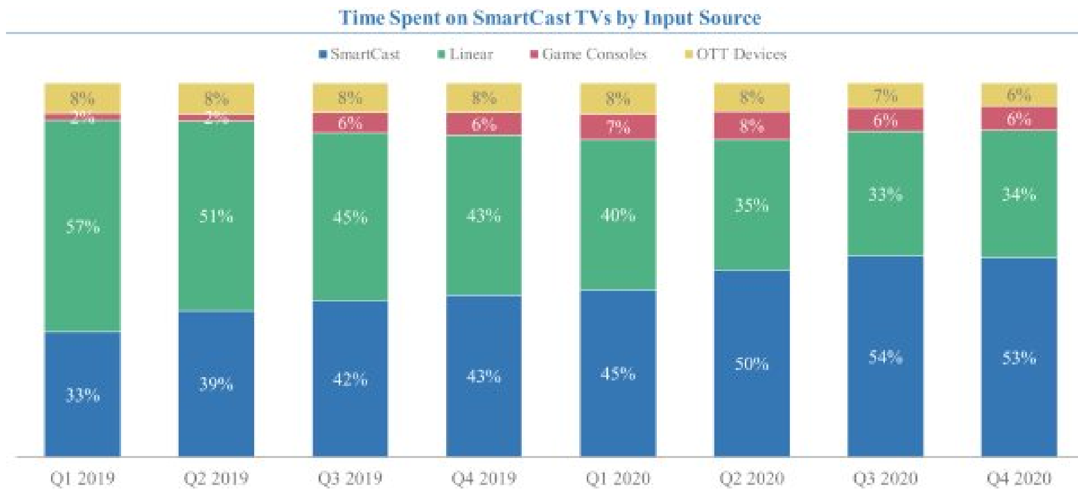
We define SmartCast Active Accounts as the number of VIZIO Smart TVs where a user has activated the SmartCast operating system through an internet connection at least once in the past 30 days. We believe that the number of SmartCast Active Accounts is an important metric to measure the size of our engaged user base, the attractiveness and usability of our operating system, and subsequent monetization opportunities to increase our Platform+ net revenue. At December 31, 2020, SmartCast Active Accounts were 12.2 million, representing a 61% year-over-year increase. This metric excludes approximately 5.3 million televisions connected to the internet through our legacy operating system, VIZIO V.I.A. Plus, which we no longer ship. As we continue to improve and market our SmartCast service combined with the secular shift to OTT, we expect the number of SmartCast Active Accounts will grow as our platform becomes the place where consumers access all of the features of their Smart TV rather than connecting a cable box, satellite or other external device. Therefore, we expect the rate of growth in SmartCast Active Accounts to continue to exceed the rate of growth in our Smart TV shipments.

Total VIZIO Hours

We define Total VIZIO Hours as the aggregate amount of time users spend utilizing our Smart TVs in any capacity. We believe this usage metric is critical to understanding our total potential monetization opportunities. Total VIZIO Hours for the year ended December 31, 2020 was 24.3 billion hours, representing a 117% year-over-year increase.

SmartCast Hours

We define SmartCast Hours as the aggregate amount of time viewers engage with our SmartCast platform to stream content or access other applications. This metric reflects the size of the audience engaged with our operating system as well as indicates the growth and awareness of our platform. It is also a measure of the success of our offerings in addressing increased user demand for OTT streaming. Greater user engagement translates into increased revenue opportunities as we earn a significant portion of our Platform+ net revenue through advertising, which is influenced by the amount of time users spend on our platform. SmartCast Hours for the year ended December 31, 2020 was 12.3 billion hours, representing a 173% year-over-year increase. In the year ended December 31, 2020, users spent more time on their SmartCast TVs streaming on the SmartCast platform than any other activity.



SmartCast ARPU

We define SmartCast ARPU as total Platform+ net revenue, less revenue attributable to legacy VIZIO V.I.A. Plus units, during the preceding four quarters divided by the average of (i) the number of SmartCast Active Accounts at the end of the current period; and (ii) the number of SmartCast Active Accounts at the end of the corresponding prior year period. SmartCast ARPU indicates the level at which we are monetizing our SmartCast Active Account user base. Growth in SmartCast ARPU is driven significantly by our ability to add users to our platform and our ability to monetize those users. SmartCast ARPU at December 31, 2020 was $12.99, representing a 78% year-over-year increase.

The following table presents these key operational metrics for 2018, 2019 and 2020:

	Year ended December 31,		
	2018	2019	2020
	(in millions, except dollars)		
Smart TV Shipments	4.4	5.9	7.1
SmartCast Active Accounts (as of)	3.6	7.6	12.2
Total VIZIO Hours(1)	N/A	11,211	24,346
SmartCast Hours(1)	N/A	4,522	12,340
SmartCast ARPU(1)	N/A	$ 7.31	$ 12.99

(1) Prior to 2019, we did not track Total VIZIO Hours, SmartCast Hours or SmartCast ARPU, and as such we do not present these metrics for 2018.

Financial metrics

Our key financial metrics are gross profit and Adjusted EBITDA. We bifurcate gross profit by business activity due to the differing margin profiles of the Device and Platform+ businesses. In addition, we manage each business, from a financial reporting perspective separately down to the gross profit level. Though both Device and Platform+ are meaningful contributors to gross profit today, as we expect Platform+ to exhibit significantly higher growth, and combined with its higher margins, we believe it will contribute a majority of our gross profit in the future.

Device gross profit

We define Device gross profit as Device net revenue less Device cost of goods sold in a given period. Device gross profit is directly influenced by consumer demand, device offerings, and our ability to maintain a cost-efficient supply chain. For the year ended December 31, 2020, our Device gross profit increased 47.6% year-over-year.

Platform+ gross profit

We define Platform+ gross profit as Platform+ net revenue less Platform+ cost of goods sold in a given period. As we continue to grow and scale our business, we expect Platform+ gross profit to increase over the long term. For the year ended December 31, 2020, our Platform+ gross profit increased 178.6% year-over-year.

Adjusted EBITDA

We define Adjusted EBITDA, a non-GAAP financial metric, as total net income before interest income (expense), net, other income (expense), net, provision for (benefit from) income taxes, depreciation and amortization and stock-based compensation. We consider Adjusted EBITDA to be an important metric to assess our operating performance and help us to manage our working capital needs. Utilizing Adjusted EBITDA, we

can identify and evaluate trends in our business as well as provide investors with consistency and comparability to facilitate period-to-period comparisons of our business. We expect Adjusted EBITDA to fluctuate in the near term and increase in the long term as we scale our business and realize greater operating leverage. For the year ended December 31, 2020, our net income increased 344% year-over-year, and Adjusted EBITDA increased 270% year-over-year. While we believe that this non-GAAP financial metric is useful in evaluating our business, this information should be considered as supplemental in nature and is not meant as a substitute for the related financial information prepared in accordance with GAAP.

Non-GAAP financial measure

We use Adjusted EBITDA in conjunction with net income (loss) as part of our overall assessment of our operating performance and the management of our working capital needs. Our definition of Adjusted EBITDA may differ from the definition used by other companies and therefore comparability may be limited. In addition, other companies may not publish Adjusted EBITDA or similar metrics. Furthermore, Adjusted EBITDA has certain limitations in that it does not include the impact of certain expenses that are reflected in our consolidated statement of operations that are necessary to run our business. Thus, Adjusted EBITDA should be considered in addition to, not as a substitute for, or in isolation from, measures prepared in accordance with GAAP, including net income (loss).

We compensate for these limitations by providing a reconciliation of Adjusted EBITDA to net income (loss). We encourage investors and others to review our financial information in its entirety, not to rely on any single financial measure and to view Adjusted EBITDA in conjunction with net income (loss).

The following table provides a reconciliation of net income (loss) to Adjusted EBITDA:[1]

	Year Ended December 31,		
	2018	**2019**	**2020**
		(*in thousands*)	
Net income (loss)	$ (156)	$23,086	$102,475
Adjusted to exclude the following:			
Interest expense (income), net	1,633	(1,178)	(12)
Other income, net	(10,532)	(235)	(532)
Provision for (benefit from) income taxes	(628)	7,719	29,968
Depreciation and amortization	5,030	4,134	2,296
Stock-based compensation	5,236	4,079	4,776
Adjusted EBITDA	$ 584	$37,604	$138,971

(1) Totals may not sum due to rounding.

Impact of COVID-19 Pandemic

Device

COVID-19 generated a net positive impact on consumer demand for our products in 2020 due to the implementation of stay-at-home orders. The increased amount of time people spent at home, and partially aided by stimulus check disbursements, led many people to upgrade their televisions, which benefitted our business. We significantly outperformed our original forecasts, but faced inventory shortages amid supply constraints which moderated sales over the summer months while demand remained strong. The pandemic also required us to shift our sales from retailers that faced mandated closures, such as Best Buy, and reallocate product to retailers that were deemed essential and remained open, such as Target and Walmart, which may have partially reduced the overall sales we could have achieved. Overall, while the pandemic has had a positive impact on our total shipments, we expect that demand in future periods may be adversely impacted due to consumers having

accelerated purchasing decisions and due to impacts of the COVID-19 pandemic on disposable income. In addition, given increased demand for our devices in 2020, we did not discount our products at the same level as prior years. This led to temporarily higher gross profit, which we expect to normalize in the future as our pricing and expenses reflect more historical trends.

Platform+

COVID-19 reduced the supply of live sports and new content on linear TV, which accelerated shifts in viewing habits towards more library content on OTT services. According to a September 2020 Comscore report, the average number of daily OTT households increased from approximately 44 million to approximately 50 million in early March 2020, and our SmartCast platform greatly benefitted from this trend. For example, SmartCast Hours increased nearly 34% quarter-over-quarter from the first quarter to the second quarter of 2020. This accelerated SmartCast engagement also increased the awareness of our platform and content offerings.

Operational performance

At the onset of COVID-19 in March 2020, we implemented modest staff reductions and hiring delays, which resulted in lower selling, general and administrative expenses in the first half of 2020. During the third quarter of 2020, our selling, general, and administrative expenses began to normalize as we began our rehiring process. In addition, given increased demand for our devices in 2020, we did not offer discounts on our products at the same level as prior years.

Factors Affecting Performance

Device

Ability to sell more devices

Selling more devices is integral to our strategy of growing SmartCast Active Accounts, increasing engagement, and expanding advertising monetization opportunities, all of which we believe will ultimately lead to higher SmartCast ARPU. There are a variety of factors that drive the sales of our devices, including our sales and marketing efforts, the quality of our products, new product introductions, effective supply chain management and relationships with retailers. For example:

- We have, to date, introduced several new products that have had a favorable impact on our revenue and operating results, such as the introduction of our OLED Smart TVs in 2020. We expect that introducing products that both stimulate demand and resonate with consumers will drive our sales growth and expand our market share.
- We actively diversify our supply chain in order to mitigate potential risks.
- With respect to our relationships with retailers, our ability to anticipate and quickly respond to consumer preferences has influenced retailers' willingness to market and promote our products over those of our competitors. Historically, we have cultivated strong relationships with our retailers, including Amazon, Best Buy, Costco, Sam's Club, Target and Walmart. According to gap intelligence, as of December 31, 2020, VIZIO held the #1 or #2 HDTV shelf share at many major consumer electronics retailers such as Sam's Club, Target and Walmart.

Seasonality

Historically, we have experienced the highest levels of our sales in the fourth quarter of the calendar year, coinciding with the holiday shopping season in the United States. Given the significant seasonality of our revenue, timely and effective product introductions and forecasting are critical to our operations, and fourth quarter sales are critical to our annual results.

Product mix

Our Device business encompasses a variety of Smart TVs and sound bars with different price points and features. Changes to our product mix may cause fluctuations in our gross profit as they reflect a range of margin profiles.

Platform+

Ability to grow SmartCast Active Accounts

If we are unable to deliver a compelling user experience on SmartCast, adoption of our platform may suffer. Failure to secure popular apps and related content on SmartCast may lead users to purchase a television from a competitor. The more SmartCast Active Accounts we have, the more attractive our platform will be to third-party content providers and advertisers looking to reach this audience.

Ability to increase engagement and monetize SmartCast Active Accounts

Our business is dependent on our continued ability to grow and sustain user engagement on SmartCast and, specifically, WatchFree and VIZIO Free Channels. User engagement on our platform is an essential revenue driver since it directly influences our attractiveness to advertisers, the largest near-term monetization opportunity. Therefore, our ability to attract compelling content viewers want to consume on WatchFree and VIZIO Free Channels is critical to our monetization. Increasing engagement on our platform can result in greater attractiveness to advertisers and other monetization opportunities. The more time consumers spend on our platform, the more data we can collect, enabling us to create a more personalized and dynamic experience for users, while also allowing us to provide more targeted reach for advertisers.

Demand for a more connected home

The proliferation of the connected home ecosystem will power the long-term growth of our business. A Smart TV centered connected home will drive user engagement and expand our monetization opportunities into new domains. In addition to boosting demand for our hardware products, a connected home will require new interactive features that we are well-positioned to help deliver, such as personal communications, commerce, gaming, fitness and wellness, and dynamic entertainment experiences. Coupled with our passion for innovation and technical expertise, we can offer differentiated experiences for consumers. As we believe our Smart TVs will evolve to have a more pivotal role in the connected home, we must continue to find ways to monetize the use cases enabled on our platform.

Other

Ability to continue to invest

The future performance of our business will be affected by our investments in both our Device and Platform+ businesses. We intend to continue to invest in the capabilities of our products and services to deliver better value for our consumers and partners and address new market opportunities. Moving forward, we are committed to following the same unwavering dedication to innovation that we have exhibited throughout our history.

Competition

We believe the principal competitive factors impacting the market for our devices are brand, price, features, quality, design, consumer service, time-to-market and availability. We believe that we compete favorably in these areas. The consumer electronics market in which we operate is highly competitive and includes large, well-established companies. Many of our competitors have greater financial, distribution, marketing and other resources, longer operating histories, better brand recognition and greater economies of scale.

Our Platform+ business competes both to be the entertainment hub of consumers' homes and to attract advertising spend. We expect advertising spend to continue to shift from linear TV to connected TV, and as such we expect new competition to continue to intensify for viewership and for advertising spend. In this respect, we compete against other television brands with Smart TV offerings, connected devices and traditional cable operators seeking to integrate streaming media into their existing offerings. We also compete with OTT streaming services, as such services are able to monetize across a variety of devices and consumers may engage with their content through devices other than our Smart TVs. We compete with these devices and services in part on the basis of user experience and content availability, including the availability of free content. In addition, we compete to attract advertising spending on the basis of the size of our audience and our ability to effectively target advertising.

Components of Our Results of Operations and Financial Condition

Net revenue

Device net revenue

We generate Device net revenue primarily through sales of our Smart TVs and sound bars to retailers, including wholesale clubs, in the United States, as well as directly to consumers through our website. We recognize Device revenue when title of the goods is transferred to retailers or distributors, or upon the date the goods are delivered to consumers from a sale through our website. Our reported revenue is net of reserves for price protection, rebates, sales returns and other retailer allowances including some cooperative advertising arrangements. The prices charged for our Smart TVs and other devices are determined through negotiation with our retailers and are fixed or determinable upon shipment.

Platform+ net revenue

We generate Platform+ net revenue through sales of advertising and related services, data licensing, sales of branded buttons on our remote controls and content distribution. Our digital ad inventory consists of inventory on WatchFree, VIZIO Free Channels and our home screen along with ad inventory we obtain through agreements with content providers and other third-party application agreements. We also re-sell video inventory that we purchase from content providers and directly sell third-party inventory on a revenue share.

Cost of goods sold

Device cost of goods sold

Device cost of goods sold primarily represents the prices for finished goods that we negotiate and pay to manufacturers and logistics providers for Smart TVs and other devices. The costs for finished goods paid to manufacturers include raw materials, manufacturing, overhead and labor costs, third-party logistics costs, shipping costs, customs and duties, license fees and royalties paid to third parties, recycling fees, insurance and other costs. Device cost of goods sold will vary with volume and is based on the cost of underlying product components and negotiated prices with the manufacturers. Shipping costs fluctuate with volume as well as with the method of shipping chosen in order to meet consumer demand. Other costs of revenue include outbound freight incurred while we take title of finished goods and employ third party logistic companies to expedite delivery to retailers, as well as after sales support.

Device cost of goods sold may be partially offset by payments we receive under certain manufacturer reimbursement and incentive arrangements in accordance with product supply agreements. These arrangements can be conditioned on the purchase of devices but are typically not a part of minimum purchase commitments with manufacturers. Accordingly, we treat these arrangements and related payments as reductions to the prices we pay to manufacturers for devices.

Platform+ cost of goods sold

Platform+ cost of goods sold includes advertising inventory costs, including revenue share as well as targeting and measurement services, third-party cloud services, allocated engineering costs and other technology expenses, and content or programming licensing fees, and amortization of internally developed technology.

Gross profit

Device gross profit

Our Device gross profit represents Device net revenue less Device cost of goods sold, and Device gross margin is Device gross profit expressed as a percentage of Device net revenue. Our Device gross profit may fluctuate from period to period as Device net revenue fluctuates and has been and will continue to be influenced by several factors including supplier prices, retailer margin and device mix. We expect Device gross margin to fluctuate over time based on our ability to manage pricing through our supply chain and retailer network.

Platform+ gross profit

Our Platform+ gross profit represents Platform+ net revenue less Platform+ cost of goods sold, and Platform+ gross margin is Platform+ gross profit expressed as a percentage of Platform+ net revenue. Our Platform+ gross profit has been and will continue to be affected by costs and availability of advertising inventory, costs of data services associated with delivering advertising campaigns, costs to acquire content from content providers and the timing of our third-party cloud services and other technology expenses, and we expect our Platform+ gross margins to fluctuate from period to period depending on the factors discussed above.

Operating expenses

We classify our operating expenses into three categories:

Selling, general and administrative

Selling, general and administrative expenses consist primarily of personnel costs for employees, including salaries, bonuses, benefits and stock-based compensation, as well as consulting expenses, fees for professional services, facilities, information technology and research and development. We expect selling, general and administrative expenses to increase in absolute dollars as our business grows. We expect to incur additional expenses as a result of costs associated with being a public company, including expenses related to compliance with the rules and regulations of the SEC and the listing standards of the New York Stock Exchange, and increased expenses for insurance, investor relations, and fees for professional services. We expect selling, general and administrative expenses to fluctuate as a percentage of net revenue from period to period in the near term as we continue to invest in growing our business, but decline over the long term as we achieve greater scale over time.

Marketing

Marketing expenses consist primarily of advertising and marketing promotions of our brand and products, including media advertisement costs, merchandising and display costs, trade show and event costs, and sponsorship costs. We expect our marketing expense to increase in absolute dollars as we continue to promote our products and brand, particularly in the fourth quarter when we have historically experienced higher marketing expenses in connection with seasonally higher Device net revenue. We expect marketing expenses to fluctuate as a percentage of net revenue from period to period.

Depreciation and amortization

Depreciation covers declines in value of fixed assets such as buildings and equipment. Amortization expense relates to our intangible assets.

Net non-operating income

Net non-operating income consists of interest income (expense), net including interest earned on our financial institution deposits, interest expense on our credit facility, gain on preexisting equity, other than temporary impairment charges on cost basis investments and non-recurring transaction gains and losses.

Income tax expense

Our income tax expense consists of income taxes in the United States and related state jurisdictions in which we do business. Our effective tax rate will generally approximate the U.S. statutory income tax rate plus the apportionment of state income taxes based on the portion of taxable income allocable to each state. We regularly assess the likelihood of adverse outcomes resulting from the examination of our tax returns by the U.S. Internal Revenue Service and other tax authorities to determine the adequacy of our income tax reserves and expense. Should actual events or results differ from our current expectations, charges or credits to our income tax expense may become necessary.

Results of Operations

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

	Year Ended December 31,		
	2018	2019	2020
		(in thousands)	
Net revenue:			
Device	$ 1,744,353	$ 1,773,600	$ 1,895,275
Platform+	36,377	63,199	147,198
Total net revenue	1,780,730	1,836,799	2,042,473
Cost of goods sold:			
Device	1,656,082	1,648,583	1,710,776
Platform+	14,387	23,051	35,339
Total cost of goods sold	1,670,469	1,671,634	1,746,115
Gross profit:			
Device	88,271	125,017	184,499
Platform+	21,990	40,148	111,859
Total gross profit	110,261	165,165	296,358
Operating expenses:			
Selling, general and administrative	95,753	108,983	130,884
Marketing	19,161	22,656	31,279
Depreciation and amortization	5,030	4,134	2,296
Total operating expenses	119,944	135,773	164,459
Income (loss) from operations	(9,683)	29,392	131,899
Interest income (expense), net	(1,633)	1,178	12
Other income, net	10,532	235	532
Total non-operating income	8,899	1,413	544
Income (loss) before income taxes	(784)	30,805	132,443
Provision for (benefit from) income taxes	(628)	7,719	29,968
Net income (loss)	$ (156)	$ 23,086	$ 102,475

The following table sets forth the components of our consolidated statements of operations as a percentage of net revenue:

	Year Ended December 31,		
	2018	2019	2020
	(as a percentage of net revenue)		
Net revenue:			
Device	98.0%	96.6%	92.8%
Platform+	2.0%	3.4%	7.2%
Total net revenue	100.0%	100.0%	100.0%
Cost of goods sold:			
Device	93.0%	89.8%	83.8%
Platform+	0.8%	1.3%	1.7%
Total cost of goods sold	93.8%	91.0%	85.5%
Gross profit			
Device	5.0%	6.8%	9.0%
Platform+	1.2%	2.2%	5.5%
Total gross profit	6.2%	9.0%	14.5%
Operating expenses:			
Selling, general and administrative	5.4%	5.9%	6.4%
Marketing	1.1%	1.2%	1.5%
Depreciation and amortization	0.3%	0.2%	0.1%
Total operating expenses	6.7%	7.4%	8.1%
Income (loss) from operations	(0.5)%	1.6%	6.5%
Interest income (expense), net	(0.1)%	0.1%	0.0%
Other income, net	0.6%	0.0%	0.0%
Total non-operating income	0.5%	0.1%	0.0%
Income (loss) before income taxes	0.0%	1.7%	6.5%
Provision for (benefit from) income taxes	0.0%	0.4%	1.5%
Net income (loss)	0.0%	1.3%	5.0%

Comparison of the Years Ended December 31, 2018, 2019 and 2020

Net revenue

	Year Ended December 31,			2018-2019 Change		2019-2020 Change	
	2018	2019	2020	$	%	$	%
	(dollars in thousands)						
Net revenue							
Device	$1,744,353	$1,773,600	$1,895,275	$ 29,247	1.7%	$ 121,675	6.9%
Platform+	36,377	63,199	147,198	26,822	73.7%	83,999	132.9%
Total net revenue	$1,780,730	$1,836,799	$2,042,473	$ 56,069	3.1%	$ 205,674	11.2%

Device

Device net revenue increased $121.7 million, or 6.9%, from $1.77 billion in 2019 to $1.90 billion in 2020. The increase in Device net revenue was primarily due to a 17.5% increase in total device units shipped partially offset by a 9.0% decline in our total device average unit price. The increase in units shipped was due to growth in the number of Smart TVs shipped primarily due to the implementation of stay-at-home orders in response to COVID-19. Average unit price declined due to a lower average unit price on Smart TVs shipped, in part as a result of the mix of Smart TVs shipped, partially offset by a higher average unit price on sound bars.

Device net revenue increased $29.2 million, or 1.7%, from $1.74 billion in 2018 to $1.77 billion in 2019. The increase in Device net revenue was primarily due to a 9.7% increase in total device units shipped primarily due to our continued improvement in the quality of our Smart TVs and sound bars as well as our sales and marketing efforts. The increase in units shipped was mostly offset by a 7.3% decline in total device average unit price due to lower pricing on TVs and sound bars.

Platform+

Platform+ net revenue increased $84.0 million, or 132.9%, from $63.2 million in 2019 to $147.2 million in 2020. The increase in Platform+ net revenue was primarily due to an increase in SmartCast Active Accounts of 61% from 7.6 million in 2019 to 12.2 million in 2020, as well as the expansion of our advertising services.

Platform+ net revenue increased $26.8 million, or 73.7%, from $36.4 million in 2018 to $63.2 million in 2019. The increase in Platform+ net revenue was primarily due to an increase in SmartCast Active Accounts of 111.1% from 3.6 million in 2018 to 7.6 million in 2019, as well as the expansion of our advertising services.

Cost of goods sold, gross profit and gross profit margin

	Year Ended December 31,			2018-2019 Change		2019-2020 Change	
	2018	2019	2020	$	%	$	%
			(dollars in thousands)				
Cost of goods sold							
Device	$1,656,082	$1,648,583	$1,710,776	$ (7,499)	(0.5)%	$ 62,193	3.8%
Platform+	14,387	23,051	35,339	8,664	60.2%	12,288	53.3%
Total cost of goods sold	$1,670,469	$1,671,634	$1,746,115	$ 1,165	0.1%	$ 74,481	4.5%
Gross profit							
Device	$ 88,271	$ 125,017	$ 184,499	$ 36,746	41.6%	$ 59,482	47.6%
Platform+	21,990	40,148	111,859	18,158	82.6%	71,711	178.6%
Total gross profit	$ 110,261	$ 165,165	$ 296,358	$ 54,904	49.8%	$131,193	79.4%
Device gross margin	5.1%	7.0%	9.7%				
Platform+ gross margin	60.5%	63.5%	76.0%				
Total gross margin	6.2%	9.0%	14.5%				

Device

Device cost of goods sold increased $62.2 million, or 3.8%, from $1.65 billion in 2019 to $1.71 billion in 2020. Device gross profit increased $59.5 million, or 47.6% from 2019 to 2020. Device gross margin increased from 7.0% in 2019 to 9.7% in 2020, primarily as a result of increased demand for our products.

Device cost of goods sold decreased $7.5 million, or 0.5%, from $1.66 billion in 2018 to $1.65 billion in 2019. Device gross profit increased $36.7 million, or 41.6% from 2018 to 2019. Device gross margin increased from 5.1% in 2018 to 7.0% in 2019, primarily as a result of improved cost management through our supply chain.

Platform+

Platform+ cost of goods sold increased $12.3 million, or 53.3%, from $23.1 million in 2019 to $35.3 million in 2020. The increase in Platform+ cost of goods sold was primarily due to increases in engineering costs, third-party cloud services and advertising inventory costs. Platform+ gross margin increased from 63.5% in 2019 to 76.0% in 2020 primarily due to growth in advertising revenue.

Platform+ cost of goods sold increased $8.7 million, or 60.2%, from $14.4 million in 2018 to $23.1 million in 2019. The increase in Platform+ cost of goods sold was primarily due to increases in advertising inventory costs, third-party cloud services and engineering costs. Platform+ gross margin increased from 60.5% in 2018 to 63.5% in 2019.

Operating expenses

	Year Ended December 31,			2018-2019 Change		2019-2020 Change	
	2018	2019	2020	$	%	$	%
	(dollars in thousands)						
Selling, general and administrative	$ 95,753	$108,983	$130,884	$13,230	13.8%	$21,901	20.1%
Marketing	19,161	22,656	31,279	3,495	18.2%	8,623	38.1%
Depreciation and amortization	5,030	4,134	2,296	(896)	(17.8)%	(1,838)	(44.5)%
Total operating expenses	$119,944	$135,773	$164,459	$15,829	13.2%	$28,686	21.1%

Selling, general and administrative expenses increased $21.9 million, or 20.1%, from $109.0 million in 2019 to $130.9 million in 2020. The increase in selling, general and administrative expenses was primarily due to an increase in personnel costs due to headcount growth as well as an increase in consulting expenses relating to additional sales and engineering staff as we grow our platform business.

Selling, general and administrative expenses increased $13.2 million, or 13.8%, from $95.8 million in 2018 to $109.0 million in 2019. The increase in selling, general and administrative expenses was primarily due to an increase in personnel costs due to headcount growth, as well as an increase in consulting expenses.

Marketing expenses increased $8.6 million, or 38.1%, from $22.7 million in 2019 to $31.3 million in 2020. Marketing expenses increased $3.5 million, or 18.2%, from $19.2 million in 2018 to $22.7 million in 2019.

Depreciation and amortization expenses decreased $1.8 million, or 44.5%, from $4.1 million in 2019 to $2.3 million in 2020 primarily due to certain assets being fully depreciated for 2020 as compared to 2019. Depreciation and amortization expenses decreased $0.9 million, or 17.8%, from $5.0 million in 2018 to $4.1 million in 2019.

Net non-operating income

	Year Ended December 31,			2018-2019 Change		2019-2020 Change	
	2018	2019	2020	$	%	$	%
	(dollars in thousands)						
Interest income (expense), net	$ (1,633)	$ 1,178	$ 12	$ 2,811	(172.1)%	$(1,166)	(99.0)%
Other income (expense), net	10,532	235	532	(10,297)	(97.8)%	297	126.4%
Net non-operating income	$ 8,899	$ 1,413	$ 544	$ (7,486)	(84.1)%	$ (869)	(61.5)%

Interest income (expense), net decreased $1.2 million or 99.0%, from $1.2 million in 2019 to approximately $12,000 in 2020. The decrease was due to a $0.4 million decrease in interest income relating to our financial institution deposit balances and a $0.3 million decrease in interest income relating to a note receivable in 2020.

Interest income (expense), net increased $2.8 million, or 172% from $(1.6) million in 2018 to $1.2 million in 2019. The increase in interest income was due to a $1.7 million increase in interest income primarily relating to our financial institution deposit balances and a $1.1 million decrease in interest expense primarily under our credit facility, which was repaid in September 2018.

Other income (expense), net increased $0.3 million, or 126.4%, from $0.2 million in 2019 to $0.5 million in 2020. Other income (expense), net is primarily composed of rental income of $0.4 million in 2020.

Other income (expense), net decreased $10.3 million, or 97.8%, from $10.5 million in 2018 to $0.2 million in 2019. The decrease in other income was primarily due to a payment received by us following the termination of a merger in 2018.

Provision for (benefit from) income taxes

	Year Ended December 31,			2018-2019 Change		2019-2020 Change	
	2018	2019	2020	$	%	$	%
	(dollars in thousands)						
Provision for (benefit from) income taxes	$ (628)	$ 7,719	$29,968	$ 8,347	(1,329.1)%	$22,249	288.2%
Effective tax rate	80.1%	25.1%	22.6%				

Provision for (benefit from) income taxes increased $22.2 million from $7.7 million in 2019 to $30.0 million in 2020. Our effective tax rate in 2019 was 25.1% compared to 22.6% in 2020. The effective rate for 2020 was lower primarily due to an increase in tax credits and a decrease in permanent book versus tax differences.

Provision for (benefit from) income taxes increased $8.3 million from a $(0.6) million benefit in 2018 to a $7.7 million provision in 2019. Our effective tax rate in 2018 was 80.1% compared to 25.1% in 2019. The effective rate for 2018 was higher primarily due to permanent book versus tax differences.

Backlog

We do not believe that our backlog of orders is meaningful as of any particular date or indicative of future sales, as our retailers can change or cancel orders with little or no penalty and limited advance notice prior to shipment.

Unaudited Quarterly Statements of Operations

The following table sets forth our unaudited quarterly consolidated statements of operations for each of the eight quarterly periods presented. These unaudited quarterly statements of operations have been prepared on the same basis as our audited consolidated financial statements and, in our opinion, reflect all normal recurring adjustments necessary for the fair statement of the results of operations for these periods. You should read the following tables in conjunction with our consolidated financial statements and the related notes included elsewhere in this prospectus. The statements of income for any quarter are not necessarily indicative of the results of operations for a full year or any future periods. Totals may not sum due to rounding.

	Three Months Ended							
	Mar. 31 2019	**Jun. 30 2019**	**Sept. 30 2019**	**Dec. 31 2019**	**Mar. 31 2020**	**Jun. 30 2020**	**Sept. 30 2020**	**Dec. 31 2020**
	(*in thousands*)							
Net revenue:								
Device	$ 359,272	$ 368,267	$ 447,644	$ 598,417	$ 308,855	$ 366,886	$ 545,511	$ 674,023
Platform+	11,834	14,887	16,403	20,076	23,685	26,577	36,673	60,263
Total net revenue	371,106	383,154	464,047	618,493	332,540	393,463	582,184	734,286
Cost of goods sold:								
Device	332,835	336,313	411,795	567,640	276,357	326,708	487,289	620,422
Platform+	4,289	4,500	7,212	7,051	8,456	8,781	6,109	11,993
Total cost of goods sold	337,124	340,813	419,007	574,691	284,813	335,489	493,398	632,415
Gross profit								
Device	26,437	31,954	35,849	30,777	32,498	40,178	58,222	53,601
Platform+	7,545	10,387	9,191	13,025	15,229	17,796	30,564	48,270
Total gross profit	33,982	42,341	45,040	43,802	47,727	57,974	88,786	101,871
Operating expenses:								
Selling, general and administrative	26,586	25,794	26,597	30,007	30,116	29,799	37,371	33,598
Marketing	4,683	4,638	4,768	8,566	6,248	4,827	5,527	14,677
Depreciation and amortization	1,208	1,217	952	758	660	584	496	556
Total operating expenses	32,477	31,649	32,317	39,331	37,024	35,210	43,394	48,831
Income from operations	1,505	10,692	12,723	4,471	10,703	22,764	45,392	53,040
Interest income (expense), net	355	283	481	60	348	79	(361)	(54)
Other income (expense), net	(47)	199	360	(277)	345	46	118	23
Total non-operating income (expense)	308	482	841	(217)	693	125	(243)	(31)
Income before income taxes	1,813	11,174	13,564	4,254	11,396	22,889	45,149	53,009
Provision for (benefit from) income taxes	338	3,464	3,060	857	2,109	5,568	10,095	12,196
Net income	$ 1,475	$ 7,710	$ 10,504	$ 3,397	$ 9,287	$ 17,321	$ 35,054	$ 40,813

The following table sets forth the components of our unaudited consolidated statements of operations for each of the periods presented as a percentage of net sales:

	Three Months Ended							
	Mar. 31 2019	Jun. 30 2019	Sept. 30 2019	Dec. 31 2019	Mar. 31 2020	Jun. 30 2020	Sept. 30 2020	Dec. 31 2020
	(*in thousands*)							
Net revenue:								
Device	96.8%	96.1%	96.5%	96.8%	92.9%	93.2%	93.7%	91.8%
Platform+	3.2%	3.9%	3.5%	3.2%	7.1%	6.8%	6.3%	8.2%
Total net revenue	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%	100.0%
Cost of goods sold:								
Device	89.7%	87.8%	88.7%	91.8%	83.1%	83.0%	83.7%	84.5%
Platform+	1.2%	1.2%	1.6%	1.1%	2.5%	2.2%	1.0%	1.6%
Total cost of goods sold	90.8%	88.9%	90.3%	92.9%	85.6%	85.3%	84.7%	86.1%
Gross profit:								
Device	7.1%	8.3%	7.7%	5.0%	9.8%	10.2%	10.0%	7.3%
Platform+	2.0%	2.7%	2.0%	2.1%	4.6%	4.5%	5.2%	6.6%
Total gross profit	9.2%	11.1%	9.7%	7.1%	14.4%	14.7%	15.3%	13.9%
Operating expenses:								
Selling, general and administrative	7.2%	6.7%	5.7%	4.9%	9.1%	7.6%	6.4%	4.6%
Marketing	1.3%	1.2%	1.0%	1.4%	1.9%	1.2%	0.9%	2.0%
Depreciation and amortization	0.3%	0.3%	0.2%	0.1%	0.2%	0.1%	0.1%	0.1%
Total operating expenses	8.8%	8.3%	7.0%	6.4%	11.1%	8.9%	7.5%	6.7%
Income from operations	0.4%	2.8%	2.7%	0.7%	3.2%	5.8%	7.8%	7.2%
Interest income (expense), net	0.1%	0.1%	0.1%	0.0%	0.1%	0.0%	(0.1%)	0.0%
Other income (expense), net	0.0%	0.1%	0.1%	0.0%	0.1%	0.0%	0.0%	0.0%
Total non-operating income	0.1%	0.1%	0.2%	0.0%	0.2%	0.0%	0.0%	0.0%
Income before income taxes	0.5%	2.9%	2.9%	0.7%	3.4%	5.8%	7.8%	7.2%
Provision for (benefit from) income taxes	0.1%	0.9%	0.7%	0.1%	0.6%	1.4%	1.7%	1.7%
Net income	0.4%	2.0%	2.3%	0.5%	2.8%	4.4%	6.0%	5.6%

Quarterly Trends and Seasonality

Net revenue

Device net revenue is typically highest in our third and fourth quarters. Device net revenue fluctuates with the typical seasonality of retail sales. We manage our inventory, introduce new products, and execute promotions to maximize sales during these peak retail shopping periods.

Platform+ net revenue increased sequentially in each quarter presented. This is primarily due to growth in our SmartCast Active Accounts, higher user engagement on our platform and improved monetization capabilities as we have expanded our advertising sales and business development organizations. Our Platform+ business is still in an early stage of development and therefore does not yet exhibit typical advertising seasonality.

Cost of goods sold

Device cost of goods sold also coincide with retail sales patterns and are typically higher in our third and fourth quarters.

Platform+ cost of goods sold has grown due to increased engineering costs as we invest in our SmartCast operating system, higher cloud computing costs due to growth in SmartCast Active Accounts, and increased advertising inventory costs as we expand our advertising sales capabilities.

Gross Profit

Device gross profit improved significantly in 2020 due to higher demand for our products. We believe this was due in large part to the impact of COVID-19 and that gross profit margin will return to a more normalized level in the future.

Platform+ gross profit steadily grew over the course of the quarters presented as we have grown the number of SmartCast Active Accounts and monetization opportunities.

Operating Expenses

Operating expenses have been steadily increasing as we have invested in more engineering and sales personnel to grow our Platform+ business.

The following table provides advertising and non-advertising revenue in Platform+:

	2019				2020			
	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
	(in thousands)							
Advertising net revenue	$ 471	$ 1,610	$ 2,751	$ 4,092	$ 6,265	$ 8,751	$ 17,780	$ 38,952
Non-Advertising net revenue	11,363	13,277	13,652	15,984	17,420	17,826	18,893	21,311
Total Platform+ net revenue	$ 11,834	$ 14,887	$ 16,403	$ 20,076	$ 23,685	$ 26,577	$ 36,673	$ 60,263

The following table sets forth the key business metrics for each of the periods presented:

	Three Months Ended							
	Mar. 31 2019	Jun. 30 2019	Sept. 30 2019	Dec. 31 2019	Mar. 31 2020	Jun. 30 2020	Sept. 30 2020	Dec. 31 2020
	(in millions, except Adjusted EBITDA, which is in thousands, and SmartCast ARPU)							
Television units sold	1.1	1.2	1.6	2.0	1.2	1.6	2.1	2.2
SmartCast Active Accounts	4.3	5.2	6.1	7.6	8.5	9.8	10.7	12.2
Total VIZIO Hours	1,798	2,406	3,013	3,995	4,944	5,920	6,224	7,258
SmartCast Hours	598	940	1,258	1,726	2,209	2,956	3,331	3,844
SmartCast ARPU (last 12 months)(1)	N/A	N/A	N/A	$ 7.31	$ 8.23	$ 8.82	$ 10.44	$ 12.99
Adjusted EBITDA	$ 3,551	$ 13,110	$ 14,695	$ 6,248	$ 12,702	$ 24,688	$ 47,226	$ 54,355

(1) Prior to 2019, we did not track SmartCast ARPU.

The following table represents a reconciliation from net income to Adjusted EBITDA for each of the periods presented:

	Three Months Ended							
	Mar. 31 2019	Jun. 30 2019	Sept. 30 2019	Dec. 31 2019	Mar. 31 2020	Jun. 30 2020	Sept. 30 2020	Dec. 31 2020
	(*in thousands*)							
Net income	$1,475	$ 7,710	$10,504	$3,397	$ 9,287	$17,321	$35,054	$40,813
Interest expense (income), net	(355)	(283)	(481)	(60)	(348)	(79)	361	54
Other expense (income), net	47	(200)	(360)	277	(345)	(46)	(119)	(22)
Provision for (benefit from) income taxes	338	3,464	3,060	857	2,109	5,568	10,095	12,196
Depreciation and amortization	1,208	1,217	952	758	660	584	496	556
Stock-based compensation	838	1,202	1,020	1,019	1,339	1,340	1,339	758
Adjusted EBITDA	$3,551	$13,110	$14,695	$6,248	$12,702	$24,688	$47,226	$54,355

Liquidity and Capital Resources

To date, our primary cash needs have been for working capital purposes and to a lesser extent, capital expenditures, acquisitions and cash dividends. We have historically funded our business through cash flows generated from operations, the issuance of common stock and our revolving credit facility, as described below. We have grown rapidly over the past two years. As we continue to grow our business and invest in the development of our Platform+ business, we may need higher levels of working capital.

As of December 31, 2019, and 2020, we had cash and cash equivalents of $176.6 million and $207.7 million, respectively. We believe our existing cash and cash equivalents and cash from operations will be sufficient to meet our projected operating requirements for at least the next 12 months from the date of this prospectus. Our future capital requirements may vary materially from our current expectations and will depend on many factors, including the growth of our business, the timing and extent of spending on various business initiatives, including investment in our Platform+ offerings, the timing of new product introductions, market acceptance of our products and overall economic conditions, including the impact of the COVID-19 pandemic. To the extent that current and anticipated future sources of liquidity are insufficient to fund our future business activities and requirements, we may be required to seek additional equity or debt financing. In the event additional financing is required from outside sources, we may not be able to obtain such financing on terms acceptable to us or at all. To the extent that we issue equity or convertible debt securities in the future, there will be further dilution to investors participating in this offering. Further, any debt financing obtained by us in the future could involve restrictive covenants relating to our capital raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital and to pursue business opportunities, including potential acquisitions.

We are party to a credit agreement with Bank of America, N.A., which currently provides for a revolving credit line of up to $50.0 million with a maturity date of April 13, 2021. Any indebtedness under this credit agreement is collateralized by substantially all of our assets and bears interest at a variable rate based either on LIBOR, the federal funds rate or the prime rate. The credit agreement contains customary affirmative and negative covenants.

As of December 31, 2020, we did not have any amounts outstanding under this line of credit. We were in compliance with all required financial covenants as of December 31, 2019 and 2020, respectively.

The following table sets forth the major components of our consolidated statements of cash flows data for the periods presented:

	Year Ended December 31,		
	2018	2019	2020
		(in thousands)	
Net cash provided by operating activities	$ 3,242	$ 79,883	$ 32,297
Net cash (used in) provided by investing activities	(443)	(800)	(1,752)
Net cash provided by financing activities	55,072	187	175
Effect of exchange rate changes on cash and cash equivalents	330	125	429
Net increase in cash and cash equivalents	$ 58,201	$ 79,395	$ 31,149

Cash flows from operating activities

Cash flows from operating activities consist of net income adjusted for certain non-cash items, including depreciation and amortization, deferred income taxes, stock-based compensation expense and other non-cash related items as well as the effect of changes in working capital and other activities.

In 2020, net cash provided by operating activities was $32.3 million, consisting of net income of $102.5 million adjusted for non-cash expenses of $9.0 million. Changes in operating assets and liabilities represented a $79.2 million use of cash, primarily driven by changes in working capital, including an increase in accounts receivable and other current assets, and a decrease in accounts payable to related parties.

In 2019, net cash provided by operating activities was $79.9 million, consisting of net income of $23.1 million adjusted for non-cash expenses of $9.5 million. Changes in operating assets and liabilities represented a $47.3 million source of cash, primarily driven by changes in working capital, including a decrease in accounts receivable, partially offset by a decrease in accounts payable and accounts payable to related parties.

In 2018, net cash provided by operating activities was $3.2 million, consisting of net loss of $0.2 million adjusted for non-cash expenses of $22.6 million. Changes in operating assets and liabilities represented a $19.2 million use of cash, primarily driven by changes in working capital, including an increase in accounts receivable and a decrease in accounts payable, partially offset by an increase in accounts payable to related parties.

Cash flows from investing activities

In 2018, 2019 and 2020, our net cash used in investing activities was $0.4 million, $0.8 million and $1.8 million respectively. In each of these periods, our primary investing activities consisted of the purchase of property and equipment to support our increased employee headcount and increased investments into internally developed software to support the overall growth in our business.

We expect that we will make capital expenditures and investments in the future, primarily on leasehold improvements, potential build-out of our corporate offices, as well as additional IT infrastructure, all of which will be done to support our future growth.

Cash flows from financing activities

In 2018, net cash provided by financing activities of $55.1 million was driven primarily from $70.0 million of proceeds from the issuance of common stock, offset by the net repayment of $15.0 million under our revolving

credit facility. In 2019 and 2020, our net cash provided by financing activities of $0.2 million and $0.2 million, respectively, was due to proceeds from the exercise of stock options.

Contractual Obligations

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

	Total	Less than 1 year	1-2 years	3-5 years	More than 5 years
			(*in thousands*)		
Royalty obligations(1)	$41,527	$16,960	$13,015	$11,552	$ —
Operating leases(2)	8,545	2,913	2,021	3,016	595
Total contractual obligations	$50,072	$19,873	$15,036	$14,568	$ 595

(1) We are engaged in, and in certain cases have settled, various claims and suits alleging the infringement of patents related to certain television technology that were initiated by television manufacturers and other nonmanufacturers. In connection with the disposition of some of these claims and suits, we have entered into, or may enter into, license arrangements, which may include royalty payments to be made for historical and/or prospective sales of our products. Certain of these settlements have included cross licenses, covenants not to sue, and litigation holds.

In connection with these existing license agreements as well as existing or potential settlement arrangements, we recorded an aggregate accrual of $84.7 million and $81.1 million for all historical product sales as of December 31, 2019 and 2020, respectively. To the extent that we are indemnified under product supply agreements with manufacturers, we have offset intellectual property expenses and recorded amounts as other receivable balances included in other current assets. Historically, we have been contractually indemnified and reimbursed by our manufacturers for most intellectual property royalty obligations and commitments. We will make future payments for the licensed technologies with funding received from the manufacturers, either through direct reimbursement from the manufacturers or payment of the net purchase price, as these royalty payments become due. In certain circumstances, we have the contractual ability to renegotiate the annual license fee in future years if certain unit sales volumes are not met in a given year.

(2) The amounts represent the contractual future annual minimum lease payments at December 31, 2020. In certain cases, we have long-term operating leases that include options to renew that we anticipate exercising upon the expiration of the current term. These anticipated renewals are not included in the above schedule.

Certain manufacturer supply agreements include a non-binding volume purchase commitment on up to 13 weeks of inventory forecast by us. We provide to manufacturers periodic forecasts at which time these manufacturers will consider the first 13 weeks of demand to be committed. Given the practice of providing frequent forecasts, any variance of the actual demand from the forecasted demand should be minimal, and we believe the risk to us is low. In addition, the table above does not include the impact of the potential acceleration of $14.0 million in licensing obligations due upon the completion of this offering.

Off-Balance Sheet Arrangements

We do not have any off-balance sheet financing arrangements or liabilities, guarantee contracts, retained or contingent interests in transferred assets, or any obligation arising out of a material variable interest in an unconsolidated entity. We do not have any majority-owned subsidiaries that are not included in our consolidated financial statements. Additionally, we do not have an interest in, or relationships with, any special-purpose entities.

Quantitative and Qualitative Disclosures about Market Risk

We are exposed to market risks in the ordinary course of our business. These risks primarily include foreign currency and interest rate risks as follows:

Foreign currency risk

To date, substantially all of our product sales and inventory purchases have been denominated in U.S. dollars. We therefore have not had any material foreign currency risk associated with these two activities. The

functional currency of most of the foreign subsidiaries is the U.S. dollar. In prior years, we executed CAD and MXN forward contracts to mitigate foreign currency risk of device sales to those countries. We withdrew from the Mexico market in 2018 and from the Canada market in early 2020.

Although we primarily procure and sell our products in U.S. dollars, our manufacturers incur many costs, including labor costs, in other currencies. To the extent that exchange rates move unfavorably for our manufacturers, they may seek to pass these additional costs on to us, which could have a material impact on our future prices and unit costs.

Interest rate risk

We had cash and cash equivalents totaling $176.6 million, and $207.7 million as of December 31, 2019 and 2020, respectively. Our cash and cash equivalents consist of cash in bank accounts as well as restricted certificates of deposits. Our cash and cash equivalents are held for working capital purposes. We do not enter into investments for trading or speculative purposes.

As of December 31, 2020, we did not have any long-term debt outstanding under our credit facility. Our credit facility bears interest at a variable rate equal to LIBOR plus 0.50% per annum. A hypothetical 10% relative increase or decrease in interest rates during any of the periods presented would not have had a material impact on our consolidated financial statements.

Critical Accounting Policies

We prepare our consolidated financial statements in accordance with accounting principles generally accepted in the United States. The preparation of these consolidated financial statements requires us to make estimates, assumptions and judgments that can significantly impact the amounts we report as assets, liabilities, net sales, costs and expenses and the related disclosures. We base our estimates on historical experience and other assumptions that we believe are reasonable under the circumstances. Our actual results could differ significantly from these estimates under different assumptions and conditions. We believe that the accounting policies discussed below are critical to understanding our historical and future performance as these policies involve a greater degree of judgment and complexity.

Revenue recognition

We derive our revenue primarily from the sale of televisions and sound bars, advertising and data services. Revenue is recognized when control of the promised goods or services is transferred to our retailers, in an amount that reflects the consideration to which we expect to be entitled in exchange for those goods or services. We apply a five-step approach as defined in Financial Accounting Standards Board (FASB) ASC 606, Revenue from Contracts with Customers (Topic 606), in determining the amount and timing of revenue to be recognized: (1) identifying the contract with a customer; (2) identifying the performance obligations in the contract; (3) determining the transaction price; (4) allocating the transaction price to the performance obligations in the contract; and (5) recognizing revenue when the corresponding performance obligation is satisfied.

We sell products to certain retailers under terms that allow them to receive price protection on future price reductions and may provide for limited rights of return, discounts and advertising credits.

Device net revenue

Each distinct promise to transfer products is considered to be an identified performance obligation for which revenue is recognized at a point in time upon transfer of control of the products to the retailer. Transfer of control occurs upon shipment or delivery to the retailer. Point in time recognition is determined as products to be sold represent an asset with an alternative use. Warranty returns have not been material, and warranty-related services are not considered a separate performance obligation.

Pricing adjustments and estimates of returns are treated as variable consideration for purposes of determining the transaction price. Sales returns are generally accepted at our discretion. Variable consideration is estimated using the most likely amount considering all reasonably available information, including our historical experience and current expectations, and is reflected in the transaction price when sales are recorded. Revenue recorded excludes taxes collected on sales to retailers.

Accounts receivable represents the unconditional right to receive consideration from retailers. Substantially all payments are collected within our standard terms, which do not include a significant financing component. To date, there have been no material impairment losses on accounts receivable. There have been no material contract assets or contract liabilities recorded on the consolidated balance sheet in any of the periods presented.

All of our products are directly shipped from manufacturers to third-party logistics and distribution centers in the United States. Generally, we ship the product to our retailers with freight carriers contracted by us. Shipping terms on sales of products are generally FOB destination but may vary depending upon the related contractual arrangement with the retailer. Amounts billed to retailers for shipping and handling costs are included in net sales.

Platform+ net revenue

We generate Platform+ net revenue through sales of advertising and related services, content distribution, subscription and transaction revenue shares, promotions, sales of branded buttons on remote controls and data licensing agreements. Our digital ad inventory consists of inventory on WatchFree, VIZIO Free Channels and our home screen along with ad inventory we obtain through our content provider and other third-party application agreements. We also re-sell video inventory that we purchase from content providers and directly sell third-party inventory on a revenue share or cost-per-thousand (CPM) basis.

Revenue for advertising and related services is primarily generated by the sale of video and display advertising. Advertising may be sold directly on a CPM basis and is evidenced by an Insertion Order (IO). We recognize revenue as the number of impressions is measured and delivered, up to the amount identified in the IO. An IO may include multiple performance obligations to the extent it contains distinct advertising products or services. Advertising inventory may also be sold programmatically by which net revenue generated by our supply-side platforms are recognized. We recognize revenue for advertising and related services on either a gross or net basis based on our determination as to whether we are acting as the principal in the revenue generation process or as an agent. Advertising revenue is recognized on a time elapsed basis, as the services are delivered over the contractual distribution term.

Subscription and transaction revenue is generated through revenue share agreements with content providers. These revenue share agreements generally apply to new subscriptions for accounts that sign up for new services or to purchases or rentals through our SmartCast operating system. We recognize revenue on a net basis as we are deemed to be the agent between content providers and consumers.

We sell content providers placements of buttons on our remote controls that provide one-touch access to a third-party applications' content. We typically receive a fixed fee per button for each device or individually packaged remote unit sold over a defined distribution period. Revenue is recognized on a time elapsed basis, by day, over the distribution term.

On revenue from data licensing agreements with retailers, each promise to transfer an individual data license in the contract also is separately identifiable; the individual data licenses do not, together, constitute a single overall promise to the retailer. Each distinct license of data has substantial standalone functionality at the point in time they are transferred to the retailer because the data can be utilized and processed in accordance with the rights provided in the contract without any further participation by us. Therefore, each distinct data license is a right to use our functional intellectual property. Revenue is recognized at the point in time in which control is

transferred to the retailer. Control of each distinct data license transfers when it is uploaded or delivered to the retailer. The transaction price for data services revenue includes both fixed and variable consideration. The fixed consideration within the retailer contract is allocated to each performance obligation as the performance obligations are satisfied. Variable consideration is recorded when it is earned in accordance with the sales or usage-based royalty exception. We record revenue gross as we control the goods before they are transferred to the retailer, are the primary obligor, negotiate pricing with our retailers, and assume the risk of bad debt.

Retailer allowances and cooperative advertising arrangements

We periodically grant certain sales discounts and incentives to retailers, such as rebates and price protection, which are treated as variable consideration for purposes of determining the transaction price. In certain instances, we will, in turn, negotiate with our manufacturers for reimbursement of a portion of the incentives so that the manufacturers are responsible for absorbing some of the rebates and price protection. Our procedures for estimating amounts accrued as retailer allowances are based upon historical experience and management judgment. Retailer allowances are accrued for when the related product sale is recognized. The accrued retailer allowances are presented on the consolidated balance sheets in accrued expenses and recorded in the consolidated statements of operations as a reduction of net revenue. The allowance for price protection was $73.1 million, $91.1 million and $61.3 million for the years ended December 31, 2018, 2019 and 2020, respectively.

Additionally, we maintain cooperative advertising arrangements with several of our retailers, which provide for television commercials, newspaper advertisements, and banner advertisements on the retailers' websites. These advertising arrangements are recorded as accrued liabilities or a reduction of accounts receivable depending on the nature of the agreement. All retailer-specific cooperative advertising arrangements are presented on the consolidated balance sheets as a reduction of accounts receivable and recorded in the consolidated statements of operations as a reduction of net sales. Cooperative advertising arrangements recorded as a reduction of net sales totaled $11.0 million, $14.1 million and $6.6 million for the years ended December 31, 2018, 2019 and 2020, respectively.

Accounts receivable and allowance for doubtful accounts

Accounts receivable consist of amounts due to us from sales arrangements executed under normal business activities and are recorded at invoiced amounts. We present the aggregate accounts receivable balance net of an allowance for doubtful accounts and extend credit to our retailers and mitigate a portion of our credit risk through credit insurance. Generally, collateral or other security is not required for outstanding accounts receivable. Credit losses, if any, are recognized based on management's evaluation of historical collection experience, retailer-specific financial conditions as well as an evaluation of current industry trends and general economic conditions. Past-due balances are assessed by management on a monthly basis and balances are written off when the retailer's financial condition no longer warrants pursuit of collections. Although we expect to collect amounts due, actual collections may differ from estimated amounts.

Goodwill and other intangible assets

Goodwill represents the excess of the purchase price over the fair value of the net tangible and intangible assets acquired in a business combination. Goodwill is not amortized but is tested at least annually for impairment as of the first day of the fourth fiscal quarter, or more frequently if indicators of impairment exist during the fiscal year. Events or circumstances which could trigger an impairment review include a significant adverse change in legal factors or in the business climate, loss of key retailers, an adverse action or assessment by a regulator, unanticipated competition, a loss of key personnel, significant changes in the manner of our use of the acquired assets or the strategy for our overall business, significant negative industry or economic trends, or significant underperformance relative to expected historical or projected future results of operations. We assess our conclusion regarding segments and reporting units in conjunction with our annual goodwill impairment test and have determined that we have one reporting unit for the purposes of allocating and testing goodwill.

When testing goodwill for impairment, we first perform a qualitative assessment. If we determine it is more likely than not that a reporting unit's fair value is less than the carrying amount, then a one-step impairment test is required. If we determine it is not more likely than not a reporting unit's fair value is less than the carrying amount, then no further analysis is necessary. To identify whether impairment exists, we compare the estimated fair value of the reporting unit with the carrying amount, including goodwill. If the estimated fair value of the reporting unit exceeds the carrying amount, goodwill is not considered to be impaired. If, however, the fair value of the reporting unit is less than the carrying amount, then such balance would be recorded as an impairment loss. Any impairment loss is limited to the carrying amount of goodwill within the entity. There has been no impairment of goodwill for any periods presented.

Acquired intangible assets with definite lives are amortized on a straight-line basis over the remaining estimated economic life of the underlying products and technologies. Long-lived assets to be held and used, including intangible assets, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be fully recoverable. These events or changes in circumstances may include a significant deterioration of operating results, changes in business plans, or changes in anticipated future cash flows. If an impairment indicator is present, we evaluate recoverability by a comparison of the carrying amount of the assets to future undiscounted net cash flows expected to be generated by the assets. If the assets are impaired, the impairment recognized is measured by the amount by which the carrying amount exceeds the fair value of the assets. Fair value is generally determined by estimates of discounted cash flows. The discount rate used in any estimate of discounted cash flows would be the rate required for a similar investment of like risk. There has been no impairment of long-lived assets for any periods presented.

Patent litigation matters

We operate in an industry where there may be certain claims made against us related to patent infringement matters. We accrue for these claims whenever we determine that an unfavorable outcome is probable, and the liability is reasonably estimable. The amount of the accrual is estimated based on our review of each individual claim, including the type and facts of the claim and our assessment of the merits of the claim. Since these patent infringement matters can be very complex and require significant judgment, we often utilize external legal counsel and other subject matter experts to assist us in defending against such claims. These accruals are reviewed at least on a quarterly basis and adjusted to reflect the impact of recent negotiations, settlements, court rulings, advice from legal counsel and other subject matter experts and any other events pertaining to the case. Although we take considerable measures to mitigate our exposure in these matters, including indemnification agreements with our manufacturers, litigation is inherently unpredictable. However, we believe that we have valid defenses and adequate indemnifications with respect to our pending legal matters against us as well as adequate provisions for any probable and estimable losses. While the outcome of these proceedings and claims cannot be predicted with certainty, we do not believe that the outcome of any pending legal matter will have a material adverse effect on our consolidated financial statements.

Income taxes

We use the asset and liability method when accounting for income taxes. Under this method, deferred income tax assets and liabilities are recognized for future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. We recognize the effect of income tax positions only if those positions are more likely than not of being sustained upon examination. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs. Valuation allowances are recorded against tax assets when it is determined that it is more likely than not that the assets will not be realized. Interest related to income taxes is recorded in other income, net and penalties are recorded in selling, general and administrative expense.

We make estimates, assumptions and judgments to determine our provision for income taxes and also for deferred tax assets and liabilities and any valuation allowances recorded against our deferred tax assets. Actual future operating results and the underlying amount and type of income could differ materially from our estimates, assumptions and judgments thereby impacting our consolidated financial position and results of operations.

Stock-based compensation

Our stock-based compensation expense has resulted from grants of employee stock options and restricted stock awards and is recognized in our consolidated financial statements based on the respective grant date fair values of the awards. Stock option and warrant grant date fair values are estimated using the Black-Scholes-Merton option pricing model. The benefits of tax deductions in excess of recognized compensation cost are reported as a financing cash flow. Forfeitures are accounted for as they occur.

We estimate the value of stock option awards using the Black-Scholes-Merton option pricing model. Determining the fair value of stock-based awards at the grant date under this model requires judgment, including estimating our fair market value per share of common stock, volatility, expected term, dividend yield and risk-free rate. The assumptions used in calculating the fair value of stock-based awards represent our best estimates. These estimates involve inherent uncertainties and the application of management judgment. The assumptions we use in the valuation model are based on subjective future expectations combined with management judgment. If any of the assumptions used in the Black-Scholes-Merton model change significantly, stock-based compensation for future awards may differ materially from the awards granted previously.

The risk-free interest rate is based on the U.S. Treasury yield of those maturities that are consistent with the expected term of the stock option in effect on the grant date of the award. Dividend yield is based upon historical dividend trends and expected future dividend payments and is calculated by dividing the dollar value of the historical average of dividends paid in a given year per share by the dollar value of the assumed per share price. As we do not have significant historical experience of similar awards, the average expected life of our stock options was determined according to the "SEC simplified method" as described in SEC Staff Accounting Bulletin Topic 14, "Share-Based Payment," which is the midpoint between the vesting date and the end of the contractual term. Because our stock is not publicly traded and we have no historical data on the volatility of our stock, our expected volatility is estimated by analyzing the historical volatility of comparable public companies.

The amount of stock-based compensation we recognize during a period is based on the portion of the awards that are ultimately expected to vest.

The following table provides information on the weighted-average assumptions used for stock options granted during the periods ended as follows:

	Year Ended December 31,		
	2018	2019	2020
Number of shares subject to options granted (in thousands)	80	216	452
Volatility factor	40.75% - 40.98%	39.00%	40.46%
Expected term	6.25 Years	6.25 Years	6.25 Years
Dividend yield	5.56%	3.08%	2.37%
Risk-free interest rate	2.77% - 2.83%	1.45%	0.35%
Fair market value per share of common stock determined by the board of directors at the time of grant	$ 26.00	$ 48.52	$ 65.98
Fair market value per option determined using a Black-Scholes-Merton option pricing model for purposes of determining compensation expense	$6.21 - $6.23	$ 13.77	$ 20.02

If factors change and we employ different assumptions, stock-based compensation expense may differ significantly from what we have recorded in the past. If there is a difference between the assumptions used in determining stock-based compensation expense and the actual factors which become known over time, we may change the input factors used in determining stock-based compensation costs for future grants. These changes, if any, may materially impact our results of operations in the period such changes are made. We expect to continue to grant stock options in the future and to the extent that we do our actual stock-based compensation expense recognized in future periods will likely increase.

Significant factors used in determining fair value of our common stock

The fair value of our Class A common stock is determined by the board of directors. Given the absence of a public trading market for our Class A common stock, and in accordance with the American Institute of Certified Public Accountants Accounting and Valuation Guide: Valuation of Privately-Held Company Equity Securities Issued as Compensation, the Board exercised reasonable judgment and considered a number of objective and subjective factors to determine the best estimate of the fair value of our Class A common stock, including:

- the prices at which we sold Class A common stock to outside investors in arms-length transactions;
- an independent third-party valuation of the our Class A common stock;
- our results of operations, financial position, and capital resources;
- industry outlook;
- the lack of marketability of our Class A common stock;
- the fact that the option grants involve illiquid securities in a private company;
- the likelihood of achieving a liquidity event, such as an initial public offering or a sale of the Company, given prevailing market conditions;
- the history and nature of our business, industry trends and competitive environment; and
- general economic outlook including economic growth, inflation and unemployment, interest rate environment, and global economic trends, including the impact of COVID-19.

Following this offering, it will not be necessary to determine the fair value of our common stock using these valuation approaches as shares of our common stock will be traded in the public market.

Based on an assumed initial public offering price of $ per share, which is the midpoint of the price range set forth on the cover page of this prospectus, the aggregate intrinsic value of stock options outstanding as of December 31, 2020 was $ million, with $ million related to vested stock options.

Recent Accounting Pronouncements

In August 2015, the FASB deferred the effective date of Accounting Standards Update (ASU) 2014-09, *Revenue from Contracts with Customers* (Topic 606), which outlines a single comprehensive model for entities to use in accounting for revenue arising from contracts with retailers and will supersede most current revenue recognition guidance. The guidance permits two methods of adoption: retrospectively to each prior period presented (full retrospective method), or retrospectively with the cumulative effect of initially applying the guidance recognized at the date of initial application (modified retrospective method). On January 1, 2018, VIZIO adopted ASU 2014-09 for open contracts not completed as of the adoption date using the modified retrospective approach. Two revenue streams were evaluated: (1) sale of flat panel HD/UHD televisions, sound bars and accessories and (2) data service arrangements with retailers including data licensing and sales associated with distributing content, advertising, and subscription. The impact of the new revenue standard on our business processes, systems, and controls was minimal. There was no adjustment recorded to opening retained earnings as of January 1, 2018. However, on January 1, 2018, we reclassified $115.7 million of refund and rebate liabilities

from contra accounts receivable to accrued expenses. Beginning on January 1, 2018, we present the refund and rebate liabilities within the accrued expenses section of the balance sheet.

In February 2016, the FASB issued ASU 2016-02, *Leases* (Topic 842), which amends the FASB ASC and creates Topic 842, Leases. The new topic supersedes Topic 840, Leases, and increases transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and requires disclosures of key information about leasing arrangements. The standard is effective for public entities for fiscal years beginning after December 15, 2018. We early adopted Topic 842 as of January 1, 2018, using the modified retrospective method. There was no cumulative effect to accumulated deficit upon adoption. We elected the transition package of three practical expedients permitted within the standard, which eliminates the requirements to reassess prior conclusions about lease identification, lease classification and initial direct costs. We adopted ASU 2016-02 on January 1, 2018 and recorded a right-of-use asset and lease liability of $3.3 million. See Note 19, “Leases”, of these notes to the consolidated financial statements for additional details.

In June 2016, the FASB issued ASU No. 2016-13, Financial Instruments—Credit Losses (Topic 326). ASU 2016-13 revises the impairment model to utilize an expected loss methodology in place of the currently used incurred loss methodology, which will result in more timely recognition of losses on financial instruments, including, but not limited to, available for sale debt securities and accounts receivable. The guidance is effective for our annual reporting period beginning after December 15, 2019. The adoption did not have a material impact on the consolidated financial statements.

In August 2016, the FASB issued ASU 2016-15, Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments (a consensus of the Emerging Issues Task Force). This ASU clarifies whether the following items should be categorized as operating, investing or financing in the statement of cash flows: (i) debt prepayments and extinguishment costs, (ii) settlement of zero-coupon debt, (iii) settlement of contingent consideration, (iv) insurance proceeds, (v) settlement of corporate-owned life insurance (COLI) and bank-owned life insurance (BOLI) policies, (vi) distributions from equity method investees, (vii) beneficial interests in securitization transactions, and (viii) receipts and payments with aspects of more than one class of cash flows. The guidance is effective for public companies for fiscal years beginning after December 15, 2017 and should be applied retrospectively to each period presented. We adopted the ASU on January 1, 2018 and determined that the impact is not material.

In January 2017, the FASB issued ASU 2017-04, Intangibles – Goodwill and Other (Topic 350), which eliminates the requirement to calculate the implied fair value of goodwill to measure a goodwill impairment charge. Instead, entities will record an impairment charge based on the excess of a reporting unit’s carrying amount over its fair value. The standard is effective for public entities for fiscal years beginning after December 15, 2019. We do not expect a material impact to the consolidated financial statements due to the adoption of this guidance.

In June 2018, the FASB issued ASU 2018-07, Compensation – Stock Compensation (Topic 718), Improvements to Nonemployee Share based Payments. This ASU expands the scope of Topic 718 to include share-based payment transactions for acquiring goods and services from nonemployees. The standard is effective for public entities for fiscal years beginning after December 15, 2018, with early adoption permitted, but no earlier than our adoption date of Topic 606. The new guidance is required to be applied on a modified retrospective basis with the cumulative effect recognized at the date of initial application. We adopted ASU 2018-07 on January 1, 2019 and determined that the impact is not material.

In August 2018, the FASB issued ASU 2018-13, *Fair Value Measurement – Disclosure Framework (Topic 820)*. The updated guidance improves the disclosure requirements on fair value measurements. The updated guidance is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2019. Early adoption is permitted for any removed or modified disclosures. On January 1, 2019, we early adopted ASU 2018-13 and applied the modified disclosure requirements.

BUSINESS

Our Mission

VIZIO's mission is to deliver immersive entertainment and compelling lifestyle enhancements that make our products the center of the connected home.

Overview

VIZIO is driving the future of televisions through our integrated platform of cutting-edge Smart TVs and powerful SmartCast operating system. Every VIZIO Smart TV enables consumers to search, discover and access a broad array of content. In addition to watching cable TV, viewers can use our platform to stream a movie or show from their favorite over-the-top (OTT) service, watch hundreds of free channels through our platform, including on our WatchFree and VIZIO Free Channel offerings, enjoy an enhanced immersive experience catered to gaming or access a variety of other content options. Our platform gives content providers more ways to distribute their content and advertisers more tools to target a growing audience that is increasingly transitioning away from linear TV.

We currently offer:

- a broad range of high-performance Smart TVs that encompass a variety of price points, technologies, features and screen sizes, each designed to address specific consumer preferences;
- a portfolio of innovative sound bars that deliver immersive audio experiences; and
- a proprietary Smart TV operating system, SmartCast, which enhances the functionality and monetization opportunities of our devices.

And this is just the beginning. Today, a television is primarily viewed as an entertainment device – but our Smart TVs are capable of so much more. Our seamless integration of devices and software allows us to create new interactive use cases, such as personal communications, fitness and wellness, commerce, social interaction and dynamic entertainment experiences. We believe we can reshape the way consumers use the largest screen in their home.

Throughout our history, we have been an innovator and a market disruptor. Founded in Orange County, California in 2002, we saw an opportunity to bring U.S. consumers quality televisions and sound bars with a significantly greater value proposition. We are based in the United States. We believe this gives us a better understanding of U.S. consumer preferences. As of December 1, 2020, we have sold approximately 82.2 million televisions and 11.8 million sound bars over the lifetime of our company. According to OMDIA, VIZIO was #2 in television market share in North America on a unit shipment basis for the January 2018 to December 2020 combined period. In addition, according to The NPD Group Retail Tracking Service, VIZIO was the #1 sound bar brand in America on a unit sales basis for the January 2018 to December 2020 combined period.

We have both driven and benefitted from powerful secular trends that are transforming the way consumers, content providers and advertisers interact in the entertainment industry. Due to the proliferation of high-speed internet access, and a growing array of content options, we foresaw that consumers would shift increasing amounts of their entertainment into the home. In 2009, we embedded the Netflix application directly on a TV, bypassing the need for additional, externally connected hardware to stream OTT content. Building on this success, we launched our upgraded operating system in 2016, known today as SmartCast, driving consumers to change the way they access and consume content. Through our acquisition of Inscape in 2015, which enhanced our data capabilities including our proprietary Automatic Content Recognition (ACR) technology, we offer valuable data-driven insights and targeting opportunities for our advertisers. Our easy-to-use and integrated platform gives content providers an additional distribution channel and offers advertisers incremental reach to a growing audience that is transitioning away from linear TV.

We have accomplished all of this by staying faithful to our founding principle that VIZIO is "Where Vision Meets Value," and that same principle will continue to guide us as we move forward.

The success of our Device business has created a massive growth opportunity for us. Our Smart TVs provide us with the opportunity to add consumers that are actively engaged with our SmartCast operating system, which in turn, expands our Platform+ monetization opportunities. While we generate the significant majority of our total net revenue from sales of our Smart TVs and sound bars, our Platform+ net revenue has grown 304.4% from $36.4 million in 2018 to $147.2 million in 2020. We believe that Platform+ will be the key driver of our future margin growth and financial performance.

Our key financial metrics for 2018, 2019 and 2020 included:

	2018	2019	2020
		(in thousands)	
Total net revenue	$ 1,780,730	$ 1,836,799	$ 2,042,473
Total gross profit	$ 110,261	$ 165,165	$ 296,358
Net income (loss)	$ (156)	$ 23,086	$ 102,475
Adjusted EBITDA(1)	$ 584	$ 37,604	$ 138,971

(1) We define Adjusted EBITDA, a non-GAAP financial metric, as total net income before interest income (expense), net, other income, net, provision for (benefit from) income taxes, depreciation and amortization and stock-based compensation. See "Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Business Metrics—Non-GAAP financial measure" for a reconciliation between Adjusted EBITDA and net income, the most directly comparable generally accepted accounting principle (GAAP) financial measure and a discussion about the limitations of Adjusted EBITDA.

Our key business metrics for 2018, 2019 and 2020 included:

	2018	2019	2020
		(in millions, except dollars)	
Smart TV Shipments(1)	4.4	5.9	7.1
SmartCast Active Accounts(1) (as of December 31)	3.6	7.6	12.2
SmartCast ARPU(1)(2)	N/A	$7.31	$12.99

(1) For a discussion of how we calculate our key business metrics, see "Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Business Metrics."

(2) Prior to 2019, we did not track SmartCast ARPU and as such we do not present this metric for 2018.

Our Businesses

We operate two distinct but fully integrated businesses: Device and Platform+.

Device

We offer a portfolio of cutting-edge Smart TVs and a versatile series of sound bars that provide an immersive consumer entertainment experience and cater to a range of different consumer price segments. Our devices are sold both in stores and online, including at major national retailers, such as Amazon, Best Buy, Costco, Sam's Club, Target and Walmart. We also sell our devices through our online channel at VIZIO.com. Through our strong and long-standing relationships with our retailers, our product lines are well distributed across the country, which attracts consumers across a broad range of demographics. By working closely with our suppliers, we have been able to focus our resources on design, marketing and distribution.

Platform+

Platform+ is comprised of SmartCast, our award-winning Smart TV operating system, which enables our fully integrated entertainment solution, and Inscape, which powers our data intelligence and services.

SmartCast delivers a compelling array of content and applications through an elegant and easy-to-use interface. It supports many of the leading streaming apps, such as Amazon Prime Video, Apple TV+, Disney+, Hulu, Netflix, Peacock and YouTube TV, and hosts our own free, ad-supported apps, WatchFree and VIZIO Free Channels. SmartCast also supports Apple AirPlay 2 and Chromecast functionalities to allow users to stream additional content from their other devices to our Smart TVs. It provides broad support for third-party voice platforms, including Amazon Alexa, Apple HomeKit and Google Voice Assistant, as well as second screen viewing to offer additional interactive features and experiences.

Our proprietary Inscape technology enables ACR, which identifies most content displayed on the Smart TV screen regardless of the input. We aggregate this viewing data to increase transparency and enhance targeting abilities for our advertisers. Additionally, we are a leader in driving the innovation and development of Dynamic Ad Insertion (DAI). We launched Project OAR (Open, Accessible, Ready), an industry consortium working directly with many of the largest television networks to establish a technology standard to advance the adoption of DAI and addressable advertising. The adoption of our DAI technology is in its early stages and is an example of our innovation in the marketplace.

We monetize Platform+ through several avenues:

Advertising

- Ad-supported Video on Demand (AVOD): Ad inventory on services such as WatchFree, VIZIO Free Channels and certain third-party AVOD services
- Home screen: Ad placements on the SmartCast home screen
- Partner marketing: Images of content and available apps on our television cartons

Data licensing

- Inscape: Data licensing fees from ad technology companies, ad agencies, and networks to aid ad buying decisions or to enable DAI capabilities

Content distribution, transactions and promotion

- Subscription Video on Demand (SVOD) and Virtual Multichannel Video Programming Distributor (vMVPD): Revenue shared by SVOD and vMVPD services on new user subscriptions activated or reactivated through our platform
- Premium Video on Demand (PVOD) and Transaction Video on Demand (TVOD): Revenue shared by PVOD and TVOD services for purchases made on our platform
- Branded buttons on remote controls: Dedicated shortcuts for content providers

Industry Trends

We have both driven and benefitted from powerful secular trends that are transforming the way consumers, content providers and advertisers interact in the entertainment industry.

Proliferation of Smart TVs and shifting consumer viewing preferences

Smart TVs are replacing traditional televisions in U.S. households. According to OMDIA, in 2020, Smart TVs represented 97% of total TV shipments in North America. Further, in 2020, eMarketer estimated that U.S. Smart TV users will increase 24.4% from 112.2 million in 2019 to 139.6 million in 2024, when it is expected that over half of U.S. households will have a Smart TV.

The increased capabilities of Smart TVs are also driving consumers to change the way they view content. eMarketer forecasted U.S. Pay TV households will decrease from 83.9 million in 2019 to 63.4 million in 2024, while Comscore estimated that as of June 2020, there were 69.2 million OTT households. We believe the use cases for Smart TVs will expand beyond streaming content, which will continue to drive adoption as consumers upgrade their televisions and discover more value in the largest screen in the home.

Increasingly connected home ecosystem

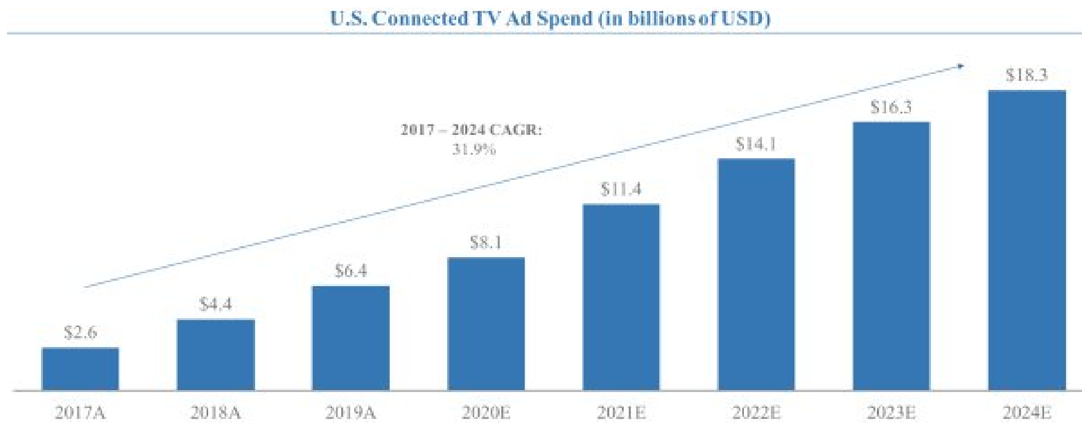
Ease of access to high-speed broadband has enabled the home to become increasingly connected. According to Kagan, a media research group within S&P Global Market Intelligence, U.S. household broadband penetration was 84.7% in 2019. The wide adoption of high-speed internet has enabled a vast range of bandwidth-intensive services, including video, to be delivered directly to the Smart TV. Concurrently, the advent of the Internet-of-Things (IoT) has enabled a frictionless connected home ecosystem. We believe the connected home experience will become more seamless as 5G and Wi-Fi 6 provide higher speeds, lower latency and increased capacity to connected devices, coupled with the technological improvements of voice input devices, intelligent assistants, and artificial intelligence. We expect the introduction of new technologies and services to unlock incremental Smart TV monetization methods. We believe Smart TVs will be an integral part of the connected, digital home because of their features and ability to create an immersive interactive environment. In addition to the streaming services Smart TVs deliver today, Smart TVs will ultimately enable additional services such as personal communications, fitness and wellness, commerce, social interaction, and dynamic entertainment experiences.

Linear TV ad spend shifting to OTT

The consumer shift away from linear TV has disrupted the traditional TV advertising model and moved increasing amounts of ad spend towards OTT. For example:

- eMarketer forecasted that U.S. connected TV advertising is expected to increase 186.6% from 2019 to 2024, indicating that ad dollars are following consumers' viewing preferences.
- Connected TV continues to resonate with linear TV ad buyers as, according to a 2020 IAB report, more than half of ad buyers reported that they are shifting from broadcast and cable TV advertising towards connected TV advertising.
- For the third quarter of 2020, Innovid reports that connected TV significantly increased its share of digital video ad impressions, jumping from 33% in the third quarter of 2019 to 41% in the third quarter of 2020, taking share from Mobile, which decreased from 47% to 43% and PC, which decreased from 20% to 16%.

The data capabilities of connected TV advertising are driving this expected growth, as they present ad buyers the opportunity to better target specific audiences and thus generate a higher expected return on their advertising investment.



Source: eMarketer, US Connected TV Advertising 2020

Future Role of the TV in the Home

We believe we are well positioned to capitalize on these trends and drive the next big shift in the television landscape. Consider everything in a home that can currently be controlled from a smart phone—things like setting a thermostat, adjusting the lights, controlling the refrigerator or setting the alarm. Our vision is for VIZIO Smart TVs to become the center of the connected home and empower these and many other functions.

We have invested in this future, including through the introduction of our SmartCast platform, and we intend to continue to improve our innovative features, such as mobile app control, IoT voice support, and our dynamic operating system to augment such connectivity. Over time, we envision consumers using their VIZIO Smart TVs for:

- *Communication:* Engaging with social networks, using messaging services and accessing telecommuting features such as video conferencing.
- *Fitness and wellness:* Connecting to interactive fitness and wellness services, such as personal training sessions and exercise tracking, from the comfort of their own living room.
- *Commerce:* Browsing online shopping services, purchasing products featured on TV as part of dynamic ads and placing food orders on delivery services through voice control.
- *Community:* Hosting virtual, integrated watch parties for the latest movies or the big game; watching live sports on TV will become an interactive experience through play-along gaming.
- *Dynamic entertainment experiences:* Attending virtual concerts or sporting events offering viewer-controlled, multi-cam experiences.

These services create opportunities for in-app transactions and we believe that by enabling these transactions we will increase monetization on our platform.

Our Market Opportunity

We believe we have a sizable market opportunity in Smart TVs. Beyond this opportunity, we have large market opportunities spanning the television advertising and SVOD markets, as well as the developing connected home market. As the capabilities of Smart TVs increase, we believe they will serve as a center for both aggregating OTT content and broader new and interactive experiences.

The continued shift of consumer viewing habits from linear TV to OTT is expected to accelerate the shift of linear TV advertising dollars to connected TV alternatives. According to eMarketer, U.S. linear TV advertising spend was $70.6 billion in 2019. As viewership grows, connected TV advertising creates a more valuable audience through its targeting abilities. eMarketer forecasted that connected TV advertising will increase from $6.4 billion in 2019 to $18.3 billion in 2024. The continued proliferation of SVOD services enhances the value proposition of free, ad-supported alternatives such as our WatchFree service and we therefore believe that the shift of linear TV advertising to connected TV alternatives will grow even faster than forecasted.

In the United States, consumers spent $18.2 billion in 2019 on SVOD and TVOD services according to PwC. PwC further forecasts these markets are expected to grow to $30.9 billion in 2024. We earn a fee from distributing a range of SVOD and TVOD services and facilitating purchases on our Smart TVs. We believe that our revenue from these services will continue to increase as our installed base continues to grow.

As we expand the functionalities of our Smart TVs and SmartCast operating system, we expect to generate recurring revenue by facilitating additional services.

Our Key Differentiators

Founder-led team with clear vision

William Wang founded VIZIO in 2002, with a dream for making home entertainment accessible to everyone. As our Chairman and CEO, he leads our vision to position the Smart TV as the center of the connected home. We strive to live by his founding principle of "Where Vision Meets Value" by providing high-quality, feature-rich products at affordable pricing. Our commitment to value while delivering high performance enables us to attract consumers and deliver on our vision.

Trusted brand with history of innovation

We have built a strong and trusted brand that symbolizes premium technology, quality and value. The VIZIO platform provides consumers with cutting-edge picture and audio performance that enhances the entertainment experience, while being easy to use and connecting viewers to a broad array of content. We have developed a reputation as a visionary company and market disruptor. For example, in 2009, we launched Netflix as a streaming app on a TV without an external device, and we recently introduced an automatically-rotating sound bar to create an immersive surround sound experience.

Unique asset-light operating model with outsourced manufacturing and supply chain excellence

We have created and continue to leverage an asset-light operating model with outsourced manufacturing that provides scale-driven cost savings and greater flexibility. Our manufacturing partners maintain the full production process for our Smart TVs and sound bars while we focus on designs, product specifications, marketing and distribution. We work very closely with our manufacturing partners in providing exceptional service to consumers throughout the warranty period. We have developed strong relationships throughout our supply chain, and by providing transparencies from suppliers to retailers through a connected IT system and information sharing, we maintain low working capital and inventory risks.

Integrated hardware and software solutions

We have evolved from being a designer of cutting-edge televisions to becoming a pioneer of Smart TVs. Every Smart TV that we have sold since 2019 has included our SmartCast operating system, creating a fully integrated hardware and software solution. Designing both hardware and software allows us to build products that complement each other and provide a superior user experience. Our integrated offering enables us to have full control over the user experience. Equipped with our SmartCast operating system, our Smart TVs offer

consumers a unified solution for their entertainment needs, allowing us to generate recurring revenue and deliver significant lifetime value, which further enables us to deploy competitive Smart TVs in the future.

Broad access to OTT services provide multiple revenue streams

Our platform provides consumers with seamless access to many popular OTT services, including Amazon Prime Video, Apple TV+, Disney+, Hulu, Netflix, Peacock and YouTube TV. We are focused on distributing the content our consumers want to watch, regardless of source. Our large embedded base of Smart TVs in homes across the United States, and our collaborative approach with third-party OTT services, enables us to broadly distribute and successfully monetize OTT apps in multiple ways. For example, we receive a share of subscription and transaction fees when retailers subscribe or make a purchase on their VIZIO Smart TV. We also receive revenue from priority advertising on our SmartCast home page and app buttons on our remote controls. Further, our largest monetization opportunity stems from third-party content through WatchFree, VIZIO Free Channels and select AVOD platforms. On these services, we receive ad inventory that we sell directly to brands, ad agencies, and programmatic connected TV ad buyers. We facilitate a win-win relationship with our content providers by acting as another distribution channel for their content. Further, as consumers engage in more activities through their Smart TV, we expect to monetize those activities and transactions.

Platform+ is well-positioned to monetize the shift to OTT

The consumer shift away from linear TV has disrupted the traditional TV advertising model, which is undergoing a transition to OTT. Smart TVs offer an attractive value proposition for advertisers to reach cord-cutters who have disconnected their Pay TV subscription or consumers who have never subscribed to Pay TV in a more targeted way. Our large Smart TV footprint in the United States provides us with the scale to reach a growing audience of consumers who are shifting away from linear TV. Through WatchFree and VIZIO Free Channels, we offer ad inventory that is attractive to both programmatic and direct advertising buyers. Additionally, we effectively monetize advertising capabilities by leveraging our data and technologies, including ACR, to offer increased transparency and enhanced targeting abilities to advertisers.

The VIZIO Value Proposition

Consumers

For consumers, we deliver a premium and interactive entertainment experience at an affordable price. We offer a large portfolio of Smart TVs and sound bars ranging in size, features and price to generate a broad market appeal. Our SmartCast operating system provides many of the leading streaming apps and, by aggregating consumer viewing data, offers personalized recommendations through an easy-to-use interface. Together, our Smart TVs and SmartCast operating system create an immersive and individualized entertainment experience.

Retailers

For retailers, we provide quality, affordable and competitive products that attract consumers across a broad range of demographics, drawing additional consumers to these retailers and helping grow their revenue. We support these retailers with a dedicated and experienced sales management team, who work with retailers to ensure a joint business strategy, cross promotions and shelf space optimization.

Content providers

For content providers, our large base of Smart TVs that are in millions of homes across the United States provides an additional avenue to increase viewership and subscriptions. SmartCast enables them to reach a growing audience that is shifting away from linear TV. We facilitate a win-win relationship with our content providers by acting as another distribution channel for their content. Our WatchFree and VIZIO Free Channels

apps provide an avenue for content providers to gain additional viewership and increase monetization opportunities. Additionally, our homepage serves as valuable real estate for content providers to promote new shows in order to drive engagement on their platforms.

Advertisers

For advertisers, we offer truly incremental reach to linear TV advertising as many VIZIO consumers either do not connect a cable or satellite box to their Smart TVs, or supplement their linear TV viewing with streaming content. Additionally, we expect our ACR and DAI capabilities to allow for more targeted advertising, including for those consumers who view linear TV on our Smart TVs. The combination of our significant reach, ability to target ads and data insights improve advertisers' return on investment.

Our Growth Strategy

Increase the sales of our Smart TVs

Our current market position reflects consumer demand for our cutting-edge technology at affordable prices. We will continue to invest in designing and developing new features, as well as in our sales and marketing, to maintain and enhance our relationships with our retailers. By continuing to offer cutting-edge technology, engaging in targeted sales and marketing efforts, supporting many of the most popular OTT apps and introducing innovative features that enhance use cases, we expect to increase the sales of our Smart TVs.

Grow awareness and adoption of SmartCast

By selling Smart TVs, we have the opportunity to bring additional consumers onto our SmartCast operating system. Through a combination of a vast array of content from leading third-party apps and expanding our platform's functionalities, we are focused on making SmartCast the primary source for content streaming and driving SmartCast Active Accounts. We will continue to invest in our SmartCast operating system and increase consumer awareness by leveraging our sales and marketing teams to emphasize SmartCast's capabilities as a key selling feature.

Drive user engagement

Our SmartCast operating system is the gateway to a streamlined entertainment experience, and we believe that SmartCast can one day power the connected home. SmartCast provides consumers with access to a broad range of content, and our intuitive user interface can deliver a wide variety of relevant, personalized content recommendations based on user viewing behavior. This enables viewers to easily discover and engage with content from leading providers on our Smart TVs. Therefore, by partnering with key content providers it will enable us to continue to provide free and compelling content that users want to watch. By growing our content library, delivering a more personalized viewing experience and increasing the functionalities of our Smart TVs, we can enhance the consumer experience and drive user engagement.

Grow SmartCast ARPU

We expect to grow SmartCast ARPU as we increase our monetization capabilities and the hours spent on our platform. Increasing advertising on our platform is currently the largest opportunity to enhance our SmartCast ARPU. We intend to leverage our significant market share in U.S. homes, our engaged user base on SmartCast, our Inscape data capabilities and investments in our advertising sales force to increase our advertising revenue. For the year ended December 31, 2020 our SmartCast ARPU was $12.99, representing a 78% year-over-year increase.

Our Technology

We are focused on providing the best consumer experience and powerful solutions for content providers and advertisers to reach a broad and engaged audience. We have developed an array of technologies that seamlessly integrate our hardware and software. Our integrated offerings allow us to provide exceptional value for consumers, retailers, content providers and advertisers.

SmartCast

Our application experiences are powered by a vast media library brought together by the SmartCast operating system. Through feed ingestion, content matching, and metadata merging services, the SmartCast home page aggregates content from major third-party OTT apps and our free, ad-supported streaming service, WatchFree, to enable a content-centric user experience. SmartCast then leverages user data and behavior to optimize recommendations and search results using AI. VIZIO's cloud infrastructure operates on Amazon Web Services and other providers, which provide efficient scaling to match our needs.

To support the current generation of Smart TV streaming apps and the planned wave of interactive services, we have formed a VIZIO Unified Interactive Framework team. This team works to provide a Javascript SDK and embedded ReSTful web service interface to developers, allowing them to create next generation Smart TV apps. The SDK combines the following Unified Interactive Framework services:

- Application-specific voice: We provide a voice AI service, through which app developers can register to be notified when app-specific user voice commands are detected. By not constraining developers to a fixed range of voice commands, we enable developers to create new experiences for consumers.
- User profile & VIZIO wallet: Allows developers to initiate in-app purchasing through services, including consumer registration, billing, purchasing and subscription management.
- Interactive video synchronization: By enabling video to be synchronized with or trigger other experiences, we enable apps to complement the video, opening up a range of user experience enhancements and commerce services.

Embedded in all our Smart TVs is the SmartCast Platform Layer (SCPL), a cutting-edge web service middleware that simplifies management and control, supports major voice assistants and provides broad services supporting app development. Our SCPL connects to the internet through an IoT connection and enables consumers to monitor, manage, and control other connected devices. Additionally, it allows us to provide remote services and features for next generation Smart TVs, including adding and modifying apps, providing push notifications, and provide billing and other consumer services, all at a low cost. Our SCPL and SDKs are hosted on ViziOS, our proprietary secure Linux-based operating system that hosts all SmartCast apps and services as an abstraction layer. This implementation enables SmartCast to be quickly matched and deployed to a range of devices and SOCs, from cost effective Full High Definition (FHD) to premium 4K SOCs.

Automated Content Recognition

We offer a cutting edge, screen-embedded ACR technology that increases transparency and enhances targeting abilities for advertisers. We access a wide range of TV viewing data from millions of TVs to help content providers and advertisers understand their audience. Our ACR technology is:

- *highly scalable* and supports over 12.2 million SmartCast Active Accounts as of December 31, 2020;
- *real time* detection of every second of TV viewing;
- *supportive of broad TV networks*, matching viewing behavior across 475 linear TV channels across all U.S. designated market areas (DMAs);

- *integrated with third party matchers*, such as Experian, LiveRamp, Adobe and 4info, combining first and third party data to perform segmentation and targeting; and
- *a combination of video and audio ACR* to improve matching accuracy and content matching (such as ticker advertisements, monochromatic content and SDR content).

Our ACR technology is compliant with Project OAR, a consortium of programmers and platforms that define the technical standards to deliver targeted advertising in linear and on-demand formats.

Hardware and chipsets

Our approach to picture quality, including our use of advanced design and our own algorithms, create high-quality panels and give us a competitive advantage in the market when it comes to picture quality and user experience. We continue to invest in these technologies, and our high-performing TV picture quality is the culmination of our product design and specifications of LCD Panels, LED backlights, chipsets, software and Quantum Dot Films. In particular, some of the powerful performance features of our Smart TVs include:

- High Dynamic Range: We have exceptional ratings for the High Dynamic Range (HDR) performance (with our P-Series Quantum X HDTVs) because we design the product with high contrast ratios, and most of our current 4K HDTV products are compatible with the latest in HDR formats like Dolby Vision, HDR10, HDR10+ and HLG.
- Contrast: Our combination of LCD panels, LED backlights and software provide a high contrast ratio for our M-Series and P-Series TV collections. This technology dynamically controls the individual LED Brightness based on the content in real time to provide deep black levels.
- Brightness: We produce vividly bright TVs by producing up to 3,000 nits of brightness.
- Color: We use advanced Quantum Dot Film (in both M-Series & P-Series models) to reach extremely rich colors.
- Uniformity: Our LCD panels go through a propriety test method in manufacturing, designed to ensure our Smart TVs pass a strict quality assurance test of uniformity so that they produce a great picture throughout the panel and display area.
- Gaming performance: We produce advanced TV models that have a fast response rate, high brightness, quantum color, high contrast ratio and are powered by chipsets that deliver extremely low latency which make them ideal for gaming. We were voted Best 4K HDR LED TV by Rtings.com in 2020 and Best 4K TV for Gaming by IGN in 2020.

We deliver exceptional sound bar performance through a combination of award-winning product design, high-performance specifications in speaker development and software. Our sound bars deliver:

- Home theater performance: Our sound bars offer clear and dynamic sound performance, with select models producing up to 107 decibels.
- Audio tuning: We have advanced software specifications to tune our sound bars to achieve both cinematic and pure audio output quality.
- Precise audio output: We are also leading the home theater industry by developing a specification to measure accuracy and performance of audio output and using this specification to design all of our sound bars. This specification focuses on audio decibel dynamic range, reduction of distortion and superior surround sound performance.
- Dolby ATMOS sound bar leadership: We have also designed leading sound bars which support Dolby ATMOS and are well known for immersive sound bar technology. We have the only ATMOS sound bar on the market that automatically rotates speakers based on content. Our Elevate sound bar has won numerous accolades and awards for its performance in 2020, including the Best Soundbar by Wirecutter in 2020.

Our Products

While our Smart TVs and sound bars continue to generate the significant majority of our total net revenue, we believe our advertising products offer the largest opportunity to profitably grow our business. We intend to significantly invest in expanding our advertising capabilities further accelerating the secular shift to connected TV advertising.

Advertising

Our advertising products benefit advertisers and content providers by offering a range of options to connect with our audience. We utilize the data we collect through our SmartCast operating system to help advertisers deliver better ads and help content providers find the right audience for their programming. We also invest in the development of new technologies, such as ACR and DAI to facilitate ads delivered over linear TV. Our proprietary Inscape data services collect viewing behavior on most content and advertisements that connects to our Smart TVs via external input as well as streamed to the TV via OTT, providing us with a powerful competitive advantage due to the breadth of data sources.

Examples of some of the data we collect through Inscape include the identity of the television programs and commercials viewed on a television, the time, date and channel on which they were viewed, and whether the programs and commercials were viewed live or at a later time. We store this Inscape data in third party data warehouses in non-identifying form, meaning viewing data is not associated or correlated with an individual's name or other contact information.

Our primary advertising products include:

- Ad Inventory: Through WatchFree and VIZIO Free Channels, we offer a broad range of advertising inventory across a variety of programming genres. We sell 15- and 30-second video ads for this programming and enable product sponsorships and promotional channels to drive shopping. We also negotiate inventory shares with certain AVOD apps.
- Promotional Ads: Our home screen is a powerful tool that helps consumers discover new content and easily find their favorite apps and shows. We sell advertising space in our Hero Banner and Discover Banner, allowing content providers options to showcase a movie or show. We also offer content providers the opportunity to purchase buttons on our remote controls to facilitate easy access to their apps.
- Viewing Data: We utilize our ACR technology to help advertisers and these AVOD apps deliver better ads to consumers.

Smart TVs

Our broad Smart TV portfolio consists of five series, each designed to target a specific consumer segment and their preferences for high picture quality, powerful processing and video performance, smart capabilities, a wide variety of content, streamlined connectivity and convenience features, and a stylish, modern industrial design.

Since our founding in 2002, we have focused on advancing the picture quality of flat screen displays with investments in key technologies that increase contrast levels for brighter white and deeper black levels, produce more accurate and wider ranges of color, and drive better clarity and detail in images, especially in fast moving scenes. Capable of producing rich contrast levels and vibrant picture quality, each of our models takes advantage of full-array LED backlighting to deliver exceptional picture quality for each consumer segment. In 2020, we brought our first OLED TV to the market, which delivers infinite contrast, true to life colors and wider viewing angles. These visual capabilities have been paired with our suite of gaming features, such as variable refresh rate, AMD FreeSync technology and 4K 120fps gameplay, bringing consumers an elevated gaming experience. In addition, we include SmartCast and voice control compatibility across every model for a smart, innovative and

tailored entertainment experience with high performance at a better value. The SmartCast technology is multimodal and designed to enable users to discover and playback content and control their devices with remote controls, voice and mobile devices.

VIZIO

OLED

For Cinephiles looking for the ultimate TV performance.

Next-generation picture quality that brings colors and exquisite contrast to life

Sizes: 55" - 65" • **MSRP:** $1299.99-$1999.99

4K

P-Series

For sports and home theater enthusiasts seeking high quality entertainment experiences.

Alluring infinity edge design

Sizes: 65" - 85" • **MSRP:** $1199.99-$3099.99

4K QUANTUM COLOR

M-Series

For families and young professionals looking for high quality and innovation at great value.

Generates deep black levels and rich contrast

Sizes: 50" - 65" • **MSRP:** $399.99-$799.99

4K QUANTUM COLOR

V-Series

For first-time buyers, college students, and others looking for new tech at an amazing value.

4K TV experience that brings entertainment to life

Sizes: 40" - 75" • **MSRP:** $299.99-$779.99

4K

D-Series

For shoppers seeking a quality HDTV with best-in-class smart TV features ideal for extra rooms, school, and work.

Delivers dependability and value

Sizes: 24" - 43" • **MSRP:** $119.99-$229.99

VIZIO SmartCast®

Hundreds of FREE TV channels

Watch Free

MORE FREE CHANNELS!

Popular built-in apps

prime video, tv+, Disney+, FOX NOW, hulu, NETFLIX, peacock, YouTube

Additional apps on platform

Additional streaming technology

Apple AirPlay

Chromecast built-in

Works with voice technology

alexa

Apple HomeKit

Hey Google

Sound bars

Our broad collection of high-performance sound bars delivers the home theater experience with immersive sound, powerful performance, and modern designs optimized to fit the user's room and television size. Our sound bars are voice assistant ready and include Bluetooth to allow consumers to easily pair and stream music by voice command or from their mobile device or personal computer, and every sound bar includes clear, quick-start instructions, mounting guides and common cables necessary for set-up, improving the out-of-box experience and reducing support calls. Our 5.1.4 sound bar also features adaptive height speakers that automatically rotate based on the type of content streamed, bringing users an exceptional audio and entertainment experience.

Awards and Accolades

Our products and value proposition have earned numerous awards and accolades from popular press. Our devices have been consistently highlighted by industry reviews and awards, and most recently received over 25 Best of CES 2020 accolades. The industry awards we have received in recent years include:

VIZIO OLED TV:

- In 2020, we received the CES Best of Year award from Reviewed.com for the VIZIO OLED TV.
- WIRED Magazine named the VIZIO OLED TV as the Best of CES 2020.
- Tom's Guide named the VIZIO OLED TV as one of the Best New TVs at CES 2020 (so far).

M-Series Televisions:

- In 2020, we received the CES Editors' Choice award from Reviewed.com for our M-Series TVs.
- Tom's Guide named the M-Series as the Tom's Guide Editor's Choice in 2019.

P-Series Televisions:

- Android Authority named the P-Series one of the Best New TVs at CES 2020.
- IGN named the P-Series the Best 4K TV for Gaming in 2020.

Audio Products:

- In 2020, we received the Red Dot Design Award for the Elevate Sound Bar.
- In 2020, Wirecutter named the VIZIO Elevate 5.1.4 Home Theater Sound Bar as the Best Soundbar of 2020.

In addition, VIZIO's consumer service has been recognized for excellence over many years. We have been awarded 112 Stevie Awards for Sales & Customer Services including six top ten, 14 Gold, 38 Silver, and 54 Bronze Stevie Awards over the last ten years.

Research and Development

We are passionate about designing cutting-edge products that drive consumer demand and enhance our brand. We believe that our future success depends, in part, upon our ability to continue to develop innovative new products, make enhancements to our existing products, and improve functionality and ease of use. We will continue to employ a consumer-focused design approach by providing innovative products that respond to, anticipate and even drive consumer desires for enhanced picture quality, audio quality, functionality, design and ease of use.

Our strong relationships with our supply chain partners allow us to collaborate with these partners on research and development with a significant pool of research and development capabilities and experience. Although we design our products in-house and perform high-value research and development in-house, we are able to leverage the resources of our suppliers' research and development functions to execute quickly on new product introductions.

We design our products to be aesthetically pleasing, with a focus on premium picture quality and an intuitive user experience. Our products include next generation technology, such as full-array LED backlighting, which enhances the viewing experience.

Manufacturing and Operations

While all of our products are designed in California, we outsource manufacturing to a diversified base of manufacturers including BOE, Foxconn, Innolux, KIE, Tonly, TPV and Zylux, which purchase components and assemble our Smart TVs, sound bars and other entertainment products in facilities in Vietnam, China, Taiwan, Thailand and Mexico. In light of trade tensions in recent years between the United States and China, manufacturing sites for a majority of our Smart TV volume have been diverted away from China. Although we do not have any long-term purchase contracts, we have executed product supply agreements with these manufacturers, which generally provide indemnification for intellectual property infringement, agreed upon price concessions, product quality requirements and vendor managed inventory expectations. We do not own manufacturing facilities, which provides us with flexibility and an ability to adapt to market changes, product supply and pricing while keeping our fixed costs low. Our strategic relationships with our manufacturers are critical to new product introduction and the success of our business. We have strong relationships with our manufacturers, helping us meet our supply and support requirements.

We focus on driving alignment of our product roadmaps with our manufacturers and determining how to collectively reduce costs across the supply chain. We use multiple manufacturers for our finished products. Our operations team coordinates with our manufacturers' engineering, manufacturing and quality control personnel to develop the requisite manufacturing processes, quality checks and testing and general oversight of the manufacturing activities. We believe this model has enabled us to effectively and efficiently deliver high quality and innovative products while enabling us to minimize costs and manage inventory risk.

Logistics and Fulfillment

The parts for our products are procured directly by our manufacturers. We utilize our business planning team to obtain competitive pricing on certain components, and we leverage our manufacturers' volume purchases for best pricing on common parts. Televisions, sound bars and accessories are typically manufactured and packaged for retail sale and shipped via ocean freighter from our manufacturers in Asia and by trucks from our manufacturers in Mexico to logistics hubs. From the hubs, our devices are shipped using our logistics network of hubs and carriers to more than 250 ship to destinations. Our business planning team also coordinates with our manufacturers to better ensure the shipment of our products from the manufacturer to these logistics hubs meets consumer needs. We typically take ownership of the products directly from these logistics hubs, and our logistics team manages this process as we deliver the products to our retailers. We utilize a vendor-managed inventory strategy that allows us to reduce costs across the supply chain and improve inventory flexibility.

Distribution and Sales of our Smart TVs and Sound Bars

While we sell to large and small retailers across the United States and directly to consumers through our website, we have historically focused on the large-scale distribution channels to drive the most efficient economies of scale and accelerate our market share. This proved to be a highly successful strategy as we have achieved a solid market share position. This approach enabled us to keep our fixed costs low and grow revenue rapidly with low headcount. We believe that our retailers make up a significant portion of the total U.S. consumer

electronics market. According to gap intelligence, as of December 31, 2020, VIZIO held the #1 or #2 HDTV shelf share at many major consumer electronics retailers such as Sam's Club, Target and Walmart. We plan to continue to expand our product offerings to capture a higher share of shelf space at existing and new retailers.

Marketing of our Smart TVs and Sound Bars

We expect that our reputation for innovative products will continue to play a significant role in our growth and success, and that high consumer satisfaction will continue to fuel word of mouth referrals of our brand to new consumers. Since our founding in 2002, we have built a highly recognizable brand in the United States.

We expect to continue investing in advertising and marketing programs that further build brand awareness, drive deeper brand engagement and foster long-term brand loyalty. Our marketing programs focus on engaging the wide spectrum of consumers from first-time shoppers to premium home theater enthusiasts, and leverage traditional advertising, high-impact sponsorships, and public relations, as well as more innovative digital marketing, social media, and retail marketing strategies that drive consideration and purchase.

Brand marketing

We focus on optimizing the efficiency and reach of our marketing spending by investing in programs that not only have mass market reach but also fuel active engagement with our brand. Early on, we employed the use of full-color packaging that served as high-impact advertising in wholesale and retail channels, accelerating initial consumer awareness and education about our products with minimal additional cost. Today, our focused approach is to drive education and awareness of new VIZIO features and technology through omni-channel marketing campaigns both online and in-store.

Digital marketing

In addition to paid media, we have developed innovative digital marketing programs to leverage shared, earned and owned media to efficiently drive brand engagement and consideration. In 2020, we launched targeted influencer campaigns to drive awareness to our product features or product segments in which we can convert paid media impressions into engagement through earned, owned and shared media that drive long-term brand loyalty and education.

As our products tend to be highly researched purchases, we have invested in building robust digital marketing programs to help drive shoppers along the consumer journey, with resources such as educational websites and product videos to explain new technologies like 4K UHD, Quantum Color and home theater audio quality and editorial content promoted through native advertising.

Retail marketing

Our in-store merchandising strategy focuses on engaging consumers with point of purchase displays that showcase the picture and audio quality of our products, explain the benefits of our TV's smart capabilities, technologies and features. We believe our merchandising strategy helps streamline the final purchase decision with simple, consistent messaging at the point of sale, including packaging, fact tags, and other item level signage. Our merchandising programs are designed to target the key demographics of the shoppers in each channel and are optimized for effective deployment and compliance with retailers' operations, from mass market to warehouse club to premium electronics retail environments.

Consumer Experience and Support

We believe that one of our key differentiators is our focus on the consumer experience. Our motto, Where Vision Meets Value, reflects our mission that by purposeful, award-winning design, strong partnerships, and American ingenuity, we make high-performing technology and content available at affordable prices.

We leverage feedback from our award-winning consumer call centers to improve our design in both performance and simplicity with each product design cycle. We believe that our focus on simplifying the initial consumer experience minimizes the need for backend support.

Our consumer support personnel are responsible for handling general consumer inquiries, answering consumer questions about products and solving technical issues consumers may have. Our consumer service representatives also report the feedback that they gain from consumers to our product development team on a monthly basis, so that we can continuously improve our products' design, installation and usability. We train and empower our consumer support staff to solve issues and remedy situations in a timely manner, increasing consumer satisfaction. Since 2012, we have been awarded 112 Stevie Awards for Sales & Customer Services including six top ten, 14 Gold, 38 Silver and 54 Bronze Stevie Awards over the last ten years.

Intellectual Property

Intellectual property is an important aspect of our business, and we seek protection for our intellectual property as appropriate. We rely upon a combination of patent, trade secret, copyright, and trademark laws and contractual restrictions, such as confidentiality agreements and licenses, to establish and protect our intellectual property and proprietary rights.

We own and utilize the trade name "VIZIO" and the VIZIO logo and trademark on all of our products. We believe that having distinctive marks that are registered and readily identifiable is an important factor in identifying our brand. As of December 31, 2020, we owned 619 active trademark registrations and applications throughout the world, including 46 active trademark registrations and applications in the United States.

As of December 31, 2020, we owned 266 issued patents and 148 pending, allowed or published but not yet issued patent applications in the United States, Australia, Brazil, Canada, Chile, China, France, Germany, Hong Kong, Japan, Mexico and the United Kingdom. However, we cannot be certain that our patent applications will be issued or that any issued patents will provide us with any competitive advantage or will not be challenged by third parties. Our issued U.S. patents will expire between 2021 and 2036.

Historically, we have been contractually indemnified and reimbursed by our manufacturers for most intellectual property royalty obligations and commitments. We receive such funding from the manufacturers either through direct reimbursement or payment of net purchase price. We cannot guarantee that we will be able to obtain such indemnities and reimbursements on favorable terms or at all.

In addition to the foregoing protections, we generally control access to, and use of, our proprietary and other confidential information, through the use of internal and external controls, including contractual protections with employees, manufacturers, distributors and others. We will continue to file and prosecute patent applications when appropriate to attempt to protect our rights in our proprietary technologies. We often rely on licenses of intellectual property for use in our business. If we fail to protect and enforce our intellectual property rights adequately, our competitors might gain access to our technology, we may not receive any return on the resources expended to create or acquire the intellectual property or generate any competitive advantage based on it, and our brand, business, financial condition and results of operations may be harmed. See "Risk Factors—Risks Relating to Our Supply Chain, Content Providers and Other Third Parties" and "Risk Factors—Risks Relating to Intellectual Property" for more information.

Competition

We believe the principal competitive factors impacting the market for our devices are brand, price, features, quality, design, consumer service, time-to-market and availability. We believe that we compete favorably in these areas. The consumer electronics market in which we operate is highly competitive and includes large, well-established companies. Our Smart TVs face competition from large consumer electronics brands such as

Samsung, Sony, LG, Hisense, TCL and Onn, which was recently introduced by Walmart. Our sound bars face competition from large consumer electronics brands such as Samsung, Sony, LG, Bose, Sonos and Onn. Many of our competitors have greater financial, distribution, marketing and other resources, longer operating histories, better brand recognition and greater economies of scale. In addition, these competitors have long-term relationships with many of our retailers.

Our Platform+ business competes both to be the entertainment hub of consumers' homes and to attract advertising spend. We expect advertising spend to continue to shift from linear TV to connected TV, and as such we expect new competition to continue to intensify for viewership and for advertising spend. In this respect, we compete against other television brands with Smart TV offerings, such as Samsung, as well as connected devices such as Roku, Amazon Fire Sticks and Apple TV and traditional cable operators seeking to integrate streaming media into their existing offerings. We also compete with OTT streaming services such as Hulu and YouTube TV, as such services are able to monetize across a variety of devices and consumers may engage with their content through devices other than our Smart TVs. We compete with these devices and services in part on the basis of user experience and content availability, including the availability of free content. In addition, we compete to attract advertising spending on the basis of the size of our audience and our ability to effectively target advertising.

Government Oversight, Regulation and Privacy Practices

In February 2017, we stipulated to the entry of a judgment in federal district court with, and paid certain penalties to, the Federal Trade Commission, the New Jersey Attorney General and Director of the New Jersey Division of Consumer Affairs to settle alleged violations of Section 5 of the Federal Trade Commission Act and New Jersey Consumer Fraud Act (the Order). The Order requires us to provide additional notices (separate and apart from our privacy policies) to consumers when our devices are collecting information about what consumers are watching on our devices (viewing data). Under the Order, VIZIO devices connected to the internet may only collect viewing data from devices which have expressly consented to this practice, after receiving notice of the collection, use and sharing of viewing data and we must provide instructions on how consumers may revoke such consent for our devices.

The Order also required us to delete certain viewing data we collected, prohibits us from misrepresenting our practices with respect to the privacy, security or confidentiality of consumer information we collect and requires us to maintain a privacy program with biennial assessments of that program and maintain certain records regarding our collection and use of consumer information. The obligations under the Order remain in effect until 2037.

With this renewed focus on privacy, we strive to provide a valuable, transparent, and user-directed Smart TV platform service. We maintain privacy policies, management oversight, accountability structures and technology processes designed to protect privacy and personal information. Our posted privacy policies are accessible to users of our devices or applications, and visitors to our websites. These privacy policies disclose how we collect, use, share and protect information we collect from or about consumers or their devices. We follow a documented privacy management program and strive to ensure that our posted privacy policies are complete, accurate, fully implemented and consistent with applicable legal requirements.

We collect and use personal information to create online accounts, effect e-commerce transactions, provide customer service, support and product registration, and for other purposes. We collect information through internet connected devices, such as Smart TVs, and also through our websites or mobile applications. We do not collect information about what content is playing on an internet connected VIZIO unit unless that unit has agreed to this collection, through an affirmative acceptance following display of a "separate and apart" disclosure regarding collection, use and sharing of such data, which meets or exceeds the Order's requirements for prominence. Consumers also have means to opt-out of (if previously having opted-in to) this tracking through user settings on the device.

In addition to the Order, we are subject to numerous U.S. federal and state and foreign laws and regulations that involve matters central to our business. These laws and regulations may involve privacy, data protection, data security, content regulation, intellectual property, competition, consumer protection, payment processing, environmental matters, taxation and other subjects. Many of these laws and regulations are still evolving and being tested in courts and could be interpreted and applied in a manner that is inconsistent with our current policies and practices in ways that could harm our business. In addition, the application and interpretation of these laws and regulations often are uncertain, particularly in new and rapidly evolving industries.

The regulatory framework for data protection, privacy and information security is evolving rapidly. For example, the CCPA went into effect on January 1, 2020. The CCPA requires covered companies to, among other things, provide new disclosures to California consumers and afford such consumers new abilities to opt-out of certain sales of personal information. Additionally, a new privacy law that significantly modifies the CCPA, the California Privacy Rights Act (CPRA) was passed by California voters in November 2020. Aspects of the CCPA, the CPRA and other laws and regulations relating to data protection, privacy, and information security, as well as their enforcement, remain unclear, and we may be required to modify our practices in an effort to comply with them. Foreign data protection, privacy, consumer protection, content regulation and other laws and regulations are often more restrictive or burdensome than those in the United States. The CCPA and CPRA could mark the beginning of a trend toward more stringent privacy legislation in the United States. The CCPA has already prompted a number of proposals for federal and state privacy legislation that, if passed, could increase our potential liability, add layers of complexity to compliance in the U.S. market, increase our compliance costs and adversely affect our business.

Violation of existing or future regulatory orders, settlements or consent decrees could subject us to substantial monetary fines and other penalties that could negatively affect our business, financial condition and results of operations. For additional information, see “Risk Factors—Risks Relating to Legal and Regulatory Matters.”

Employees

As of December 31, 2020, we had 527 full-time, U.S.-based employees. During the holiday season, we have historically added temporary workers to augment our full-time work force. None of our employees are currently covered by a collective bargaining agreement. We consider our relationship with our employees to be excellent and have never experienced a labor-related work stoppage. In our efforts to manage our human capital, we seek to identify, attract and retain employees who are aligned with and will help us progress towards our mission, and we aim to provide competitive compensation.

Facilities

Our corporate headquarters are located in Irvine, California, where we wholly own one building, located at 35 Tesla, and have a minority ownership in another building, located at 39 Tesla. We lease the office building located at 39 Tesla from an entity which is principally owned by two of our employees, our Chief Executive Officer and another employee. See “Related Party Transactions—Lease of Headquarter Premises” for further discussion. We also lease a building at 43 Tesla that includes office and warehouse space. We also lease facilities in Bentonville, Arkansas; Bloomington, Minnesota; Dakota Dunes, South Dakota; Dallas, Texas; New York, New York; San Francisco, California; and Seattle, Washington.

Legal Proceedings

We are currently, and in the future may continue to be, subject to litigation, claims and assertions incidental to our business, including patent infringement litigation and product liability claims, as well as other litigation of a non-material nature in the ordinary course of business. We believe that the outcome of any existing litigation, either individually or in the aggregate, will not have a material impact on our business, financial condition, results of operations or cash flows.

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MANAGEMENT

Executive Officers and Directors

The following table sets forth information about our executive officers and directors as of February 28, 2021:

Name	Age	Position
William Wang(1)	57	Founder, Chairman and Chief Executive Officer
Ben Wong	59	President and Chief Operating Officer
Adam Townsend	48	Chief Financial Officer
Bill Baxter	57	Chief Technology Officer
Michael O'Donnell	39	Chief Revenue Officer, Platform+
John Burbank(1)(2)	57	Director
Julia S. Gouw(2)	61	Director
Shiou Chuang Huang(3)	69	Director
David Russell(2)(3)	57	Director

(1) Member of our nominating and corporate governance committee.
(2) Member of our audit committee.
(3) Member of our compensation committee.

William Wang co-founded VIZIO and has served as Chairman of our board of directors and our Chief Executive Officer since December 2020 and as the Chairman of California VIZIO's board of directors and Chief Executive Officer of California VIZIO since its founding in 2002. Mr. Wang also served as California VIZIO's Chief Technology Officer from 2002 to March 2010. Prior to founding VIZIO, Mr. Wang was the founder, President and Chief Executive Officer of PGS OEM, Inc., a distributor of computer monitors. PGS OEM began winding down its operations in 1998 and liquidated in Chapter 7 bankruptcy in 2005. Mr. Wang holds a Bachelor of Science in Electrical Engineering from the University of Southern California.

Mr. Wang was selected to serve on our board of directors due to the perspective and experience he brings as one of our founders and as one of our largest stockholders, as well as his extensive experience within the television manufacturing industry.

Ben Wong has served as our President and Chief Operating Officer since December 2020 and as the President and Chief Operating Officer of California VIZIO since April 2010, having also served as California VIZIO's Acting Chief Financial Officer from August 2017 to May 2020, and having previously served as California VIZIO's Chief Financial Officer and Chief Operating Officer from April 2005 to May 2006. From June 2006 to April 2010, Mr. Wong held executive-level roles at Fugoo Corporation, an internet appliance company, at AmTRAN Technologies Co. Ltd., a manufacturer of televisions and displays and one of our largest stockholders, at Suzhou Raken Technology, Ltd., a television manufacturer, which is a joint venture of AmTRAN and LG Display Co., LTD, and at Packard Bell B.V., a computer company in France. In 2002, Mr. Wong consented to the issuance of an SEC order providing that he cease and desist from committing or causing violations of certain federal securities laws and related SEC regulations. The order related to actions taken from 1996 to 1998, and Mr. Wong neither admitted nor denied the findings in the order. The order did not impose any monetary penalties on Mr. Wong and did not bar him from serving as an officer or director of a public company. Mr. Wong holds a Bachelor of Science in Accounting from California State University, Los Angeles.

Adam Townsend has served as our Chief Financial Officer since December 2020 and as California VIZIO's Chief Financial Officer since May 2020. Prior to joining VIZIO, Mr. Townsend was the Chief Financial Officer of Showtime Networks Inc., an entertainment company and wholly owned subsidiary of ViacomCBS, from October 2018 to March 2020. From July 2008 to October 2018, Mr. Townsend held roles in finance and investor

relations at CBS Corporation, including serving as Executive Vice President, Corporate Finance and Investor Relations from January 2016 to October 2018 and as Executive Vice President, Investor Relations from July 2008 to January 2016. Mr. Townsend holds a Bachelor of Science in Biology from the University of California, Los Angeles.

Bill Baxter has served as our Chief Technology Officer since December 2020 and as California VIZIO's Chief Technology Officer since January 2018. From January 2015 to December 2017, Mr. Baxter held various roles within our engineering organization, most recently as Senior Vice President of Product Development and Engineering. From September 2010 to December 2014, Mr. Baxter was the Chief Technology Officer and Executive Vice President of Products at BuddyTV, an entertainment-based website that was acquired by VIZIO in January 2015. Prior to BuddyTV, Mr. Baxter founded and held executive-level roles at several technology companies. Mr. Baxter holds a Bachelor of Science and Master of Science in Computer Science from the University of Wyoming.

Michael O'Donnell has served as our Chief Revenue Officer, Platform+ since December 2020 and as California VIZIO's Chief Revenue Officer, Platform+ since July 2020, having previously served as our Senior Vice President, Platform Business, from September 2019 to July 2020. Prior to joining VIZIO, Mr. O'Donnell served as Chief Revenue Officer of Connekt Inc., an advertising and data science company, from July 2017 to September 2019. Prior to that, from July 2011 to July 2017, Mr. O'Donnell served in senior sales positions at YuMe, Inc., a video advertising platform that was acquired by RhythmOne plc in 2018, including as Senior Vice President, North America Sales from June 2016 to July 2017 and as Vice President, East Sales from July 2014 to June 2016. Mr. O'Donnell holds a Bachelor of Science in Finance from Villanova University.

John Burbank has served as a member of our board of directors since December 2020 and as a member of California VIZIO's board of directors since May 2020. From May 2008 to February 2019, Mr. Burbank held various management-level roles at Nielsen Holdings plc (Nielsen), a global media measurement, retail data and analytics company, including as President of Strategy and Corporate Development from January 2017 to February 2019 and President, Strategic Initiatives from November 2011 to January 2017. Prior to Nielsen, Mr. Burbank held senior leadership positions in consumer marketing at AOL, AT&T and the Procter & Gamble Company. Mr. Burbank has served as an independent director of Entergy Corporation, an energy company since 2018 and has served on the board of directors of Connecticut Public Broadcasting Network since March 2020. Mr. Burbank holds a Bachelor of Arts in Russian History and a Masters of Business Administration, both from the University of Chicago.

Mr. Burbank was selected to serve on our board of directors because of his significant experience in media, analytics, marketing and advertising as well as experience serving as a director of a public company.

Julia S. Gouw has served as a member of our board of directors and California VIZIO's board of directors since February 2021. From 2009 through her retirement in March 2016, Ms. Gouw served as President and Chief Operating Officer of East West Bancorp, Inc. and East West Bank, an independent bank, having previously served as Executive Vice President and Chief Financial Officer from 1994 to 2008. Prior to East West Bank, Ms. Gouw was a Senior Audit Manager with the accounting firm KPMG LLP. Ms. Gouw has served on the board of directors of Pacific Life Insurance Company since 2011, serving as Chair of the Investment and Finance Committee, and Cascade Acquisition Corp. since November 2020, serving as Chair of the Audit Committee. Ms. Gouw is a co-founder of Piermont Bank and has served as Chair of the Board and Audit Committee since July 2019. Ms. Gouw has also served as a Commissioner of the Ontario International Airport Authority (OIAA) since September 2017. Ms. Gouw holds a Bachelor of Science in accounting from the University of Illinois at Urbana-Champaign.

Ms. Gouw was selected to serve on our board of directors because of her extensive operational experience and financial expertise, as well as her experience serving as a director of a public company.

Shiou Chuang Huang has served as a member of our board of directors since December 2020 and as a member of California VIZIO's board of directors since 2004. From 1990 through July 2008, Mr. Huang was Corporate Vice President at Hon Hai Precision Ltd. Co., also known as Foxconn Technology Group, and from July 2004 to July 2009, Mr. Huang served as Vice Chairman to Innolux Corporation, an affiliated company of Hon Hai. Mr. Huang currently serves as the Chairman of the board of directors of VizionFocus, Inc. and as a director of Chang Wah Technology Co., LTD and Chang Wah Electromaterials Inc. Mr. Huang holds a Bachelor of Science from Tatung University in Taipei, Taiwan.

Mr. Huang was selected to serve on our board of directors because of his significant experience in the consumer electronics industry.

David Russell has served as a member of our board of directors since December 2020 and as a member of California VIZIO's board of directors since July 2007. Since May 2014, Mr. Russell has served as Chief Executive Officer of Puro Sound Labs, a consumer audio company. Prior to founding Puro Sound Labs, Mr. Russell served as Executive Vice President of Avalon Capital Group, Inc., a private investment company, from 2005 to 2014. From 1988 to 2005, Mr. Russell worked at Gateway, Inc., a consumer electronics company, in a variety of senior management positions. Mr. Russell also serves as Vice Chairman and a member of the board of directors of Waitt Foundation and Waitt Institute, nonprofit organizations focusing on the restoration of ocean health.

Mr. Russell was selected to serve on our board of directors because of his experience in the consumer electronics industry.

Family Relationships

There are no familial relationships among any of our executive officers listed above or our directors.

Code of Business Conduct and Ethics

We have adopted a code of business conduct and ethics, effective upon the completion of this offering, which will apply to all of our employees, officers and directors, including those officers responsible for financial reporting. Following the completion of this offering, the code of business conduct and ethics will be available on our website. We intend to disclose any amendments to the code, or any waivers of its requirements, on our website to the extent required by the applicable rules and exchange requirements.

Board Composition

Our business and affairs are managed under the direction of our board of directors. The number of directors will be fixed by our board of directors, subject to the terms of our amended and restated certificate of incorporation and amended and restated bylaws that will become effective immediately prior to the completion of this offering. Each of our current directors will continue to serve as a director until the election and qualification of their successor, or until their earlier death, resignation or removal.

Director Independence

Our board of directors has undertaken a review of the independence of each director. Based on information provided by each director concerning their background, employment and affiliations, our board of directors has determined each of Messrs. Burbank, Huang and Russell and Ms. Gouw does not have a material relationship with us (either directly or as a partner, shareholder or officer of an organization that has a relationship with us) and that each of these directors is "independent" as that term is defined under the listing standards of the New York Stock Exchange. In making these determinations, our board of directors considered the current and prior relationships that each non-employee director has with our company and all other facts and circumstances our

board of directors deemed relevant in determining their independence, including the beneficial ownership of our capital stock by each non-employee director, and the transactions involving them described in "Related Party Transactions."

Board Leadership Structure

Mr. Wang serves as both our Principal Executive Officer and Chairman of the board of directors. In addition, our board of directors does not have a lead independent director. Our board of directors believes that Mr. Wang's service as both Chairman of the board of directors and Chief Executive Officer is in our and our stockholders' best interests. Mr. Wang possesses detailed and in-depth knowledge of the issues, opportunities and challenges that we face and is thus best positioned to develop agendas that ensure that the board of directors' time and attention are focused on the most critical matters. Specifically, his combined role enables decisive leadership, ensures clear accountability, and enhances our ability to communicate our message and strategy clearly and consistently to our stockholders, employees, retailers and manufacturers.

Furthermore, the current leadership structure has been in place since our inception. While the board of directors may change in the future under appropriate circumstances (in connection with a management succession, for example), the board of directors does not believe that splitting the roles of Chairman and Chief Executive Officer in the present circumstances would result in an improvement in our performance. The board of directors believes that the current arrangement also provides for adequate independent oversight.

Role of Board of Directors in Risk Oversight Process

Although management is responsible for the day-to-day management of the risks our company faces, our board of directors and its committees take an active role in overseeing management of our risks and have the ultimate responsibility for the oversight of risk management. The board of directors regularly reviews information regarding our operational, financial, legal and strategic risks. Specifically, senior management attends quarterly meetings of our board of directors, provides presentations on operations including significant risks, and is available to address any questions or concerns raised by our board of directors.

In addition, we expect that our three committees will assist the board of directors in fulfilling its oversight responsibilities in certain areas of risk. The Audit Committee will coordinate the board of directors' oversight of our internal control over financial reporting, disclosure controls and procedures, related party transactions and code of conduct and corporate governance guidelines, and management will regularly report to the Audit Committee on these areas. The Compensation Committee will assist our board of directors in fulfilling its oversight responsibilities with respect to the management of risks arising from our compensation policies and programs as well as succession planning as it relates to our Chief Executive Officer. The Nominating and Corporate Governance Committee will assist our board of directors in fulfilling its oversight responsibilities with respect to the management of risks associated with board organization, membership and structure, succession planning for our directors and corporate governance. When any of the committees receives a report related to material risk oversight, the Chairman of the relevant committee will report on the discussion to the full board of directors.

Controlled Company Exception

After giving effect to this offering, Mr. Wang will continue to control a majority of the voting power of our outstanding capital stock. As a result, we will remain a "controlled company" within the meaning of the New York Stock Exchange. Under the corporate governance requirements of the New York Stock Exchange, a company of which more than 50% of the voting power is held by an individual, group or another company is a "controlled company" and may elect not to comply with certain corporate governance requirements, including (1) the requirement that a majority of the board of directors consist of independent directors, (2) the requirement that we have a compensation committee that is composed entirely of independent directors with a written charter

addressing the committee's purpose and responsibilities, (3) the requirement that we have a nominating and corporate governance committee that is composed entirely of independent directors with a written charter addressing the committee's purpose and responsibilities and (4) the requirement for an annual performance evaluation of the nominating and corporate governance and compensation committees. While a majority of our board of directors consists of independent directors and our compensation committee is composed entirely of independent directors, our nominating and corporate governance committee is not currently composed entirely of independent directors. Accordingly, you will not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance requirements of the New York Stock Exchange. In the event that we cease to be a "controlled company" and our shares continue to be listed on the New York Stock Exchange, we will be required to comply with these provisions within the applicable transition periods.

Board Committees

In connection with this offering, our board of directors has established the following committees: an Audit Committee, a Compensation Committee and a Nominating and Corporate Governance Committee. The composition and responsibilities of each committee are described below. Members will serve on these committees until their resignation or until otherwise determined by our board of directors.

Audit Committee

Our Audit Committee will consist of Ms. Gouw and Messrs. Burbank and Russell, with Ms. Gouw serving as its Chair, each of whom meets the requirements for independence under the listing standards of the New York Stock Exchange and SEC rules and regulations. Each member of our Audit Committee also meets the financial literacy and sophistication requirements of the listing standards of the New York Stock Exchange. In addition, our board of directors has determined that Ms. Gouw is an audit committee financial expert within the meaning of Item 407(d) of Regulation S-K under the Securities Act. Following the completion of this offering, our Audit Committee will, among other things:

- select and hire a qualified firm to serve as the independent registered public accounting firm to audit our financial statements;
- supervise and evaluate the independence and performance of the independent registered public accounting firm;
- discuss the scope and results of the audit with the independent registered public accounting firm, and review, with management and the independent registered public accounting firm, our annual audited and quarterly unaudited financial statements and annual and quarterly reports on Form 10-K and 10-Q;
- review and discuss the adequacy and effectiveness of the our internal controls;
- develop procedures for employees to submit concerns anonymously about questionable accounting or audit matters;
- review our policies on risk assessment and risk management;
- review related party transactions; and
- approve or, as required, pre-approve, all audit and all permissible non-audit services, other than de minimis non-audit services, to be performed by the independent registered public accounting firm.

Our Audit Committee will operate under a written charter, to be effective prior to the completion of this offering, that satisfies the applicable rules and regulations of the SEC and the listing standards of the New York Stock Exchange.

Compensation Committee

Our Compensation Committee will consist of Messrs. Huang and Russell, with Mr. Russell serving as its Chair. Because we are considered to be a "controlled company" for the purposes of the New York Stock Exchange listing requirements, we are permitted to opt out of the New York Stock Exchange listing requirements that would otherwise require our Compensation Committee to be comprised entirely of independent directors. However, currently all of the anticipated members of our Compensation Committee are independent under the applicable New York Stock Exchange rules and regulations. Each member of our compensation committee will also be a non-employee director, as defined pursuant to Rule 16b-3 promulgated under the Exchange Act. Following the completion of this offering, our Compensation Committee will, among other things:

- review, approve and determine or make recommendations to our board of directors regarding, the compensation of our executive officers;
- administer our equity compensation plans;
- review and approve and make recommendations to our board of directors regarding incentive compensation and equity compensation plans; and
- establish and review general policies relating to compensation and benefits of our employees.

Our Compensation Committee will operate under a written charter, to be effective prior to the completion of this offering, that satisfies the applicable rules and regulations of the SEC and the listing standards of the New York Stock Exchange.

Nominating and Corporate Governance Committee

Our Nominating and Corporate Governance Committee will consist of Messrs. Burbank and Wang, with Mr. Burbank serving as its Chair. Because we are considered to be a "controlled company" for the purposes of the New York Stock Exchange listing requirements, we are permitted to opt out of the New York Stock Exchange listing requirements that would otherwise require our Nominating and Corporate Governance Committee to be comprised entirely of independent directors and we intend to rely on such exemption. Following the completion of this offering, our Nominating and Corporate Governance Committee will, among other things:

- identify, evaluate and select or make recommendations to our board of directors regarding, nominees for election to our board of directors and its committees;
- evaluate the performance of our board of directors and of individual directors;
- consider and make recommendations to our board of directors regarding the composition of our board of directors and its committees;
- review developments in corporate governance practices;
- evaluate the adequacy of our corporate governance practices and reporting; and
- develop and make recommendations to our board of directors regarding corporate governance guidelines and matters.

Our Nominating and Corporate Governance Committee will operate under a written charter, to be effective prior to the completion of this offering, that satisfies the applicable rules and regulations of the SEC and the listing standards of the New York Stock Exchange.

Compensation Committee Interlocks and Insider Participation

Prior to this offering, Mr. Russell and Mr. Wang, our Chairman, Chief Executive Officer and principal stockholder, established compensation for each of our executive officers, other than Mr. Wang. These

compensation decisions were guided based on input, feedback and recommendations from certain members of our management. Mr. Wang's compensation was approved by Mr. Russell. Mr. Wang has historically had significant influence over all matters at our company, including compensation matters. We expect that after completion of this offering, Mr. Wang, as Chairman and Chief Executive Officer, will provide input and may make recommendations to our Compensation Committee regarding our compensation decisions for our other executive officers, although the Compensation Committee will make all executive compensation determinations.

Other than as disclosed above, none of the members of our Compensation Committee is or has been an officer or employee of our company. None of our executive officers currently serves, or in the past year has served, as a member of the board of directors or Compensation Committee (or other board committee performing equivalent functions) of any entity that has one or more of its executive officers serving on our board of directors or Compensation Committee. See "Related Party Transactions" for information about related party transactions involving members of our Compensation Committee or their affiliates.

Limitation of Liability and Indemnification of Directors and Officers

Our amended and restated certificate of incorporation, which will become effective prior to the completion of this offering, will contain provisions that limit the liability of our directors for monetary damages to the fullest extent permitted by Delaware law. Consequently, our directors will not be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duties as directors, except for the following:

- any breach of their duty of loyalty to our company or our stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law; or
- any transaction from which they derived an improper personal benefit.

Our amended and restated bylaws, which will become effective prior to the completion of this offering, will provide that we shall indemnify, to the fullest extent permitted by law, any person who is or was a party or is threatened to be made a party to any action, suit or proceeding, by reason of the fact that he or she is or was one of our directors or officers or is or was serving at our request as a director or officer of another corporation, partnership, joint venture, trust or other enterprise. Our amended and restated bylaws will provide that we may indemnify to the fullest extent permitted by law any person who is or was a party or is threatened to be made a party to any action, suit or proceeding, by reason of the fact that he or she is or was one of our employees or agents or is or was serving at our request as an employee or agent of another corporation, partnership, joint venture, trust or other enterprise. Our amended and restated bylaws will also provide that we must advance expenses incurred by or on behalf of a director or officer in advance of the final disposition of any action or proceeding, subject to very limited exceptions.

Prior to the completion of this offering, we intend to obtain insurance policies under which, subject to the limitations of the policies, coverage is provided to our directors and officers against loss arising from claims made by reason of breach of fiduciary duty or other wrongful acts as a director or officer, including claims relating to public securities matters, and to us with respect to payments that may be made by us to these officers and directors pursuant to our indemnification obligations or otherwise as a matter of law.

In addition, we have entered into or will enter into indemnification agreements with each of our directors and executive officers that may be broader than the specific indemnification provisions contained in the Delaware General Corporation Law. These indemnification agreements may require us, among other things, to indemnify our directors and executive officers against liabilities that may arise by reason of their status or service, other than liabilities arising by willful misconduct. These indemnification agreements may also require

us to advance all expenses incurred by the directors and executive officers in investigating or defending any such action, suit or proceeding. We believe that these agreements are necessary to attract and retain qualified individuals to serve as directors and executive officers.

At present, we are not aware of any pending litigation or proceeding for which indemnification is sought involving any person who is or was one of our directors, officers, employees or other agents or is or was serving at our request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, and we are not aware of any threatened litigation that may result in claims for indemnification.

We expect that the underwriting agreement for this offering will provide for indemnification by the underwriters of us and our officers, directors and employees for certain liabilities arising under the Securities Act, or otherwise.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling our company pursuant to the foregoing provisions, we have been informed that, in the opinion of the SEC, such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

Director Compensation

The following table summarizes the compensation of each member of the board of directors of California VIZIO in 2020, other than William Wang and Julia Gouw, who was appointed to the board of directors of California VIZIO in February 2021 (neither of whom received compensation for service as a director in 2020):

Name	Fees Earned or Paid in Cash ($)	All Other Compensation ($)	Total ($)
David Russell	$45,000	—	$45,000
Shiou Chuang Huang	$25,000	—	$25,000
David S. Lee(1)	$ 6,250	—	$ 6,250
John R. Burbank(2)	$16,667	—	$16,667

(1) Mr. Lee resigned from our board of directors in May 2020.
(1) Mr. Burbank joined our board of directors in May 2020.

For the year ended December 31, 2020, each of Messrs. Huang and Russell received an annual retainer of $25,000, paid quarterly, for service on our board of directors. Each of Messrs. Lee and Burbank received a prorated portion of the annual retainer of $25,000 for the period of their respective service as a director. Mr. Russell received an additional fee of $20,000 for his service on our Incentive Award Committee. The compensation received by Mr. Wang for his service as an employee for the year ended December 31, 2020 is set forth in “Executive Compensation—Compensation Tables—Summary Compensation Table.”

None of our non-employee directors held any stock options or any unvested stock awards as of December 31, 2020.

Prior to this offering, we did not have a formal policy with respect to compensation payable to our directors for service as directors. From time to time, we have granted equity awards to certain non-employee directors to encourage them to join our board of directors and as compensation for their continued service on our board of directors. We anticipate adopting a formal compensation policy for our non-employee directors to provide cash and equity compensation to them following the completion of this offering.

EXECUTIVE COMPENSATION

Compensation Discussion and Analysis

The purpose of this Compensation Discussion and Analysis section is to discuss our compensation philosophy, our executive compensation program and the compensation for our named executive officers (NEOs).

Our NEOs for 2019 were:

- William Wang, our Founder, Chairman and Chief Executive Officer (CEO);
- Ben Wong, our President and Chief Operating Officer (COO) and acting Chief Financial Officer (CFO) until May 2020;
- Bill Baxter, our Chief Technology Officer (CTO); and
- Michael O'Donnell, our Senior Vice President, Platform+ for 2019 and our Chief Revenue Officer, Platform+ for 2020.

For 2020, our NEOs consisted of these executive officers and Adam Townsend, our CFO.

Compensation philosophy and objectives

We recognize that the ability to excel depends on the integrity, knowledge, skill, diversity and teamwork of our employees. To this end, we strive to create an environment of mutual respect, encouragement and teamwork that rewards commitment and performance and that is responsive to the needs of our employees. Accordingly, we strive to create an executive compensation program that balances short-term versus long-term payments and awards. Our compensation program consists of various elements, including base salary and variable cash and long-term incentives. The base salary component of our compensation program is meant to attract and retain talented individuals by providing a competitive baseline of compensation, and our variable cash and long-term incentives are primarily aimed at ensuring a performance-based delivery that will ensure a strong connection between executive compensation and financial performance to drive results and maximize stockholder value. The principles and objectives of our compensation and benefits programs for our employees generally, and for our NEOs specifically, are intended to:

- attract, engage and retain individuals of superior ability, experience and managerial talent, enabling us to be an employer of choice in our highly-competitive and dynamic industry;
- ensure a performance-based delivery of pay that aligns our NEOs' rewards with our corporate strategies, business and financial objectives and the long-term interests of our stockholders;
- compensate our NEOs in a manner that incentivizes them to manage our business to meet our long-range objectives;
- compensate our NEOs in a manner commensurate with our performance;
- motivate and reward executive officers whose knowledge, skills and performance promote our continued success;
- seek to ensure that total compensation is fair, reasonable and competitive; and
- promote a long-term commitment to us.

Process for determining compensation

Role of senior management

Our historical compensation approach has reflected our stage of development. Prior to this offering, we were a privately-held company with our principal and controlling stockholder, Mr. Wang, also serving as our

Chairman and CEO. As a result, we have not been subject to any stock exchange or SEC rules requiring a majority of our board of directors to be independent or relating to compensation committee composition and function. Historically, our board of directors has delegated authority to an Incentive Award Committee comprised of Mr. Wang and David Russell, one of our non-employee directors. The Incentive Award Committee has worked closely with other members of senior management, as described herein, in driving our compensation programs and policies.

Most, if not all, of our executive compensation policies and determinations, including those made for 2019 and 2020, were guided by the recommendations of Mr. Wong, our COO. Together with input and feedback from our human resources function, Mr. Wong made recommendations to our CEO regarding the compensation of our NEOs (other than Messrs. Wong and Wang). Based on these recommendations, the Incentive Award Committee established compensation, for each of our NEOs (other than Mr. Wang). Mr. Wang's compensation was approved by Mr. Russell. We expect that after completion of this offering, our COO and human resources will continue to make compensation recommendations to our CEO, who will in turn provide input and may make recommendations to our Compensation Committee regarding our executive compensation matters, although the Compensation Committee will make all executive compensation determinations for our NEOs.

Role of compensation data

We aim to compensate our executive officers at levels that are at least commensurate with the compensation of executive officers in similar positions at companies relative to us in size (measured by annual revenue), geography (Southern California or applicable region) and industry (technology), as reported in published survey sources. The individuals responsible for making compensation recommendations as well as our Incentive Award Committee also consider the scope of responsibility of each executive officer, our current practice of maintaining minimal differentiation between the cash packages of our executive officers and the officer's tenure and experience. In determining 2019 and 2020 compensation, we did not use a formula for taking into account these different factors.

Historically, management has reviewed both cash and equity compensation data from published survey sources, which for 2019 and 2020 focused primarily on technology companies with at least $1 billion in annual revenue, as well as reference data from Southern California-based technology companies, each as published in the Aon Radford Global Technology Survey (the Radford Survey). The Radford Survey data has been used primarily as a validation measure to ensure our executive compensation levels remain competitive.

In 2019 and 2020, our COO and human resources function reviewed our executive compensation against the Radford Survey data to ensure that our executive officer compensation is competitive and sufficient to recruit and retain our executive officers. We do not seek to benchmark our NEO compensation to any particular level. Thus, the total compensation for any one individual NEO is not determined based on any pre-set "target" percentile of market. We rely heavily on the knowledge and experience of the individuals responsible for making compensation recommendations as well as the Incentive Award Committee in determining the appropriate compensation levels for our executive officers.

Overall, based on management's analysis of the Radford Survey data, annualized base salaries (based on salary in effect at the end of 2018) for our executive officers on average were below the 25th percentile of Radford Survey data, while total cash compensation (which included base salary and 2018 actual bonus payments) was above the 50th percentile, consistent with our pay philosophy. As discussed below under "—Elements of compensation," this highlights our emphasis on pay for performance and at-risk compensation.

Determining compensation following this offering

Following this offering, we will be a "controlled company" within the meaning of the rules of the New York Stock Exchange, as more than 50% in voting power of our shares will be held by Mr. Wang, although our

Compensation Committee will initially be wholly composed of independent directors. We anticipate that our newly-formed Compensation Committee will review our compensation programs. As we gain experience as a public company, we expect that the specific direction, emphasis and components of our compensation program will continue to evolve.

Elements of compensation

For our 2019 and 2020 fiscal years, our executive compensation program consisted of the following components:

- Base salary
- Performance-based cash compensation
- Equity-based compensation
- Retirement savings (401(k)) plan
- Health and welfare benefits
- Certain limited perquisites and other personal benefits

We combine these elements to formulate compensation packages that provide competitive pay, and further our compensation goals of retention, alignment of executive and stockholder interests and linking pay with performance.

Base salary

Our compensation philosophy with respect to base salaries is designed to keep base salaries aligned with our low margin, variable profit business model. Base salaries initially are set at the time of an NEO's hire (including Mr. Townsend's base salary for 2020 and Mr. O'Donnell's base salary for 2019), and we have made increases to base salaries in the ordinary course in order to increase retention and the competitiveness of our pay.

Except in the cases of Mr. Townsend (who joined us in 2020) and Mr. O'Donnell (who joined us in 2019), the base salary levels of our NEOs for 2019 and 2020 remained at the same level as in 2018. Mr. O'Donnell's base salary was increased in 2020 in connection with his promotion to our Chief Revenue Officer, Platform+. The base salaries in effect for 2019 and 2020 for our NEOs are as set forth below:

Name	Base Salary in Effect for 2019	Base Salary in Effect for 2020
William Wang	$ 425,000	$ 425,000
Ben Wong	$ 425,000	$ 425,000
Adam Townsend	—	$ 400,000
Bill Baxter	$ 600,000	$ 600,000
Michael O'Donnell	$ 300,000	$ 360,000

Cash incentives

Our NEOs are eligible to earn discretionary quarterly and annual cash bonus payments. The purpose of these cash incentives is to have a significant portion of our NEOs' annual compensation reflect our performance. We believe that the quarterly and annual bonus payments provide a direct and measurable way to align our NEOs' goals with our corporate objectives of linking pay with performance, increasing revenue and profit, and creating stockholder value.

Bonus amounts are recommended to and determined by the Incentive Award Committee in its discretion with reference to a variety of financial and operational metrics. While our performance is reviewed, bonus payouts are discretionary and are not formulaic. Messrs. Wang and Russell establish target bonus opportunities for each NEO (with Mr. Russell approving Mr. Wang's opportunity). Except in the cases of Mr. Townsend (who joined us in 2020) and Mr. O'Donnell (who joined us in 2019), each NEO's target bonus opportunity for 2019 and 2020 was set the same level as in 2018. Mr. Townsend's target bonus opportunity for 2020 was set at the time of his hire. Mr. O'Donnell's bonus for 2019 was guaranteed to be at least $75,000 as part of the negotiation of his initial compensation, and his 2020 cash incentive opportunity of $300,000 is split between a $100,000 quarterly bonus opportunity similar to those for the other NEOs and a $200,000 quarterly commission opportunity (which is discussed below).

Our NEO's target bonus opportunities (expressed as percentages of their base salaries) for 2019 and 2020 are set forth in the table below:

Name	2019 Target Bonus Opportunity (% of Base Salary)	2020 Target Bonus Opportunity (% of Base Salary)
William Wang	276%	276%
Ben Wong	276%	276%
Adam Townsend	—	88%
Bill Baxter	25%	25%
Michael O'Donnell	33%	28%

Except for Mr. O'Donnell (whose entire bonus opportunity is evaluated and paid out on a quarterly basis), each NEO's bonus opportunity consists of a portion that is evaluated and paid out on a quarterly basis and a portion that is evaluated and paid out on an annual basis. For the 2019 and 2020 bonus opportunities of our NEOs other than Messrs. Townsend and O'Donnell, approximately half of the NEO's target bonus opportunity was allocated to the annual bonus and the remainder of the NEO's target bonus opportunity was allocated equally to each quarterly bonus. The allocation of Mr. Townsend's 2020 bonus opportunity of $350,000 ($150,000 to his annual bonus and the remaining $200,000 equally to his quarterly bonuses) was established through arms' length negotiation in connection with his hire.

Target bonus opportunities represent a guideline for the aggregate target cash amount to be received by an NEO. In arriving at the target bonus opportunities, we determined an appropriate range of total cash compensation that would be competitive based on the aforementioned survey data and their own experience and knowledge of the executive market.

In determining actual quarterly bonus amounts, our COO reviews our financial performance for the most recently completed quarter and then makes a recommendation to Mr. Wang regarding the proposed bonuses for the NEOs, taking into account each NEO's target bonus opportunity. Messrs. Wang and Russell approve the final quarterly bonuses for all of our NEOs other than Mr. Wang. Mr. Russell approves Mr. Wang's bonus. The Incentive Award Committee retains the discretion to reduce quarterly cash bonuses if it determines our performance was below expectations.

At the completion of each fiscal year, each NEO is eligible to receive the annual portion (generally half) of such NEO's aggregate target bonus opportunity after payment of the quarterly cash bonuses. The Incentive Award Committee retains the authority to award a discretionary bonus amount in excess of the target bonus opportunity for an NEO for the year in the case of exceptional performance. The Incentive Award Committee may in its discretion also award up to, or in excess of, an NEO's aggregate target bonus opportunity for a given fiscal year notwithstanding the fact that performance during one or more of the preceding quarters was below expectations. Similar to the quarterly bonuses, Messrs. Wang and Russell approve the final annual bonuses for all of our NEOs other than Mr. Wang. Mr. Russell approves Mr. Wang's annual bonus.

Bonuses are not earned until paid and eligibility to receive a bonus is contingent upon the NEO being continuously employed by us through the bonus payment date.

The amounts of quarterly and annual cash bonuses paid to our NEOs for 2019 are set forth below and expressed as a percentage of the respective NEO's target bonus opportunity.

Name	2019 Quarterly Cash Bonuses (Q1-Q4)	2019 Annual Cash Bonus	Total Cash Bonuses as % of 2019 Target Bonus Opportunity
William Wang	$ 587,500	$ 587,500	100%
Ben Wong	$ 587,500	$ 587,500	100%
Bill Baxter	$ 75,000	$ 75,000	100%

As noted above, Mr. O'Donnell's 2019 bonus opportunity (which was pro-rated for the portion of 2019 that he was employed by us) was guaranteed in connection with his hire, and he accordingly received quarterly cash bonuses for 2019 totaling $75,000.

The amounts of quarterly and annual cash bonuses paid to our NEOs for 2020 are set forth below and expressed as a percentage of the respective NEO's target bonus opportunity.

Name	2020 Quarterly Cash Bonuses (Q1-Q4)	2020 Annual Cash Bonus	Total Cash Bonuses as % of 2020 Target Bonus Opportunity
William Wang	$ 587,500	$ 1,087,500	142.80%
Ben Wong	$ 587,500	$ 1,087,500	142.80%
Adam Townsend	$ 131,868	$ 99,180	66.01%
Bill Baxter	$ 75,000	$ 75,000	100%
Michael O'Donnell	$ 87,500	$ 50,000	136.41%

During the 2019 bonus review process, in addition to the quarterly and annual bonuses described above, the Incentive Award Committee approved the following additional discretionary bonuses to our NEOs: $600,000 for Mr. Wang, $600,000 for Mr. Wong, and $75,000 for Mr. Baxter. The amounts of these additional bonuses were based upon these NEOs' target bonus opportunities for 2017, which the NEOs did not receive due to certain operational challenges experienced by the Company. The additional bonuses were intended to recognize these NEOs' efforts in successfully addressing these operational challenges and improving the Company's competitive position.

In 2020, we provided Mr. O'Donnell a commission opportunity (referred to as the 2020 Cash Incentive Plan) for each quarter in 2020 based on our Platform+ net revenue during such quarter equal to (1) 0.50% of such revenue up to 124.99% of the quarterly revenue target, (2) 0.75% of such revenue between 125% and 149.99% of the quarterly revenue target, (3) 1.00% of such revenue between 150% and 174.99% of the quarterly revenue target, (4) 1.25% of such revenue between 175% and 199.99% of the quarterly revenue target and (5) 1.50% of such revenue equal to or greater than 200% of the quarterly revenue target. The quarterly revenue targets were $6 million for the first quarter, $10 million for the second quarter, $11 million for the third quarter, and $15 million for the fourth quarter. Based on our Platform+ net revenue during 2020, Mr. O'Donnell received the following quarterly commissions for 2020: $29,721.73 for the first quarter, $50,323.25 for the second quarter, $242,742.04 for the third quarter, and $618,195.90 for the fourth quarter.

Equity incentive program

Our compensation program includes equity incentives that have been designed to reward our employees for the Company's long-term financial performance and enhancement of stockholder value through stock price appreciation, to attract, motivate and encourage retention of employees, to align the interests of our employees with the creation of stockholder value by creating long-term employee interest and an "ownership mentality" in

our growth and stock price value, so that their efforts reflect the perspective of our stockholders and promote our long-term success. The equity incentives have primarily been in the form of stock options, but we have also granted a limited number of restricted stock awards (RSAs) to certain employees.

2019 Awards

In October 2019, the Incentive Award Committee approved the grant to Mr. O'Donnell of an option to purchase 40,000 shares and an RSA covering 8,000 shares, as shown in the table below under our 2017 Incentive Award Plan (2017 Plan).

Name	Type of Award	Grant Date	Number of Shares Subject to Award	Exercise Price of Option Award	Grant Date Fair Value of Award(1)
Michael O'Donnell	Option	10/8/19	40,000	$ 48.52	$ 710,000
Michael O'Donnell	RSA	10/8/19	8,000	—	$ 388,160

(1) These amounts reflect the grant date fair value calculated in accordance with ASC 718 on the basis of the fair market value of the underlying awards on the respective grant dates and without any adjustment for estimated forfeitures. Assumptions used in the calculation of these amounts are included in Note 14, "Stock-Based Compensation," to our audited financial statements. The amount shown for the option award also reflects the grant date fair value of a corresponding dividend equivalent that was granted concurrently with the option.

In accordance with the terms of the 2017 Plan, Mr. O'Donnell's option vests in equal annual installments over a four-year period, subject to Mr. O'Donnell's continued service. Mr. O'Donnell's RSA vests, if an initial public offering of the Company's common stock occurs within seven years after the date of grant (referred to as the IPO Deadline), in equal annual installments over a four-year period, subject to Mr. O'Donnell's continued service. Except as described in the following sentence, no portion of the RSA will vest until such an initial public offering occurs. The RSA will fully vest upon the occurrence of any of the following prior to the IPO Deadline: (1) a termination of Mr. O'Donnell's service due to his death or disability, (2) an involuntary termination of Mr. O'Donnell's service by the Company without cause or his resignation for good reason, subject to his execution of a release of claims, or (3) a change in control. If an initial public offering of the Company's common stock does not occur by the IPO Deadline, the RSA will be forfeited without any portion vesting.

The Incentive Award Committee also approved the grant of dividend equivalents in tandem with Mr. O'Donnell's awards. The dividend equivalents provide Mr. O'Donnell the right to receive the equivalent value of any dividends on shares of Class A common stock with payment dates during the period between the date the awards were granted and the date the awards vest, are exercised, or expire.

Messrs. Wang, Wong, and Baxter did not receive any equity awards in 2019.

2020 Awards

In December 2020, in consideration of their leadership, experience, expertise, and past and expected future contributions and in order to further align their interests with the interests of our stockholders and our corporate strategies, business, and financial objectives, the Incentive Award Committee approved the grant to Messrs. Townsend, Wong, and O'Donnell of options and restricted stock units (RSUs) under our 2017 Plan, as shown in the table below. In determining the size of these awards, the Incentive Award Committee reviewed factors such as these NEOs' positions, responsibilities, and current and former equity holdings.

Name	Type of Award	Grant Date	Number of Shares Subject to Award	Exercise Price of Option Award	Grant Date Fair Value of Award(1)
Ben Wong	Option	12/31/20	52,000	$ 76.90	$ 1,402,960
Ben Wong	RSU	12/31/20	163,660	—	$ 12,585,454
Adam Townsend	Option	12/31/20	41,000	$ 76.90	$ 1,106,180
Adam Townsend	RSU	12/31/20	49,000	—	$ 3,768,100
Michael O'Donnell	Option	12/31/20	3,780	$ 76.90	$ 101,984
Michael O'Donnell	Option	12/31/20	40,000	$ 76.90	$ 1,079,200
Michael O'Donnell	RSU	12/31/20	2,220	—	$ 170,718

(1) These amounts reflect the grant date fair value calculated in accordance with ASC 718 on the basis of the fair market value of the underlying awards on the respective grant dates and without any adjustment for estimated forfeitures. Assumptions used in the calculation of these amounts are included in Note 14, "Stock-Based Compensation," to our audited financial statements. The amount shown for each award also reflects the grant date fair value of a corresponding dividend equivalent that was granted concurrently with the award.

The Incentive Award Committee also approved the grant of dividend equivalents in tandem with the awards granted to Messrs. Townsend, Wong, and O'Donnell in 2020. The dividend equivalents provide these NEOs the right to receive the equivalent value of any dividends on shares of Class A common stock with payment dates during the period between the date the awards were granted and the date the awards vest, are exercised, or expire.

Vesting of Mr. Townsend's 2020 Awards

Mr. Townsend's option vests in equal annual installments over a four-year period, subject to his continued service.

Mr. Townsend's RSUs vest when both a service-based requirement and a liquidity event requirement have been satisfied. The service-based requirement will be satisfied in equal annual installments over a four-year period, subject to Mr. Townsend's continued service. The liquidity event requirement will be satisfied upon the earliest of the following events, subject to his continued service through the date of that event: (i) the later of (A) the 90th day following an underwritten public offering of the Company's securities or (B) the expiration of the market standoff period following such underwritten public offering, (ii) the 90th day following a direct listing or direct placement of our common stock in a publicly traded exchange, or (iii) immediately prior to a change in control in which the consideration received by holders of our capital stock is cash, marketable securities registered under the Securities Act, or a combination of both. In addition, if the market standoff period expires with respect to less than all of the shares that were subject to the market standoff period, the liquidity event requirement will be satisfied only to the extent that, immediately following that partial expiration of the market standoff period, Mr. Townsend is able to sell the shares of our common stock that would be issued in settlement of his RSUs that vest upon that partial expiration, subject to his continued service through the date of the partial expiration.

Vesting of Mr. O'Donnell's 2020 Awards

Mr. O'Donnell's RSUs have similar terms as Mr. Townsend's RSUs, vesting when both a service-based requirement and a liquidity event requirement have been satisfied.

Mr. O'Donnell's option to purchase 3,780 shares has vesting terms similar to those of Mr. Townsend's option. Mr. O'Donnell's option to purchase 40,000 shares vests when both a performance-based requirement and a liquidity event requirement have been satisfied. The liquidity event requirement for this option is similar to the liquidity event requirement for Mr. Townsend's RSUs. The performance-based requirement will be satisfied based on the annual net revenue and net revenue growth from the Platform+ business (as compared to such annual net revenue in the previous year) in each of 2021, 2022, 2023, and 2024, subject to his continued service through the date such growth is determined by the administrator of the 2017 Plan, as follows:

- as to 12.5% of the option if the Platform+ annual net revenue growth for 2021 is at least 50%;
- as to 12.5% of the option if the Platform+ annual net revenue growth for 2021 is at least 100%;
- as to 12.5% of the option if the Platform+ annual net revenue growth for 2022 is at least 50%;
- as to 12.5% of the option if the Platform+ annual net revenue growth for 2022 is at least 100%;
- as to 12.5% of the option if the Platform+ annual net revenue growth for 2023 is at least 25%;
- as to 12.5% of the option if the Platform+ annual net revenue growth for 2023 is at least 50%;
- as to 12.5% of the option if the Platform+ annual net revenue growth for 2024 is at least 25%; and
- as to 12.5% of the option if the Platform+ annual net revenue growth for 2024 is at least 50%.

Vesting of Mr. Wong's 2020 Awards

Mr. Wong's RSU and option awards vest in equal quarterly installments over a one-year period, subject to his continued service.

2021 Awards

On February 11, 2021, we granted equity awards to our executive officers under our 2017 Plan as follows: Mr. Wang received an award of 145,500 RSUs, Mr. Wong received an award of 409,500 RSUs and Mr. Townsend received an option to purchase 20,000 shares of our Class A common stock. Messrs. Wong and Wang's RSU awards were granted in recognition of their outstanding past performance, and Mr. Wong's RSU award was also intended to provide additional retention incentives. In determining the size of the awards to Messrs. Wang and Wong, we reviewed factors such as these NEOs' positions, responsibilities and current and former equity holdings. Mr. Townsend's option was granted in satisfaction of the promise in his employment offer letter with us (which was entered into in connection with his hire) that he would receive such option upon the completion of an initial public offering. We decided to grant this option before the completion of this offering in recognition of his outstanding performance. The RSUs granted to Messrs. Wang and Wong are scheduled to vest with respect to 25% of the underlying shares on each of the three, six, nine and twelve month anniversaries of the grant date. The option granted to Mr. Townsend is scheduled to vest with respect to 25% of the shares subject to the option on each of the four anniversaries of the grant date, subject to the satisfaction of a liquidity event requirement with similar terms as the liquidity event requirement for Mr. Townsend's RSUs, as described above.

In August 2015, we entered into new employment agreements with each of Messrs. Wang and Wong in connection with an anticipated initial public offering, which was not completed. Pursuant to Mr. Wang's employment agreement with us, upon the completion of this offering, he will become entitled to receive (1) an option and (2) an RSA. Pursuant to Mr. Wong's employment agreement with us, upon the completion of this offering, he will become entitled to receive (1) an option and (2) an RSA. These equity award grants were established through arms' length negotiation of the terms of the employment agreements.

Limited perquisites

We provide limited perquisites to three of our NEOs, Messrs. Wang, Wong, and O'Donnell, in the form of private club memberships and related meals and incidentals, as reported in "—Compensation Tables—Summary

Compensation Table." In deciding to provide these perquisites, our board of directors determined that such perquisites were reasonable because (1) they would provide significant potential business and economic benefits to us through access to the facilities of the club for meetings and other gatherings pertaining to our business and to entertain potential and existing customers and (2) membership in the club is limited to individuals and not available directly for businesses or entities.

Other than the foregoing, we do not provide any perquisites to any of our NEOs.

Severance and change in control benefits

Under the terms of our 2007 Incentive Award Plan (2007 Plan), if a change in control (as defined in the 2007 Plan) occurs and a participant's outstanding equity awards granted under the 2007 Plan are not assumed, continued, converted or substituted by the successor entity, such equity awards will become fully vested and exercisable, unless otherwise provided in any applicable agreement with the participant.

We have entered into employment agreements with Messrs. Wang and Wong that provide for severance and change in control benefits as described below under "—Compensation Tables—Potential Payments Upon Termination or Change-in-Control."

Other benefits

Our NEOs are eligible to participate in our standard benefit plans on the same terms as all other U.S.-based employees, which include: health insurance, life and disability insurance, and our 401(k) plan participation. We subsidized a portion of each employee's insurance premiums and provided matching contributions to the 401(k) plan accounts of all eligible employees in 2019 and 2020.

Tax considerations

Section 162(m) of the Code

Generally, Section 162(m) of the Internal Revenue Code (referred to as the Code) disallows a tax deduction for any publicly held corporation for individual compensation exceeding $1.0 million in any taxable year for its chief executive officer and certain other highly compensated current and former executive officers. As we are not currently publicly traded, our board of directors has not previously taken the deductibility limit imposed by Section 162(m) into consideration in setting compensation. Following this offering, we expect that our Compensation Committee, in approving the amount and form of compensation for our NEOs in the future, will consider all elements of the cost to our company of providing compensation to our executive officers, including the potential impact of Section 162(m). However, our Compensation Committee may, in its judgment, authorize compensation payments that exceed the deductibility limit imposed by Section 162(m) when it believes that such payments are appropriate.

Section 409A of the Code

Section 409A of the Code requires that "nonqualified deferred compensation" be deferred and paid under plans or arrangements that satisfy the requirements of the statute with respect to the timing of deferral elections, timing of payments and certain other matters. Failure to satisfy these requirements can expose employees and other service providers to accelerated income tax liabilities and penalty taxes and interest on their vested compensation under such plans. Accordingly, we generally intend to design and administer our compensation and benefits plans and arrangements for all of our employees and other service providers, including our NEOs, with the intent that they are either exempt from, or satisfy the requirements of, Section 409A.

Accounting standards

ASC Topic 718, Compensation—Stock Compensation (ASC Topic 718) requires us to recognize an expense for the fair value of equity-based compensation awards. Grants of stock options and restricted stock under our

equity incentive award plans are accounted for under ASC Topic 718. The Incentive Committee has historically considered and our Compensation Committee will regularly consider the accounting implications of significant compensation decisions, especially in connection with decisions that relate to our equity incentive award plans and programs. As accounting standards change, we may revise certain programs to appropriately align accounting expenses of our equity awards with our overall executive compensation philosophy and objectives.

Compensation Risk Assessment

Our management team plays a role in evaluating and mitigating any risk that may exist relating to our compensation plans, practices and policies for all employees, including our NEOs. In connection with this offering, management performed an assessment of our compensation plans and practices and concluded that our compensation programs do not create risks that are reasonably likely to have a material adverse effect on our business. The objective of the assessment was to identify any compensation plans or practices that may encourage employees to take unnecessary risk that could threaten our business. No such plans or practices were identified. The risk assessment process included, among other things, a review of our cash and equity incentive-based compensation plans to ensure that they are aligned with our performance goals and the overall compensation to ensure an appropriate balance between fixed and variable pay components and between short- and long-term incentives.

Compensation Tables

Summary Compensation Table

The following table shows the compensation awarded, paid to or earned by each of our NEOs for services rendered in all capacities to us, and our subsidiaries, for the years ended December 31, 2019 and 2020.

Name and Principal Position	Year	Salary	Bonus(1)	Stock Awards(2)	Option Awards(3)	Non-Equity Incentive Plan Compensation(4)	All Other Compensation(5)	Total
William Wang Founder, Chairman and Chief Executive Officer	2020	$425,000	$1,675,000	—	—	—	$ 61,377	$ 2,161,377
	2019	$425,000	$1,175,000	—	—	—	$ 64,774	$ 1,664,774
Ben Wong President and Chief Operating Officer	2020	$425,000	$1,675,000	$12,585,454	$1,402,960	—	$ 40,666	$16,129,080
	2019	$425,000	$1,175,000	—	—	—	$ 46,096	$ 1,646,096
Adam Townsend(6) Chief Financial Officer	2020	$261,538	$ 231,048	$ 3,768,100	$1,106,180	—	$ 5,700	$ 5,372,566
Bill Baxter Chief Technology Officer	2020	$600,000	$ 150,000	—	—	—	$ 8,305	$ 758,305
	2019	$600,000	$ 150,000	—	—	—	$ 4,200	$ 754,200
Michael O'Donnell(7) Chief Revenue Officer, Platform+ (Senior Vice President, Platform Business in 2019)	2020	$360,000	$ 137,500	$ 170,718	$1,181,184	$ 940,983	$ 10,586	$ 2,800,971
	2019	$ 99,231	$ 75,000	$ 388,160	$ 710,000	—	—	$ 1,272,391

(1) Amounts reflect quarterly and annual bonus amounts awarded for 2019 and 2020, as applicable, to each of the NEOs. Bonus amounts for 2019 exclude discretionary bonuses in the amounts of $600,000 for each of Mr. Wang and Mr. Wong and $75,000 for Mr. Baxter related to these NEOs' target bonus opportunities for 2017 described above under "—Elements of compensation—Cash incentives."

(2) These amounts reflect the grant date fair value calculated in accordance with ASC 718 on the basis of the fair market value of the underlying awards on the respective grant dates and without any adjustment for estimated forfeitures. Assumptions used in the calculation of these amounts are included in Note 14, "Stock-Based Compensation," to our audited financial statements. The awards in 2020 were awards of RSUs and the award in 2019 for Mr. O'Donnell was an RSA. The amounts shown for the RSUs awarded to the NEOs also reflect the grant date fair value of a corresponding dividend equivalent that was granted concurrently with each RSU.

(3) These amounts reflect the grant date fair value calculated in accordance with ASC 718 on the basis of the fair market value of the underlying awards on the respective grant dates and without any adjustment for estimated forfeitures. Assumptions used in the calculation of these amounts are included in Note 14, "Stock-Based Compensation," to our audited financial statements. The amounts shown also reflect the grant date fair value of a corresponding dividend equivalent that was granted concurrently with the option.

(4) Amounts reported under Non-Equity Incentive Plan Compensation for 2020 represent the cash incentive payouts to Mr. O'Donnell under his 2020 Cash Incentive Award described above under "—Compensation Discussion and Analysis—Elements of compensation—Cash incentives."

(5) Amounts reported under All Other Compensation consist of (i) for 2019, the payment of private club memberships and related meals and incidentals for Mr. Wang and Mr. Wong of $60,574 and $41,896, respectively, and company contributions to each of Mr. Wang, Mr. Wong and Mr. Baxter's 401(k) retirement plan accounts in the amount of $4,200, and (ii) for 2020, (a) the payment of private club memberships and related meals and incidentals for Mr. Wang, Mr. Wong and Mr. O'Donnell of $55,677, $32,361 and $4,886, respectively, (b) expected company contributions to each of Mr. Wang, Mr. Wong, Mr. Baxter, Mr. O'Donnell and Mr. Townsend's 401(k) retirement plan accounts in the amount of $5,700 and (c) the cash value service anniversary gifts of $2,605 to each of Mr. Wong and Mr. Baxter.

(6) Mr. Townsend joined us in May 2020, and therefore his salary and bonus amount set forth in the table above were prorated for the portion of 2020 in which he was employed with us.

(7) Mr. O'Donnell joined us in September 2019, and therefore his salary and bonus amount set forth in the table above for 2019 were prorated for the portion of 2019 in which he was employed with us.

Grants of Plan-Based Awards

The following table sets forth certain information regarding grants of plan-based awards under our 2017 Plan to our NEOs during 2020. In connection with each option and RSU award granted under our 2017 Plan, we have awarded a dividend equivalent, as described below in "—Dividend equivalents." No dividends were paid in 2019 on our Class A common stock.

Name	Grant Date	Estimated Future Payouts Under Non-Equity Incentive Plan Awards: Target ($)(1)	All Other Stock Awards: Number of Shares of Stock or Units (#)(2)	All Other Option Awards; Number of Securities Underlying Options (#)	Exercise or Base Price of Option Awards ($/Sh)	Grant Date Fair Value of Stock and Option Awards ($)(3)
William Wang	—	—	—	—	—	—
Ben Wong	12/31/2020	—	163,660	—	—	12,585,454
	12/31/2020	—		52,000	76.90	1,402,960
Adam Townsend	12/31/2020	—	49,000	—	—	3,768,100
	12/31/2020	—		41,000	76.90	1,106,180
Bill Baxter	—	—	—	—	—	—
Michael O'Donnell		210,000	—	—	—	—
	12/31/2020	—	2,220	—	—	170,718
	12/31/2020	—	—	43,780	76.90	1,181,184

(1) This amount reflects the target payout of cash incentive compensation to Mr. O'Donnell under his 2020 Cash Incentive Plan. There is no threshold or maximum amount under such award. The actual amounts paid are reflected in the "Non-Equity Incentive Plan Compensation" column of the Summary Compensation Table and the award is described further in "—Compensation Discussion and Analysis—Elements of compensation—Cash incentives."

(2) Reflects the award of RSUs for such NEO as described in the section titled "—Compensation Discussion and Analysis—Elements of compensation—Equity incentive program."

(3) These amounts reflect the grant date fair value calculated in accordance with ASC 718 on the basis of the fair market value of the underlying awards on the respective grant dates and without any adjustment for estimated forfeitures. Assumptions used in the calculation of these amounts are included in Note 14, "Stock-Based Compensation," to our audited financial statements. The amounts shown for the options and RSUs awarded to the NEOs also reflect the grant date fair value of a corresponding dividend equivalent that was granted concurrently with each option and RSU.

Outstanding Equity Awards at December 31, 2020

			Option Awards				Stock Awards	
Name	**Grant Date**	**Vesting Commencement Date**	**Number of Securities Underlying Unexercised Options Exercisable**	**Number of Securities Underlying Unexercised Options Unexercisable**	**Option Exercise Price**	**Option Expiration Date**	**Number of Shares or Units of Stock That Have Not Vested**	**Market Value of Shares or Units of Stock That Have Not Vested(1)**
William Wang	—	—	—	—	—	—	—	—
Ben Wong	12/31/2020	12/31/2020	—	52,000(3)	$ 76.90	12/31/2030	—	—
	12/31/2020	12/31/2020	—	—	—	—	163,660(3)	$12,585,454
	12/29/2017	5/7/2017	151,500	50,500(4)	$ 26.00	12/29/2027	—	—
	3/26/2014	3/26/2014	31,100(2)	—	$ 12.08	3/26/2024	—	—
	3/26/2014	3/26/2014	3,900(2)	—	$ 12.08	3/26/2024	—	—
Adam Townsend	12/31/2020	5/4/2020	—	41,000(4)	$ 76.90	12/31/2030	—	—
	12/31/2020	5/4/2020	—	—	—	—	49,000(5)	$ 3,768,100
Bill Baxter	12/29/2017	5/7/2017	113,625	37,875(4)	$ 26.00	12/29/2027	—	—
	12/29/2017	5/7/2017	—	—	—	—	50,500(6)	$ 3,883,450
	5/21/2015	1/1/2015	10,000(2)	—	$ 17.92	5/21/2025	—	—
Michael O’Donnell	12/31/2020	6/29/2020	—	3,780(4)	$ 76.90	12/31/2030	—	—
	12/31/2020	12/31/2020	—	40,000(7)	$ 76.90	12/31/2030	—	—
	12/31/2020	6/29/2020	—	—	—	—	2,220(5)	$ 170,718
	10/8/2019	9/3/2019	10,000	30,000(4)	$ 48.52	10/8/2029	—	—
	10/8/2019	—	—	—	—	—	8,000(6)	$ 615,200

(1) This amount reflects the fair value of our Class A common stock of $76.90 as of December 31, 2020 (the determination of the fair value by our board of directors as of the most proximate date) multiplied by the amount shown in the column for the number of shares or units that have not vested.

(2) This option is fully vested.

(3) This award vests with respect to 25% of the underlying shares on the three, six, nine, and twelve month anniversaries of the vesting commencement date.

(4) The option vest as to 25% of the underlying shares on each of the four anniversaries of the vesting commencement date, subject to the holder’s continued service. Mr. Wong’s unvested options will fully vest upon a change in control.

(5) These RSUs vest when both a service-based requirement and a liquidity event requirement have been satisfied. The service-based requirement will be satisfied in equal annual installments over a four-year period, subject to Mr. Townsend’s or Mr. O’Donnell’s continued service, as applicable. The liquidity event requirement will be satisfied upon the earliest of the following events, subject to Mr. Townsend’s or Mr. O’Donnell’s continued service, as applicable, through the date of that event: (i) the later of (A) the 90th day following an underwritten public offering of the Company’s securities or (B) the expiration of the market standoff period following such underwritten public offering, (ii) the 90th day following a direct listing or direct placement of our common stock in a publicly traded exchange, or (iii) immediately prior to a change in control in which the consideration received by holders of our capital stock is cash, marketable securities registered under the Securities Act, or a combination of both. In addition, if the market standoff period expires with respect to less than all of the shares that were subject to the market standoff period, the liquidity event requirement will be satisfied only to the extent that, immediately following that partial expiration of the market standoff period, Mr. Townsend or Mr. O’Donnell, as applicable, is able to sell the shares of our common stock that would be issued in settlement of his respective RSUs that vest upon that partial expiration, subject to his continued service through the date of the partial expiration.

(6) The RSA vests, if an initial public offering of our common stock occurs within seven years after the date of grant (the IPO Deadline), in equal annual installments over a four year period starting on the vesting commencement date subject to the holder’s continued service. Except as described in the following sentence, no portion of the RSA will vest until such an initial public offering occurs. Mr. Baxter’s RSA will fully vest upon the occurrence of either of the following events prior to the IPO Deadline: (1) a termination of his service due to death or disability or (2) a change in control. Mr. O’Donnell’s RSA will fully vest upon the occurrence of any of the following events prior to the IPO Deadline: (1) a termination of his service due to his death or disability, (2) an involuntary termination of his service by us without cause or his resignation for good reason, subject to his execution of a release of claims, or (3) a change in control. If an initial public offering of the Company’s common stock does not occur by the IPO Deadline, the RSA will be forfeited without any portion vesting.

(7) The shares subject to this option vest and becomes exercisable when both a performance-based requirement and a liquidity event requirement have been satisfied, provided that the recipient remains a service provider upon the date of determination of satisfaction of such requirement. The performance-based requirement will be satisfied based on the annual net revenue growth from the Platform+ business in each of 2021, 2022, 2023 and 2024, as to an incremental 12.5% of the option if the Platform+ annual net revenue growth: (i) for 2021 is at least 50%; (ii) for 2021 is at least 100%; (iii) for 2022 is at least 50%; (iv) for 2022 is at least 100%; (v) for 2023 is at least 25%; (v) for 2023 is at least 50%; (vi) for 2024 is at least 25%; and (vii) for 2024 is at least 50%. The liquidity event requirement will be satisfied on the expiration in full of the lock-up agreement described in the section titled “Shares Eligible for Future Sale.”

Potential Payments Upon Termination or Change-in-Control

Employment Agreements

Each of the employment agreements with Messrs. Wang and Wong provides that in the event the applicable NEO's employment is terminated without "cause" or the NEO resigns for "good reason" (each as defined in their respective employment agreement), subject to the NEO's execution and effectiveness of a general release of claims against us, the NEO will be entitled to a lump sum payment equal to 12 months of base salary and payment or reimbursement of COBRA premiums for 12 months. If the applicable NEO's employment is terminated without "cause" or the NEO resigns for "good reason" within 18 months following a change in control (the Change in Control Period), subject to the NEO's execution and effectiveness of a general release of claims against us, the NEO would instead be entitled to a lump sum payment equal to 18 months of base salary plus 1.5 times the NEO's target bonus opportunity and payment or reimbursement of COBRA premiums for 12 months.

Each employment agreement also provides that immediately prior to a change in control that occurs while the applicable NEO is employed with us, the NEO's stock options, restricted stock and other Company equity awards will become fully vested and exercisable.

Each employment agreement provides that in the event that the payments described above would, if paid, be excess parachute payments subject to the excise tax under Section 4999 (the Excise Tax) of the Code, then the payments will be reduced to the extent necessary so that no portion of the payments is subject to the Excise Tax, but only if the net after-tax amount of the reduced payments is greater than the net after-tax amount of the payments without such reduction.

2007 Plan

In the event that a change in control of us (as described more fully under "Equity Incentive Plans—2007 Incentive Award Plan") occurs and a participant's outstanding awards granted under the 2007 Plan are not continued, converted, assumed or replaced by us or our successor, such awards will become fully vested and exercisable immediately prior to the consummation of such change in control, unless the applicable award agreements provide otherwise.

Equity Awards

The RSA granted to Mr. Baxter in December 2017 will fully vest upon the occurrence of either of the following events prior to the IPO Deadline: (1) a termination of his service due to death or disability or (2) a change in control. The RSA granted to Mr. O'Donnell in October 2019 will fully vest upon the occurrence of any of the following events prior to the IPO Deadline: (1) a termination of his service due to his death or disability, (2) an involuntary termination of his service by us without cause or his resignation for good reason, subject to his execution of a release of claims, or (3) a change in control. If an initial public offering of the Company's common stock does not occur by the IPO Deadline, the RSAs will be forfeited without any portion vesting.

Each of the RSU awards granted to Messrs. Townsend and O'Donnell in December 2020 vest when both a service-based requirement and a liquidity event requirement have been satisfied, and each of the options granted to Mr. O'Donnell in December 2020 vests when both a performance-based requirement and a liquidity event requirement have been satisfied. The liquidity event requirement for these awards will be satisfied upon the occurrence of certain events, including a change in control in which the consideration received by holders of our capital stock is cash, marketable securities registered under the Securities Act, or a combination of both.

The following table summarizes the payments that would be made to our NEOs upon the occurrence of a qualifying termination of employment or change in control, assuming that each NEO's termination of employment with us, or a change in control, occurred on December 31, 2020, as applicable. Amounts shown do

not include (i) accrued but unpaid salary through the date of termination and (ii) other benefits earned or accrued by the NEO during his employment that are available to all salaried employees, such as accrued vacation.

Name *Trigger Event*	Base Salary	Target Bonus	Value of Equity Award Acceleration(1)	Health and Welfare Benefits	Total Value
William Wang					
Involuntary Termination Not in Connection with a Change in Control	$ 425,000	—	—	$ 27,854	$ 452,854
Involuntary Termination in Connection with a Change in Control	$ 637,500	$ 1,759,500	—	$ 27,854	$ 2,424,854
Ben Wong					
Change in Control	—	—	$ 15,155,904	—	$ 15,155,904
Involuntary Termination Not in Connection with a Change in Control	$ 425,000	—	—	$ 27,854	$ 452,854
Involuntary Termination in Connection with a Change in Control	$ 637,500	$ 1,759,500	—	$ 27,854	$ 2,424,854
Bill Baxter					
Change in Control	—	—	$ 3,883,450	—	$ 3,883,450
Termination Due to Death or Disability	—	—	$ 3,883,450	—	$ 3,883,450
Michael O'Donnell					
Change in Control	—	—	$ 615,200	—	$ 615,200
Termination Due to Death or Disability	—	—	$ 615,200	—	$ 615,200
Involuntary Termination Not in Connection with a Change in Control	—	—	$ 615,200	—	$ 615,200

(1) The value of an accelerated equity award was calculated by multiplying (x) the number of shares covered by the portion of the equity award subject to acceleration by (y) the fair market value of a share of our Class A common stock on December 31, 2020 ($76.90) (and in the case of an option, minus the per share exercise price of the option).

Equity Incentive Plans

2017 Incentive Award Plan

Our board of directors adopted, and our stockholders approved, the 2017 Incentive Award Plan (2017 Plan). The 2017 Plan provides for the grant of incentive stock options (ISOs), nonstatutory stock options (NSOs), stock appreciation rights (SARs), restricted stock, restricted stock units (RSUs), dividend equivalents and other stock-based awards to eligible employees, directors and consultants. As of December 31, 2020, the following awards remained outstanding under the 2017 Plan: (i) options to purchase a total of 1,615,797 shares of our Class A common stock at a weighted average exercise price per share of $39.32, (ii) restricted stock awards covering a total of 157,300 shares of our Class A common stock, and (iii) RSUs covering a total of 226,108 shares of our Class A common stock.

Prior to the completion of this offering, our board of directors intends to adopt, and we expect our stockholders will approve, an amendment and restatement of our 2017 Plan. The following summary describes the principal features of the 2017 Plan immediately following such amendment and restatement.

Authorized shares

The number of shares of our Class A common stock reserved for issuance pursuant to our 2017 Plan will be the total of (i) shares, (ii) the number of shares that, as of the date the 2017 Plan was adopted by our board of directors, were available for issuance under the 2007 Plan, plus (ii) the number of shares subject to awards outstanding under the 2007 Plan as of the date the 2017 Plan was approved by our board of directors, that on or after that date, are forfeited or otherwise terminate or expire for any reason without the issuance of shares to the holders of the awards, with the maximum number of shares of our Class A common stock to be added to the 2021 Plan under clauses (ii) and (iii) equal to shares. A maximum of 4,502,295 shares may be issued upon the exercise of ISOs granted under the 2017 Plan. The number of shares available for issuance under our 2017 Plan will also include an annual increase on the first day of each fiscal year beginning with our 2022 fiscal year, equal to the least of:

- shares;
- % of the outstanding shares of all classes of our common stock as of the last day of the immediately preceding fiscal year; or
- such other amount as the administrator may determine no later than the last day of the immediately preceding fiscal year.

If any shares subject to an award are forfeited or expire, is surrendered through an exchange program, or such award is settled for cash (in whole or in part) (including shares of restricted stock repurchased by us at the same price paid by the participant due to the failure to vest), the shares subject to the award will, to the extent of such forfeiture, expiration or cash settlement, again be available for future grants of awards under the 2017 Plan. In addition, the following shares will again be available for future grants of awards under the 2017 Plan: (i) shares tendered by a participant or withheld by us in payment of the exercise price of an option; and (ii) shares tendered by the participant or withheld by us to satisfy any tax withholding obligation with respect to an award. The payment of dividend equivalents in cash in conjunction with any outstanding awards will not reduce the number of shares available for issuance under the 2017 Plan. However, no shares may again be optioned, granted or awarded if such action would cause an option granted as an ISO to fail to qualify as an ISO under Section 422 of the Internal Revenue Code.

Administration

Our board of directors, or a committee thereof appointed by our board of directors, has the authority to administer the 2017 Plan, except that the full board of directors, acting by a majority of its members in office, will conduct the general administration of the 2017 Plan with respect to awards granted to non-employee directors. In addition, if we determine it is desirable to qualify transactions under our 2017 Plan as exempt under Rule 16b-3 of the Exchange Act, such transactions will be structured to satisfy the requirements for exemption under Rule 16b-3.

The administrator will have the power to (i) interpret the 2017 Plan, all programs adopted by the administrator pursuant to the 2017 Plan containing the terms and conditions intended to govern a specified type of award granted under the 2017 Plan (Programs) and award agreements; (ii) adopt such rules for the administration, interpretation and application of the 2017 Plan and any Program as are not inconsistent with the 2017 Plan; (iii) interpret, amend or revoke any such rules; (iv) amend any Program or award agreement, provided that the rights or obligations of the holder of the award that is the subject of any such Program or award agreement are not materially adversely affected by such amendment, unless the consent of the holder is obtained

or such amendment is otherwise permitted under the 2017 Plan; (v) determine the fair market value of our common stock; (vi) designate eligible individuals to receive awards; (vii) determine the type or types of awards to be granted to each eligible individual; (viii) determine the number of awards to be granted and the number of shares to which an award will relate; (ix) determine the terms and conditions of any award granted pursuant to the 2017 Plan; (x) institute and determine the terms and conditions of an exchange program through which outstanding awards may be surrendered or cancelled in exchange for awards of the same type (which may have a higher or lower exercise price and/or different terms), awards of a different type, and/or cash, by which participants would have the opportunity to transfer outstanding awards to a financial institution or other person or entity selected by the administrator, or by which the exercise price of an outstanding award is increased or reduced; (xi) determine whether, to what extent, and under what circumstances an award may be settled in, or the exercise price of an award may be paid in cash, shares, other awards, or other property, or an award may be canceled, forfeited or surrendered; (xii) prescribe the form of each award agreement, which need not be identical for each holder; (xiii) decide all other matters that must be determined in connection with an award; (xiv) establish, adopt or revise any Programs, rules and regulations as it may deem necessary or advisable to administer the 2017 Plan; (xv) interpret the terms of, and any matter arising pursuant to, the 2017 Plan, any Program or any award agreement; (xvi) allow a participant to defer the receipt of payment of cash or the delivery of shares that would otherwise be due to such participant under an award; (xvii) make all other decisions and determinations that may be required pursuant to the 2017 Plan or as the administrator deems necessary or advisable to administer the 2017 Plan; and (xviii) accelerate wholly or partially the vesting or lapse of restrictions of any award or portion thereof at any time after the grant of an award.

In addition, in order to comply with the laws in countries other than the United States in which we or our subsidiaries operate or have employees, non-employee directors or consultants, or in order to comply with the requirements of any foreign securities exchange or other applicable law, the administrator will have the power and authority to (i) determine which subsidiaries will be covered by the 2017 Plan; (ii) determine which eligible individuals outside the United States are eligible to participate in the 2017 Plan; (iii) modify the terms and conditions of any award granted to eligible individuals outside the United States to comply with applicable law; (iv) subject to the share limits described above, establish subplans and modify exercise procedures and other terms and procedures, to the extent such actions may be necessary or advisable; and (v) take any action, before or after an award is made, that the administrator deems advisable to obtain approval or comply with any necessary local governmental regulatory exemptions or approvals or listing requirements of any foreign securities exchange.

Eligibility

Awards other than ISOs may be granted to any of our employees or consultants, employees or consultants of any of our parents or subsidiaries or to any member of our board of directors. Only our employees or employees of any of our parents or subsidiaries may be granted ISOs.

Stock options

Stock options provide for the purchase of shares of our Class A common stock in the future at an exercise price set on the grant date. The 2017 Plan provides for the grant of ISOs under the federal tax laws or NSOs. ISOs may be granted only to employees, and NSOs may be granted to employees, directors or consultants. ISOs, by contrast to NSOs, may provide tax deferral beyond exercise and favorable capital gains tax treatment to their holders if certain holding period and other requirements of the Code are satisfied. The term of a stock option may not be longer than ten years (or five years in the case of ISOs granted to certain significant stockholders). The exercise price of options will be determined by the administrator, provided that the exercise price of a stock option may not be less than 100% of the fair market value of the underlying share on the date of grant (or 110% in the case of ISOs granted to certain significant stockholders), except with respect to certain substitute options granted in connection with a corporate transaction. Vesting conditions determined by the plan administrator may apply to stock options and may include continued service, performance and/or other conditions. After a

participant's termination of service, the vested portion of a participant's option will remain exercisable for the period of time specified in his or her award agreement. In the absence of a specified time in an award agreement, the vested portion of an option will (i) expire immediately upon a termination for cause (as defined in the 2017 Plan), (ii) remain exercisable for 12 months following a termination due to death or disability, or (iii) remain exercisable for 3 months following a termination for any other reason. In addition, an award agreement may provide for an extension of the option post-termination exercise period if the participant's service is terminated for reasons other than his or her death or disability and the exercise of the option following the termination of the participant's service would result in liability under Section 16(b) of the Exchange Act or would violate the registration requirements under the Securities Act. An option, however, may not be exercised later than the expiration of its term.

Stock appreciation rights

The 2017 Plan provides that we may issue SARs. SARs entitle their holder, upon exercise, to receive from us an amount equal to the appreciation of the shares subject to the award between the grant date and the exercise date. Each SAR will be governed by a stock appreciation right agreement and may be granted in connection with stock options or other awards, or separately. The exercise price of a SAR may not be less than 100% of the fair market value of the underlying share on the date of grant (except with respect to certain substitute SARs granted in connection with a corporate transaction) and the term of a SAR may not be longer than ten years. Vesting conditions determined by the plan administrator may apply to SARs and may include continued service, performance and/or other conditions. After a participant's termination of service, the same rules relating to the exercise of options will apply to the participant's SAR.

Restricted stock and restricted stock units

The 2017 Plan provides that we may issue restricted stock awards and RSUs. Restricted stock is an award of nontransferable shares of our Class A common stock that remain forfeitable unless and until specified conditions are met, and which may be subject to a purchase price. RSUs are contractual promises to deliver shares of our Class A common stock in the future, which may also remain forfeitable unless and until specified conditions are met. Delivery of the shares underlying RSUs may be deferred under the terms of the award or at the election of the participant, if the plan administrator permits such a deferral. Conditions applicable to restricted stock and RSUs may be based on continuing service, the attainment of performance goals and/or such other conditions as the plan administrator may determine. Holders of restricted stock, unlike recipients of other equity awards, will have voting rights and will have the right to receive dividends, if any, prior to the time when the restrictions lapse.

Dividend equivalents

The 2017 Plan provides that dividend equivalents may be awarded to eligible employees, consultants or directors. Dividend equivalents represent the right to receive the equivalent value of the dividends, if any, per share paid by us on shares of Class A common stock and may be granted alone or in tandem with awards other than stock options or SARs. Dividend equivalents are credited as of dividend record dates during the period between the date an award is granted (or such other date determined by the administrator) and the date such award vests, is exercised, is distributed or expires, as determined by the plan administrator.

Other stock-based awards

Other stock -based awards may include a stock bonus award, performance award or incentive award that is paid in cash, shares or a combination of both, which may include deferred stock, deferred stock units, stock payments and performance awards. The administrator determines the terms and conditions of each other stock-based award, including the term of the award, any exercise or purchase price, performance goals, transfer restrictions, vesting conditions and other terms and conditions, which will be provided in the applicable award

agreement. Other stock-based awards may be available as a form of payment in the settlement of other awards granted under the 2017 Plan, as stand-alone payments, as a part of a bonus, deferred bonus, deferred compensation or other arrangement and/or as payment in lieu of compensation to which an eligible employee, director or consultant is otherwise entitled.

Outside directors

All outside (non-employee) directors will be eligible to receive all types of awards (except for incentive stock options) under our 2017 Plan. In order to provide a maximum limit on the cash compensation and equity awards that can be made to our outside directors, our 2017 Plan provides that in any given fiscal year, an outside director will not be granted cash compensation and equity awards with an aggregate value greater than $, with the value of each equity award based on its grant date fair value as determined according to GAAP for purposes of this limit. Any cash compensation paid or awards granted to an individual for his or her services as an employee or consultant (other than as an outside director) will not count toward this limit.

Transferability

Awards are transferable only by will and the laws of descent and distribution, or to the extent authorized by the administrator, to certain permitted transferees, including members of the participant's immediate family. The participant may also designate one or more beneficiaries in the event of death on a designated form provided by the administrator.

Changes in capitalization; corporate transactions

In the event of any stock dividend, stock split, combination or exchange of shares, merger, consolidation, or other distribution (other than normal cash dividends) of our assets to stockholders, or any other change affecting our stock or the share price of our stock other than an equity restructuring, the administrator may make equitable adjustments to (i) the number and kind of shares subject to outstanding awards, the grant or exercise price of outstanding awards, and the terms and conditions of outstanding awards and (ii) the number and kind of shares that may be issued under the 2017 Plan.

In the event of a change in control (as defined in the 2017 Plan), any transaction or event described in the previous paragraph, or any unusual or nonrecurring transactions or events affecting us or any of our subsidiaries, any financial statements of ours or our subsidiaries, or of changes in applicable laws or applicable accounting standards, the administrator has broad discretion to take action under the 2017 Plan to prevent the dilution or enlargement of intended benefits and to facilitate such transactions or events, including providing for the cash-out, assumption, substitution, accelerated vesting or termination of awards.

For awards granted to an outside director, in the event of a change in control, the outside director will fully vest in and have the right to exercise all of his or her outstanding options and stock appreciation rights, all restrictions on restricted stock and restricted stock units will lapse and, for awards with performance-based vesting, unless specifically provided for otherwise under the applicable award agreement or other agreement or policy applicable to the participant, all performance goals or other vesting criteria will be deemed achieved at 100% of target levels and all other terms and conditions met.

In addition, in the event of certain non-reciprocal transactions with our stockholders known as "equity restructurings," the administrator will make equitable adjustments to the 2017 Plan and outstanding awards.

In the event of our proposed liquidation or dissolution, the administrator will notify participants as soon as practicable prior to the effective date of such proposed transaction, and to the extent not exercised, all awards will terminate immediately prior to the consummation of such proposed transaction.

Claw-back provisions

The administrator may specify in an award agreement that the participant's rights, payments, and/or benefits with respect to an award will be subject to reduction, cancellation, forfeiture, and/or recoupment upon the occurrence of certain specified events. All awards (including any proceeds, gains, or other economic benefit actually or constructively received by a participant upon any receipt or exercise of any award or upon the receipt or resale of any shares underlying the award) will be subject to the provisions of any claw-back policy implemented by us. Our board of directors may require a participant to forfeit, return, or reimburse us all or a portion of the award (including any proceeds, gains, or other economic benefit actually or constructively received by a participant upon any receipt or exercise of any award or upon the receipt or resale of any shares underlying an award) according to the terms of such clawback policy or in order to comply with applicable laws.

Amendment; termination

Our board of directors has the authority to amend or terminate our 2017 Plan, but no such action may materially impair the rights of any participant without the consent of the participant, unless the participant's award expressly permits such action. Our board of directors will obtain shareholder approval of any amendment necessary to comply with applicable laws. Our 2017 Plan will continue until terminated by our board of directors, but (i) no ISO may be granted after the tenth anniversary of the earlier of the date the amendment and restatement of the 2017 Plan is adopted by our board of directors or the date the amendment and restatement of the 2017 Plan is approved by our stockholders and (ii) the automatic annual increases to the number of shares available for issuance under our 2017 Plan will operate only until the tenth anniversary of the earlier of the date the amendment and restatement of the 2017 Plan is adopted by our board of directors or the date the amendment and restatement of the 2017 Plan is approved by our stockholders.

2007 Incentive Award Plan

Our board of directors adopted, and our stockholders approved, our 2007 Incentive Award Plan (2007 Plan). Our 2007 Plan was terminated in connection with our adoption of our 2017 Plan. However, any outstanding awards granted under the 2007 Plan remain outstanding, subject to the terms of our 2007 Plan and award agreements, until such outstanding awards vest and are exercised (as applicable) or until they terminate or expire by their terms. The material terms of the 2007 Plan are summarized below.

The 2007 Plan provided for the grant of ISOs, NSOs, SARs, restricted stock, RSUs, dividend equivalents and stock payment awards. As of December 31, 2020, the following awards remained outstanding and subject to the terms of our 2007 Plan: (i) options to purchase a total of 208,250 shares of our Class A common stock at a weighted average exercise price per share of $23.09 and (ii) 555,000 shares of our Class A common stock subject to restricted stock awards that were forfeited subsequent to December 31, 2020.

Administration

Our board of directors, or a committee thereof appointed by our board of directors, has the authority to administer the 2007 Plan and the awards granted under it, including the power to (i) accelerate or waive any forfeiture restrictions or restrictions on exercisability of an award; (ii) determine whether, to what extent, and under what circumstances an award may be settled in, or the exercise price of an award may be paid in, cash, shares of our common stock, other awards, or other property, or an award may be canceled, forfeited or surrendered; (iii) decide all matters that must be determined in connection with an award; (iv) establish, adopt or revise any rules and regulations as it may deem necessary or advisable to administer the 2007 Plan; (v) modify the terms and conditions of any award granted to an individual outside the United States to comply with applicable foreign laws; (vi) establish subplans and modify exercise procedures and other terms and procedures, to the extent such actions may be necessary or advisable to comply with applicable foreign laws; (vii) interpret the terms of, and any matter arising pursuant to, the 2007 Plan or any award agreement; and (viii) make all other

decisions and determinations that may be required under the 2007 Plan or as the administrator deems necessary or advisable to administer the 2007 Plan. Our board of directors may modify outstanding awards under the 2007 Plan but must obtain the consent of any participant adversely affected by any such modification. The administrator's interpretation of the 2007 Plan, any awards granted under the 2007 Plan, or any award agreement, and all decisions and determinations by the administrator with respect to the 2007 Plan, are final, binding and conclusive on all persons.

Stock options

The exercise price of options was determined by the administrator, provided that the exercise price of an ISO granted to an individual who owned stock representing more than 10% of the voting power of all classes of our capital stock or that of any parent or subsidiary of ours could not be less than 110% of the fair market value per share of our Class A common stock on the date of grant. Shares subject to options under the 2007 Plan generally vest in a series of installments over an optionee's period of service. No stock option award could have a term of more than ten years from the date of grant, and in the case of an ISO granted to an individual who owned stock representing more than 10% of the voting power of all classes of our capital stock or that of any parent or subsidiary of ours, the term of the ISO could be no more than five years from the date of grant. After a participant's termination of service, the participant's option will remain exercisable for the period of time specified in his or her award agreement.

Restricted stock

Shares of restricted stock remain forfeitable or subject to our repurchase right unless and until specified conditions are met. The conditions may be based on continuing service, the attainment of performance goals and/or such other conditions as the administrator determined. Holders of restricted stock, unlike recipients of options, have voting rights and will have the right to receive dividends, if any, prior to the time when the restrictions lapse.

Transferability

Awards are transferable only by will and the laws of descent and distribution, or to the extent authorized by the administrator, to certain permitted transferees, including members of the participant's immediate family. The participant may also designate one or more beneficiaries in the event of death in the manner determined by the administrator.

Adjustments; change in control

In the event of any stock dividend, stock split, reverse stock split, combination or exchange of shares, merger, consolidation, spin-off, recapitalization, reclassification, distribution of assets (other than normal cash dividends), or any other corporate event affecting our Class A common stock, the administrator will equitably adjust the number and kind of shares subject to outstanding awards, the grant or exercise price of outstanding awards and terms and conditions of outstanding awards.

In the event of any transaction or event described in the previous paragraph or any unusual or nonrecurring transactions or events affecting us or any of our affiliates or any of our or our affiliates' financial statements (such as a change in control (as defined in the 2007 Plan)), or of changes in applicable laws, regulations or accounting principles, and whenever the administrator determines that such action is appropriate in order to prevent the dilution or enlargement of the benefits or potential benefits intended to be made available under the 2007 Plan or with respect to any award under the 2007 Plan, to facilitate such transactions or events or to give effect to such changes in laws, regulations or principles, the administrator, in its discretion and on such terms and conditions as it deems appropriate, either by amendment of the terms of any outstanding Awards or by action

taken prior to the occurrence of such transaction or event and either automatically or upon the participant's request, may take any one or more of the following actions:

- provide for either (A) termination of any such award in exchange for an amount of cash and/or other property equal to the amount that would have been received upon the exercise of such award or realization of the participant's rights, if any, or (B) the replacement of such award with other rights or property selected by the administrator in its discretion;
- provide that such award will be assumed by the successor or survivor entity (or its subsidiary) or substituted for by similar awards covering the stock of the successor or survivor entity (or its subsidiary), with appropriate adjustments as to the number and kind of shares and prices;
- provide that any repurchase rights (or forfeiture restrictions) in our favor with respect to such award are assigned to the successor or survivor corporation (or its subsidiary) or otherwise continued, with appropriate adjustments as to the number and kind of shares and prices;
- make adjustments in the number and type of shares (or other securities or property) subject to outstanding awards and/or in the terms and conditions of (including the grant or exercise price);
- provide that such award will be exercisable or payable or fully vested with respect to all underlying shares; and
- provide that the award cannot vest, be exercised or become payable after such event.

If a change in control occurs and a participant's awards are not continued, converted, assumed or replaced, such awards will become fully exercisable and/or payable, as applicable, and all forfeiture, repurchase and other restrictions on such awards will lapse immediately prior to such change in control, unless otherwise provided in any applicable agreement with the participant.

Amendment

Our board of directors may amend the 2007 Plan. We will obtain stockholder approval of any amendment to the extent necessary to comply with applicable law. No amendment of the 2007 Plan may adversely affect in any material way any outstanding award without the prior written consent of the participant.

2021 Employee Stock Purchase Plan

Prior to the completion of this offering, our board of directors intends to adopt, and we expect our stockholders will approve, our ESPP. We expect that our ESPP will be effective on the business day immediately prior to the effective date of the registration statement of which this prospectus forms a part. We believe that allowing our employees to participate in our ESPP will provide them with a further incentive towards promoting our success and accomplishing our corporate goals.

Authorized Shares

A total of shares of our Class A common stock will be available for sale under our ESPP. The number of shares of our Class A common stock that will be available for sale under our ESPP also includes an annual increase on the first day of each fiscal year beginning with our 2022 fiscal year, equal to the least of:

- shares;
- % of the outstanding shares of all classes of our common stock as of the last day of the immediately preceding fiscal year; or
- such other amount as the administrator may determine.

Administration

We expect that the compensation committee of our board of directors will administer our ESPP. The administrator will have full and exclusive discretionary authority to construe, interpret, and apply the terms of the ESPP, delegate ministerial duties to any of our employees, designate separate offerings under the ESPP, designate our subsidiaries and affiliates as participating in the ESPP, determine eligibility, adjudicate all disputed claims filed under the ESPP, and establish procedures that it deems necessary or advisable for the administration of the ESPP, such as adopting such rules, procedures, sub-plans, and appendices to subscription agreements as are necessary or appropriate to permit participation in the ESPP by employees who are foreign nationals or employed outside the United States. The administrator's findings, decisions and determinations will be final and binding on all participants to the full extent permitted by law.

Eligibility

Generally, all of our employees will be eligible to participate if they are customarily employed by us, or any participating subsidiary or affiliate, for at least 20 hours per week and more than five months in any calendar year. The administrator, in its discretion, may, prior to an enrollment date, for all options to be granted on such enrollment date in an offering, determine that an employee who (i) has not completed at least two years of service (or a lesser period of time determined by the administrator) since his or her last hire date, (ii) customarily works not more than 20 hours per week (or a lesser period of time determined by the administrator), (iii) customarily works not more than five months per calendar year (or a lesser period of time determined by the administrator), (iv) is a highly compensated employee within the meaning of Section 414(q) of the Code, or (v) is a highly compensated employee within the meaning of Section 414(q) of the Code with compensation above a certain level or is an officer or subject to disclosure requirements under Section 16(a) of the Exchange Act, is or is not eligible to participate in such offering period.

However, an employee may not be granted rights to purchase shares of our Class A common stock under our ESPP if such employee:

- immediately after the grant would own capital stock and/or hold outstanding options to purchase such stock possessing 5% or more of the total combined voting power or value of all classes of capital stock of ours or of any parent or subsidiary of ours; or
- holds rights to purchase shares of our common stock under all employee stock purchase plans of ours or any parent or subsidiary of ours that accrue at a rate that exceeds $25,000 worth of shares of our common stock for each calendar year in which such rights are outstanding at any time.

Offering Periods

Our ESPP will include a component that allows us to make offerings intended to qualify under Section 423 of the Code and a component that allows us to make offerings not intended to qualify under Section 423 of the Code to designated companies, as described in our ESPP. Our ESPP will provide for consecutive 6-month offering periods. The offering periods will be scheduled to start on the first trading day on or after and of each year, except the first offering period will commence on the first trading day on or after the effective date of the registration statement of which this prospectus forms a part and will end on the last trading day on or before , and the second offering period will commence on the first trading day on or after .

Contributions

Our ESPP will permit participants to purchase shares of our Class A common stock through contributions (in the form of payroll deductions or otherwise to the extent permitted by the administrator) of up to [ ]% of their eligible compensation, which includes a participant's base straight time gross earnings but excludes payments for commissions, incentive compensation, bonuses, payments for overtime and shift premium, equity compensation income and other similar compensation. Unless otherwise determined by the administrator,

(i) during a purchase period, a participant may make a one-time decrease (but not increase) to the rate of his or her contributions to 0%, and (ii) during an offering period, a participant may increase or decrease the rate of his or her contributions.

Exercise of Purchase Right

Amounts contributed and accumulated by the participant will be used to purchase shares of our Class A common stock at the end of each offering period. A participant may purchase a maximum of [ ] shares of our Class A common stock during an offering period. The per share purchase price of the shares will be [ ]% of the lower of the fair market value of a share of our Class A common stock on the first trading day of the offering period or on the exercise date. If the fair market value of a share of our common stock on the exercise date is less than the fair market value of a share of our common stock on the first trading day of the offering period, then all participants in the offering period automatically will be withdrawn from the offering period immediately after the exercise of all options outstanding as of such exercise date and automatically will be re-enrolled in the immediately following offering period. Participants may end their participation at any time during an offering period and will be paid their accrued contributions that have not yet been used to purchase shares of our Class A common stock. Participation ends automatically upon termination of employment with us.

Non-Transferability

A participant will not be permitted to transfer contributions credited to his or her account or rights granted under our ESPP (other than by will, the laws of descent and distribution or as otherwise provided under our ESPP).

Merger or Change in Control

Our ESPP will provide that in the event of a merger or change in control, as defined under our ESPP, a successor corporation (or a parent or subsidiary of the successor corporation) may assume or substitute each outstanding purchase right. If the successor corporation refuses to assume or substitute for the outstanding purchase right, the offering period with respect to which the purchase right relates will be shortened, and a new exercise date will be set that will be before the date of the proposed merger or change in control. The administrator will notify each participant that the exercise date has been changed and that the participant's option will be exercised automatically on the new exercise date unless prior to such date the participant has withdrawn from the offering period.

Amendment; Termination

The administrator will have the authority to amend, suspend or terminate our ESPP. Our ESPP automatically will terminate in 2041, unless we terminate it sooner.

PRINCIPAL AND SELLING STOCKHOLDERS

The following table indicates information as of February 28, 2021, regarding the beneficial ownership of our common stock, and as adjusted to reflect the sale of Class A common stock offered by us and the selling stockholders in this offering, for:

- each person, or group or affiliated persons, whom we know beneficially owns more than 5% of our shares of our outstanding Class A common stock or Class B common stock;
- each of our named executive officers;
- each of our directors;
- all of our directors and executive officers as a group; and
- each selling stockholder.

The number of shares beneficially owned prior to the offering and the percentage of shares beneficially owned prior to the offering are based on 8,613,247 shares of Class A common stock and 10,959,225 shares of Class B common stock outstanding as of February 28, 2021, after giving effect to (i) the consummation of the Reorganization Transaction, (ii) the Series A Conversion and (iii) the Class B Stock Exchange.

Beneficial ownership is determined in accordance with the rules and regulations of the SEC. Shares subject to options that are exercisable and shares of restricted stock that vest within 60 days following February 28, 2021 are deemed to be outstanding and beneficially owned by the holder thereof for the purpose of computing share and percentage ownership of that holder, but are not deemed to be outstanding for the purpose of computing the percentage ownership of any other person. Except as indicated in the footnotes to this table, and as affected by applicable community property laws, all persons listed have sole voting and investment power for all shares shown as beneficially owned by them. Except as otherwise set forth below, the address of the beneficial owner is c/o VIZIO Holding Corp., 39 Tesla, Irvine, California 92618.

	Beneficial Ownership Prior to this Offering				% of Total Voting Power Before the Offering	Shares of Class A Being Offered	Beneficial Ownership After this Offering				% of Total Voting Power After the Offering
	Class A		Class B				Class A		Class B		
Name of Beneficial Owner	Shares	%	Shares	%			Shares	%	Shares	%	
5% Stockholders:											
AmTRAN Technology Co. Ltd.(1)	1,684,200	19.55%	—	—	1.42%						
Q-Run Holdings Ltd.(2)	1,684,200	19.55%	—	—	1.42%						
V-TW Holdings, LLC(3)	1,562,900	18.15%	—	—	1.32%						
Innolux Corporation(4)	927,452	10.77%	—	—	*						
Foxconn Assembly Holding Corporation(5)	515,251	5.98%	—	—	*						
Officers and Directors:											
William Wang(6)	—	—	10,959,225	100.00%	92.71%						
Ben Wong(7)	243,900	2.77%	—	—	*						
Adam Townsend	—	—	—	—	—						
Bill Baxter(8)	174,126	1.99%	—	—	*						
Michael O'Donnell(9)	18,000	*	—	—	*						
John R. Burbank	—	—	—	—	—						
Julia Gouw	—	—	—	—	—						
S.C Huang	21,200	*	—	—	*						
David Russell(10)	486,864	5.65%	—	—	*						
All executive officers and directors as a group (9 persons)(11)	**944,090**	**10.87%**	**10,959,225**	**100.00%**	**93.51%**						
Selling Stockholders:											

* Represents beneficial ownership or voting power of less than one percent (1%).

(1) The address for AmTRAN Technology Co. Ltd. is 17F, No. 268, Lian Chen Rd., Jhonghe City, Taipei County, Taiwan, R.O.C.

(2) Q-Run Holdings Ltd. is a wholly-owned subsidiary of Foxconn Technology Co., Ltd. The address for Q-Run Holdings Ltd. is 15F, No. 207, Sec. 3, Peishin Rd., Shindian City, 23143, Taipei County, Taiwan, R.O.C. The address for Foxconn Technology Co., Ltd. is No 66-1, Chung-Shan Road, Taipei, Tucheng, 236 Taiwan, R.O.C.

(3) Avalon Capital Group II, LLC is the manager and Tdub Trust is the majority member of V-TW Holdings, LLC. Theodore W. Waitt is the trustee of Tdub Trust and has voting and dispositive control over Avalon Capital Group II, LLC. Each of Mr. Waitt, Avalon Capital Group, II LLC and Tdub Trust may be deemed to have voting and dispositive control with respect to the shares held by V-TW Holdings, LLC. In addition, American Endowment Foundation, a minority member of V-TW Holdings, LLC, has the right to direct the manager to vote or dispose of its pro rata portion of the shares held by V-TW Holdings. The address of Mr. Waitt, Avalon Capital Group, II LLC and Tdub Trust is 5786 La Jolla Blvd., La Jolla, CA 92037.

(4) The address for Innolux Corporation is No. 160, Kesyue Rd. Jhunan Science Park, Miaoli County 350, Taiwan, R.O.C.

(5) Foxconn Assembly Holding Corporation is a subsidiary of Hon Hai Precision Industry Co., Ltd. The address for Hon Hai Precision Industry Co., Ltd. and Foxconn Assembly Holding Corporation is 2 Tzu Yu Street, Tucheng City, Taipei Hsien, Taiwan, R.O.C.

(6) Consists of (i) 97,000 shares of Class B common stock held by Mr. Wang; (ii) 7,238,161 shares of Class B common stock held by The William W. Wang Separate Property Trust, of which the trustee is Mr. Wang; (iii) 700,000 shares of Class B common stock held by the W. Wang 2021 GRAT, dated February 22, 2021, of which the trustee is Mr. Wang; and (iv) 284,825 shares held by 2015 W. Wang GRAT, of which the trustee is Mr. Wang. The reported shares also include an aggregate of 2,639,219 shares of Class B common stock held by (A) the 2009 S. Wang GRAT, of which the trustee is Mr. Wang's sister; (B) the 2009 W. Wang GRAT, of which the trustee is Mr. Wang's sister; (C) the 2015 S. Wang GRAT, of which the trustee is Mr. Wang's spouse; (D) the Wang Family Trust, of which the trustees are Mr. Wang and his spouse; (E) the Wang Insurance Trust, of which the trustee is Mr. Wang's sister; and (F) the Wang Insurance Trust #2, of which the trustee is Mr. Wang's spouse (the trusts in (A)-(F) are referred to as the Affiliated Trusts). Prior to the effectiveness of the registration statement related to this offering, Mr. Wang is expected to enter into voting agreements with respect to the 2,639,219 shares held by the Affiliated Trusts, pursuant to which Mr. Wang will have the authority (and irrevocable proxy) to direct the vote and vote the shares of Class B common stock held by the Affiliated Trusts at his discretion on all matters to be voted upon by stockholders.

(7) Consists of (i) 57,400 shares of Class A common stock held by Mr. Wong and (ii) 186,500 shares of Class A common stock subject to stock options that are exercisable within 60 days of February 28, 2021.

(8) Consists of (i) 50,500 shares of restricted Class A common stock held by Mr. Baxter that will vest upon the completion of this offering and (ii) 123,626 shares of Class A common stock subject to stock options that are exercisable within 60 days of February 28, 2021.

(9) Consists of (i) 8,000 shares of restricted Class A common stock held by Mr. O'Donnell that will vest upon the completion of this offering and (ii) 10,000 shares of Class A common stock subject to stock options that are exercisable within 60 days of February 28, 2021.

(10) Consists of (i) 4,350 shares of Class A common stock held by Mr. Russell; (ii) 452,514 shares of Class A common stock held by T-Russ-D, LLC, a limited liability company held in a trust of which Mr. Russell is trustee; and (iii) 30,000 shares of Class A common stock held by the David E. Russell Grantor Retained Annuity Trust, for which Mr. Russell is trustee.

(11) Consists of (i) 623,964 shares of Class A common stock and 10,959,225 shares of Class B common stock beneficially owned by our executive officers and directors and (ii) 320,126 shares of Class A common stock subject to stock options exercisable within 60 days of February 28, 2021.

RELATED PARTY TRANSACTIONS

Since January 1, 2018, there has not been, nor is there any proposed transaction where (i) we were or will be a party, (ii) in which the amount involved exceeded or will exceed $120,000 and (iii) in which any director, executive officer, holder of more than 5% of any class of our voting securities, or any member of the immediate family of any of the foregoing persons had or will have a direct or indirect material interest, other than the compensation agreements and other agreements and transactions which are described in "Management" and the transactions described below.

Corporate Reorganization

Following the completion of this offering, we will have completed an internal restructuring, which we refer to in this prospectus as the Reorganization Transaction. Pursuant to the Reorganization Transaction, California VIZIO will become a wholly-owned subsidiary of Parent, and the holders of equity interests in California VIZIO will become stockholders of Parent. Please read "Prospectus Summary—Corporate Information" for additional information.

Lease of Headquarter Premises

In January 2007, we entered into a lease agreement with Spyglass Tesla, LLC to lease the premises located at 39 Tesla, Irvine, California, 92618, which is one of the two buildings in our current headquarters. As of December 31, 2020, (i) we are a 12.5% owner in Spyglass Tesla, LLC, (ii) William Wang, our Founder, Chairman and Chief Executive Officer, and his brother, Paul Wang, an employee, collectively own 43.75% of Spyglass Tesla, LLC through an entity they both equally own, and (iii) AmTRAN Technology Co., Ltd. (AmTRAN), a holder of more than 5% of our Class A common stock, is a 43.75% owner of Spyglass Tesla, LLC. Our lease with Spyglass Tesla, LLC is a triple-net lease that obligates us to pay all property-related expenses, including maintenance, utilities, repairs, taxes, insurance and capital expenditures. The total rent paid by us to Spyglass Tesla, LLC for 2018, 2019 and 2020 was $0.6 million, $0.7 million and $0.7 million, respectively. As of December 31, 2020, our annual base rent payment is $0.7 million and increases by 4% on February 1 of each year. Our lease is set to expire on January 31, 2022, and we will have the option to extend the lease for one additional term of five years pursuant to the terms of the lease agreement, which we anticipate exercising. Spyglass Tesla, LLC also paid Paul Wang a property management fee of $56,558 in 2020.

Supply Arrangements with Stockholders

We contract with certain of our stockholders to manufacture some of our products. Specifically, we have product supply agreements for the purchase of televisions and other consumer electronics with Innolux Corporation (Innolux) and Competition Team Technology US (CTTUS), an affiliate of Hon Hai Precision Industry Co., Ltd. (Hon Hai), which does business as Foxconn Technology Group (Foxconn). Innolux is a holder of more than 5% of our Class A common stock, and entities affiliated with Hon Hai and Foxconn are holders of more than 5% of our Class A common stock. Our product supply agreements with Innolux and Foxconn outline the terms of product delivery as well as distribution and marketing rights that we have upon the purchase of branded products for distribution throughout North America. Each of these supply agreements has a one-year term, with automatic renewals for additional one year terms unless otherwise terminated.

In addition, in connection with the purchase by Innolux and Foxconn of shares of our Class A common stock in June 2018, we entered into strategic cooperation agreements with each of Innolux and Sakai Display Products (Sakai), an affiliate of Foxconn, pursuant to which Innolux and Sakai agreed to certain business terms with respect to the manufacture, supply and promotion of our television and display products, and we agreed to issue to Innolux and Foxconn warrants to purchase shares of our Class A common stock with an aggregate value of $15.0 million at an exercise price of $48.52 per share subject to Innolux and Sakai collectively meeting certain milestones. These warrants were issued in December 2019 and expired unexercised in 2020.

We previously contracted with AmTRAN for the manufacture of our televisions and other consumer electronics pursuant to a product supply agreement, which we originally entered into in January 2012. As of November 2020, we have terminated our supply relationship with AmTRAN. See "—Settlement Agreement" below for more information. For the years ended December 31, 2018, 2019 and 2020, we purchased televisions and other consumer electronics from (i) Innolux for $166.3 million, $622.2 million and $687.7 million, respectively, (ii) CTTUS for $285.5 million, $170.1 million and $122.1 million, respectively, and (iii) AmTRAN for $166.7 million, $125.9 million and $17.9 million, respectively. In addition to our supply agreements with Innolux and CTTUS, we also source inventory from other unrelated third-party manufacturers as part of our diversification strategy.

Settlement Agreement

In November 2020, we entered into a settlement agreement with AmTRAN and one of its subsidiaries. AmTRAN is a holder of more than 5% of our Class A common stock. The settlement agreement was made to resolve a disagreement related to our prior supply agreement with AmTRAN and an ancillary security agreement with its subsidiary. Pursuant to the settlement agreement, we agreed, among other things, to pay AmTRAN approximately $8.2 million and to dismiss an action that we had filed against AmTRAN in the Superior Court of the State of California arising from the supply agreement. AmTRAN agreed that its security agreement would be null and void and to terminate with prejudice any UCC financing statements relating to that security agreement. AmTRAN further agreed to pay to a third party outstanding fees owed by it for intellectual property licenses related to the manufacturing of our devices. Both parties also agreed that we would collectively retain a reserve of approximately $4.0 million for payment of, among other things, any future settlements and/or fees and costs to defend against license, royalty, infringement or other claims attributable directly or indirectly to devices manufactured by AmTRAN that we had purchased from it prior to December 31, 2022. We have agreed to pay AmTRAN on December 31, 2022 the lesser of (i) 50% of the remaining balance of the reserve or (ii) approximately $2.0 million, with the balance of the reserve being retained by us.

Securities Purchase Agreements

In June 2018, we sold (i) 515,251 shares of our Class A common stock at a price of $48.52 per share, for an aggregate purchase price of $25.0 million, to Q-Run Holdings Ltd. (Q-Run), a holder of more than 5% of our Class A common stock and an affiliate of Foxconn and (ii) 927,452 shares of our Class A common stock at a price of $48.52 per share, for an aggregate purchase price of $45.0 million, to Innolux. Under the securities purchase agreements pursuant to which we sold Foxconn and Innolux the shares of Class A common stock, we agreed, among other things, that Foxconn is entitled to designate a member of our board of directors in the event that a member of our board of directors is no longer designated by Q-Run, pursuant to the shareholders' agreement described below, that William Wang will continue in his role as our key executive, and that we will deliver to Innolux and Foxconn certain financial information.

Shareholders' Agreement

We are party to our shareholders' agreement, dated as of September 15, 2008, as amended, by and among us and certain of our stockholders, including each of our officers and directors who holds shares of our capital stock, Paul Wang, who is the brother of William Wang, our Founder, Chairman and Chief Executive Officer, and each of our greater than 5% stockholders. Our shareholders' agreement provides, among other things, that we and certain holders of our capital stock have rights of first refusal and co-sale with respect to certain sales of securities by certain holders of our capital stock. In addition, pursuant to the shareholders' agreement, the holders of the Series A preferred stock are entitled to designate one individual for election to our board of directors, and the parties to the shareholders' agreement agree to cause such designee of the Series A preferred stock to be elected. The shareholders' agreement also restricts Mr. Wang from transferring his shares of our capital stock, with certain exceptions. The shareholders' agreement will terminate upon the consummation of this offering.

Other Transactions

Paul Wang, the brother of William Wang, our Founder, Chairman and Chief Executive Officer, is employed as our Director of Facilities. Paul Wang received an annual salary and other cash compensation of $140,349 and received a cash bonus of $31,250 in 2020. He also received benefits consistent with other employees serving in similar roles. In addition, we granted Paul Wang a stock option to purchase 3,800 shares of our Class A common stock at an exercise price of $76.90 per share during the year ended December 31, 2020 and a corresponding dividend equivalent that was granted concurrently.

To facilitate the Class B Stock Exchange, we will enter into an exchange agreement with William Wang, our Founder, Chairman and Chief Executive Officer, and his affiliates, effective as of immediately prior to effectiveness of the filing of our amended and restated certificate of incorporation, pursuant to which 10,959,225 shares of our Class A common stock beneficially owned by Mr. Wang and his affiliates will automatically be exchanged for an equivalent number of shares of our Class B common stock immediately prior to the completion of this offering.

Directed Share Program

At our request, the underwriters have reserved up to 5% of the shares offered by this prospectus for sale at the initial public offering price through a directed share program available to directors, officers, employees and their friends and family members.

The number of shares of common stock available for sale to the general public will be reduced to the extent that such persons purchase such reserved shares. Any shares not so purchased will be offered by the underwriters to the general public on the same basis as the other shares offered by this prospectus. Other than the underwriting discount described on the front covered of this prospectus, the underwriters will not be entitled to any commission with respect to shares of Class A common stock sold pursuant to the directed share program.

Indemnification Agreements

We have entered into or will enter into indemnification agreements with each of our directors and executive officers. These indemnification agreements may require us, among other things, to indemnify each of our directors and executive officers to the fullest extent permitted by Delaware law. For a more detailed description of our indemnification arrangements, see “Management—Limitation of Liability and Indemnification of Directors and Officers.”

Policies and Procedures for Related Person Transactions

Following the completion of this offering, our Audit Committee will have the primary responsibility for reviewing and approving or disapproving “related party transactions,” which are transactions between us and related persons in which the aggregate amount involved exceeds or may be expected to exceed $120,000 and in which a related person has or will have a direct or indirect material interest. Upon completion of this offering, our policy regarding transactions between us and related persons will provide that a related person is defined as a director, executive officer, nominee for director or beneficial owner of more than 5% of our Class A common stock or Class B common stock, in each case since the beginning of the most recently completed year, and any of their immediate family members. Our Audit Committee charter that will be in effect upon completion of this offering provides that our Audit Committee shall review and approve or disapprove any related party transactions.

We did not have a written policy regarding the review and approval of related person transactions prior to this offering. Nevertheless, with respect to such transactions, it has been the practice of our board of directors to consider the nature of and business reason for such transactions, how the terms of such transactions compared to those which might be obtained from unaffiliated third parties and whether such transactions were otherwise fair to us and in our best interests, or not contrary to, our best interests. In addition, all related person transactions required prior approval, or later ratification, by our board of directors.

DESCRIPTION OF CAPITAL STOCK

General

The descriptions of our capital stock that follow assume the consummation of the Reorganization Transaction and reflect changes to our capital structure that will occur prior to the completion of this offering in accordance with the terms of the amended and restated certificate of incorporation that will be adopted by us prior to the completion of this offering. The following description of our securities and the provisions of our bylaws and certificate of incorporation is only a summary. You should also refer to the copies of our bylaws and certificate of incorporation (both our current versions as well as the versions planned to be adopted) which have been filed with the SEC as exhibits to our registration statement, of which this prospectus forms a part.

Upon the completion of this offering and the filing of our amended and restated certificate of incorporation, our authorized capital stock will consist of shares of Class A common stock, par value $0.0001 per share, shares of Class B common stock, par value $0.0001 per share and shares of Class C common stock, par value $0.0001 per share. Our amended and restated certificate of incorporation will also authorize shares of undesignated preferred stock, the rights, preferences and privileges of which may be designated from time to time by our board of directors.

Assuming the Series A Conversion and after giving effect to the Class B Stock Exchange, as of December 31, 2020, there were 8,613,247 shares of our Class A common stock outstanding, held by 65 stockholders of record, 10,959,225 shares of our Class B common stock outstanding held by nine stockholders of record and no shares of our Class C common stock outstanding. Upon the completion of this offering, based on the number of shares outstanding as of December 31, 2020, we expect that shares of Class A common stock (or shares of Class A common stock if the underwriters exercise their option to purchase additional shares from us in full), and shares of Class B common stock, will be issued and outstanding. Until the Final Conversion Date, any issuance of additional shares of Class B common stock requires the approval of the holders of at least two-thirds of the outstanding shares of Class B common stock voting as a separate class.

Common Stock

We have three classes of authorized common stock, Class A common stock, Class B common stock and Class C common stock. The rights of the holders of Class A common stock, Class B common stock, and Class C common stock are identical, except with respect to voting and conversion.

Voting rights

Holders of our Class A common stock and Class B common stock have identical rights, provided that, except as otherwise expressly provided in our amended and restated certificate of incorporation or required by applicable law, on any matter that is submitted to a vote of our stockholders, holders of Class A common stock are entitled to one vote per share of Class A common stock and holders of Class B common stock are entitled to 10 votes per share of Class B common stock. Holders of our Class C common stock are not entitled to vote on any matter that is submitted to a vote of stockholders, except as otherwise required by law.

Holders of shares of Class A common stock and Class B common stock will vote together as a single class on all matters (including the election of directors) submitted to a vote of stockholders. Under our amended and restated certificate of incorporation, approval of the holders of at least a majority of the outstanding shares of our Class B common stock voting as a separate class is required to increase the number of authorized shares of our Class B common stock. In addition, Delaware law could require either holders of our Class A common stock, our Class B common stock, or our Class C common stock to vote separately as a single class in the following circumstances:

- if we were to seek to amend our amended and restated certificate of incorporation to increase or decrease the par value of a class of stock, then that class would be required to vote separately to approve the proposed amendment; and

- if we were to seek to amend our amended and restated certificate of incorporation in a manner that alters or changes the powers, preferences or special rights of a class of stock in a manner that affected its holders adversely, then that class would be required to vote separately to approve the proposed amendment.

Until the Final Conversion Date, approval of at least two-thirds of the outstanding shares of our Class B common stock, voting as a separate class, will be required to amend or modify any provision of the amended and restated certificate of incorporation inconsistent with, or otherwise alter, any provision of the amended and restated certificate of incorporation to modify the voting, conversion, or other rights, powers, preferences, privileges, or restrictions of our Class B common stock.

Dividends and distributions

Holders of our common stock are entitled to share equally, on a per share basis, in any dividends declared by our board of directors out of legally available funds, subject to the rights of holders of preferred stock, if any, and the terms of any existing or future agreements between us and our lenders. We presently intend to retain future earnings, if any, to finance the growth and development of our business. Following this offering, we do not anticipate paying cash dividends in the foreseeable future. See "Dividend Policy."

Liquidation rights

In the event of our liquidation, dissolution or winding up, holders of our common stock are entitled to share equally, on a per share basis, in all assets legally available for distribution after payment of all debts and other liabilities, and subject to the prior rights of any holders of outstanding shares of preferred stock, if any.

Change of control transactions

In any merger, consolidation or business combination with or into another corporation or other business entity, whether or not we are the surviving corporation, the consideration per share to be received by holders of our common stock in such merger, consolidation or business combination must be identical, except that in any such transaction in which shares of capital stock are distributed, such shares may differ as to voting rights to the extent and only to the extent that the voting rights of our common stock differ as provided in our amended and restated certificate of incorporation.

Subdivisions and combinations

If we in any manner subdivide or combine the outstanding shares of one class of common stock, our amended and restated certificate of incorporation requires that the outstanding shares of the other class of common stock will be subdivided or combined in the same manner.

Conversion of Class B Common Stock

Each share of Class B common stock will be convertible into one fully paid and nonassessable share of Class A common stock at the option of the holder at any time and upon any sale or other disposition of each such share of Class B common stock whether or not for value, except certain transfers to entities, to the extent the transferor retains sole dispositive power and exclusive voting control with respect to the shares of Class B common stock, and certain other transfers described in our amended and restated certificate of incorporation. Additionally, each outstanding share of Class B common stock will convert on the date fixed by the board of directors that is no less than 61 days and no more than 180 days following (i) the first time that Mr. Wang and his affiliates hold less than the 25% Ownership Threshold; (ii) following the date on which Mr. Wang is terminated for cause (as defined in our amended and restated certificate of incorporation); or (iii) the date upon which (A) Mr. Wang is no longer providing services to us as our Chief Executive Officer and (B) Mr. Wang is no

longer a member of our board of directors, either as a result of Mr. Wang's voluntary resignation or as a result of a request or agreement by Mr. Wang not to be re-nominated as a member of our board of directors at a meeting of our stockholders. Additionally, shares of Class B common stock will convert automatically at the close of business on the date that is 12 months after the death or permanent and total disability of Mr. Wang, during which 12-month period the shares of our Class B common stock shall be voted as directed by a person designated by Mr. Wang and approved by our board of directors (or if there is no such person, then our secretary then in office).

Conversion of Class C Common Stock

After the conversion or exchange of all outstanding shares of our Class B common stock into shares of Class A common stock, all outstanding shares of Class C common stock will convert automatically into Class A common stock, on a share-for-share basis, on the date or time specified by the holders of a majority of the outstanding shares of Class A common stock, voting as a separate class.

Preferred Stock

As of December 31, 2020, after giving effect to the Reorganization Transaction but prior giving effect to the Series A Conversion, there were 134,736 shares of our Series A convertible preferred stock outstanding. These shares were held by two stockholders of record. As a result of the Series A Conversion, each share of Series A convertible preferred stock outstanding will convert on a one-for-twenty-five basis into an aggregate of 3,368,400 shares of our Class A common stock.

Under the terms of our amended and restated certificate of incorporation, which will become effective immediately prior to the completion of this offering, our board of directors will be authorized to issue from time to time up to an aggregate of 25,000,000 shares of preferred stock in one or more series and to fix or alter the designations, preferences, rights and any qualifications, limitations or restrictions of the shares of each of these series, including the dividend rights, dividend rates, conversion rights, voting rights, term of redemption, including sinking fund provisions, redemption price or prices, liquidation preferences and the number of shares constituting any series or designations of a series without further vote or action by the stockholders. The issuance of preferred stock may have the effect of delaying, deferring or preventing a change in control of us without further action by the stockholders and may adversely affect the voting and other rights of the holders of our common stock. We currently have no plans to issue any shares of preferred stock.

We believe that the ability to issue preferred stock without the expense and delay of a special stockholders' meeting will provide us with increased flexibility in structuring possible future financings and acquisitions, and in meeting other corporate needs that might arise. This also permits our board of directors to issue preferred stock containing terms which could impede the completion of a takeover attempt, subject to limitations imposed by the securities laws. The board of directors will make any determination to issue these shares based on its judgment as to the best interests of our company and our stockholders at the time of issuance. This could discourage an acquisition attempt or other transaction which stockholders might believe to be in their best interests or in which they might receive a premium for their stock over the then market price of the stock.

Options

As of December 31, 2020, options to purchase 1,615,797 shares of our Class A common stock were outstanding under our 2017 Plan, at a weighted average exercise price of $39.32 per share, and options to purchase 208,250 shares of our Class A common were outstanding under our 2007 Plan, at a weighted average exercise price of $23.09 per share. Up to 2,245,390 additional shares of our Class A common stock were reserved for future issuance under our stock plans as of December 31, 2020. For a more complete discussion of our stock option plans, see "Executive Compensation—Employee Benefit and Stock Plans—2017 Incentive Award Plan" and "Executive Compensation—Employee Benefit and Stock Plans—2007 Incentive Award Plan."

Restricted Stock Units

As of December 31, 2020, we had outstanding 226,108 shares of our Class A common stock subject to RSUs granted pursuant to our 2017 Plan. Subsequent to December 31, 2020, we granted 565,000 shares of our Class A common stock subject to RSUs pursuant to our 2017 Plan.

Restricted Stock

As of December 31, 2020, we had outstanding (i) 555,000 shares of Class A common stock subject to restricted stock awards granted pursuant to our 2007 Plan that were forfeited subsequent to December 31, 2020 and (ii) 157,300 shares of our Class A common stock subject to restricted stock awards granted pursuant to our 2017 Plan.

Voting Agreements

Prior to the effectiveness of the registration statement related to this offering, Mr. Wang is expected to enter into voting agreements with certain of his affiliates and family members who are our stockholders, which voting agreements will remain in effect after the completion of this offering. These voting agreements cover an aggregate of % of the voting power of our outstanding capital stock after our initial public offering. We are not a party to these voting agreements. Under these voting agreements, Mr. Wang, has the authority (and irrevocable proxy) to direct the vote and vote these shares at his discretion on all matters to be voted upon by stockholders.

Shares subject to the voting agreements will no longer be subject to the provisions of the voting agreement if the holder sells, transfers, assigns, pledges, or otherwise disposes of or encumbers the shares subject to the voting agreements after the completion of our initial public offering, except for permitted transfers under our amended and restated certificate of incorporation. The voting agreements will terminate on our dissolution, the express written consent of the proxyholder, the Final Conversion Date, or the date on which the stockholder and any of such stockholder's permitted transferees ceases to own any of the shares subject to the applicable voting agreement.

Anti-Takeover Provisions

Amended and Restated Certificate of Incorporation and Amended and Restated Bylaw Provisions

Our amended and restated certificate of incorporation and our amended and restated bylaws, which will become effective immediately prior to the completion of this offering, will include a number of provisions that could deter hostile takeovers or delay or prevent changes in control of our board of directors or management team, including the following:

Multi-Class Stock

As described above in "—Common Stock—Voting Rights," our amended and restated certificate of incorporation provides for a multi-class common stock structure, as a result of which holders of our Class B common stock will be entitled to ten votes per share, while holders of Class A common stock are entitled to one vote per share. Holders of Class A common stock and Class B common stock vote together as one class on all matters submitted to a vote of the stockholders.

Because of our multi-class structure, until the Final Conversion Date, Mr. Wang will be able to determine or significantly influence matters submitted to our stockholders for approval even if he owns significantly less than 50% of the shares of our outstanding Class A common stock and Class B common stock on an as-converted to Class A common stock basis. Mr. Wang's concentrated control could discourage others from initiating a potential merger, takeover or other change of control transaction that other stockholders may view as beneficial.

Separate Class B Vote for Certain Transactions

Until the Final Conversion Date, our Class B common stock will have the right to vote as a separate class on amendments to our amended and restated certificate of incorporation that affect the rights of our Class B common stock. See the section titled "—Common Stock—Voting Rights."

Board of Directors Vacancies

Our amended and restated certificate of incorporation and amended and restated bylaws will authorize only our board of directors to fill vacant directorships, including newly created seats. In addition, the number of directors constituting our board of directors will be permitted to be set only by a resolution adopted by a majority vote of our entire board of directors. Accordingly, these provisions would prevent a stockholder from increasing the size of our board of directors and then gaining control of our board of directors by filling the resulting vacancies with its own nominees. This will make it more difficult to change the composition of our board of directors and will promote continuity of management.

Stockholder Action; Special Meeting of Stockholders

Our amended and restated certificate of incorporation will provide that until the Voting Threshold Date, our stockholders may take action by written consent. After the Voting Threshold Date, our stockholders will not be able to take action by written consent for any matter and will only be able to take action at annual or special meetings. As a result, a holder controlling a majority of the voting power of our Class A common stock would not be able to amend our amended and restated bylaws or remove directors without holding a meeting of our stockholders called in accordance with our amended and restated bylaws. Our amended and restated bylaws will further provide that special meetings of our stockholders may be called only by a majority of our board of directors, the chairperson of our board of directors, our Chief Executive Officer, or our President, thus prohibiting a stockholder from calling a special meeting. These provisions might delay the ability of our stockholders to force consideration of a proposal or for stockholders controlling a majority of the voting power of our capital stock to take any action, including the removal of directors.

Advance Notice Requirements for Stockholder Proposals and Director Nominations

Our amended and restated bylaws will provide advance notice procedures for stockholders seeking to bring business before our annual meeting of stockholders or to nominate candidates for election as directors at our annual meeting of stockholders. Our amended and restated bylaws will also specify certain requirements regarding the form and content of a stockholder's notice. These provisions might preclude our stockholders from bringing matters before our annual meeting of stockholders or from making nominations for directors at our annual meeting of stockholders if the proper procedures are not followed. We expect that these provisions may also discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of our company.

Amendment of Charter and Bylaws Provisions

Any amendment to our amended and restated certificate of incorporation will require the approval of the holders of at least a majority of the voting power of the outstanding shares of our Class A common stock and Class B common stock voting as a single class. Our amended and restated bylaws will provide that the approval of the holders of at least a majority of the voting power of the outstanding shares of our Class A common stock and Class B common voting as a single class is required for stockholders to amend or adopt any provision of our bylaws.

Issuance of Undesignated Preferred Stock

Our board of directors will have the authority, without further action by our stockholders, to issue up to   shares of undesignated preferred stock with rights and preferences, including voting rights,

designated from time to time by our board of directors. The existence of authorized but unissued shares of preferred stock would enable our board of directors to render more difficult or to discourage an attempt to obtain control of us by means of a merger, tender offer, proxy contest or other means.

Forum selection

Our amended and restated bylaws will provide that, unless we consent in writing to the selection of an alternative forum, the sole and exclusive forum for (i) any derivative action or proceeding brought on our behalf, (ii) any action asserting a claim of breach of a fiduciary duty owed by any of our directors, officers or other employees to us or our stockholders, (iii) any action asserting a claim against us or any of our directors or officers arising pursuant to any provision of the Delaware General Corporation Law, (iv) any action to interpret, apply, enforce or determine the validity of our amended and restated certificate of incorporation or amended and restated bylaws, or (v) any other action asserting a claim that is governed by the internal affairs doctrine shall be a state or federal court located within the State of Delaware, in all cases subject to the court’s having jurisdiction over indispensable parties named as defendants. Our amended and restated bylaws will also provide that the federal district courts of the United States of America will be the exclusive forum for resolving any complaint asserting a course of action under the Securities Act. Nothing in our amended and restated bylaws precludes stockholders that assert claims under the Exchange Act from bringing such claims in state or federal court, subject to applicable law. Any person or entity purchasing or otherwise acquiring any interest in our securities shall be deemed to have notice of and consented to these provisions. We note that stockholders cannot waive compliance (or consent to noncompliance) with the federal securities laws and the rules and regulations thereunder. Although we believe these provisions benefit us by providing increased consistency in the application of Delaware law for the specified types of actions and proceedings, the provisions may have the effect of discouraging lawsuits against us or our directors and officers.

Section 203 of the Delaware General Corporation Law

We will be governed by the provisions of Section 203 of the Delaware General Corporation Law. In general, Section 203 prohibits a public Delaware corporation from engaging in a “business combination” with an “interested stockholder” for a period of three years after the date of the transaction in which the person became an interested stockholder, unless:

- the business combination or transaction which resulted in the stockholder becoming an interested stockholder was approved by the board of directors prior to the time that the stockholder became 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 corporation outstanding at the time the transaction commenced, excluding shares owned by directors who are also officers of the corporation and shares owned by 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 the time the stockholder became an interested stockholder, the business combination was approved by the board of directors and authorized at an annual or special meeting of the stockholders, and not by written consent, by the affirmative vote of at least two-thirds of the outstanding voting stock which is not owned by the interested stockholder.

In general, Section 203 defines a “business combination” to include mergers, asset sales, and other transactions resulting in financial benefit to a stockholder and an “interested stockholder” as a person who, together with affiliates and associates, owns, or within three years did own, 15% or more of the corporation’s outstanding voting stock. These provisions may have the effect of delaying, deferring, or preventing changes in control of our company.

Limitations of Liability and Indemnification

See "Management—Limitation of Liability and Indemnification of Directors and Officers."

Listing and Trading

We have applied to list our Class A common stock on the New York Stock Exchange under the symbol "VZIO."

Transfer Agent and Registrar

Upon the completion of this offering, the transfer agent and registrar for our common stock will be American Stock Transfer & Trust Company, LLC. The transfer agent's postal address is 48 Wall Street, 22nd Floor, New York, New York 10005.

SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has not been any public market for our Class A common stock, and we cannot predict the effect, if any, that market sales of shares of our Class A common stock or the availability of shares of Class A common stock for sale will have on the market price of our Class A common stock. Nevertheless, sales of substantial amounts of our Class A common stock in the public market, or the perception that such sales could occur, could adversely affect the market price of our Class A common stock and could impair our future ability to raise capital through the sale of equity securities.

Based on the number of shares outstanding as of December 31, 2020, upon completion of this offering, we will have a total of shares of Class A common stock, shares of Class B common stock outstanding and no shares of our Class C common stock outstanding. Shares of Class A common stock sold in this offering will be freely tradable without restriction or further registration under the Securities Act except for any shares which may be held or acquired by our "affiliates," as that term is defined in Rule 144 promulgated under the Securities Act, which shares will be subject to the volume limitations and other restrictions of Rule 144 described below. The remaining shares of Class A common stock outstanding will be deemed "restricted securities" as defined under Rule 144. Restricted securities may be sold in the public market, subject to the lock-up agreements described below, only if registered under the Securities Act or pursuant to an exemption from such registration, including, among others, the exemptions provided by Rules 144 and 701 promulgated under the Securities Act, summarized below.

As a result of these lock-up agreements and subject to the provisions of Rule 144 or Rule 701, shares of our Class A common stock (including shares of Class A common stock issuable upon conversion of Class B common stock) will be available for sale in the public market as follows:

- beginning on the date of this prospectus, all shares of our Class A common stock sold in this offering will be immediately available for sale in the public market;
- beginning on the Early Lock-Up Expiration Date (as described below), shares of our Class A common stock will be immediately available for sale in the public market from time to time thereafter, subject in some cases to the volume and other restrictions of Rule 144;
- beginning on the Blackout Release Date (as described below), the remainder of the shares of our Class A common stock will be eligible for sale in the public market, subject in some cases to volume and other restrictions of Rule 144; and
- beginning 181 days after the date of this prospectus, subject to the terms of the lock-up and market standoff agreements described below, and to the extent not previously released on the Early Lock-up Expiration Date or the Blackout Release Date, the remainder of the shares of our Class A common stock will become eligible for sale in the public market, subject in some cases to the volume and other restrictions of Rule 144.

Each share of Class B common stock will be convertible at any time, at the option of the holder, into one share of Class A common stock and upon other specified circumstances. See "Description of Capital Stock—Class A and Class B Common Stock—Conversion."

Lock-up Agreements

We and each of our directors, our executive officers and holders of a substantial amount of all of our capital stock and securities convertible into our capital stock have entered or will enter into lock-up agreements with the underwriters prior to the commencement of this offering pursuant to which each of these persons or entities, with limited exceptions, for a period of 180 days after the date of this prospectus, may not, without the prior written consent of J.P. Morgan Securities LLC and BofA Securities, Inc., (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Class A or Class B

common stock or any securities convertible into or exercisable or exchangeable for common stock (including without limitation, common stock or such other securities which may be deemed to be beneficially owned by such directors, executive officers and stockholders in accordance with the rules and regulations of the SEC and securities which may be issued upon exercise of a stock option or warrant) (collectively with the Class A and Class B common stock, the Lock-Up Securities), (ii) enter into any hedging, swap or other agreement or transaction that transfers, in whole or in part, any of the economic consequences of ownership of the Lock-Up Securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Lock-Up Securities, in cash or otherwise, (iii) make any demand for, or exercise any right with respect to, the registration of any Lock-Up Securities, or (iv) publicly disclose the intention to do any of the foregoing.

However, the terms of the lock-up agreements entered into between the underwriters and each of our directors, officers and substantially all other holders of our capital stock will expire for 25% of each stockholder's shares of common stock subject to the lock-up agreement if certain conditions are met. If such conditions are met, these shares will become available for sale on the Early Lock-Up Expiration Date, which is immediately prior to the opening of trading on the fourth trading day following the date on which all of the below conditions are satisfied:

(i) 90 days have passed since the date of this prospectus;

(ii) we have furnished at least one earnings release on Form 8-K or have filed at least one quarterly report on Form 10-Q or annual report on Form 10-K with the SEC;

(iii) the last reported closing price of our Class A Common Stock on the New York Stock Exchange is at least 25% greater than the initial public offering price per share set forth on the cover page of this prospectus for 5 out of any 10 consecutive trading days ending on or after the 90th day after the date of this prospectus; and

(iv) such date occurs in a broadly applicable period during which trading in our securities is permitted under our insider trading policy, or an open trading window, and there are at least 5 trading days remaining in the open trading window.

If we are in a blackout period or within five trading days prior to a blackout period at the time of such Early Lock-Up Expiration Date, the date of the Early Lock-Up Expiration will be delayed until immediately prior to the opening of trading on the fourth trading day following the first date that (i) we are no longer in a blackout period under our insider trading policy and (ii) the closing price is at least greater than the initial public offering price per share set forth on the cover of this prospectus.

In addition, to the extent not released on the Early Lock-Up Expiration Date, if (i) at least 120 days have elapsed since the date of this prospectus, and (ii) the lock-up period is scheduled to end during or within five trading days prior to a blackout period, the lock-up period will end 10 trading days prior to the commencement of such blackout period.

The following table summarizes the potential lock-up expiration dates:

Type of Release	Conditions	Expiration Date	Percent Release
Early Lock-Up Expiration Date	All must be satisfied: • 90 days have passed since the date of this prospectus; • After first 8-K earnings release or periodic report; • For 5 out of any 10 consecutive trading days ending on such date,	Prior to trading on the fourth trading day following date on which all conditions are satisfied	25% of the shares subject to the lock-up agreement

Type of Release	Conditions	Expiration Date	Percent Release
	the closing price is at least 25% higher than the initial public offering price; and • Date occurs in an open trading window, with at least 5 trading days remaining • However, if we are in a blackout period or within five trading days prior to a blackout period at the time of such Early Lock-Up Expiration Date, the date of the Early Lock-Up Expiration will be delayed until immediately prior to the opening of trading on the fourth trading day after the first date that (i) we are no longer in a blackout period under our insider trading policy and (ii) the closing price is at least greater than the price on the cover of this prospectus		
Blackout-Related Release	All must be satisfied: • At least 120 days have elapsed since the date of this prospectus; and • The lock-up period is scheduled to end during or within five trading days prior to a blackout period	The lock-up period will end 10 trading days prior to the commencement of the blackout period	All remaining shares
Final Lock-Up Expiration	181 days have elapsed since the date of this prospectus	181 days after the date of this prospectus	All remaining shares

In addition, our executive officers, directors and holders of a substantial amount of all of our capital stock and securities convertible into or exchangeable for our capital stock have entered into market standoff agreements with us under which they have agreed that, subject to certain exceptions, for a period of 180 days after the date of this prospectus, they will not, without our prior written consent, dispose of or hedge any shares or any securities convertible into or exchangeable for shares of our common stock.

Rule 144

In general, under Rule 144 as currently in effect, once we have been subject to public company reporting requirements for at least 90 days, a person who is not deemed to have been one of our "affiliates" for purposes of the Securities Act at any time during the 90 days preceding a sale and who has beneficially owned the shares proposed to be sold for at least six months, including the holding period of any prior owner other than our "affiliates," is entitled to sell those shares without complying with the manner of sale, volume limitation or notice provisions of Rule 144, subject to compliance with the public information requirements of Rule 144. If such a person has beneficially owned the shares proposed to be sold for at least one year, including the holding period of any prior owner other than our "affiliates," then that person is entitled to sell those shares without complying with any of the requirements of Rule 144.

In general, under Rule 144, as currently in effect, our "affiliates" or persons selling shares on behalf of our "affiliates" are entitled to sell upon expiration of the lock-up agreements described above, within any three-month period beginning 90 days after the date of this prospectus, a number of shares that does not exceed the greater of:

- 1% of the number of shares of common stock then outstanding, which will equal approximately shares immediately after this offering; or
- the average weekly trading volume of our Class A common stock on the New York Stock Exchange during the four calendar weeks preceding the filing of a notice on Form 144 with respect to that sale.

Sales under Rule 144 by our "affiliates" or persons selling shares on behalf of our "affiliates" are also subject to certain manner of sale provisions and notice requirements and to the availability of current public information about us.

Rule 701

Subject to certain limitations on the aggregate offering price of a transaction and other conditions, Rule 701 permits resales of shares issued prior to the date the issuer becomes subject to the reporting requirements of the Exchange Act pursuant to certain compensatory benefit plans and contracts, commencing 90 days after the issuer becomes subject to the reporting requirements of the Exchange Act, in reliance upon Rule 144 but without compliance with certain restrictions, including the holding period requirements. In addition, the SEC has indicated that Rule 701 will apply to typical stock options granted by an issuer before it becomes subject to the reporting requirements of the Exchange Act, along with the shares acquired upon exercise of these options, including exercises after the date the issuer becomes so subject. Securities issued in reliance on Rule 701 are restricted securities and, subject to the lock-up restrictions described above, beginning 90 days after the date of this prospectus, may be sold by persons other than "affiliates" subject only to the manner-of-sale provisions of Rule 144 and by "affiliates" under Rule 144 without compliance with its holding period requirement.

Stock Options

We intend to file a registration statement on Form S-8 under the Securities Act covering all of the shares of our Class A common stock subject to options outstanding or reserved for issuance under our 2017 Plan and options outstanding under our 2007 Plan. We expect to file this registration statement as soon as practicable after this offering. In addition, we intend to file a registration statement on Form S-8 or such other form as may be required under the Securities Act for the resale of shares of our Class A common stock that were not granted under Rule 701. We expect to file this registration statement as soon as permitted under the Securities Act. However, the shares registered on Form S-8 will not be eligible for resale until expiration of the lock up agreements to which they are subject.

MATERIAL U.S. FEDERAL INCOME TAX CONSEQUENCES TO NON-U.S. HOLDERS

The following discussion is a summary of the material U.S. federal income tax consequences to Non-U.S. Holders (as defined below) of the purchase, ownership and disposition of our Class A common stock issued pursuant to this offering, but does not purport to be a complete analysis of all potential tax effects. The effects of other U.S. federal tax laws, such as estate and gift tax laws, and any applicable state, local or non-U.S. tax laws are not discussed. This discussion is based on the Code, Treasury Regulations promulgated thereunder, judicial decisions, and published rulings and administrative pronouncements of the U.S. Internal Revenue Service (the IRS) in each case in effect as of the date hereof. These authorities may change or be subject to differing interpretations. Any such change or differing interpretation may be applied retroactively in a manner that could adversely affect a Non-U.S. Holder of our Class A common stock. We have not sought and will not seek any rulings from the IRS regarding the matters discussed below. There can be no assurance the IRS or a court will not take a contrary position to that discussed below regarding the tax consequences of the purchase, ownership and disposition of our Class A common stock.

This discussion is limited to Non-U.S. Holders that hold our Class A common stock as a “capital asset” within the meaning of Section 1221 of the Code (generally, property held for investment). This discussion does not address all U.S. federal income tax consequences relevant to a Non-U.S. Holder’s particular circumstances, including the impact of the Medicare contribution tax on net investment income. In addition, it does not address consequences relevant to Non-U.S. Holders subject to special rules, including, without limitation:

- U.S. expatriates and former citizens or long-term residents of the United States;
- persons subject to the alternative minimum tax;
- persons holding our Class A common stock as part of a hedge, straddle or other risk reduction strategy or as part of a conversion transaction or other integrated investment;
- banks, insurance companies, and other financial institutions;
- brokers or dealers in securities or currencies;
- traders in securities that elect to use a mark-to-market method of accounting for their securities holdings;
- “controlled foreign corporations,” “passive foreign investment companies,” and corporations that accumulate earnings to avoid U.S. federal income tax;
- partnerships or other entities or arrangements treated as partnerships for U.S. federal income tax purposes (and investors therein);
- tax-exempt organizations or governmental organizations;
- persons deemed to sell our Class A common stock under the constructive sale provisions of the Code;
- tax-qualified retirement plans; and
- persons subject to special tax accounting rules as a result of any item of gross income with respect to our common stock being taken into account in an “applicable financial statement” as defined in Section 451(b) of the Code.

If an entity treated as a partnership for U.S. federal income tax purposes holds our Class A common stock, the tax treatment of a partner in the partnership will depend on the status of the partner, the activities of the partnership and certain determinations made at the partner level. Accordingly, partnerships holding our Class A common stock and the partners in such partnerships should consult their tax advisors regarding the U.S. federal income tax consequences to them.

INVESTORS SHOULD CONSULT THEIR TAX ADVISORS WITH RESPECT TO THE APPLICATION OF THE U.S. FEDERAL INCOME TAX LAWS TO THEIR PARTICULAR

SITUATIONS AS WELL AS ANY TAX CONSEQUENCES OF THE PURCHASE, OWNERSHIP AND DISPOSITION OF OUR CLASS A COMMON STOCK ARISING UNDER THE U.S. FEDERAL ESTATE OR GIFT TAX LAWS OR UNDER THE LAWS OF ANY STATE, LOCAL OR NON-U.S. TAXING JURISDICTION OR UNDER ANY APPLICABLE INCOME TAX TREATY.

Definition of a Non-U.S. Holder

For purposes of this discussion, a "Non-U.S. Holder" is any beneficial owner of our Class A common stock that is neither a "U.S. person" nor an entity treated as a partnership for U.S. federal income tax purposes. A U.S. person is any person that, for U.S. federal income tax purposes, is or is treated as any of the following:

- an individual who is a citizen or resident of the United States;
- a corporation created or organized under the laws of the United States, any state thereof, or the District of Columbia;
- an estate, the income of which is subject to U.S. federal income tax regardless of its source; or
- a trust that (1) is subject to the primary supervision of a U.S. court and the control of one or more "United States persons" (within the meaning of Section 7701(a)(30) of the Code), or (2) has a valid election in effect to be treated as a United States person for U.S. federal income tax purposes.

Distributions

As described in the section entitled "Dividend Policy," we do not anticipate declaring or paying dividends to holders of our Class A common stock in the foreseeable future. However, if we do make distributions of cash or property on our Class A common stock, such distributions will constitute dividends for U.S. federal income tax purposes to the extent paid from our current or accumulated earnings and profits, as determined under U.S. federal income tax principles. Amounts not treated as dividends for U.S. federal income tax purposes will constitute a return of capital and first be applied against and reduce a Non-U.S. Holder's adjusted tax basis in its Class A common stock, but not below zero. Any excess will be treated as capital gain and will be treated as described below under "—Sale or Other Taxable Disposition."

Subject to the discussion below on effectively connected income and the discussion below regarding FATCA, dividends paid to a Non-U.S. Holder of our Class A common stock will be subject to U.S. federal withholding tax at a rate of 30% of the gross amount of the dividends (or such lower rate specified by an applicable income tax treaty, provided the Non-U.S. Holder furnishes a valid IRS Form W-8BEN or W-8 BEN-E (or other applicable documentation) certifying qualification for the lower treaty rate). If a Non-U.S. Holder holds the stock through a financial institution or other intermediary, the Non-U.S. Holder will be required to provide appropriate documentation to the intermediary, which then will be required to provide certification to the applicable withholding agent, either directly or through other intermediaries. A Non-U.S. Holder that does not timely furnish the required documentation, but that qualifies for a reduced treaty rate, may obtain a refund of any excess amounts withheld by timely filing an appropriate claim for refund with the IRS. Non-U.S. Holders should consult their tax advisors regarding their entitlement to benefits under any applicable income tax treaty.

If dividends paid to a Non-U.S. Holder are effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the Non-U.S. Holder maintains a permanent establishment in the United States to which such dividends are attributable), the Non-U.S. Holder will be exempt from the U.S. federal withholding tax described above. To claim the exemption, the Non-U.S. Holder must furnish to the applicable withholding agent a valid IRS Form W-8ECI, certifying that the dividends are effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States.

Any such effectively connected dividends will be subject to U.S. federal income tax on a net income basis at the regular graduated rates. A Non-U.S. Holder that is a corporation also may be subject to a branch profits tax at

a rate of 30% (or such lower rate specified by an applicable income tax treaty) on such effectively connected dividends, as adjusted for certain items. Non-U.S. Holders should consult their tax advisors regarding any applicable tax treaties that may provide for different rules.

Sale or Other Taxable Disposition

Subject to the discussion below regarding FATCA, a Non-U.S. Holder will not be subject to U.S. federal income tax on any gain realized upon the sale or other taxable disposition of our Class A common stock unless:

- the gain is effectively connected with the Non-U.S. Holder's conduct of a trade or business within the United States (and, if required by an applicable income tax treaty, the Non-U.S. Holder maintains a permanent establishment in the United States to which such gain is attributable);
- the Non-U.S. Holder is a nonresident alien individual present in the United States for 183 days or more during the taxable year of the disposition and certain other requirements are met; or
- our Class A common stock constitutes a U.S. real property interest (USRPI) by reason of our status as a U.S. real property holding corporation (USRPHC) for U.S. federal income tax purposes.

Gain described in the first bullet point above generally will be subject to U.S. federal income tax on a net income basis at the regular graduated rates. A Non-U.S. Holder that is a corporation also may be subject to a branch profits tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty) on such effectively connected gain, as adjusted for certain items.

Gain described in the second bullet point above will be subject to U.S. federal income tax at a rate of 30% (or such lower rate specified by an applicable income tax treaty), which may be offset by U.S. source capital losses of the Non-U.S. Holder (even though the individual is not considered a resident of the United States), provided the Non-U.S. Holder has timely filed U.S. federal income tax returns with respect to such losses.

With respect to the third bullet point above, we believe we currently are not, and do not anticipate becoming, a USRPHC. Because the determination of whether we are a USRPHC depends, however, on the fair market value of our USRPIs relative to the fair market value of our non-U.S. real property interests and our other business assets, there can be no assurance we currently are not a USRPHC or will not become one in the future. Even if we are or were to become a USRPHC, gain arising from the sale or other taxable disposition by a Non-U.S. Holder of our Class A common stock will not be subject to U.S. federal income tax if our Class A common stock is "regularly traded," as defined by applicable Treasury Regulations, on an established securities market, and such Non-U.S. Holder owned, actually and constructively, 5% or less of our Class A common stock throughout the shorter of the five-year period ending on the date of the sale or other taxable disposition or the Non-U.S. Holder's holding period.

Non-U.S. Holders should consult their tax advisors regarding potentially applicable income tax treaties that may provide for different rules.

Information Reporting and Backup Withholding

Payments of dividends on our Class A common stock will not be subject to backup withholding, provided the applicable withholding agent does not have actual knowledge or reason to know the holder is a United States person and the holder either certifies its non-U.S. status, such as by furnishing a valid IRS Form W-8BEN, W-8BEN-E or W-8ECI, or otherwise establishes an exemption. However, information returns are required to be filed with the IRS in connection with any dividends on our Class A common stock paid to the Non-U.S. Holder, regardless of whether any tax was actually withheld. In addition, proceeds of the sale or other taxable disposition of our Class A common stock within the United States or conducted through certain U.S.-related brokers generally will not be subject to backup withholding or information reporting, if the applicable withholding agent

receives the certification described above and does not have actual knowledge or reason to know that such holder is a United States person, or the holder otherwise establishes an exemption. Proceeds of a disposition of our Class A common stock conducted through a non-U.S. office of a non-U.S. broker generally will not be subject to backup withholding or information reporting.

Copies of information returns that are filed with the IRS may also be made available under the provisions of an applicable treaty or agreement to the tax authorities of the country in which the Non-U.S. Holder resides or is established.

Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules may be allowed as a refund or a credit against a Non-U.S. Holder's U.S. federal income tax liability, provided the required information is timely furnished to the IRS.

Additional Withholding Tax on Payments Made to Foreign Accounts

Sections 1471 through 1474 of the Code and the Treasury Regulations and other official IRS guidance issued thereunder (collectively FATCA) generally impose a U.S. federal withholding tax of 30% on dividends and the gross proceeds of a disposition of our Class A common stock paid to a "foreign financial institution" (as defined under these rules) unless such institution enters into an agreement with the U.S. government to withhold on certain payments and to collect and provide to the U.S. tax authorities substantial information regarding U.S. account holders of such institution (which includes certain equity and debt holders of such institution, as well as certain account holders that are foreign entities with U.S. owners). FATCA also generally imposes a U.S. federal withholding tax of 30% on dividends and the gross proceeds of a disposition of our Class A common stock paid to a "non-financial foreign entity" (as specifically defined under these rules) unless such entity provides the withholding agent with a certification identifying the substantial direct and indirect U.S. owners of the entity, certifies that it does not have any substantial U.S. owners, or otherwise establishes an exemption.

The withholding obligations under FATCA generally apply to dividends on our Class A common stock and to the payment of gross proceeds of a sale or other disposition of our Class A common stock. However, the U.S. Treasury Department has issued proposed regulations that, if finalized in their present form, would eliminate FATCA withholding on gross proceeds of the sale or other disposition of our Class A common stock (but not on payments of dividends). Taxpayers may rely on the proposed regulations until final regulations are issued or until such proposed regulations are rescinded. If a dividend payment is both subject to withholding under FATCA and subject to the withholding tax discussed above under "—Distributions," the withholding under FATCA may be credited against, and therefore reduce, such other withholding tax. An intergovernmental agreement between the United States and a Non-U.S. Holder's country of residence may modify the requirements described in this section. Non-U.S. Holders should consult with their tax advisors regarding the application of FATCA withholding to an investment in, and the ownership and disposition of, our Class A common stock.

The preceding discussion of U.S. federal tax considerations is for general information only. It is not tax advice. Each prospective investor should consult its own tax advisor regarding the particular U.S. federal, state and local and non-U.S. tax consequences of purchasing, holding and disposing of our common stock, including the consequences of any proposed change in applicable laws.

UNDERWRITING

We will be offering the shares of common stock described in this prospectus through a number of underwriters. J.P. Morgan Securities LLC and BofA Securities, Inc. will be acting as joint book-running managers of the offering and as representatives of the underwriters. We will enter into an underwriting agreement with the underwriters. Subject to the terms and conditions of the underwriting agreement, we will agree to sell to the underwriters, and each underwriter will severally agree to purchase, at the public offering price less the underwriting discounts and commissions set forth on the cover page of this prospectus, the number of shares of Class A common stock listed next to its name in the following table:

Name	Number of Shares
J.P. Morgan Securities LLC	
BofA Securities, Inc.	
Wells Fargo Securities, LLC	
Guggenheim Securities, LLC	
Needham & Company, LLC	
Piper Sandler & Co.	
Roth Capital Partners, LLC	
Total	

The underwriters will be committed to purchase all the shares of shares of Class A common stock offered by us if they purchase any shares. The underwriting agreement will also provide that if an underwriter defaults, the purchase commitments of non-defaulting underwriters may also be increased or the offering may be terminated.

The underwriters will propose to offer the shares of Class A common stock directly to the public at the initial public offering price set forth on the cover page of this prospectus and to certain dealers at that price less a concession not in excess of $ per share. After the initial offering of the shares to the public, if all of the shares of Class A common stock are not sold at the initial public offering price, the underwriters may change the offering price and the other selling terms. Sales of any shares made outside of the United States may be made by affiliates of the underwriters.

The underwriters do not expect to sell more than 5% of the shares of Class A common stock in the aggregate to accounts over which they exercise discretionary authority.

The underwriters will have an option to buy up to additional shares of Class A common stock from us and the selling stockholders to cover sales of shares by the underwriters which exceed the number of shares specified in the table above. The underwriters will have 30 days from the date of this prospectus to exercise this option to purchase additional shares. If any shares are purchased with this option to purchase additional shares, the underwriters will purchase shares in approximately the same proportion as shown in the table above. If any additional shares of Class A common stock are purchased, the underwriters will offer the additional shares on the same terms as those on which the shares are being offered.

The underwriting fee will be equal to the public offering price per share of Class A common stock less the amount paid by the underwriters to us per share of Class A common stock. The underwriting fee will be $ per share. The following table shows the per share and total underwriting discounts and commissions to be paid to the underwriters assuming both no exercise and full exercise of the underwriters' option to purchase additional shares.

	Without option to purchase additional shares exercise	With full option to purchase additional shares exercise
Per Share	$	$
Total	$	$

We estimate that the total expenses of this offering, including registration, filing and listing fees, printing fees and legal and accounting expenses, but excluding the underwriting discounts and commissions, will be approximately $. We will agree to reimburse the underwriters for reasonable fees and expenses relating to the clearance of this offering with the Financial Industry Regulatory Authority of the terms of sale of the shares of Class A common stock offered hereby in an amount not to exceed $.

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

We will agree that we will not (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, any shares of Class A or Class B common stock or any securities convertible into or exercisable or exchangeable for common stock (including without limitation, common stock or such other securities which may be deemed to be beneficially owned by the lock-up party in accordance with the rules and regulations of the SEC and securities which may be issued upon exercise of a stock option or warrant) (collectively with the Class A and Class B common stock, the Lock-Up Securities), (ii) enter into any hedging, swap or other agreement or transaction that transfers, in whole or in part, any of the economic consequences of ownership of the Lock-Up Securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Lock-Up Securities, in cash or otherwise, (iii) make any demand for, or exercise any right with respect to, the registration of any Lock-Up Securities, or (iv) publicly disclose the intention to do any of the foregoing, in each case without the prior written consent of J.P. Morgan Securities LLC and BofA Securities, Inc. for a period of 180 days after the date of this prospectus, other than the shares of our Class A common stock to be sold in this offering.

The restrictions on our actions, as described above, will not apply to certain transactions, including .

Our directors and executive officers, and substantially all of our shareholders (such persons, the lock-up parties) will enter into lock-up agreements with the underwriters prior to the commencement of this offering pursuant to which each lock-up party, with limited exceptions, for a period of 180 days after the date of this prospectus (such period, the restricted period), may not (and may not cause any of their direct or indirect affiliates to), without the prior written consent of J.P. Morgan Securities LLC and BofA Securities, Inc., (i) offer, pledge, sell, contract to sell, sell any option or contract to purchase, purchase any option or contract to sell, grant any option, right or warrant to purchase, lend, or otherwise transfer or dispose of, directly or indirectly, the Lock-Up Securities, (ii) enter into any hedging, swap or other agreement or transaction that transfers, in whole or in part, any of the economic consequences of ownership of the Lock-Up Securities, whether any such transaction described in clause (i) or (ii) above is to be settled by delivery of Lock-Up Securities, in cash or otherwise, (iii) make any demand for, or exercise any right with respect to, the registration of any Lock-Up Securities, or (iv) publicly disclose the intention to do any of the foregoing. Such persons or entities have further acknowledged that these undertakings preclude them from engaging in any hedging or other transactions or arrangements (including, without limitation, any short sale or the purchase or sale of, or entry into, any put or call option, or combination thereof, forward, swap or any other derivative transaction or instrument, however described or defined) designed or intended, or which could reasonably be expected to lead to or result in, a sale or disposition or transfer (by any person or entity, whether or not a signatory to such agreement) of any Lock-Up Securities whether any such transaction or arrangement (or instrument provided for thereunder) would be settled by delivery of Lock-Up Securities, in cash or otherwise.

The restrictions described in the immediately preceding paragraph and contained in the lock-up agreements between the underwriters and the lock-up parties will not apply, subject in certain cases to various conditions, to certain transactions, including: (a) transfer of the Lock-Up Securities (i) as a bona fide gift or gifts, charitable contribution or contributions or for bona fide estate planning purposes, (ii) by will or intestacy, (iii) to the

immediate family of the lock-up party or any trust for the direct or indirect benefit of the lock-up party or the immediate family of the lock-up party, or if the lock-up party is a trust, to a trustor or beneficiary of the trust or to the estate of a beneficiary of such trust, (iv) to a partnership, limited liability company or other entity of which the lock-up party and/or the immediate family of the lock-up party are the legal and beneficial owner of all of the outstanding equity securities or similar interests, (v) to a nominee or custodian of a person or entity to whom a disposition or transfer would be permissible under clauses (i) through (iv) above, (vi) if the lock-up party is a corporation, partnership, limited liability company, trust or other business entity, (A) to another corporation, partnership, limited liability company, trust or other business entity that is an affiliate of the lock-up party, or to any investment fund or other entity controlling, controlled by, managing or managed by or under common control with the lock-up party or affiliates of the lock-up party, or (B) as part of a distribution to members, managers, partners, shareholders or holders of similar equity interests of the lock-up party, (vii) by operation of law, such as pursuant to a qualified domestic order, divorce settlement, divorce decree or separation agreement, (viii) if the lock-up party is our employee or service provider, to us upon death, disability or termination of employment, in each case, of the lock-up party, (ix) as part of a sale of the lock-up party's Lock-Up Securities acquired (A) from the underwriters in this offering or (B) in open market transactions after the closing date of this offering, (x) (A) to us for the purposes of exercising (including for the payment of tax withholdings or remittance payments due as a result of such exercise) on a "net exercise" basis options, warrants or other rights to purchase shares of our common stock and (B) in connection with the vesting or settlement of restricted stock units, including any transfer to us for the payment of tax withholdings or remittance payments due as a result of the vesting or settlement of such restricted stock units, and any transfer necessary to generate such amount of cash needed for the payment of taxes, including estimated taxes, due as a result of the vesting or settlement of restricted stock units whether by means of a "net settlement" or otherwise, provided that any such transfers described in this subclause (B) occurring within 90 days of the date of this offering shall be only to us, and in all such cases described in (A) and (B), provided that any such shares of our common stock received upon such exercise, vesting or settlement shall be subject to the terms of the lock-up agreement, and provided further that any such restricted stock units, options, warrants or rights are held by the lock-up party pursuant to an agreement or equity awards granted under a stock incentive plan or other equity award plan, each such agreement or plan which is described in this prospectus, (xi) pursuant to a bona fide third-party tender offer, merger, consolidation or other similar transaction that is approved by our board of directors and made to all holders of the our capital stock involving a change of control (as defined in the lock-up agreements), in one transaction or a series of related transactions, to a person or group of affiliated persons, of shares of capital stock if, after such transfer, such person or group of affiliated persons would hold more than a majority of our outstanding voting securities (or the surviving entity)); provided that in the event that such tender offer, merger, consolidation or other similar transaction is not completed, the lock-up party's Lock-Up Securities shall remain subject to the provisions of the lock-up agreements, or (xii) for shares of our common stock or other securities in connection with the conversion, reclassification, exchange or swap of any outstanding preferred stock, other classes of our common stock or other securities into shares of one or more series or classes of our common stock or other securities; provided that any such shares of our common stock or other securities received upon such conversion, reclassification, exchange or swap shall be subject to the terms of the lock-up agreement; (b) exercise outstanding options, settle restricted stock units or other equity awards or exercise warrants pursuant to plans described in this prospectus; provided that any Lock-Up Securities received upon such exercise, vesting or settlement shall be subject to the terms of the lock-up agreement; (c) convert outstanding preferred stock, warrants to acquire preferred stock or convertible securities into shares of our common stock or warrants to acquire shares of common stock or convert any shares of Class B Common Stock into Class A Common Stock; provided that any such shares of our common stock or warrants received upon such conversion shall be subject to the terms of the lock-up agreement; (d) establish trading plans pursuant to Rule 10b5-1 under the Exchange Act for the transfer of shares of Lock-Up Securities; provided that (1) such plans do not provide for the transfer of Lock-Up Securities during the restricted period and (2) no filing by any party under the Exchange Act or other public announcement shall be required or made voluntarily in connection with such trading plan during the restricted period; and (e) sell the securities to be sold by the lock-up party pursuant to the terms of the underwriting agreement.

However, the terms of the lock-up agreements will expire for 25% of each stockholder's shares of common stock subject to the lock-up agreement if certain conditions are met. If such conditions are met, these shares will become available for sale on the Early Lock-Up Expiration Date, which is immediately prior to the opening of trading on the fourth trading day following the date on which all of the below conditions are satisfied:

(i) 90 days have passed since the date of this prospectus;

(ii) we have furnished at least one earnings release on Form 8-K or have filed at least one quarterly report on Form 10-Q or annual report on Form 10-K with the SEC;

(iii) the last reported closing price of our Class A Common Stock on the New York Stock Exchange is at least 25% greater than the initial public offering price per share set forth on the cover page of this prospectus for 5 out of any 10 consecutive trading days ending on or after the 90th day after the date of this prospectus; and

(iv) such date occurs in a broadly applicable period during which trading in our securities is permitted under our insider trading policy, or an open trading window, and there are at least 5 trading days remaining in the open trading window.

If we are in a blackout period or within five trading days prior to a blackout period at the time of such Early Lock-Up Expiration Date, the date of the Early Lock-Up Expiration will be delayed until immediately prior to the opening of trading on the fourth trading day following the first date that (i) we are no longer in a blackout period under our insider trading policy and (ii) the closing price is at least greater than the price on the cover of this prospectus.

In addition, to the extent not released on the Early Lock-Up Expiration Date, if (i) at least 120 days have elapsed since the date of this prospectus, and (ii) the lock-up period is scheduled to end during or within five trading days prior to a blackout period, the lock-up period will end 10 trading days prior to the commencement of such blackout period. In addition, J.P. Morgan Securities LLC and BofA Securities, Inc., in their sole discretion, may release the securities subject to any of the lock-up agreements with the underwriters described above, in whole or in part at any time.

We will agree to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act of 1933.

We have applied to have our Class A common stock approved for listing/quotation on the New York Stock Exchange under the symbol "VZIO".

In connection with this offering, the underwriters may engage in stabilizing transactions, which involves making bids for, purchasing and selling shares of Class A common stock in the open market for the purpose of preventing or retarding a decline in the market price of the Class A common stock while this offering is in progress. These stabilizing transactions may include making short sales of Class A common stock, which involves the sale by the underwriters of a greater number of shares of Class A common stock than they are required to purchase in this offering, and purchasing shares of Class A common stock on the open market to cover positions created by short sales. Short sales may be "covered" shorts, which are short positions in an amount not greater than the underwriters' option to purchase additional shares referred to above, or may be "naked" shorts, which are short positions in excess of that amount. The underwriters may close out any covered short position either by exercising their option to purchase additional shares, in whole or in part, or by purchasing shares in the open market. In making this determination, the underwriters will consider, among other things, the price of shares available for purchase in the open market compared to the price at which the underwriters may purchase shares through the option to purchase additional shares. A naked short position is more likely to be created if the underwriters are concerned that there may be downward pressure on the price of the Class A common stock in the open market that could adversely affect investors who purchase in this offering. To the extent that the underwriters create a naked short position, they will purchase shares in the open market to cover the position.

The underwriters have advised us that, pursuant to Regulation M of the Securities Act of 1933, they may also engage in other activities that stabilize, maintain or otherwise affect the price of the Class A common stock, including the imposition of penalty bids. This means that if the representatives of the underwriters purchase Class A common stock in the open market in stabilizing transactions or to cover short sales, the representatives can require the underwriters that sold those shares as part of this offering to repay the underwriting discount received by them.

These activities may have the effect of raising or maintaining the market price of the Class A common stock or preventing or retarding a decline in the market price of the Class A common stock, and, as a result, the price of the Class A common stock may be higher than the price that otherwise might exist in the open market. If the underwriters commence these activities, they may discontinue them at any time. The underwriters may carry out these transactions on the New York Stock Exchange, in the over-the-counter market or otherwise.

Prior to this offering, there has been no public market for our Class A common stock. The initial public offering price will be determined by negotiations between us and the representatives of the underwriters. In determining the initial public offering price, we and the representatives of the underwriters expect to consider a number of factors including:

- the information set forth in this prospectus and otherwise available to the representatives;
- our prospects and the history and prospects for the industry in which we compete;
- an assessment of our management;
- our prospects for future earnings;
- the general condition of the securities markets at the time of this offering;
- the recent market prices of, and demand for, publicly traded common stock of generally comparable companies; and
- other factors deemed relevant by the underwriters and us.

Neither we nor the underwriters can assure investors that an active trading market will develop for our Class A common stock, or that the shares will trade in the public market at or above the initial public offering price.

Other Relationships

Certain of the underwriters and their affiliates have provided in the past to us and our affiliates and may provide from time to time in the future certain commercial banking, financial advisory, investment banking and other services for us and such affiliates in the ordinary course of their business, for which they have received and may continue to receive customary fees and commissions. For example, an affiliate of BofA Securities, Inc. is the agent and sole lead arranger and sole bookrunner under our existing loan and security agreement. In addition, from time to time, certain of the underwriters and their affiliates may effect transactions for their own account or the account of customers, and hold on behalf of themselves or their customers, long or short positions in our debt or equity securities or loans, and may do so in the future.

Directed Share Program

At our request, the underwriters have reserved up to 5% of the shares offered by this prospectus for sale at the initial public offering price through a directed share program available to directors, officers, employees and their friends and family members. The number of shares of common stock available for sale to the general public will be reduced to the extent that such persons purchase such reserved shares. Any reserved shares not so purchased will be offered by the underwriters to the general public on the same basis as the other shares offered

by this prospectus. Other than the underwriting discount described on the front cover of this prospectus, the underwriters will not be entitled to any commission with respect to shares of Class A common stock sold pursuant to the directed share program. We will agree to indemnify the underwriters against certain liabilities and expenses, including liabilities under the Securities Act, in connection with sales of the shares reserved for the directed share program. J.P. Morgan Securities LLC, an underwriter in this offering, will administer our directed share program.

Selling Restrictions

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

Notice to Prospective Investors in Canada

The shares may be sold only to purchasers purchasing, or deemed to be purchasing, as principal that are accredited investors, as defined in National Instrument 45-106 Prospectus Exemptions or subsection 73.3(1) of the Securities Act (Ontario), and are permitted clients, as defined in National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations. Any resale of the shares must be made in accordance with an exemption from, or in a transaction not subject to, the prospectus requirements of applicable securities laws.

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if this prospectus (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor.

Pursuant to section 3A.3 of National Instrument 33-105 Underwriting Conflicts (NI 33-105), the underwriters are not required to comply with the disclosure requirements of NI 33-105 regarding underwriter conflicts of interest in connection with this offering.

Notice to prospective investors in the European Economic Area

In relation to each Member State of the European Economic Area (each a "Relevant State"), no shares have been offered or will be offered pursuant to the offering to the public in that Relevant State prior to the publication of a prospectus in relation to the shares which has been approved by the competent authority in that Relevant State or, where appropriate, approved in another Relevant State and notified to the competent authority in that Relevant State, all in accordance with the Prospectus Regulation, except that offers of shares may be made to the public in that Relevant State at any time under the following exemptions under the Prospectus Regulation:

(a) to any legal entity which is a qualified investor as defined under the Prospectus Regulation;

(b) to fewer than 150 natural or legal persons (other than qualified investors as defined under the Prospectus Regulation), subject to obtaining the prior consent of the underwriters; or

(c) in any other circumstances falling within Article 1(4) of the Prospectus Regulation,

provided that no such offer of shares shall require us or any underwriter to publish a prospectus pursuant to Article 3 of the Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the Prospectus Regulation and each person who initially acquires any shares or to whom any offer is made will be deemed to have represented, acknowledged and agreed to and with each of the underwriters and the Company that it is a “qualified investor” within the meaning of Article 2(e) of the Prospectus Regulation. In the case of any shares being offered to a financial intermediary as that term is used in the Prospectus Regulation, each such financial intermediary will be deemed to have represented, acknowledged and agreed that the shares acquired by it in the offer have not been acquired on a nondiscretionary basis on behalf of, nor have they been acquired with a view to their offer or resale to, persons in circumstances which may give rise to an offer of any shares to the public other than their offer or resale in a Relevant State to qualified investors as so defined or in circumstances in which the prior consent of the underwriters have been obtained to each such proposed offer or resale.

For the purposes of this provision, the expression an “offer to the public” in relation to shares in any Relevant State means the communication in any form and by any means of sufficient information on the terms of the offer and any shares to be offered so as to enable an investor to decide to purchase or subscribe for any shares, and the expression “Prospectus Regulation” means Regulation (EU) 2017/1129.

We have not authorized and do not authorize the making of any offer of shares through any financial intermediary on their behalf, other than offers made by the underwriters with a view to the final placement of the shares in this document. Accordingly, no purchaser of the shares, other than the underwriters, is authorized to make any further offer of the shares on behalf of us or the underwriters.

Notice to prospective investors in the United Kingdom

In relation to the United Kingdom, no shares of common stock have been offered or will be offered pursuant to this offering to the public in the United Kingdom prior to the publication of a prospectus in relation to the shares that either (i) has been approved by the Financial Conduct Authority, or (ii) is to be treated as if it had been approved by the Financial Conduct Authority in accordance with the transitional provision in Regulation 74 of the Prospectus (Amendment etc.) (EU Exit) Regulations 2019, except that offers of shares may be made to the public in the United Kingdom at any time under the following exemptions under the UK Prospectus Regulation:

- to any legal entity which is a qualified investor as defined in Article 2 of the UK Prospectus Regulation;
- to fewer than 150 natural or legal persons (other than qualified investors as defined in Article 2 of the UK Prospectus Regulation); or
- in any other circumstances falling within section 86 of the Financial Services and Markets Act 2000 (“FSMA”),

provided that no such offer of shares shall require the Issuer or any representative to publish a prospectus pursuant to section 85 of the FSMA or supplement a prospectus pursuant to Article 23 of the UK Prospectus Regulation.

For the purposes of this provision, the expression an “offer to the public” in relation to any shares in any relevant state means the communication in any form and by any means of sufficient information on the terms of the offer and any shares to be offered so as to enable an investor to decide to purchase or subscribe for any shares, and the expression “UK Prospectus Regulation” means Regulation (EU) 2017/1129 as it forms part of domestic law by virtue of the European Union (Withdrawal) Act 2018.

We have not authorized and do not authorize the making of any offer of shares through any financial intermediary on their behalf, other than offers made by the underwriters with a view to the final placement of the

shares as contemplated in this prospectus. Accordingly, no purchaser of the shares, other than the underwriters, is authorized to make any further offer of the shares on behalf of us or the underwriters.

In addition, in the United Kingdom, this document is being distributed only to, and is directed only at, and any offer subsequently made may only be directed at persons who are "qualified investors" (as defined in Article 2 of the UK Prospectus Regulation) (i) who have professional experience in matters relating to investments falling within Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005, as amended, or the Order, and/or (ii) who are high net worth companies (or persons to whom it may otherwise be lawfully communicated) falling within Article 49(2)(a) to (d) of the Order (all such persons together being referred to as "relevant persons") or otherwise in circumstances which have not resulted and will not result in an offer to the public of the shares in the United Kingdom within the meaning of the FSMA.

Any person in the United Kingdom that is not a relevant person should not act or rely on the information included in this document or use it as basis for taking any action. In the United Kingdom, any investment or investment activity that this document relates to may be made or taken exclusively by relevant persons.

Notice to Prospective Investors in Switzerland

The shares may not be publicly offered in Switzerland and will not be listed on the SIX Swiss Exchange (SIX) or on any other stock exchange or regulated trading facility in Switzerland. This document does not constitute a prospectus within the meaning of, and has been prepared without regard to the disclosure standards for issuance prospectuses under art. 652a or art. 1156 of the Swiss Code of Obligations or the disclosure standards for listing prospectuses under art. 27 ff. of the SIX Listing Rules or the listing rules of any other stock exchange or regulated trading facility in Switzerland. Neither this document nor any other offering or marketing material relating to the shares or the offering may be publicly distributed or otherwise made publicly available in Switzerland.

Neither this document nor any other offering or marketing material relating to the offering, the Company, or the shares have been or will be filed with or approved by any Swiss regulatory authority. In particular, this document will not be filed with, and the offer of shares will not be supervised by, the Swiss Financial Market Supervisory Authority FINMA (FINMA), and the offer of shares has not been and will not be authorized under the Swiss Federal Act on Collective Investment Schemes (CISA). The investor protection afforded to acquirers of interests in collective investment schemes under the CISA does not extend to acquirers of shares.

Notice to Prospective Investors in Monaco

The shares may not be offered or sold, directly or indirectly, to the public in Monaco other than by a Monaco Bank or a duly authorized Monegasque intermediary acting as a professional institutional investor which has such knowledge and experience in financial and business matters as to be capable of evaluating the risks and merits of an investment in the Fund. Consequently, this Prospectus may only be communicated to (i) banks, and (ii) portfolio management companies duly licensed by the "Commission de Contrôle des Activités Financières" by virtue of Law n° 1.338, of September 7, 2007, and authorized under Law n° 1.144 of July 26, 1991. Such regulated intermediaries may in turn communicate this Document to potential investors.

Notice to Prospective Investors in Australia

This prospectus:

- does not constitute a disclosure document or a prospectus under Chapter 6D.2 of the Corporations Act 2001 (Cth) (the Corporations Act);
- has not been, and will not be, lodged with the Australian Securities and Investments Commission (ASIC), as a disclosure document for the purposes of the Corporations Act and does not purport to include the information required of a disclosure document for the purposes of the Corporations Act; and

- may only be provided in Australia to select investors who are able to demonstrate that they fall within one or more of the categories of investors, available under section 708 of the Corporations Act (Exempt Investors).

The shares may not be directly or indirectly offered for subscription or purchased or sold, and no invitations to subscribe for or buy the shares may be issued, and no draft or definitive offering memorandum, advertisement or other offering material relating to any shares may be distributed in Australia, except where disclosure to investors is not required under Chapter 6D of the Corporations Act or is otherwise in compliance with all applicable Australian laws and regulations. By submitting an application for the shares, you represent and warrant to us that you are an Exempt Investor.

As any offer of shares under this document will be made without disclosure in Australia under Chapter 6D.2 of the Corporations Act, the offer of those securities for resale in Australia within 12 months may, under section 707 of the Corporations Act, require disclosure to investors under Chapter 6D.2 if none of the exemptions in section 708 applies to that resale. By applying for the shares you undertake to us that you will not, for a period of 12 months from the date of sale of the shares, offer, transfer, assign or otherwise alienate those shares to investors in Australia except in circumstances where disclosure to investors is not required under Chapter 6D.2 of the Corporations Act or where a compliant disclosure document is prepared and lodged with ASIC.

Notice to Prospective Investors in New Zealand

This document has not been registered, filed with or approved by any New Zealand regulatory authority under the Financial Markets Conduct Act 2013 (the FMA Act). The securities may only be offered or sold in New Zealand (or allotted with a view to being offered for sale in New Zealand) to a person who:

- is an investment business within the meaning of clause 37 of Schedule 1 of the FMC Act;
- meets the investment activity criteria specified in clause 38 of Schedule 1 of the FMC Act;
- is large within the meaning of clause 39 of Schedule 1 of the FMC Act;
- is a government agency within the meaning of clause 40 of Schedule 1 of the FMC Act; or
- is an eligible investor within the meaning of clause 41 of Schedule 1 of the FMC Act.

Notice to Prospective Investors in Japan

The shares have not been and will not be registered pursuant to Article 4, Paragraph 1 of the Financial Instruments and Exchange Act. Accordingly, none of the shares nor any interest therein may be offered or sold, directly or indirectly, in Japan or to, or for the benefit of, any "resident" of Japan (which term as used herein means any person resident in Japan, including any corporation or other entity organized under the laws of Japan), or to others for re-offering or resale, directly or indirectly, in Japan or to or for the benefit of a resident of Japan, except pursuant to an exemption from the registration requirements of, and otherwise in compliance with, the Financial Instruments and Exchange Act and any other applicable laws, regulations and ministerial guidelines of Japan in effect at the relevant time.

Notice to Prospective Investors in Hong Kong

The shares have not been offered or sold and will not be offered or sold in Hong Kong, by means of any document, other than (a) to "professional investors" as defined in the Securities and Futures Ordinance (Cap. 571 of the Laws of Hong Kong) (the SFO) of Hong Kong and any rules made thereunder; or (b) in other circumstances which do not result in the document being a "prospectus" as defined in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32) of Hong Kong) (the CO) or which do not constitute an offer to the public within the meaning of the CO. No advertisement, invitation or document relating to the shares

has been or may be issued or has been or may be in the possession of any person for the purposes of issue, whether in Hong Kong or elsewhere, which is directed at, or the contents of which are likely to be accessed or read by, the public of Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to shares which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" as defined in the SFO and any rules made thereunder.

Notice to Prospective Investors in Singapore

Singapore SFA Product Classification — In connection with Section 309B of the SFA and the CMP Regulations 2018, unless otherwise specified before an offer of Notes, the Issuer has determined, and hereby notifies all relevant persons (as defined in Section 309A(1) of the SFA), that the Notes are ''prescribed capital markets products'' (as defined in the CMP Regulations 2018) and Excluded Investment Products (as defined in MAS Notice SFA 04-N12: Notice on the Sale of Investment Products and MAS Notice FAA-N16: Notice on Recommendations on Investment Products).

Each underwriter has acknowledged that this prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, each underwriter has represented and agreed that it has not offered or sold any shares or caused the shares to be made the subject of an invitation for subscription or purchase and will not offer or sell any shares or cause the shares to be made the subject of an invitation for subscription or purchase, and has not circulated or distributed, nor will it circulate or distribute, this prospectus or any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares, whether directly or indirectly, to any person in Singapore other than:

(a) to an institutional investor (as defined in Section 4A of the Securities and Futures Act (Chapter 289) of Singapore, as modified or amended from time to time (the SFA)) pursuant to Section 274 of the SFA;

(b) to a relevant person (as defined in Section 275(2) of the SFA) pursuant to Section 275(1) of the SFA and in accordance with the conditions specified in Section 275 of the SFA; or

(c) otherwise pursuant to, and in accordance with the conditions of, any other applicable provision of the SFA.

Where the shares are subscribed or purchased under Section 275 of the SFA by a relevant person which is:

(a) a corporation (which is not an accredited investor (as defined in Section 4A of the SFA)) the sole business of which is to hold investments and the entire share capital of which is owned by one or more individuals, each of whom is an accredited investor; or

(b) a trust (where the trustee is not an accredited investor) whose sole purpose is to hold investments and each beneficiary of the trust is an individual who is an accredited investor,

securities or securities-based derivatives contracts (each term as defined in Section 2(1) of the SFA) of that corporation or the beneficiaries' rights and interest (howsoever described) in that trust shall not be transferred within six months after that corporation or that trust has acquired the shares pursuant to an offer made under Section 275 of the SFA except:

(i) to an institutional investor or to a relevant person, or to any person arising from an offer referred to in Section 276(4)(i)(B) of the SFA;

(ii) where no consideration is or will be given for the transfer;

(iii) where the transfer is by operation of law;

(iv) as specified in Section 276(7) of the SFA; or

(v) as specified in Regulation 37A of the Securities and Futures (Offers of Investments) (Securities and Securities-based Derivatives Contracts) Regulations 2018.

Notice to Prospective Investors in China

This prospectus will not be circulated or distributed in the PRC and the shares will not be offered or sold, and will not be offered or sold to any person for re-offering or resale directly or indirectly to any residents of the PRC except pursuant to any applicable laws and regulations of the PRC. Neither this prospectus nor any advertisement or other offering material may be distributed or published in the PRC, except under circumstances that will result in compliance with applicable laws and regulations.

Notice to Prospective Investors in Korea

The shares have not been and will not be registered under the Financial Investments Services and Capital Markets Act of Korea and the decrees and regulations thereunder (the FSCMA), and the shares have been and will be offered in Korea as a private placement under the FSCMA. None of the shares may be offered, sold or delivered directly or indirectly, or offered or sold to any person for re-offering or resale, directly or indirectly, in Korea or to any resident of Korea except pursuant to the applicable laws and regulations of Korea, including the FSCMA and the Foreign Exchange Transaction Law of Korea and the decrees and regulations thereunder (the FETL). The shares have not been listed on any of securities exchanges in the world including, without limitation, the Korea Exchange in Korea. Furthermore, the purchaser of the shares shall comply with all applicable regulatory requirements (including but not limited to requirements under the FETL) in connection with the purchase of the shares. By the purchase of the shares, the relevant holder thereof will be deemed to represent and warrant that if it is in Korea or is a resident of Korea, it purchased the shares pursuant to the applicable laws and regulations of Korea.

Notice to Prospective Investors in Malaysia

No prospectus or other offering material or document in connection with the offer and sale of the shares has been or will be registered with the Securities Commission of Malaysia (Commission) for the Commission's approval pursuant to the Capital Markets and Services Act 2007. Accordingly, this prospectus and any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares may not be circulated or distributed, nor may the shares be offered or sold, or be made the subject of an invitation for subscription or purchase, whether directly or indirectly, to persons in Malaysia other than (i) a closed end fund approved by the Commission; (ii) a holder of a Capital Markets Services Licence; (iii) a person who acquires the shares, as principal, if the offer is on terms that the shares may only be acquired at a consideration of not less than RM250,000 (or its equivalent in foreign currencies) for each transaction; (iv) an individual whose total net personal assets or total net joint assets with his or her spouse exceeds RM3 million (or its equivalent in foreign currencies), excluding the value of the primary residence of the individual; (v) an individual who has a gross annual income exceeding RM300,000 (or its equivalent in foreign currencies) per annum in the preceding twelve months; (vi) an individual who, jointly with his or her spouse, has a gross annual income of RM400,000 (or its equivalent in foreign currencies), per annum in the preceding twelve months; (vii) a corporation with total net assets exceeding RM10 million (or its equivalent in a foreign currencies) based on the last audited accounts; (viii) a partnership with total net assets exceeding RM10 million (or its equivalent in foreign currencies); (ix) a bank licensee or insurance licensee as defined in the Labuan Financial Services and Securities Act 2010; (x) an Islamic bank licensee or takaful licensee as defined in the Labuan Financial Services and Securities Act 2010; and (xi) any other person as may be specified by the Commission; provided that, in each of the preceding categories (i) to (xi), the distribution of the shares is made by a holder of a Capital Markets Services Licence who carries on the business of dealing in securities. The distribution in Malaysia of this prospectus is subject to Malaysian laws. This prospectus does not constitute and may not be used for the purpose of public offering or an

issue, offer for subscription or purchase, invitation to subscribe for or purchase any securities requiring the registration of a prospectus with the Commission under the Capital Markets and Services Act 2007.

Notice to Prospective Investors in Taiwan

The shares have not been and will not be registered with the Financial Supervisory Commission of Taiwan pursuant to relevant securities laws and regulations and may not be sold, issued or offered within Taiwan through a public offering or in circumstances which constitutes an offer within the meaning of the Securities and Exchange Act of Taiwan that requires a registration or approval of the Financial Supervisory Commission of Taiwan. No person or entity in Taiwan has been authorised to offer, sell, give advice regarding or otherwise intermediate the offering and sale of the shares in Taiwan.

Notice to Prospective Investors in Saudi Arabia

This document may not be distributed in the Kingdom of Saudi Arabia except to such persons as are permitted under the Offers of Securities Regulations as issued by the board of the Saudi Arabian Capital Market Authority (CMA) pursuant to resolution number 2-11-2004 dated 4 October 2004 as amended by resolution number 1-28-2008, as amended (the CMA Regulations). The CMA does not make any representation as to the accuracy or completeness of this document and expressly disclaims any liability whatsoever for any loss arising from, or incurred in reliance upon, any part of this document. Prospective purchasers of the securities offered hereby should conduct their own due diligence on the accuracy of the information relating to the securities. If you do not understand the contents of this document, you should consult an authorised financial adviser.

Notice to Prospective Investors in Qatar

The shares described in this prospectus have not been, and will not be, offered, sold or delivered, at any time, directly or indirectly in the State of Qatar in a manner that would constitute a public offering. This prospectus has not been, and will not be, registered with or approved by the Qatar Financial Markets Authority or Qatar Central Bank and may not be publicly distributed. This prospectus is intended for the original recipient only and must not be provided to any other person. It is not for general circulation in the State of Qatar and may not be reproduced or used for any other purpose.

Notice to Prospective Investors in the Dubai International Financial Centre (DIFC)

This document relates to an Exempt Offer in accordance with the Markets Rules 2012 of the Dubai Financial Services Authority (DFSA). This document is intended for distribution only to persons of a type specified in the Markets Rules 2012 of the DFSA. It must not be delivered to, or relied on by, any other person. The DFSA has no responsibility for reviewing or verifying any documents in connection with Exempt Offers. The DFSA has not approved this prospectus supplement nor taken steps to verify the information set forth herein and has no responsibility for this document. The securities to which this document relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the securities offered should conduct their own due diligence on the securities. If you do not understand the contents of this document you should consult an authorized financial advisor.

In relation to its use in the DIFC, this document is strictly private and confidential and is being distributed to a limited number of investors and must not be provided to any person other than the original recipient, and may not be reproduced or used for any other purpose. The interests in the securities may not be offered or sold directly or indirectly to the public in the DIFC.

Notice to Prospective Investors in the United Arab Emirates

The shares have not been, and are not being, publicly offered, sold, promoted or advertised in the United Arab Emirates (including the Dubai International Financial Centre) other than in compliance with the

laws of the United Arab Emirates (and the Dubai International Financial Centre) governing the issue, offering and sale of securities. Further, this prospectus does not constitute a public offer of securities in the United Arab Emirates (including the Dubai International Financial Centre) and is not intended to be a public offer. This prospectus has not been approved by or filed with the Central Bank of the United Arab Emirates, the Securities and Commodities Authority or the Dubai Financial Services Authority.

Notice to Prospective Investors in Bermuda

Shares may be offered or sold in Bermuda only in compliance with the provisions of the Investment Business Act of 2003 of Bermuda which regulates the sale of securities in Bermuda. Additionally, non-Bermudian persons (including companies) may not carry on or engage in any trade or business in Bermuda unless such persons are permitted to do so under applicable Bermuda legislation.

Notice to Prospective Investors in the British Virgin Islands

The shares are not being, and may not be offered to the public or to any person in the British Virgin Islands for purchase or subscription by or on behalf of the Issuer. The shares may be offered to companies incorporated under the BVI Business Companies Act, 2004 (British Virgin Islands) (BVI Companies), but only where the offer will be made to, and received by, the relevant BVI Company entirely outside of the British Virgin Islands.

Notice to Prospective Investors in Bahamas

Shares may not be offered or sold in The Bahamas via a public offer. Shares may not be offered or sold or otherwise disposed of in any way to any person(s) deemed "resident" for exchange control purposes by the Central Bank of The Bahamas.

Notice to Prospective Investors in South Africa

Due to restrictions under the securities laws of South Africa, no "offer to the public" (as such term is defined in the South African Companies Act, No. 71 of 2008 (as amended or re-enacted) (the South African Companies Act)) is being made in connection with the issue of the shares in South Africa. Accordingly, this document does not, nor is it intended to, constitute a "registered prospectus" (as that term is defined in the South African Companies Act) prepared and registered under the South African Companies Act and has not been approved by, and/or filed with, the South African Companies and Intellectual Property Commission or any other regulatory authority in South Africa. The shares are not offered, and the offer shall not be transferred, sold, renounced or delivered, in South Africa or to a person with an address in South Africa, unless one or other of the following exemptions stipulated in section 96 (1) applies:

Section 96 (1) (a)

the offer, transfer, sale, renunciation or delivery is to:

(i) persons whose ordinary business, or part of whose ordinary business, is to deal in securities, as principal or agent;

(ii) the South African Public Investment Corporation;

(iii) persons or entities regulated by the Reserve Bank of South Africa;

(iv) authorised financial service providers under South African law;

(v) financial institutions recognised as such under South African law;

(vi) a wholly-owned subsidiary of any person or entity contemplated in (c), (d) or (e), acting as agent in the capacity of an authorised portfolio manager for a pension fund, or as manager for a collective investment scheme (in each case duly registered as such under South African law); or

(vii) any combination of the person in (i) to (vi); or

Section 96 (1) (b)

the total contemplated acquisition cost of the securities, for any single addressee acting as principal is equal to or greater than ZAR1,000,000 or such higher amount as may be promulgated by notice in the Government Gazette of South Africa pursuant to section 96(2)(a) of the South African Companies Act.

Information made available in this prospectus should not be considered as “advice” as defined in the South African Financial Advisory and Intermediary Services Act, 2002.

If Exchange Controls are applicable, add: No South African residents or offshore subsidiary of a South African resident may subscribe for or purchase any of the shares or beneficially own or hold any of the shares unless specific approval has been obtained from the financial surveillance department of the South African Reserve Bank (the SARB) by such persons or such subscription, purchase or beneficial holding or ownership is otherwise permitted under the South African Exchange Control Regulations or the rulings promulgated thereunder (including, without limitation, the rulings issued by the SARB providing for foreign investment allowances applicable to persons who are residents of South Africa under the applicable exchange control laws of South Africa).

Notice to Prospective Investors in Chile

THESE SECURITIES ARE PRIVATELY OFFERED IN CHILE PURSUANT TO THE PROVISIONS OF LAW 18,045, THE SECURITIES MARKET LAW OF CHILE, AND NORMA DE CARÁCTER GENERAL NO. 336 (RULE 336), DATED JUNE 27, 2012, ISSUED BY THE SUPERINTENDENCIA DE VALORES Y SEGUROS DE CHILE (SVS), THE SECURITIES REGULATOR OF CHILE, TO RESIDENT QUALIFIED INVESTORS THAT ARE LISTED IN RULE 336 AND FURTHER DEFINED IN RULE 216 OF JUNE 12, 2008 ISSUED BY THE SVS.

PURSUANT TO RULE 336 THE FOLLOWING INFORMATION IS PROVIDED IN CHILE TO PROSPECTIVE RESIDENT INVESTORS IN THE OFFERED SECURITIES:

1. THE INITIATION OF THE OFFER IN CHILE IS   , 2021.

2. THE OFFER IS SUBJECT TO NCG 336 OF JUNE 27, 2012 ISSUED BY THE SUPERINTENDENCIA DE VALORES Y SEGUROS DE CHILE (SUPERINTENDENCY OF SECURITIES AND INSURANCE OF CHILE).

3. THE OFFER REFERS TO SECURITIES THAT ARE NOT REGISTERED IN THE REGISTRO DE VALORES (SECURITIES REGISTRY) OR THE REGISTRO DE VALORES EXTRANJEROS (FOREIGN SECURITIES REGISTRY) OF THE SVS AND THEREFORE:

a. THE SECURITIES ARE NOT SUBJECT TO THE OVERSIGHT OF THE SVS; AND 15

b. THE ISSUER THEREOF IS NOT SUBJECT TO REPORTING OBLIGATION WITH RESPECT TO ITSELF OR THE OFFERED SECURITIES.

4. THE SECURITIES MAY NOT BE PUBLICLY OFFERED IN CHILE UNLESS AND UNTIL THEY ARE REGISTERED IN THE SECURITIES REGISTRY OF THE SVS.

INFORMACIÓN A LOS INVERSIONISTAS RESIDENTES EN CHILE

LOS VALORES OBJETO DE ESTA OFERTA SE OFRECEN PRIVADAMENTE EN CHILE DE CONFORMIDAD CON LAS DISPOSICIONES DE LA LEY N° 18.045 DE MERCADO DE VALORES, Y LA NORMA DE CARÁCTER GENERAL N° 336 DE 27 DE JUNIO DE 2012 (NCG 336) EMITIDA POR LA SUPERINTENDENCIA DE VALORES Y SEGUROS DE CHILE, A LOS "INVERSIONISTAS CALIFICADOS" QUE ENUMERA LA NCG 336 Y QUE SE DEFINEN EN LA NORMA DE CARÁCTER GENERAL N° 216 DE 12 DE JUNIO DE 2008 EMITIDA POR LA MISMA SUPERINTENDENCIA.

EN CUMPLIMIENTO DE LA NCG 336, LA SIGUIENTE INFORMACIÓN SE PROPORCIONA A LOS POTENCIALES INVERSIONISTAS RESIDENTES EN CHILE:

1. LA OFERTA DE ESTOS VALORES EN CHILE COMIENZA EL DÍA DE 2021.

2. LA OFERTA SE ENCUENTRA ACOGIDA A LA NCG 336 DE FECHA ECHA 27 DE JUNIO DE 2012 EMITIDA POR LA SUPERINTENDENCIA DE VALORES Y SEGUROS.

3. LA OFERTA VERSA SOBRE VALORES QUE NO SE ENCUENTRAN INSCRITOS EN EL REGISTRO DE VALORES NI EN EL REGISTRO DE VALORES EXTRANJEROS QUE LLEVA LA SUPERINTENDENCIA DE VALORES Y SEGUROS, POR LO QUE:

a) LOS VALORES NO ESTÁN SUJETOS A LA FISCALIZACIÓN DE ESA SUPERINTENDENCIA; Y

b) EL EMISOR DE LOS VALORES NO ESTÁ SUJETO A LA OBLIGACIÓN DE ENTREGAR INFORMACIÓN PÚBLICA SOBRE LOS VALORES OFRECIDOS NI SU EMISOR.

4. LOS VALORES PRIVADAMENTE OFRECIDOS NO PODRÁN SER OBJETO DE OFERTA PÚBLICA EN CHILE MIENTRAS NO SEAN EN EL REGISTRO DE VALORES CORRESPONDIENTE.

LEGAL MATTERS

The validity of the issuance of the Class A common stock offered by this prospectus and certain other legal matters in connection with the sale of the shares of Class A common stock offered hereby will be passed upon for us by Wilson Sonsini Goodrich & Rosati, P.C., Palo Alto, California. Certain legal matters relating to the offering will be passed upon for the underwriters by Davis Polk & Wardwell LLP, Menlo Park, California.

EXPERTS

The consolidated financial statements of VIZIO, Inc. as of December 31, 2020 and 2019, and for each of the years in the three-year period ended December 31, 2020, have been included herein in reliance upon the reports of KPMG LLP, independent registered public accounting firm, appearing elsewhere herein, and upon the authority of said firm as experts in accounting and auditing.

WHERE YOU CAN FIND MORE INFORMATION

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the shares of our Class A common stock to be sold in this offering. This prospectus, filed as a part of the registration statement, does not contain all of the information set forth in the registration statement and exhibits and schedules, certain parts of which are omitted in accordance with the rules and regulations of the SEC. For

further information about us and the shares to be sold in this offering, please refer to the registration statement. Statements contained in this prospectus as to the contents of any agreement or any other document referred to are not necessarily complete and, in each instance, we refer you to the copy of the agreement or other document filed as an exhibit to the registration statement. Each of these statements is qualified in all respects by this reference.

The SEC also maintains a website that contains reports, proxy and information statements and other information about issuers, including VIZIO, that file electronically with the SEC. Upon completion of this offering, we will become subject to the reporting and information requirements of the Securities Exchange Act of 1934, as amended, and we will file reports, proxy statements and other information with the SEC. You will be able to inspect and copy such periodic reports, proxy statements and other information at the website of the SEC. The address of that site is *www.sec.gov*.

VIZIO, INC.

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Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of
Directors VIZIO, Inc.:

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of VIZIO, Inc. and subsidiaries (the Company) as of December 31, 2019 and 2020, the related consolidated statements of operations and comprehensive income, stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2020, and the related notes (collectively, the consolidated financial statements). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2019 and 2020, and the results of its operations and its cash flows for each of the years in the three-year period ended December 31, 2020, in conformity with U.S. generally accepted accounting principles.

Basis for Opinion

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

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free of material misstatement, whether due to error or fraud. Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matter

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

Evaluation of accrued customer price protection incentives

As discussed in Note 2(m) to the consolidated financial statements, the Company periodically grants certain sales discounts and incentives to customers, such as price protection, which are treated as variable consideration for purposes of determining the transaction price. Price protection incentives are accrued for when the related product sale is recognized. The accrual for price protection incentives consists of estimated revenue deductions for future payments to customers. The Company estimates accrued price protection based upon historical experience and management judgment. As of December 31, 2020, amounts recorded for customer price protection incentives within accrued expenses were $61.3 million.

We identified the evaluation of the accrual for customer price protection incentives as a critical audit matter. Complex auditor judgment was required to assess the anticipated final sale price and the length of time between when a sale is made and when the related price protection incentive is settled by the Company.

The following are the primary procedures we performed to address this critical audit matter. We evaluated the design of certain internal controls over the Company's process to develop estimates of its accrued customer price protection incentives. This included controls related to the Company's process to evaluate:

- the accuracy of the anticipated final sale price upon which the accrual is established, and
- whether adjustments are required to previously established accruals for price protection based on developments subsequent to the related sale until the related price protection incentive is settled.

We selected a sample of programs and ensured the required accrual was recorded at the time of sale. We evaluated the accruals related to a sample of price protection incentives by comparing the documentation supporting the program, including customer activity and executed contracts, as well as documentation supporting market conditions. We assessed the historical claims to evaluate the length of time between when a sale is made and when the related price protection is settled. To assess the Company's ability to accurately forecast, we compared the historical accrual to the amounts settled.

/s/ KPMG LLP

We have served as the Company's auditor since 2010.

Los Angeles, California
March 1, 2021

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VIZIO, Inc.
Consolidated Balance Sheets
(In thousands)

	As of	
	December 31, 2019	**December 31, 2020**
Assets		
Current assets:		
Cash and cash equivalents	$ 176,579	207,728
Accounts receivable, net	360,714	405,609
Other receivables due from related parties	5,399	978
Inventories	13,252	10,545
Income tax receivable	778	1,315
Other current assets	36,278	55,460
Total current assets	593,000	681,635
Property, equipment and software, net	7,734	7,929
Goodwill, net	44,788	44,788
Intangible assets, net	769	131
Deferred income taxes	28,576	26,652
Other assets	9,473	13,847
Total assets	$ 684,340	774,982
Liabilities and Stockholders' Equity		
Current liabilities:		
Accounts payable due to related parties	225,837	209,362
Accounts payable	164,997	166,805
Accrued expenses	160,540	154,959
Accrued royalties	84,751	81,143
Other current liabilities	1,775	5,272
Total current liabilities	637,900	617,541
Other long-term liabilities	5,357	8,210
Total liabilities	643,257	625,751
Commitments and contingencies (note 21)		
Stockholders' equity:		
Preferred stock, $0.0001 par value; 25,000 shares authorized; 250 shares designated as Series A convertible preferred stock; 135 shares of Series A convertible preferred stock issued and outstanding as of December 31, 2019 and 2020, respectively	2,445	2,565
Common stock and additional paid-in-capital, $0.0001 par value; 75,000 shares authorized; 16,733 and 16,759 shares issued and outstanding as of December 31, 2019 and 2020, respectively	93,948	98,900
Accumulated other comprehensive income	152	873
Retained earnings (accumulated deficit)	(55,462)	46,893
Total stockholders' equity	41,083	149,231
Total liabilities and stockholders' equity	$ 684,340	774,982

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

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VIZIO, Inc.
Consolidated Statements of Operations and Comprehensive Income
(In thousands, except per share amounts)

	Year Ended		
	December 31, 2018	December 31, 2019	December 31, 2020
Net revenue:			
Device	$ 1,744,353	$ 1,773,600	$ 1,895,275
Platform+	36,377	63,199	147,198
Total net revenue	1,780,730	1,836,799	2,042,473
Cost of goods sold:			
Device	1,656,082	1,648,583	1,710,776
Platform+	14,387	23,051	35,339
Total cost of goods sold	1,670,469	1,671,634	1,746,115
Gross profit:			
Device	88,271	125,017	184,499
Platform+	21,990	40,148	111,859
Total gross profit	110,261	165,165	296,358
Operating expenses:			
Selling, general and administrative	95,753	108,983	130,884
Marketing	19,161	22,656	31,279
Depreciation and amortization	5,030	4,134	2,296
Total operating expenses	119,944	135,773	164,459
Income (loss) from operations	(9,683)	29,392	131,899
Interest income (expense), net	(1,633)	1,178	12
Other income, net	10,532	235	532
Total non-operating income	8,899	1,413	544
Income (loss) before income taxes	(784)	30,805	132,443
Provision for (benefit from) income taxes	(628)	7,719	29,968
Net income (loss)	$ (156)	$ 23,086	$ 102,475
Other comprehensive income			
Net income (loss)	$ (156)	$ 23,086	$ 102,475
Foreign currency translation gain, net of tax	330	125	721
Comprehensive income	$ 174	$ 23,211	$ 103,196
Net income (loss) per share attributable to common stockholders:			
Basic	$ (0.02)	$ 1.12	$ 5.00
Diluted	$ (0.02)	$ 1.10	$ 4.91
Weighted-average common shares outstanding:			
Basic	15,329	16,014	16,042
Diluted	15,329	16,340	16,334

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

VIZIO, Inc.
Consolidated Statements of Stockholders' Equity
(In thousands)

	Preferred Stock		Common Stock and Additional Paid-In Capital		Accumulated Other Comprehensive Income	Retained Earnings (Accumulated Deficit)	Total Stockholders' Equity
	Shares	Amount	Shares	Amount			
Balance at December 31, 2017	135	$ 2,205	15,241	$12,447	$ (303)	$ (78,152)	$ (63,803)
Stock-based compensation expense	—	—	—	5,236	—	—	5,236
Shares issued pursuant to incentive award plans	—	—	16	72	—	—	72
Shares repurchased and cancelled	—	—	1,443	70,000	—	—	70,000
Accretion of preferred stock dividends	—	120	—	—	—	(120)	—
Other comprehensive income net of tax	—	—	—	—	330	—	330
Net loss	—	—	—	—	—	(156)	(156)
Balance at December 31, 2018	135	2,325	16,700	87,755	27	(78,428)	11,679
Stock-based compensation expense	—	—	—	4,079	—	—	4,079
Issuance of Class A Common Stock Warrants	—	—	—	1,927	—	—	1,927
Shares issued pursuant to incentive award plans	—	—	33	187	—	—	187
Accretion of preferred stock dividends	—	120	—	—	—	(120)	—
Other comprehensive income net of tax	—	—	—	—	125	—	125
Net income	—	—	—	—	—	23,086	23,086
Balance at December 31, 2019	135	2,445	16,733	93,948	152	(55,462)	41,083
Stock-based compensation expense	—	—	—	4,776	—	—	4,776
Shares issued pursuant to incentive award plans	—	—	26	176	—	—	176
Accretion of preferred stock dividends	—	120	—	—	—	(120)	—
Other comprehensive income net of tax	—	—	—	—	721	—	721
Net income	—	—	—	—	—	102,475	102,475
Balance at December 31, 2020	135	$ 2,565	16,759	$98,900	$ 873	$ 46,893	$ 149,231

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements

VIZIO, Inc.
Consolidated Statements of Cash Flows
(In thousands)

	Year Ended		
	December 31, 2018	December 31, 2019	December 31, 2020
Cash flows from operating activities:			
Net (loss) income	$ (156)	$ 23,086	$ 102,475
Adjustments to reconcile net income (loss) to net cash provided by (used in) operating activities:			
Depreciation and amortization	5,030	4,134	2,296
Deferred income taxes	12,346	(616)	1,923
Stock-based compensation expense and common stock warrants	5,236	6,006	4,776
Changes in operating assets and liabilities:			
Accounts receivable	(46,718)	130,524	(44,857)
Other receivables due from related parties	234	(3,231)	4,421
Inventories	9,754	13,061	2,717
Income taxes receivable	—	2,016	(537)
Other current assets	7,677	(6)	(19,472)
Other assets	(2,727)	1,354	(4,374)
Accounts payable due to related parties	95,109	(24,849)	(16,476)
Accounts payable	(77,958)	(79,204)	2,116
Accrued expenses	(27,181)	12,336	(5,455)
Accrued royalties	19,054	(3,136)	(3,608)
Income taxes payable	(247)	—	—
Other current liabilities	931	89	3,498
Other long-term liabilities	2,858	(1,681)	2,854
Net cash provided by operating activities	3,242	79,883	32,297
Cash flows from investing activities:			
Purchases of property and equipment	(443)	(800)	(1,752)
Net cash used in investing activities	(443)	(800)	(1,752)
Cash flows from financing activities:			
Proceeds from exercise of stock options	72	187	175
Proceeds from issuance of stock	70,000	—	—
Proceeds from line-of-credit borrowings	107,000	—	—
Repayments of line-of-credit borrowings	(122,000)	—	—
Net cash provided by financing activities	55,072	187	175
Effect of exchange rate changes on cash and cash equivalents	330	125	429
Net increase in cash and cash equivalents	58,201	79,395	31,149
Cash and cash equivalents at beginning of year	38,983	97,184	176,579
Cash and cash equivalents at end of year	$ 97,184	$ 176,579	$ 207,728
Supplemental disclosure of cash flow information:			
Net cash (received) paid during the period for income taxes	$ (12,851)	$ 6,427	$ 27,588
Cash paid for interest	$ 1,479	$ 212	$ 188
Supplemental disclosure of non-cash investing and financing activities:			
Right-of-use assets obtained in exchange for new operating lease liabilities	$ 4,789	$ 158	$ 5,208
Cash paid for amounts included in the measurement of operating lease liabilities	$ 1,207	$ 1,803	$ 2,524

The accompanying Notes to Consolidated Financial Statements are an integral part of these statements.

VIZIO, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts and percentage data)

(1) Organization and Nature of Business

VIZIO, Inc. (including its subsidiaries, referred to collectively as VIZIO or the Company) was incorporated in the State of California on October 21, 2002 and commenced operations in January 2003. VIZIO was originally incorporated as V, Inc. and was renamed VIZIO, Inc. in March 2007. The Company's devices include high-performance Smart televisions (Smart TVs), sound bars, and accessories. These products are sold to retailers and through online channels throughout the United States.

Additionally, VIZIO launched Platform+ which comprises of VIZIO's SmartCast operating system, enabling a fully integrated home entertainment solution, and data intelligence and services products through Inscape. SmartCast delivers content and applications through an easy-to-use interface. It supports leading streaming apps and hosts the Company's own free ad-supported video app, WatchFree, as well as VIZIO Free Channels. The Company provides broad support for third-party voice platforms and second screen experiences to offer additional interactive features and experiences.

VIZIO purchases all of its products from manufacturers based in Asia. Since inception, the Company has purchased a portion of its televisions from one manufacturer who holds a noncontrolling interest in the Company through its ownership of voting common stock and nonvoting Series A preferred stock. Since 2012, VIZIO has purchased a portion of its televisions from three manufacturers who are affiliates of an investor who holds a noncontrolling interest in the Company through its ownership of nonvoting Series A preferred stock and common stock. These manufacturers do not have any significant voting privileges, nor sufficient seats on the board of directors that would enable them to dictate any of the Company's strategic or operating decisions. All transactions executed with the aforementioned manufacturers are presented as related party transactions.

Recent Developments

On March 11, 2020, the COVID-19 outbreak was declared a pandemic by the World Health Organization. The challenges posed by the COVID-19 pandemic on the global economy increased significantly as the year progressed. In response to COVID-19, national and local governments around the world have instituted certain measures, including travel bans, prohibitions on group events and gatherings, shutdowns of certain businesses, curfews, shelter-in-place orders and recommendations to practice social distancing. The full impact of COVID-19 on the Company's results of operations, financial condition and cash flows is dependent on future developments, including the duration of the pandemic and the related length of its impact on the global economy, which are uncertain and cannot be predicted at this time. Through the date these financial statements were available to be issued, COVID-19 has not had a material adverse effect on the Company's business and results of operations.

(2) Summary of Significant Accounting Policies

(a) Basis of Consolidation

The consolidated financial statements include the accounts of VIZIO and all subsidiaries. All intercompany transactions and balances have been eliminated in consolidation. The functional currency of most of the foreign subsidiaries is the U.S. dollar. The accounts of these remaining foreign subsidiaries have been translated using the U.S. dollar as the functional currency. Gains or losses resulting from remeasurement of these accounts from local currencies into U.S. dollars were immaterial to the consolidated financial statements. Financial statements of the Company's foreign subsidiaries for which the functional currency is the local currency are translated into U.S. dollars using the exchange rate at each balance sheet date for assets and liabilities and the transaction date

exchange rate for statements of operations items. Currency translation adjustments are recorded in accumulated other comprehensive income, a component of stockholders' equity.

(b) Use of Estimates

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain amounts reported in the consolidated financial statements and accompanying notes. Actual results may differ from those estimates and assumptions. Significant items subject to such estimates and assumptions include the allowances for doubtful accounts and sales returns, reserves for excess and obsolete inventory, accrued price protection and rebates, accrued royalties, stock-based compensation, intellectual property and related intangible assets, valuation of deferred tax assets and other contingencies. Supplier and customer concentrations also increase the degree of uncertainty inherent in these estimates and assumptions.

(c) Cash and Cash Equivalents

All highly liquid financial instruments with a remaining maturity of 90 days or less when purchased are presented as cash equivalents.

(d) Accounts Receivable and Allowance for Doubtful Accounts

Accounts receivable consist of amounts due to VIZIO from sales arrangements executed under normal business activities and are recorded at invoiced amounts which is the amount VIZIO expects to be entitled to receive. The Company presents the aggregate accounts receivable balance net of an allowance for doubtful accounts and extends credit to its customers and mitigates a portion of the Company's credit risk through credit insurance. Generally, collateral or other security is not required for outstanding accounts receivable. Credit losses, if any, are recognized based on management's evaluation of historical collection experience, customer-specific financial conditions as well as an evaluation of current industry trends and general economic conditions. Past-due balances are assessed by management on a monthly basis and balances are written off when the customer's financial condition no longer warrants pursuit of collections. Although VIZIO expects to collect amounts due, actual collections may differ from estimated amounts.

(e) Concentrations of Credit Risk

Financial instruments that potentially create significant concentrations of credit risk consist principally of accounts receivable and cash in banks. The Company maintains its cash balances at various financial institutions. At times, such balances may exceed federally insured limits. No losses have been experienced in any such accounts.

(f) Inventories

Inventories are stated at the lower of cost, using the first-in, first-out method, or net realizable value. Inventories are reviewed for excess and obsolescence based upon demand forecasts for a specific time horizon. The Company records a charge to cost of sales for the amount required to reduce the carrying value of inventory to net realizable value. For inventories related to certain manufacturers, VIZIO may be contractually required to purchase this inventory if the product is (i) requested by VIZIO, (ii) received at the manufacturers' warehouse on an agreed-upon receipt date, and (iii) remains unsold after a predetermined period, which generally exceeds 30 to 45 days.

VIZIO, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts and percentage data)

(g) Property and Equipment

Property and equipment are recorded at historical cost, less accumulated depreciation and impairment, if applicable. Depreciation is computed using the straight-line method based upon the following estimated useful lives:

	Years
Buildings	39
Machinery and equipment	5
Furnitures and fixtures	7
Computer and software	3
Automobiles	5

Leasehold improvements are amortized using the straight-line method over the lesser of the lease term or the estimated useful life of the assets. Maintenance and repairs are expensed as incurred.

Capitalized Software Development Costs

The Company capitalizes certain costs associated with creating and enhancing internally developed software related to the Company's technology infrastructure and are records these amounts within property and equipment, net. These costs include personnel and related employee benefit expenses for employees who are directly associated with and who devote time to software development projects and contractor costs. Software development costs that do not qualify for capitalization are expensed as incurred and recorded as research and development expenses in the consolidated statements of operations and comprehensive income.

Software development activities typically consist of three stages: (1) the preliminary project stage; (2) the application development stage; and (3) the post implementation stage. Costs incurred in the planning and post implementation phases, including costs associated with training and repairs and maintenance, are expensed as incurred. The Company capitalizes costs associated with software developed when the preliminary project stage is completed, management implicitly or explicitly authorizes and commits to funding the project and it is probable that the project will be completed and perform as intended. Costs incurred in the application development stage, including significant enhancements and upgrades, are capitalized. Capitalization ends once a project is substantially complete and the software is ready for its intended purpose. Software development costs are amortized using a straight-line method over the estimated useful life, commencing when the software is ready for its intended use. The straight-line recognition method approximates the manner in which the expected benefit will be derived.

During the years ended December 31, 2018, 2019 and 2020, the Company capitalized software development costs of $1,455, $3,787, and $3,148, respectively. During the years ended December 31, 2018, 2019 and 2020 amortization of capitalized software development costs was $3,776, $3,047 and $3,353, respectively, and are recorded in costs of goods sold in the accompanying consolidated statements of operations and comprehensive income.

(h) Goodwill and Other Intangible Assets

Goodwill represents the excess of the purchase price over the fair value of the net tangible and intangible assets acquired in a business combination. Goodwill is not amortized but is tested at least

VIZIO, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts and percentage data)

annually for impairment as of the first day of the fourth fiscal quarter, or more frequently if indicators of impairment exist during the fiscal year. Events or circumstances which could trigger an impairment review include a significant adverse change in legal factors or in the business climate, loss of key customers, an adverse action or assessment by a regulator, unanticipated competition, a loss of key personnel, significant changes in the manner of the Company's use of the acquired assets or the strategy for its overall business, significant negative industry or economic trends, or significant underperformance relative to expected historical or projected future results of operations. The Company assessed the conclusion regarding segments and reporting units in conjunction with its annual goodwill impairment test, which is performed on December 31, and has determined that it has one reporting unit for the purposes of allocating and testing goodwill. All of the Company's goodwill is attributable to the Platform+ reporting unit.

When testing goodwill for impairment, the Company first performs a qualitative assessment. If the Company determines it is more likely than not that a reporting unit's fair value is less than the carrying amount, then a one-step impairment test is required. If the Company determines it is not more likely than not a reporting unit's fair value is less than the carrying amount, then no further analysis is necessary. To identify whether impairment exists, the Company compares the estimated fair value of the reporting unit with the carrying amount, including goodwill. If the estimated fair value of the reporting unit exceeds the carrying amount, goodwill is not considered to be impaired. If, however, the fair value of the reporting unit is less than the carrying amount, then such balance would be recorded as an impairment loss. Any impairment loss is limited to the carrying amount of goodwill within the entity. There has been no impairment of goodwill for any periods presented.

Acquired intangible assets with definite lives are amortized on a straight-line basis over the remaining estimated economic life of the underlying products and technologies. Long-lived assets to be held and used, including intangible assets, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be fully recoverable. These events or changes in circumstances may include a significant deterioration of operating results, changes in business plans, or changes in anticipated future cash flows. If an impairment indicator is present, the Company evaluates recoverability by a comparison of the carrying amount of the assets to future undiscounted net cash flows expected to be generated by the assets. If the assets are impaired, the impairment recognized is measured by the amount by which the carrying amount exceeds the fair value of the assets. Fair value is generally determined by estimates of discounted cash flows. The discount rate used in any estimate of discounted cash flows would be the rate required for a similar investment of like risk. There has been no impairment of long-lived assets for any periods presented.

(i) Leases

Effective January 1, 2018, the Company adopted Accounting Standards Update ("ASU") 2016-02, Leases and related standards, as amended, or Accounting Standards Codification ("ASC") 842. See Recently Issued Accounting Pronouncements below.

Under ASC 842, the Company determines whether an arrangement is a lease at contract inception. Operating leases right-of-use assets are included in other current assets and other assets, and lease liabilities are included in other current liabilities and other long-term liabilities in the Company's consolidated balance sheets. Operating lease charges are recorded in selling, general and administrative expenses in the consolidated statements of operations and comprehensive income.

Operating lease right-of-use assets and operating lease liabilities are recognized based on the present value of the future lease payments over the lease term at the commencement date. The Company does

not separate lease and non-lease components for all underlying asset classes. As most of the Company's leases do not provide a readily determinable implicit rate, it estimates the incremental borrowing rate, using the formula for the interest rate on the company's collateralized borrowing at the point in time of lease start or the adoption date (whichever is later), to discount the lease payments based on information available at lease commencement. The Company determines the incremental borrowing rate for each lease based primarily on the lease term and the economic environment of the applicable country or region. The operating lease right-of-use asset also includes any prepaid lease payments and is reduced by existing lease incentive balances upon adoption. The Company does not include the cost of lease extensions in the right-of-use asset until it is reasonably certain such an option will be executed, and the cost can be determined. The Company recognizes lease expense for lease payments over the lease term, while variable lease payments, such as common area maintenance, are recognized as incurred. The Company elected the practical expedient to not recognize operating lease right-of-use assets and operating lease liabilities that arise from short-term leases (i.e., leases with a term of 12 months or less).

(j) Revenue Recognition

The Company derives revenue primarily from the sale of televisions and sound bars, advertising and data services. Revenue is recognized when control of the promised goods or services is transferred to the Company's retailers, in an amount that reflects the consideration to which it expects to be entitled in exchange for those goods or services. The Company applies a five-step approach as defined in Financial Accounting Standards Board ("FASB") ASC 606, Revenue from Contracts with Customers (Topic 606), in determining the amount and timing of revenue to be recognized: (1) identifying the contract with a customer; (2) identifying the performance obligations in the contract; (3) determining the transaction price; (4) allocating the transaction price to the performance obligations in the contract; and (5) recognizing revenue when the corresponding performance obligation is satisfied.

The Company sells products to certain retailers under terms that allow them to receive price protection on future price reductions and may provide for limited rights of return, discounts and advertising credits.

Device Revenue

Each distinct promise to transfer products is considered to be an identified performance obligation for which revenue is recognized at a point in time upon transfer of control of the products to the retailer. Transfer of control occurs upon shipment or delivery to the retailer. Point in time recognition is determined as products to be sold represent an asset with an alternative use. Warranty returns have not been material, and warranty-related services are not considered a separate performance obligation.

Pricing adjustments and estimates of returns are treated as variable consideration for purposes of determining the transaction price. Sales returns are generally accepted at the Company's discretion. Variable consideration is estimated using the most likely amount considering all reasonably available information, including the Company's historical experience and current expectations, and is reflected in the transaction price when sales are recorded. Revenue recorded excludes taxes collected on sales to retailers.

Accounts receivable represents the unconditional right to receive consideration from retailers. Substantially all payments are collected within the Company's standard terms, which do not include a significant financing component. In 2018, 2019 and 2020, there have been no material impairment

VIZIO, Inc.
Notes to Consolidated Financial Statements
(In thousands, except per share amounts and percentage data)

losses on accounts receivable. There have been no material contract assets or contract liabilities recorded on the consolidated balance sheet in any of the periods presented.

All of the Company’s products are directly shipped by vessel from manufacturers to third-party logistics and distribution centers in the United States. Generally, the Company ships the product to its retailers with freight carriers contracted by the Company. Shipping terms on sales of products are generally FOB destination but may vary depending upon the related contractual arrangement with the retailers. Amounts billed to retailers for shipping and handling costs are included in net revenue.

Platform+ Revenue

The Company generates Platform+ revenue through sales of advertising and related services, content distribution, subscription and transaction revenue shares, promotions, sales of branded channel buttons on remote controls and data licensing arrangements. The Company’s digital ad inventory consists of inventory on WatchFree, VIZIO Free Channels and its home screen along with ad inventory it obtains through its content provider and other third-party application agreements. The Company also re-sells video inventory that it purchases from content publishers and directly sells third-party inventory on a revenue share or cost-per-thousand (“CPM”) basis.

Revenue for advertising and related services is primarily generated by the sale of video and display advertising. Advertising is sold directly on a CPM basis and is evidenced by an Insertion Order, (“IO”). The Company recognizes revenue as the number of impressions is measured and delivered, up to the amount identified in the IO. An IO may include multiple performance obligations to the extent it contains distinct advertising products or services. Advertising inventory may also be sold programmatically by which net revenues generated by the Company’s supply-side platforms are recognized. The Company recognizes revenue for advertising and related services on either a gross or net basis based on its determination as to whether it is acting as the principal in the revenue generation process or as an agent.

Subscription and transaction revenue is generated through revenue share agreements with content providers. These revenue share agreements generally apply to new subscriptions for accounts that sign up for new services or to purchases or rentals through the Company’s SmartCast operating system. The Company recognizes revenue on a net basis as it is deemed to be the agent between content publishers and consumers.

The Company sells content publishers placements of buttons on its remote controls that provide one-touch access to a third-party applications’ content. The Company typically receives a fixed fee per button for each Device or individually packaged remote unit sold over a defined distribution period. The Company’s only performance obligations for these arrangements are placement of the app button on the remote and delivery of the TV and remote to the retailer. Revenue is recognized at the point in time which transfer of title to the retailer occurs.

For revenue from data licensing agreements with customers, each promise to transfer an individual data license in the contract also is separately identifiable; the individual data licenses do not, together, constitute a single overall promise to the customer. Each distinct license of data has substantial standalone functionality at the point in time they are transferred to the customer because the data can be utilized and processed in accordance with the rights provided in the contract without any further participation by the Company. Therefore, each distinct data license is a right to use the Company’s functional intellectual property. Control of each distinct data license transfers when it is uploaded or delivered to the customer. Data is delivered at least on a monthly basis during the data delivery phase

of the contract. The transaction price for data services revenue includes both fixed and variable consideration. The fixed consideration within the customer contract is allocated to each performance obligation as the performance obligations are satisfied. The performance obligations are satisfied over time during the data delivery period. Revenue for the fixed consideration is recognized ratably beginning upon the first delivery of data throughout the remainder of the contract. Variable consideration is recorded when it is earned in accordance with the sales or usage-based royalty exception.

(k) Shipping and Handling Costs

All shipping and handling costs related to purchases of inventory are included in the purchase price of each product negotiated with the manufacturer and recorded in inventory and classified in cost of goods sold. All shipping and handling costs charged to customers are treated as fulfillment costs and are presented within cost of goods sold.

(l) Recycling Costs

The Company incurs recycling costs in order to comply with electronic waste recycling programs within certain states. These fees are assessed by the states using current market share and actual costs incurred on administration of such programs and are expensed as incurred. Recycling costs were $13,115, $10,735, and $9,335 for the years ended December 31, 2018, 2019 and 2020, respectively, and are recorded in cost of goods sold in the accompanying consolidated statements of operations and comprehensive income.

(m) Customer Allowances

The Company periodically grants certain sales discounts and incentives to customers, such as rebates and price protection, which are treated as variable consideration for purposes of determining the transaction price. In certain instances, the Company will, in turn, negotiate with its manufacturers for reimbursement of a portion of the incentives so that the manufacturers are responsible for absorbing some of the rebates and price protection. The Company's procedures for estimating customer allowances recorded as a reduction of revenue are based upon historical experience, as adjusted for the current environment, and management judgment. Customer allowances are accrued for when the related product sale is recognized. The accrued customer allowances are presented on the consolidated balance sheets in accrued expenses and recorded in the consolidated statements of operations and comprehensive income as a reduction of net revenue.

The Company offers sales incentives through various programs, consisting primarily of discounts, cooperative advertising and market development fund programs. The Company records cooperative advertising and market development fund programs with customers as a reduction to revenue unless the Company receives a distinct benefit in exchange for credits claimed by the customer and can reasonably estimate the fair value of the benefit received. These arrangements are recorded as accrued liabilities. Cooperative advertising arrangements recorded as a reduction of net revenue totaled $10,965, $14,117 and $6,554 for the years ended December 31, 2018, 2019 and 2020, respectively.

(n) Selling, general and administrative

Selling, general and administrative expenses consist primarily of personnel related costs for employees, including salaries, bonuses, benefits, and stock-based compensation, as well as consulting expenses, fees for professional services, facilities, information technology, and research and development.

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(o) Research and Development Costs

Research and development expense consists primarily of employee-related costs, including salaries and bonuses, stock-based compensation expense, and employee benefits costs, third-party contractor costs, and related allocated overhead costs. In certain cases, costs are incurred to purchase materials and equipment for future use in research and development efforts. These costs are capitalized and expensed as consumed. Research and development costs were $3,844, $10,272 and $15,138 in 2018, 2019 and 2020, respectively, and are recorded in selling, general and administrative expense in the accompanying consolidated statements of operations and comprehensive income.

(p) Marketing Costs

Marketing expenses consist primarily of advertising and marketing promotions of the Company's brand and products, including media advertisement costs, merchandising and display costs, trade show and event costs, and sponsorship costs.

(q) Product Warranty

All products have a one or two-year limited warranty against manufacturing defects and workmanship. Although the Company is principally responsible for servicing warranty claims, substantially all product warranty expenses are reimbursed by the manufacturers under the Company's standard product supply agreements.

(r) Deferred Offering Costs

Deferred offering costs included in other assets in the consolidated balance sheet, consist of direct and incremental costs related to the proposed initial public offering of common stock. Upon completion of the initial public offering, these amounts will be offset against the proceeds of the offering. If the offering is terminated, the deferred offering costs will be expensed.

(s) Comprehensive Income

Comprehensive income consists of two components, net income (loss) and other comprehensive income. The accumulated balance of other comprehensive income contains foreign currency translation adjustments, net of income tax impact.

(t) Income Taxes

Income taxes are accounted for using the asset and liability method. Under this method, deferred income tax assets and liabilities are recognized for future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases and operating loss and tax credit carryforwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred tax assets and liabilities of a change in tax rates is recognized in income in the period that includes the enactment date. The Company recognizes the effect of income tax positions only if those positions are more likely than not of being sustained upon examination. Changes in recognition or measurement are reflected in the period in which the change in judgment occurs. Valuation allowances are recorded against tax assets when it is determined that it is more likely than not that the assets will not be realized. Interest related to income taxes is recorded in other income, net and penalties are recorded in selling, general and administrative expense.

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The Company makes estimates, assumptions and judgments to determine its provision for income taxes and also for deferred tax assets and liabilities and any valuation allowances recorded against deferred tax assets. Actual future operating results and the underlying amount and type of income could differ materially from the Company's estimates, assumptions and judgments thereby impacting its consolidated financial position and results of operations and comprehensive income.

(u) Net Income (Loss) Per Share

Basic earnings (loss) per share is calculated by dividing the net income attributable to common stockholders by the weighted-average number of shares of common stock outstanding. The Company applies the two-class method to allocate earnings between common stock and participating securities.

Diluted earnings per share attributable to common stockholders adjusts the basic earnings per share attributable to common stockholders and the weighted-average number of shares of common stock outstanding for the potential dilutive impact of stock options, using the treasury-stock method.

(v) Stock-Based Compensation

Stock-based compensation expense resulting from grants of employee stock options and nonemployee stock warrants is recognized in the consolidated financial statements based on the respective grant date fair values of the awards. Stock option and warrant grant date fair values are estimated using the Black-Scholes-Merton option pricing model. The benefits of tax deductions in excess of recognized compensation cost are reported as an operating cash flow. Forfeitures are accounted for as they occur.

The determination of the grant date fair value of stock-based awards is affected by the estimated fair value per share of our common stock as well as other subjective assumptions, including, but not limited to, the expected term of the stock-based awards, expected stock price volatility, risk-free interest rates, and expected dividend yields, which are estimated as follows:

- *Fair value per share of the Company's common stock*. The Company is privately held with no active public market for its common stock. Given the absence of an active market for the Company's common stock, the board of directors approves the fair value of the common stock at the time of grant for each stock-based award based upon several factors, including consideration of input from management and contemporaneous third-party valuations. Each fair value estimate was based on a variety of factors, including the forecasted financial performance, prices, rights, preferences and privileges of the Company's preferred stock relative to those of its common stock, pricing and timing of transactions in the Company's equity, the lack of marketability of the common stock, actual operating and financial performance, developments and milestones in the Company, the market performance of comparable publicly traded companies, the likelihood of achieving a liquidity event, and U.S. and global capital market conditions, among other factors.
- *Expected term.* The Company determines the expected term of the awards using the simplified method due to the Company's insufficient history of option exercise and forfeiture activity. The simplified method estimates the expected term based on the average of the vesting period and contractual term of the stock option.
- *Expected volatility.* The Company estimates the expected volatility based on the volatility of similar publicly held entities (referred to as "guideline companies") over a period equivalent to the expected term of the awards. In evaluating the similarity of guideline companies, the Company considered factors such as industry, stage of life cycle, size, and financial leverage.

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- *Risk-free interest rate*. The risk-free interest rate is based on the implied yield currently available on U.S. Treasury issues with terms approximately equal to the expected life of the option.
- *Estimated dividend yield.* The expected dividend based on the Company's historical dividend activity.

The assumptions used in calculating the fair value of stock-based awards represent the Company's best estimates, however, these estimates involve inherent uncertainties and the application of judgment. As a result, if factors change or the Company uses different assumptions, stock-based compensation expense could be materially different in the future.

(w) Fair Value Measurements

The Company's carrying value of cash and cash equivalents, certificates of deposit, accounts receivable, accounts payable, and accrued expenses approximate fair value due to the short maturity of these items.

The framework for measuring fair value and related disclosure requirements about fair value measurements are provided in ASC 820, *Fair Value Measurement (ASC 820)*. This pronouncement defines fair value as the price that would be received to sell an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. The fair value hierarchy prescribed by ASC 820 contains three levels as follows:

- Level 1 Inputs: Unadjusted quoted prices in active markets for identical assets or liabilities accessible to the reporting entity at the measurement date.
- Level 2 Inputs: Other than quoted prices included in Level 1 inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the asset or liability.
- Level 3 Inputs: Unobservable inputs for the asset or liability used to measure fair value to the extent that observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at measurement date.

Assets and Liabilities Recorded at Fair Value on a Non-Recurring Basis

Certain assets and liabilities, including goodwill and intangible assets are subject to measurement at fair value on a non-recurring basis if there are indicators of impairment or if they are deemed to be impaired as a result of an impairment review.

There were no assets or liabilities measured at fair value using Level 3 inputs for the periods presented.

(x) Subsequent Events

In connection with the preparation of these consolidated financial statements, the Company evaluated any subsequent events after the balance sheet date of December 31, 2020 and through March 1, 2021, the date that the financial statements were available to be issued.

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(y) Recently Issued Accounting Pronouncements

Accounting Pronouncements Recently Adopted

On January 1, 2018, VIZIO adopted (“ASU”) 2014-09, *Revenue from Contracts with Customers* (Topic 606) for open contracts not completed as of the adoption date using the modified retrospective approach. Two revenue streams were evaluated: 1) device sales, and 2) Platform+ services including advertising, subscription and transaction services with revenue share and data licensing. The impact of the new revenue standard on the Company’s business processes, systems, and controls was minimal. There was no adjustment recorded to opening retained earnings as of January 1st, 2018. However, on January 1st, the Company reclassified $115,670 refund and rebate liabilities from contra accounts receivable to accrued expenses. Going forward as of January 1, 2018, the Company will present the refund and rebate liabilities within accrued expenses section of the balance sheet.

In February 2016, the FASB issued ASU 2016-02, *Leases, (Topic 842)*, which amends the FASB ASC and creates Topic 842, Leases. The new topic supersedes Topic 840, Leases, and increases transparency and comparability among organizations by recognizing lease assets and lease liabilities on the balance sheet and requires disclosures of key information about leasing arrangements. The standard is effective for public entities for fiscal years beginning after December 15, 2018. The Company early adopted Topic 842 as of January 1, 2018, using the modified retrospective method. There was no cumulative effect to accumulated deficit upon adoption. The Company elected the transition package of three practical expedients permitted within the standard, which eliminates the requirements to reassess prior conclusions about lease identification, lease classification and initial direct costs. The Company adopted ASU 2016-02 on January 1, 2018 and recorded a right-of-use asset and lease liability of $3,273. See Note 20, “Leases”, of these notes to the consolidated financial statements for additional details.

In August 2016, the FASB issued ASU 2016-15, Statement of Cash Flows (Topic 230): Classification of Certain Cash Receipts and Cash Payments (a consensus of the Emerging Issues Task Force). This ASU clarifies whether the following items should be categorized as operating, investing or financing in the statement of cash flows: (i) debt prepayments and extinguishment costs, (ii) settlement of zero-coupon debt, (iii) settlement of contingent consideration, (iv) insurance proceeds, (v) settlement of corporate-owned life insurance (COLI) and bank-owned life insurance (BOLI) policies, (vi) distributions from equity method investees, (vii) beneficial interests in securitization transactions, and (viii) receipts and payments with aspects of more than one class of cash flows. The guidance is effective for public companies for fiscal years beginning after December 15, 2017 and should be applied retrospectively to each period presented. VIZIO adopted the ASU on January 1, 2018 and determined that the impact is not material.

In January 2017, the FASB issued ASU 2017-04, Intangibles – Goodwill and Other (Topic 350), which eliminates the requirement to calculate the implied fair value of goodwill to measure a goodwill impairment charge. Instead, entities will record an impairment charge based on the excess of a reporting unit’s carrying amount over its fair value. The Company early adopted ASU 2017-04 on January 1, 2018. The Company did not incur a material impact to the consolidated financial statements due to the adoption of this guidance.

In June 2018, the FASB issued ASU 2018-07, Compensation – Stock Compensation (Topic 718), Improvements to Nonemployee Share based Payments. This ASU expands the scope of Topic 718 to include share-based payment transactions for acquiring goods and services from nonemployees. The standard is effective for public entities for fiscal years beginning after December 15, 2018, with early adoption permitted, but no earlier than the Company’s adoption date of Topic 606. The new guidance

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is required to be applied on a modified retrospective basis with the cumulative effect recognized at the date of initial application. The Company adopted ASU 2018-07 on January 1, 2019 and determined that the impact is not material.

In June 2016, the FASB issued ASU No. 2016-13, Financial Instruments—Credit Losses (Topic 326). ASU 2016-13 revises the impairment model to utilize an expected loss methodology in place of the currently used incurred loss methodology, which results in more timely recognition of losses on financial instruments, including, but not limited to, available for sale debt securities and accounts receivable. The guidance is effective for the Company's annual reporting period beginning after December 15, 2019. In 2020, the Company adopted Topic 326 and concluded that the adoption did not have a material impact on the consolidated financial statements.

(z) Reclassifications

The Company has reclassified certain amounts relating to its prior period results. In 2020, the Company reviewed the classification of engineering costs within selling, general, and administrative and concluded that certain amounts qualified as research and development based on the related activities performed and as a result reclassified certain prior year amounts to conform to the current year presentation. These reclassifications have not changed the results of operations of prior periods. See ***(o)*** above for further information.

(3) Significant Manufacturers

VIZIO purchases a significant amount of its product inventory from certain manufacturers. The inventory is purchased under standard product supply agreements that outline the terms of the product delivery. Once all aspects of the product are agreed upon, the manufacturers are then responsible for transporting the product to their warehouses located in the United States. The manufacturers are considered the importers of record and are required to insure the product as it is shipped to the warehouses. The title and risk of loss of the product passes to VIZIO upon shipment from the manufacturer's warehouse in the United States to the customer. The product supply agreement stipulates that the manufacturer will (i) generally reimburse VIZIO for at least a portion of the price protection or sales concessions negotiated between the Company and customers on product purchased, and (ii) indemnify VIZIO against all liability resulting from valid and enforceable patent infringement with regard to product purchased under the agreement except if such infringement arises out of the Company's modification or misuse of the product.

The Company has the following significant concentrations related to suppliers:

	December 31, 2019	December 31, 2020
Inventory purchases:		
Supplier A	26%	29%
Supplier B – related party	11	8
Supplier C – related party	8	1
Supplier D – related party	39	44

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	Year Ended	
	December 31, 2019	December 31, 2020
Accounts payable:		
Supplier A	30%	16%
Supplier B – related party	7	6
Supplier C – related party	5	—
Supplier D – related party	45	21

The Company is currently reliant upon these manufacturers for products. Although VIZIO can obtain products from other sources, the loss of a significant manufacturer could have a material impact on the Company's financial condition and results of operations as the products that are being purchased may not be available on the same terms from another manufacturer.

The Company has also recorded other receivables of $16,056 and $3,033 due from the manufacturers as of December 31, 2019 and 2020, respectively. The other receivable balances are attributable to price protection and customer allowances as well as accrued royalties due in connection with the settlement of certain patent infringement cases for units shipped, which are indemnified by the Company's manufacturers and are recognized at the time the aforementioned liabilities are incurred. The net effect is recorded in the consolidated statements of operations as a reduction to cost of goods sold.

Additionally, the Company has a security agreement executed under the provisions of the Uniform Commercial Code by one of the related party manufacturers such that the manufacturer has a lien on a portion of the Company's accounts receivable limited solely to the sale of that particular manufacturer's manufactured product sold by VIZIO. The portion of accounts receivable subject to this lien approximates 3% and 0% as of December 31, 2019 and 2020, respectively. As of December 31, 2020, the accounts receivable balance is $0.

(4) Significant Customers

VIZIO is a wholesale distributor of televisions and other home entertainment products, which are sold to the largest retailers and wholesale clubs in North America, primarily in the United States. The Company's sales can be impacted by consumer spending and the cyclical nature of the retail industry. The following customers account for more than 10% of revenue or 10% of accounts receivable:

	Year Ended	
	December 31, 2019	December 31, 2020
Net Revenue:		
Customer A	43%	49%
Customer B	14	11
Customer C	14	12
Customer D	15	10
Customer E	6	10

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	Year Ended	
	December 31, 2019	December 31, 2020
Net Receivables		
Customer A	45%	41%
Customer B	17	18
Customer C	16	16
Customer D	11	8

Customer A and Customer C, and certain other customers not separately identified in the table above, are affiliates under common control. Collectively, they comprised 57% and 58% of VIZIO's net revenue for the years ended December 31, 2019 and 2020, respectively. Their collective accounts receivable balance as of December 31, 2019 and 2020 was 61% and 57%, respectively. However, throughout VIZIO's history and presently, the Company has dealt with separate purchasing departments at Customer A and Customer C, and have at times sold products to Customer C without selling products to Customer A.

(5) Fair Value Measurements

The following tables present the Company's cash and cash equivalents, net unrealized gains/losses and fair value by significant investment category:

	December 31, 2019			
	Adjusted cost	Net unrealized gains (losses)	Fair value	Cash and cash equivalents
Cash and cash equivalents	$176,579	$ —	$176,579	$ 176,579
Total	$176,579	$ —	$176,579	$ 176,579

	December 31, 2020			
	Adjusted cost	Net unrealized gains (losses)	Fair value	Cash and cash equivalents
Cash and cash equivalents	$207,728	$ —	$ —	$ 207,728
Total	$207,728	$ —	$ —	$ 207,728

Gross unrealized gains and losses were not significant in 2019 and 2020 and, therefore, are not presented separately.

(6) Accounts Receivable

Accounts receivable consists of the following:

	As of	
	December 31, 2019	December 31, 2020
Accounts receivable	$ 362,321	$ 406,608
Allowance for sales returns	(1,585)	(981)
Allowance for doubtful accounts	(22)	(18)
Total accounts receivable, net of allowances	$ 360,714	$ 405,609

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VIZIO maintains credit insurance on certain accounts receivable balances to mitigate collection risk for these customers. The Company evaluates all accounts receivable for the allowance for doubtful accounts.

(7) Inventories

Inventories consist of the following:

	As of	
	December 31, 2019	December 31, 2020
Inventory on hand	$ 2,754	$ 3,237
Inventory in transit	10,498	7,308
Total inventory	$ 13,252	$ 10,545

(8) Property and Equipment

Property and equipment consist of the following:

	As of	
	December 31, 2019	December 31, 2020
Building	$ 9,998	$ 9,998
Machinery and equipment	1,242	1,284
Leasehold improvements	3,438	3,438
Furniture and fixtures	2,251	2,840
Computer and software	18,064	19,184
Automobile & truck	22	22
Total property and equipment	35,015	36,766
Less accumulated depreciation and amortization	(27,281)	(28,837)
Total property and equipment, net	$ 7,734	$ 7,929

Depreciation expense was $4,973, $3,646, and $1,556 for the years ended December 31, 2018, 2019 and 2020, respectively.

The Company's long-lived assets, which include property, plant and equipment and other intangible assets of $8,503 and $8,060 as of December 31, 2019 and 2020, respectively, are located entirely within the United States.

(9) Revenue

The Company adopted the new revenue recognition accounting standard, ASC 606, effective January 1, 2018 on a modified retrospective basis and applied the new standard only to contracts that were not completed contracts prior to January 1, 2018. See Note 2, *Significant Accounting Policies*, of these notes to the Company's consolidated financial statements for a description of the Company's ASC 606 revenue recognition accounting policy. The Company disaggregates revenue by (i) Device Revenue, and (ii) Platform+ Revenue, as it believes it best depicts how the nature, timing and uncertainty of revenue and cash flows are affected by economic factors. See consolidated statements of operations and comprehensive income for disaggregation of revenue.

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The revenue recognized from the contract liabilities consisted of the Company satisfying performance obligations during the normal course of business. The Company did not identify nor record any contract assets as of December 31, 2019 and 2020. Additionally, no costs associated with obtaining contracts with customers were capitalized, nor any costs associated with fulfilling its contracts. All costs to obtain contracts were expensed as incurred as a practical expedient.

(10) Segment Information

Operating segments are components of an enterprise for which discrete financial reporting information is available and evaluated regularly by the chief operating decision maker ("CODM") in deciding how to allocate resources and in assessing performance. The Company has identified its Chief Executive Officer as the CODM. The CODM views the Company's operations and manages the businesses as two operating segments, which are also the Company's reportable segments: (i) Device Revenue, and (ii) Platform+ Revenue. The CODM reviews the operating results of these segments on a regular basis and allocates company resources to these two segments based on the needs of each segment and the availability of resources. The Company assesses its determination of operating segments at least annually.

Segment revenue and gross profit are disclosed on the face of the statement of operations.

(11) Goodwill and Other Intangible Assets

(a) Goodwill

The Company's goodwill balance was $44,788 as of December 31, 2019 and 2020. The goodwill balance was determined based on the excess of the purchase price paid over the fair value of the identifiable net assets acquired and represents its future revenue and earnings potential and certain other assets acquired that do not meet the recognition criteria, such as assembled workforce.

The Company performed an impairment test of its goodwill as of the first day of the fourth fiscal quarter in accordance with its accounting policy. The results of this test indicated that the Company's goodwill was not impaired. No goodwill impairment was recorded for the years ended December 31, 2018, 2019 and 2020.

(b) Other Intangible Assets

Intangible assets primarily consist of acquired developed technology, customer relationships, trademarks resulting from business combinations and acquired patent intangible assets, which are recorded at acquisition-date fair value, less accumulated amortization. The Company determines the appropriate useful life of its intangible assets by performing an analysis of expected cash flows of the acquired assets. Intangible assets are amortized over their estimated useful lives using a straight-line method, which approximates the pattern in which the economic benefits are consumed.

Acquired intangible assets from business combinations and accumulated amortization consist of the following:

	December 31, 2019		
	Gross carrying amount	Accumulated amortization	Net carrying amount
Developed technology	$ 5,500	$ (4,977)	$ 523
Customer relationships	1,870	(1,870)	—
Trademarks	30	(30)	—
Total	$ 7,400	$ (6,877)	$ 523

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	December 31, 2020		
	Gross carrying amount	Accumulated amortization	Net carrying amount
Developed technology	$ 5,500	$ (5,500)	$ —
Customer relationships	1,870	(1,870)	—
Trademarks	30	(30)	—
Total	$ 7,400	$ (7,400)	$ —

Amortization expense recorded for intangible assets for the years ended December 31, 2018, 2019 and 2020 was $1,225, $860 and $523, respectively, and is included in cost of goods sold. The weighted-average remaining useful life for developed technology as of December 31, 2020 was 0.0 years.

VIZIO has a portfolio of patents that provide a variety of benefits including defense against in progress and potential future lawsuits. The acquired patents and related fees are recorded at cost (which approximates fair value) and are being amortized using the straight-line method over the average life of the underlying patents. There were no patents purchased in 2019 and 2020.

The acquired patent intangible assets are as follows:

	As of	
	December 31, 2019	December 31, 2020
Acquired patents	$ 7,663	$ 7,663
Less accumulated amortization	(7,417)	(7,532)
Total patents	$ 246	$ 131

Amortization expense on acquired patent intangibles for the years ended December 31, 2018, 2019, and was $115, $115 and $115, respectively, and is included in cost of goods sold. The weighted-average remaining useful life for acquired patents as of December 31, 2020 was 1.0 years.

Estimated future amortization of acquired intangible assets from business combinations and acquired patent intangible assets is as follows for the years ending December 31:

2021	$ 115
2022	7
2023	7
2024 and thereafter	2
Total amortization expense	$ 131

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(12) Accrued Expenses

The Company's accrued expenses consisted of the following (in thousands):

	As of	
	December 31, 2019	December 31, 2020
Accrued price protection	$ 91,058	$ 61,331
Accrued other customer related expenses	39,381	54,404
Accrued supplier related expenses	5,975	12,434
Accrued payroll expenses	13,604	10,874
Accrued tax expenses	2,856	2,741
Accrued other expenses	7,666	13,175
Total accrued expenses	$ 160,540	$ 154,959

(13) Stockholders' Equity

(a) Convertible Preferred Stock

The Company is authorized to issue 25,000 shares of convertible preferred stock with $0.0001 par value, of which 250 shares are designated as Series A convertible preferred stock. The Series A convertible preferred stock was issued with the following terms:

Voting Rights: The holders of convertible preferred stock have no voting rights but are entitled to participate as one class of stock in the election of one member of the Company's Board of Directors.

Dividend Rate: The holders of Series A convertible preferred stock are entitled to receive cumulative dividends in preference to any dividends on the Company's outstanding common stock at the per annum rate of 6% of the stated value when and as declared by the Board of Directors. In 2018 and 2019, the Board of Directors did not declare a dividend payment for preferred or common stockholders. Accumulated preferred dividends not yet paid were $445 and $565 at December 31, 2019 and 2020, respectively.

Conversion Feature: Each share of Series A convertible preferred stock is automatically convertible into shares of common stock upon the occurrence of an underwritten public offering resulting in aggregate net proceeds of at least $15,000 and pursuant to a registration statement under the Securities Act of 1933 or on any recognized foreign exchange. Each share of Series A convertible preferred stock shall be converted by dividing the initial issuance price by the conversion price upon the commencement of a transaction as defined above. The conversion price shall be the initial issuance price as adjusted for any anti-dilution provisions as defined in the articles of incorporation.

Liquidation Preference: The holders of the preferred stock are entitled to receive, in preference to the holders of the common stock, a per share amount equal of $14.84 plus all declared but unpaid dividends on such shares. After the holders of the Series A convertible preferred stock receive their full liquidation preference, only then shall all other stockholders be entitled to share in the remaining proceeds based on the number of shares held. Additionally, after the payment of the liquidation preference, any of the Company's remaining assets shall be distributed ratably to the holders of the common stock and preferred stock.

(b) Common Stock

At December 31, 2020, the Company is authorized to issue 75,000 shares of common stock with $0.0001 par value, of which 16,759 shares are issued and outstanding. The Class A common stock was issued with the following terms:

Voting Rights: Each holder of shares of the Company’s Class A common stock is entitled to cast one vote for each such share of Class A common stock outstanding in the holder’s name.

Dividends: The holders of the Company’s Class A common stock are entitled to dividends in the event declared by the Company’s Board of Directors out of funds legally available for such purpose. Dividends may not be paid on common stock unless all accrued dividends on preferred stock, if any, have been paid or declared and set aside.

Liquidation: In the event of the Company’s liquidation, dissolution or winding up, the holders of the Series A convertible preferred stock and holders of Class A common stock will be entitled to share pro rata in the assets remaining after payment of the liquidation preference plus any unpaid dividends to holders of any outstanding preferred stock.

Common Stock Issuance: On June 20, 2018, VIZIO issued 1,442 shares of its Class A common stock for $70,000, or $48.52 per share, to two related party manufacturers, Supplier B and Supplier D. In conjunction with this common stock issuance, VIZIO entered into strategic cooperation agreements with these suppliers. If certain conditions set out in the agreements are achieved, the agreements provide opportunities for potential further equity investment in VIZIO, preference in future board member assignment, and future strategic financial incentives. The value of these were determined to be immaterial within the arrangement and to the consolidated financial statements.

Warrant Issuance: On December 31, 2019, VIZIO issued warrants to the same two suppliers in accordance with the strategic cooperation agreements entered into on June 20, 2018, upon the achievement of certain purchase volume milestones as set out in the strategic cooperation agreements. The warrants provide the suppliers the right to purchase a total of $15,000 of Class A common stock at an exercise price of $48.52 per share. The awards are exercisable in cash for a period of six months from the grant date and have a fair value of $1,927 at the grant date. The warrants were valued using the Black-Scholes option pricing model as of the issuance date and have been expensed in full within cost of goods sold within the consolidated statement of operations. Assumptions used include the annualized volatility of 47.55%, fair value of common stock of $48.52 and the dividend rate of 3.08%. In July 2020, the warrants expired unexercised.

(14) Stock-Based Compensation

The Company’s Board of Directors adopted the 2007 Incentive Award Plan (2007 Plan), which provides for the granting of qualified and nonqualified stock options, restricted stock awards, restricted stock units and stock appreciation rights of up to 3,521 shares of common stock to eligible employees and directors. The primary purpose of the Plan is to enhance the Company’s ability to attract, motivate, and retain the services of qualified employees, officers, and directors. Any stock options or stock appreciation rights granted under the Plan will have a term of not more than 10 years and the vesting of the awards are set at the discretion of the Board of Directors but is not expected to exceed four years. All awards are subject to forfeiture within 90 days if employment or other services terminate prior to the vesting of the awards.

In August 2017, the Company’s Board of Directors adopted the 2017 Incentive Award Plan (2017 Plan), which provides for the granting of qualified and nonqualified stock options, restricted stock awards, restricted stock units, dividend equivalents, stock appreciation rights and other stock-based awards. The

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2017 Plan provides for up to 2,716 shares of common stock to eligible employees and directors plus any shares available for issuance under the 2007 Plan, or shares that become available for issuance due to the forfeiture of previously granted stock options under the 2007 Plan. The primary purpose of the Plan is to enhance the Company's ability to attract, motivate, and retain the services of qualified employees, officers, and directors. Any stock options or stock appreciation rights granted under the Plan will have a term of not more than 10 years and the vesting of the awards are set at the discretion of the Board of Directors but is not expected to exceed four years.

Stock Option Awards

A summary of the status of the Company's stock option plans as of December 31, 2018, 2019 and 2020 is presented below:

	Number of options	Weighted average exercise price	Weighted Average remaining contractual life (years)	Aggregate intrinsic value
Outstanding at December 31, 2018	1,756	$ 23.98	7.3	
Granted	216	48.52		
Exercised	(7)	26.00		$ 162
Forfeited	(115)	26.68		
Outstanding at December 31, 2019	1,850	26.66	6.1	
Granted	452	65.98		
Exercised	(26)	27.96		$ 1,805
Forfeited	(452)	23.28		
Outstanding at December 31, 2020	1,824	$ 37.46	7.1	$ 71,934
Stock options vested December 31, 2020	1,030	$ 36.05	6.2	$ 66,279

	Year Ended	
	December 31, 2019	December 31, 2020
Weighted average grant date fair value of stock options granted during the year	$ 13.77	$ 20.02

A summary of the nonvested stock options as of December 31, 2019, and 2020 is as follows:

	Shares	Weighted average grant date fair value
Nonvested at December 31, 2018	977	$ 6.04
Granted	216	13.77
Forfeited	(83)	7.05
Vested	(340)	7.55
Nonvested at December 31, 2019	770	8.06
Granted	452	20.02
Forfeited	(100)	15.51
Vested	(327)	7.88
Nonvested at December 31, 2020	795	$ 14.77

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The following provides information on the weighted-average assumptions used for stock options granted during the years ended as follows:

	Year Ended		
	December 31, 2018	December 31, 2019	December 31, 2020
Number of options granted	80	216	452
Volatility factor	40.75%-40.98%	39.00%	40.46%
Expected term	6.25 Years	6.25 Years	6.25 Years
Dividend yield	5.56%	3.08%	2.37%
Risk-free interest rate	2.77%-2.83%	1.45%	0.35%
Fair market value per share of common stock approved by the Company’s Board of Directors at the time of grant	$26.00	$48.52	$65.98
Fair market value per option determined using a Black-Scholes-Merton Option pricing model for purposes of determining compensation expense	$6.21-6.23	$13.77	$20.02

Stock compensation expense of $5,236, $4,079, and $4,776 was recognized in the consolidated statements of operations as selling, general and administrative expense in 2018, 2019 and 2020, respectively.

As of December 31, 2019 and 2020, the Company had $8,292 and $12,037, respectively, of unrecognized compensation costs related to stock-based payments, which is expected to be recognized over a weighted average vesting period of approximately 2.9 years and 1.97 years, respectively.

Restricted Stock Awards

Effective October 29, 2010, the Board of Directors granted a total of 555 restricted stock awards to the Company’s Chief Executive Officer and Chief Operating Officer with a stock price of $17.40 per share. The restricted stock awards vest and become nonforfeitable ratably over a four-year period assuming VIZIO made its first public offering of common stock pursuant to a registration statement filed with the Securities and Exchange Commission during this period. Under the terms of the grant, if a public offering did not occur within the four-year vesting period, the restricted stock awards would remain outstanding and unvested for an additional three-year period and all shares would vest contingent upon an initial public offering. If after seven years, VIZIO was not successful at completing an initial public offering, all of the restricted stock awards would forfeit. Effective April 25, 2017, the forfeiture date on these awards was extended to December 31, 2020. In estimating the fair value of the common stock at the grant date, the Company engaged an independent valuation specialist to assist in determining the stock price.

Effective December 29, 2017, the Board of Directors granted a total of 131 restricted stock awards to members of senior management with a stock price of $26.00 per share. On October 8, 2019, the Board of Directors granted a total of 26 restricted stock awards to members of senior management with a stock price of $48.52 per share. On December 31, 2020, the Board of Directors granted a total of 226 restricted stock units to members of senior management with a stock price of $76.90 per share. The restricted stock units vest and become nonforfeitable ratably over a one to four-year period assuming VIZIO made its first public offering of common stock pursuant to a registration statement filed with the Securities and Exchange Commission during this period. Under the terms of the grant, if a public offering does not occur within the vesting period, the restricted stock awards remain outstanding and unvested for an additional period and all shares shall vest contingent upon an initial public offering. Since the vesting of the restricted stock awards is contingent upon an initial public offering, VIZIO has deferred the recognition of compensation expense for

these shares until such time that the contingencies are resolved. In estimating the fair value of the common stock at the grant date, the Company engaged an independent valuation specialist to assist in determining the stock price.

Given the absence of a public trading market, the Company's board of directors consider numerous objective and subjective factors to determine the fair value of the common stock at each grant date. These factors include, but are not limited to (a) the prices at which the Company sold its Class A common stock to outside investors in arms-length transactions, (b) an independent third-party valuation of the Company's Class A common stock, (c) the Company's results of operations, financial position, and capital resources, (d) industry outlook, (d) the likelihood of achieving a liquidity event, such as an initial public offering or a sale of the Company, given prevailing market conditions, (e) the history and nature of the Company's business, industry trends and competitive environment; and (f) general economic outlook including economic growth, inflation and unemployment, interest rate environment, and global economic trends, including the impact of COVID-19.

(15) Net Income (Loss) Per Share

The Basic and diluted earnings (loss) per common share is presented in conformity with the two-class method required for participating securities and multiple classes of shares. The Company considers the preferred shares and unvested options granted under the 2017 Incentive Plan to be participating securities.

For each period presented, cumulative preferred dividends earned on preferred stock are subtracted from net income (loss) in calculating the net income (loss) attributable to common stockholders. For any period in which the Company records net income, undistributed earnings allocated to the participating securities are subtracted from net income in determining net income attributable to common stockholders. The undistributed earnings have been allocated based on the participation rights of preferred shares, common shares, and unvested stock options under the 2017 Incentive Plan as if the earnings for the year have been distributed. For periods in which the Company recognizes a net loss, undistributed losses are allocated only to common shares as the participating securities do not contractually participate in the Company's losses. Basic earnings (loss) per share is computed by dividing the net income (loss) attributable to common stockholders by the weighted-average number of common shares outstanding during the period. Participating securities are excluded from basic weighted-average common shares outstanding.

Diluted earnings (loss) per share represents net income (loss) divided by the weighted-average number of common shares outstanding, inclusive of the effect of potential common shares, if dilutive. For the year ended December 31, 2018, the potential dilutive shares were not included in the computation of diluted earnings (loss) per common share as the effect of including these units in the calculation would have been anti-dilutive. For the years ended December 31, 2018, 2019 and 2020, the potential dilutive shares relating to outstanding stock options were included in the computation of diluted earnings.

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Basic and diluted earnings (loss) per share and the weighted-average shares outstanding have been computed for all periods as shown below:

	Year Ended December 31,		
	2018	2019	2020
Numerator			
Net income (loss)	$ (156)	$23,086	$102,475
Less: Undistributed accumulated dividends on preferred shares	(120)	(120)	(120)
Undistributed earnings	(276)	22,966	102,355
Less: Undistributed earnings attributable to participating securities	—	(4,960)	(22,115)
Net income (loss) attributable to common shareholders	$ (276)	$18,006	$ 80,240
Denominator			
Weighted-average common shares	15,329	16,014	16,042
Weighted-average effect of dilutive securities	—		
Employee stock options	—	326	292
Weighted average common shares outstanding-diluted	15,329	16,340	16,334
Basic net income (loss) per share attributable to common stockholders	$ (0.02)	$ 1.12	$ 5.00
Diluted net income (loss) per share attributable to common stockholders	$ (0.02)	$ 1.10	$ 4.91
Anti-dilutive equity awards under stock-based award plans excluded from the determination of diluted EPS	736	406	509

(16) Income Taxes

The components of Provision for (benefit from) income taxes consist of the following:

	As of		
	December 31, 2018	December 31, 2019	December 31, 2020
Current:			
Federal	$ (1,402)	$ 8,288	$ 23,745
State	269	617	4,287
Foreign	(579)	(570)	12
Total current income tax expense (benefit)	(1,712)	8,335	28,044
Deferred:			
Federal	1,221	(582)	1,884
State	(137)	(34)	40
Foreign	—	—	—
Total deferred income tax expense (benefit)	1,084	(616)	1,924
Total	$ (628)	$ 7,719	$ 29,968

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The tax effects of temporary differences that give rise to significant portions of deferred tax assets (liabilities) are as follows:

	As of	
	December 31, 2019	December 31, 2020
Deferred tax assets:		
Accrued license payments	$ 9,078	$ 7,687
Stock compensation	1,854	2,199
Accrued rebates	12,177	6,574
Accrued Legal Fees	1,440	3,080
Accrued Recycling Fees	—	2,335
Accrued Other	1,295	1,816
Leases	—	1,951
NOL carryforwards	2,614	2,447
Depreciation and amortization	913	—
Other	2,194	2,371
	31,565	30,460
Less valuation allowance	(2,212)	(2,218)
Deferred tax assets	$ 29,353	$ 28,242
Deferred tax liabilities:		
Federal impact of state taxes	$ (777)	$ (512)
Depreciation and amortization	—	(1,078)
Deferred tax liabilities	(777)	(1,590)
Net deferred tax assets	$ 28,576	$ 26,652

As of December 31, 2020, the Company has gross federal and state net operating loss carryforwards of $4,161 and $10,446, respectively, which, if unused, will expire in years 2027 through 2037. A portion of the net operating losses are subject to annual limitations as a result of past acquisitions, which constitutes a change of ownership as defined under Internal Revenue Code Section 382. The Company believes that it is more likely than not that VIZIO will generate earnings in the future and will be able to realize the benefit of the net operating losses.

As of December 31, 2020, the Company has California net operating loss of $923 and Federal and California tax credit carryforwards of $86 generated from the pre-acquisition years and has provided a valuation allowance of $1,009 of those California carryforwards since its entity's relative apportionment percentage is effectively zero due to intercompany sales elimination for the combined group filing. The state tax credit has no expiration date.

The change to the valuation allowance was primarily due to the change in the state effective tax rates. VIZIO has maintained a valuation allowance of $1,469 on the deferred tax assets related to state and foreign net operating losses and research and development credit carryforwards.

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The income tax provision differs from the amount obtained by applying the statutory tax rate as follows:

	As of		
	December 31, 2018	December 31, 2019	December 31, 2020
Income tax provision at statutory rate	$ (165)	$ 6,469	$ 27,813
State income taxes (net of federal benefit)	19	1,003	4,801
Permanent tax differences	746	637	(145)
Tax differential on foreign earnings	(963)	82	(370)
Effect of U.S. tax law change	968	(57)	(11)
Tax credits	(475)	(466)	(2,742)
Tax contingencies	540	516	985
Prior year adjustments	(938)	(338)	(199)
Other	(360)	(127)	(164)
Total (benefit from) provision for income taxes	$ (628)	$ 7,719	$ 29,968

As of December 31, 2020, VIZIO has $3,073 in liabilities for unrecognized tax benefits inclusive of penalties. A reconciliation of the beginning and ending amount of unrecognized tax benefits, exclusive of penalties, is as follows:

	As of	
	December 31, 2019	December 31, 2020
Unrecognized tax benefit at January 1	$ 2,065	$ 1,910
Gross increases – tax position in prior period	1,048	956
Settlement	(1,203)	—
Unrecognized tax benefit at December 31	$ 1,910	$ 2,866

As of December 31, 2019 and 2020, unrecognized tax benefits of $1,569 and $2,608, respectively, would affect the effective tax rate if recognized.

The total amount of interest and penalties related to unrecognized tax benefits in the consolidated statements of operations is $93, $222 and $588 for the years ended December 31, 2018, 2019 and 2020, respectively. The total amount of interest and penalties related to unrecognized tax benefits in the consolidated balance sheets is $564 and $1,161 as of December 31, 2019 and 2020, respectively.

The Company files income tax returns in the U.S. federal, state and foreign jurisdictions. For federal tax purposes, there is a 3-year statute of limitations and the Company is no longer subject to U.S. federal tax examinations for years prior to 2015. During 2019, the Internal Revenue Service commenced an income tax audit for 2015, 2016, and 2017 which is on-going. Management believes that an adequate provision has been made for any adjustments that may result from tax examinations. If any issues addressed in the Company's tax audits are resolved in a manner not consistent with management's expectations, the Company could be required to adjust its provision for income taxes in the period such resolution occurs. Although timing of the resolution and/or closure of the audit is not certain, the Company does not believe it is reasonably possible that its unrecognized tax benefits would materially change in the next 12 months. In general, the Company is no longer subject to state tax examinations for years prior to 2015. The Company also files income tax returns in various foreign jurisdictions. The following tax years remain subject to examinations:

Major jurisdiction	Open years
China	2017–2019
Mexico	2015–2019

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(17) Defined Contribution Retirement Plan

VIZIO maintains a 401(k) defined contribution plan allowing eligible U.S.-based employees to contribute up to an annual maximum amount as set periodically by the Internal Revenue Service. The Company provides for solely discretionary matching contributions on the employee deferred amounts. In December 2018, 2019 and 2020, the Company approved discretionary matching contributions of $223, $547 and $946 respectively, which were funded in February 2019, 2020 and 2021, respectively.

(18) Accrued Royalties

VIZIO is engaged in, and in certain cases has settled, various claims and suits alleging the infringement of patents related to certain television technology that were initiated by television manufacturers and other nonmanufacturers. In connection with the disposition of some of these claims and suits, the Company has entered into, or may enter into, license arrangements, which may include royalty payments to be made for historical and/or prospective sales of the Company's products. Certain of these settlements have included cross-licenses, covenants not to sue, and litigation holds.

In connection with these existing license agreements as well as existing or potential settlement arrangements, the Company recorded an aggregate accrual of $84,751 and $81,143 for all historical product sales as of December 31, 2019 and 2020, respectively. To the extent that VIZIO is indemnified under its product supply agreements with its manufacturers, the Company has offset intellectual property expenses and recorded amounts as other receivable balances included in other current assets. Historically, VIZIO has been contractually indemnified and reimbursed by its manufacturers for most intellectual property royalty obligations and commitments. The Company will make future payments for the licensed technologies with funding received from the manufacturers, either through direct reimbursement from the manufacturers or payment of the net purchase price, as these royalty payments become due. In certain circumstances, VIZIO has the contractual ability to renegotiate the annual license fee in future years if certain unit sales volumes are not met in a given year.

A summary of future commitments on royalty obligations as of December 31, 2020 is as follows:

2021	$ 16,960
2022	13,015
2023	8,302
2024	2,750
2025 and thereafter	500
Total	$ 41,527

For potential future settlements related to historical sales for which the Company does not expect to be reimbursed, a reserve of $47,427 and $49,643 has been recorded as of December 31, 2019 and 2020, respectively, as part of accrued royalties. At December 31, 2019 and 2020, an additional $50 and $0, respectively, of the total reserve is specific to manufacturers, which management believes may not exhibit the financial ability or intent to comply with the contractual indemnification provisions of the product supply agreements. Any patent infringement lawsuit in which VIZIO is not indemnified is expensed when management determines that it is probable that a liability has been incurred and the amount is estimable.

In certain instances, the Company administers refundable deposits on behalf of its manufacturers for asserted intellectual property infringement claims and related active litigation in accordance with the terms of the supply agreements. The use of the refundable deposits is limited to the resolution or settlement of these claims and active cases. Management reviews the nature of these claims and active cases with the

manufacturers on a periodic basis. The deposit amounts received and recorded are determined and adjusted quarterly based on mutual consent of both parties and using all available information at that time. In the event of an unfavorable resolution or settlement that exceeds the amount recorded as a refundable deposit, the excess shall be paid by VIZIO and then reimbursed by the manufacturer in accordance with the contractual indemnification provisions in the product supply agreement. Refundable deposits of $37,274 and $31,500 have been recorded as of December 31, 2019 and 2020, respectively, which are presented within accrued royalties in the consolidated balance sheets.

In the ordinary course of business, management anticipates that VIZIO will be party to various claims and suits including disputes arising over intellectual property rights and other matters. The Company intends to vigorously defend against such claims and suits; however, the ultimate outcome of such claims may remain unknown for some time. Based on all of the information available to date, management does not believe that there are any claims or suits that would have a material adverse effect on the Company's financial condition, results of operations, or liquidity.

(19)Other Income

On July 26, 2016, VIZIO entered into a definitive agreement with LeEco V Ltd. (LeEco), a China based electronics company, to acquire all of VIZIO's outstanding shares for $2,000,000. On April 5, 2017, VIZIO executed a termination and mutual release agreement to terminate the definitive agreement, and received a fee of $40,000 on April 10, 2017, and $10,000 on December 7, 2018.

(20)Leases

The Company has various non-cancelable operating leases for its corporate and satellite offices primarily in the United States. These leases expire at various times through 2026.

The table below presents supplemental balance sheet information related to the Company's operating leases as follows (in thousands, except lease term and discount rate):

	Classification	As of December 31, 2019	As of December 31, 2020
Assets:			
Right of use assets	Other assets	$ 5,044	$ 7,993
Liabilities:			
Lease liabilities—current	Other current liabilities	$ 1,775	$ 2,856
Lease liabilities—noncurrent	Other long-term liabilities	$ 3,269	$ 5,137
Weighted Average Remaining Lease term		2.7 years	3.7 Years
Weighted Average Discount Rate		4.30%	3.40%

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The following lease costs were included in the Company's consolidated statements of operations and comprehensive income (in thousands):

	Year Ended		
	December 31, 2018	December 31, 2019	December 31, 2020
Operating lease costs	$ 2,754	$ 2,971	$ 2,780
Total lease costs	$ 2,754	$ 2,971	$ 2,780

The table below reconciles the undiscounted cash flows of the operating leases for each of the first five years, and total of the remaining years, to the operating lease liabilities recorded on the consolidated balance sheet as of December 31, 2020.

2021	$ 2,913
2022	2,021
2023	1,333
2024	943
2025 and thereafter	1,335
Total minimum lease payments	8,545
Less imputed interest	(552)
Total lease liabilities	$ 7,993

The future lease payments have not been reduced by minimum sublease rentals of $378 due in the future under noncancelable subleases.

VIZIO has a 13% ownership interest in Spyglass Tesla LLC (Spyglass), a corporation that owns and manages the building in which VIZIO maintains its corporate headquarters in Irvine, California. Spyglass is principally owned by two related parties, and VIZIO does not have significant influence over the operations and governance of Spyglass. As such, the Company accounts for the $500 investment in the members' equity of Spyglass as an investment in equity securities without a readily determinable fair value, which is included in other assets in the consolidated balance sheets as of December 31, 2019 and 2020. Additionally, VIZIO executed a noncancelable operating lease with Spyglass, which will expire in January 2022. Net rent expense under this operating lease was approximately $909, $873 and $1,004 for the years ended December 31, 2018, 2019 and 2020, respectively.

In 2011, the Company purchased a building adjacent to the corporate headquarters and in 2015, the Company leased a building near the corporate headquarters. The Company leases and subleases available office space in those buildings to manufacturers and other third parties and recognizes rental income. For the years ended December 31, 2018, 2019 and 2020 rental income from tenants was approximately $597, $465 and $403, respectively.

(21) Commitments and Contingencies

(a) Volume Commitments

Certain product supply agreements include a volume supply commitment on up to 13 weeks of inventory forecasted by the Company. Management provides periodic forecasts to manufacturers at which time they consider the first 13 weeks of supply to be committed. As of December 31, 2020, no liabilities were recorded related to this supply commitment.

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(b) Revolving Credit Facility

(i) Bank of America Facility

On April 13, 2016, VIZIO entered into a credit agreement with Bank of America, N.A. Under the credit agreement, Bank of America, N.A. agreed to provide VIZIO with a revolving credit line of up to $50,000 with a maturity date of April 13, 2021, for the purposes of repurchasing certain outstanding shares of common stock held by a related party supplier and other general business requirements, including working capital. The Company's indebtedness to Bank of America, N.A. under the credit agreement is collateralized by substantially all of the Company's assets.

Any indebtedness under this credit agreement bears interest at a variable rate based either on LIBOR, the federal funds rate, or the prime rate. The credit agreement contains affirmative and negative covenants which, among other things, requires the Company to deliver to Bank of America, N.A. specified annual and monthly financial information.

VIZIO repaid the Bank of America Facility on September 26, 2018. Interest expense and unused fees were $1,479 for the year ended December 31, 2018. Unused fees related to this line of credit was $324 and $191 for the year ended December 31, 2019 and 2020, respectively. The Company is in compliance with all required financial covenants as of December 31, 2020.

(c) Legal Matters

Several data privacy lawsuits were filed against VIZIO involving its data collection and use practices for internet connected televisions alleging various federal and/or state law violations. In April 2016, the complaints were consolidated into a multi-district litigation and transferred to the United States District Court for the Central District of California (the Court). The parties participated in voluntary mediation in first quarter of 2018. In March 2018, parties accepted a mediator's proposal of $17,000 to resolve the matter. The proposal involves a cash contribution from VIZIO in the amount of $9,000 with the remaining balance being insurance contribution. In January 2019, the Company paid $1,700, and in August 2019, VIZIO paid the remaining $7,300, to settle this matter.

Advanced Micro Devices, Inc. (AMD) presented the Company with a claim letter dated May 11, 2015 in which AMD claimed the Company is infringing its patents that cover graphics processing and semiconductor technologies. On January 23 and 24, 2017, respectively, AMD filed complaints in the U.S. District Court for the District of Delaware and the International Trade Center (ITC) alleging infringement of AMD's U.S. patents. On August 22, 2018, the ITC ruled against VIZIO and recommended limited exclusion and cease and desist orders. On August 30, 2018, the parties entered into a settlement agreement including payments of $39,000 in total, and the cases were subsequently dismissed. Of the $39,000 settlement outlined in the agreement, $15,000 was negotiated to apply to the release for units shipped prior to the effective date of the agreement which is indemnified by VIZIO's suppliers. This is reflected in the first three payments due to AMD under the license, which were paid by the end of 2018. Payments beginning with the fourth payment are scheduled on an annual basis in May of each subsequent calendar year for payment of ongoing license from September 2018 and included in accrued royalties in note 18.

In November 2020, the Company entered into a settlement agreement with AmTRAN Technology Co., Ltd., or AmTRAN and one of its subsidiaries. AmTRAN is a beneficial holder of more than 5% of the Company's Series A convertible preferred stock. Pursuant to the settlement agreement, the Company agreed, among other things, to pay AmTRAN approximately $8,200. In return, on November 23, 2020 AmTRAN terminated its security agreement. AmTRAN further agreed to pay outstanding fees owed by it for IP licenses related to the manufacturing of the Company's devices. The parties further agreed that VIZIO

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would continue to retain a reserve of approximately $4,000 for payment of, future claims attributable to devices manufactured by AmTRAN. On December 31, 2022 VIZIO will release to AmTRAN the lesser of (i) 50% of the remaining balance of the reserve or (ii) approximately $2,000, with a like amount to be retained by the Company.

(22) Subsequent Events

In February 2021, the Company granted approximately 565,000 restricted stock units to various executives and employees. The vesting terms of the restricted stock units range from one to four years.

Other than reported above, no events have occurred which require adjustment to or disclosure in the consolidated financial statements.

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PART II

INFORMATION NOT REQUIRED IN PROSPECTUS

Item 13. Other Expenses of Issuance and Distribution.

The following table shows the expenses to be incurred in connection with the offering described in this registration statement, all of which will be paid by the registrant. All amounts are estimates, other than the SEC registration fee, the FINRA filing fee and the New York Stock Exchange listing fee.

SEC registration fee	$ *
FINRA filing fee	*
New York Stock Exchange listing fee	*
Accounting fees and expenses	*
Legal fees and expenses	*
Printing and engraving expenses	*
Transfer agent’s fees	*
Blue sky fees and expenses	*
Miscellaneous	*
Total	*

* To be completed by amendment

Item 14. Indemnification of Directors and Officers.

Section 145 of the Delaware General Corporation Law authorizes a corporation’s board of directors to grant, and authorizes a court to award, indemnity to officers, directors, and other corporate agents.

We intend to adopt an amended and restated certificate of incorporation, which will become effective immediately prior to the completion of this offering, and which will contain provisions that limit the liability of our directors for monetary damages to the fullest extent permitted by Delaware law. Consequently, our directors will not be personally liable to us or our stockholders for monetary damages for any breach of fiduciary duties as directors, except liability for the following:

- any breach of their duty of loyalty to our company or our stockholders;
- any act or omission not in good faith or that involves intentional misconduct or a knowing violation of law;
- unlawful payments of dividends or unlawful stock repurchases or redemptions as provided in Section 174 of the Delaware General Corporation Law; or
- any transaction from which they derived an improper personal benefit.

Any amendment to, or repeal of, these provisions will not eliminate or reduce the effect of these provisions in respect of any act, omission or claim that occurred or arose prior to that amendment or repeal. If the Delaware General Corporation Law is amended to provide for further limitations on the personal liability of directors of corporations, then the personal liability of our directors will be further limited to the greatest extent permitted by the Delaware General Corporation Law.

In addition, we intend to adopt amended and restated bylaws, which will become effective immediately prior to the completion of this offering, and which will provide that we will indemnify, to the fullest extent permitted by law, any person who is or was a party or is threatened to be made a party to any action, suit or proceeding by reason of the fact that he or she is or was one of our directors or officers or is or was serving at our request as a director or officer of another corporation, partnership, joint venture, trust, or other enterprise. Our

amended and restated bylaws will provide that we may indemnify to the fullest extent permitted by law any person who is or was a party or is threatened to be made a party to any action, suit, or proceeding by reason of the fact that he or she is or was one of our employees or agents or is or was serving at our request as an employee or agent of another corporation, partnership, joint venture, trust, or other enterprise. Our amended and restated bylaws will also provide that we must advance expenses incurred by or on behalf of a director or officer in advance of the final disposition of any action or proceeding, subject to limited exceptions.

Further, we have entered into or will enter into indemnification agreements with each of our directors and executive officers that may be broader than the specific indemnification provisions contained in the Delaware General Corporation Law. These indemnification agreements require us, among other things, to indemnify our directors and executive officers against liabilities that may arise by reason of their status or service. These indemnification agreements also require us to advance all expenses incurred by the directors and executive officers in investigating or defending any such action, suit, or proceeding. We believe that these agreements are necessary to attract and retain qualified individuals to serve as directors and executive officers.

The limitation of liability and indemnification provisions that will be included in our amended and restated certificate of incorporation, amended and restated bylaws, and the indemnification agreements that we have entered into or will enter into with our directors and executive officers may discourage stockholders from bringing a lawsuit against our directors and executive officers for breach of their fiduciary duties. They may also reduce the likelihood of derivative litigation against our directors and executive officers, even though an action, if successful, might benefit us and other stockholders. Further, a stockholder's investment may be adversely affected to the extent that we pay the costs of settlement and damage awards against directors and executive officers as required by these indemnification provisions. At present, we are not aware of any pending litigation or proceeding involving any person who is or was one of our directors, officers, employees or other agents or is or was serving at our request as a director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, for which indemnification is sought, and we are not aware of any threatened litigation that may result in claims for indemnification.

We have obtained insurance policies under which, subject to the limitations of the policies, coverage is provided to our directors and executive officers against loss arising from claims made by reason of breach of fiduciary duty or other wrongful acts as a director or executive officer, including claims relating to public securities matters, and to us with respect to payments that may be made by us to these directors and executive officers pursuant to our indemnification obligations or otherwise as a matter of law.

Certain of our non-employee directors may, through their relationships with their employers, be insured or indemnified against certain liabilities incurred in their capacity as members of our board of directors.

The underwriting agreement filed as Exhibit 1.1 to this registration statement will provide for indemnification by the underwriters of us and our officers and directors for certain liabilities arising under the Securities Act or otherwise.

Item 15. Recent Sales of Unregistered Securities.

Since December 31, 2017, VIZIO, Inc. made the following sales of unregistered securities:

Common Stock Issuances

In June 2018, VIZIO, Inc. sold an aggregate of 1,442,703 shares of Class A common stock to two accredited investors at a purchase price of $48.52 per share, for an aggregate purchase price of $69,999,949.51. In connection with these issuances, in December 2019, VIZIO, Inc. issued to these two accredited investors warrants to purchase shares of our Class A common stock with an aggregate value of $15.0 million at an exercise price of $48.52 per share. These warrants expired unexercised in 2020.

Option Issuances

From January 1, 2018 through the date of this prospectus, VIZIO, Inc. granted stock options under the 2017 Plan to purchase an aggregate of 828,084 shares of our Class A common stock to a total of 257 employees, directors and service providers, with exercise prices ranging from $26.00 to $76.90 per share.

Each of the sales of securities above were deemed to be exempt from registration under the Securities Act in reliance upon Section 4(a)(2) of the Securities Act or Regulation D or Regulation S promulgated thereunder, or Rule 701 promulgated under Section 3(b) of the Securities Act as transactions by an issuer not involving any public offering or pursuant to benefit plans and contracts relating to compensation as provided under Rule 701. The recipients of such securities were our employees, directors or bona fide consultants or other service providers and received the securities under our 2017 Plan. Appropriate legends were affixed to the securities issued in these transactions. Each of the recipients of securities in these transactions had adequate access, through employment, business or other relationships, to information about us.

Item 16. Exhibits and Financial Statement Schedules.

(a) Exhibits

See the Exhibit Index preceding the signature page hereto for a list of exhibits filed as part of this registration statement on Form S-1, which Exhibit Index is incorporated by reference herein.

(b) Financial Statement Schedules

Schedules not listed above have been omitted because the information required to be set forth therein is not applicable or is shown in the Financial Statements or notes thereto.

Item 17. Undertakings.

(a) The undersigned registrant hereby undertakes to provide to the underwriters at the closing specified in the underwriting agreement certificates in such denominations and registered in such names as required by the underwriters to permit prompt delivery to each purchaser.

(b) Insofar as indemnification by the registrant for liabilities arising under the Securities Act may be permitted to directors, officers, and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the SEC such indemnification is against public policy as expressed in the Securities Act and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer, or controlling person of the registrant in the successful defense of any action, suit, or proceeding) is asserted by such director, officer, or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act and will be governed by the final adjudication of such issue.

(c) The undersigned registrant hereby undertakes that:

1. For purposes of determining any liability under the Securities Act, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4) or 497(h) under the Securities Act shall be deemed to be part of this registration statement as of the time it was declared effective.

2. For purposes of determining any liability under the Securities Act, each post-effective amendment that contains a form of prospectus shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

EXHIBIT INDEX

Exhibit No.	Description of Document
1.1*	Form of Underwriting Agreement
3.1*	Certificate of Incorporation of the registrant, as currently in effect
3.2*	Form of Amended and Restated Certificate of Incorporation of the registrant, to be in effect upon completion of the offering
3.3*	Bylaws of the registrant, as currently in effect
3.4*	Form of Amended and Restated Bylaws of the registrant, to be in effect upon completion of the offering
4.1*	Form of Class A common stock certificate of the registrant
5.1*	Opinion of Wilson Sonsini Goodrich & Rosati, P.C.
10.1+	Form of Indemnification Agreement between the registrant and each of its directors and officers
10.2+*	2007 Incentive Award Plan, as amended, and forms of agreements thereunder
10.3+*	2017 Incentive Award Plan and forms of agreements thereunder
10.4+*	2021 Employee Stock Purchase Plan, and forms of agreements thereunder
10.5+*	Executive Employment Agreement, dated as of , by and between the registrant and William Wang
10.6+*	Executive Employment Agreement, dated as of , by and between the registrant and Ben Wong
10.7	Loan and Security Agreement, dated April 13, 2016, by and between VIZIO, Inc. and Bank of America, N.A.
10.8	California Commercial Lease Agreement, dated January 29, 2007 by and between VIZIO, Inc. and Spyglass Tesla, LLC, as amended January 26, 2011 and August 11, 2017
21.1*	Subsidiaries of VIZIO Holding Corp.
23.1	Consent of Independent Registered Public Accounting Firm
23.2*	Consent of Wilson Sonsini Goodrich & Rosati, P.C. (included in Exhibit 5.1)
24.1	Power of Attorney (included on page II-5)

* To be filed by amendment
\+ Management contract or compensatory plan or arrangement

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, as amended, the registrant has duly caused this registration statement on Form S-1 to be signed on its behalf by the undersigned, thereunto duly authorized in the city of Irvine, state of California, on this 1st day of March, 2021.

VIZIO HOLDING CORP.

By: /s/ William Wang
Name: William Wang
Title: Chairman and Chief Executive Officer

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS, that each person whose signature appears below constitutes and appoints William Wang, Adam Townsend and Jerry Huang, and each one of them, as his or her true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution, for him or her and in their name, place, and stead, in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement, and to sign any registration statement for the same offering covered by this registration statement that is to be effective on filing pursuant to Rule 462(b) under the Securities Act of 1933, as amended, and all post-effective amendments thereto, and to file the same, with all exhibits thereto and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done in connection therewith, as fully to all intents and purposes as he or she might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or his or her substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

SIGNATURE	TITLE	DATE
/s/ William Wang William Wang	Chief Executive Officer and Chairman of the Board of Directors (Principal Executive Officer)	March 1, 2021
/s/ Ben Wong Ben Wong	President and Chief Operating Officer	March 1, 2021
/s/ Adam Townsend Adam Townsend	Chief Financial Officer (Principal Financial Officer and Principal Accounting Officer)	March 1, 2021
/s/ John R. Burbank John R. Burbank	Director	March 1, 2021
/s/ Julia S. Gouw Julia S. Gouw	Director	March 1, 2021
/s/ S.C. Huang S.C. Huang	Director	March 1, 2021
/s/ David E. Russell David E. Russell	Director	March 1, 2021

Exhibit 10.1

VIZIO HOLDING CORP.

INDEMNIFICATION AGREEMENT

This Indemnification Agreement (this "***Agreement***") is dated as of [*insert date*], and is between VIZIO Holding Corp., a Delaware corporation (together with its subsidiaries, the "***Company***"), and [*insert name*] ("***Indemnitee***").

RECITALS

A. Indemnitee's service to the Company substantially benefits the Company.

B. Individuals are reluctant to serve as directors or officers of corporations or in certain other capacities unless they are provided with adequate protection through insurance or indemnification against the risks of claims and actions against them arising out of such service.

C. Indemnitee does not regard the protection currently provided by applicable law, the Company's governing documents and any insurance as adequate under the present circumstances, and Indemnitee may not be willing to serve as a director or officer without additional protection.

D. In order to induce Indemnitee to continue to provide services to the Company, it is reasonable, prudent and necessary for the Company to contractually obligate itself to indemnify, and to advance expenses on behalf of, Indemnitee as permitted by applicable law.

E. This Agreement is a supplement to and in furtherance of the indemnification provided in the Company's certificate of incorporation and bylaws, and any resolutions adopted pursuant thereto, and this Agreement shall not be deemed a substitute therefor, nor shall this Agreement be deemed to limit, diminish or abrogate any rights of Indemnitee thereunder.

The parties therefore agree as follows:

1. **Definitions.**

(a) A "***Change in Control***" shall be deemed to occur upon the earliest to occur after the date of this Agreement of any of the following events:

(i) *Acquisition of Stock by Third Party.* Any Person (as defined below) becomes the Beneficial Owner (as defined below), directly or indirectly, of securities of the Company representing fifteen percent (15%) or more of the combined voting power of the Company's then outstanding securities;

(ii) *Change in Board Composition.* During any period of two consecutive years (not including any period prior to the execution of this Agreement), individuals who at the beginning of such period constitute the Company's board of directors, and any new directors (other than a director designated by a person who has entered into an agreement with the Company to effect a transaction described in Sections 1(a)(i), 1(a)(iii) or 1(a)(iv)) whose election by the board of directors or nomination for election by the Company's stockholders was approved by a vote of at least two-thirds of the directors then still in office who either were directors at the beginning of the period or whose election or nomination for election was previously so approved, cease for any reason to constitute at least a majority of the members of the Company's board of directors;

(iii) *Corporate Transactions.* The effective date of a merger or consolidation of the Company with any other entity, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior to such merger or consolidation continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) more than 50% of the combined voting power of the voting securities of the surviving entity outstanding immediately after such merger or consolidation and with the power to elect at least a majority of the board of directors or other governing body of such surviving entity;

(iv) *Liquidation.* The approval by the stockholders of the Company of a complete liquidation of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets; and

(v) *Other Events.* Any other event of a nature that would be required to be reported in response to Item 6(e) of Schedule 14A of Regulation 14A (or in response to any similar item on any similar schedule or form) promulgated under the Securities Exchange Act of 1934, as amended, whether or not the Company is then subject to such reporting requirement, except the completion of the Company's initial public offering shall not be considered a Change in Control.

For purposes of this Section 1(a), the following terms shall have the following meanings:

(1) "***Person***" shall have the meaning as set forth in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended; *provided, however,* that "***Person***" shall exclude (i) the Company, (ii) any trustee or other fiduciary holding securities under an employee benefit plan of the Company, and (iii) any corporation owned, directly or indirectly, by the stockholders of the Company in substantially the same proportions as their ownership of stock of the Company.

(2) "***Beneficial Owner***" shall have the meaning given to such term in Rule 13d-3 under the Securities Exchange Act of 1934, as amended; *provided, however,* that "***Beneficial Owner***" shall exclude any Person otherwise becoming a Beneficial Owner by reason of (i) the stockholders of the Company approving a merger of the Company with another entity or (ii) the Company's board of directors approving a sale of securities by the Company to such Person.

(b) "***Corporate Status***" describes the status of a person who is or was a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of the Company or any other Enterprise, including as a deemed fiduciary thereto.

(c) "***DGCL***" means the General Corporation Law of the State of Delaware.

(d) "***Disinterested Director***" means a director of the Company who is not and was not a party to the Proceeding in respect of which indemnification is sought by Indemnitee.

(e) "***Enterprise***" means the Company and any other corporation, partnership, limited liability company, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary.

(f) "***Expenses***" include all reasonable and actually incurred attorneys' fees, retainers, court costs, transcript costs, fees and costs of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, being or preparing to be a witness in, or otherwise participating in, a

Proceeding. Expenses also include (i) Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedeas bond or other appeal bond or their equivalent, and (ii) for purposes of Section 12(d), Expenses incurred by Indemnitee in connection with the interpretation, enforcement or defense of Indemnitee's rights under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(g) "***Independent Counsel***" means a law firm, or a partner or member of a law firm, that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent (i) the Company or Indemnitee in any matter material to either such party (other than as Independent Counsel with respect to matters concerning Indemnitee under this Agreement, or other indemnitees under similar indemnification agreements), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "***Independent Counsel***" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement.

(h) "***Proceeding***" means any threatened, pending or completed action, suit, arbitration, mediation, alternate dispute resolution mechanism, investigation, inquiry, administrative hearing or proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, including any appeal therefrom and including without limitation any such Proceeding pending as of the date of this Agreement, in which Indemnitee was, is or will be involved as a party, a potential party, a non-party witness or otherwise by reason of (i) the fact that Indemnitee is or was a director or officer of the Company, (ii) any action taken by Indemnitee or any action or inaction on Indemnitee's part while acting as a director or officer of the Company, or (iii) the fact that he or she is or was serving at the request of the Company as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of the Company or any other Enterprise, in each case whether or not serving in such capacity at the time any liability or Expense is incurred for which indemnification or advancement of expenses can be provided under this Agreement.

(i) Reference to "***other enterprises***" shall include employee benefit plans; references to "***fines***" shall include any excise taxes assessed on a person with respect to any employee benefit plan; references to "***serving at the request of the Company***" shall include any service as a director, officer, employee or agent of the Company which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner he or she reasonably believed to be in the best interests of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "***not opposed to the best interests of the Company***" as referred to in this Agreement.

2. **Indemnity in Third-Party Proceedings.** The Company shall indemnify Indemnitee in accordance with the provisions of this Section 2 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 2, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee or on his or her behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

3. **Indemnity in Proceedings by or in the Right of the Company.** The Company shall indemnify Indemnitee in accordance with the provisions of this Section 3 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 3, Indemnitee shall be indemnified to the fullest extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company. No indemnification for Expenses shall be made under this Section 3 in respect of any claim, issue or matter as to which Indemnitee shall have been adjudged by a court of competent jurisdiction to be liable to the Company, unless and only to the extent that the Delaware Court of Chancery or any court in which the Proceeding was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification for such expenses as the Delaware Court of Chancery or such other court shall deem proper.

4. **Indemnification for Expenses of a Party Who is Wholly or Partly Successful.** To the extent that Indemnitee is a party to or a participant in and is successful (on the merits or otherwise) in defense of any Proceeding or any claim, issue or matter therein, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith. For purposes of this section, the termination of any claim, issue or matter in such a Proceeding by dismissal, with or without prejudice, shall be deemed to be a successful result as to such claim, issue or matter.

5. **Indemnification for Expenses of a Witness.** To the extent that Indemnitee is, by reason of his or her Corporate Status, a witness in any Proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified to the extent permitted by applicable law against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith.

6. **Additional Indemnification.**

(a) Notwithstanding any limitation in Sections 2, 3 or 4, the Company shall indemnify Indemnitee to the fullest extent permitted by applicable law if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding (including a Proceeding by or in the right of the Company to procure a judgment in its favor) against all Expenses, judgments, fines and amounts paid in settlement actually and reasonably incurred by Indemnitee or on his or her behalf in connection with the Proceeding or any claim, issue or matter therein.

(b) For purposes of Section 6(a), the meaning of the phrase "***to the fullest extent permitted by applicable law***" shall include, but not be limited to:

(i) the fullest extent permitted by the provision of the DGCL that authorizes or contemplates additional indemnification by agreement, or the corresponding provision of any amendment to or replacement of the DGCL; and

(ii) the fullest extent authorized or permitted by any amendments to or replacements of the DGCL adopted after the date of this Agreement that increase the extent to which a corporation may indemnify its officers and directors.

7. **Exclusions.** Notwithstanding any provision in this Agreement, the Company shall not be obligated under this Agreement to make any indemnity in connection with any Proceeding (or any part of any Proceeding):

(a) for which payment has actually been made to or on behalf of Indemnitee under any statute, insurance policy, indemnity provision, vote or otherwise, except with respect to any excess beyond the amount paid, subject to any subrogation rights set forth in Section16; *provided, however,* for the avoidance for doubt, that payment made to Indemnitee pursuant to an insurance policy purchased and maintained by Indemnitee at his or her own expense of any amounts otherwise indemnifiable or obligated to be made pursuant to this Agreement shall not reduce the Company's obligations to Indemnitee pursuant to this Agreement;

(b) for an accounting or disgorgement of profits pursuant to Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of federal, state or local statutory law or common law, if Indemnitee is held liable therefor (including pursuant to any settlement arrangements);

(c) for any reimbursement of the Company by Indemnitee of any bonus or other incentive-based or equity-based compensation or of any profits realized by Indemnitee from the sale of securities of the Company, as required in each case under the Securities Exchange Act of 1934, as amended (including any such reimbursements that arise from an accounting restatement of the Company pursuant to Section 304 of the Sarbanes-Oxley Act of 2002 (the "***Sarbanes-Oxley Act***"), or the payment to the Company of profits arising from the purchase and sale by Indemnitee of securities in violation of Section 306 of the Sarbanes-Oxley Act), if Indemnitee is held liable therefor (including pursuant to any settlement arrangements);

(d) initiated by Indemnitee, including any Proceeding (or any part of any Proceeding) initiated by Indemnitee against the Company or its directors, officers, employees, agents or other indemnitees, unless (i) the Company's board of directors authorized the Proceeding (or the relevant part of the Proceeding) prior to its initiation, (ii) the Company provides the indemnification, in its sole discretion, pursuant to the powers vested in the Company under applicable law, (iii) otherwise authorized in Section 12(d) or (iv) otherwise required by applicable law; or

(e) if prohibited by applicable law.

8. **Advances of Expenses.** The Company shall advance the Expenses incurred by Indemnitee in connection with any Proceeding prior to its final disposition, and such advancement shall be made as soon as reasonably practicable, but in any event no later than 90 days, after the receipt by the Company of a written statement or statements requesting such advances from time to time (which shall include invoices received by Indemnitee in connection with such Expenses but, in the case of invoices in connection with legal services, any references to legal work performed or to expenditure made that would cause Indemnitee to waive any privilege accorded by applicable law shall not be included with the invoice). Advances shall be unsecured and interest free and made without regard to Indemnitee's ability to repay such advances. Indemnitee hereby undertakes to repay any advance to the extent that it is ultimately determined that Indemnitee is not entitled to be indemnified by the Company, and no other form of undertaking shall be required other than the execution of this Agreement. This Section 8 shall not apply to the extent advancement is prohibited by law and shall not apply to any Proceeding (or any part of any Proceeding) for which indemnity is not permitted under this Agreement, but shall apply to any Proceeding (or any part of any Proceeding) referenced in Section 7(b) or 7(c) prior to a determination that Indemnitee is not entitled to be indemnified by the Company.

9. **Procedures for Notification and Defense of Claim.**

(a) Indemnitee shall notify the Company in writing of any matter with respect to which Indemnitee intends to seek indemnification or advancement of Expenses as soon as reasonably practicable following the receipt by Indemnitee of notice thereof. The Company may request Indemnitee to provide

information that the Company may deem necessary to assess the request. The failure by Indemnitee to notify the Company will not relieve the Company from any liability which it may have to Indemnitee hereunder or otherwise than under this Agreement, except to the extent that such failure or delay materially prejudices the Company.

(b) If, at the time of the receipt of a notice of a Proceeding pursuant to the terms hereof, the Company has directors' and officers' liability insurance in effect that may be applicable to the Proceeding, the Company shall give prompt notice of the commencement of the Proceeding to the insurers in accordance with the procedures set forth in the applicable policies. The Company shall thereafter take all commercially-reasonable action to cause such insurers to pay, on behalf of Indemnitee, all amounts payable as a result of such Proceeding in accordance with the terms of such policies.

(c) In the event the Company may be obligated to make any indemnity in connection with a Proceeding, the Company shall be entitled to assume the defense of such Proceeding with counsel approved by Indemnitee, which approval shall not be unreasonably withheld, conditioned or delayed, upon the delivery to Indemnitee of written notice of its election to do so. After delivery of such notice, approval of such counsel by Indemnitee and the retention of such counsel by the Company, the Company will not be liable to Indemnitee for any fees or expenses of counsel subsequently incurred by Indemnitee with respect to the same Proceeding. Notwithstanding the Company's assumption of the defense of any such Proceeding, the Company shall be obligated to pay the fees and expenses of Indemnitee's separate counsel to the extent (i) the employment of separate counsel by Indemnitee is authorized by the Company, (ii) counsel for the Company or Indemnitee shall have reasonably concluded that there is a conflict of interest between the Company and Indemnitee in the conduct of any such defense such that Indemnitee needs to be separately represented, (iii) the Company is not financially or legally able to perform its indemnification obligations, (iv) the fees and expenses are non-duplicative and reasonably incurred in connection with Indemnitee's role in the Proceeding despite the Company's assumption of the defense, or (v) the Company shall not have retained, or shall not continue to retain, counsel to defend such Proceeding. Regardless of any provision in this Agreement, Indemnitee shall have the right to employ counsel in any Proceeding at Indemnitee's personal expense. Indemnitee agrees that any such separate counsel retained by indemnitee will be a member of any approved list of panel counsel under the Company's applicable directors and officers liability insurance policy, should the applicable policy provide for a panel of approved counsel and should such approved panel list comprise law firms with well-established reputations in the type of litigation at issue. (For clarity, the fact of a firm's being part of a panel shall not be evidence of a firm's having a well-established national reputation for the type of litigation at issue). The Company shall not be entitled, without the consent of Indemnitee, to assume the defense of any claim brought by or in the right of the Company.

(d) Indemnitee shall give the Company such information and cooperation in connection with the Proceeding as may be reasonably appropriate, but in no case shall Indemnitee be required to convey any information that would cause Indemnitee to waive any privilege accorded by applicable law.

(e) The Company shall not be liable to indemnify Indemnitee for any settlement of any Proceeding (or any part thereof) without the Company's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

(f) The Company shall not settle any Proceeding (or any part thereof) in a manner that imposes any penalty or liability on Indemnitee without Indemnitee's prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

10. **Procedures upon Application for Indemnification.**

(a) To obtain indemnification, Indemnitee shall submit to the Company a written request, including therein or therewith such documentation and information as is reasonably available to Indemnitee and as is reasonably necessary to determine whether and to what extent Indemnitee is entitled to indemnification following the final disposition of the Proceeding. The Company shall, as soon as reasonably practicable after receipt of such request for indemnification, advise the board of directors that Indemnitee has requested indemnification. Any delay in providing the request will not relieve the Company from its obligations under this Agreement, except to the extent such failure is materially prejudicial.

(b) Upon written request by Indemnitee for indemnification pursuant to Section 10(a), a determination with respect to Indemnitee's entitlement thereto shall be made in the specific case (i) if a Change in Control shall have occurred, by Independent Counsel in a written opinion to the Company's board of directors, a copy of which shall be delivered to Indemnitee or (ii) if a Change in Control shall not have occurred, (A) by a majority vote of the Disinterested Directors, even though less than a quorum of the Company's board of directors, (B) by a committee of Disinterested Directors designated by a majority vote of the Disinterested Directors, even though less than a quorum of the Company's board of directors, (C) if there are no such Disinterested Directors or, if such Disinterested Directors so direct, by Independent Counsel in a written opinion to the Company's board of directors, a copy of which shall be delivered to Indemnitee or (D) if so directed by the Company's board of directors, by the stockholders of the Company. If it is determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within 30 days after such determination. Indemnitee shall cooperate with the person, persons or entity making the determination with respect to Indemnitee's entitlement to indemnification, including providing to such person, persons or entity upon reasonable advance request any documentation or information that is not privileged or otherwise protected from disclosure and that is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including attorneys' fees and disbursements) actually and reasonably incurred by Indemnitee in so cooperating with the person, persons or entity making such determination shall be borne by the Company, to the extent permitted by applicable law.

(c) In the event the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 10(b), the Independent Counsel shall be selected as provided in this Section 10(c). If a Change in Control shall not have occurred, the Independent Counsel shall be selected by the Company's board of directors, and the Company shall give written notice to Indemnitee advising him or her of the identity of the Independent Counsel so selected. If a Change in Control shall have occurred, the Independent Counsel shall be selected by Indemnitee (unless Indemnitee shall request that such selection be made by the Company's board of directors, in which event the preceding sentence shall apply), and Indemnitee shall give written notice to the Company advising it of the identity of the Independent Counsel so selected. In either event, Indemnitee or the Company, as the case may be, may, within 30 days after such written notice of selection shall have been given, deliver to the Company or to Indemnitee, as the case may be, a written objection to such selection; *provided*, *however*, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 1 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within 20 days after the later of (i) submission by Indemnitee of a written request for indemnification pursuant to Section 10(a) hereof and (ii) the final disposition of the Proceeding, the parties have not agreed upon an Independent Counsel, either the Company or Indemnitee may petition the Delaware Court of Chancery for resolution of any objection which shall have been made by the Company or Indemnitee to the other's selection of Independent Counsel and for the

appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 10(b) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 12(a) of this Agreement, the Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

(d) The Company agrees to pay the reasonable fees and expenses of any Independent Counsel.

11. **Presumptions and Effect of Certain Proceedings.**

(a) In making a determination with respect to entitlement to indemnification hereunder, the person, persons or entity making such determination shall, to the fullest extent not prohibited by law, presume that Indemnitee is entitled to indemnification under this Agreement, and the Company shall, to the fullest extent not prohibited by law, have the burden of proof to overcome that presumption by clear and convincing evidence.

(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of *nolo contendere* or its equivalent, shall not (except as otherwise expressly provided in this Agreement) of itself adversely affect the right of indemnitee to indemnification or create a presumption that Indemnitee did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his or her conduct was unlawful.

(c) For purposes of any determination of good faith, Indemnitee shall be deemed to have acted in good faith to the extent Indemnitee relied in good faith on (i) the records or books of account of the Enterprise, including financial statements, (ii) information supplied to Indemnitee by the officers of the Enterprise in the course of their duties, (iii) the advice of legal counsel for the Enterprise or its board of directors or counsel selected by any committee of the board of directors or (iv) information or records given or reports made to the Enterprise by an independent certified public accountant, an appraiser, investment banker or other expert selected with reasonable care by the Enterprise or its board of directors or any committee of the board of directors. The provisions of this Section 11(c) shall not be deemed to be exclusive or to limit in any way the other circumstances in which Indemnitee may be deemed to have acted in good faith or met any other applicable standard of conduct.

(d) Neither the knowledge, actions nor failure to act of any other director, officer, agent or employee of the Enterprise shall be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

12. **Remedies of Indemnitee.**

(a) Subject to Section 12(e), in the event that (i) a determination is made pursuant to Section 10 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) advancement of Expenses is not timely made pursuant to Section 8 or 12(d) of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 10 of this Agreement within 90 days after the later of the receipt by the Company of the request for indemnification or the final disposition of the Proceeding, (iv) payment of indemnification pursuant to this Agreement is not made (A) within 30 days after a determination has been made that Indemnitee is entitled to indemnification or (B) with respect to indemnification pursuant to Sections 4, 5 and 12(d) of this

Agreement, within 30 days after receipt by the Company of a written request therefor, or (v) the Company or any other person or entity takes or threatens to take any action to declare this Agreement void or unenforceable, or institutes any litigation or other action or proceeding designed to deny, or to recover from, Indemnitee the benefits provided or intended to be provided to Indemnitee hereunder, Indemnitee shall be entitled to an adjudication by the Delaware Court of Chancery of his or her entitlement to such indemnification or advancement of Expenses. Alternatively, Indemnitee, at his or her option, may seek an award in arbitration with respect to his or her entitlement to such indemnification or advancement of Expenses, to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee shall commence such proceeding seeking an adjudication or an award in arbitration within 180 days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 12(a); *provided, however,* that the foregoing clause shall not apply in respect of a proceeding brought by Indemnitee to enforce his or her rights under Section 4 of this Agreement. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration in accordance with this Agreement.

(b) Neither (i) the failure of the Company, its board of directors, any committee or subgroup of the board of directors, Independent Counsel or stockholders to have made a determination that indemnification of Indemnitee is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor (ii) an actual determination by the Company, its board of directors, any committee or subgroup of the board of directors, Independent Counsel or stockholders that Indemnitee has not met the applicable standard of conduct, shall create a presumption that Indemnitee has or has not met the applicable standard of conduct. In the event that a determination shall have been made pursuant to Section 10 of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 12 shall be conducted in all respects as a *de novo* trial, or arbitration, on the merits, and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 12, the Company shall, to the fullest extent not prohibited by law, have the burden of proving Indemnitee is not entitled to indemnification or advancement of Expenses, as the case may be, by clear and convincing evidence.

(c) To the fullest extent not prohibited by law, the Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 12 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement. If a determination shall have been made pursuant to Section 10 of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 12, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statements not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) To the extent not prohibited by law, the Company shall indemnify Indemnitee against all Expenses that are incurred by Indemnitee in connection with any action for indemnification or advancement of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company, unless the court (or arbitrator) finds that each material argument or defense advanced by Indemnitee in such action or arbitration was either frivolous or not made in good faith, and, if requested by Indemnitee, shall (as soon as reasonably practicable, but in any event no later than 90 days, after receipt by the Company of a written request therefor) advance such Expenses to Indemnitee, subject to the provisions of Section 8.

(e) Notwithstanding anything in this Agreement to the contrary, no determination as to entitlement to indemnification shall be required to be made prior to the final disposition of the Proceeding.

13. **Monetary Damages Insufficient/Specific Performance.** The Company and Indemnitee agree that a monetary remedy for breach of this Agreement may be inadequate, impracticable and difficult of proof, and further agree that such breach may cause Indemnitee irreparable harm. Accordingly, the parties hereto agree that Indemnitee may enforce this Agreement by seeking injunctive relief and/or specific performance hereof, without any necessity of showing actual damage or irreparable harm (having agreed that actual and irreparable harm will result in not forcing the Company to specifically perform its obligations pursuant to this Agreement) and that by seeking injunctive relief and/or specific performance, Indemnitee shall not be precluded from seeking or obtaining any other relief to which he or she may be entitled. The Company and Indemnitee further agree that Indemnitee shall be entitled to such specific performance and injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting bonds or other undertaking in connection therewith. If Indemnitee seeks mandatory injunctive relief, it shall not be a defense to enforcement of the Company's obligations set forth in this Agreement that Indemnitee has an adequate remedy at law for damages.

14. **Contribution.** To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee, the Company, in lieu of indemnifying Indemnitee, shall contribute to the amounts incurred by Indemnitee, whether for Expenses, judgments, fines or amounts paid or to be paid in settlement, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the events and transactions giving rise to such Proceeding; and (ii) the relative fault of Indemnitee and the Company (and its other directors, officers, employees and agents) in connection with such events and transactions.

15. **Non-exclusivity.** The rights of indemnification and to receive advancement of Expenses as provided by this Agreement shall not be deemed exclusive of any other rights to which Indemnitee may at any time be entitled under applicable law, the Company's certificate of incorporation or bylaws, any agreement, a vote of stockholders or a resolution of directors, or otherwise. To the extent that a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or advancement of Expenses than would be afforded currently under the Company's certificate of incorporation and bylaws and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change, subject to the restrictions expressly set forth herein or therein. Except as expressly set forth herein, no right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. Except as expressly set forth herein, the assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

16. **Primary Responsibility.** The Company acknowledges that, to the extent Indemnitee is serving as a director on the Company's board of directors at the request or direction of a venture capital fund or entity and/or certain of its affiliates (collectively, the "***Secondary Indemnitors***"), Indemnity has certain rights to indemnification and advancement of expenses provided by such Secondary Indemnitors. The Company agrees that, as between the Company and the Secondary Indemnitors, the Company is primarily responsible for amounts required to be indemnified or advanced under the Company's certificate of incorporation or bylaws or this Agreement and any obligation of the Secondary Indemnitors to provide indemnification or advancement for the same amounts is secondary to those Company obligations. To the extent not in contravention of any insurance policy or policies providing liability or other insurance for the

Company or any director, trustee, general partner, managing member, officer, employee, agent or fiduciary of the Company or any other Enterprise, the Company waives any right of contribution or subrogation against the Secondary Indemnitors with respect to the liabilities for which the Company is primarily responsible under this Section 15. In the event of any payment by the Secondary Indemnitors of amounts otherwise required to be indemnified or advanced by the Company under the Company's certificate of incorporation or bylaws or this Agreement, the Secondary Indemnitors shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee for indemnification or advancement of expenses under the Company's certificate of incorporation or bylaws or this Agreement or, to the extent such subrogation is unavailable and contribution is found to be the applicable remedy, shall have a right of contribution with respect to the amounts paid; *provided, however,* that the foregoing sentence will be deemed void if and to the extent that it would violate any applicable insurance policy. The Secondary Indemnitors are express third-party beneficiaries of the terms of this Section 16.

17. **No Duplication of Payments.** The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which advancement is provided hereunder) if and to the extent that Indemnitee has otherwise actually received payment for such amounts under any insurance policy, contract, agreement or otherwise, subject to any subrogation right set forth in Section 16; *provided, however,* for the avoidance of doubt, that payment made to Indemnitee pursuant to an insurance policy purchased and maintained by Indemnitee at his or her own expense of any amounts otherwise indemnifiable or obligated to be made pursuant to this Agreement shall not reduce the Company's obligations to Indemnitee pursuant to this Agreement.

18. **Insurance.**

(a) To the extent that the Company maintains an insurance policy or policies providing liability insurance for directors, trustees, general partners, managing members, officers, employees, agents or fiduciaries of the Company or any other Enterprise, Indemnitee shall be covered by such policy or policies to the same extent as the most favorably-insured persons under such policy or policies in a comparable position.

(b) In the event of a change of control or the Company's becoming insolvent, the Company shall maintain in force any and all insurance policies then maintained by the Company in providing insurance—directors' and officers' liability, fiduciary, employment practices or otherwise (such applicable policies, the "Existing Policies")—in respect of the individual directors and officers of the Company, for a fixed period of six years thereafter (a "Tail Policy"). The Tail Policy shall be non-cancellable and shall be substantially comparable in scope and amount as the Existing Policies.

19. **Subrogation.** In the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitee, who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

20. **Services to the Company.** Indemnitee agrees to serve as a director or officer of the Company or, at the request of the Company, as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of another Enterprise, for so long as Indemnitee is duly elected or appointed or until Indemnitee tenders his or her resignation or is removed from such position. Indemnitee may at any time and for any reason resign from such position (subject to any other contractual obligation or any obligation imposed by operation of law), in which event the Company shall have no obligation under this Agreement to continue Indemnitee in such position. This Agreement shall not be deemed an employment contract between the Company (or any of its subsidiaries or any Enterprise) and Indemnitee. Indemnitee specifically acknowledges that any employment with the Company (or any of its subsidiaries

or any Enterprise) is at will, and Indemnitee may be discharged at any time for any reason, with or without cause, with or without notice, except as may be otherwise expressly provided in any executed, written employment contract between Indemnitee and the Company (or any of its subsidiaries or any Enterprise), any existing formal severance policies adopted by the Company's board of directors or, with respect to service as a director or officer of the Company, the Company's certificate of incorporation or bylaws or the DGCL. No such document shall be subject to any oral modification thereof.

21. **Duration.** This Agreement shall continue in effect until the later of (a) ten years after the date that Indemnitee shall have ceased to serve as a director or an officer of the Company or as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of any other Enterprise, as applicable, or (b) for as long as any Proceeding is pending in respect of which Indemnitee is granted rights of indemnification or advancement of Expenses hereunder, even after Indemnitee has ceased to serve as a director or officer of the Company or as a director, trustee, general partner, managing member, officer, employee, agent or fiduciary of any other Enterprise, as applicable, and for one year after the final termination of such Proceeding, including any appeal, and of any proceeding commenced by Indemnitee pursuant to Section 12 relating thereto.

22. **Successors.** This Agreement shall be binding upon the Company and its successors and assigns, including any direct or indirect successor, by purchase, merger, consolidation or otherwise, to all or substantially all of the business or assets of the Company, and shall inure to the benefit of Indemnitee and Indemnitee's heirs, executors and administrators. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of the Company, by written agreement, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place.

23. **Severability.** Nothing in this Agreement is intended to require or shall be construed as requiring the Company to do or fail to do any act in violation of applicable law. The Company's inability, pursuant to court order or other applicable law, to perform its obligations under this Agreement shall not constitute a breach of this Agreement. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (i) the validity, legality and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (ii) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (iii) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

24. **Enforcement.** The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve as a director or officer of the Company, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company.

25. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; *provided*, *however*, that this Agreement is a supplement to and in furtherance of the Company's certificate of incorporation and bylaws and applicable law.

26. **Modification and Waiver.** No supplement, modification or amendment to this Agreement shall be binding unless executed in writing by the parties hereto. No amendment, alteration or repeal of this Agreement shall adversely affect any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his or her Corporate Status prior to such amendment, alteration or repeal. No waiver of any of the provisions of this Agreement shall constitute or be deemed a waiver of any other provision of this Agreement nor shall any waiver constitute a continuing waiver.

27. **Notices.** All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid, sent by electronic mail or otherwise delivered by hand, messenger or courier service addressed:

(a) if to Indemnitee, to Indemnitee's address or electronic mail address as shown on the signature page of this Agreement or in the Company's records, as may be updated in accordance with the provisions hereof; or

(b) if to the Company, to the attention of the Chief Executive Officer or Chief Financial Officer of the Company at 39 Tesla, Irvine, CA 92618, or at such other current address as the Company shall have furnished to Indemnitee.

Each such notice or other communication shall for all purposes of this Agreement be treated as effective or having been given (i) if delivered by hand, messenger or courier service, when delivered (or if sent *via* a nationally-recognized overnight courier service, freight prepaid, specifying next-business-day delivery, one business day after deposit with the courier), (ii) if sent *via* mail, at the earlier of its receipt or five days after the same has been deposited in a regularly-maintained receptacle for the deposit of the United States mail, addressed and mailed as aforesaid, or (iii) if sent *via* electronic mail, upon confirmation of delivery when directed to the relevant electronic mail address, if sent during normal business hours of the recipient, or if not sent during normal business hours of the recipient, then on the recipient's next business day.

28. **Applicable Law and Consent to Jurisdiction.** This Agreement and the legal relations described herein among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 12(a) of this Agreement, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Court of Chancery, and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court of Chancery for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, The Corporation Trust Company, 1209 Orange Street, in the City of Wilmington, County of New Castle, Delaware 19801, as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court of Chancery, and (v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court of Chancery has been brought in an improper or inconvenient forum.

29. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. This Agreement may also be executed and delivered by facsimile signature and in counterparts, each of which shall for all purposes be deemed to be an original but all of which together shall constitute one and the same Agreement. Only one such counterpart signed by the party against whom enforceability is sought needs to be produced to evidence the existence of this Agreement.

30. **Captions.** The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

(*signature page follows*)

The parties are signing this Indemnification Agreement as of the date stated in the introductory sentence.

VIZIO HOLDING CORP.

____
(*Signature*)

____
(*Print name*)

____
(*Title*)

[***INDEMNITEE NAME***]

____
(*Signature*)

____
(*Print name*)

____
(*Street address*)

____
(*City, State and ZIP*)

(*Signature Page to Indemnification Agreement*)

Exhibit 10.7

LOAN AND SECURITY AGREEMENT

Dated as of April 13, 2016

VIZIO, INC.,

as Borrower

BANK OF AMERICA, N.A.,

as Agent

BANK OF AMERICA, N.A.,

as Sole Lead Arranger and Sole Bookrunner

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Exhibit B	Assignment Notice
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LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT is dated as of April 13, 2016, among **VIZIO, INC.**, a California corporation ("Borrower"), the financial institutions party to this Agreement from time to time as Lenders, and **BANK OF AMERICA, N.A.**, a national banking association ("Bank of America"), as agent for the Lenders (in such capacity, "Agent").

R E C I T A L S:

Borrower has requested that Lenders provide a credit facility to Borrower for general corporate purposes. Lenders are willing to provide the credit facility on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for valuable consideration hereby acknowledged, the parties agree as follows:

SECTION 1. DEFINITIONS; RULES OF CONSTRUCTION

1.1. Definitions. As used herein, the following terms have the meanings set forth below:

Acceptable Field Examination: a field examination conducted by an examiner satisfactory to Agent and with results and scope satisfactory to Agent, in each case, as determined in its Permitted Discretion.

Acceptable Field Examination Reserve: $10,000,000; provided that upon receipt by Agent of an Acceptable Field Examination and satisfaction of the conditions set forth in **Sections 6.3.1** and **6.3.2,** such amount shall be reduced to $0.

Account: as defined in the UCC, including all rights to payment for goods sold or leased, or for services rendered.

Accounts Formula Amount: an amount equal to 85% of the sum of (i) the Value of Eligible Accounts, minus (ii) the Acceptable Field Examination Reserve.

Acquisition: a transaction or series of transactions resulting in (a) acquisition of a business, division or substantially all assets of a Person; (b) record or beneficial ownership of more than 50% of the Equity Interests of a Person; or (c) merger, consolidation or combination of Borrower or Subsidiary with another Person.

Affiliate: with respect to a specified Person, another Person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the Person specified. "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have correlative meanings.

Agent Indemnitees: Agent and its officers, directors, employees, Affiliates, agents and attorneys.

Agent Professionals: attorneys, accountants, appraisers, auditors, business valuation experts, environmental engineers or consultants, turnaround consultants, and other professionals and experts retained by Agent.

AmTRAN: AmTRAN Logistics, Inc., a California corporation.

AmTRAN Flow of Funds Agreement: that certain flow of funds agreement (in form and substance satisfactory to Agent) dated as of even date herewith executed by Borrower and Agent.

AmTRAN Stock Repurchase: the one-time repurchase by Borrower of all of Borrower's common Equity Interests held by AmTRAN so long as (i) the total consideration paid therefor does not exceed $131,271,746.52, (ii) no Default or Event of Default exists immediately prior to or after giving effect thereto, (iii) the consideration thereof is paid as set forth in the AmTRAN Flow of Funds Agreement, and (iv) such repurchase is consummated within 3 Business Days of the Closing Date.

AmTRAN Lien: the Lien in the Accounts of Borrower in favor of AmTRAN securing repayment of all obligations owed by Borrower to AmTRAN.

AmTRAN Liability Amount: an amount equal to 115% of all liabilities owed by Borrower to AmTRAN (determined as of the most recently ended fiscal month of Borrower and net of any amounts owed by AmTRAN to Borrower). The AmTRAN Liability Amount shall be reduced to $0 upon receipt by Agent of evidence reasonably satisfactory to Agent of the termination of the AmTRAN Lien.

AmTRAN Reserve: the sum of

(i) the amount of the AmTRAN Liability Amount up to $25,000,000, plus

(ii) an amount, not to be less than $0, equal to the difference of (a) the AmTRAN Liability Amount, minus (b) Suppressed Availability, minus (c) $25,000,000.

Anti-Terrorism Law: any law relating to terrorism or money laundering, including the Patriot Act.

Applicable Law: all laws, rules, regulations and governmental guidelines applicable to the Person or matter in question, including statutory law, common law and equitable principles, as well as provisions of constitutions, treaties, statutes, rules, regulations, orders and decrees of Governmental Authorities. For the purposes of **Sections 5.1, 5.9** and **5.10,** "Applicable Law" shall include FATCA.

Applicable Margin: the margin set forth below, as determined by the average daily Availability for the prior three month period (as determined by Agent's books and records):

Level	Average Daily Availability	Base Rate Revolver Loans	LIBOR Revolver Loans
I	< 50% of the Revolver Commitments	0.50%	1.50%
II	≥ 50 % of the Revolver Commitments	0.25%	1.25%

Until December 31, 2016, margins shall be determined as if Level II were applicable. Thereafter, margins shall be subject to increase or decrease by Agent on the first day of the calendar month following each Fiscal Quarter end. If Agent is unable to calculate average daily Availability for any applicable three month period due to Borrower's failure to deliver any Borrowing Base Report when required hereunder, then, at the option of Agent or Required Lenders, margins shall be determined as if Level I were applicable until the first day of the calendar month following its receipt.

Approved Fund: any Person (other than a natural Person) engaged in making, purchasing, holding or otherwise investing in commercial loans in its ordinary course of activities.

Asset Disposition: a sale, lease, license, consignment, transfer or other disposition of Property of an Obligor, including any disposition of Property in connection with a sale-leaseback transaction or synthetic lease.

Assignment: an assignment agreement between a Lender and Eligible Assignee, in the form of **Exhibit A** or otherwise satisfactory to Agent.

Availability: the Borrowing Base minus Revolver Usage.

Availability Reserve: the sum (without duplication) of (a) the Rent and Charges Reserve; (b) the Bank Product Reserve; (c) the aggregate amount of liabilities secured by Liens upon Collateral that are senior to Agent's Liens (other than the AmTRAN Lien) (but imposition of any such reserve shall not waive an Event of Default arising therefrom); (d) the Dilution Reserve; (e) the AmTRAN Reserve; and (f) such additional reserves, in such amounts and with respect to such matters, as Agent in its Permitted Discretion may elect to impose from time to time; provided that Agent shall provide prior notice to Borrower of any such additional reserves; and provided further, however, that any failure to give such notice shall not affect Agent's right to establish such additional reserves.

Bail-In Action: the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

Bail-In Legislation: with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

Bank of America Indemnitees: Bank of America and its officers, directors, employees, Affiliates, agents and attorneys.

Bank Product: any of the following products or services extended to Borrower or Affiliate of Borrower by a Lender or any of its Affiliates: (a) Cash Management Services; (b) products under Hedging Agreements; (c) commercial credit card and merchant card services; and (d) leases and other banking products or services, other than Letters of Credit.

Bank Product Reserve: the aggregate amount of reserves established by Agent from time to time in its discretion with respect to Secured Bank Product Obligations.

Bankruptcy Code: Title 11 of the United States Code.

Base Rate: for any day, a per annum rate equal to the greater of (a) the Prime Rate for such day; (b) the Federal Funds Rate for such day, plus 0.50%; or (c) LIBOR for a 30 day interest period as of such day, plus 1.0%.

Base Rate Loan: any Revolver Loan that bears interest based on the Base Rate.

Base Rate Revolver Loan: a Revolver Loan that bears interest based on the Base Rate.

Board of Governors: the Board of Governors of the Federal Reserve System.

Borrowed Money: with respect to any Obligor, without duplication, its (a) Debt that (i) arises from the lending of money by any Person to such Obligor, (ii) is evidenced by notes, drafts, bonds,

debentures, credit documents or similar instruments, (iii) accrues interest or is a type upon which interest charges are customarily paid (excluding trade payables owing in the Ordinary Course of Business), or (iv) was issued or assumed as full or partial payment for Property; (b) Capital Leases; (c) letter of credit reimbursement obligations; and (d) guaranties of any such Debt, Capital Leases or letter of credit reimbursement obligations owing by another Person.

Borrower Materials: Borrowing Base Reports, Compliance Certificates and other information, reports, financial statements and other materials delivered by Borrower hereunder, as well as other Reports and information provided by Agent to Lenders.

Borrowing: a group of Revolver Loans that are made or converted together on the same day and have the same interest option and, if applicable, Interest Period.

Borrowing Base: on any date of determination, an amount equal to the lesser of (a) the difference of (i) the aggregate Revolver Commitments, minus (ii) the AmTRAN Reserve; or (b) the sum of the Accounts Formula Amount, plus the Securities Formula Amount, minus the Availability Reserve.

Borrowing Base Report: a report of the Borrowing Base, in form and substance satisfactory to Agent.

Business Day: any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, North Carolina and California, and if such day relates to a LIBOR Loan, any such day on which dealings in Dollar deposits are conducted in the London interbank market.

Capital Expenditures: all liabilities incurred or expenditures made by Borrower or Subsidiary for the acquisition of fixed assets, or any improvements, replacements, substitutions or additions thereto with a useful life of more than one year.

Capital Lease: any lease required to be capitalized for financial reporting purposes in accordance with GAAP.

Cash Collateral: cash delivered to Agent to Cash Collateralize any Obligations, and all interest, dividends, earnings and other proceeds relating thereto.

Cash Collateralize: the delivery of cash to Agent, as security for the payment of Obligations, in an amount equal to (a) with respect to LC Obligations, 105% of the aggregate LC Obligations, and (b) with respect to any inchoate, contingent or other Obligations (including Secured Bank Product Obligations), Agent's good faith estimate of the amount due or to become due, including fees, expenses and indemnification hereunder. "Cash Collateralization" has a correlative meaning.

Cash Equivalents: (a) marketable obligations issued or unconditionally guaranteed by, and backed by the full faith and credit of, the U.S. government, maturing within 12 months of the date of acquisition; (b) certificates of deposit, time deposits and bankers' acceptances maturing within 12 months of the date of acquisition, and overnight bank deposits, in each case which are issued by Bank of America or a commercial bank organized under the laws of the United States or any state or district thereof, rated A-1 (or better) by S&P or P-1 (or better) by Moody's at the time of acquisition, and (unless issued by a Lender) not subject to offset rights; (c) repurchase obligations with a term of not more than 30 days for underlying investments of the types described in clauses (a) and (b) entered into with any bank described in clause (b); (d) commercial paper issued by Bank of America or rated A-1 (or better) by S&P or P-1 (or better) by Moody's, and maturing within nine months of the date of acquisition; and (e) shares of any money market fund that has substantially all of its assets invested continuously in the types of investments referred to above, has net assets of at least $500,000,000 and has the highest rating obtainable from either Moody's or S&P.

Cash Management Services: services relating to operating, collections, payroll, trust, or other depository or disbursement accounts, including automated clearinghouse, e-payable, electronic funds transfer, wire transfer, controlled disbursement, overdraft, depository, information reporting, lockbox and stop payment services.

CERCLA: the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. § 9601 et seq.).

Change in Law: the occurrence, after the date hereof, of (a) the adoption, taking effect or phasing in of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof; or (c) the making, issuance or application of any request, guideline, requirement or directive (whether or not having the force of law) by any Governmental Authority; provided, however, that "Change in Law" shall include, regardless of the date enacted, adopted or issued, all requests, rules, guidelines, requirements or directives (i) under or relating to the Dodd-Frank Wall Street Reform and Consumer Protection Act, or (ii) promulgated pursuant to Basel III by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any similar authority) or any other Governmental Authority.

Change of Control: (a) William Wang ceases to own and control, directly or indirectly, beneficially and of record, at least 40% of the Equity Interests of Borrower; (b) any Person other than William Wang owns or controls, directly or indirectly, beneficially or of record, more than 40% of the Equity Interests of Borrower; (c) Borrower ceases to own and control, beneficially and of record, a majority of voting securities or Equity Interests of any of its Subsidiaries; (d) a change in the majority of directors of Borrower during any 24 month period, unless approved by the majority of directors serving at the beginning of such period; or (e) the sale or transfer of all or substantially all assets of Borrower.

Citibank: Citibank, N.A.

Citibank Collateral: "Collateral" as defined in the Citibank Pledge Agreement (as in effect on the date hereof).

Citibank Credit Agreement: Credit Agreement dated as of August 14, 2014 between Borrower and Citibank, as amended by that certain First Amendment to Credit Agreement dated as of July 17, 2015 and as the same may be further amended, restated, amended and restated, supplemented or otherwise modified in accordance with the terms thereof.

Citibank Facility: the credit facility provided by Citibank to Borrower in an amount not to exceed $50,000,000 pursuant to the Citibank Credit Agreement, the obligations under which credit facility are secured by the Citibank Lien on the Citibank Collateral (and no other assets of Borrower or Subsidiaries).

Citibank Facility Documents: the Citibank Credit Agreement, the Citibank Pledge Agreement and the other "Loan Documents".

Citibank Lien: the Lien granted by Borrower to Citibank in the Citibank Collateral to secure the obligations of Borrower under the Citibank Facility Documents.

Citibank Pledge Agreement: "Pledge Agreement" as defined in the Citibank Credit Agreement.

Claims: all claims, liabilities, obligations, losses, damages, penalties, judgments, proceedings, interest, costs and expenses of any kind (including remedial response costs, reasonable attorneys' fees and Extraordinary Expenses) at any time (including after Full Payment of the Obligations or replacement of

Agent or any Lender) incurred by any Indemnitee or asserted against any Indemnitee by any Obligor or other Person, in any way relating to (a) any Revolver Loans, Letters of Credit, Loan Documents, Borrower Materials, or the use thereof or transactions relating thereto, (b) any action taken or omitted in connection with any Loan Documents, (c) the existence or perfection of any Liens, or realization upon any Collateral, (d) exercise of any rights or remedies under any Loan Documents or Applicable Law, or (e) failure by any Obligor to perform or observe any terms of any Loan Document, in each case including all costs and expenses relating to any investigation, litigation, arbitration or other proceeding (including an Insolvency Proceeding or appellate proceedings), whether or not the applicable Indemnitee is a party thereto.

Closing Date: as defined in **Section 6.1.**

Code: the Internal Revenue Code of 1986, as amended.

Collateral: all Property described in **Section 7.1,** all Property described in any Security Documents as security for any Obligations, and all other Property that now or hereafter secures (or is intended to secure) any Obligations.

Commitment Termination Date: the earliest to occur of (a) the Revolver Termination Date; (b) the date on which Borrower terminates the Revolver Commitments pursuant to **Section 2.1.4;** or (c) the date on which the Revolver Commitments are terminated pursuant to **Section 11.2.**

Commodity Exchange Act: the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*).

Compliance Certificate: a certificate in substantially the form set forth in **Exhibit C** and otherwise in form and substance satisfactory to Agent, by which Borrower certifies compliance with **Section 10.3** and shows a calculation of Fixed Charge Coverage Ratio regardless of the existence of a Financial Covenant Trigger Period.

Connection Income Taxes: Other Connection Taxes that are imposed on or measured by net income (however denominated), or are franchise or branch profits Taxes.

Contingent Obligation: any obligation of a Person arising from a guaranty, indemnity or other assurance of payment or performance of any Debt, lease, dividend or other obligation ("primary obligations") of another obligor ("primary obligor") in any manner, whether directly or indirectly, including any obligation of such Person under any (a) guaranty, endorsement, co-making or sale with recourse of an obligation of a primary obligor; (b) obligation to make take-or-pay or similar payments regardless of nonperformance by any other party to an agreement; and (c) arrangement (i) to purchase any primary obligation or security therefor, (ii) to supply funds for the purchase or payment of any primary obligation, (iii) to maintain or assure working capital, equity capital, net worth or solvency of the primary obligor, (iv) to purchase Property or services for the purpose of assuring the ability of the primary obligor to perform a primary obligation, or (v) otherwise to assure or hold harmless the holder of any primary obligation against loss in respect thereof. The amount of any Contingent Obligation shall be deemed to be the stated or determinable amount of the primary obligation (or, if less, the maximum amount for which such Person may be liable under the instrument evidencing the Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto.

CWA: the Clean Water Act (33 U.S.C. §§ 1251 et seq.).

Debt: as applied to any Person, without duplication, (a) all items that would be included as liabilities on a balance sheet in accordance with GAAP, including Capital Leases, but excluding trade payables incurred and being paid in the Ordinary Course of Business; (b) all Contingent Obligations; (c) all reimbursement obligations in connection with letters of credit issued for the account of such Person;

and (d) in the case of Borrower, the Obligations. The Debt of a Person shall include any recourse Debt of such Person arising from any partnership in which such Person is a general partner or joint venturer but only to the extent of the liability of such Person.

Default: an event or condition that, with the lapse of time or giving of notice, would constitute an Event of Default.

Default Rate: for any Obligation (including, to the extent permitted by law, interest not paid when due) that are overdue, 2% plus the interest rate otherwise applicable thereto.

Defaulting Lender: any Lender that (a) has failed to comply with its funding obligations hereunder, and such failure is not cured within two Business Days; (b) has notified Agent or Borrower that such Lender does not intend to comply with its funding obligations hereunder or under any other credit facility, or has made a public statement to that effect; (c) has failed, within three Business Days following request by Agent or Borrower, to confirm in a manner satisfactory to Agent and Borrower that such Lender will comply with its funding obligations hereunder; or (d) has, or has a direct or indirect parent company that has, become the subject of an Insolvency Proceeding (including reorganization, liquidation, or appointment of a receiver, custodian, administrator or similar Person by the Federal Deposit Insurance Corporation or any other regulatory authority) or Bail-In Action; provided, however, that a Lender shall not be a Defaulting Lender solely by virtue of a Governmental Authority's ownership of an equity interest in such Lender or parent company unless the ownership provides immunity for such Lender from jurisdiction of courts within the United States or from enforcement of judgments or writs of attachment on its assets, or permits such Lender or Governmental Authority to repudiate or otherwise to reject such Lender's agreements.

Deposit Account Control Agreement: control agreement satisfactory to Agent executed by an institution maintaining a Deposit Account for an Obligor, to perfect Agent's Lien on such account.

Designated Jurisdiction: a country or territory that is the subject of a Sanction.

Dilution Percent: the percent, determined for Borrower's most recent Fiscal Quarter (without duplication of any Accounts which are deemed ineligible as a result of such dilutive items), equal to (a) bad debt write-downs or write-offs, discounts, returns, promotions, credits, credit memos and other dilutive items with respect to Accounts, divided by (b) gross sales.

Dilution Reserve: a reserve equal to 1.0% of Eligible Accounts for each percentage point (or portion thereof) that the Dilution Percent exceeds 5%.

Disqualified Company: any operating company which is a direct competitor of Borrower identified to Agent in writing prior to the Closing Date and set forth on **Schedule 1.1D,** and thereafter, upon the consent of the Agent (such consent not to be unreasonably withheld or delayed), such additional bona fide operating companies which are direct competitors of Borrower as may be identified to Agent from time to time and notified to Lenders. A Disqualified Company will include any known subsidiary or parent company thereof.

Distribution: any declaration or payment of a distribution, interest or dividend on any Equity Interest (other than payment-in-kind); distribution, advance or repayment of Debt to a holder of Equity Interests; or purchase, redemption, or other acquisition or retirement for value of any Equity Interest.

Dollars: lawful money of the United States.

Dominion Account: a special account established by Borrower at Bank of America or another bank acceptable to Agent, over which Agent has exclusive control for withdrawal purposes.

Dominion Trigger Period: the period (a) commencing on any day that (i) an Event of Default occurs, or (ii) Availability is less than 12.5% of the aggregate Revolver Commitments at any time; and (b) continuing until, during each of the preceding 30 consecutive days, no Event of Default has existed and Availability has been more than 12.5% of the aggregate Revolver Commitments; provided, that so long as no Default or Event of Default exists, Agent shall notify Borrower of the commencement of a Dominion Trigger Period and such Dominion Trigger Period shall be deemed not to have occurred if within 5 Business Days after receipt of such notice, Borrower notifies Agent in writing of its intent to repay the Revolver Loans and repays the Revolver Loans (other than as set forth in **Section 5.7)** in such amount as is necessary to cause Availability as of the date of such repayment to be greater than 12.5% of the aggregate Revolver Commitments.

EBITDA: determined on a consolidated basis for Borrower and Subsidiaries, net income, calculated before interest expense, provision for income taxes, depreciation and amortization expense, stock compensation expense, gains or losses arising from the sale of capital assets, gains arising from the write-up of assets, and any extraordinary gains or losses (in each case, to the extent included in determining net income).

EEA Financial Institution: (a) any credit institution or investment firm established in an EEA Member Country that is subject to the supervision of an EEA Resolution Authority; (b) any entity established in an EEA Member Country that is a parent of an institution described in clause (a) above; or (c) any financial institution established in an EEA Member Country that is a subsidiary of an institution described in the foregoing clauses and is subject to consolidated supervision with its parent.

EEA Member Country: any of the member states of the European Union, Iceland, Liechtenstein and Norway.

EEA Resolution Authority: any public administrative authority or any Person entrusted with public administrative authority of an EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

Eligible Account: an Account owing to Borrower that arises in the Ordinary Course of Business from the sale of goods, is payable in Dollars and is deemed by Agent, in its Permitted Discretion, to be an Eligible Account. Without limiting the foregoing, no Account shall be an Eligible Account if (a) it is unpaid (x) for more than 60 days after the original due date, or more than 90 days after the original invoice date for Accounts with 30 day terms and (y) for more than 60 days after the original due date, or more than 120 days after the original invoice date for Accounts with terms greater than 30 days; (b) 50% or more of the Accounts owing by the Account Debtor are not Eligible Accounts as a result of the application of the foregoing clause (a); (c) when aggregated with other Accounts owing by the Account Debtor and its Affiliates, it exceeds 15% of the aggregate Eligible Accounts; provided, that such percentage with respect to Accounts owed by Walmart and its Affiliates and Costco and its Affiliates shall be 65% (in each case, (x) or such other percentage as Agent may establish in its Permitted Discretion for an Account Debtor and its Affiliates from time to time and (y) to the extent the aggregate Accounts owing by any Account Debtor exceed such percentage, the excess shall be deemed eligible if such Accounts are subject to credit insurance as identified in **Schedule 1.1E** (as may be updated by Borrower form time to time) in form and substance and by an insurer satisfactory to Agent and so long as the aggregate amount of Eligible Accounts owed by such Account Debtor do not exceed the credit limit established by the credit insurance policy for such Account Debtor); (d) it does not conform with a covenant or representation herein; (e) without duplication of any amounts included in the Availability Reserve with respect thereto, it is owing by a creditor or supplier, or is otherwise subject to a potential offset, counterclaim, dispute, deduction, discount, recoupment, reserve, defense, chargeback, credit or allowance (but ineligibility shall be limited to the amount thereof); (f) an Insolvency Proceeding has been commenced by or against the Account Debtor; or the Account Debtor has failed, has suspended or ceased doing business, is liquidating, dissolving or winding up its affairs, is not Solvent, or is subject to any

Sanction or on any specially designated nationals list maintained by OFAC; or Borrower is not able to bring suit or enforce remedies against the Account Debtor through judicial process; (g) the Account Debtor is organized or has its principal offices or assets outside the United States or Canada, unless the Account is supported by a letter of credit (delivered to and directly drawable by Agent) or credit insurance satisfactory in all respects to Agent; (h) it is owing by a Governmental Authority, unless the Account Debtor is the United States or any department, agency or instrumentality thereof and the Account has been assigned to Agent in compliance with the federal Assignment of Claims Act; (i) it is not subject to a duly perfected, first priority Lien in favor of Agent, or is subject to any other Lien (other than the AmTRAN Lien); (j) the goods giving rise to it have not been delivered to the Account Debtor or it otherwise does not represent a final sale; (k) it is evidenced by Chattel Paper or an Instrument of any kind, or has been reduced to judgment; (l) its payment has been extended after the applicable invoice has been issued unless otherwise approved by Agent in its Permitted Discretion or the Account Debtor has made a partial payment; (m) it arises from a sale to an Affiliate, from a sale on a cash-on-delivery, bill-and-hold, sale-or-return, sale-on-approval, consignment, or other repurchase or return basis, or from a sale for personal, family or household purposes; (n) it represents a progress billing or retainage, or relates to services for which a performance, surety or completion bond or similar assurance has been issued; or (o) it includes a billing for interest, fees or late charges, but ineligibility shall be limited to the extent thereof. In calculating delinquent portions of Accounts under clauses (a) and (b), credit balances more than 90 days old will be excluded.

Eligible Assignee: (a) a Lender, Affiliate of a Lender or Approved Fund; (b) a financial institution approved by Borrower (which approval shall not be unreasonably withheld or delayed, and shall be deemed given if no objection is made within 5 Business Days after notice of the proposed assignment) and Agent, that is organized under the laws of the United States or any state or district thereof, has total assets in excess of $5 billion and extends asset-based lending facilities in its ordinary course of business; or (c) during the continuance of an Event of Default, any Person acceptable to Agent in its discretion; provided that in no event shall any Disqualified Company be an Eligible Assignee.

Eligible Securities: financial assets consisting of Cash and Cash Equivalents of Borrower that are held in a Securities Account bearing account number #8GM-02070 or a Securities Account bearing account number #8GM-02069, in either case, maintained by Merrill Lynch, Pierce, Fenner & Smith Incorporated in the name of Borrower and that are deemed by Agent, in its Permitted Discretion, to be Eligible Securities. Without limiting the foregoing, no such financial assets shall be an Eligible Security if (i) it is subject to a Lien other than Liens permitted pursuant to clause (a), (d) and/or (i) of Section 10.2.2 or (ii) it is not subject to a blocked account agreement reasonably satisfactory in form and substance to Agent.

Enforcement Action: any action to enforce any Obligations (other than Secured Bank Product Obligations) or Loan Documents or to exercise any rights or remedies relating to any Collateral, whether by judicial action, self-help, notification of Account Debtors, setoff or recoupment, credit bid, deed in lieu of foreclosure, action in an Insolvency Proceeding or otherwise.

Environmental Laws: Applicable Laws (including programs, permits and guidance promulgated by regulators) relating to public health (other than occupational safety and health regulated by OSHA) or the protection or pollution of the environment, including CERCLA, RCRA and CWA.

Environmental Notice: a notice (whether written or oral) from any Governmental Authority or other Person of any possible noncompliance with, investigation of a possible violation of, litigation relating to, or potential fine or liability under any Environmental Law, or with respect to any Environmental Release, environmental pollution or hazardous materials, including any complaint, summons, citation, order, claim, demand or request for correction, remediation or otherwise.

Environmental Release: a release as defined in CERCLA or under any other Environmental Law.

Equity Interest: the interest of any (a) shareholder in a corporation; (b) partner in a partnership (whether general, limited, limited liability or joint venture); (c) member in a limited liability company; or (d) other Person having any other form of equity security or ownership interest.

ERISA: the Employee Retirement Income Security Act of 1974.

ERISA Affiliate: any trade or business (whether or not incorporated) under common control with an Obligor within the meaning of Section 414(b) or (c) of the Code (and Sections 414(m) and (o) of the Code for purposes of provisions relating to Section 412 of the Code).

ERISA Event: (a) a Reportable Event with respect to a Pension Plan; (b) withdrawal of an Obligor or ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) complete or partial withdrawal of an Obligor or ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) filing of a notice of intent to terminate, treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA, or institution of proceedings by the PBGC to terminate a Pension Plan; (e) determination that a Pension Plan is considered an at-risk plan or a plan in critical or endangered status under the Code or ERISA; (f) an event or condition that constitutes grounds under Section 4042 of ERISA for termination of, or appointment of a trustee to administer, any Pension Plan; (g) imposition of any liability on an Obligor or ERISA Affiliate under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA; or (h) failure by an Obligor or ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or to make a required contribution to a Multiemployer Plan if the event described in (a) through (h), individually or with each other such event that has occurred, would have a Material Adverse Effect.

EU Bail-In Legislation Schedule: the EU Bail-In Legislation Schedule published by the Loan Market Association, as in effect from time to time.

Event of Default: as defined in **Section 11.**

Excluded Property: (a) any owned or leased real property which is located outside of the United States, (b) any Intellectual Property for which a perfected Lien thereon is not effected either by filing of a UCC financing statement or by appropriate evidence of such Lien being filed in either the United States Copyright Office or the United States Patent and Trademark Office, (c) unless requested by the Agent or the Required Lenders, any personal property (other than personal property described in clause (b) above) for which the attachment or perfection of a Lien thereon is not governed by the UCC, (d) the Equity Interests of any Foreign Subsidiary or Foreign Subsidiary Holding Company to the extent not required to be pledged to secure the Obligations, (e) Excluded Accounts and (f) the Citibank Collateral; provided, that the Citibank Collateral shall cease to be Excluded Property upon the full repayment of the Citibank Facility and termination of the Citibank Credit Agreement and Borrower shall promptly establish Agent's Lien and control with respect thereto, pursuant to documentation in form and substance satisfactory to Agent.

Excluded Swap Obligation: with respect to an Obligor, each Swap Obligation as to which, and only to the extent that, such Obligor's guaranty of or grant of a Lien as security for such Swap Obligation is or becomes illegal under the Commodity Exchange Act because the Obligor does not constitute an "eligible contract participant" as defined in the act (determined after giving effect to any keepwell, support or other agreement for the benefit of such Obligor and all guarantees of Swap Obligations by other Obligors) when such guaranty or grant of Lien becomes effective with respect to the Swap Obligation. If a Hedging Agreement governs more than one Swap Obligation, only the Swap Obligation(s) or portions thereof described in the foregoing sentence shall be Excluded Swap Obligation(s) for the applicable Obligor.

Excluded Taxes: means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes and branch profits Taxes (i) as a result of such Recipient being organized under the laws of, or having its principal office or applicable Lending Office located in, the jurisdiction imposing such Tax, or (ii) constituting Other Connection Taxes; (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of a Lender with respect to its interest in a Revolver Loan or Revolver Commitment pursuant to a law in effect when the Lender acquires such interest (except pursuant to an assignment request by Borrower under **Section 13.4)** or changes its Lending Office, unless the Taxes were payable to its assignor immediately prior to such assignment or to the Lender immediately prior to its change in Lending Office; (c) Taxes attributable to a Recipient's failure to comply with **Section 5.10;** and (d) Taxes imposed pursuant to FATCA.

Extraordinary Expenses: all reasonable and documented out-of-pocket costs, expenses or advances that Agent may incur during a Default or Event of Default, or during the pendency of an Insolvency Proceeding of an Obligor, including those relating to (a) any audit, inspection, repossession, storage, repair, appraisal, insurance, manufacture, preparation or advertising for sale, sale, collection, or other preservation of or realization upon any Collateral; (b) any action, arbitration or other proceeding (whether instituted by or against Agent, any Lender, any Obligor, any representative of creditors of an Obligor or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidability of Agent's Liens with respect to any Collateral), Loan Documents, Letters of Credit or Obligations, including any lender liability or other Claims; (c) the exercise of any rights or remedies of Agent in, or the monitoring of, any Insolvency Proceeding; (d) settlement or satisfaction of taxes, charges or Liens with respect to any Collateral; (e) any Enforcement Action; and (f) negotiation and documentation of any modification, waiver, workout, restructuring or forbearance with respect to any Loan Documents or Obligations. Such costs, expenses and advances include transfer fees, Other Taxes, storage fees, insurance costs, permit fees, utility reservation and standby fees, legal fees, appraisal fees, brokers' and auctioneers' fees and commissions, accountants' fees, environmental study fees, wages and salaries paid to employees of any Obligor or independent contractors in liquidating any Collateral, and travel expenses.

FATCA: Sections 1471 through 1474 of the Code (including any amended or successor version if substantively comparable and not materially more onerous to comply with), current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code and any intergovernmental agreements that implement or modify the foregoing (together with the portions of any law implementing such governmental agreements).

Federal Funds Rate: (a) the weighted average of interest rates on overnight federal funds transactions with members of the Federal Reserve System on the applicable day (or the preceding Business Day, if the applicable day is not a Business Day), as published by the Federal Reserve Bank of New York on the next Business Day; or (b) if no such rate is published on the next Business Day, the average rate (rounded up to the nearest 1/8 of 1%) charged to Bank of America on the applicable day on such transactions, as determined by Agent; provided, that in no event shall such rate be less than zero.

Financial Covenant Trigger Period: the period (a) commencing on any day that (i) an Event of Default occurs, or (ii) Availability is less than 10% of the aggregate Revolver Commitments at any time; and (b) continuing until, during each of the preceding 30 consecutive days, no Event of Default has existed and Availability has been more than 10% of the aggregate Revolver Commitments.

Fiscal Quarter: each period of three months, commencing on the first day of a Fiscal Year.

Fiscal Year: the fiscal year of Borrower and Subsidiaries for accounting and tax purposes, ending on December 31 of each year.

Fixed Charge Coverage Ratio: the ratio, determined on a consolidated basis for Borrower and Subsidiaries for the most recent 12 months, of (a) EBITDA minus Capital Expenditures (except those financed with Borrowed Money other than Revolver Loans) and cash taxes paid, to (b) Fixed Charges.

Fixed Charges: the sum of interest expense (other than payment-in-kind), principal payments made on Borrowed Money and Capital Leases, and Distributions made (other than Distributions made prior to the Closing Date and Distributions made by Borrower on or about the Closing Date pursuant to the Flow of Funds Agreement for the consummation of the AmTRAN Stock Repurchase.

FLSA: the Fair Labor Standards Act of 1938.

Foreign Lender: any Lender that is not a U.S. Person.

Foreign Plan: any employee benefit plan or arrangement (a) maintained or contributed to by any Obligor or Subsidiary that is subject to the laws of a jurisdiction outside the United States; or (b) mandated by a government other than the United States for employees of any Obligor or Subsidiary.

Foreign Subsidiary: a direct or indirect Subsidiary that is a "controlled foreign corporation" under Section 957 of the Code, such that a guaranty by such Subsidiary of the Obligations or a Lien on the assets of such Subsidiary to secure the Obligations would reasonably likely to result in material tax liability to the Borrower, as determined in the good faith discretion of the Borrower.

Foreign Subsidiary Holding Company: a U.S. direct or indirect Subsidiary that (a) is a disregarded entity for U.S. federal income Tax purposes and (b) substantially all of the assets of which are Equity Interests or indebtedness of one or more Foreign Subsidiaries.

Fronting Exposure: a Defaulting Lender's interest in LC Obligations, Swingline Loans and Protective Advances, except to the extent Cash Collateralized by the Defaulting Lender or allocated to other Lenders hereunder.

Full Payment: with respect to any Obligations, (a) the full and indefeasible cash payment thereof, including any interest, fees and other charges accruing during an Insolvency Proceeding (whether or not allowed in the proceeding); and (b) if such Obligations are LC Obligations or inchoate or contingent in nature, Cash Collateralization thereof (or delivery of a standby letter of credit acceptable to Agent in its discretion, in the amount of required Cash Collateral). No Revolver Loans shall be deemed to have been paid in full unless all Revolver Commitments related to such Revolver Loans have expired or have been terminated.

GAAP: generally accepted accounting principles in effect in the United States from time to time.

Governmental Approvals: all authorizations, consents, approvals, licenses and exemptions of, registrations and filings with, and required reports to, all Governmental Authorities.

Governmental Authority: any federal, state, local, foreign or other agency, authority, body, commission, court, instrumentality, political subdivision, central bank, or other entity or officer exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions for any governmental, judicial, investigative, regulatory or self-regulatory authority (including the Financial Conduct Authority, the Prudential Regulation Authority and any supra-national bodies such as the European Union or European Central Bank).

Guarantors: each Person that guarantees payment or performance of Obligations.

Guaranty: each guaranty agreement executed by a Guarantor in favor of Agent, including, without limitation, that certain Guaranty Agreement, dated as of even date herewith, by Guarantors party thereto in favor of Agent.

Hedging Agreement: a "swap agreement" as defined in Bankruptcy Code Section 101(53B)(A).

Increased A/P Reporting Period: any of the following periods (i) September 1 through December 31 of each year, or (ii) any period during which Borrowing Base Reports are delivered on a weekly basis.

Indemnified Taxes: (a) Taxes, other than Excluded Taxes, imposed on or relating to any payment of an Obligation; and (b) to the extent not otherwise described in clause (a), Other Taxes.

Indemnitees: Agent Indemnitees, Lender Indemnitees, Issuing Bank Indemnitees and Bank of America Indemnitees.

Insolvency Proceeding: any case or proceeding commenced by or against a Person under any state, federal or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the Bankruptcy Code, or any other insolvency, debtor relief or debt adjustment law; (b) the appointment of a receiver, trustee, liquidator, administrator, conservator or other custodian for such Person or any part of its Property; or (c) an assignment or trust mortgage for the benefit of creditors.

Intellectual Property: all intellectual and similar Property of a Person, including inventions, designs, patents, copyrights, trademarks, service marks, trade names, trade secrets, confidential or proprietary information, customer lists, know-how, software and databases; all embodiments or fixations thereof and all related documentation, applications, registrations and franchises; all licenses or other rights to use any of the foregoing; and all books and records relating to the foregoing.

Intellectual Property Claim: any claim or assertion (whether in writing, by suit or otherwise) that Borrower's or Subsidiary's ownership, use, marketing, sale or distribution of any Inventory, Equipment, Intellectual Property or other Property violates another Person's Intellectual Property.

Interest Period: as defined in **Section 3.1.3.**

Inventory: as defined in the UCC, including all goods intended for sale, lease, display or demonstration; all work in process; and all raw materials, and other materials and supplies of any kind that are or could be used in connection with the manufacture, printing, packing, shipping, advertising, sale, lease or furnishing of such goods, or otherwise used or consumed in Borrower's business (but excluding Equipment).

Investment: an Acquisition, an acquisition of record or beneficial ownership of any Equity Interests of a Person, or an advance or capital contribution to or other investment in a Person.

IRS: the United States Internal Revenue Service.

Issuing Bank: Bank of America (including any Lending Office of Bank of America), or any replacement issuer appointed pursuant to **Section 2.3.4.**

Issuing Bank Indemnitees: Issuing Bank and its officers, directors, employees, Affiliates, agents and attorneys.

LC Application: an application by Borrower to Issuing Bank for issuance of a Letter of Credit, in form and substance satisfactory to Issuing Bank and Agent.

LC Conditions: upon giving effect to issuance of a Letter of Credit, (a) the conditions in **Section 6** are satisfied; (b) total LC Obligations do not exceed the Letter of Credit Subline and Revolver Usage does not exceed the Borrowing Base; (c) the Letter of Credit and payments thereunder are denominated in Dollars or other currency satisfactory to Agent and Issuing Bank; and (d) the purpose and form of the Letter of Credit are satisfactory to Agent and Issuing Bank in their discretion.

LC Documents: all documents, instruments and agreements (including LC Requests and LC Applications) delivered by Borrower or any other Person to Issuing Bank or Agent in connection with any Letter of Credit.

LC Obligations: the sum (without duplication) of (a) all amounts owing by Borrower for drawings under Letters of Credit; and (b) the Stated Amount of all outstanding Letters of Credit.

LC Request: a request for issuance of a Letter of Credit, to be provided by Borrower to Issuing Bank, in form satisfactory to Agent and Issuing Bank.

Lender Indemnitees: Lenders and Secured Bank Product Providers, and their officers, directors, employees, Affiliates, agents and attorneys.

Lenders: lenders party to this Agreement (including Agent in its capacity as provider of Swingline Loans) and any Person who hereafter becomes a "Lender" pursuant to an Assignment, including any Lending Office of the foregoing.

Lending Office: the office (including any domestic or foreign Affiliate or branch) designated as such by a Lender or Issuing Bank by notice to Agent and Borrower.

Letter of Credit: any standby or documentary letter of credit, foreign guaranty, documentary bankers acceptance, indemnity, reimbursement agreement or similar instrument issued by Issuing Bank for the account or benefit of Borrower or Affiliate of Borrower.

Letter of Credit Subline: $20,000,000.

LIBOR: the per annum rate of interest (rounded up to the nearest 1/8th of 1%) determined by Agent at or about 11:00 a.m. (London time) two Business Days prior to an interest period, for a term equivalent to such period, equal to the London Interbank Offered Rate, or comparable or successor rate approved by Agent, as published on the applicable Reuters screen page (or other commercially available source designated by Agent from time to time); provided, that any comparable or successor rate shall be applied by Agent, if administratively feasible, in a manner consistent with market practice; provided further, that in no event shall LIBOR be less than zero.

LIBOR Loan: each set of LIBOR Revolver Loans having a common length and commencement of Interest Period.

LIBOR Revolver Loan: a Revolver Loan that bears interest based on LIBOR.

License: any license or agreement under which an Obligor is authorized to use Intellectual Property in connection with any manufacture, marketing, distribution or disposition of Collateral, any use of Property or any other conduct of its business.

Licensor: any Person from whom an Obligor obtains the right to use any Intellectual Property.

Lien: a Person's interest in Property securing an obligation owed to, or a claim by, such Person, including any lien, security interest, pledge, hypothecation, assignment, trust, reservation, encroachment, easement, right-of-way, covenant, condition, restriction, lease, or other title exception or encumbrance.

Lien Waiver: an agreement, in form and substance reasonably satisfactory to Agent, by which (a) for any material Collateral located on leased premises, the lessor waives or subordinates any Lien it may have on the Collateral, and agrees to permit Agent to enter upon the premises and remove the Collateral or to use the premises to store or dispose of the Collateral; (b) for any Collateral held by a warehouseman, processor, shipper, customs broker or freight forwarder, such Person waives or subordinates any Lien it may have on the Collateral, agrees to hold any Documents in its possession relating to the Collateral as agent for Agent, and agrees to deliver the Collateral to Agent upon request; (c) for any Collateral held by a repairman, mechanic or bailee, such Person acknowledges Agent's Lien, waives or subordinates any Lien it may have on the Collateral, and agrees to deliver the Collateral to Agent upon request; and (d) for any Collateral subject to a Licensor's Intellectual Property rights, the Licensor grants to Agent the right, vis-à-vis such Licensor, to enforce Agent's Liens with respect to the Collateral, including the right to dispose of it with the benefit of the Intellectual Property, whether or not a default exists under any applicable License.

Loan Documents: this Agreement, Other Agreements and Security Documents.

Loan Year: each 12 month period commencing on the Closing Date or an anniversary thereof.

Margin Stock: as defined in Regulation U of the Board of Governors.

Material Adverse Effect: the effect of any event or circumstance that, taken alone or in conjunction with other events or circumstances, (a) has or could be reasonably expected to have a material adverse effect on the business, operations, Properties or condition (financial or otherwise) of any Obligor, on the value of any material Collateral, on the enforceability of any Loan Documents, or on the validity or priority of Agent's Liens on any Collateral; (b) impairs the ability of an Obligor to perform its obligations under the Loan Documents, including repayment of any Obligations; or (c) otherwise impairs the ability of Agent or any Lender to enforce or collect any Obligations or to realize upon any Collateral.

Material Contract: any agreement or arrangement to which Borrower or Subsidiary is party (other than the Loan Documents) (a) that is deemed to be a material contract under any securities law applicable to such Person, including the Securities Act of 1933; (b) for which breach, termination, nonperformance or failure to renew could reasonably be expected to have a Material Adverse Effect; or (c) that relates to Debt in an aggregate amount of $10,000,000 or more.

Moody's: Moody's Investors Service, Inc. or any successor acceptable to Agent.

Multiemployer Plan: any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which an Obligor or ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

Multiple Employer Plan: a Plan that has two or more contributing sponsors, including an Obligor or ERISA Affiliate, at least two of whom are not under common control, as described in Section 4064 of ERISA.

Net Proceeds: with respect to an Asset Disposition, proceeds (including, when received, any deferred or escrowed payments) received by Borrower or Subsidiary in cash from such disposition, net of (a) reasonable and customary costs and expenses actually incurred in connection therewith, including legal fees and sales commissions; (b) amounts applied to repayment of Debt secured by a Permitted Lien senior to Agent's Liens on Collateral sold; (c) transfer or similar taxes; and (d) reserves for indemnities, until such reserves are no longer needed.

Notice of Borrowing: a request by Borrower for a Borrowing of Revolver Loans, in form reasonably satisfactory to Agent.

Notice of Conversion/Continuation: a request by Borrower for conversion or continuation of a Revolver Loan as a LIBOR Loan, in form satisfactory to Agent.

Obligations: all (a) principal of and premium, if any, on the Revolver Loans, (b) LC Obligations and other obligations of Obligors with respect to Letters of Credit, (c) interest, expenses, fees, indemnification obligations, Extraordinary Expenses and other amounts payable by Obligors under Loan Documents, (d) Secured Bank Product Obligations, and (e) other Debts, obligations and liabilities of any kind owing by Obligors pursuant to the Loan Documents, whether now existing or hereafter arising, whether evidenced by a note or other writing, whether allowed in any Insolvency Proceeding, whether arising from an extension of credit, issuance of a letter of credit, acceptance, loan, guaranty, indemnification or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint or several; provided, that Obligations of an Obligor shall not include its Excluded Swap Obligations.

Obligor: Borrower, Guarantor or other Person that is liable for payment of any Obligations or that has granted a Lien on its assets in favor of Agent to secure any Obligations.

OFAC: Office of Foreign Assets Control of the U.S. Treasury Department.

Ordinary Course of Business: the ordinary course of business of Borrower or Subsidiary, undertaken in good faith and consistent with Applicable Law and past practices.

Organic Documents: with respect to any Person, its charter, certificate or articles of incorporation, bylaws, articles of organization, limited liability agreement, operating agreement, members agreement, shareholders agreement, partnership agreement, certificate of partnership, certificate of formation, voting trust agreement, or similar agreement or instrument governing the formation or operation of such Person.

OSHA: the Occupational Safety and Hazard Act of 1970.

Other Agreement: each LC Document, AmTRAN Flow of Funds Agreement, fee letter, Lien Waiver, Borrowing Base Report, Compliance Certificate, Borrower Materials, or other note, document, instrument or agreement (other than this Agreement or a Security Document) now or hereafter delivered by an Obligor or other Person to Agent or a Lender in connection with any transactions relating hereto.

Other Connection Taxes: Taxes imposed on a Recipient due to a present or former connection between it and the taxing jurisdiction (other than connections arising from the Recipient having executed, delivered, become party to, performed obligations or received payments under, received or perfected a Lien or engaged in any other transaction pursuant to, enforced, or sold or assigned an interest in, any Loan or Loan Document).

Other Taxes: all present or future stamp, court, documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a Lien under, or otherwise with respect to, any Loan Document, except Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 13.4(c)**).

Overadvance: as defined in **Section 2.1.5.**

Participant: as defined in **Section 13.2.**

Patriot Act: the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

Payment Item: each check, draft or other item of payment payable to Borrower, including those constituting proceeds of any Collateral.

Payment Test: the satisfaction of each of the following: (i) no Default or Event of Default exists immediately before and after giving effect to the applicable prepayment, Distribution (other than with respect to the AmTRAN Stock Purchase) or Investment, (ii) upon giving pro forma effect to the applicable prepayment, Distribution (other than with respect to the AmTRAN Stock Purchase) or Investment, Availability is at least 20% of the Revolver Commitments for each of the preceding 30 days and as of the date of the applicable prepayment, Distribution (other than with respect to the AmTRAN Stock Purchase) or Investment, (iii) immediately after giving pro forma effect to the consummation of the applicable prepayment, Distribution (other than with respect to the AmTRAN Stock Purchase) or Investment, Fixed Charge Coverage Ratio shall be greater than 1.10:1.00 (whether or not a Financial Covenant Trigger Period exists) and (iv) solely with respect to Distributions (other than with respect to the AmTRAN Stock Purchase) immediately after giving effect to the consummation of the applicable Distribution, Borrower shall have a net worth (as determined by GAAP) of greater than $0.

PBGC: the Pension Benefit Guaranty Corporation.

Pension Funding Rules: Code and ERISA rules regarding minimum required contributions (including installment payments) to Pension Plans set forth in, for plan years ending prior to the Pension Protection Act of 2006 effective date, Section 412 of the Code and Section 302 of ERISA, both as in effect prior to such act, and thereafter, Sections 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

Pension Plan: any employee pension benefit plan (as defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by any Obligor or ERISA Affiliate or to which the Obligor or ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the preceding five plan years.

Permitted Acquisition: any Acquisition as long as (a) the Payment Test is satisfied; (b) the Acquisition is consensual; (c) the assets, business or Person being acquired is useful or engaged in the business of Borrower and Subsidiaries and is located or organized within the United States; (d) no Debt or Liens are assumed or incurred, except as permitted by **Sections 10.2.1(f)**, **10.2.1(i)** and **10.2.2(j)**; and (e) Borrower delivers to Agent, at least 10 Business Days prior to the Acquisition (or such shorter period of time as may be agreed to by Agent in its sole discretion), copies of all material agreements relating thereto and a certificate, in form and substance satisfactory to Agent, stating that the Acquisition is a "Permitted Acquisition" and demonstrating compliance with the foregoing requirements.

Permitted Asset Disposition: as long as no Default or Event of Default exists and all Net Proceeds are remitted to Agent, an Asset Disposition that is (a) a sale of Inventory in the Ordinary Course of Business; (b) a disposition of Inventory that is obsolete, unmerchantable or otherwise unsalable in the Ordinary Course of Business; (c) termination of a lease of real or personal Property that is not necessary for the Ordinary Course of Business, could not reasonably be expected to have a Material Adverse Effect and does not result from an Obligor's default; or (d) approved in writing by Agent and Required Lenders.

Permitted Contingent Obligations: Contingent Obligations (a) arising from endorsements of Payment Items for collection or deposit in the Ordinary Course of Business; (b) arising from Hedging Agreements permitted hereunder; (c) existing on the Closing Date, and any extension or renewal thereof that does not increase the amount of such Contingent Obligation when extended or renewed; (d) incurred in the Ordinary Course of Business with respect to surety, appeal or performance bonds, or other similar obligations; (e) arising from customary indemnification obligations in favor of purchasers in connection with dispositions of Equipment permitted hereunder; (f) arising under the Loan Documents; or (g) in an aggregate amount of 10,000,000 or less at any time.

Permitted Discretion: a determination made in the exercise, in good faith, of reasonable business judgment (from the perspective of a secured, asset-based lender).

Permitted Lien: as defined in **Section 10.2.2.**

Permitted Purchase Money Debt: Purchase Money Debt of Borrower and Subsidiaries that is unsecured or secured only by a Purchase Money Lien, as long as the aggregate amount does not exceed $10,000,000 at any time outstanding.

Person: any individual, corporation, limited liability company, partnership, joint venture, association, trust, unincorporated organization, Governmental Authority or other entity.

Plan: an employee benefit plan (as defined in Section 3(3) of ERISA) maintained for employees of an Obligor or ERISA Affiliate, or to which an Obligor or ERISA Affiliate is required to contribute on behalf of its employees.

Platform: as defined in **Section 14.3.3.**

Pledge Agreement: Pledge Agreement, dated as even date herewith, among Borrower, Vizio Investments, L.L.C., a Delaware limited liability company, and Agent, as the same may be amended, restated, amended and restated, supplemented or otherwise modified in accordance with the terms thereof.

Prime Rate: the rate of interest announced by Bank of America from time to time as its prime rate. Such rate is set by Bank of America on the basis of various factors, including its costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above or below such rate. Any change in such rate publicly announced by Bank of America shall take effect at the opening of business on the day specified in the announcement.

Pro Rata: with respect to any Lender, a percentage (rounded to the ninth decimal place) determined (a) by dividing the amount of such Lender's Revolver Commitment by the aggregate outstanding Revolver Commitments; or (b) following termination of the Revolver Commitments, by dividing the amount of such Lender's Revolver Loans and LC Obligations by the aggregate outstanding Revolver Loans and LC Obligations or, if all Revolver Loans and LC Obligations have been paid in full and/or Cash Collateralized, by dividing such Lender's and its Affiliates' remaining Obligations by the aggregate remaining Obligations.

Properly Contested: with respect to any obligation of an Obligor, (a) the obligation is subject to a bona fide dispute regarding amount or the Obligor's liability to pay; (b) the obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (c) appropriate reserves have been established in accordance with GAAP; (d) non-payment could not have a Material Adverse Effect, nor result in forfeiture or sale of any assets of the Obligor; (e) no Lien is imposed on assets of the Obligor, unless bonded and stayed to the satisfaction of Agent; and (f) if the obligation results from entry of a judgment or other order, such judgment or order is stayed pending appeal or other judicial review.

Property: any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

Protective Advances: as defined in **Section 2.1.6.**

Purchase Money Debt: (a) Debt (other than the Obligations) for payment of any of the purchase price of fixed assets; (b) Debt (other than the Obligations) incurred within 10 days before or after acquisition of any fixed assets, for the purpose of financing any of the purchase price thereof; and (c) any renewals, extensions or refinancings (but not increases) thereof.

Purchase Money Lien: a Lien that secures Purchase Money Debt, encumbering only the fixed assets acquired with such Debt and constituting a Capital Lease or a purchase money security interest under the UCC.

Qualified ECP: an Obligor with total assets exceeding $10,000,000, or that constitutes an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" under Section 1a(18)(A)(v)(II) of such act.

RCRA: the Resource Conservation and Recovery Act (42 U.S.C. §§ 6991-6991i).

Real Estate: all right, title and interest (whether as owner, lessor or lessee) in any real Property or any buildings, structures, parking areas or other improvements thereon.

Recipient: Agent, Issuing Bank, any Lender or any other recipient of a payment to be made by an Obligor under a Loan Document or on account of an Obligation.

Refinancing Conditions: (a) the Refinancing Debt is in an aggregate principal amount that does not exceed the principal amount of the Debt being extended, renewed or refinanced; (b) it has a final maturity no sooner than, a weighted average life no less than, and an interest rate no greater than, the Debt being extended, renewed or refinanced; (c) it is subordinated to the Obligations at least to the same extent as the Debt being extended, renewed or refinanced; (d) the representations, covenants and defaults applicable to it are no less favorable to Borrower than those applicable to the Debt being extended, renewed or refinanced; (e) no additional Lien is granted to secure it; (f) no additional Person is obligated on such Debt; and (g) upon giving effect to it, no Default or Event of Default exists.

Refinancing Debt: Borrowed Money that is the result of an extension, renewal or refinancing of Debt permitted under **Section 10.2.1(b)**, **(d), (f)** or **(i)**.

Reimbursement Date: as defined in **Section 2.3.2.**

Rent and Charges Reserve: the aggregate of (a) all past due rent and other amounts owing by an Obligor to the landlord with respect to Borrower's headquarters location; and (b) a reserve at least equal to three months rent and other charges that could be payable to such Person, unless it has executed a Lien Waiver.

Report: as defined in **Section 12.2.3.**

Reportable Event: any event set forth in Section 4043(c) of ERISA, other than an event for which the 30 day notice period has been waived.

Required Lenders: two or more unaffiliated Secured Parties holding more than 50% of (a) the aggregate outstanding Revolver Commitments; or (b) after termination of the Revolver Commitments, the aggregate outstanding Revolver Loans and LC Obligations or, upon Full Payment of all Revolver Loans and LC Obligations, the aggregate remaining Obligations; provided, however, that Revolver Commitments, Revolver Loans and other Obligations held by a Defaulting Lender and its Affiliates shall be disregarded in making such calculation, but any related Fronting Exposure shall be deemed held as a Revolver Loan or LC Obligation by the Lender that funded the applicable Revolver Loan or issued the applicable Letter of Credit.

Restricted Investment: any Investment by Borrower or Subsidiary, other than (a) Investments in Subsidiaries to the extent existing on the Closing Date; (b) Cash and Cash Equivalents that are subject to Agent's Lien and control, pursuant to documentation in form and substance satisfactory to Agent (other than the Citibank Collateral so long as no additional Investments are made in the Citibank Collateral other than as required under the Citibank Credit Agreement to maintain a minimum collateral value); (c) loans and advances permitted under **Sections 10.2.1 and 10.2.7;** (d) to the extent deemed an Investment, the AmTRAN Stock Repurchase subject to the Flow of Funds Agreement; (e) Permitted Acquisitions; and (f) any other Investments made from and after the Closing Date, when taken together with loans of the type described in clause (d)(iii) of **Section 10.2.7,** valued at less than $10,000,000 in the aggregate at any time and at the time such Investment is made the Payment Test is satisfied; and.

Restrictive Agreement: an agreement (other than a Loan Document) that conditions or restricts the right of Borrower, Subsidiary or other Obligor to incur or repay Borrowed Money, to grant Liens on any assets, to declare or make Distributions, to modify, extend or renew any agreement evidencing Borrowed Money, or to repay any intercompany Debt.

Revolver Commitment: for any Lender, its obligation to make Revolver Loans and to participate in LC Obligations up to the maximum principal amount shown on **Schedule 1.1,** as hereafter modified pursuant to Section 2.1.7 or an Assignment to which it is a party. "Revolver Commitments" means the aggregate amount of such commitments of all Lenders.

Revolver Loan: any loan made pursuant to **Section 2.1** or as a Swingline Loan.

Revolver Termination Date: April 13, 2021.

Revolver Usage: (a) the aggregate amount of outstanding Revolver Loans; plus (b) the aggregate Stated Amount of outstanding Letters of Credit, except to the extent Cash Collateralized by Borrower.

S&P: Standard & Poor's Financial Services LLC, a subsidiary of The McGraw-Hill Companies, Inc., or any successor acceptable to Agent.

Sanction: any sanction administered or enforced by the U.S. Government (including OFAC), United Nations Security Council, European Union, Her Majesty's Treasury or other sanctions authority.

Secured Bank Product Obligations: Debt, obligations and other liabilities with respect to Bank Products owing by Borrower or Affiliate of Borrower to a Secured Bank Product Provider; provided, that Secured Bank Product Obligations of an Obligor shall not include its Excluded Swap Obligations.

Secured Bank Product Provider: (a) Bank of America or any of its Affiliates; and (b) any other Lender or Affiliate of a Lender that is providing a Bank Product, provided such provider delivers written notice to Agent, in form and substance satisfactory to Agent, within 10 days following the later of the Closing Date or creation of the Bank Product, (i) describing the Bank Product and setting forth the maximum amount to be secured by the Collateral and the methodology to be used in calculating such amount, and (ii) agreeing to be bound by **Section 12.13.**

Secured Parties: Agent, Issuing Bank, Lenders and Secured Bank Product Providers.

Securities Formula Amount: 72% of the Value of Eligible Securities; provided, that in the event of a change in the types of assets constituting Eligible Securities from those types of assets constituting Eligible Securities on the Closing Date, such percentage may be adjusted by Agent in its Permitted Discretion to reflect the appropriate advance rate as required by Applicable Law with which Agent is required to comply.

Security Agreement: Security Agreement, dated as of even date herewith, among Borrower, certain of its Subsidiaries party thereto and Agent, as the same may be amended, restated, amended and restated, supplemented or otherwise modified in accordance with the terms thereof.

Security Documents: the Security Agreement, the Pledge Agreement, the Guaranties, the Deposit Account Control Agreements, securities accounts control agreements and all other documents, instruments and agreements now or hereafter securing (or given with the intent to secure) any Obligations.

Senior Officer: the chairman of the board, president, chief executive officer or chief financial officer of Borrower or, if the context requires, an Obligor.

Settlement Report: a report summarizing Revolver Loans and participations in LC Obligations outstanding as of a given settlement date, allocated to Lenders on a Pro Rata basis in accordance with their Revolver Commitments.

Solvent: as to any Person, such Person (a) owns Property whose fair salable value is greater than the amount required to pay all of its debts (including contingent, subordinated, unmatured and unliquidated liabilities); (b) owns Property whose present fair salable value (as defined below) is greater than the probable total liabilities (including contingent, subordinated, unmatured and unliquidated liabilities) of such Person as they become absolute and matured; (c) is able to pay all of its debts as they mature; (d) has capital that is not unreasonably small for its business and is sufficient to carry on its business and transactions and all business and transactions in which it is about to engage; (e) is not "insolvent" within the meaning of Section 101(32) of the Bankruptcy Code; and (f) has not incurred (by way of assumption or otherwise) any obligations or liabilities (contingent or otherwise) under any Loan Documents, or made any conveyance in connection therewith, with actual intent to hinder, delay or defraud either present or future creditors of such Person or any of its Affiliates. "Fair salable value" means the amount that could be obtained for assets within a reasonable time, either through collection or through sale under ordinary selling conditions by a capable and diligent seller to an interested buyer who is willing (but under no compulsion) to purchase.

Specified Obligor: an Obligor that is not then an "eligible contract participant" under the Commodity Exchange Act.

Stated Amount: the outstanding amount of a Letter of Credit, including any automatic increase or tolerance (whether or not then in effect) provided by the Letter of Credit or related LC Documents.

Subordinated Debt: Debt incurred by Borrower that is expressly subordinate and junior in right of payment to Full Payment of all Obligations, and is on terms (including maturity, interest, fees, repayment, covenants and subordination) satisfactory to Agent.

Subsidiary: any entity at least a majority of whose voting securities or Equity Interests is owned by Borrower (including indirect ownership through other entities in which Borrower directly or indirectly owns a majority of the voting securities or Equity Interests).

Suppressed Availability: the amount by which the amount determined under clause (b) of the definition of Borrowing Base (excluding any amounts calculated under clause (e) of the definition of Availability Reserve) exceeds the aggregate Revolver Commitments.

Swap Obligations: with respect to an Obligor, its obligations under a Hedging Agreement that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

Swingline Loan: any Borrowing of Base Rate Revolver Loans funded with Agent's funds, until such Borrowing is settled among Lenders or repaid by Borrower.

Taxes: all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

Transferee: any actual or potential Eligible Assignee, Participant or other Person acquiring an interest in any Obligations.

UCC: the Uniform Commercial Code as in effect in the State of California or, when the laws of any other jurisdiction govern the perfection or enforcement of any Lien, the Uniform Commercial Code of such jurisdiction.

Unfunded Pension Liability: the excess of a Pension Plan's benefit liabilities under Section 4001(a)(16) of ERISA, over the current value of that Pension Plan's assets, determined in accordance with the assumptions used for funding the Pension Plan pursuant to the Code, ERISA or the Pension Protection Act of 2006 for the applicable plan year.

Unused Line Fee Rate: a per annum rate equal to (a) from the Closing Date until July 31, 2016, 0.20%; and (b) thereafter (i) 0.375%, if average daily Revolver Usage was 33.3% or less of the Revolver Commitments during the preceding calendar month, or (ii) 0.25%, if average daily Revolver Usage was more than 33.3% of the Revolver Commitments during such month.

Upstream Payment: a Distribution by a Subsidiary of Borrower to Borrower.

U.S. Person: "United States Person" as defined in Section 7701(a)(30) of the Code.

U.S. Tax Compliance Certificate: as defined in **Section 5.10.2(b)(iii)**.

Value: (a) for an Account, its face amount, net of any returns, rebates, discounts (calculated on the shortest terms), credits, allowances or Taxes (including sales, excise or other taxes) that have been or could be claimed by the Account Debtor or any other Person, and (b) for an Eligible Security, the market value as determined by Agent in its sole discretion.

Write-Down and Conversion Powers: the write-down and conversion powers of the applicable EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which powers are described in the EU Bail-In Legislation Schedule.

1.2. Accounting Terms. Under the Loan Documents (except as otherwise specified therein), all accounting terms shall be interpreted, all accounting determinations shall be made, and all financial statements shall be prepared, in accordance with GAAP applied on a basis consistent with the most recent audited financial statements of Borrower delivered to Agent before the Closing Date and using the same inventory valuation method as used in such financial statements, except for any change required or permitted by GAAP if Borrower's certified public accountants concur in such change, the change is disclosed to Agent, and all relevant provisions of the Loan Documents are amended in a manner satisfactory to Required Lenders to take into account the effects of the change.

1.3. Uniform Commercial Code. As used herein, the following terms are defined in accordance with the UCC in effect in the State of California from time to time: "Account," "Account Debtor," "Chattel Paper," "Commercial Tort Claim," "Deposit Account," "Document," "Equipment," "General Intangibles," "Goods," "Instrument," "Investment Property," "Letter-of-Credit Right," "Securities Account" and "Supporting Obligation."

1.4. Certain Matters of Construction. The terms "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. In the computation of periods of

time from a specified date to a later specified date, "from" means "from and including," and "to" and "until" each mean "to but excluding." The terms "including" and "include" shall mean "including, without limitation" and, for purposes of each Loan Document, the parties agree that the rule of *ejusdem generis* shall not be applicable to limit any provision. Section titles appear as a matter of convenience only and shall not affect the interpretation of any Loan Document. All references to (a) laws include all related regulations, interpretations, supplements, amendments and successor provisions; (b) any document, instrument or agreement include any amendments, waivers and other modifications, extensions or renewals (to the extent permitted by the Loan Documents); (c) any section mean, unless the context otherwise requires, a section of this Agreement; (d) any exhibits or schedules mean, unless the context otherwise requires, exhibits and schedules attached hereto, which are hereby incorporated by reference; (e) any Person include successors and assigns; (f) time of day mean time of day at Agent's notice address under **Section 14.3.1**; or (g) discretion of Agent, Issuing Bank or any Lender mean the sole and absolute discretion of such Person exercised at any time. All determinations (including calculations of Borrowing Base and financial covenants) made from time to time under the Loan Documents shall be made in light of the circumstances existing at such time. Borrowing Base calculations shall be consistent with historical methods of valuation and calculation, and otherwise satisfactory to Agent in its Permitted Discretion (and not necessarily calculated in accordance with GAAP). Borrower shall have the burden of establishing any alleged negligence, misconduct or lack of good faith by Agent, Issuing Bank or any Lender under any Loan Documents. No provision of any Loan Documents shall be construed against any party by reason of such party having, or being deemed to have, drafted the provision. Reference to Borrower's "knowledge" or similar concept means actual knowledge of a Senior Officer, or knowledge that a Senior Officer would have obtained if he or she had engaged in good faith and diligent performance of his or her duties, including reasonably specific inquiries of employees or agents and a good faith attempt to ascertain the matter.

SECTION 2. CREDIT FACILITIES

2.1. Revolver Commitment.

2.1.1. Revolver Loans. Each Lender agrees, severally on a Pro Rata basis up to its Revolver Commitment, on the terms set forth herein, to make Revolver Loans to Borrower from time to time through the Commitment Termination Date. The Revolver Loans may be repaid and reborrowed as provided herein. In no event shall Lenders have any obligation to honor a request for a Revolver Loan if Revolver Usage at such time plus the requested Revolver Loan would exceed the Borrowing Base.

2.1.2. Notes. Revolver Loans and interest accruing thereon shall be evidenced by the records of Agent and the applicable Lender. At the request of a Lender, Borrower shall deliver promissory note(s) to such Lender, evidencing its Revolver Loans.

2.1.3. Use of Proceeds. The proceeds of Revolver Loans shall be used by Borrower solely (a) to pay fees and transaction expenses associated with the closing of this credit facility; (b) to pay Obligations in accordance with this Agreement; (c) to pay a portion of the funds necessary to consummate the AmTRAN Stock Repurchase; and (d) for lawful corporate purposes of Borrower, including working capital. Borrower shall not, directly or indirectly, use any Letter of Credit or Revolver Loan proceeds, nor use, lend, contribute or otherwise make available any Letter of Credit or Revolver Loan proceeds to any Subsidiary, joint venture partner or other Person, (i) to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of issuance of the Letter of Credit or funding of the Revolver Loan, is the subject of any Sanction; (ii) in any manner that would result in a violation of a Sanction by any Person (including any Secured Party or other individual or entity participating in any transaction); or (iii) for any purpose that would breach the U.S. Foreign Corrupt Practices Act of 1977, UK Bribery Act 2010 or similar law in any jurisdiction.

2.1.4. Voluntary Reduction or Termination of Revolver Commitments.

(a) The Revolver Commitments shall terminate on the Revolver Termination Date, unless sooner terminated in accordance with this Agreement. Upon at least 30 days prior written notice to Agent, Borrower may, at its option, terminate the Revolver Commitments and this credit facility. Any notice of termination given by Borrower shall be irrevocable. On the termination date, Borrower shall make Full Payment of all Obligations.

(b) Borrower may permanently reduce the Revolver Commitments, on a ratable basis for all Lenders, upon at least 30 days prior written notice to Agent, which notice shall specify the amount of the reduction and shall be irrevocable once given. Each reduction shall be in a minimum amount of $5,000,000, or an increment of $1,000,000 in excess thereof.

2.1.5. Overadvances. If Revolver Usage exceeds the Borrowing Base ("Overadvance") at any time, the excess shall be payable by Borrower **on demand** by Agent and shall constitute an Obligation secured by the Collateral, entitled to all benefits of the Loan Documents. Agent may require Lenders to fund Base Rate Revolver Loans that cause or constitute an Overadvance and to forbear from requiring Borrower to cure an Overadvance, as long as the total Overadvance does not exceed 10% of the Revolver Commitments then in effect and does not continue for more than 30 consecutive days without the consent of Required Lenders. In no event shall Revolver Loans be required that would cause Revolver Usage to exceed the aggregate Revolver Commitments. No funding or sufferance of an Overadvance shall constitute a waiver by Agent or Lenders of the Event of Default caused thereby. No Obligor shall be a beneficiary of this Section nor authorized to enforce any of its terms.

2.1.6. Protective Advances. Agent shall be authorized, in its discretion, at any time that any conditions in **Section 6** are not satisfied, to make Base Rate Revolver Loans ("Protective Advances") (a) up to an aggregate amount equal to 10% of the Revolver Commitments then in effect outstanding at any time, if Agent deems such Revolver Loans necessary or desirable to preserve or protect Collateral, or to enhance the collectability or repayment of Obligations, as long as such Revolver Loans do not cause Revolver Usage to exceed the aggregate Revolver Commitments; or (b) to pay any other amounts chargeable to Obligors under any Loan Documents, including interest, costs, fees and expenses. Lenders shall participate on a Pro Rata basis in Protective Advances outstanding from time to time. Required Lenders may at any time revoke Agent's authority to make further Protective Advances under clause (a) by written notice to Agent. Absent such revocation, Agent's determination that funding of a Protective Advance is appropriate shall be conclusive.

2.1.7. Increase in Revolver Commitments. Borrower may request an increase in Revolver Commitments from time to time upon notice to Agent, as long as (a) the Agent shall have received evidence in form and substance satisfactory to Agent that the AmTRAN Lien has been terminated; (b) the requested increase is in a minimum amount of $25,000,000 and is offered on the same terms as existing Revolver Commitments, except for a closing fee specified by Borrower, and (c) total increases under this Section do not exceed $100,000,000 and no more than 4 increases are made. Agent shall promptly notify Lenders of the requested increase and, within 10 Business Days thereafter, each Lender shall notify Agent if and to what extent such Lender commits to increase its Revolver Commitment. Any Lender not responding within such period shall be deemed to have declined an increase. If Lenders fail to commit to the full requested increase, Eligible Assignees may issue additional Revolver Commitments and become Lenders hereunder. Agent may allocate, in its discretion, the increased Revolver Commitments among committing Lenders and, if necessary, Eligible Assignees. Provided the conditions set forth in Section 6.2 are satisfied, total Revolver Commitments shall be increased by the requested amount (or such lesser amount committed by Lenders and Eligible Assignees) on a date agreed upon by Agent and Borrower, but no later than 45 days following Borrower's increase request. Agent, Borrower, and new and existing Lenders shall execute and deliver such documents and agreements as Agent deems appropriate to evidence the increase in and allocations of Revolver Commitments. On the effective date of an increase, the Revolver Usage and other exposures under the Revolver Commitments shall be reallocated among Lenders, and settled by Agent as necessary, in accordance with Lenders' adjusted shares of such commitments.

2.2. [Reserved].

2.3. Letter of Credit Facility.

2.3.1. Issuance of Letters of Credit. Issuing Bank shall issue Letters of Credit from time to time until the Commitment Termination Date, on the terms set forth herein, including the following:

(a) Borrower acknowledges that Issuing Bank's issuance of any Letter of Credit is conditioned upon Issuing Bank's receipt of a LC Application with respect to the requested Letter of Credit, as well as such other instruments and agreements as Issuing Bank may customarily require for issuance of a letter of credit of similar type and amount. Issuing Bank shall have no obligation to issue any Letter of Credit unless (i) Issuing Bank receives a LC Request and LC Application at least three Business Days prior to the requested date of issuance; (ii) each LC Condition is satisfied; and (iii) if a Defaulting Lender exists, such Lender or Borrower have entered into arrangements satisfactory to Agent and Issuing Bank to eliminate any Fronting Exposure associated with such Lender. If, in sufficient time to act, Issuing Bank receives written notice from Agent or Required Lenders that a LC Condition has not been satisfied, Issuing Bank shall not issue the requested Letter of Credit. Prior to receipt of any such notice, Issuing Bank shall not be deemed to have knowledge of any failure of LC Conditions.

(b) Letters of Credit may be requested by Borrower to support obligations incurred in the Ordinary Course of Business, or as otherwise approved by Agent. Increase, renewal or extension of a Letter of Credit shall be treated as issuance of a new Letter of Credit, except that Issuing Bank may require a new LC Application in its discretion.

(c) Borrower assumes all risks of the acts, omissions or misuses of any Letter of Credit by the beneficiary. In connection with any Letter of Credit, none of Agent, Issuing Bank or any Lender shall be responsible for the existence, character, quality, quantity, condition, packing, value or delivery of any goods purported to be represented by any Documents; any differences or variation in the character, quality, quantity, condition, packing, value or delivery of any goods from that expressed in any Documents; the form, validity, sufficiency, accuracy, genuineness or legal effect of any Documents or of any endorsements thereon; the time, place, manner or order in which shipment of goods is made; partial or incomplete shipment of, or failure to ship, any goods referred to in a Letter of Credit or Documents; any deviation from instructions, delay, default or fraud by any shipper or other Person in connection with any goods, shipment or delivery; any breach of contract between a shipper or vendor and Borrower; errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, telecopy, e-mail, telephone or otherwise; errors in interpretation of technical terms; the misapplication by a beneficiary of any Letter of Credit or the proceeds thereof; or any consequences arising from causes beyond the control of Issuing Bank, Agent or any Lender, including any act or omission of a Governmental Authority. Borrower shall take all action to avoid and mitigate any damages relating to any Letter of Credit or claimed against Issuing Bank, Agent or any Lender, including through enforcement of any available rights against a beneficiary. Issuing Bank shall be fully subrogated to the rights and remedies of any beneficiary whose claims against Borrower are discharged with proceeds of a Letter of Credit. The rights and remedies of Issuing Bank under the Loan Documents shall be cumulative.

(d) In connection with its administration of and enforcement of rights or remedies under any Letters of Credit or LC Documents, Issuing Bank shall be entitled to act, and shall be fully protected in acting, upon any certification, documentation or communication in whatever form believed by Issuing Bank, in good faith, to be genuine and correct and to have been signed, sent or made by a

proper Person. Issuing Bank may use legal counsel, accountants and other experts to advise it concerning its obligations, rights and remedies, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by such experts. Issuing Bank may employ agents and attorneys-in-fact in connection with any matter relating to Letters of Credit or LC Documents, and shall not be liable for the negligence or misconduct of agents and attorneys-in-fact selected with reasonable care.

2.3.2. Reimbursement; Participations.

(a) If Issuing Bank honors any request for payment under a Letter of Credit, Borrower shall pay to Issuing Bank, on the same day ("Reimbursement Date"), the amount paid by Issuing Bank under such Letter of Credit, together with interest at the interest rate for Base Rate Revolver Loans from the Reimbursement Date until payment by Borrower. The obligation of Borrower to reimburse Issuing Bank for any payment made under a Letter of Credit shall be absolute, unconditional, irrevocable, and joint and several, and shall be paid without regard to any lack of validity or enforceability of any Letter of Credit or the existence of any claim, setoff, defense or other right that Borrower may have at any time against the beneficiary. Whether or not Borrower submits a Notice of Borrowing, Borrower shall be deemed to have requested a Borrowing of Base Rate Revolver Loans in an amount necessary to pay all amounts due Issuing Bank on any Reimbursement Date and each Lender shall fund its Pro Rata share of such Borrowing whether or not the Revolver Commitments have terminated, an Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied.

(b) Each Lender hereby irrevocably and unconditionally purchases from Issuing Bank, without recourse or warranty, an undivided Pro Rata participation in all LC Obligations outstanding from time to time. Issuing Bank is issuing Letters of Credit in reliance upon this participation. If Borrower does not make a payment to Issuing Bank when due hereunder, Agent shall promptly notify Lenders and each Lender shall within one Business Day after such notice pay to Agent, for the benefit of Issuing Bank, the Lender's Pro Rata share of such payment. Upon request by a Lender, Issuing Bank shall provide copies of Letters of Credit and LC Documents in its possession at such time.

(c) The obligation of each Lender to make payments to Agent for the account of Issuing Bank in connection with Issuing Bank's payment under a Letter of Credit shall be absolute, unconditional and irrevocable, not subject to any counterclaim, setoff, qualification or exception whatsoever, and shall be made in accordance with this Agreement under all circumstances, irrespective of any lack of validity or unenforceability of any Loan Documents; any draft, certificate or other document presented under a Letter of Credit having been determined to be forged, fraudulent, noncompliant, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; any waiver by Issuing Bank of a requirement that exists for its protection (and not Borrower's protection) or that does not materially prejudice Borrower; any honor of an electronic demand for payment even if a draft is required; any payment of an item presented after a Letter of Credit's expiration date if authorized by the UCC or applicable customs or practices; or any setoff or defense that an Obligor may have with respect to any Obligations. Issuing Bank does not assume any responsibility for any failure or delay in performance or any breach by Borrower or other Person of any obligations under any LC Documents. Issuing Bank does not make to Lenders any express or implied warranty, representation or guaranty with respect to any Letter of Credit, Collateral, LC Document or Obligor. Issuing Bank shall not be responsible to any Lender for any recitals, statements, information, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of any LC Documents; the validity, genuineness, enforceability, collectability, value or sufficiency of any Collateral or the perfection of any Lien therein; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor.

(d) No Issuing Bank Indemnitee shall be liable to any Lender or other Person for any action taken or omitted to be taken in connection with any Letter of Credit or LC Document except as a

result of its gross negligence or willful misconduct. Issuing Bank may refrain from taking any action with respect to a Letter of Credit until it receives written instructions (and in its discretion, appropriate assurances) from the Lenders.

2.3.3. Cash Collateral. Subject to **Section 2.1.5,** if at any time (a) an Event of Default exists, (b) the Commitment Termination Date occurs, or (c) the Revolver Termination Date is scheduled to occur within 20 Business Days, then Borrower shall, at Issuing Bank's or Agent's request, Cash Collateralize all outstanding Letters of Credit. Borrower shall, at Issuing Bank's or Agent's request at any time, Cash Collateralize the Fronting Exposure of any Defaulting Lender. If Borrower fails to provide any Cash Collateral as required hereunder, Lenders may (and shall upon direction of Agent) advance, as Revolver Loans, the amount of Cash Collateral required (whether or not the Revolver Commitments have terminated, an Overadvance exists or the conditions in **Section 6** are satisfied).

2.3.4. Resignation of Issuing Bank. Issuing Bank may resign at any time upon notice to Agent and Borrower, and any resignation of Agent hereunder shall automatically constitute its concurrent resignation as Issuing Bank. From the effective date of such resignation, Issuing Bank shall have no obligation to issue, amend, renew, extend or otherwise modify any Letter of Credit, but shall otherwise continue to have all rights and obligations of an Issuing Bank hereunder relating to any Letter of Credit issued by it prior to such date. Agent shall promptly appoint a replacement Issuing Bank, which, as long as no Default or Event of Default exists, shall be reasonably acceptable to Borrower.

SECTION 3. INTEREST, FEES AND CHARGES

3.1. Interest.

3.1.1. Rates and Payment of Interest.

(a) The Obligations shall bear interest (i) if a Base Rate Loan, at the Base Rate in effect from time to time, plus the Applicable Margin; (ii) if a LIBOR Loan, at LIBOR for the applicable Interest Period, plus the Applicable Margin; and (iii) if any other Obligation (including, to the extent permitted by law, interest not paid when due), at the Base Rate in effect from time to time, plus the Applicable Margin for Base Rate Revolver Loans.

(b) During an Insolvency Proceeding with respect to Borrower, or during any other Event of Default if Agent or Required Lenders in their discretion so elect, Obligations shall bear interest at the Default Rate (whether before or after any judgment), payable **on demand.**

(c) Interest shall accrue from the date a Revolver Loan is advanced or Obligation is incurred or payable, until paid in full by Borrower, and shall in no event be less than zero at any time. Interest accrued on the Revolver Loans shall be due and payable in arrears, (i) on the first day of each month; (ii) on any date of prepayment, with respect to the principal amount being prepaid; and (iii) on the Commitment Termination Date. Interest accrued on any other Obligations shall be due and payable as provided in the Loan Documents or, if no payment date is specified, **on demand.**

3.1.2. Application of LIBOR to Outstanding Revolver Loans.

(a) Borrower may on any Business Day elect to convert any portion of the Base Rate Loans to, or to continue any LIBOR Loan at the end of its Interest Period as, a LIBOR Loan. During the continuance of any Default or Event of Default, Agent may (and shall at the direction of Required Lenders) declare that no Revolver Loan may be made, converted or continued as a LIBOR Loan.

(b) To convert or continue Revolver Loans as LIBOR Loans, Borrower shall give Agent a Notice of Conversion/Continuation, no later than 11:00 a.m. at least two Business Days before the requested conversion or continuation date. Promptly after receiving any such notice, Agent shall

notify each Lender thereof. Each Notice of Conversion/Continuation shall be irrevocable, and shall specify the amount of Revolver Loans to be converted or continued, the conversion or continuation date (which shall be a Business Day), and the duration of the Interest Period (which shall be deemed to be 30 days if not specified). If, upon the expiration of any Interest Period for any LIBOR Loan, Borrower shall have failed to deliver a Notice of Conversion/Continuation, Borrower shall be deemed to have elected to convert such Revolver Loan into a Base Rate Loan. Agent does not warrant or accept responsibility for, nor shall it have any liability with respect to, administration, submission or any other matter related to any rate described in the definition of LIBOR.

3.1.3. Interest Periods. In connection with the making, conversion or continuation of any LIBOR Loans, Borrower shall select an interest period ("Interest Period") to apply, which interest period shall be 30, 60, or 90 days (if available from all Lenders); provided, however, that:

(a) the Interest Period shall begin on the date the Revolver Loan is made or continued as, or converted into, a LIBOR Loan, and shall expire on the numerically corresponding day in the calendar month at its end;

(b) if any Interest Period begins on a day for which there is no corresponding day in the calendar month at its end or if such corresponding day falls after the last Business Day of such month, then the Interest Period shall expire on the last Business Day of such month; and if any Interest Period would otherwise expire on a day that is not a Business Day, the period shall expire on the next Business Day; and

(c) no Interest Period shall extend beyond the Revolver Termination Date.

3.1.4. Interest Rate Not Ascertainable. If, due to any circumstance affecting the London interbank market, Agent determines that adequate and fair means do not exist for ascertaining LIBOR on any applicable date or that any Interest Period is not available on the basis provided herein, then Agent shall immediately notify Borrower of such determination. Until Agent notifies Borrower that such circumstance no longer exists, the obligation of Lenders to make affected LIBOR Loans shall be suspended and no further Revolver Loans may be converted into or continued as such LIBOR Loans.

3.2. Fees.

3.2.1. Unused Line Fee. Borrower shall pay to Agent, for the Pro Rata benefit of Lenders, a fee equal to the Unused Line Fee Rate times the amount by which the Revolver Commitments exceed the average daily Revolver Usage during any month. Such fee shall be payable in arrears, on the first day of each month and on the Commitment Termination Date.

3.2.2. LC Facility Fees. Borrower shall pay (a) to Agent, for the Pro Rata benefit of Lenders, a fee equal to the Applicable Margin in effect for LIBOR Revolver Loans times the average daily Stated Amount of Letters of Credit, which fee shall be payable monthly in arrears, on the first day of each month; (b) to Agent, for its own account, a fronting fee equal to 0.125% per annum (or such lesser percentage as determined by Agent) on the Stated Amount of each Letter of Credit, which fee shall be payable monthly in arrears, on the first day of each month; and (c) to Issuing Bank, for its own account, all customary charges associated with the issuance, amending, negotiating, payment, processing, transfer and administration of Letters of Credit, which charges shall be paid as and when incurred. During the continuation of an Event of Default, the fee payable under clause (a) shall be increased by 2% per annum.

3.2.3. Fee Letters. Borrower shall pay all fees set forth in any fee letter executed in connection with this Agreement.

3.3. Computation of Interest, Fees, Yield Protection. All interest, as well as fees and other charges calculated on a per annum basis, shall be computed for the actual days elapsed, based on a year of 360 days. Each determination by Agent of any interest, fees or interest rate hereunder shall be final, conclusive and binding for all purposes, absent manifest error. All fees shall be fully earned when due and shall not be subject to rebate, refund or proration. All fees payable under **Section 3.2** are compensation for services and are not, and shall not be deemed to be, interest or any other charge for the use, forbearance or detention of money. A certificate as to amounts payable by Borrower under **Section 3.4, 3.6, 3.7, 3.9** or **5.9,** submitted to Borrower by Agent or the affected Lender shall be final, conclusive and binding for all purposes, absent manifest error, and Borrower shall pay such amounts to the appropriate party within 10 days following receipt of the certificate.

3.4. Reimbursement Obligations. Borrower shall pay all Extraordinary Expenses promptly upon request. Borrower shall also reimburse Agent for all legal, accounting, appraisal, consulting, and other fees and expenses incurred by it in connection with (a) negotiation and preparation of any Loan Documents, including any modification thereof; (b) administration of and actions relating to any Collateral, Loan Documents and transactions contemplated thereby, including any actions taken to perfect or maintain priority of Agent's Liens on any Collateral, to maintain any insurance required hereunder or to verify Collateral; and (c) subject to the limits of **Section 10.1.1(b)**, any examination or appraisal with respect to any Obligor or Collateral by Agent's personnel or a third party; provided, that any such legal fees and expenses shall be limited to reasonable and documented out-of-pocket costs and expenses of one legal counsel and, to the extent necessary, one local counsel in each relevant jurisdiction for Agent. All legal, accounting and consulting fees shall be charged to Borrower by Agent's professionals at their full hourly rates, regardless of any alternative fee arrangements that Agent, any Lender or any of their Affiliates may have with such professionals that otherwise might apply to this or any other transaction. Borrower acknowledges that counsel may provide Agent with a benefit (such as a discount, credit or accommodation for other matters) based on counsel's overall relationship with Agent, including fees paid hereunder. If, for any reason (including inaccurate reporting in any Borrower Materials), it is determined that a higher Applicable Margin should have applied to a period than was actually applied, then the proper margin shall be applied retroactively and Borrower shall immediately pay to Agent, for the ratable benefit of Lenders, an amount equal to the difference between the amount of interest and fees that would have accrued using the proper margin and the amount actually paid. All amounts payable by Borrower under this Section shall be due **on demand.**

3.5. Illegality. If any Lender determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender to perform any of its obligations hereunder, to make, maintain, fund or charge applicable interest or fees with respect to any Revolver Loan or Letter of Credit, or to determine or charge interest based on LIBOR, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to Agent, any obligation of such Lender to perform such obligations, to make, maintain or fund the Revolver Loan or participate in the Letter of Credit (or to charge interest or fees with respect thereto), or to continue or convert Revolver Loans as LIBOR Loans, shall be suspended until such Lender notifies Agent that the circumstances giving rise to such determination no longer exist. Upon delivery of such notice, Borrower shall prepay the applicable Revolver Loan, Cash Collateralize the applicable LC Obligations or, if applicable, convert LIBOR Loan(s) of such Lender to Base Rate Loan(s), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain the LIBOR Loan to such day, or immediately, if such Lender may not lawfully continue to maintain the LIBOR Loan. Upon any such prepayment or conversion, Borrower shall also pay accrued interest on the amount so prepaid or converted.

3.6. Inability to Determine Rates. Agent will promptly notify Borrower and Lenders if, in connection with any Revolver Loan or request for a Revolver Loan, (a) Agent determines that (i) Dollar deposits are not being offered to banks in the London interbank Eurodollar market for the applicable

Revolver Loan amount or Interest Period, or (ii) adequate and reasonable means do not exist for determining LIBOR for the Interest Period; or (b) Agent or Required Lenders determine for any reason that LIBOR for the Interest Period does not adequately and fairly reflect the cost to Lenders of funding the Revolver Loan. Thereafter, Lenders' obligations to make or maintain affected LIBOR Loans and utilization of the LIBOR component (if affected) in determining Base Rate shall be suspended until Agent (upon instruction by Required Lenders) withdraws the notice. Upon receipt of such notice, Borrower may revoke any pending request for a LIBOR Loan or, failing that, will be deemed to have requested a Base Rate Loan.

3.7. Increased Costs; Capital Adequacy.

3.7.1. Increased Costs Generally. If any Change in Law shall:

(a) impose, modify or deem applicable any reserve, liquidity, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in calculating LIBOR) or Issuing Bank;

(b) subject any Recipient to Taxes (other than (i) Indemnified Taxes, (ii) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and (iii) Connection Income Taxes) with respect to any Revolver Loan, Letter of Credit, Revolver Commitment or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(c) impose on any Lender, Issuing Bank or interbank market any other condition, cost or expense affecting any Revolver Loan, Letter of Credit, participation in LC Obligations, Revolver Commitment or Loan Document;

and the result thereof shall be to increase the cost to a Lender of making or maintaining any Revolver Loan or Revolver Commitment, or converting to or continuing any interest option for a Revolver Loan, or to increase the cost to a Lender or Issuing Bank of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by a Lender or Issuing Bank hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or Issuing Bank, Borrower will pay to it such additional amount(s) as will compensate it for the additional costs incurred or reduction suffered.

3.7.2. Capital Requirements. If a Lender or Issuing Bank determines that a Change in Law affecting such Lender or Issuing Bank or its holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's, Issuing Bank's or holding company's capital as a consequence of this Agreement, or such Lender's or Issuing Bank's Revolver Commitments, Revolver Loans, Letters of Credit or participations in LC Obligations or Revolver Loans, to a level below that which such Lender, Issuing Bank or holding company could have achieved but for such Change in Law (taking into consideration its policies with respect to capital adequacy), then from time to time Borrower will pay to such Lender or Issuing Bank, as the case may be, such additional amounts as will compensate it or its holding company for the reduction suffered.

3.7.3. LIBOR Loan Reserves. If any Lender is required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits, Borrower shall pay additional interest to such Lender on each LIBOR Loan equal to the costs of such reserves allocated to the Revolver Loan by the Lender (as determined by it in good faith, which determination shall be conclusive). The additional interest shall be due and payable on each interest payment date for the Revolver Loan; provided, however, that if the Lender notifies Borrower (with a copy to Agent) of the additional interest less than 10 days prior to the interest payment date, then such interest shall be payable 10 days after Borrower's receipt of the notice.

3.7.4. Compensation. Failure or delay on the part of any Lender or Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of its right to demand such compensation, but Borrower shall not be required to compensate a Lender or Issuing Bank for any increased costs or reductions suffered more than nine months (plus any period of retroactivity of the Change in Law giving rise to the demand) prior to the date that the Lender or Issuing Bank notifies Borrower of the applicable Change in Law and of such Lender's or Issuing Bank's intention to claim compensation therefor.

3.8. Mitigation. If any Lender gives a notice under **Section 3.5** or requests compensation under **Section 3.7,** or if Borrower is required to pay any Indemnified Taxes or additional amounts with respect to a Lender under **Section 5.9,** then at the request of Borrower, such Lender shall use reasonable efforts to designate a different Lending Office or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender, such designation or assignment (a) would eliminate the need for such notice or reduce amounts payable or to be withheld in the future, as applicable; and (b) would not subject the Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to it or unlawful. Borrower shall pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

3.9. Funding Losses. If for any reason (a) any Borrowing, conversion or continuation of a LIBOR Loan does not occur on the date specified therefor in a Notice of Borrowing or Notice of Conversion/Continuation (whether or not withdrawn), (b) any repayment or conversion of a LIBOR Loan occurs on a day other than the end of its Interest Period, (c) Borrower fails to repay a LIBOR Loan when required hereunder, or (d) a Lender (other than a Defaulting Lender) is required to assign a LIBOR Loan prior to the end of its Interest Period pursuant to **Section 13.4,** then Borrower shall pay to Agent its customary administrative charge and to each Lender all losses, expenses and fees arising from redeployment of funds or termination of match funding. For purposes of calculating amounts payable under this Section, a Lender shall be deemed to have funded a LIBOR Loan by a matching deposit or other borrowing in the London interbank market for a comparable amount and period, whether or not the Revolver Loan was in fact so funded.

3.10. Maximum Interest. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by Applicable Law ("maximum rate"). If Agent or any Lender shall receive interest in an amount that exceeds the maximum rate, the excess interest shall be applied to the principal of the Obligations or, if it exceeds such unpaid principal, refunded to Borrower. In determining whether the interest contracted for, charged or received by Agent or a Lender exceeds the maximum rate, such Person may, to the extent permitted by Applicable Law, (a) characterize any payment that is not principal as an expense, fee or premium rather than interest; (b) exclude voluntary prepayments and the effects thereof; and (c) amortize, prorate, allocate and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

SECTION 4. LOAN ADMINISTRATION

4.1. Manner of Borrowing and Funding Revolver Loans.

4.1.1. Notice of Borrowing.

(a) To request Revolver Loans, Borrower shall give Agent a Notice of Borrowing by 11:00 a.m. (i) on the requested funding date, in the case of Base Rate Loans and the LIBOR Loans made on the Closing Date, and (ii) at least two Business Days prior to the requested funding date, in the case of LIBOR Loans (other than LIBOR Loans made on the Closing Date). Notices received by Agent after such time shall be deemed received on the next Business Day. Each Notice of Borrowing shall be irrevocable and shall specify (A) the Borrowing amount, (B) the requested funding date (which must be a Business Day), (C) whether the Borrowing is to be made as a Base Rate Loan or LIBOR Loan, and (D) in the case of a LIBOR Loan, the applicable Interest Period (which shall be deemed to be 30 days if not specified).

(b) Unless payment is otherwise made by Borrower, the becoming due of any Obligation (whether principal, interest, fees or other charges, including Extraordinary Expenses, LC Obligations, Cash Collateral and Secured Bank Product Obligations) shall be deemed to be a request for a Base Rate Revolver Loan on the due date in the amount due and the Revolver Loan proceeds shall be disbursed as direct payment of such Obligation. In addition, Agent may, at its option, charge such amount against any operating, investment or other account of Borrower maintained with Agent or any of its Affiliates.

(c) If Borrower maintains a disbursement account with Agent or any of its Affiliates, then presentation for payment in the account of a Payment Item when there are insufficient funds to cover it shall be deemed to be a request for a Base Rate Revolver Loan on the presentation date, in the amount of the Payment Item. Proceeds of the Revolver Loan may be disbursed directly to the account.

4.1.2. Fundings by Lenders. Except for Swingline Loans, Agent shall endeavor to notify Lenders of each Notice of Borrowing (or deemed request for a Borrowing) by 1:00 p.m. on the proposed funding date for a Base Rate Loan or by 3:00 p.m. two Business Days before a proposed funding of a LIBOR Loan. Each Lender shall fund its Pro Rata share of a Borrowing in immediately available funds not later than 3:00 p.m. on the requested funding date, unless Agent's notice is received after the times provided above, in which case Lender shall fund by 11:00 a.m. on the next Business Day. Subject to its receipt of such amounts from Lenders, Agent shall disburse the Borrowing proceeds in a manner directed by Borrower and acceptable to Agent. Unless Agent receives (in sufficient time to act) written notice from a Lender that it will not fund its share of a Borrowing, Agent may assume that such Lender has deposited or promptly will deposit its share with Agent, and Agent may disburse a corresponding amount to Borrower. If a Lender's share of a Borrowing or of a settlement under **Section 4.1.3(b)** is not received by Agent, then Borrower agrees to repay to Agent **on demand** the amount of such share, together with interest thereon from the date disbursed until repaid, at the rate applicable to the Borrowing. A Lender or Issuing Bank may fulfill its obligations under Loan Documents through one or more Lending Offices, and this shall not affect any obligation of Obligors under the Loan Documents or with respect to any Obligations.

4.1.3. Swingline Loans; Settlement.

(a) To fulfill any request for a Base Rate Revolver Loan hereunder, Agent may in its discretion advance Swingline Loans to Borrower, up to an aggregate outstanding amount equal to 10% of the Revolver Commitments then in effect. Swingline Loans shall constitute Revolver Loans for all purposes, except that payments thereon shall be made to Agent for its own account until Lenders have funded their participations therein as provided below.

(b) Settlement of Revolver Loans, including Swingline Loans, among Lenders and Agent shall take place on a date determined from time to time by Agent (but at least weekly, unless the settlement amount is de minimis), on a Pro Rata basis in accordance with the Settlement Report delivered by Agent to Lenders. Between settlement dates, Agent may in its discretion apply payments on Revolver Loans to Swingline Loans, regardless of any designation by Borrower or anything herein to the contrary. Each Lender hereby purchases, without recourse or warranty, an undivided Pro Rata participation in all Swingline Loans outstanding from time to time until settled. If a Swingline Loan cannot be settled among Lenders, whether due to an Obligor's Insolvency Proceeding or for any other reason, each Lender shall pay the amount of its participation in the Revolver Loan to Agent, in immediately available funds, within one Business Day after Agent's request therefor. Lenders' obligations to make settlements and to fund participations are absolute, irrevocable and unconditional, without offset, counterclaim or other defense, and whether or not the Revolver Commitments have terminated, an Overadvance exists or the conditions in **Section 6** are satisfied.

4.1.4. Notices. If Borrower requests, converts or continues Revolver Loans, select interest rates or transfer funds based on telephonic or electronic instructions to Agent, Borrower shall confirm each such request by prompt delivery to Agent of a Notice of Borrowing or Notice of Conversion/Continuation, as applicable. Neither Agent nor any Lender shall have any liability for any loss suffered by Borrower as a result of Agent or any Lender acting upon its understanding of telephonic or electronic instructions from a person believed in good faith to be authorized to give such instructions on Borrower's behalf.

4.2. Defaulting Lender. Notwithstanding anything herein to the contrary:

4.2.1. Reallocation of Pro Rata Share; Amendments. For purposes of determining Lenders' obligations or rights to fund, participate in or receive collections with respect to Revolver Loans and Letters of Credit (including existing Swingline Loans, Protective Advances and LC Obligations), Agent may in its discretion reallocate Pro Rata shares by excluding a Defaulting Lender's Revolver Commitments and Revolver Loans from the calculation of shares. A Defaulting Lender shall have no right to vote on any amendment, waiver or other modification of a Loan Document, except as provided in **Section 14.1.1(c)**.

4.2.2. Payments; Fees. Agent may, in its discretion, receive and retain any amounts payable to a Defaulting Lender under the Loan Documents, and a Defaulting Lender shall be deemed to have assigned to Agent such amounts until all Obligations owing to Agent, non-Defaulting Lenders and other Secured Parties have been paid in full. Agent may use such amounts to cover the Defaulting Lender's defaulted obligations, to Cash Collateralize such Lender's Fronting Exposure, to readvance the amounts to Borrower or to repay Obligations. A Lender shall not be entitled to receive any fees accruing hereunder while it is a Defaulting Lender and its unfunded Revolver Commitment shall be disregarded for purposes of calculating the unused line fee under **Section 3.2.1.** If any LC Obligations owing to a Defaulted Lender are reallocated to other Lenders, fees attributable to such LC Obligations under **Section 3.2.2** shall be paid to such Lenders. Agent shall be paid all fees attributable to LC Obligations that are not reallocated.

4.2.3. Status; Cure. Agent may determine in its discretion that a Lender constitutes a Defaulting Lender and the effective date of such status shall be conclusive and binding on all parties, absent manifest error. Borrower, Agent and Issuing Bank may agree in writing that a Lender has ceased to be a Defaulting Lender, whereupon Pro Rata shares shall be reallocated without exclusion of the reinstated Lender's Revolver Commitments and Revolver Loans, and the Revolver Usage and other exposures under the Revolver Commitments shall be reallocated among Lenders and settled by Agent (with appropriate payments by the reinstated Lender, including its payment of breakage costs for reallocated LIBOR Loans) in accordance with the readjusted Pro Rata shares. Unless expressly agreed by Borrower, Agent and Issuing Bank, or as expressly provided herein with respect to Bail-In Actions and related matters, no reallocation of Revolver Commitments and Revolver Loans to non-Defaulting Lenders or reinstatement of a Defaulting Lender shall constitute a waiver or release of claims against such Lender. The failure of any Lender to fund a Revolver Loan, to make a payment in respect of LC Obligations or otherwise to perform obligations hereunder shall not relieve any other Lender of its obligations under any Loan Document. No Lender shall be responsible for default by another Lender.

4.3. Number and Amount of LIBOR Loans; Determination of Rate. Each Borrowing of LIBOR Loans when made shall be in a minimum amount of $1,000,000, plus an increment of $100,000 in excess thereof. No more than 10 Borrowings of LIBOR Loans may be outstanding at any time, and all LIBOR Loans having the same length and beginning date of their Interest Periods shall be aggregated together and considered one Borrowing for this purpose. Upon determining LIBOR for any Interest Period requested by Borrower, Agent shall promptly notify Borrower thereof by telephone or electronically and, if requested by Borrower, shall confirm any telephonic notice in writing.

4.4. [Reserved].

4.5. One Obligation. The Revolver Loans, LC Obligations and other Obligations constitute one general obligation of Borrower and are secured by Agent's Lien on all Collateral; provided, however, that Agent and each Lender shall be deemed to be a creditor of, and the holder of a separate claim against, Borrower to the extent of any Obligations jointly or severally owed by Borrower.

4.6. Effect of Termination. On the effective date of the termination of all Revolver Commitments, the Obligations shall be immediately due and payable, and each Secured Bank Product Provider may terminate its Bank Products. Until Full Payment of the Obligations, all undertakings of Borrower contained in the Loan Documents shall continue, and Agent shall retain its Liens in the Collateral and all of its rights and remedies under the Loan Documents. Agent shall not be required to terminate its Liens unless it receives Cash Collateral or a written agreement, in each case satisfactory to it, protecting Agent and Lenders from dishonor or return of any Payment Item previously applied to the Obligations. **Sections 2.3, 3.4, 3.6, 3.7, 3.9, 5.5, 5.9, 5.10, 12, 14.2,** this Section, and each indemnity or waiver given by an Obligor or Lender in any Loan Document, shall survive Full Payment of the Obligations.

SECTION 5. PAYMENTS

5.1. General Payment Provisions. All payments of Obligations shall be made in Dollars, without offset, counterclaim or defense of any kind, free and clear of (and without deduction for) any Taxes, except as required by Applicable Law, and in immediately available funds, not later than 12:00 noon on the due date. Any payment after such time shall be deemed made on the next Business Day. Any payment of a LIBOR Loan prior to the end of its Interest Period shall be accompanied by all amounts due under **Section 3.9.** Any prepayment of Revolver Loans shall be applied first to Base Rate Loans and then to LIBOR Loans.

5.2. Repayment of Revolver Loans. Revolver Loans shall be due and payable in full on the Revolver Termination Date, unless payment is sooner required hereunder. Revolver Loans may be prepaid from time to time, without penalty or premium. Subject to **Section 2.1.5,** if an Overadvance exists at any time, Borrower shall, on the sooner of Agent's demand or the first Business Day after Borrower has knowledge thereof, repay Revolver Loans in an amount sufficient to reduce Revolver Usage to the Borrowing Base. If any Asset Disposition includes the disposition of Accounts or Eligible Securities, Borrower shall apply Net Proceeds to repay Revolver Loans equal to the reduction in Borrowing Base resulting from the disposition.

5.3. [Reserved].

5.4. Payment of Other Obligations. Obligations other than Revolver Loans, including LC Obligations and Extraordinary Expenses, shall be paid by Borrower as provided in the Loan Documents or, if no payment date is specified, **on demand.**

5.5. Marshaling; Payments Set Aside. None of Agent or Lenders shall be under any obligation to marshal any assets in favor of any Obligor or against any Obligations. If any payment by or on behalf of Borrower is made to Agent, Issuing Bank or any Lender, or if Agent, Issuing Bank or any Lender exercises a right of setoff, and any of such payment or setoff is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Agent, Issuing Bank or a Lender in its discretion) to be repaid to a trustee, receiver or any other Person, then the Obligation originally intended to be satisfied, and all Liens, rights and remedies relating thereto, shall be revived and continued in full force and effect as if such payment or setoff had not occurred.

5.6. Application and Allocation of Payments.

5.6.1. Application. Payments made by Borrower hereunder shall be applied (a) first, as specifically required hereby; (b) second, to Obligations then due and owing; (c) third, to other Obligations specified by Borrower; and (d) fourth, as determined by Agent in its discretion.

5.6.2. Post-Default Allocation. Notwithstanding anything in any Loan Document to the contrary, during an Event of Default under **Section 11.1(j)**, or during any other Event of Default at the discretion of Agent or Required Lenders, monies to be applied to the Obligations, whether arising from payments by Obligors, realization on Collateral, setoff or otherwise, shall be allocated as follows:

(a) first, to all fees, indemnification, costs and expenses, including Extraordinary Expenses, owing to Agent;

(b) second, to all other amounts owing to Agent, including Swingline Loans, Protective Advances, and Revolver Loans and participations that a Defaulting Lender has failed to settle or fund;

(c) third, to all amounts owing to Issuing Bank;

(d) fourth, to all Obligations (other than Secured Bank Product Obligations) constituting fees, indemnification, costs or expenses owing to Lenders;

(e) fifth, to all Obligations (other than Secured Bank Product Obligations) constituting interest;

(f) sixth, to Cash Collateralize all LC Obligations;

(g) seventh, to all Revolver Loans, and to Secured Bank Product Obligations arising under Hedge Agreements (including Cash Collateralization thereof) up to the amount of Reserves existing therefor;

(h) eighth, to all other Secured Bank Product Obligations; and

(i) last, to all remaining Obligations.

Amounts shall be applied to payment of each category of Obligations only after Full Payment of amounts payable from time to time under all preceding categories. If amounts are insufficient to satisfy a category, they shall be paid ratably among outstanding Obligations in the category. Monies and proceeds obtained from an Obligor shall not be applied to its Excluded Swap Obligations, but appropriate adjustments shall be made with respect to amounts obtained from other Obligors to preserve the allocations in each category. Agent shall have no obligation to calculate the amount of any Secured Bank Product Obligation and may request a reasonably detailed calculation thereof from a Secured Bank Product Provider. If the provider fails to deliver the calculation within five days following request, Agent may assume the amount is zero. The allocations set forth in this Section are solely to determine the rights and priorities among Secured Parties, and may be changed by agreement of the affected Secured Parties, without the consent of any Obligor. This Section is not for the benefit of or enforceable by any Obligor, and Borrower irrevocably waives the right to direct the application of any payments or Collateral proceeds subject to this Section.

5.6.3. Erroneous Application. Agent shall not be liable for any application of amounts made by it in good faith and, if any such application is subsequently determined to have been made in error, the sole recourse of any Lender or other Person to which such amount should have been paid shall be to recover the amount from the Person that actually received it (and, if such amount was received by a Secured Party, the Secured Party agrees to return it).

5.7. Dominion Account. The ledger balance in the main Dominion Account as of the end of a Business Day shall be applied to the Obligations at the beginning of the next Business Day, during any Dominion Trigger Period. Any resulting credit balance shall not accrue interest in favor of Borrower and shall be made available to Borrower as long as no Default or Event of Default exists.

5.8. Account Stated. Agent shall maintain, in accordance with its customary practices, loan account(s) evidencing the Debt of Borrower hereunder. Any failure of Agent to record anything in a loan account, or any error in doing so, shall not limit or otherwise affect the obligation of Borrower to pay any amount owing hereunder. Entries made in a loan account shall constitute presumptive evidence of the information contained therein. If any information contained in a loan account is provided to or inspected by any Person, the information shall be conclusive and binding on such Person for all purposes absent manifest error, except to the extent such Person notifies Agent in writing within 30 days after receipt or inspection that specific information is subject to dispute.

5.9. Taxes.

5.9.1. Payments Free of Taxes; Obligation to Withhold; Tax Payment.

(a) All payments of Obligations by Obligors shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If Applicable Law (as determined by Agent or the applicable Obligor in its discretion) requires the deduction or withholding of any Tax from any such payment by Agent or an Obligor, then Agent or such Obligor shall be entitled to make such deduction or withholding based on information and documentation provided pursuant to **Section 5.10**.

(b) If Agent or any Obligor is required by the Code to withhold or deduct Taxes, including backup withholding and withholding taxes, from any payment, then (i) Agent shall pay the full amount that it determines is to be withheld or deducted to the relevant Governmental Authority pursuant to the Code, and (ii) to the extent the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Obligor shall be increased as necessary so that the Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(c) If Agent or any Obligor is required by any Applicable Law other than the Code to withhold or deduct Taxes from any payment, then (i) Agent or such Obligor, to the extent required by Applicable Law, shall timely pay the full amount to be withheld or deducted to the relevant Governmental Authority, and (ii) to the extent the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Obligor shall be increased as necessary so that the Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

5.9.2. Payment of Other Taxes. Without limiting the foregoing, Borrower shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at Agent's option, timely reimburse Agent for payment of, any Other Taxes.

5.9.3. Tax Indemnification.

(a) Borrower shall indemnify and hold harmless each Recipient against any Indemnified Taxes (including those imposed or asserted on or attributable to amounts payable under this Section) payable or paid by a Recipient or required to be withheld or deducted from a payment to a

Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Borrower shall indemnify and hold harmless Agent against any amount that a Lender or Issuing Bank fails for any reason to pay indefeasibly to Agent as required pursuant to this Section. Borrower shall make payment within 10 days after demand for any amount or liability payable under this Section. A certificate as to the amount of such payment or liability delivered to Borrower by a Lender or Issuing Bank (with a copy to Agent), or by Agent on its own behalf or on behalf of any Recipient, shall be conclusive absent manifest error.

(b) Each Lender and Issuing Bank shall indemnify and hold harmless, on a several basis, (i) Agent against any Indemnified Taxes attributable to such Lender or Issuing Bank (but only to the extent Borrower has not already paid or reimbursed Agent therefor and without limiting Borrower's obligation to do so), (ii) Agent and Obligors, as applicable, against any Taxes attributable to such Lender's failure to maintain a Participant register as required hereunder, and (iii) Agent and Obligors, as applicable, against any Excluded Taxes attributable to such Lender or Issuing Bank, in each case, that are payable or paid by Agent or an Obligor in connection with any Obligations, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Lender and Issuing Bank shall make payment within 10 days after demand for any amount or liability payable under this Section. A certificate as to the amount of such payment or liability delivered to any Lender or Issuing Bank by Agent shall be conclusive absent manifest error.

5.9.4. Evidence of Payments. As soon as practicable after payment by an Obligor of any Taxes pursuant to this Section, Borrower shall deliver to Agent the original or a certified copy of a receipt issued by the appropriate Governmental Authority evidencing the payment, a copy of any return required by Applicable Law to report the payment or other evidence of payment reasonably satisfactory to Agent.

5.9.5. Treatment of Certain Refunds. Unless required by Applicable Law, at no time shall Agent have any obligation to file for or otherwise pursue on behalf of a Lender or Issuing Bank, nor have any obligation to pay to any Lender or Issuing Bank, any refund of Taxes withheld or deducted from funds paid for the account of a Lender or Issuing Bank. If a Recipient determines in its discretion that it has received a refund of Taxes that were indemnified by Borrower or with respect to which Borrower paid additional amounts pursuant to this Section, it shall pay the amount of such refund to Borrower (but only to the extent of indemnity payments or additional amounts actually paid by Borrower with respect to the Taxes giving rise to the refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient and without interest (other than interest paid by the relevant Governmental Authority with respect to such refund). Borrower shall, upon request by the Recipient, repay to the Recipient such amount paid over to Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) if the Recipient is required to repay such refund to the Governmental Authority. Notwithstanding anything herein to the contrary, no Recipient shall be required to pay any amount to Borrower if such payment would place it in a less favorable net after-Tax position than it would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. In no event shall Agent or any Recipient be required to make its tax returns (or any other information relating to its Taxes that it deems confidential) available to any Obligor or other Person.

5.9.6. Survival. Each party's obligations under **Sections 5.9** and **5.10** shall survive the resignation or replacement of Agent or any assignment of rights by or replacement of a Lender or Issuing Bank, the termination of the Revolver Commitments, and the repayment, satisfaction, discharge or Full Payment of any Obligations.

5.10. Lender Tax Information.

5.10.1. Status of Lenders. Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments of Obligations shall deliver to Borrower and Agent properly completed and executed documentation reasonably requested by Borrower or Agent as will permit such payments to be made without or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrower or Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by Borrower or Agent to enable them to determine whether such Lender is subject to backup withholding or information reporting requirements. Notwithstanding the foregoing, such documentation (other than documentation described in **Sections 5.10.2(a), (b)** and **(d)**) shall not be required if a Lender reasonably believes delivery of the documentation would subject it to any material unreimbursed cost or expense or would materially prejudice its legal or commercial position.

5.10.2. Documentation. Without limiting the foregoing, if Borrower is a U.S. Person,

(a) Any Lender that is a U.S. Person shall deliver to Borrower and Agent on or prior to the date on which such Lender becomes a Lender hereunder (and from time to time thereafter upon reasonable request of Borrower or Agent), executed copies of IRS Form W-9, certifying that such Lender is exempt from U.S. federal backup withholding Tax;

(b) Any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender hereunder (and from time to time thereafter upon reasonable request of Borrower or Agent), whichever of the following is applicable:

(i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party, (x) with respect to payments of interest under any Loan Document, executed copies of IRS Form W-8BEN-E establishing an exemption from or reduction of U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty, and (y) with respect to other payments under the Loan Documents, IRS Form W-8BEN-E establishing an exemption from or reduction of U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(ii) executed copies of IRS Form W-8ECI;

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate in form satisfactory to Agent to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code ("U.S. Tax Compliance Certificate"), and (y) executed copies of IRS Form W-8BEN-E; or

(iv) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate in form satisfactory to Agent, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more of its direct or indirect partners is claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate on behalf of each such partner;

(c) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrower and Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender hereunder (and from time to time thereafter upon reasonable request), executed copies of any other form prescribed by Applicable Law as a basis for

claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit Borrower or Agent to determine the withholding or deduction required to be made; and

(d) if payment of an Obligation to a Lender would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code), such Lender shall deliver to Borrower and Agent, at the time(s) prescribed by law and otherwise upon reasonable request, such documentation prescribed by Applicable Law (including Section 1471(b)(3)(C)(i) of the Code) and such additional documentation as may be appropriate for Borrower or Agent to comply with their obligations under FATCA and to determine that such Lender has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (d), "FATCA" shall include any amendments made to FATCA after the date hereof.

5.10.3. Redelivery of Documentation. If any form or certification previously delivered by a Lender pursuant to this Section expires or becomes obsolete or inaccurate in any respect, such Lender shall promptly update the form or certification or notify Borrower and Agent in writing of its inability to do so.

5.11. Qualified ECP. Each Obligor that is a Qualified ECP when its guaranty of or grant of Lien as security for a Swap Obligation becomes effective hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide funds or other support to each Specified Obligor with respect to such Swap Obligation as may be needed by such Specified Obligor from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP's obligations and undertakings under this **Section 5.11** voidable under any applicable fraudulent transfer or conveyance act). The obligations and undertakings of each Qualified ECP under this Section shall remain in full force and effect until Full Payment of all Obligations. Each Obligor intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support or other agreement" for the benefit of, each Obligor for all purposes of the Commodity Exchange Act.

SECTION 6. CONDITIONS PRECEDENT

6.1. Conditions Precedent to Initial Revolver Loans. In addition to the conditions set forth in **Section 6.2,** Lenders shall not be required to fund any requested Revolver Loan, issue any Letter of Credit, or otherwise extend credit to Borrower hereunder, until the date ("Closing Date") that each of the following conditions has been satisfied:

(a) Each Loan Document shall have been duly executed and delivered to Agent by each of the signatories thereto, and each Obligor shall be in compliance with all terms thereof.

(b) Agent shall have received acknowledgments of all filings or recordations necessary to perfect its Liens in the Collateral, as well as UCC and Lien searches and other evidence satisfactory to Agent that such Liens are the only Liens upon the Collateral, except Permitted Liens.

(c) Agent shall have received certificates, in form and substance satisfactory to it, from a knowledgeable Senior Officer of Borrower certifying that, after giving effect to the initial Revolver Loans and transactions hereunder, (i) Borrower is Solvent; (ii) no Default or Event of Default exists; (iii) the representations and warranties set forth in **Section 9** are true and correct; and (iv) Borrower has complied with all agreements and conditions to be satisfied by it under the Loan Documents.

(d) Agent shall have received a certificate of a duly authorized officer of each Obligor, certifying (i) that attached copies of such Obligor's Organic Documents are true and complete, and in full force and effect, without amendment except as shown; (ii) that an attached copy of resolutions authorizing execution and delivery of the Loan Documents is true and complete, and that such resolutions are in full force and effect, were duly adopted, have not been amended, modified or revoked, and constitute all resolutions adopted with respect to this credit facility; and (iii) to the title, name and signature of each Person authorized to sign the Loan Documents. Agent may conclusively rely on this certificate until it is otherwise notified by the applicable Obligor in writing.

(e) Agent shall have received a written opinion of Latham & Watkins LLP, as well as any local counsel to Borrower or Agent, in form and substance satisfactory to Agent.

(f) Agent shall have received copies of the charter documents of each Obligor, certified by the Secretary of State or other appropriate official of such Obligor's jurisdiction of organization. Agent shall have received good standing certificates for each Obligor, issued by the Secretary of State or other appropriate official of such Obligor's jurisdiction of organization and each jurisdiction where such Obligor's conduct of business or ownership of Property necessitates qualification excluding jurisdictions where the failure to be so qualified would not have a materially negative impact on the Borrower's access to the courts of such jurisdiction.

(g) Agent shall have received copies of policies or certificates of insurance for the insurance policies carried by Borrower, all in compliance with the Loan Documents.

(h) Agent shall have completed its business, financial and legal due diligence of Obligors, including (i) a roll-forward of its previous field examination, with results satisfactory to Agent and (ii) receipt and satisfactory review of Borrower's December 31, 2015 audited financial statements. No material adverse change in the financial condition of any Obligor or in the quality, quantity or value of any Collateral shall have occurred since December 31, 2015.

(i) Borrower shall have paid all fees and expenses to be paid to Agent and Lenders on the Closing Date.

(j) Agent shall have received a copy of the fully executed agreement evidencing the terms of the AmTRAN Stock Repurchase, which agreement shall provide AmTRAN's consent to Agent's lien on the Collateral subject to the AmTRAN Lien.

(k) Agent shall have received a Borrowing Base Report as of March 31, 2016. Upon giving effect to the initial funding of Revolver Loans and issuance of Letters of Credit, and the payment by Borrower of all fees and expenses incurred in connection herewith as well as any payables stretched beyond their customary payment practices, Availability shall be at least $45,000,000.

6.2. Conditions Precedent to All Credit Extensions. Agent, Issuing Bank and Lenders shall in no event be required to make any credit extension hereunder (including funding any Revolver Loan, arranging any Letter of Credit, or granting any other accommodation to or for the benefit of Borrower), if the following conditions are not satisfied on such date and upon giving effect thereto:

(a) No Default or Event of Default exists;

(b) The representations and warranties of each Obligor in the Loan Documents are true and correct in all material respects (or, in the case of any representation and warranty that is qualified as to "materiality", "Material Adverse Effect" or similar language, in all respects after giving effect to any qualification therein) (except for representations and warranties that relate solely to an earlier date);

(c) All conditions precedent in **Section 6.1** continue to be satisfied; and

(d) With respect to a Letter of Credit issuance, all LC Conditions are satisfied.

Each request (or deemed request) by Borrower for any credit extension shall constitute a representation by Borrower that the foregoing conditions are satisfied on the date of such request and on the date of the credit extension. As an additional condition to a credit extension, Agent may request any other information, certification, document, instrument or agreement as it deems appropriate.

6.3. Post Closing Date Conditions. Within the time periods set forth below (or such longer period as determined by Agent) Borrower shall:

6.3.1. within 60 days after the Closing Date (or such later date as may be agreed to by Agent in its sole discretion), deliver to Agent duly executed agreements establishing each Dominion Account, in form and substance, and with financial institutions, satisfactory to Agent;

6.3.2. within 60 days after the Closing Date (or such later date as may be agreed to by Agent in its sole discretion), deliver to Agent duly executed Deposit Account Control Agreements with respect to any Deposit Account and control agreements with respect to any Securities Accounts, in each case, as required by **Section 8.5,** in form and substance, and with financial institutions, satisfactory to Agent; and

6.3.3. within 90 days after the Closing Date (or such later date as may be agreed to by Agent in its sole discretion), cooperate with Agent and its employees, agents and representatives to allow Agent to conduct a full scope field examination which shall be conducted by an examiner satisfactory to Agent and shall be in scope, form and substance satisfactory to Agent.

6.3.4. within 10 Business Days after the Closing Date (or such later date as may be agreed to by Agent in its sole discretion), Borrower shall deliver to Agent a lender's loss payable endorsement with respect to Borrower's insurance policy, in form and substance satisfactory to Agent.

SECTION 7. COLLATERAL

7.1. Grant of Security Interest. To secure the prompt payment and performance of its Obligations, Borrower hereby grants to Agent, for the benefit of Secured Parties, a continuing security interest in and Lien upon all Property of Borrower, including all of the following Property, whether now owned or hereafter acquired, and wherever located:

(a) all Accounts;

(b) all Chattel Paper, including electronic chattel paper;

(c) all Commercial Tort Claims, including those shown on **Schedule 9.1.16**;

(d) all Deposit Accounts;

(e) all Documents;

(f) all General Intangibles, including Intellectual Property;

(g) all Goods, including Inventory, Equipment and fixtures;

(h) all Instruments;

(i) all Investment Property;

(j) all Letter-of-Credit Rights;

(k) all Supporting Obligations;

(l) all monies, whether or not in the possession or under the control of Agent, a Lender, or a bailee or Affiliate of Agent or a Lender, including any Cash Collateral;

(m) all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any Collateral; and

(n) all books and records (including customer lists, files, correspondence, tapes, computer programs, print-outs and computer records) pertaining to the foregoing.

Notwithstanding anything to the contrary contained herein, the security interests granted under this **Section 7.1** shall not extend to (a) Excluded Property, (b) any General Intangible, permit, lease, license, contract or other Instrument of Borrower to the extent the grant of a security interest in such General Intangible, permit, lease, license, contract or other Instrument in the manner contemplated by this Agreement, under the terms thereof or under applicable Law, is prohibited and would result in the termination thereof or give the other parties thereto the right to terminate, accelerate or otherwise alter such Grantor's rights, titles and interests thereunder (including upon the giving of notice or the lapse of time or both) or (c) any United States intent-to-use trademark applications to the extent that, and solely during the period in which the grant of a security interest therein would impair the validity or enforceability of or render void or result in the cancellation of, any registration issued as a result of such intent-to-use trademark applications under applicable Law; provided that upon submission and acceptance by the United States Patent and Trademark Office of an amendment to allege pursuant to 15 U.S.C. Section 1060(a) or any successor provision), such intent-to-use trademark application shall be considered Collateral; provided, further that (i) any such limitation described in the foregoing clause (b) on the security interests granted hereunder shall only apply to the extent that any such prohibition or right to terminate or accelerate or alter Borrower's rights could not be rendered ineffective pursuant to the UCC or any other Applicable Law (including debtor relief laws) or principles of equity and (ii) in the event of the termination or elimination of any such prohibition or right or the requirement for any consent contained in any applicable Law, General Intangible, permit, lease, license, contract or other Instrument, to the extent sufficient to permit any such item to become Collateral hereunder, or upon the granting of any such consent, or waiving or terminating any requirement for such consent, a security interest in such General Intangible, permit, lease, license, contract or other Instrument shall be automatically and simultaneously granted hereunder and shall be included as Collateral hereunder.

7.2. Lien on Deposit Accounts; Cash Collateral.

7.2.1. Deposit Accounts. To further secure the prompt payment and performance of its Obligations, Borrower hereby grants to Agent a continuing security interest in and Lien upon all amounts credited to any Deposit Account of Borrower, including sums in any blocked, lockbox, sweep or collection account (other than any such items that constitute Excluded Property). Borrower hereby authorizes and directs each bank or other depository to deliver to Agent, upon request, all balances in any Deposit Account maintained for Borrower (other than any such items that constitute Excluded Property), without inquiry into the authority or right of Agent to make such request.

7.2.2. Cash Collateral. Cash Collateral may be invested, at Agent's discretion (with the consent of Borrower, provided no Event of Default exists), but Agent shall have no duty to do so, regardless of any agreement or course of dealing with Borrower, and shall have no responsibility for any investment or loss. As security for its Obligations, Borrower hereby grants to Agent a security interest in and Lien upon all Cash Collateral delivered hereunder from time to time, whether held in a segregated

cash collateral account or otherwise. Agent may apply Cash Collateral to payment of such Obligations as they become due, in such order as Agent may elect. All Cash Collateral and related deposit accounts shall be under the sole dominion and control of Agent, and no Borrower or other Person shall have any right to any Cash Collateral until Full Payment of the Obligations.

7.3. [Reserved].

7.4. Other Collateral.

7.4.1. Commercial Tort Claims. Borrower shall promptly notify Agent in writing if Borrower has a Commercial Tort Claim (other than, as long as no Default or Event of Default exists, a Commercial Tort Claim for less than $1,000,000), shall promptly amend **Schedule 9.1.16** to include such claim, and shall take such actions as Agent deems appropriate to subject such claim to a duly perfected, first priority Lien in favor of Agent.

7.4.2. Certain After-Acquired Collateral. Borrower shall promptly notify Agent in writing if, after the Closing Date, Borrower obtains any interest in any Collateral consisting of Deposit Accounts, Chattel Paper, Documents, Instruments, Intellectual Property, Investment Property or Letter-of-Credit Rights and, upon Agent's request, shall promptly take such actions as Agent deems appropriate to effect Agent's duly perfected, first priority Lien upon such Collateral, including obtaining any appropriate possession, control agreement or Lien Waiver. If any Collateral is in the possession of a third party, at Agent's request, Borrower shall obtain an acknowledgment that such third party holds the Collateral for the benefit of Agent.

7.5. Limitations. The Lien on Collateral granted hereunder is given as security only and shall not subject Agent or any Lender to, or in any way modify, any obligation or liability of Borrower relating to any Collateral. In no event shall the grant of any Lien under any Loan Document secure an Excluded Swap Obligation of the granting Obligor.

7.6. Further Assurances. All Liens granted to Agent under the Loan Documents are for the benefit of Secured Parties. Promptly upon request, Borrower shall deliver such instruments and agreements, and shall take such actions, as Agent deems appropriate under Applicable Law to evidence or perfect its Lien on any Collateral, or otherwise to give effect to the intent of this Agreement. Borrower authorizes Agent to file any financing statement that describes the Collateral as "all assets" or "all personal property" of Borrower, or words to similar effect, and ratifies any action taken by Agent before the Closing Date to effect or perfect its Lien on any Collateral.

7.7. Foreign Subsidiary Stock. Notwithstanding **Section 7.1,** the Collateral shall include only 65% of the voting stock of any Foreign Subsidiary or Foreign Subsidiary Holding Company.

SECTION 8. COLLATERAL ADMINISTRATION

8.1. Borrowing Base Reports. By the 20th day of each month, Borrower shall deliver to Agent (and Agent shall promptly deliver same to Lenders) a Borrowing Base Report as of the close of business of the previous month; provided, that at any time Availability is less than 12.5% of the Revolver Commitments, Borrower shall deliver to Agent a Borrowing Base Report as of the close of business of the previous week by no later than the 2nd Business Day of such week, in each case, as more frequently as deemed necessary by Agent in its Permitted Discretion. All information (including calculation of Availability) in a Borrowing Base Report shall be certified by Borrower. Agent may from time to time adjust such report (a) to reflect Agent's reasonable estimate of declines in value of Collateral, due to collections received in the Dominion Account or otherwise; (b) to adjust advance rates to reflect changes in dilution, quality, mix and other factors affecting Collateral; and (c) to the extent any information or calculation does not comply with this Agreement. Agent shall provide notice to Borrower of any

adjustments pursuant to the foregoing sentence; provided that any failure to give such notice shall not affect Agent's right to review and adjust such calculations. Each Borrowing Base Report shall provide a roll forward of Accounts, sales, credits, collections and adjustments as reflected on the most recently delivered Borrowing Base Report.

8.2. Accounts.

8.2.1. Records and Schedules of Accounts. Borrower shall keep accurate and complete records of its Accounts, including all payments and collections thereon, and shall submit to Agent sales, collection, reconciliation and other reports in form satisfactory to Agent, on such periodic basis as Agent may request. Borrower shall also provide to Agent, on or before the 20th day of each month, a detailed aged trial balance of all Accounts as of the end of the preceding month, specifying each Account's Account Debtor name and address, amount, invoice date and due date, showing any discount, allowance, credit, authorized return or dispute, and including such proof of delivery, copies of invoices and invoice registers, copies of related documents, repayment histories, status reports and other information as Agent may reasonably request. If Accounts in an aggregate face amount of $10,000,000 or more, individually, or $25,000,000 or more, in the aggregate, in either case cease to be Eligible Accounts, Borrower shall notify Agent of such occurrence promptly (and in any event within one Business Day) after Borrower has knowledge thereof.

8.2.2. Taxes. If an Account of Borrower includes a charge for any Taxes, Agent is authorized, in its discretion, to pay the amount thereof to the proper taxing authority for the account of Borrower and to charge Borrower therefor; provided, however, that neither Agent nor Lenders shall be liable for any Taxes that may be due from Borrower or with respect to any Collateral.

8.2.3. Account Verification. Whether or not a Default or Event of Default exists, Agent shall have the right at any time, in the name of Agent, any designee of Agent or Borrower, to verify the validity, amount or any other matter relating to any Accounts of Borrower by mail, telephone or otherwise; provided that if no Default or Event of Default has occurred and is continuing, Agent shall only exercise this right upon delivery of prior notice to Borrower, and Borrower shall have the right to participate in such verification process. Borrower shall cooperate fully with Agent in an effort to facilitate and promptly conclude any such verification process.

8.2.4. Maintenance of Dominion Account. Borrower shall maintain Dominion Accounts pursuant to lockbox or other arrangements acceptable to Agent. Borrower shall obtain an agreement (in form and substance satisfactory to Agent) from each lockbox servicer and Dominion Account bank, establishing Agent's control over and Lien in the lockbox or Dominion Account, which may be exercised by Agent during any Dominion Trigger Period, requiring immediate deposit of all remittances received in the lockbox to a Dominion Account, and waiving offset rights of such servicer or bank, except for customary administrative charges. If a Dominion Account is not maintained with Bank of America, Agent may, during any Dominion Trigger Period, require immediate transfer of all funds in such account to a Dominion Account maintained with Bank of America. Agent and Lenders assume no responsibility to Borrower for any lockbox arrangement or Dominion Account, including any claim of accord and satisfaction or release with respect to any Payment Items accepted by any bank.

8.2.5. Proceeds of Collateral. Borrower shall request in writing and otherwise take all necessary steps to ensure that all payments on Accounts or otherwise relating to Collateral are made directly to a Dominion Account (or a lockbox relating to a Dominion Account). If Borrower or Subsidiary receives cash or Payment Items with respect to any Collateral, it shall hold same in trust for Agent and promptly (not later than the next Business Day) deposit same into a Dominion Account.

8.3. Inventory.

8.3.1. Records and Reports of Inventory. Borrower shall keep accurate and complete records of its Inventory.

8.3.2. Returns of Inventory. No Borrower shall return any Inventory to a supplier, vendor or other Person, whether for cash, credit or otherwise, unless (a) such return is in the Ordinary Course of Business; (b) no Default, Event of Default exists or would result therefrom; (c) Agent is promptly notified if the aggregate Value of all Inventory returned in any month exceeds $10,000,000; and (d) during a Dominion Trigger Period, any payment received by Borrower for a return is promptly remitted to Agent for application to the Obligations.

8.3.3. Acquisition, Sale and Maintenance. No Borrower shall acquire or accept any Inventory on consignment or approval, and shall take all steps to assure that all Inventory is produced in accordance with Applicable Law, including the FLSA. No Borrower shall sell any Inventory on consignment or approval or any other basis under which the customer may return or require Borrower to repurchase such Inventory. Borrower shall use, store and maintain all Inventory with reasonable care and caution, in accordance with applicable standards of any insurance and in conformity with all Applicable Law, and shall make current rent payments (within applicable grace periods provided for in leases) at all locations where any Collateral is located.

8.4. Equipment.

8.4.1. Records and Schedules of Equipment. Borrower shall keep accurate and complete records of its Equipment.

8.4.2. Dispositions of Equipment. No Borrower shall sell, lease or otherwise dispose of any Equipment, without the prior written consent of Agent, other than (a) a Permitted Asset Disposition; and (b) replacement of Equipment that is worn, damaged or obsolete with Equipment of like function and value, if the replacement Equipment is acquired substantially contemporaneously with such disposition and is free of Liens.

8.4.3. Condition of Equipment. The Equipment is in good operating condition and repair, and all necessary replacements and repairs have been made so that the value and operating efficiency of the Equipment is preserved at all times, reasonable wear and tear excepted. Borrower shall ensure that the Equipment is mechanically and structurally sound, and capable of performing the functions for which it was designed, in accordance with manufacturer specifications. No Borrower shall permit any Equipment to become affixed to real Property unless any landlord or mortgagee delivers a Lien Waiver.

8.5. Deposit Accounts/Securities Accounts. Schedule 8.5 shows all Deposit Accounts and Securities Accounts maintained by Obligors, including Dominion Accounts. Obligors shall take all actions necessary to establish Agent's first priority Lien on each Deposit Account and Securities Account within the time period established pursuant to **Section 6.3** (except (i) Deposit Accounts exclusively used for payroll, payroll taxes or employee benefits, (ii) any Securities Account constituting Citibank Collateral unless the Citibank Facility is paid in full and the Citibank Credit Agreement is terminated, (iii) other disbursement Deposit Accounts acceptable to Agent, or (iv) any Deposit Account or Securities Account containing not more than $150,000, individually, at any time, or $300,000, collectively, for all such accounts at any time (collectively, "Excluded Accounts"). Each Obligor shall be the sole account holders of each Deposit Account and each Securities Account and shall not allow any Person (other than the applicable depository bank or securities intermediary) to have control over their Deposit Accounts, Securities Accounts or any Property deposited therein (other than the Securities Account constituting Citibank Collateral and Property deposited therein). Each Obligor shall promptly notify Agent of any opening or closing of a Deposit Account or Securities Account and, with the consent of Agent, will amend **Schedule 8.5** to reflect same.

8.6. General Provisions.

8.6.1. Business Locations. All of Borrower's business locations are set forth in **Schedule 8.6.1.**

8.6.2. Insurance of Collateral; Condemnation Proceeds.

(a) Borrower shall maintain insurance with respect to the Collateral, covering casualty, hazard, theft, malicious mischief, flood and other risks, in amounts, with endorsements and with insurers (with a Best rating of at least A+, unless otherwise approved by Agent in its discretion) satisfactory to Agent. During the continuance of an Event of Default, all proceeds under each policy shall be payable to Agent. From time to time upon request, Borrower shall deliver to Agent the originals or certified copies of its insurance policies and updated flood plain searches. Unless Agent shall agree otherwise, each policy shall include satisfactory endorsements (i) showing Agent as loss payee; (ii) requiring 30 days prior written notice to Agent in the event of cancellation of the policy for any reason whatsoever; and (iii) specifying that the interest of Agent shall not be impaired or invalidated by any act or neglect of Borrower or the owner of the Property, nor by the occupation of the premises for purposes more hazardous than are permitted by the policy. If Borrower fails to provide and pay for any insurance, Agent may, at its option, but shall not be required to, procure the insurance and charge Borrower therefor. Borrower agrees to deliver to Agent, promptly as rendered, copies of all reports made to insurance companies. While no Event of Default exists, Borrower may settle, adjust or compromise any insurance claim. If an Event of Default exists, only Agent shall be authorized to settle, adjust and compromise such claims.

(b) Any proceeds of insurance (other than proceeds from workers' compensation or D&O insurance) and any awards arising from condemnation of any Collateral shall be paid to Borrower; provided, that any such proceeds payable during the continuance of an Event of Default shall be paid to Agent.

8.6.3. Protection of Collateral. All expenses of protecting, storing, warehousing, insuring, handling, maintaining and shipping any Collateral, all Taxes payable with respect to any Collateral (including any sale thereof), and all other payments required to be made by Agent to any Person to realize upon any Collateral, shall be borne and paid by Borrower. Agent shall not be liable or responsible in any way for the safekeeping of any Collateral, for any loss or damage thereto (except for reasonable care in its custody while Collateral is in Agent's actual possession), for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency or other Person whatsoever, but the same shall be at Borrower's sole risk.

8.6.4. Defense of Title. Borrower shall defend its title to Collateral and Agent's Liens therein against all Persons, claims and demands, except Permitted Liens.

8.7. Power of Attorney. Borrower hereby irrevocably constitutes and appoints Agent (and all Persons designated by Agent) as Borrower's true and lawful attorney (and agent-in-fact) for the purposes provided in this Section. Agent, or Agent's designee, may, without notice and in either its or Borrower's name, but at the cost and expense of Borrower:

(a) Endorse Borrower's name on any Payment Item or other proceeds of Collateral (including proceeds of insurance) that come into Agent's possession or control; and

(b) During the continuance of an Event of Default, (i) notify any Account Debtors of the assignment of their Accounts, demand and enforce payment of Accounts by legal proceedings or otherwise, and generally exercise any rights and remedies with respect to Accounts; (ii) settle, adjust, modify, compromise, discharge or release any Accounts or other Collateral, or any legal proceedings brought to collect Accounts or Collateral; (iii) sell or assign any Accounts and other Collateral upon such terms, for such amounts and at such times as Agent deems advisable; (iv) collect, liquidate and receive balances in Deposit Accounts or investment accounts, and take control, in any manner, of proceeds of Collateral; (v) prepare, file and sign Borrower's name to a proof of claim or other document in a bankruptcy of an Account Debtor, or to any notice, assignment or satisfaction of Lien or similar document; (vi) receive, open and dispose of mail addressed to Borrower, and notify postal authorities to deliver any such mail to an address designated by Agent; (vii) endorse any Chattel Paper, Document, Instrument, bill of lading, or other document or agreement relating to any Accounts, Inventory or other Collateral; (viii) use Borrower's stationery and sign its name to verifications of Accounts and notices to Account Debtors; (ix) use information contained in any data processing, electronic or information systems relating to Collateral; (x) make and adjust claims under insurance policies; (xi) take any action as may be necessary or appropriate to obtain payment under any letter of credit, banker's acceptance or other instrument for which Borrower is a beneficiary; and (xii) take all other actions as Agent deems appropriate to fulfill Borrower's obligations under the Loan Documents.

SECTION 9. REPRESENTATIONS AND WARRANTIES

9.1. General Representations and Warranties. To induce Agent and Lenders to enter into this Agreement and to make available the Revolver Commitments, Revolver Loans and Letters of Credit, Borrower represents and warrants that:

9.1.1. Organization and Qualification. Borrower and Subsidiary are duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization. Borrower and Subsidiary are duly qualified, authorized to do business and in good standing as a foreign corporation in each jurisdiction where failure to be so qualified could reasonably be expected to have a Material Adverse Effect. No Obligor is an EEA Financial Institution.

9.1.2. Power and Authority. Each Obligor is duly authorized to execute, deliver and perform its Loan Documents. The execution, delivery and performance of the Loan Documents have been duly authorized by all necessary action, and do not (a) require any consent or approval of any holders of Equity Interests of any Obligor, except those already obtained; (b) contravene the Organic Documents of any Obligor; (c) violate or cause a default under any Applicable Law or Material Contract; or (d) result in or require imposition of a Lien (other than Permitted Liens) on any Obligor's Property.

9.1.3. Enforceability. Each Loan Document is a legal, valid and binding obligation of each Obligor party thereto, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

9.1.4. Capital Structure. **Schedule 9.1.4** shows, for Borrower and Subsidiary, its name, jurisdiction of organization, authorized and issued Equity Interests, holders of its Equity Interests, and agreements binding on such holders with respect to such Equity Interests. Except as disclosed on **Schedule 9.1.4**, in the five years preceding the Closing Date, neither Borrower nor any Subsidiary has acquired any substantial assets from any other Person nor been the surviving entity in a merger or combination. Borrower has good title to its Equity Interests in its Subsidiaries, subject only to Agent's Lien, and all such Equity Interests are duly issued, fully paid and non-assessable. There are no outstanding purchase options, warrants, subscription rights, agreements to issue or sell, convertible interests, phantom rights or powers of attorney relating to Equity Interests of Borrower or Subsidiary.

9.1.5. Title to Properties; Priority of Liens. Borrower and Subsidiary have good and marketable title to (or valid leasehold interests in) all of its Real Estate, and good title to all of its personal Property, including all Property reflected in any financial statements delivered to Agent or Lenders, in each case free of Liens except Permitted Liens. Borrower and Subsidiary have paid and discharged all lawful claims that, if unpaid, could become a Lien on its Properties, other than Permitted Liens. All Liens of Agent in the Collateral are duly perfected, first priority Liens, subject only to Permitted Liens that are expressly allowed to have priority over Agent's Liens.

9.1.6. Accounts. Agent may rely, in determining which Accounts are Eligible Accounts, on all statements and representations made by Borrower with respect thereto. Borrower warrants, with respect to each Account at the time that it is shown as an Eligible Account in a Borrowing Base Report, that:

(a) it is genuine and in all respects what it purports to be;

(b) it arises out of a completed, *bona fide* sale and delivery of goods in the Ordinary Course of Business, and substantially in accordance with any purchase order, contract or other document relating thereto;

(c) it is for a sum certain, maturing as stated in the applicable invoice, a copy of which has been furnished or is available to Agent on request;

(d) it is not subject to any offset, Lien (other than Agent's Lien), deduction, defense, dispute, counterclaim or other adverse condition except as arising in the Ordinary Course of Business and disclosed to Agent; and it is absolutely owing by the Account Debtor, without contingency of any kind;

(e) no purchase order, agreement, document or Applicable Law restricts assignment of the Account to Agent (regardless of whether, under the UCC, the restriction is ineffective), and the applicable Borrower is the sole payee or remittance party shown on the invoice;

(f) no extension, compromise, settlement, modification, credit, deduction or return has been authorized or is in process with respect to the Account, except discounts or allowances granted in the Ordinary Course of Business for prompt payment that are reflected on the face of the invoice related thereto and in the reports submitted to Agent hereunder; and

(g) to the best of Borrower's knowledge, (i) there are no facts or circumstances that are reasonably likely to impair the enforceability or collectability of such Account; (ii) the Account Debtor had the capacity to contract when the Account arose, continues to meet the applicable Borrower's customary credit standards, is Solvent, is not contemplating or subject to an Insolvency Proceeding, and has not failed, or suspended or ceased doing business; and (iii) there are no proceedings or actions threatened or pending against any Account Debtor that could reasonably be expected to have a material adverse effect on the Account Debtor's financial condition.

9.1.7. Financial Statements. The consolidated balance sheets, and related statements of income, cash flow and shareholders equity, of Borrower and Subsidiaries that have been and are hereafter delivered to Agent and Lenders, are prepared in accordance with GAAP, and fairly present in all material respects the financial positions and results of operations of Borrower and Subsidiaries at the dates and for the periods indicated. All projections delivered from time to time to Agent and Lenders have been prepared in good faith, based on assumptions by management of Borrower which are reasonable in light of the circumstances at such time. Since December 31, 2015, there has been no change in the condition, financial or otherwise, of Borrower or Subsidiary that could reasonably be expected to have a Material Adverse Effect. No financial statement delivered to Agent or Lenders at any time contains any untrue statement of a material fact, nor fails to disclose any material fact necessary to make such statement not materially misleading. Borrower and Subsidiary, on a consolidated basis, are Solvent.

9.1.8. Surety Obligations. Neither Borrower nor any Subsidiary is obligated as surety or indemnitor under any bond or other contract that assures payment or performance of any obligation of any Person, except as permitted hereunder.

9.1.9. Taxes. Borrower and Subsidiary have filed all federal, state and local tax returns and other reports that they are required by law to file, and have paid, or made provision for the payment of, all Taxes upon it, its income and its Properties that are due and payable by Borrower or Subsidiary, except to the extent being Properly Contested. The provision for Taxes on the books of Borrower and Subsidiary is adequate for all years not closed by applicable statutes, and for its current Fiscal Year.

9.1.10. Brokers. There are no brokerage commissions, finder's fees or investment banking fees payable in connection with any transactions contemplated by the Loan Documents.

9.1.11. Intellectual Property. Borrower and Subsidiary own or have the lawful right to use all Intellectual Property necessary for the conduct of its business, without conflict with any rights of others except where such conflict could not reasonably be expected to have a Material Adverse Effect. There is no pending or, to Borrower's knowledge, threatened Intellectual Property Claim with respect to Borrower, any Subsidiary or any of their Property (including any Intellectual Property). Except as disclosed on **Schedule 9.1.11**, neither Borrower nor any Subsidiary pays or owes any royalty or other compensation to any Person with respect to any Intellectual Property. Other than commercially available, off-the-shelf software, all Intellectual Property owned, used or licensed by, or otherwise subject to any interests of, Borrower or Subsidiary is shown on **Schedule 9.1.11**.

9.1.12. Governmental Approvals. Borrower and Subsidiary have, are in compliance with, and are in good standing with respect to, all Governmental Approvals necessary to conduct its business and to own, lease and operate its Properties to the extent failure to have, to comply with, or be in good standing with respect to, could have a Material Adverse Effect on the business of Borrower or Subsidiary. All necessary import, export or other licenses, permits or certificates for the import or handling of any goods or other Collateral have been procured and are in effect, and Borrower and Subsidiaries have complied with all foreign and domestic laws with respect to the shipment and importation of any goods or Collateral, except where noncompliance could not reasonably be expected to have a Material Adverse Effect.

9.1.13. Compliance with Laws. Borrower and Subsidiary have duly complied, and its Properties and business operations are in compliance, in all material respects with all Applicable Law, except where noncompliance could not reasonably be expected to have a Material Adverse Effect. There have been no citations, notices or orders of material noncompliance issued to Borrower or Subsidiary under any Applicable Law. No Inventory has been produced in violation of the FLSA.

9.1.14. Compliance with Environmental Laws. Except as disclosed on **Schedule 9.1.14**, neither Borrower's nor any Subsidiary's past or present operations, Real Estate or other Properties are subject to any federal, state or local investigation to determine whether any remedial action is needed to address any environmental pollution, hazardous material or environmental clean-up. Neither Borrower nor any Subsidiary has received any material Environmental Notice. Neither Borrower nor any Subsidiary has any contingent liability with respect to any Environmental Release, environmental pollution or hazardous material on any Real Estate now or previously owned, leased or operated by it.

9.1.15. Burdensome Contracts. Neither Borrower nor any Subsidiary is a party or subject to any contract, agreement or charter restriction that could reasonably be expected to have a

Material Adverse Effect. Neither Borrower nor any Subsidiary is party or subject to any Restrictive Agreement, except as shown on **Schedule 9.1.15**. No such Restrictive Agreement prohibits the execution, delivery or performance of any Loan Document by an Obligor.

9.1.16. Litigation. Except as shown on **Schedule 9.1.16**, there are no proceedings or investigations pending or, to Borrower's knowledge, threatened against Borrower or Subsidiary, or any of their businesses, operations, Properties, prospects or conditions, that (a) relate to any Loan Documents or transactions contemplated thereby; or (b) could reasonably be expected to have a Material Adverse Effect if determined adversely to Borrower or Subsidiary. Except as shown on such Schedule, no Obligor has a Commercial Tort Claim (other than, as long as no Default or Event of Default exists, a Commercial Tort Claim for less than $1,000,000). Neither Borrower nor any Subsidiary is in default with respect to any order, injunction or judgment of any Governmental Authority.

9.1.17. No Defaults. No event or circumstance has occurred or exists that constitutes a Default or Event of Default. Neither Borrower nor Subsidiary is in default, and no event or circumstance has occurred or exists that with the passage of time or giving of notice would constitute a default, under any Material Contract or in the payment of any Borrowed Money. There is no basis upon which any party (other than Borrower or Subsidiary) could terminate a Material Contract prior to its scheduled termination date.

9.1.18. ERISA. Except as disclosed on **Schedule 9.1.18**:

(a) Except as would not reasonably be expected to have a Material Adverse Effect, each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code, and other federal and state laws. Each Plan that is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS or an application for such a letter is currently being processed by the IRS with respect thereto and, to the knowledge of Borrower, nothing has occurred which would prevent, or cause the loss of, such qualification. Except as would not reasonably be expected to have a Material Adverse Effect, each Obligor and ERISA Affiliate has met the applicable requirements under the Code, ERISA and the Pension Protection Act of 2006, and no application for a waiver of the minimum funding standards or an extension of any amortization period has been made with respect to any Plan.

(b) There are no pending or, to the knowledge of Borrower, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted in or could reasonably be expected to have a Material Adverse Effect.

(c) (i) Except as would not reasonably be expected to have a Material Adverse Effect, no ERISA Event has occurred or is reasonably expected to occur; (ii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is at least 60%; and no Obligor or ERISA Affiliate knows of any reason that such percentage could reasonably be expected to drop below 60%; (iii) no Obligor or ERISA Affiliate has incurred any material liability to the PBGC except for the payment of premiums, and, to the knowledge of Borrower, no premium payments are due and unpaid; (iv) no Obligor or ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or 4212(c) of ERISA; and (v) except as would not reasonably be expected to have an Material Adverse Effect, no Pension Plan has been terminated by its plan administrator or the PBGC, and, to the knowledge of Borrower, no fact or circumstance exists that could reasonably be expected to cause the PBGC to institute proceedings to terminate a Pension Plan.

(d) Except as would not reasonably be expected to have a Material Adverse Effect, with respect to any Foreign Plan, (i) all employer and employee contributions required by law or by the

terms of the Foreign Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices; (ii) the fair market value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance, or the book reserve established for any Foreign Plan, together with any accrued contributions, is sufficient to procure or provide for the accrued benefit obligations with respect to all current and former participants in such Foreign Plan according to the actuarial assumptions and valuations most recently used to account for such obligations in accordance with applicable generally accepted accounting principles; and (iii) it has been registered as required and has been maintained in good standing with applicable regulatory authorities.

9.1.19. Trade Relations. There exists no actual or threatened termination, limitation or modification of any business relationship between Borrower or Subsidiary and any customer or supplier, or any group of customers or suppliers, who individually or in the aggregate are material to the business of Borrower or Subsidiary. There exists no condition or circumstance that could reasonably be expected to impair the ability of Borrower or Subsidiary to conduct its business at any time hereafter in substantially the same manner as conducted on the Closing Date.

9.1.20. Labor Relations. Except as described on **Schedule 9.1.20**, neither Borrower nor any Subsidiary is party to or bound by any collective bargaining agreement, management agreement or consulting agreement. There are no material grievances, disputes or controversies with any union or other organization of Borrower’s or Subsidiary’s employees, or, to Borrower’s knowledge, any asserted or threatened strikes, work stoppages or demands for collective bargaining.

9.1.21. Payable Practices. Neither Borrower nor any Subsidiary has made any material change in its historical accounts payable practices from those in effect on the Closing Date.

9.1.22. Not a Regulated Entity. No Obligor is (a) an “investment company” or a “person directly or indirectly controlled by or acting on behalf of an investment company” within the meaning of the Investment Company Act of 1940; or (b) subject to regulation under the Federal Power Act, the Interstate Commerce Act, any public utilities code or any other Applicable Law regarding its authority to incur Debt.

9.1.23. Margin Stock. Neither Borrower nor any Subsidiary is engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No Revolver Loan proceeds or Letters of Credit will be used by Borrower to purchase or carry, or to reduce or refinance any Debt incurred to purchase or carry, any Margin Stock or for any related purpose governed by Regulations T, U or X of the Board of Governors.

9.1.24. OFAC. Neither Borrower, any Subsidiary, or any director, officer, employee, agent, affiliate or representative thereof, is or is owned or controlled by any individual or entity that is currently the subject or target of any Sanction or is located, organized or resident in a Designated Jurisdiction.

9.1.25. Anti-Corruption Laws. Borrower and Subsidiary have conducted their business in accordance with applicable anti-corruption laws and has instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

9.2. Complete Disclosure. No Loan Document contains any untrue statement of a material fact, nor fails to disclose any material fact necessary to make the statements contained therein not materially misleading. There is no fact or circumstance that any Obligor has failed to disclose to Agent in writing that could reasonably be expected to have a Material Adverse Effect.

SECTION 10. COVENANTS AND CONTINUING AGREEMENTS

10.1. Affirmative Covenants. As long as any Revolver Commitments or Obligations are outstanding, Borrower shall, and shall cause each Subsidiary to:

10.1.1. Inspections; Appraisals.

(a) Permit Agent from time to time, subject (unless a Default or Event of Default exists) to reasonable notice and normal business hours, to visit and inspect the Properties of Borrower or Subsidiary, inspect, audit and make extracts from Borrower's or Subsidiary's books and records, and discuss with its officers, employees, agents, advisors and independent accountants Borrower's or Subsidiary's business, financial condition, assets, prospects and results of operations. Lenders may participate in any such visit or inspection, at their own expense. Secured Parties shall have no duty to any Obligor to make any inspection, nor to share any results of any inspection, appraisal or report with any Obligor. Borrower acknowledges that all inspections, appraisals and reports are prepared by Agent and Lenders for their purposes, and Borrower shall not be entitled to rely upon them.

(b) Reimburse Agent for all its charges, costs and expenses in connection with (i) examinations of Obligors' books and records or any other financial or Collateral matters as it deems appropriate, up to (x) once per Loan Year and (y) twice per Loan Year if an examination is initiated while Availability is less than 15% of the Revolver Commitments; provided, however, that if an examination is initiated during a Default or Event of Default, all charges, costs and expenses relating thereto shall be reimbursed by Borrower without regard to such limits. Borrower shall pay Agent's then standard charges for examination activities, including charges for its internal examination and appraisal groups, as well as the charges of any third party used for such purposes. No Borrowing Base calculation shall include Collateral acquired in a Permitted Acquisition or otherwise outside the Ordinary Course of Business until completion of applicable field examinations and appraisals (which shall not be included in the limits provided above) satisfactory to Agent. Notwithstanding the above, Borrower shall reimburse Agent for all charges, costs and expenses in connection with the field examination conducted pursuant to **Section 6.3.3** without regard to the limitations set forth in this clause (b).

10.1.2. Financial and Other Information. Keep adequate records and books of account with respect to its business activities, in which proper entries are made in accordance with GAAP reflecting all financial transactions; and furnish to Agent and Lenders:

(a) as soon as available, and in any event within 90 days after the close of each Fiscal Year, balance sheets as of the end of such Fiscal Year and the related statements of income, cash flow and shareholders equity for such Fiscal Year, on a consolidated basis for Borrower and Subsidiaries, which consolidated statements shall be audited and certified (without qualification) by a firm of independent certified public accountants of recognized standing selected by Borrower and reasonably acceptable to Agent, and shall set forth in comparative form corresponding figures for the preceding Fiscal Year and other information acceptable to Agent;

(b) as soon as available, and in any event within 30 days after the end of each month, unaudited balance sheets as of the end of such month and the related statements of income (and with each quarterly financial statement, cash flow) for such month and for the portion of the Fiscal Year then elapsed, on a consolidated basis for Borrower and Subsidiaries, setting forth in comparative form corresponding figures for the preceding Fiscal Year and certified by the chief financial officer of Borrower as prepared in accordance with GAAP and fairly presenting the financial position and results of operations for such month and period, subject to normal year-end adjustments and the absence of footnotes;

(c) concurrently with delivery of financial statements under clauses (a) and (b) above with respect to each monthly financial statement being delivered at a Fiscal Quarter end, or more frequently if requested by Agent while a Default or Event of Default exists, a Compliance Certificate executed by the chief financial officer of Borrower;

(d) concurrently with delivery of financial statements under clause (a) above, copies of all management letters and other material reports submitted to Borrower by its accountants in connection with such financial statements;

(e) not later than 30 days prior to the end of each Fiscal Year, projections of Borrower's consolidated balance sheets, results of operations, cash flow and Availability for the next Fiscal Year, quarter by quarter;

(f) at Agent's request, a listing of Borrower's trade payables, specifying the trade creditor and balance due, and a detailed trade payable aging, all in form satisfactory to Agent; provided, that Borrower shall deliver to Agent together with each Borrowing Base Report (or on the 2nd Business Day of each week if an Increased A/P Reporting Period is in effect), a detailed listing of Borrower's payables owed to AmTRAN;

(g) promptly after the sending or filing thereof, copies of any proxy statements, financial statements or reports that Borrower has made generally available to its shareholders; copies of any regular, periodic and special reports or registration statements or prospectuses that Borrower files with the Securities and Exchange Commission or any other Governmental Authority, or any securities exchange; and copies of any press releases or other statements made available by Borrower to the public concerning material changes to or developments in the business of Borrower or its Subsidiaries;

(h) promptly after the sending or filing thereof, copies of any annual report to be filed in connection with each Pension Plan; and

(i) such other reports and information (financial or otherwise) as Agent may request from time to time in connection with any Collateral or Borrower's, Subsidiary's or other Obligor's financial condition or business.

10.1.3. Notices. Notify Agent and Lenders in writing, promptly after Borrower's obtaining knowledge thereof, of any of the following that affects an Obligor: (a) the threat or commencement of any proceeding or investigation, whether or not covered by insurance, if an adverse determination could have a Material Adverse Effect; (b) any pending or threatened labor dispute, strike or walkout, or the expiration of any material labor contract; (c) any default under or termination of a Material Contract; (d) the existence of any Default or Event of Default; (e) any judgment in an amount exceeding $10,000,000; (f) the assertion against Borrower of any Intellectual Property Claim, if an adverse resolution could have a Material Adverse Effect; (g) any violation or asserted violation by Borrower of any Applicable Law (including ERISA, OSHA, FLSA, or any Environmental Laws), if an adverse resolution could have a Material Adverse Effect; (h) any Environmental Release by an Obligor or on any Property owned, leased or occupied by an Obligor; or receipt of any Environmental Notice, the effect of which could reasonably be expected to have a Material Adverse Effect; (i) the occurrence of any ERISA Event; (j) the discharge of or any withdrawal or resignation by Borrower's independent accountants; or (k) any opening of a new office or place of business, at least 30 days prior to such opening.

10.1.4. Landlord and Storage Agreements. Upon request, provide Agent with copies of all existing agreements, and promptly after execution thereof provide Agent with copies of all future agreements, between an Obligor and any landlord, warehouseman, processor, shipper, bailee or other Person that owns any premises at which any Collateral may be kept or that otherwise may possess or handle any Collateral.

10.1.5. Compliance with Laws. Comply with all Applicable Laws, including ERISA, Environmental Laws, FLSA, OSHA, Anti-Terrorism Laws, and laws regarding collection and payment of Taxes, and maintain all Governmental Approvals necessary to the ownership of its Properties or conduct of its business, unless failure to comply (other than failure to comply with Anti-Terrorism Laws) or maintain could not reasonably be expected to have a Material Adverse Effect. Without limiting the generality of the foregoing, if any Environmental Release occurs at or on any Properties of Borrower or Subsidiary, it shall act promptly and diligently to investigate and report to Agent and all appropriate Governmental Authorities the extent of, and to make appropriate remedial action to eliminate, such Environmental Release, whether or not directed to do so by any Governmental Authority.

10.1.6. Taxes. Pay and discharge all Taxes prior to the date on which they become delinquent or penalties attach, unless such Taxes are being Properly Contested.

10.1.7. Insurance. In addition to the insurance required hereunder with respect to Collateral, maintain insurance with insurers (with a Best rating of at least A+, unless otherwise approved by Agent in its discretion) satisfactory to Agent, with respect to the Properties and business of Borrower and Subsidiaries of such type (including product liability, workers' compensation, larceny, embezzlement, or other criminal misappropriation insurance), in such amounts, and with such coverages and deductibles as are customary for companies similarly situated.

10.1.8. Licenses. Keep each License affecting any Collateral (including the manufacture, distribution or disposition of Inventory) or any other material Property of Borrower and Subsidiaries in full force and effect; promptly notify Agent of any proposed modification to any such License, or entry into any new License, in each case at least 30 days prior to its effective date; pay all royalties and other amounts when due under any License; and notify Agent of any default or breach asserted by any Person to have occurred under any License.

10.1.9. Future Subsidiaries. Promptly notify Agent upon any Person becoming a Subsidiary and, if such Person is not a Foreign Subsidiary, a wholly owned Subsidiary of any Foreign Subsidiary, or a Foreign Subsidiary Holding Company, cause it to guaranty the Obligations in a manner satisfactory to Agent, and to execute and deliver such documents, instruments and agreements and to take such other actions as Agent shall require to evidence and perfect a Lien in favor of Agent on all assets of such Person, including delivery of such legal opinions, in form and substance satisfactory to Agent, as it shall deem appropriate.

10.1.10. Anti-Corruption Laws. Conduct its business in compliance with applicable anti-corruption laws and maintain policies and procedures designed to promote and achieve compliance with such laws.

10.2. Negative Covenants. As long as any Revolver Commitments or Obligations are outstanding, Borrower shall not, and shall cause each Subsidiary not to:

10.2.1. Permitted Debt. Create, incur, guarantee or suffer to exist any Debt, except:

(a) the Obligations;

(b) Subordinated Debt;

(c) Permitted Purchase Money Debt;

(d) Borrowed Money (other than the Obligations, Subordinated Debt and Permitted Purchase Money Debt), but only to the extent outstanding on the Closing Date and not satisfied with proceeds of the initial Revolver Loans;

(e) Debt with respect to Bank Products incurred in the Ordinary Course of Business;

(f) Debt that is in existence when a Person becomes a Subsidiary or that is secured by an asset when acquired by Borrower or Subsidiary, as long as such Debt was not incurred in contemplation of such Person becoming a Subsidiary or such acquisition, and does not exceed $10,000,000 in the aggregate at any time;

(g) Permitted Contingent Obligations;

(h) Refinancing Debt as long as each Refinancing Condition is satisfied;

(i) the Citibank Facility;

(j) to the extent deemed to be Debt, the liabilities owed to AmTRAN; and

(k) Debt that is not included in any of the preceding clauses of this Section, is not secured by a Lien and does not exceed $10,000,000 in the aggregate at any time.

10.2.2. Permitted Liens. Create or suffer to exist any Lien upon any of its Property, except the following (collectively, "Permitted Liens"):

(a) Liens in favor of Agent;

(b) Purchase Money Liens securing Permitted Purchase Money Debt;

(c) Liens for Taxes not yet due or being Properly Contested;

(d) statutory Liens (other than Liens for Taxes or imposed under ERISA) arising in the Ordinary Course of Business, but only if (i) payment of the obligations secured thereby is not yet due or is being Properly Contested, and (ii) such Liens do not materially impair the value or use of the Property or materially impair operation of the business of Borrower or Subsidiary;

(e) Liens incurred or deposits made in the Ordinary Course of Business to secure the performance of government tenders, bids, contracts, statutory obligations and other similar obligations, as long as such Liens are at all times junior to Agent's Liens and are required or provided by law;

(f) Liens arising in the Ordinary Course of Business that are subject to Lien Waivers;

(g) Liens arising by virtue of a judgment or judicial order against Borrower or Subsidiary, or any Property of Borrower or Subsidiary, as long as such Liens are (i) in existence for less than 20 consecutive days or being Properly Contested, and (ii) at all times junior to Agent's Liens;

(h) easements, rights-of-way, restrictions, covenants or other agreements of record, and other similar charges or encumbrances on Real Estate, that do not secure any monetary obligation and do not interfere with the Ordinary Course of Business;

(i) normal and customary rights of setoff upon deposits in favor of depository institutions, and Liens of a collecting bank on Payment Items in the course of collection;

(j) Liens on assets (other than Accounts and Inventory) acquired in a Permitted Acquisition, securing Debt permitted by **Section 10.2.1(f)**;

(k) the AmTRAN Lien;

(l) the Citibank Lien;

(m) existing Liens shown on **Schedule 10.2.2;** and

(n) other Liens (other than Liens on Accounts and Inventory) that are not included in any of the preceding clauses of this Section securing Debt or other obligations having an aggregate outstanding principal amount not in excess of $5,000,000 in the aggregate at any time.

10.2.3. [Reserved].

10.2.4. Distributions; Upstream Payments. Declare or make any Distributions, except (i) Upstream Payments, (i) Distributions made within 3 Business Days of the Closing Date for the consummation of the AmTRAN Stock Repurchase pursuant to the Flow of Funds Agreement, (iii) Distributions payable solely in Equity Interests and (iv) any other Distributions so long as the Payment Test is satisfied; or create or suffer to exist any encumbrance or restriction on the ability of a Subsidiary to make any Upstream Payment, except for restrictions under the Loan Documents, under Applicable Law, under Section 10.2.14 or in effect on the Closing Date as shown on **Schedule 9.1.15.**

10.2.5. Restricted Investments. Make any Restricted Investment.

10.2.6. Disposition of Assets. Make any Asset Disposition, except a Permitted Asset Disposition, a disposition of Equipment under **Section 8.4.2,** or a transfer of Property by a Subsidiary or Obligor to Borrower.

10.2.7. Loans. Make any loans or other advances of money to any Person, except (a) advances to an officer or employee for salary, travel expenses, commissions and similar items in the Ordinary Course of Business; (b) prepaid expenses and extensions of trade credit made in the Ordinary Course of Business; (c) deposits with financial institutions permitted hereunder; (d) intercompany loans (i) by any Obligor to any other Obligor, (ii) by a Subsidiary that is not an Obligor to any Obligor (which loans are Subordinated Debt) and (iii) by any Obligor to any Subsidiary that is not an Obligor so long as at the time of the making of such loan the Payment Test is satisfied and when taken together with Restricted Investments of the type described in clause (f) of the definition thereof, does not exceed $10,000,000 in the aggregate at any time; and (e) loans and advances (other than Distributions) to an officer or employee in the Ordinary Course of Business so long as the aggregate amount of such loans and advances made in each Fiscal Year does not exceed $3,000,000 during such Fiscal Year.

10.2.8. Restrictions on Payment of Certain Debt. Make any payments (whether voluntary or mandatory, or a prepayment, redemption, retirement, defeasance or acquisition) with respect to any

(a) Subordinated Debt, except regularly scheduled payments of principal, interest and fees, but only to the extent permitted under any subordination agreement relating to such Debt (and a Senior Officer of Borrower shall certify to Agent, not less than five Business Days prior to the date of payment that all conditions under such agreement have been satisfied); or

(b) Borrowed Money (other than the Obligations or the Citibank Facility) prior to its due date under the agreements evidencing such Debt as in effect on the Closing Date (or as amended thereafter with the consent of Agent); or

(c) the Citibank Facility so long as the Payment Test is satisfied.

10.2.9. Fundamental Changes. Change its name or conduct business under any fictitious name; change its tax, charter or other organizational identification number; change its form or state of organization; liquidate, wind up its affairs or dissolve itself; or merge, combine or consolidate with any Person, whether in a single transaction or in a series of related transactions, except for (a) mergers or consolidations of a wholly-owned Subsidiary with another wholly-owned Subsidiary or into Borrower; or (b) Permitted Acquisitions.

10.2.10. Subsidiaries. Form or acquire any Subsidiary after the Closing Date, except in accordance with **Sections 10.1.9, 10.2.5** and **10.2.9**; or permit any existing Subsidiary to issue any additional Equity Interests except directors' qualifying shares.

10.2.11. Organic Documents. Amend, modify or otherwise change any of its Organic Documents, except in a manner that is not materially adverse to Agent or Lenders or otherwise in connection with a transaction permitted under **Section 10.2.9.**

10.2.12. Tax Consolidation. File or consent to the filing of any consolidated income tax return with any Person other than Borrower and Subsidiaries.

10.2.13. Accounting Changes. Make any material change in accounting treatment or reporting practices, except as required by GAAP and in accordance with **Section 1.2**; or change its Fiscal Year.

10.2.14. Restrictive Agreements. Become a party to any Restrictive Agreement, except a Restrictive Agreement (a) in effect on the Closing Date; (b) relating to secured Debt permitted hereunder, as long as the restrictions apply only to collateral for such Debt; or (c) constituting customary restrictions on assignment in leases and other contracts.

10.2.15. Hedging Agreements. Enter into any Hedging Agreement, except to hedge risks arising in the Ordinary Course of Business and not for speculative purposes.

10.2.16. Conduct of Business. Engage in any business, other than its business as conducted on the Closing Date and any activities incidental or reasonably related thereto.

10.2.17. Affiliate Transactions. Enter into or be party to any transaction with an Affiliate, except (a) transactions expressly permitted by the Loan Documents; (b) payment of reasonable compensation and expenses to officers and employees for services actually rendered, and loans and advances permitted by **Section 10.2.7**; (c) payment of customary directors' fees and indemnities; (d) transactions with Affiliates consummated prior to the Closing Date, as shown on **Schedule 10.2.17**; (e) transactions solely amongst Obligors; and (f) transactions with Affiliates in the Ordinary Course of Business, upon fair and reasonable terms fully disclosed to Agent and no less favorable than would be obtained in a comparable arm's-length transaction with a non-Affiliate.

10.2.18. Plans. Become party to any Pension Plan, Multiemployer Plan or Foreign Plan that could reasonably be expected to result in liability to an Obligor in excess of $10,000,000, other than any in existence on the Closing Date.

10.2.19. Amendments to Subordinated Debt. Amend, supplement or otherwise modify any document, instrument or agreement relating to any Subordinated Debt, if such modification (a) increases the principal balance of such Debt, or increases any required payment of principal or interest; (b) accelerates the date on which any installment of principal or any interest is due, or adds any additional redemption, put or prepayment provisions; (c) shortens the final maturity date or otherwise accelerates amortization; (d) increases the interest rate; (e) increases or adds any fees or charges; (f) modifies any

covenant in a manner or adds any representation, covenant or default that is more onerous or restrictive in any material respect for Borrower or Subsidiary, or that is otherwise materially adverse to Borrower, any Subsidiary or Lenders; or (g) results in the Obligations not being fully benefited by the subordination provisions thereof.

10.3. Financial Covenants. As long as any Revolver Commitments or Obligations are outstanding, Borrower shall:

10.3.1. Fixed Charge Coverage Ratio. Maintain a Fixed Charge Coverage Ratio, measured quarterly as of the last day of each Fiscal Quarter for each 12 month period then ended of at least 1.00:1.00 while a Financial Covenant Trigger Period is in effect, measured for the most recent period for which financial statements were delivered hereunder prior to the Financial Covenant Trigger Period and each period ending thereafter until the Financial Covenant Trigger Period is no longer in effect.

SECTION 11. EVENTS OF DEFAULT; REMEDIES ON DEFAULT

11.1. Events of Default. Each of the following shall be an "Event of Default" if it occurs for any reason whatsoever, whether voluntary or involuntary, by operation of law or otherwise:

(a) Borrower fails to pay its Obligations when due (whether at stated maturity, on demand, upon acceleration or otherwise);

(b) Any representation, warranty or other written statement of an Obligor made in connection with any Loan Documents or transactions contemplated thereby is incorrect or misleading in any material respect when given;

(c) Borrower breaches or fail to perform any covenant contained in **Section 6.3, 7.2, 7.4, 7.6, 8.1, 8.2.4, 8.2.5, 8.6.2, 10.1.1, 10.1.2, 10.2** or **10.3**;

(d) An Obligor breaches or fails to perform any other covenant contained in any Loan Documents, and such breach or failure is not cured within 30 days after a Senior Officer of such Obligor has knowledge thereof or receives notice thereof from Agent, whichever is sooner; provided, however, that such notice and opportunity to cure shall not apply if the breach or failure to perform is not capable of being cured within such period or is a willful breach by an Obligor;

(e) A Guarantor repudiates, revokes or attempts to revoke its Guaranty; an Obligor or third party denies or contests the validity or enforceability of any Loan Documents or Obligations, or the perfection or priority of any Lien granted to Agent; or any Loan Document ceases to be in full force or effect for any reason (other than a waiver or release by Agent and Lenders);

(f) Any breach or default of an Obligor occurs under (i) any Hedging Agreement; or (ii) any instrument or agreement to which it is a party or by which it or any of its Properties is bound, relating to any Debt (other than the Obligations) in excess of $10,000,000, if the maturity of or any payment with respect to such Debt may be accelerated or demanded due to such breach;

(g) Any judgment or order for the payment of money is entered against an Obligor in an amount that exceeds, individually or cumulatively with all unsatisfied judgments or orders against all Obligors, $10,000,000 (net of insurance coverage therefor that has not been denied by the insurer), unless a stay of enforcement of such judgment or order is in effect;

(h) A loss, theft, damage or destruction occurs with respect to any Collateral if the amount not covered by insurance exceeds $10,000,000;

(i) An Obligor is enjoined, restrained or in any way prevented by any Governmental Authority from conducting any material part of its business; an Obligor suffers the loss, revocation or termination of any material license, permit, lease or agreement necessary to its business; there is a cessation of any material part of an Obligor's business for a material period of time; any material Collateral or Property of an Obligor is taken or impaired through condemnation; an Obligor agrees to or commences any liquidation, dissolution or winding up of its affairs; or an Obligor is not Solvent;

(j) An Insolvency Proceeding is commenced by an Obligor; an Obligor makes an offer of settlement, extension or composition to its unsecured creditors generally; a trustee is appointed to take possession of any substantial Property of or to operate any of the business of an Obligor; or an Insolvency Proceeding is commenced against an Obligor and the Obligor consents to institution of the proceeding, the petition commencing the proceeding is not timely contested by the Obligor, the petition is not dismissed within 30 days after filing, or an order for relief is entered in the proceeding;

(k) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan that has resulted or could reasonably be expected to result in liability of an Obligor to a Pension Plan, Multiemployer Plan or PBGC in excess of $10,000,000, or that constitutes grounds for appointment of a trustee for or termination by the PBGC of any Pension Plan or Multiemployer Plan; an Obligor or ERISA Affiliate fails to pay when due after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan that could reasonably be expected to result in liability to an Obligor in an aggregate amount in excess of $10,000,000; or any event similar to the foregoing occurs or exists with respect to a Foreign Plan that could reasonably be expected to result in liability to an Obligor in an aggregate amount in excess of $10,000,000;

(l) An Obligor or any of its Senior Officers is criminally indicted or convicted for (i) a felony committed in the conduct of the Obligor's business, or (ii) violating any state or federal law (including the Controlled Substances Act, Money Laundering Control Act of 1986 and Illegal Exportation of War Materials Act) that could lead to forfeiture of any material Property or any Collateral; or

(m) A Change of Control occurs; or any event occurs or condition exists that has a Material Adverse Effect.

11.2. <u>Remedies upon Default</u>. If an Event of Default described in **Section 11.1(j)** occurs with respect to Borrower, then to the extent permitted by Applicable Law, all Obligations (other than Secured Bank Product Obligations) shall become automatically due and payable and all Revolver Commitments shall terminate, without any action by Agent or notice of any kind. In addition, or if any other Event of Default exists, Agent may in its discretion (and shall upon written direction of Required Lenders) do any one or more of the following from time to time:

(a) declare any Obligations (other than Secured Bank Product Obligations) immediately due and payable, whereupon they shall be due and payable without diligence, presentment, demand, protest or notice of any kind, all of which are hereby waived by Borrower to the fullest extent permitted by law;

(b) terminate, reduce or condition any Revolver Commitment or adjust the Borrowing Base;

(c) require Obligors to Cash Collateralize their LC Obligations, Secured Bank Product Obligations and other Obligations that are contingent or not yet due and payable, and if Obligors fail to deposit such Cash Collateral, Agent may (and shall upon the direction of Required Lenders) advance the required Cash Collateral as Revolver Loans (whether or not an Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied); and

(d) exercise any other rights or remedies afforded under any agreement, by law, at equity or otherwise, including the rights and remedies of a secured party under the UCC. Such rights and remedies include the rights to (i) take possession of any Collateral; (ii) require Borrower to assemble Collateral, at Borrower's expense, and make it available to Agent at a place designated by Agent; (iii) enter any premises where Collateral is located and store Collateral on such premises until sold (and if the premises are owned or leased by Borrower, Borrower agrees not to charge for such storage); and (iv) sell or otherwise dispose of any Collateral in its then condition, or after any further manufacturing or processing thereof, at public or private sale, with such notice as may be required by Applicable Law, in lots or in bulk, at such locations, all as Agent, in its discretion, deems advisable. Borrower agrees that 10 days notice of any proposed sale or other disposition of Collateral by Agent shall be reasonable, and that any sale conducted on the internet or to a licensor of Intellectual Property shall be commercially reasonable. Agent may conduct sales on any Obligor's premises, without charge, and any sale may be adjourned from time to time in accordance with Applicable Law. Agent shall have the right to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and set off the amount of such price against the Obligations.

11.3. License. Agent is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of royalty or other compensation to any Person) any or all Intellectual Property of Borrower, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other Property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral during the continuance of an Event of Default,. Borrower's rights and interests under Intellectual Property shall inure to Agent's benefit.

11.4. Setoff. At any time during the continuance of an Event of Default, Agent, Issuing Bank, Lenders, and any of their Affiliates are authorized, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by Agent, Issuing Bank, such Lender or such Affiliate to or for the credit or the account of an Obligor against its Obligations, whether or not Agent, Issuing Bank, such Lender or such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or are owed to a branch or office of Agent, Issuing Bank, such Lender or such Affiliate different from the branch or office holding such deposit or obligated on such indebtedness. The rights of Agent, Issuing Bank, each Lender and each such Affiliate under this Section are in addition to other rights and remedies (including other rights of setoff) that such Person may have.

11.5. Remedies Cumulative; No Waiver.

11.5.1. Cumulative Rights. All agreements, warranties, guaranties, indemnities and other undertakings of Obligors under the Loan Documents are cumulative and not in derogation of each other. The rights and remedies of Agent and Lenders under the Loan Documents are cumulative, may be exercised at any time and from time to time, concurrently or in any order, and are not exclusive of any other rights or remedies available by agreement, by law, at equity or otherwise. All such rights and remedies shall continue in full force and effect until Full Payment of all Obligations.

11.5.2. Waivers. No waiver or course of dealing shall be established by (a) the failure or delay of Agent or any Lender to require strict performance by any Obligor under any Loan Document, or to exercise any rights or remedies with respect to Collateral or otherwise; (b) the making of any Revolver Loan or issuance of any Letter of Credit during a Default, Event of Default or other failure to satisfy any conditions precedent; or (c) acceptance by Agent or any Lender of any payment or performance by an Obligor under any Loan Documents in a manner other than that specified therein. Any failure to satisfy a financial covenant on a measurement date shall not be cured or remedied by satisfaction of such covenant on a subsequent date.

SECTION 12. AGENT

12.1. Appointment, Authority and Duties of Agent.

12.1.1. Appointment and Authority. Each Secured Party appoints and designates Bank of America as Agent under all Loan Documents. Agent may, and each Secured Party authorizes Agent to, enter into all Loan Documents to which Agent is intended to be a party and accept all Security Documents. Any action taken by Agent in accordance with the provisions of the Loan Documents, and the exercise by Agent of any rights or remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized by and binding upon all Secured Parties. Without limiting the generality of the foregoing, Agent shall have the sole and exclusive authority to (a) act as the disbursing and collecting agent for Lenders with respect to all payments and collections arising in connection with the Loan Documents; (b) execute and deliver as Agent each Loan Document, including any intercreditor or subordination agreement, and accept delivery of each Loan Document; (c) act as collateral agent for Secured Parties for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein; (d) manage, supervise or otherwise deal with Collateral; and (e) take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral or under any Loan Documents, Applicable Law or otherwise. Agent alone shall be authorized to determine eligibility and applicable advance rates under the Borrowing Base, whether to impose or release any reserve, or whether any conditions to funding or issuance of a Letter of Credit have been satisfied, which determinations and judgments, if exercised in good faith, shall exonerate Agent from liability to any Secured Party or other Person for any error in judgment.

12.1.2. Duties. The title of "Agent" is used solely as a matter of market custom and the duties of Agent are administrative in nature only. Agent has no duties except those expressly set forth in the Loan Documents, and in no event does Agent have any agency, fiduciary or implied duty to or relationship with any Secured Party or other Person by reason of any Loan Document or related transaction. The conferral upon Agent of any right shall not imply a duty to exercise such right, unless instructed to do so by Lenders in accordance with this Agreement.

12.1.3. Agent Professionals. Agent may perform its duties through agents and employees. Agent may consult with and employ Agent Professionals, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by an Agent Professional. Agent shall not be responsible for the negligence or misconduct of any agents, employees or Agent Professionals selected by it with reasonable care.

12.1.4. Instructions of Required Lenders. The rights and remedies conferred upon Agent under the Loan Documents may be exercised without the necessity of joining any other party, unless required by Applicable Law. In determining compliance with a condition for any action hereunder, including satisfaction of any condition in **Section 6**, Agent may presume that the condition is satisfactory to a Secured Party unless Agent has received notice to the contrary from such Secured Party before Agent takes the action. Agent may request instructions from Required Lenders or other Secured Parties with respect to any act (including the failure to act) in connection with any Loan Documents or Collateral, and may seek assurances to its satisfaction from Secured Parties of their indemnification obligations against Claims that could be incurred by Agent. Agent may refrain from any act until it has received such instructions or assurances, and shall not incur liability to any Person by reason of so refraining. Instructions of Required Lenders shall be binding upon all Secured Parties, and no Secured Party shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting pursuant to instructions of Required Lenders. Notwithstanding the foregoing, instructions by and consent of specific parties shall be required to the extent provided in **Section 14.1.1**. In no event shall Agent be required to take any action that it determines in its discretion is contrary to Applicable Law or any Loan Documents or could subject any Agent Indemnitee to liability.

12.2. Agreements Regarding Collateral and Borrower Materials.

12.2.1. Lien Releases; Care of Collateral. Secured Parties authorize Agent to release any Lien on any Collateral (a) upon Full Payment of the Obligations; (b) that is the subject of a disposition or Lien that Borrower certifies in writing is a Permitted Asset Disposition or a Permitted Lien entitled to priority over Agent's Liens (and Agent may rely conclusively on such certificate without further inquiry); (c) that does not constitute a material part of the Collateral; or (d) subject to **Section 14.1**, with the consent of Required Lenders. Secured Parties authorize Agent to subordinate its Liens to any Purchase Money Lien or other Lien entitled to priority hereunder. Agent has no obligation to assure that any Collateral exists or is owned by an Obligor, or is cared for, protected or insured, nor to assure that Agent's Liens have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral.

12.2.2. Possession of Collateral. Agent and Secured Parties appoint each Secured Party as agent (for the benefit of Secured Parties) for the purpose of perfecting Liens in Collateral held or controlled by it, to the extent such Liens are perfected by possession or control. If a Secured Party obtains possession or control of any Collateral, it shall notify Agent thereof and, promptly upon Agent's request, deliver such Collateral to Agent or otherwise deal with it in accordance with Agent's instructions.

12.2.3. Reports. Agent shall promptly provide to Lenders, when complete, any field examination, audit or appraisal report prepared for Agent with respect to any Obligor or Collateral ("Report"). Reports and other Borrower Materials may be made available to Lenders by providing access to them on the Platform, but Agent shall not be responsible for system failures or access issues that may occur from time to time. Each Lender agrees (a) that Reports are not intended to be comprehensive audits or examinations, and that Agent or any other Person performing an audit or examination will inspect only limited information and will rely significantly upon Borrower's books, records and representations; (b) that Agent makes no representation or warranty as to the accuracy or completeness of any Borrower Materials and shall not be liable for any information contained in or omitted from any Borrower Materials, including any Report; and (c) to keep all Borrower Materials confidential and strictly for such Lender's internal use, not to distribute any Report or other Borrower Materials (or the contents thereof) to any Person (except to such Lender's Participants, attorneys and accountants), and to use all Borrower Materials solely for administration of the Obligations. Each Lender shall indemnify and hold harmless Agent and any other Person preparing a Report from any action such Lender may take as a result of or any conclusion it may draw from any Borrower Materials, as well as from any Claims arising as a direct or indirect result of Agent furnishing same to such Lender, via the Platform or otherwise.

12.3. Reliance By Agent. Agent shall be entitled to rely, and shall be fully protected in relying, upon any certification, notice or other communication (including those by telephone, telex, telegram, telecopy, e-mail or other electronic means) believed by it to be genuine and correct and to have been signed, sent or made by the proper Person. Agent shall have a reasonable and practicable amount of time to act upon any instruction, notice or other communication under any Loan Document, and shall not be liable for any delay in acting.

12.4. Action Upon Default. Agent shall not be deemed to have knowledge of any Default or Event of Default, or of any failure to satisfy any conditions in **Section 6**, unless it has received written notice from Borrower or Required Lenders specifying the occurrence and nature thereof. If a Lender acquires knowledge of a Default, Event of Default or failure of such conditions, it shall promptly notify Agent and the other Lenders thereof in writing. Each Secured Party agrees that, except as otherwise provided in any Loan Documents or with the written consent of Agent and Required Lenders, it will not take any Enforcement Action, accelerate Obligations (other than Secured Bank Product Obligations) or assert any rights relating to any Collateral.

12.5. Ratable Sharing. If any Lender obtains any payment or reduction of any Obligation, whether through set-off or otherwise, in excess of its ratable share of such Obligation, such Lender shall forthwith purchase from Secured Parties participations in the affected Obligation as are necessary to share the excess payment or reduction on a Pro Rata basis or in accordance with **Section 5.6.2**, as applicable. If any of such payment or reduction is thereafter recovered from the purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest. Notwithstanding the foregoing, if a Defaulting Lender obtains a payment or reduction of any Obligation, it shall immediately turn over the full amount thereof to Agent for application under **Section 4.2.2** and it shall provide a written statement to Agent describing the Obligation affected by such payment or reduction. No Lender shall set off against a Dominion Account without Agent's prior consent.

12.6. Indemnification. EACH SECURED PARTY SHALL INDEMNIFY AND HOLD HARMLESS AGENT INDEMNITEES AND ISSUING BANK INDEMNITEES, TO THE EXTENT NOT REIMBURSED BY OBLIGORS, ON A PRO RATA BASIS, AGAINST ALL CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY SUCH INDEMNITEE, PROVIDED THAT ANY CLAIM AGAINST AN AGENT INDEMNITEE RELATES TO OR ARISES FROM ITS ACTING AS OR FOR AGENT (IN THE CAPACITY OF AGENT). In Agent's discretion, it may reserve for any Claims made against an Agent Indemnitee or Issuing Bank Indemnitee, and may satisfy any judgment, order or settlement relating thereto, from proceeds of Collateral prior to making any distribution of Collateral proceeds to Secured Parties. If Agent is sued by any receiver, trustee or other Person for any alleged preference or fraudulent transfer, then any monies paid by Agent in settlement or satisfaction of such proceeding, together with all interest, costs and expenses (including attorneys' fees) incurred in the defense of same, shall be promptly reimbursed to Agent by each Secured Party to the extent of its Pro Rata share.

12.7. Limitation on Responsibilities of Agent. Agent shall not be liable to any Secured Party for any action taken or omitted to be taken under the Loan Documents, except for losses directly and solely caused by Agent's gross negligence or willful misconduct. Agent does not assume any responsibility for any failure or delay in performance or any breach by any Obligor, Lender or other Secured Party of any obligations under the Loan Documents. Agent does not make any express or implied representation, warranty or guarantee to Secured Parties with respect to any Obligations, Collateral, Liens, Loan Documents or Obligor. No Agent Indemnitee shall be responsible to Secured Parties for any recitals, statements, information, representations or warranties contained in any Loan Documents or Borrower Materials; the execution, validity, genuineness, effectiveness or enforceability of any Loan Documents; the genuineness, enforceability, collectability, value, sufficiency, location or existence of any Collateral, or the validity, extent, perfection or priority of any Lien therein; the validity, enforceability or collectability of any Obligations; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor or Account Debtor. No Agent Indemnitee shall have any obligation to any Secured Party to ascertain or inquire into the existence of any Default or Event of Default, the observance by any Obligor of any terms of the Loan Documents, or the satisfaction of any conditions precedent contained in any Loan Documents.

12.8. Successor Agent and Co-Agents.

12.8.1. Resignation; Successor Agent. Agent may resign at any time by giving at least 30 days written notice thereof to Lenders and Borrower. Required Lenders may appoint a successor that is (a) a Lender or Affiliate of a Lender; or (b) a financial institution reasonably acceptable to Required Lenders and (provided no Default or Event of Default exists) Borrower. If no successor is appointed by the effective date of Agent's resignation, then on such date, Agent may appoint a successor acceptable to it in its discretion (which shall be a Lender unless no Lender accepts the role) or, in the absence of such

appointment, Required Lenders shall automatically assume all rights and duties of Agent. The successor Agent shall thereupon succeed to and become vested with all the powers and duties of the retiring Agent without further act. The retiring Agent shall be discharged from its duties hereunder on the effective date of its resignation, but shall continue to have all rights and protections available to Agent under the Loan Documents with respect to actions, omissions, circumstances or Claims relating to or arising while it was acting or transferring responsibilities as Agent or holding any Collateral on behalf of Secured Parties, including the indemnification set forth in **Sections 12.6** and **14.2**, and all rights and protections under this **Section 12.** Any successor to Bank of America by merger or acquisition of stock or this loan shall continue to be Agent hereunder without further act on the part of any Secured Party or Obligor.

12.8.2. Co-Collateral Agent. If appropriate under Applicable Law, Agent may appoint a Person to serve as a co-collateral agent or separate collateral agent under any Loan Document. Each right, remedy and protection intended to be available to Agent under the Loan Documents shall also be vested in such agent. Secured Parties shall execute and deliver any instrument or agreement that Agent may request to effect such appointment. If any such agent shall die, dissolve, become incapable of acting, resign or be removed, then all the rights and remedies of the agent, to the extent permitted by Applicable Law, shall vest in and be exercised by Agent until appointment of a new agent.

12.9. Due Diligence and Non-Reliance. Each Lender acknowledges and agrees that it has, independently and without reliance upon Agent or any other Lenders, and based upon such documents, information and analyses as it has deemed appropriate, made its own credit analysis of each Obligor and its own decision to enter into this Agreement and to fund Revolver Loans and participate in LC Obligations hereunder. Each Secured Party has made such inquiries as it feels necessary concerning the Loan Documents, Collateral and Obligors. Each Secured Party acknowledges and agrees that the other Secured Parties have made no representations or warranties concerning any Obligor, any Collateral or the legality, validity, sufficiency or enforceability of any Loan Documents or Obligations. Each Secured Party will, independently and without reliance upon any other Secured Party, and based upon such financial statements, documents and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in making Revolver Loans and participating in LC Obligations, and in taking or refraining from any action under any Loan Documents. Except for notices, reports and other information expressly requested by a Lender, Agent shall have no duty or responsibility to provide any Secured Party with any notices, reports or certificates furnished to Agent by any Obligor or any credit or other information concerning the affairs, financial condition, business or Properties of any Obligor (or any of its Affiliates) which may come into possession of Agent or its Affiliates.

12.10. Remittance of Payments and Collections.

12.10.1. Remittances Generally. Payments by any Secured Party to Agent shall be made by the time and date provided herein, in immediately available funds. If no time for payment is specified or if payment is due on demand and request for payment is made by Agent by 1:00 p.m. on a Business Day, then payment shall be made by the Secured Party by 3:00 p.m. on such day, and if request is made after 1:00 p.m., then payment shall be made by 11:00 a.m. on the next Business Day. Payment by Agent to any Secured Party shall be made by wire transfer, in the type of funds received by Agent. Any such payment shall be subject to Agent's right of offset for any amounts due from such payee under the Loan Documents.

12.10.2. Failure to Pay. If any Secured Party fails to deliver when due any amount payable by it to Agent hereunder, such amount shall bear interest, from the due date until paid in full, at the greater of the Federal Funds Rate or the rate determined by Agent as customary for interbank compensation for two Business Days and thereafter at the Default Rate for Base Rate Revolver Loans. In no event shall Borrower be entitled to credit for any interest paid by a Secured Party to Agent, nor shall a Defaulting Lender be entitled to interest on amounts held by Agent pursuant to **Section 4.2**.

12.10.3. Recovery of Payments. If Agent pays an amount to a Secured Party in the expectation that a related payment will be received by Agent from an Obligor and such related payment is not received, then Agent may recover such amount from the Secured Party. If Agent determines that an amount received by it must be returned or paid to an Obligor or other Person pursuant to Applicable Law or otherwise, then Agent shall not be required to distribute such amount to any Secured Party. If Agent is required to return any amounts applied by it to Obligations held by a Secured Party, such Secured Party shall pay to Agent, **on demand**, its share of the amounts required to be returned.

12.11. Individual Capacities. As a Lender, Bank of America shall have the same rights and remedies under the Loan Documents as any other Lender, and the terms "Lenders," "Required Lenders" or any similar term shall include Bank of America in its capacity as a Lender. Agent, Lenders and their Affiliates may accept deposits from, lend money to, provide Bank Products to, act as financial or other advisor to, and generally engage in any kind of business with, Obligors and their Affiliates, as if they were not Agent or Lenders hereunder, without any duty to account therefor to any Secured Party. In their individual capacities, Agent, Lenders and their Affiliates may receive information regarding Obligors, their Affiliates and their Account Debtors (including information subject to confidentiality obligations), and shall have no obligation to provide such information to any Secured Party.

12.12. Titles. Each Lender, other than Bank of America, that is designated in connection with this credit facility as an "Arranger," "Bookrunner" or "Agent" of any kind shall have no right or duty under any Loan Documents other than those applicable to all Lenders, and shall in no event have any fiduciary duty to any Secured Party.

12.13. Bank Product Providers. Each Secured Bank Product Provider, by delivery of a notice to Agent of a Bank Product, agrees to be bound by the Loan Documents, including **Sections 5.6, 14.3.3** and **12.** Each Secured Bank Product Provider shall indemnify and hold harmless Agent Indemnitees, to the extent not reimbursed by Obligors, against all Claims that may be incurred by or asserted against any Agent Indemnitee in connection with such provider's Secured Bank Product Obligations.

12.14. No Third Party Beneficiaries. This **Section 12** is an agreement solely among Secured Parties and Agent, and shall survive Full Payment of the Obligations. This **Section 12** does not confer any rights or benefits upon Borrower or any other Person. As between Borrower and Agent, any action that Agent may take under any Loan Documents or with respect to any Obligations shall be conclusively presumed to have been authorized and directed by Secured Parties.

SECTION 13. BENEFIT OF AGREEMENT; ASSIGNMENTS

13.1. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrower, Agent, Lenders, Secured Parties, and their respective successors and assigns, except that (a) no Borrower shall have the right to assign its rights or delegate its obligations under any Loan Documents; and (b) any assignment by a Lender must be made in compliance with **Section 13.3.** Agent may treat the Person which made any Revolver Loan as the owner thereof for all purposes until such Person makes an assignment in accordance with **Section 13.3.** Any authorization or consent of a Lender shall be conclusive and binding on any subsequent transferee or assignee of such Lender.

13.2. Participations.

13.2.1. Permitted Participants; Effect. Subject to **Section 13.3.3**, any Lender may sell to a financial institution ("Participant") a participating interest in the rights and obligations of such Lender under any Loan Documents. Despite any sale by a Lender of participating interests to a Participant, such Lender's obligations under the Loan Documents shall remain unchanged, it shall remain solely responsible to the other parties hereto for performance of such obligations, it shall remain the holder of its Revolver Loans and Revolver Commitments for all purposes, all amounts payable by Borrower shall be

determined as if it had not sold such participating interests, and Borrower and Agent shall continue to deal solely and directly with such Lender in connection with the Loan Documents. Each Lender shall be solely responsible for notifying its Participants of any matters under the Loan Documents, and Agent and the other Lenders shall not have any obligation or liability to any such Participant. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of **Section 5.9** unless Borrower agrees otherwise in writing.

13.2.2. Voting Rights. Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, waiver or other modification of a Loan Document other than that which forgives principal, interest or fees, reduces the stated interest rate or fees payable with respect to any Revolver Loan or Revolver Commitment in which such Participant has an interest, postpones the Commitment Termination Date or any date fixed for any regularly scheduled payment of principal, interest or fees on such Revolver Loan or Revolver Commitment, or releases Borrower, Guarantor or substantially all Collateral.

13.2.3. Participant Register. Each Lender that sells a participation shall, acting as a non-fiduciary agent of Borrower (solely for tax purposes), maintain a register in which it enters the Participant's name, address and interest in Revolver Commitments, Revolver Loans (and stated interest) and LC Obligations. Entries in the register shall be conclusive, absent manifest error, and such Lender shall treat each Person recorded in the register as the owner of the participation for all purposes, notwithstanding any notice to the contrary. No Lender shall have an obligation to disclose any information in such register except to the extent necessary to establish that a Participant's interest is in registered form under Section 5f.103-1(c) of the U.S. Treasury Regulations under the Code.

13.2.4. Benefit of Setoff. Each Participant shall have a right of set-off in respect of its participating interest to the same extent as if such interest were owing directly to a Lender, and each Lender shall also retain the right of set-off with respect to any participating interests sold by it. By exercising any right of set-off, a Participant agrees to share with Lenders all amounts received through its set-off, in accordance with **Section 12.5** as if such Participant were a Lender.

13.3. Assignments.

13.3.1. Permitted Assignments. A Lender may assign to an Eligible Assignee any of its rights and obligations under the Loan Documents, as long as (a) each assignment is of a constant, and not a varying, percentage of the transferor Lender's rights and obligations under the Loan Documents and, in the case of a partial assignment, is in a minimum principal amount of $10,000,000 (unless otherwise agreed by Agent in its discretion) and integral multiples of $5,000,000 in excess of that amount; (b) except in the case of an assignment in whole of a Lender's rights and obligations, the aggregate amount of the Revolver Commitments retained by the transferor Lender is at least $10,000,000 (unless otherwise agreed by Agent in its discretion); and (c) the parties to each such assignment shall execute and deliver an Assignment to Agent for acceptance and recording. Nothing herein shall limit the right of a Lender to pledge or assign any rights under the Loan Documents to secure obligations of such Lender, including a pledge or assignment to a Federal Reserve Bank; provided, however, that no such pledge or assignment shall release the Lender from its obligations hereunder nor substitute the pledge or assignee for such Lender as a party hereto.

13.3.2. Effect; Effective Date. Upon delivery to Agent of an assignment notice in the form of **Exhibit B** and a processing fee of $3,500 (unless otherwise agreed by Agent in its discretion), the assignment shall become effective as specified in the notice, if it complies with this **Section 13.3**. From such effective date, the Eligible Assignee shall for all purposes be a Lender under the Loan Documents, and shall have all rights and obligations of a Lender thereunder. Upon consummation of an assignment, the transferor Lender, Agent and Borrower shall make appropriate arrangements for issuance of replacement and/or new notes, if applicable. The transferee Lender shall comply with **Section 5.10** and deliver, upon request, an administrative questionnaire satisfactory to Agent.

13.3.3. Certain Assignees. No assignment or participation may be made to Borrower, Affiliate of Borrower, Defaulting Lender or natural person. Agent shall have no obligation to determine whether any assignment is permitted under the Loan Documents. Any assignment by a Defaulting Lender must be accompanied by satisfaction of its outstanding obligations under the Loan Documents in a manner satisfactory to Agent, including payment by the Defaulting Lender or Eligible Assignee of an amount sufficient upon distribution (through direct payment, purchases of participations or other methods acceptable to Agent in its discretion) to satisfy all funding and payment liabilities of the Defaulting Lender. If any assignment by a Defaulting Lender (by operation of law or otherwise) does not comply with the foregoing, the assignee shall be deemed a Defaulting Lender for all purposes until compliance occurs.

13.3.4. Register. Agent, acting as a non-fiduciary agent of Borrower (solely for tax purposes), shall maintain (a) a copy (or electronic equivalent) of each Assignment and Acceptance delivered to it, and (b) a register for recordation of the names, addresses and Revolver Commitments of, and the Revolver Loans, interest and LC Obligations owing to, each Lender. Entries in the register shall be conclusive, absent manifest error, and Borrower, Agent and Lenders shall treat each Person recorded in such register as a Lender for all purposes under the Loan Documents, notwithstanding any notice to the contrary. Agent may choose to show only one Borrower as the borrower in the register, without any effect on the liability of any Obligor with respect to the Obligations. The register shall be available for inspection by Borrower or any Lender, from time to time upon reasonable notice.

13.4. Replacement of Certain Lenders. If a Lender (a) within the last 120 days failed to give its consent to any amendment, waiver or action for which consent of all Lenders was required and Required Lenders consented, (b) is a Defaulting Lender, or (c) within the last 120 days gave a notice under **Section 3.5** or requested payment or compensation under **Section 3.7** or **5.9** (and has not designated a different Lending Office pursuant to **Section 3.8**), then Agent or Borrower may, upon 10 days notice to such Lender, require it to assign its rights and obligations under the Loan Documents to Eligible Assignee(s), pursuant to appropriate Assignment(s), within 20 days after the notice. Agent is irrevocably appointed as attorney-in-fact to execute any such Assignment if the Lender fails to execute it. Such Lender shall be entitled to receive, in cash, concurrently with such assignment, all amounts owed to it under the Loan Documents through the date of assignment.

SECTION 14. MISCELLANEOUS

14.1. Consents, Amendments and Waivers.

14.1.1. Amendment. No modification of any Loan Document, including any extension or amendment of a Loan Document or any waiver of a Default or Event of Default, shall be effective without the prior written agreement of Agent (with the consent of Required Lenders) and each Obligor party to such Loan Document; provided, however, that

(a) without the prior written consent of Agent, no modification shall alter any provision in a Loan Document that relates to any rights, duties or discretion of Agent;

(b) without the prior written consent of Issuing Bank, no modification shall alter **Section 2.3** or any other provision in a Loan Document that relates to Letters of Credit or any rights, duties or discretion of Issuing Bank;

(c) without the prior written consent of each affected Lender, including a Defaulting Lender, no modification shall (i) increase the Revolver Commitment of such Lender; (ii) reduce the

amount of, or waive or delay payment of, any principal, interest or fees payable to such Lender (except as provided in **Section 4.2**); (iii) extend the Revolver Termination Date applicable to such Lender's Obligations; or (iv) amend this clause (c);

(d) without the prior written consent of all Lenders (except any Defaulting Lender), no modification shall (i) alter **Section 5.6.2, 7.1** (except to add Collateral) or **14.1.1**; (ii) amend the definition of Borrowing Base, Accounts Formula Amount or Securities Formula Amount (or any defined term used in such definitions) if the effect of such amendment is to increase borrowing availability, Pro Rata or Required Lenders; (iii) release all or substantially all Collateral; or (iv) except in connection with a merger, disposition or similar transaction expressly permitted hereby, release any Obligor from liability for any Obligations; and

(e) without the prior written consent of a Secured Bank Product Provider, no modification shall affect its relative payment priority under **Section 5.6.2**.

14.1.2. Limitations. The agreement of Borrower shall not be required for any modification of a Loan Document that deals solely with the rights and duties of Lenders, Agent and/or Issuing Bank as among themselves. Only the consent of the parties to any agreement relating to fees or a Bank Product shall be required for modification of such agreement, and no Bank Product provider (in such capacity) shall have any right to consent to modification of any Loan Document other than its Bank Product agreement. Any waiver or consent granted by Agent or Lenders hereunder shall be effective only if in writing and only for the matter specified.

14.1.3. Payment for Consents. No Borrower will, directly or indirectly, pay any remuneration or other thing of value, whether by way of additional interest, fee or otherwise, to any Lender (in its capacity as a Lender hereunder) as consideration for agreement by such Lender with any modification of any Loan Documents, unless such remuneration or value is concurrently paid, on the same terms, on a Pro Rata basis to all Lenders providing their consent.

14.2. Indemnity. BORROWER SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST ANY CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE, INCLUDING CLAIMS ASSERTED BY ANY OBLIGOR OR OTHER PERSON OR ARISING FROM THE NEGLIGENCE OF AN INDEMNITEE. In no event shall any party to a Loan Document have any obligation thereunder to indemnify or hold harmless an Indemnitee with respect to a Claim that is determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence or willful misconduct of such Indemnitee.

14.3. Notices and Communications.

14.3.1. Notice Address. Subject to **Section 14.3.2**, all notices and other communications by or to a party hereto shall be in writing and shall be given to Borrower, at Borrower's address shown on the signature pages hereof, and to any other Person at its address shown on the signature pages hereof (or, in the case of a Person who becomes a Lender after the Closing Date, at the address shown on its Assignment), or at such other address as a party may hereafter specify by notice in accordance with this **Section 14.3**. Each communication shall be effective only (a) if given by facsimile transmission, when transmitted to the applicable facsimile number, if confirmation of receipt is received; (b) if given by mail, three Business Days after deposit in the U.S. mail, with first-class postage pre-paid, addressed to the applicable address; or (c) if given by personal delivery, when duly delivered to the notice address with receipt acknowledged. Notwithstanding the foregoing, no notice to Agent pursuant to **Section 2.1.4, 2.3, 3.1.2, 4.1.1** or **5.3.3** shall be effective until actually received by the individual to whose attention at Agent such notice is required to be sent. Any written communication that is not sent in conformity with the foregoing provisions shall nevertheless be effective on the date actually received by the noticed party. Any notice received by Borrower shall be deemed received by Borrower.

14.3.2. Communications. Electronic and telephonic communications (including e-mail, messaging, voice mail and websites) may be used only in a manner acceptable to Agent. Secured Parties make no assurance as to the privacy or security of electronic or telephonic communications. E-mail and voice mail shall not be effective notices under the Loan Documents.

14.3.3. Platform. Borrower Materials shall be delivered pursuant to procedures approved by Agent, including electronic delivery (if possible) upon request by Agent to an electronic system maintained by Agent ("Platform"). Borrower shall notify Agent of each posting of Borrower Materials on the Platform and the materials shall be deemed received by Agent only upon its receipt of such notice. Borrower Materials and other information relating to this credit facility may be made available to Secured Parties on the Platform. The Platform is provided "as is" and "as available." Agent does not warrant the accuracy or completeness of any information on the Platform nor the adequacy or functioning of the Platform, and expressly disclaims liability for any errors or omissions in the Borrower Materials or any issues involving the Platform. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY AGENT WITH RESPECT TO BORROWER MATERIALS OR THE PLATFORM. No Agent Indemnitee shall have any liability to Borrower, Secured Parties or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) relating to use by any Person of the Platform, including any unintended recipient, nor for delivery of Borrower Materials and other information via the Platform, internet, e-mail, or any other electronic platform or messaging system.

14.3.4. Public Information. Obligors and Secured Parties acknowledge that "public" information may not be segregated from material non-public information on the Platform. Secured Parties acknowledge that Borrower Materials may include Obligors' material non-public information, and should not be made available to personnel who do not wish to receive such information or may be engaged in investment or other market-related activities with respect to an Obligor's securities.

14.3.5. Non-Conforming Communications. Agent and Lenders may rely upon any communications purportedly given by or on behalf of Borrower even if they were not made in a manner specified herein, were incomplete or were not confirmed, or if the terms thereof, as understood by the recipient, varied from a later confirmation. Borrower shall indemnify and hold harmless each Indemnitee from any liabilities, losses, costs and expenses arising from any electronic or telephonic communication purportedly given by or on behalf of Borrower.

14.4. Performance of Borrower's Obligations. Agent may, in its discretion at any time and from time to time, at Borrower's expense, pay any amount or do any act required of Borrower under any Loan Documents or otherwise lawfully requested by Agent to (a) enforce any Loan Documents or collect any Obligations; (b) protect, insure, maintain or realize upon any Collateral; or (c) defend or maintain the validity or priority of Agent's Liens in any Collateral, including any payment of a judgment, insurance premium, warehouse charge, finishing or processing charge, or landlord claim, or any discharge of a Lien. All payments, costs and expenses (including Extraordinary Expenses) of Agent under this Section shall be reimbursed to Agent by Borrower, **on demand**, with interest from the date incurred until paid in full, at the Default Rate applicable to Base Rate Revolver Loans. Any payment made or action taken by Agent under this Section shall be without prejudice to any right to assert an Event of Default or to exercise any other rights or remedies under the Loan Documents.

14.5. Credit Inquiries. Agent and Lenders may (but shall have no obligation) to respond to usual and customary credit inquiries from third parties concerning any Obligor or Subsidiary.

14.6. Severability. Wherever possible, each provision of the Loan Documents shall be interpreted in such manner as to be valid under Applicable Law. If any provision is found to be invalid under Applicable Law, it shall be ineffective only to the extent of such invalidity and the remaining provisions of the Loan Documents shall remain in full force and effect.

14.7. Cumulative Effect; Conflict of Terms. The provisions of the Loan Documents are cumulative. The parties acknowledge that the Loan Documents may use several limitations or measurements to regulate similar matters, and they agree that these are cumulative and that each must be performed as provided. Except as otherwise provided in another Loan Document (by specific reference to the applicable provision of this Agreement), if any provision contained herein is in direct conflict with any provision in another Loan Document, the provision herein shall govern and control.

14.8. Counterparts; Execution. Any Loan Document may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement shall become effective when Agent has received counterparts bearing the signatures of all parties hereto. Agent may (but shall have no obligation to) accept any signature, contract formation or record-keeping through electronic means, which shall have the same legal validity and enforceability as manual or paper-based methods, to the fullest extent permitted by Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar state law based on the Uniform Electronic Transactions Act. Upon request by Agent, any electronic signature or delivery shall be promptly followed by a manually executed or paper document.

14.9. Entire Agreement. Time is of the essence with respect to all Loan Documents and Obligations. The Loan Documents constitute the entire agreement, and supersede all prior understandings and agreements, among the parties relating to the subject matter thereof.

14.10. Relationship with Lenders. The obligations of each Lender hereunder are several, and no Lender shall be responsible for the obligations or Revolver Commitments of any other Lender. Amounts payable hereunder to each Lender shall be a separate and independent debt. It shall not be necessary for Agent or any other Lender to be joined as an additional party in any proceeding for such purposes. Nothing in this Agreement and no action of Agent, Lenders or any other Secured Party pursuant to the Loan Documents or otherwise shall be deemed to constitute Agent and any Secured Party to be a partnership, joint venture or similar arrangement, nor to constitute control of any Obligor.

14.11. No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated by any Loan Document, Borrower acknowledges and agrees that (a)(i) this credit facility and any arranging or other services by Agent, any Lender, any of their Affiliates or any arranger are arm's-length commercial transactions between Borrower and its Affiliates, on one hand, and Agent, any Lender, any of their Affiliates or any arranger, on the other hand; (ii) Borrower has consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate; and (iii) Borrower is capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated by the Loan Documents; (b) each of Agent, Lenders, their Affiliates and any arranger is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for Borrower, its Affiliates or any other Person, and has no obligation with respect to the transactions contemplated by the Loan Documents except as expressly set forth therein; and (c) Agent, Lenders, their Affiliates and any arranger may be engaged in a broad range of transactions that involve interests that differ from those of Borrower and its Affiliates, and have no obligation to disclose any of such interests to Borrower or its Affiliates. To the fullest extent permitted by Applicable Law, Borrower hereby waives and releases any claims that it may have against Agent, Lenders, their Affiliates and any arranger with respect to any breach of agency or fiduciary duty in connection with any transaction contemplated by a Loan Document.

14.12. Confidentiality. Each of Agent, Lenders and Issuing Bank shall maintain the confidentiality of all Information (as defined below), except that Information may be disclosed (a) to its

Affiliates, and to its and their partners, directors, officers, employees, agents, advisors and representatives (provided they are informed of the confidential nature of the Information and instructed to keep it confidential); (b) to the extent requested by any governmental, regulatory or self-regulatory authority purporting to have jurisdiction over it or its Affiliates; (c) to the extent required by Applicable Law or by any subpoena or other legal process; (d) to any other party hereto; (e) in connection with any action or proceeding relating to any Loan Documents or Obligations; (f) subject to an agreement containing provisions substantially the same as this Section, to any Transferee or any actual or prospective party (or its advisors) to any Bank Product or to any swap, derivative or other transaction under which payments are to be made by reference to an Obligor or Obligor's obligations; (g) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) is available to Agent, any Lender, Issuing Bank or any of their Affiliates on a nonconfidential basis from a source other than Borrower; (h) on a confidential basis to a provider of a Platform; or (i) with the consent of Borrower. Notwithstanding the foregoing, Agent and Lenders may publish or disseminate general information concerning this credit facility for league table, tombstone and advertising purposes, and may use Borrower's logos, trademarks or product photographs in advertising materials. As used herein, "Information" means information received from an Obligor or Subsidiary relating to it or its business that is identified as confidential when delivered. A Person required to maintain the confidentiality of Information pursuant to this Section shall be deemed to have complied if it exercises a degree of care similar to that accorded its own confidential information. Each of Agent, Lenders and Issuing Bank acknowledges that (i) Information may include material non-public information; (ii) it has developed compliance procedures regarding the use of such information; and (iii) it will handle the material non-public information in accordance with Applicable Law.

14.13. [Reserved]

14.14. GOVERNING LAW. UNLESS EXPRESSLY PROVIDED IN ANY LOAN DOCUMENT, THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND ALL CLAIMS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES EXCEPT FEDERAL LAWS RELATING TO NATIONAL BANKS.

14.15. Consent to Forum; Bail-In of EEA Financial Institutions.

14.15.1. Forum. **BORROWER HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE COURT SITTING IN LOS ANGELES COUNTY, CALIFORNIA OR THE UNITED STATES DISTRICT COURT OF THE CENTRAL DISTRICT OF CALIFORNIA, IN ANY DISPUTE, ACTION, LITIGATION OR OTHER PROCEEDING RELATING IN ANY WAY TO ANY LOAN DOCUMENTS, AND AGREES THAT ANY DISPUTE, ACTION, LITIGATION OR OTHER PROCEEDING SHALL BE BROUGHT BY IT SOLELY IN ANY SUCH COURT. BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL CLAIMS, OBJECTIONS AND DEFENSES THAT IT MAY HAVE REGARDING ANY SUCH COURT'S PERSONAL OR SUBJECT MATTER JURISDICTION, VENUE OR INCONVENIENT FORUM. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 14.3.1.** A final judgment in any proceeding of any such court shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or any other manner provided by Applicable Law.

14.15.2. Other Jurisdictions. Nothing herein shall limit the right of Agent or any Lender to bring proceedings against any Obligor in any other court, nor limit the right of any party to serve process in any other manner permitted by Applicable Law. Nothing in this Agreement shall be deemed to preclude enforcement by Agent of any judgment or order obtained in any forum or jurisdiction.

14.15.3. Acknowledgement and Consent to Bail-In of EEA Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among the parties, each party hereto (including each Secured Party) acknowledges that any liability arising under a Loan Document of any Secured Party that is an EEA Financial Institution, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority, and agrees and consents to, and acknowledges and agrees to be bound by, (a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising under any Loan Documents which may be payable to it by any Secured Party that is an EEA Financial Institution; and (b) the effects of any Bail-in Action on any such liability, including (i) a reduction in full or in part or cancellation of any such liability; (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under any Loan Document; or (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

14.15.4. **Judicial Reference.** If any action, litigation or proceeding relating to any Obligations or Loan Documents is filed in a court sitting in or applying the laws of California, the court shall, and is hereby directed to, make a general reference pursuant to Cal. Civ. Proc. Code §638 to a referee (who shall be an active or retired judge) to hear and determine all issues in the case (whether fact or law) and to report a statement of decision. Nothing in this Section shall limit any right of Agent or any other Secured Party to exercise self-help remedies, such as setoff, foreclosure or sale of Collateral, or to obtain provisional or ancillary remedies from a court of competent jurisdiction before, during or after any judicial reference. The exercise of a remedy does not waive the right of any party to require judicial reference. At Agent's option, foreclosure under a mortgage or deed of trust may be accomplished either by exercise of power of sale thereunder or by judicial foreclosure.

14.16. Waivers by Borrower. To the fullest extent permitted by Applicable Law, Borrower waives (a) the right to trial by jury (which Agent, Issuing Bank and each Lender hereby also waive) in any proceeding or dispute of any kind relating in any way to any Loan Documents, Obligations or Collateral; (b) presentment, demand, protest, notice of presentment, default, non-payment, maturity, release, compromise, settlement, extension or renewal of any commercial paper, accounts, documents, instruments, chattel paper and guaranties at any time held by Agent on which Borrower may in any way be liable, and hereby ratifies anything Agent may do in this regard; (c) notice prior to taking possession or control of any Collateral; (d) any bond or security that might be required by a court prior to allowing Agent to exercise any rights or remedies; (e) the benefit of all valuation, appraisement and exemption laws; (f) any claim against Agent, Issuing Bank or any Lender, on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to direct or actual damages) in any way relating to any Enforcement Action, Obligations, Loan Documents or transactions relating thereto; and (g) notice of acceptance hereof. Borrower acknowledges that the foregoing waivers are a material inducement to Agent, Issuing Bank and Lenders entering into this Agreement and that they are relying upon the foregoing in their dealings with Borrower. Borrower has reviewed the foregoing waivers with its legal counsel and has knowingly and voluntarily waived its jury trial and other rights following consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

14.17. Patriot Act Notice. Agent and Lenders hereby notify Borrower that pursuant to the Patriot Act, Agent and Lenders are required to obtain, verify and record information that identifies Borrower, including its legal name, address, tax ID number and other information that will allow Agent and Lenders to identify it in accordance with the Patriot Act. Agent and Lenders will also require information regarding any personal guarantor and may require information regarding Borrower's management and owners, such as legal name, address, social security number and date of birth. Borrower shall, promptly upon request, provide all documentation and other information as Agent, Issuing Bank or any Lender may request from time to time in order to comply with any obligations under any "know your customer," anti-money laundering or other requirements of Applicable Law.

14.18. <u>NO ORAL AGREEMENT</u>. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS BETWEEN THE PARTIES. THERE ARE NO UNWRITTEN AGREEMENTS BETWEEN THE PARTIES.

[Remainder of page intentionally left blank; signatures begin on following page]

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date set forth above.

BORROWER:

VIZIO, INC.,
a California corporation

By: /s/ Kurtis Binder
Name: Kurtis Binder
Title: Chief Financial Officer

Address:

39 Tesla
Irvine, CA 92618
Attn: Kurtis Binder
Telephone:

AGENT AND LENDERS:

BANK OF AMERICA, N.A.,
as Agent and Lender

By: /s/ Stephen J. King
Name: Stephen J. King
Title: Senior Vice President

Address:

333 South Hope Street
13th Floor
Los Angeles, California 90071
Attn: Asset Based Specialist – Vizio, Inc.
Fascimile:

EXHIBIT C
to
Loan and Security Agreement

[FORM OF]
COMPLIANCE CERTIFICATE

Financial Statement Date: [,]

TO: Bank of America, N.A., as Agent, Sole Lead Arranger and Sole Bookrunner

RE: Loan and Security Agreement, dated as of April 13, 2016 (as amended, modified, extended, restated, replaced, or supplemented from time to time, the "Loan Agreement"; each capitalized term used but not defined herein shall have the meanings ascribed thereto in the Loan Agreement), by and among **VIZIO, INC.**, a California corporation ("Borrower"), the financial institutions from time to time party thereto as Lenders, and Bank of America, N.A., as Agent for Lenders

DATE: [Date]

The undersigned hereby certifies as of the date hereof that [he/she] is the chief financial officer of the Borrower, and that, as such, [he/she] is authorized to execute and deliver this Compliance Certificate to Agent on the behalf of Borrower, and that:

[Use following paragraph 1 for fiscal year-end financial statements]

1. Borrower has delivered (a) the year-end audited consolidated financial statements required by Section 10.1.2(a) of the Loan Agreement for the Fiscal Year of Borrower ended as of the above date, together with the report and opinion of an independent certified public accountant required by such Section and (b) the consolidated balance sheet of Borrower and its Subsidiaries as at the end of such Fiscal Year and the related statements of income, shareholders' equity and cash flows for such Fiscal Year as required by Section 9.1.7 of the Loan Agreement. Such consolidated statements fairly present in all material respects the financial positions and results of operations of Borrower and its Subsidiaries at the dates and for the periods indicated.

[Use following paragraph 1 for fiscal month-end financial statements delivered with respect to the applicable fiscal quarter]

1. The Borrower has delivered the unaudited financial statements required by Section 10.1.2(b) of the Loan Agreement for the calendar month of Borrower ended on or about the last day of such calendar month and the related statement of income (and with each quarterly financial statement, cash flow) for such calendar month and for the portion of the Fiscal Year then elapsed, on a consolidated basis for Borrower and its Subsidiaries, setting forth in comparative form corresponding figures for the preceding Fiscal Year. Such consolidated financial statements are prepared in accordance with GAAP and fairly present the financial position and results of operations for such calendar month and for the portion of the Fiscal Year then elapsed, subject to normal year-end adjustments and the absence of footnotes.

2. The undersigned has reviewed and is familiar with the terms of the Loan Agreement and has made, or has caused to be made under [his/her] supervision, a detailed review of the transactions and condition (financial or otherwise) of Borrower and its Subsidiaries during the accounting period covered by such financial statements.

3. A review of the activities of Borrower and its Subsidiaries during such fiscal period has been made under the supervision of the undersigned with a view to determining whether during such fiscal period Borrower and each of the other Obligors performed and observed all its obligations under the Loan Documents, and

[select one:]

[to the best knowledge of the undersigned, during such fiscal period each Obligor performed and observed each covenant and condition of the Loan Documents applicable to it, and no Default or Event of Default has occurred and is continuing.]

—or—

[to the best knowledge of the undersigned, during such fiscal period, the following covenants or conditions have not been performed or observed and the following is a list of each such Default and Event of Default and its nature and status:]

4. The representations and warranties of Borrower and each other Obligor contained in Article IX of the Loan Agreement or any other Loan Document, or which are contained in any document furnished at any time under or in connection therewith are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on the date hereof (except for representations and warranties that expressly relate to an earlier date), and except that for purposes of this Compliance Certificate, the representations and warranties contained in Section 9.1.7 of the Loan Agreement shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), as applicable, of Section 10.1.2 of the Loan Agreement, including the statements in connection with which this Compliance Certificate is delivered.

5. The financial covenant analyses and information set forth on Schedule A attached hereto are true and accurate on and as of the date of this Compliance Certificate.

Delivery of an executed counterpart of a signature page of this Compliance Certificate by fax transmission or other electronic mail transmission (e.g. "pdf" or "tif") shall be effective as delivery of a manually executed counterpart of this Compliance Certificate.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

VIZIO, INC.,
a California corporation

By: ______________________
Name: ______________________
Title: ______________________

Signature Page
Compliance Certificate

Schedule A

Financial Statement Date: [,] ("Statement Date")

Section 10.3.1 – Fixed Charge Coverage Ratio

The Fixed Charge Coverage Ratio for the applicable twelve (12)-month period ending as of the Statement Date is [ ] to 1:00 while a Financial Covenant Trigger Period is in effect, measured for the most recent period for which financial statements were delivered under the Loan Agreement prior to the Financial Covenant Trigger Period and each period ending thereafter until the Financial Covenant Trigger Period is no longer in effect, as further described in Schedule A-1 hereto.

Schedule A-1

A. Consolidated EBITDA		
1. Consolidated net income (or net loss) of Borrower and its Subsidiaries:	$	______
2. Consolidated interest expense:		
3. Consolidated income Tax expenses:	$	______
4. Depreciation expense:	$	______
5. Amortization expense:	$	______
6. Stock compensation expense:	$	______
7. Gains or losses arising from the sale of capital assets:	$	______
8. Gains arising from the write-up of assets:	$	______
9. Extraordinary gains or losses (in each case, to the extent included in determining net income):	$	______
10. Consolidated EBITDA (Line A.1 plus Line A.2 plus Line A.3 plus Line A.4 plus Line A.5 plus Line A.6 plus (or minus) Line A.7 minus Line A.8 plus (or minus) Line A.9):	$	______
B. Consolidated Fixed Charge Coverage Ratio		
1. Consolidated EBITDA (Line A.10 above):	$	______
2. Capital Expenditures (except those financed with Borrowed Money other than Revolver Loans):	$	______
3. Cash Taxes paid:	$	______
4. Fixed Charges:	$	______
5. Ratio ((Line B.1 minus Line B.2 minus Line B.3) to (Line B.4)):	$	______
6. Minimum Consolidated Fixed Charge Coverage Ratio:		____ to 1.00
7. Borrower is in compliance (check yes or no) 1:	☐ Yes	☐ No

1 Only to be completed to the extent a Financial Covenant Trigger Period exists.

SCHEDULE 1.1
to
Loan and Security Agreement

REVOLVER COMMITMENTS OF LENDERS

Lender	Revolver Commitment
Bank of America, N.A.	$ 150,000,000
Total Commitments:	$ 150,000,000

California Commercial Lease Agreement

This Commercial Lease Agreement ("Lease") is made and effective January 29, 2007 by and between Spyglass Tesla, LLC ("Landlord") and Vizio Inc. ("Tenant").

Landlord is the owner of land and improvements commonly known and numbered as 39 Tesla, Irvine, California 92618 and legally described as follows (the "Building"): About Twenty Seven Thousand and Three Hundred Square Feet Industrial R&D Commercial Building located at 39 Tesla, California 92618.

Landlord desires to lease the Leased Premises to Tenant, and Tenant desires to lease the Leased Premises from Landlord for the term, at the rental and upon the covenants, conditions and provisions herein set forth.

THEREFORE, in consideration of the mutual promises herein, contained and other good and valuable consideration, it is agreed:

1. **Term**.

A. Landlord hereby leases the Leased Premises to Tenant, and Tenant hereby leases the same from Landlord, for an "Initial Term" beginning February 1, 2007 and ending January 31, 2012. Landlord shall use its best efforts to give Tenant possession as nearly as possible at the beginning of the Lease term. If Landlord is unable to timely provide the Leased Premises, rent shall abate for the period of delay. Tenant shall make no other claim against Landlord for any such delay.

B. Tenant may renew the Lease for one extended term of two, five (5) year terms. Tenant shall exercise such renewal option, if at all, by giving written notice to Landlord not less than ninety (90) days prior to the expiration of the Initial Term. The renewal term shall be at the rental set forth below and otherwise upon the same covenants, conditions and provisions as provided in this Lease.

2. **Rental**.

A. Tenant shall pay to Landlord during the Initial Term rental of Sixty-one thousand and five hundred dollars ($61,500.00) per month. Each installment payment shall be due in advance on the first day of each calendar month during the lease term to Landlord at 39 Tesla, Irvine, CA 92618 or at such other place designated by written notice from Landlord or Tenant. The rental payment amount for any partial calendar months included in the lease term shall be prorated on a daily basis. Tenant shall also pay to Landlord a "Security Deposit" in the amount of Sixty-one thousand and five hundred dollars ($61,500.00).

B. The Rental increase per year is designated on Schedule A of the attached form.

C. The rental for any renewal lease term, if created as permitted under this Lease, shall be stated on Schedule A of the attached form.

3. **Use**

Notwithstanding the forgoing, Tenant shall not use the Leased Premises for the purposes of storing, manufacturing or selling any explosives, flammables or other inherently dangerous substance, chemical, thing or device.

4. **Sublease and Assignment**.

Tenant shall have the right with Landlord's consent, to assign this Lease to a corporation with which Tenant may merge or consolidate, to any subsidiary of Tenant, to any corporation under common control with Tenant, or to a purchaser of substantially all of Tenant's assets. Except as set forth above, Tenant shall not sublease all or any part of the Leased Premises, or assign this Lease in whole or in part without Landlord's consent, such consent not to be unreasonably withheld or delayed.

5. **Repairs**.
During the Lease term, Tenant shall make, at Tenant's expense, all necessary repairs to the Leased Premises. Repairs shall include such items as routine repairs of floors, walls, ceilings, and other parts of the Leased Premises damaged or worn through normal occupancy, except for major mechanical systems or the roof, subject to the obligations of the parties otherwise set forth in this Lease.

6. **Alterations and Improvements**.

Tenant, at Tenant's expense, shall have the right following Landlord's consent to remodel, redecorate, and make additions, improvements and replacements of and to all or any part of the Leased Premises from time to time as Tenant may deem desirable, provided the same are made in a workmanlike manner and utilizing good quality materials. Tenant shall have the right to place and install personal property, trade fixtures, equipment and other temporary installations in and upon the Leased Premises, and fasten the same to the premises. All personal property, equipment, machinery, trade fixtures and temporary installations, whether acquired by Tenant at the commencement of the Lease term or placed or installed on the Leased Premises by Tenant thereafter, shall remain Tenant's property free and clear of any claim by Landlord. Tenant shall have the right to remove the same at any time during the term of this Lease provided that all damage to the Leased Premises caused by such removal shall be repaired by Tenant at Tenant's expense.

7. **Property Taxes.**

Landlord shall pay, prior to delinquency, all general real estate taxes and installments of special assessments coming due during the Lease term on the Leased Premises, and all personal property taxes with respect to Landlord's personal property, if any, on the Leased Premises. Tenant shall be responsible for paying all personal property taxes with respect to Tenant's personal property at the Leased Premises.

8. **Insurance.**

A. If the Leased Premises or any other part of the Building is damaged by fire or other casualty resulting from any act or negligence of Tenant or any of Tenant's agents, employees or invitees, rent shall not be diminished or abated while such damages are under repair, and Tenant shall be responsible for the costs of repair not covered by insurance.

B. Landlord shall maintain fire and extended coverage insurance on the Building and the Leased Premises in such amounts as Landlord shall deem appropriate. Tenant shall be responsible, at its expense, for fire and extended coverage insurance on all of its personal property, including removable trade fixtures, located in the Leased Premises.

C. Tenant and Landlord shall, each at its own expense, maintain a policy or policies of comprehensive general liability insurance with respect to the respective activities of each in the Building with the premiums thereon fully paid on or before due date, issued by and binding upon some insurance company approved by Landlord, such insurance to afford minimum protection of not less than $2,000,000 combined single limit coverage of bodily injury, property damage or combination thereof. Landlord shall be listed as an additional insured on Tenant's policy or policies of comprehensive general liability insurance, and Tenant shall provide Landlord with current Certificates of Insurance evidencing Tenant's compliance with this Paragraph. Tenant shall obtain the agreement of Tenant's insurers to notify Landlord that a policy is due to expire at least (10) days prior to such expiration. Landlord shall not be required to maintain insurance against thefts within the Leased Premises or the Building.

9. **Utilities.**

Tenant shall pay all charges for water, sewer, gas, electricity, telephone and other services and utilities used by Tenant on the Leased Premises during the term of this Lease unless otherwise expressly agreed in writing by Landlord. ln the event

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that any utility or service provided to the Leased Premises is not separately metered, Landlord shall pay the amount due and separately invoice Tenant for Tenant's pro rata share of the charges. Tenant shall pay such amounts within fifteen (15) days of invoice. Tenant acknowledges that the Leased Premises are designed to provide standard office use electrical facilities and standard office lighting. Tenant shall not use any equipment or devices that utilizes excessive electrical energy or which may, in Landlord's reasonable opinion, overload the wiring or interfere with electrical services to other tenants.

10. **Signs.**

Following Landlord's consent, Tenant shall have the right to place on the Leased Premises, at locations selected by Tenant, any signs which are permitted by applicable zoning ordinances and private restrictions. Landlord may refuse consent to any proposed signage that is in Landlord's opinion too large, deceptive, unattractive or otherwise inconsistent with or inappropriate to the Leased Premises or use of any other tenant. Landlord shall assist and cooperate with Tenant in obtaining any necessary permission from governmental authorities or adjoining owners and occupants for Tenant to place or construct the foregoing signs. Tenant shall repair all damage to the Leased Premises resulting from the removal of signs installed by Tenant.

11. **Entry.**

Landlord shall have the right to enter upon the Leased Premises at reasonable hours to inspect the same, provided Landlord shall not thereby unreasonably interfere with Tenant's business on the Leased Premises.

12. **Parking.**

During the term of this Lease, Tenant shall have the non-exclusive use in common with Landlord, other tenants of the Building, their guests and invitees, of the non-reserved common automobile parking areas, driveways, and footways, subject to rules and regulations for the use thereof as prescribed from time to time by Landlord. Landlord reserves the right to designate parking areas within the Building or in reasonable proximity thereto, for Tenant and Tenant's agents and employees. Tenant shall provide Landlord with a list of all license numbers for the cars owned by Tenant, its agents and employees.

13. **Building Rules.**

Tenant will comply with the rules of the Building adopted and altered by Landlord from time to time and will cause all of its agents, employees, invitees and visitors to do so; all changes to such rules will be sent by Landlord to Tenant in writing.

14. **Damage and Destruction**.

Subject to Section 8 A. above, if the Leased Premises or any part thereof or any appurtenance thereto is so damaged by fire, casualty or structural defects that the same cannot be used for Tenant's purposes, then Tenant shall have the right within ninety (90) days following damage to elect by notice to Landlord to terminate this Lease as of the date of such damage. In the event of minor damage to any part of the Leased Premises, and if such damage docs not render the Leased Premises unusable for Tenant's purposes, Landlord shall promptly repair such damage at the cost of the Landlord. In making the repairs called for in this paragraph, Landlord shall not be liable for any delays resulting from strikes, governmental restrictions, inability to obtain necessary materials or labor or other matters which are beyond the reasonable control of Landlord. Tenant shall be relieved from paying rent and other charges during any portion of the Lease term that the Leased Premises are inoperable or unfit for occupancy, or use, in whole or in part, for Tenant's purposes. Rentals and other charges paid in advance for any such periods shall be credited on the next ensuing payments, if any, but if no further payments arc to be made, any such advance payments shall be refunded to Tenant. The provisions of this paragraph extend not only to the matters aforesaid, but also to any occurrence which is beyond Tenant's reasonable control and which renders the Leased Premises, or any appurtenance thereto, inoperable or unfit for occupancy or use, in whole or in part, for Tenant's purposes.

15. **Default**.

If default shall at any time be made by Tenant in the payment of rent when due to Landlord as herein provided, and if said default shall continue for fifteen (15) days after written notice thereof shall have been given to Tenant by Landlord, or if default shall be made in any of the other covenants or conditions to be kept, observed and performed by Tenant, and such default shall continue for thirty (30) days after notice thereof in writing to Tenant by Landlord without correction thereof then having been commenced and thereafter diligently prosecuted, Landlord may declare the term of this Lease ended and terminated by giving Tenant written notice of such intention, and if possession of the Leased Premises is not surrendered, Landlord may reenter said premises. Landlord shall have, in addition to the remedy above provided, any other right or remedy available to Landlord on account of any Tenant default, either in law or equity. Landlord shall use reasonable efforts to mitigate its damages.

16. **Quiet Possession**.

Landlord covenants and warrants that upon performance by Tenant of its obligations hereunder, Landlord will keep and maintain Tenant in exclusive, quiet, peaceable and undisturbed and uninterrupted possession of the Leased Premises during the term of this Lease.

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17. **Condemnation**.

If any legally, constituted authority condemns the Building or such part thereof which shall make the Leased Premises unsuitable for leasing, this Lease shall cease when the public authority takes possession, and Landlord and Tenant shall account for rental as of that date. Such termination shall be without prejudice to the rights of either party to recover compensation from the condemning authority for any loss or damage caused by the condemnation. Neither party shall have any rights in or to any award made to the other by the condemning authority.

18. **Subordination**.

Tenant accepts this Lease subject and subordinate to any mortgage, deed of trust or other lien presently existing or hereafter arising upon the Leased Premises, or upon the Building and to any renewals, refinancing and extensions thereof, but Tenant agrees that any such mortgagee shall have the right at any time to subordinate such mortgage, deed of trust or other lien to this Lease on such terms and subject to such conditions as such mortgagee may deem appropriate in its discretion. Landlord is hereby irrevocably vested with full power and authority to subordinate this Lease to any mortgage, deed of trust or other lien now existing or hereafter placed upon the Leased Premises of the Building, and Tenant agrees upon demand to execute such further instruments subordinating this Lease or attorning to the holder of any such liens as Landlord may request. In the event that Tenant should fail to execute any instrument of subordination herein required to be executed by Tenant promptly as requested, Tenant hereby irrevocably constitutes Landlord as its attorney-in-fact to execute such instrument in Tenant's name, place and stead, it being agreed that such power is one coupled with an interest. Tenant agrees that it will from time to time upon request by Landlord execute and deliver to such persons as Landlord shall request a statement in recordable form certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as so modified), stating the dates to which rent and other charges payable under this Lease have been paid, stating that Landlord is not in default hereunder (or if Tenant alleges a default stating the nature of such alleged default) and further stating such other matters as Landlord shall reasonably require.

19. **Security Deposit**.

The Security Deposit shall be held by Landlord without liability for interest and as security for the performance by Tenant of Tenant's covenants and obligations under this Lease, it being expressly understood that the Security Deposit shall not

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be considered an advance payment of rental or a measure of Landlord's damages in case of default by Tenant. Unless otherwise provided by mandatory non-waivable law or regulation, Landlord may commingle the Security Deposit with Landlord's other funds. Landlord may, from time to time, without prejudice to any other remedy, use the Security Deposit to the extent necessary to make good any arrearages of rent or to satisfy any other covenant or obligation of Tenant hereunder. Following any such application of the Security Deposit, Tenant shall pay to Landlord on demand the amount so applied in order to restore the Security Deposit to its original amount. If Tenant is not in default at the termination of this Lease, the balance of the Security Deposit remaining after any such application shall be returned by Landlord to Tenant. If Landlord transfers its interest in the Premises during the term of this Lease, Landlord may assign the Security Deposit to the transferee and thereafter shall have no further liability for the return of such Security Deposit.

20. **Notice.**

Any notice required or permitted under this Lease shall be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, addressed as follows:

If to Landlord to:

SPYGLASS TESLA, LLC
39 TESLA
IRVINE, CA 92618

If to Tenant to:

SPYGLASS TESLA, LLC
39 TESLA
IRVINE, CA 92618

Landlord and Tenant shall each have the right from time to time to change the place notice is to be given under this paragraph by written notice thereof to the other party.

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21. **Brokers**.

Tenant represents that Tenant was not shown the Premises by any real estate broker or agent and that Tenant has not otherwise engaged in, any activity which could form the basis for a claim for real estate commission, brokerage fee, finder's fee or other similar charge, in connection with this Lease.

22. **Waiver**.

No waiver of any default of Landlord or Tenant hereunder shall be implied from any omission to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Landlord or Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.

23. **Memorandum of Lease**.

The parties hereto contemplate that this Lease should not and shall not be filed for record, but in lieu thereof, at the request of either party, Landlord and Tenant shall execute a Memorandum of Lease to be recorded for the purpose of giving record notice of the appropriate provisions of this Lease.

24. **Headings**.

The headings used in this Lease are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision of this Lease.

25. **Successors**.

The provisions of this Lease shall extend to and be binding upon Landlord and Tenant and their respective legal representatives, successors and assigns.

26. **Consent**.

Landlord shall not unreasonably withhold or delay its consent with respect to any matter for which Landlord's consent is required or desirable under this Lease.

27. **Performance**.

If there is a default with respect to any of Landlord's covenants, warranties or representations under this Lease, and if the default continues more than fifteen (15) days after notice in writing from Tenant to Landlord specifying the default, Tenant may, at its option and without affecting any other remedy hereunder, cure such default and deduct the cost thereof from the next accruing installment or installments of rent payable hereunder until Tenant shall have been fully reimbursed for such expenditures, together with interest thereon at a rate equal to

the lessor of twelve percent (12%) per annum or the then highest lawful rate. If this Lease terminates prior to Tenant's receiving full reimbursement, Landlord shall pay the unreimbursed balance plus accrued interest to Tenant on demand.

28. **Compliance with Law.**

Tenant shall comply with all laws, orders, ordinances and other public requirements now or hereafter pertaining to Tenant's use of the Leased Premises. Landlord shall comply with all laws, orders, ordinances and other public requirements now or hereafter affecting the Leased Premises.

29. **Final Agreement.**

This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof. This Agreement may be modified only by a further writing that is duly executed by both parties.

30. **Governing Law.**

This Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Lease as of the day and year first above written.

/s/ Paul Wang 1/29/07

Paul Wang, MANAGER, SPYGLASS TESLA, LLC

[ILLEGIBLE] *** 1/29/07

VIZIO INC.

ADDENDUM A

YEAR 1 THRU 5 PAYMENT SCHEDULE:

YEAR 1: $61,500.00 PER MONTH (GROSS RENT)
YEAR 2: $64,575.00 PER MONTH (GROSS RENT)
YEAR 3: $67,805.00 PER MONTH (GROSS RENT)
YEAR 4: $71,195.00 PER MONTH (GROSS RENT)
YEAR 5: $74,75500 PER MONTH (GROSS RENT)

RENEWAL TERMS ARE AT 5% INCREASE PER ANNUM. (MAXIMUM)

THIRD AMENDMENT OF CALIFORNIA COMMERCIAL LEASE AGREEMENT

THIS THIRD AMENDMENT OF CALIFORNIA COMMERCIAL LEASE AGREEMENT (the “Amendment”) is made and entered into this 26th day of January, 2011, by and between Spyglass Tesla, LLC (“Landlord”) and VIZIO, Inc. (formerly known as V, Inc.), a California corporation (“Tenant”).

Effective as of November 1, 2010 (“Effective Date”), Landlord and Tenant hereby agree to amend certain California Commercial Lease Agreement between the parties dated January 29, 2007 (the “Lease”), which relates to the Premises located at 39 Tesla, Irvine, CA 92618, as follows:

1. In Paragraph 1.A of the Lease, the date of January 31, 2012 as the expiration date of Initial Term is deleted and replaced with January 31, 2017.

2. All prior addendums and schedules reflecting base rent and/or rate of rent increase are replaced by Addendum “A” (Effective November 1, 2010), attached hereto as Exhibit “A”.

3. Tenant agrees to pay (as part of the Gross Rent amount) for new tenant improvements completed by Landlord for warehouse conversion project in order to provide additional offices, conference rooms, and showroom in total sum of $750,000 (the “Project”) amortized throughout the term of the Lease. The monthly Gross Rent amount will include a pro rata portion of total cost of the Project on a monthly basis from the completion date of the Project to the end of the Lease Term. The Project was scheduled to be completed by November 1, 2010. Tenant shall remain responsible for the full payment of the total sum of the Project notwithstanding any early termination of the Lease for any reason other than due to an uncured material breach by Landlord.

4. Landlord shall advance payment for Trash, Janitorial, Pest Control, HVAC Maintenance contract, on behalf of Tenant; such payments to be added to NNN charges. NNN charges will be summarized at year end. Any positive or negative balance will be applied to invoice and remitted to Tenant.

5. The rental for any renewal or option lease term, if properly created or exercised in accordance with the Lease, shall be as stated on Addendum A to the Lease.

6. Except as expressly stated above, the Lease remains in full force and effect.

Exhibit "A"

ADDENDUM "A" (Effective November 1, 2010)

This revised addendum is for the California Commercial Lease Agreement Dated January 29, 2007 (the "Lease"), between VIZIO, Inc. (formerly V, Inc., the "Tenant") and Spyglass Tesla, LLC (the "Landlord") for property located at 39 Tesla, Irvine, California 92618.

1. The annual rate of increase for base rental shall be five percent (5%) through January 31, 2012 and the greater of CPI or three (3.0%) thereafter.
2. REVISED MONTHLY BASE RENT PAYMENT SCHEDULE (NOVEMBER 1, 2010)

NOV 1, 2010 – JAN 31, 2011:	$2.08	PER SQUARE FOOT*+
FEB 1, 2011 – JAN 31, 2012:	$2.19	PER SQUARE FOOT*+
FEB 1, 2012 – JAN 31, 2013:	$2.10	PER SQUARE FOOT+
FEB 1, 2013 – JAN 31, 2014:	$2.16	PER SQUARE FOOT**+
FEB 1, 2014 – JAN 31, 2015:	$2.23	PER SQUARE FOOT**+
FEB 1, 2015 – JAN 31, 2016:	$2.29	PER SQUARE FOOT**+
FEB 1, 2016 – JAN 31, 2017:	$2.36	PER SQUARE FOOT**+

* Subject to pro rata share of the total cost for prior tenant improvements completed before the effective date of this Addendum in the aggregate amount of $10,494.98 per month.

** Estimated Base Rent based on assumption of 3.0% annual increase; subject to CPI review as provided for by Sec. 1 above.

\+ Subject to additional pro rata share of the total cost for new warehouse conversion tenant improvement project scheduled to be completed by November 1, 2010 in the amount of $12,150.53 per month.

IN WITNESS WHEREOF, the parties have executed this Amendment on the date first written above.

LANDLORD		**TENANT**	
By:	/s/ Paul Wang	By:	/s/ Kurtis Binder
Name:	Paul Wang	Name:	Kurtis Binder
Title:	Manager	Title:	Vice President / Controller
Date:	Jan 26, 2011	Date:	January 26, 2011

FOURTH AMENDMENT OF CALIFORNIA COMMERCIAL LEASE AGREEMENT

THIS FOURTH AMENDMENT OF CALIFORNIA COMMERCIAL LEASE AGREEMENT (the "Fourth Amendment") is made and entered into this __ day of July 2017, by and between Spyglass Tesla, LLC ("Landlord") and VIZIO, Inc. (formerly known as V, Inc.), a California corporation ("Tenant").

Landlord and Tenant hereby agree as follows:

The California Commercial Lease Agreement between the parties dated January 29, 2007 (the "Lease"), as amended by the Third Amendment of California Commercial Lease Agreement dated January 26, 2011 (the "Third Amendment", and collectively with the Lease, the "Amended Lease"), which relates to the Premises located at 39 Tesla, Irvine, CA 92618, is hereby extended for an additional term of five (5) years for an Extension Term beginning February 1, 2017 and ending January 31, 2022 (the "Third Extension Term"). The Third Extension Term shall be at the rental rate set forth in the Monthly Base Rent Schedule below and otherwise upon the same covenants, conditions and provisions as provided in the Amended Lease.

Each rent installment payment will be due in advance on the first day of each calendar month during the Third Extension Term to Landlord at 39 Tesla, Irvine, CA 92618 or at such other place designated by written notice from Landlord.

Monthly Base Rent Schedule:

Feb 1, 2017 – January 31, 2018:	$51,870.00
Feb 1, 2018 – January 31, 2019:	$53,944.80
Feb 1, 2019 – January 31, 2020:	$56,102.59
Feb 1, 2020 – January 31, 2021:	$58,346.70
Feb 1, 2021 – January 31, 2022:	$60,680.56

Except as expressly amended above, the Lease remains in full force and effect. In the event of any conflict with the Lease or any Amendments (including the Third Amendment), this Fourth Amendment shall supersede any prior amendments to the Lease.

IN WITNESS WHEREOF, the parties have executed this Fourth Amendment on the date first written above.

LANDLORD

By: /s/ Paul Wang
Name: Paul Wang
Title: Manager
Date: 7/21/17

TENANT

By: /s/ Ben Wong
Name: Ben Wong
Title: President & COO
Date: 8/11/17

Exhibit 23.1

Consent of Independent Registered Public Accounting Firm

The Board of Directors
VIZIO, Inc.:

We consent to the use of our report dated March 1, 2021 with respect to the consolidated balance sheets of VIZIO, Inc. (the Company) as of December 31, 2019 and 2020, the related consolidated statements of operations and comprehensive income, stockholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2020, and the related notes, included herein and to the reference to our firm under the heading "Experts" in the prospectus.

/s/ KPMG LLP
Los Angeles, California
March 1, 2021