

As confidentially submitted to the Securities and Exchange Commission on December 30, 2021 as Amendment No. 1 to the initial confidential submission.  
This draft registration statement has not been publicly filed with the Securities and Exchange Commission and all information herein remains strictly confidential.

Registration No. 333-

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

Amendment No. 1

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

**Snail Games USA Inc.**

(Exact Name of Registrant as Specified in Its Charter)

**California**  
(State or other jurisdiction of  
incorporation or organization)

**7372**  
(Primary Standard Industrial  
Classification Code Number)

**27-1157839**  
(I.R.S. Employer  
Identification Number)

**12049 Jefferson Blvd  
Culver City, CA 90230  
Tel: +1 (310) 928-7428**

(Address, including zip code, and telephone number, including area code, of registrant's principal executive office)

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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, 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 <sup>(1)(2)</sup>	Amount Of Registration Fee <sup>(3)</sup>
Class A common stock, par value \$ per share	\$	\$

(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 Class A common stock granted pursuant to the underwriters' option to purchase additional shares. See "Underwriting."

(3) Calculated pursuant to Rule 457(o) based on an estimate of the proposed maximum aggregate offering price.

**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, as amended, or until the registration statement shall become effective on such date as the Commission, acting pursuant to such Section 8(a), may determine.**

**EXPLANATORY NOTE**

Snail Games USA Inc. (“Snail Games USA”), the registrant whose name appears on the cover of this registration statement, is a California Corporation. Concurrently with this offering, Snail, Inc. (“Snail”), an entity that will be incorporated under the laws of Delaware, and Snail Games USA will consummate the Transactions as defined and as described in “Our Organizational Structure” in the prospectus included as part of this registration statement. As a result of the Transactions, (i) Snail will be a holding company, with its principal asset consisting of all of the shares of common stock of Snail Games USA and (ii) Snail will control the business and affairs of Snail Games USA and its subsidiaries. Except as otherwise disclosed in the prospectus included in this registration statement, the consolidated historical financial statements and summary financial and information included in this registration statement are those of Snail Games USA and its subsidiaries, and do not give effect to the Transactions.

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**Subject to completion,  
Preliminary Prospectus dated \_\_\_\_\_, 2022**

The information in this preliminary prospectus is not complete and may be changed. We 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 nor a solicitation of an offer to buy these securities in any jurisdiction where the offer and sale is not permitted.

**PROSPECTUS**



**Snail, Inc.**

**Class A Common Stock**

This is Snail, Inc.'s initial public offering. We are selling \_\_\_\_\_ shares of our Class A common stock.

We expect the public offering price to be between \$ \_\_\_\_\_ and \$ \_\_\_\_\_ per share. Currently no public market exists for the shares. After pricing of the offering, we expect that the shares will trade on the Nasdaq Global Market ("Nasdaq") under the symbol "\_\_\_\_\_."

Upon completion of this offering, we will have two classes of common stock: our Class A common stock and our Class B common stock. The rights of the holders of Class A common stock and Class B common stock will be identical, except with respect to voting, conversion and transfer restrictions applicable to the Class B common stock. Each share of Class A common stock will be entitled to one vote. Each share of Class B common stock will be entitled to \_\_\_\_\_ votes and will be convertible into one share of Class A common stock automatically upon transfer, subject to certain exceptions. Holders of Class A common stock and Class B common stock will vote together as a single class on all matters unless otherwise required by law. Following this offering, our issued and outstanding Class B common stock will represent approximately \_\_\_\_\_ % of the combined voting power of our outstanding common stock, assuming no exercise of the underwriters' option to purchase additional shares, and Mr. Hai Shi ("Mr. Shi"), our Founder and Chairman, will beneficially own \_\_\_\_\_ % of the combined voting power of our outstanding common stock. Accordingly, we will be a "controlled company" as defined under the corporate governance rules of Nasdaq. See "Management — Controlled Company Exemption" and "Description of Capital Stock."

We are an "emerging growth company" under the U.S. federal securities laws as that term is used in the Jumpstart Our Business Startups Act of 2012 and, as a result, have elected to comply with certain reduced public company disclosure and reporting requirements.

**Investing in our Class A common stock involves risks that are described in the "Risk Factors" section beginning on page 13 of this prospectus.**

	Per share	Total
Public offering price	\$ _____	\$ _____
Underwriting discount <sup>(1)</sup>	\$ _____	\$ _____
Proceeds, before expenses, to us	\$ _____	\$ _____

(1) See "Underwriting" for a description of all compensation payable to the underwriters.

The underwriters may also exercise their option to purchase up to an additional \_\_\_\_\_ shares of Class A common stock from us, less the underwriting discount, for 30 days after the date of this prospectus.

Neither the U.S. Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The shares of Class A common stock will be ready for delivery on or about \_\_\_\_\_, 2022.

**BofA Securities**

The date of this prospectus is \_\_\_\_\_, 2022.

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Unless otherwise indicated or the context otherwise requires, all references in this prospectus to “Snail” or the “Company,” “we,” “our,” “ours,” “us” or similar terms refer, prior to the completion of the Transactions (as defined herein), to Snail Games USA Inc., together with its consolidated subsidiaries, and after the completion of the Transactions, including this offering, to Snail, Inc., together with its consolidated subsidiaries, the issuer of the shares of Class A common stock offered hereby, together with its direct and indirect subsidiaries.

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Neither we nor the underwriters, nor any of their respective agents, have authorized anyone to provide any information other than that contained in this prospectus or in any free writing prospectus prepared by or on behalf of us or to which we may have referred you. Neither we nor the underwriters, nor any of their respective agents, take responsibility for, and can provide any assurance as to the reliability of, any other information that others may give you. Neither we nor the underwriters, nor any of their respective agents, have authorized any other person to provide you with different or additional information. Neither we nor the underwriters, nor any of their respective agents, are making an offer to sell the Class A common stock in any jurisdiction where the offer or sale is not permitted. This offering is being made in the United States and elsewhere solely on the basis of the information contained in this prospectus. You should assume that the information appearing in this prospectus is accurate only as of the date on the front cover of this prospectus,

regardless of the time of delivery of this prospectus or any sale of the Class A common stock. Our business, financial condition, results of operations and prospects may have changed since the date on the front cover of this prospectus.

For investors outside the United States: Neither we nor the underwriters, nor any of their respective agents, have done anything that would permit this offering or possession or distribution of this prospectus or any free writing prospectus we may provide to you in connection with this offering in any jurisdiction, other than the United States, where action for that purpose is required. Persons outside the United States who come into possession of this prospectus or any such free writing prospectus must inform themselves about, and observe any restrictions relating to, the offering of our Class A common stock and the distribution of this prospectus and any such free writing prospectus outside the United States and in their jurisdiction.

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## PRESENTATION OF FINANCIAL AND OTHER INFORMATION

### Financial Statements

Except as otherwise disclosed, the financial information contained in this prospectus includes audited consolidated financial statements of Snail Games USA as of and for the years ended December 31, 2020 and 2019 together with the notes thereto. All references herein to “our financial statements,” “our audited consolidated financial information,” and “our audited consolidated financial statements,” are to consolidated financial statements of Snail Games USA included elsewhere in this prospectus.

The financial information should be read in conjunction with “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial statements.

Our fiscal year ends on December 31. References in this prospectus to a fiscal year, such as “fiscal year 2020,” relate to our fiscal year ended on December 31 of that calendar year.

### Non-GAAP Measures

This prospectus contains certain financial measures, including Bookings and Adjusted EBITDA (each as defined below), that are not required by, or presented in accordance with, generally accepted accounting principles in the United States (“GAAP”). We refer to these measures as “non-GAAP” financial measures or information.

Bookings and Adjusted EBITDA, as used in this prospectus, are non-GAAP financial measures that are presented as supplemental disclosures and should not be construed as alternatives to net income (loss) or revenue as indicators of operating performance, nor as alternatives to cash flow provided by operating activities as measures of liquidity, both as determined in accordance with GAAP.

We define “Bookings” as the net amount of products and services sold digitally or physically in the period. Bookings is equal to revenues excluding the impact from deferrals.

We define “Adjusted EBITDA” as net income (loss) before (i) interest expense, (ii) interest income, (iii) income tax provision (benefit), (iv) depreciation and amortization expense, (v) amortization — intangible assets (other), (vi) impairment of intangible assets, (vii) litigation settlement expense and (viii) gain on the sale of membership interest of equity investment.

We supplementally present Bookings and Adjusted EBITDA because they are key operating measures used by our management to assess our financial performance. Bookings adjusts for the impact of deferrals and, we believe, provides a useful indicator of sales in a given period. Adjusted EBITDA adjusts for items that we believe do not reflect the ongoing operating performance of our business, such as certain non-cash items, unusual or infrequent items or items that change from period to period without any material relevance to our operating performance. Management believes Bookings and Adjusted EBITDA are useful to investors and analysts in highlighting trends in our operating performance, while other measures can differ significantly depending on long-term strategic decisions regarding capital structure, the tax jurisdictions in which we operate and capital investments. Management uses Bookings and Adjusted EBITDA to supplement GAAP measures of performance in the evaluation of the effectiveness of our business strategies, to make budgeting decisions, and to compare our performance against other peer companies using similar measures. We evaluate Bookings and Adjusted EBITDA in conjunction with our results according to GAAP because we believe it provides investors and analysts a more complete understanding of factors and trends affecting our business than GAAP measures alone. Bookings and Adjusted EBITDA should not be considered as alternatives to net income (loss), as measures of financial performance or any other performance measure derived in accordance with GAAP.

Bookings and Adjusted EBITDA as calculated herein may not be comparable to similarly titled measures reported by other companies within the industry and is not determined in accordance with GAAP. Our presentation of Bookings and Adjusted EBITDA should not be construed as an inference that our future results will be unaffected by unusual or unexpected items. Also, we may incur expenses that are the same or similar to some of the adjustments in this presentation.

For more information and a reconciliation of such non-GAAP measures, the closest comparable GAAP financial measure, see “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Key Performance Metrics and Non-GAAP Measures — Bookings and Adjusted EBITDA.”

### **Key Performance Metrics**

We monitor Units Sold (as defined below) as a key performance metric in evaluating the performance of our console and PC game business. We define “Units Sold” as the number of game titles purchased through digital channels by an individual end user. Under this metric, the purchase of a standalone game, downloadable content (“DLC”), Season Pass or bundle on a specific platform are individually counted as a unit. For example, an individual who purchases a standalone game and DLC on one platform, a Season Pass on another platform and a bundle on a third platform would count as four Units Sold. Similarly, an individual who purchases three standalone game titles on the same platform would count as three Units Sold.

Units Sold may be impacted by several factors that could cause fluctuations on a quarterly basis, such as game releases, promotional sales on digital platforms, console release cycles and new digital platforms. Future growth in Units Sold will depend on our ability to launch new games and features and the effectiveness of marketing strategies.

### **Industry Data**

This prospectus includes market and industry data that has been obtained from third party sources, including industry publications, as well as industry data prepared by our management on the basis of its knowledge of and experience in the industries in which we operate (including our management’s estimates and assumptions relating to such industries based on that knowledge). Management’s knowledge of such industries has been developed through its experience and participation in these industries. While our management believes the third-party sources referred to in this prospectus are reliable, neither we nor our management have independently verified any of the data from such sources referred to in this prospectus or ascertained the underlying economic assumptions relied upon by such sources. Internally prepared and third-party market forecasts in particular are estimates only and may be inaccurate, especially over long periods of time. In addition, the underwriters have not independently verified any of the industry data prepared by management or ascertained the underlying estimates and assumptions relied upon by management. Forecasts and other forward-looking information with respect to industry, market, business and other data are subject to the same qualifications and additional uncertainties regarding the other forward-looking statements in this prospectus. See “Cautionary Statement Regarding Forward-Looking Statements.” Furthermore, references in this prospectus to any publications, reports, surveys or articles prepared by third parties should not be construed as depicting the complete findings of the entire publication, report, survey or article. The information in any such publication, report, survey or article is not incorporated by reference in this prospectus.

### **Trademarks**

We own or have rights to trademarks, service marks and trade names that we use in connection with the operation of our business, including our corporate name, logos and website names. Other trademarks, service marks and trade names appearing in this prospectus are the property of their respective owners. Solely for convenience, some of the trademarks, service marks and trade names referred to in this prospectus are listed without the ® and ™ symbols, but we will assert, to the fullest extent under applicable law, our rights to our trademarks, service marks and trade names.

## SUMMARY

*This summary highlights information contained elsewhere in this prospectus. This summary may not contain all the information that may be important to you and we urge you to read this entire prospectus carefully, including the “Risk Factors” and “Management’s Discussion and Analysis of Financial Condition and Results of Operations” sections and our consolidated financial statements and notes thereto included elsewhere in this prospectus, before deciding to invest in our Class A common stock.*

### Overview

Our mission is to provide high-quality entertainment experiences to audiences around the world.

We are a leading, global independent developer and publisher of interactive digital entertainment for consumers around the world. We have built a premier portfolio of premium games designed for use on a variety of platforms, including consoles, PCs and mobile devices. For four of the last five years ended December 2020, *ARK: Survival Evolved* was a top-25 seller on the Steam platform across all game genres. Our expertise in technology, in-game ecosystems and monetization of online multiplayer games has enabled us to assemble a broad portfolio of intellectual property across multiple media formats and technology platforms. Our flagship franchise from which we generate the substantial majority of our revenues, *ARK: Survival Evolved*, is a leader within the sandbox survival genre with over 48.9 million console and PC installs through June 2021. Between June 2020 and June 2021, *ARK: Survival Evolved* has averaged a total of 267,000 daily active users (“DAUs”) on the Steam and Epic platforms, and we experienced a peak of approximately 755,000 DAUs in early June 2020. We define “daily active users” as the number of unique users who play any given game on any given day. For the years ended December 31, 2020 and 2019, we generated 89.5% and 80.5%, respectively, of our revenues from *ARK: Survival Evolved*.

According to Newzoo, from 2015 to 2020, the global gaming industry grew approximately 94% from \$91.8 billion in 2015 to \$177.8 billion in 2020. The global gaming market is forecasted to generate revenue of \$175.8 billion in 2021, representing sales approximately 30% larger than the combined revenue generated by the global music, cinema and OTT markets, according to Newzoo and PwC. The global gaming market is expected to further expand through 2024, growing 23% to \$218.7 billion, according to Newzoo. The shift towards online game play along with in-game monetization and new platforms have fundamentally transformed the way consumers interact with video games. Moreover, digital distribution has democratized developer access, leading to an expansion of new titles to address consumer preferences. At Snail, we focus on building compelling interactive entertainment franchises, with an aim of ultimately creating a world-class metaverse driven by player-created content. We believe success in delivering a highly engaging consumer experience results from a combination of best-in-class creativity and innovative use of leading, cutting-edge technology and platforms.

Our roots trace back to the beginnings of the massively multiplayer online role-playing games (“MMORPG”), with early titles including *Age of Wushu*. Our long history provides us with substantial experience that we leverage to identify and invest in promising game development studios and to manage the growth of our games into AAA titles. We collaborate with talented development teams, providing our expertise, capital, technological resources, customer service, marketing strategy and other services to achieve a successful outcome.

We optimize our development pipeline and target specific market segments by publishing games under several specialized brands through our two publishing labels, Snail Games USA and Wandering Wizard. Our distribution strategy utilizes Steam’s early access feature to achieve faster go-to-market times. We utilize proprietary technology, including a versatile game engine and advanced server technology, to heighten artistic detail and increase player engagement.

We attribute our continued success to several differentiating elements.

- **Perseverance:** We are called Snail because we admire a snail’s perseverance in achieving its goals. We maintain a disciplined approach to our game development, financial management and strategic acquisitions as we seek to deliver long-term value.



- **Innovation:** We believe innovation is at the core of a highly engaging entertainment experience. Our titles span from indie to our AAA franchise *ARK: Survival Evolved*. We created the Wandering Wizard label to allow us to invest and grow indie titles built by bright, passionate teams.
- **Technology:** We utilize advanced and proprietary technologies to drive demand and optimize costs. Our proprietary micro-influencer platform, *NOIZ*, enables us to substantially broaden our influencer base at an advantaged cost, and our game and server technology provide a highly customizable development infrastructure.
- **Collaboration:** We partner with talented independent studios for game development. Development teams, some of which are our wholly owned subsidiaries, are provided capital and other critical resources and are afforded a high degree of autonomy. We believe this model best preserves the culture and creativity of the development team and encourages the development of successful games.
- **Developers:** We believe in the importance of maintaining a broad developer network to ensure the simultaneous development of high-quality games. We have seven internal development studios and we partner with two related-party development studios from AAA to indie located in the United States and internationally.
- **Experience:** Our management team has deep knowledge of the gaming landscape based on more than two decades of experience in the gaming industry. Our Founder and Chairman, Mr. Shi, was a pioneer in sandbox and MMORPG games, and our Chief Executive Officer, Jim Tsai, has a deep understanding of game development and publishing with more than 25 years of experience. Our industry experience is foundational to our success in development and publishing and helps us to quickly identify attractive acquisitions and partnerships opportunities.

Our dedication to provide audiences with high-quality entertainment experiences utilizing the latest gaming technology has produced strong user engagement, continued revenue growth, and increased cash flows. Through June 30, 2021, our *ARK* franchise game has been played for more than 2.4 billion hours with an average playing time per user of more than 182 hours and with the top 24% of all players spending over 100 hours in the game, according to data related to the Steam platform. For the years ended December 31, 2020 and 2019, our revenue was \$124.9 million and \$86.3 million, respectively, representing annual growth of 44.7%. We have maintained a diversified revenue base across platforms, with approximately 49% of fiscal year 2020 revenue from consoles, 40% from PC and 11% from mobile platforms. We had net income of \$29.8 million for the year ended December 31, 2020 as compared to net loss of \$(15.2) million for the year ended December 31, 2019.

#### **Our Heritage and Expertise**

We were founded in 2009 as a subsidiary of Suzhou Snail Digital Technology Co. Ltd. (“Suzhou Snail”), and our heritage and knowledge extends to our Founder and Chairman’s creation of Suzhou Snail. Suzhou Snail was founded in the early 2000s to fulfill a need for gaming in Asia. Our Founder and Chairman, Mr. Shi, became an early adopter of PC-based online free-to-play gaming, and Suzhou Snail became a pioneer in MMORPG games, releasing successful titles such as *Age of Wushu*. Amid transformations in the global gaming industry in the mid-2000s, our initial goal was to serve as the publisher for Suzhou Snail’s games in the United States. We rapidly transformed our business model to include development and publishing of independently sourced content, pursuing a premium game strategy anchored by diversified development teams. In 2015, we partnered with Studio Wildcard to develop our flagship franchise, *ARK*. Our heritage in free-to-play games and operating history in premium games has afforded us with deep knowledge of the global gaming marketplace and has enabled us to develop a successful value proposition for our consumers and developers.

#### **Market Opportunity**

We serve a large addressable market in a dynamic industry with strong growth tailwinds. From 2015 to 2020, the video game industry has grown at over 14% CAGR. The global gaming market was valued over \$177.8 billion in 2020 and is projected to grow to \$218.7 billion in 2024, representing a 5.3% CAGR as its popularity continues to flourish mainstream. In 2021, there were over one billion console and PC (excluding mobile) gamers worldwide, according to IDC. More than 75% of gamers are age 21 or older, and the vast

majority of gamers are medium-to-high earners with full-time jobs, according to Newzoo. The combination of these statistics illustrates a quickly growing market with a highly engaged target demographic with purchasing power towards entertainment. Within the video game industry, the console and PC gaming segment of the global games industry is estimated to account for 48% of the total market in 2021. The sandbox survival category is an attractive genre within gaming because it is truly “one-size-fits-all.” We have developed and invested in various successful sandbox survival titles since 2015, including our flagship franchise, *ARK*. In addition to gaming, we believe there are several adjacent market opportunities driven by the proliferation of streaming and eSports: the global eSports audience is projected to reach 474 million viewers and surpass \$1 billion in revenue in 2021.

#### Our Value Proposition

- **Value proposition for gamers:** We aim to provide high-quality entertainment experience to gamers by offering frequent new content and endless game play possibility as key value propositions to our players.
- **Value proposition for developers:** Our business model is dependent on partnerships with developers, and we offer key value propositions of collaborative partnership, culture of innovation and technology to our developers.

#### Our Platform

Our strategic flywheel is anchored by our dedication to delivering high-quality, compelling entertainment experiences and is driven by our capabilities in publishing, developing and creating proprietary technology. Growth in the number of published titles allows us to invest in new development teams and proprietary technology, which expand the number of titles we publish in a self-reinforcing loop. As the quality of our games increases, we are well-positioned to attract more users and more influencers. With increased influencers through our propriety micro-influencer platform, *NOIZ*, we are able to reach a broader audience and increase user engagement within our games. This drives additional revenue, which we use to increase our developer network and to build proprietary technology. Our technology, along with our collaborative, innovative culture attracts talented developers, which in turn result in an increased number of high-quality games.



#### Our Key Strengths

- **Top-ranked category defining franchise with a track record of exponential growth:** Our dedication to our customers and innovative game development has resulted in our position as the top-ranked category defining franchise, with a track record of growth. Our flagship franchise, *ARK: Survival Evolved*, is a leader within the sandbox survival genre with over 48.9 million console and PC installs

through June 2021. *ARK: Survival Evolved* has been a top-25 selling game on the Steam platform by gross revenue in each year we released an *ARK* DLC. Between June 2020 and June 2021, *ARK: Survival Evolved* has averaged a total of 267,000 DAUs on the Steam and Epic platform, and we experienced a peak of approximately 755,000 DAUs in early June 2020.

- **Proven expertise in creating successful gaming franchises:** We have proven expertise in creating successful gaming franchises. We are a multi-platform publisher with over 12 years of experience in creating culturally influential game titles, while demonstrating financial growth. As of June 30, 2021, we have more than 20 game titles.
- **IP portfolio spanning across multiple media formats and technology platforms to captivate end user:** We license and own an IP portfolio spanning across multiple media formats and technology platforms to captivate end users. Our primary use of IP is to generate successful video games within and beyond the sandbox survival genre.
- **Collaborative development process between developers and management:** We continue to evolve with the industry with our deep pipeline of leading video game franchises such as *ARK: Survival Evolved*, *Atlas*, *Last Oasis*, *Dark and Light* and *Outlaws of the Old West*. Our success in game development and in keeping up with industry trends is partially attributed to our collaborative relationships with video game development studios, industry leaders, technology providers and distribution platforms. We offer developers freedom by giving them access to the wide breadth of the Snail platform and resources so they can do what they do best: create.
- **Innovative use and creation of next-gen technologies and platforms:** We use innovative technology to serve our customers, allowing us to provide high-quality user experiences and services. Our proprietary video game technology includes a versatile game engine, development pipeline tools, advanced rendering technology and advanced server and network operations.
- **Industry-leading financial profile combined with proven track-record of capital efficiency and growth:** We have an industry-leading financial profile, combined with a proven track-record of capital efficiency and growth. From 2019 to 2020, our net revenue grew 44.7%. We are focused on an organic growth strategy in our already successful video gaming business, but also on leveraging the same IP across multiples vectors of digital entertainment and technology.
- **Visionary management team well versed in industry and business:** We attribute much of our success to our visionary senior management and business development teams, which have a deep understanding of games and global video markets and aim to build innovative products for gamers. Our founder and other members of our management and business development teams are seasoned gamers, who lead and provide insight into gaming development from a first-hand user's perspective. We operate in an ecosystem in which our leaders employ a hands-on approach, as each developer is able to get in direct contact with our founder and receive one-on-one feedback and mentorship.

#### **Our Growth Strategy**

- **Continue to grow our successful *ARK: Survival Evolved* franchise:** Our primary strategy is to capitalize on our franchise and focus on delivering unique games and content, offering services that extend and enhance the experience, and connecting more players across more platforms. We believe the breadth and depth of our multi-platform, services offerings, and our use of multiple business models and distribution channels provide us with strategic advantages.
- **Continue to build a strong pipeline of new content via Snail Games USA and our independent label, Wandering Wizard:** Building on our strong established franchises and creating new franchises through compelling new content is at the core of our business. We endeavor to reach as many consumers as possible by offering our content on multiple platforms. Currently, we have six console and PC games under development that are expected to be released in the next five years. Our independent label, Wandering Wizard, allows us to publish independent games of different graphical quality and different genres at lower acquisition cost while utilizing our proven development and distribution strategies.
- **Continue to expand *NOIZ*, our micro-influencer marketing business, and use the platform to bolster our marketing initiatives and eCommerce revenue:** We are focused on reaching more players whenever

and wherever they want to play. We believe that we can add value to our network by utilizing content creators and micro-influencers to connect to a world of play by offering an interactive platform for players to engage in. We created our proprietary, full-service marketing platform, *NOIZ*, where we have direct relationships with influencers and save on third-party costs. *NOIZ* helps aspiring game streamers and game companies reach a wider audience, diversify marketing spend and income streams, and build their own brands easily and professionally at a large scale.

- **Continue investing in new technologies and platforms to efficiently capitalize on emerging trends:** We provide a variety of digitally delivered products and games that are played online and on mobile platforms, such as tablets and smartphones; as such, there are various opportunities for us to grow and enhance profitability. We will continue investing in new distribution channels such as medias of streaming, animation, television and eSports as opportunities in platform distribution as well as DLCs arise to expand our reach and grow our business.
- **Scale our operations through international market expansion and strategic acquisitions:** In line with our growth strategy, we plan to complete acquisitions to expand our gaming offerings, obtain talent, and expand into new markets. We continue to evaluate strategic acquisition opportunities in areas such as studios, publishers and agencies. We may also pursue joint ventures or establish subsidiaries with strategic partners as well as make investments in interactive gaming and entertainment business as part of our long-term business strategy.

#### **Risk Factors Summary**

Our business is subject to a number of risks of which you should be aware before making an investment decision. You should carefully consider all of the information set forth in this prospectus and, in particular, should evaluate the specific factors set forth in the section titled “Risk Factors” before deciding whether to invest in our Class A common stock. Among these important risks are, but such risks are not limited to, the following:

- We are dependent on the future success of our *ARK* franchise, and we must continue to publish “hit” titles or sequels to such “hit” titles in order to compete successfully in our industry.
- If we do not consistently deliver popular, high-quality content in a timely manner, if we are not successful in meaningfully expanding our existing franchise, or if consumers prefer products from our competitors, our business may be negatively impacted.
- We rely on license agreements to publish certain games, including games in our *ARK* franchise. Failure to renew our existing content licenses on favorable terms or at all or to obtain additional licenses would impair our ability to introduce new games, improvements or enhancements or to continue to offer our current games, which would materially harm our business, results of operations, financial condition and prospects.
- We depend on our key management and product development personnel.
- Our management team has limited experience managing a public company.
- The COVID-19 pandemic and containment efforts across the globe have materially altered how individuals interact with each other and have materially affected how we and our business partners are operating, and the extent to which this situation will impact our future results of operations and overall financial performance remains uncertain.
- Our business is subject to the risks of earthquakes, fire, floods, public health crises and other natural catastrophes and to interruption by man-made problems such as power disruptions, computer viruses, data security breaches or other incidents or terrorism.
- Our industry is subject to rapid technological change, and if we do not adapt to, and appropriately allocate our resources among, emerging technologies and business models, our business may be negatively impacted.
- We rely on third-party platforms, such as Xbox Live and Game Pass, PlayStation Network, Steam, Epic Games Store, Google Stadia, the Apple App Store, the Google Play Store and the Amazon

Appstore, to distribute our games and collect revenues generated on such platforms and rely on third-party payment service providers to collect revenues generated on our own platforms.

- We depend on servers and networks to operate our games with online features. If we were to lose functionality in any of these areas for any reason, our business may be negatively impacted.
- We may be unable to effectively manage the continued growth and the scope and complexity of our business, including our expansion into new business models that are untested and into adjacent business opportunities with large, established competitors.
- The interactive entertainment software industry is highly competitive.
- We are subject to product development risks, which could result in delays and additional costs, and often times we must adapt to changes in software technologies.
- Our business is subject to our ability to develop commercially successful products for the current video game platforms, which may not generate immediate or near-term revenues, and as a result, our business and operating results may be more volatile and difficult to predict during console transitions than during other times.
- Our results of operations or reputation may be harmed as a result of objectionable consumer- or other third party-created content, or if our distributors, retailers, development, and licensing partners, or other third parties with whom we are affiliated, act in ways that put our brand at risk.
- The products or services we release may contain defects, bugs or errors.
- External game developers may not meet product development schedules or otherwise fulfill their contractual obligations.
- Any cybersecurity-related attack, significant data breach, or disruption of the information technology systems or networks on which we rely could negatively impact our business.

#### **Summary of the Transactions**

Snail, Inc. (“Snail”), a Delaware corporation, was formed on \_\_\_\_\_, 2022 and is the issuer of the Class A common stock offered by this prospectus. In connection with this offering, Snail Technology (HK) Limited, a subsidiary of Suzhou Snail Digital Technology Co., Ltd. and the sole stockholder of Snail Games USA, will contribute its interest in Snail Games USA to its shareholders who, in turn, will contribute such interests to Snail in exchange for a proportional amount of Class B common stock of Snail. Thereafter, Snail will be the sole stockholder of Snail Games USA, and all of our business operations will continue to be conducted through Snail Games USA and its direct and indirect subsidiaries. For more information, see “Our Organizational Structure.”

#### **Corporate Information**

Snail was incorporated in the State of Delaware in \_\_\_\_\_ 2022. Snail Games USA was incorporated in the State of California in September 2009. Our principal executive offices are located at 12049 Jefferson Boulevard, Culver City, California 90230. Our telephone number at this address is (310) 928-7428. Our main website is [www.snailgamesusa.com](http://www.snailgamesusa.com). The information contained in, or accessible through, our website is not incorporated by reference in, and should not be considered part of, this prospectus.

We have proprietary rights to trademarks, trade names and service marks appearing in this prospectus that are important to our business. Solely for convenience, the trademarks, trade names and service marks may appear in this prospectus without the ® and ™ symbols, but any such references are not intended to indicate, in any way, that we forgo or will not assert, to the fullest extent under applicable law, our rights or the rights of the applicable licensors to these trademarks, trade names and service marks. All trademarks, trade names and service marks appearing in this prospectus are the property of their respective owners.

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

We qualify as an “emerging growth company” as defined in the Jumpstart Our Business Startups Act of 2012, as amended (the “JOBS Act”). An emerging growth company may take advantage of specified

reduced reporting and other burdens that are otherwise applicable generally to public companies in the United States. These provisions include:

- a requirement to have only two years of audited financial statements and only two years of related Management’s Discussion and Analysis of Financial Condition and Results of Operations disclosure in this prospectus;
- reduced executive compensation disclosure; and
- an exemption from the auditor attestation requirement in the assessment of our internal control over financial reporting pursuant to the Sarbanes-Oxley Act of 2002.

We may choose to take advantage of some but not all of these reduced disclosure requirements. We may take advantage of these provisions until we are no longer an emerging growth company. We will remain an emerging growth company until the earliest to occur of: (1) (a) the last day of the fiscal year following the fifth anniversary of the closing of this offering, (b) the last day of the fiscal year in which our annual gross revenues are \$1.07 billion or more, or (c) the date on which we are deemed to be a “large accelerated filer,” under the rules of the SEC, which means the market value of our equity securities that is held by non-affiliates exceeds \$700 million as of the end of our second quarter and (2) the date on which we have issued more than \$1.0 billion in non-convertible debt during the prior three-year period.

In addition, under the JOBS Act, emerging growth companies can delay adopting new or revised accounting standards until such time as those standards apply to private companies. See “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Emerging Growth Company Status.” We have elected to use the extended transition period under the JOBS Act. Accordingly, our financial statements may not be comparable to the financial statements of public companies that comply with such new or revised accounting standards.

#### **Controlled Company**

Upon completion of this offering, Mr. Shi, our Founder and Chairman, will control a majority of the voting power of our outstanding common stock. As a result, we will be a “controlled company” under Nasdaq corporate governance standards. As a controlled company, exemptions under such standards will free us from the obligation to comply with certain corporate governance requirements. See “Management — Corporate Governance — Controlled Company Exemption” for additional information.

## THE OFFERING

*This summary highlights information presented in greater detail elsewhere in this prospectus. This summary is not complete and does not contain all the information you should consider before investing in our Class A common stock. You should carefully read this entire prospectus before investing in our Class A common stock including “Risk Factors” and our consolidated financial statements.*

Issuer	Snail, Inc.
Class A common stock offered by us	_____ shares (or _____ shares if the underwriters exercise in full their option to purchase additional shares).
Class A common stock to be outstanding immediately after this offering	_____ shares (or _____ shares if the underwriters exercise in full their option to purchase additional shares).
Class B common stock to be outstanding immediately after this offering	_____ shares.
Total common stock to be outstanding immediately after this offering	_____ shares (or _____ shares if the underwriters exercise in full their option to purchase additional shares).
Voting rights	<p>Upon consummation of this offering, the holders of our Class A common stock will be entitled to one vote per share, and the holders of our Class B common stock will be entitled to _____ votes per share.</p> <p>Each share of Class B common stock may be converted into one share of Class A common stock at the option of the holder.</p> <p>If, on the record date for any meeting of the stockholders, the number of shares of Class B common stock then outstanding is less than _____ % of the aggregate number of shares of Class A common stock and Class B common stock outstanding, then each share of Class B common stock will automatically convert into one share of Class A common stock.</p> <p>In addition, each share of Class B common stock will convert automatically into one share of Class A common stock upon any transfer, except for certain transfers to other holders of Class B common stock or their affiliates or to certain unrelated third parties as described under “Description of Capital Stock — Conversion” and “Description of Capital Stock — Transfer of Shares.”</p> <p>Holders of Class A common stock and Class B common stock will vote together as a single class on all matters unless otherwise required by law.</p> <p>Upon consummation of this offering, assuming no exercise of the underwriters’ option to purchase additional shares, (1) holders of Class A common stock will hold approximately _____ % of the combined voting power of our outstanding common stock and approximately _____ % of our total equity ownership and (2) holders of Class B common stock will hold approximately _____ % of the combined voting power of</p>



	<p>our outstanding common stock and approximately % of our total equity ownership.</p> <p>If the underwriters exercise their option to purchase additional shares in full, (1) holders of Class A common stock will hold approximately % of the combined voting power of our outstanding common stock and approximately % of our total equity ownership and (2) holders of Class B common stock will hold approximately % of the combined voting power of our outstanding common stock and approximately % of our total equity ownership.</p> <p>The rights of the holders of Class A common stock and Class B common stock are identical, except with respect to voting, conversion and transfer restrictions applicable to the Class B common stock. See “Description of Capital Stock” for a description of the material terms of our common stock.</p>
Option to purchase additional shares	<p>We have granted the underwriters the right to purchase up to an additional Class A common stock from us, within 30 days of the date of this prospectus, at the public offering price, less underwriting discounts, on the same terms as set forth in this prospectus.</p>
Listing	<p>We intend to apply to list our Class A common stock on Nasdaq under the symbol “.”</p>
Use of proceeds	<p>We estimate that the net proceeds to us from the offering will be approximately \$ . We intend to use the net proceeds from this offering for general corporate purposes, which may include funding future products or technologies, maintaining liquidity and funding our working capital solutions. We may also use a portion of the net proceeds to acquire, in-license or make investments in businesses, products, offerings and technologies, although we do not have agreements or commitments for any material acquisitions or investments at this time. We will have broad discretion in allocating the net proceeds from this offering. See “Use of Proceeds.”</p>
Dividend policy	<p>We have never declared nor paid cash dividends on our capital stock. We currently intend to retain all available funds and any future earnings, if any, to fund the development and expansion of our business and we do not anticipate paying any cash dividends in the foreseeable future. Any future determination to pay dividends will be made at the discretion of our board of directors and will depend on various factors, including applicable laws, our results of operations, financial condition, future prospects and any other factors deemed relevant by our board of directors.</p>
Lock-up agreements	<p>We have agreed with the underwriters, subject to certain exceptions, not to offer, sell, or dispose of any shares of our share capital or securities convertible into or exchangeable or exercisable for any shares of our share capital during the -day period following the date of</p>



Risk factors

this prospectus. The members of our board of directors and our executive officers, as well as our stockholders, have agreed to substantially similar lock-up provisions, subject to certain exceptions. See “Underwriting.”

See “Risk Factors” and the other information included in this prospectus for a discussion of factors you should consider before deciding to invest in our Class A common stock.

The number of shares of Class A and Class B common stock to be outstanding after this offering excludes shares of common stock reserved for future issuance under our equity incentive plan, which we expect to become effective prior to the completion of this offering.

Unless otherwise indicated, all information contained in this prospectus assumes no exercise of the option granted to the underwriters to purchase up to additional shares of Class A common stock in connection with the offering.

### SUMMARY FINANCIAL AND OTHER INFORMATION

The following tables set forth, for the periods and as of the dates indicated, our summary financial and other information. This information should be read in conjunction with “Presentation of Financial and Other Information,” “Management’s Discussion and Analysis of Financial Condition and Results of Operations” and our consolidated financial statements, including the notes thereto, included elsewhere in this prospectus. Our audited consolidated financial statements are prepared and presented in accordance with GAAP. Our historical results do not necessarily indicate results expected for any future periods.

	Years Ended December 31,	
	2020	2019
	(in millions)	
<b>Consolidated Statement of Operations Data and Comprehensive Income (Loss):</b>		
Revenues, net	\$124.9	\$ 86.3
Cost of revenues	67.3	78.1
Gross profit	57.6	8.2
<b>Operating expenses:</b>		
General and administrative	22.9	20.3
Research and development	1.4	2.0
Advertising and marketing	1.1	0.7
Depreciation and amortization	0.9	1.0
Loss on disposal of fixed assets	0.1	—
Impairment of intangible assets	1.3	—
Total operating expenses	27.7	23.8
Income (loss) from operations	30.0	(15.7)
<b>Other income (expense):</b>		
Interest income	1.0	0.5
Interest expense	(0.6)	(1.5)
Interest expense – related parties	(0.0)	(0.1)
Other income	0.5	(0.0)
Gain on sale of membership interest of equity investment	4.9	—
Foreign currency transaction gain	(0.0)	—
Equity in earnings (loss) of unconsolidated entity	0.7	(1.1)
Total other income (expense), net	6.6	(2.0)
Income (loss) before provision for income taxes	36.6	(17.7)
Income tax provision (benefit)	6.8	(2.5)
Net income (loss)	29.8	(15.2)
Net loss attributable to non-controlling interests	(0.9)	(1.3)
<b>Net income (loss) attributable to Snail Games USA Inc.</b>	<b>30.7</b>	<b>(13.9)</b>
<b>Comprehensive income statement:</b>		
Other comprehensive loss	(0.1)	(0.1)
<b>Total other comprehensive income (loss)</b>	<b>\$ 30.6</b>	<b>\$ (14.0)</b>



## RISK FACTORS

*Investing in our Class A common stock involves a high degree of risk. Before you invest in our Class A common stock, you should carefully consider the following risks, as well as general economic and business risks, and all of the other information contained in this prospectus. Any of the following risks could have a material adverse effect on our business, operating results and financial condition and cause the trading price of our Class A common stock to decline, which would cause you to lose all or part of your investment. When determining whether to invest, you should also refer to the other information contained in this prospectus, including our consolidated financial statements and the related notes thereto.*

### **Risks Related to Our Business and Industry**

***We are dependent on the future success of our ARK franchise, and we must continue to publish “hit” titles or sequels to such “hit” titles in order to compete successfully in our industry.***

ARK is a “hit” product and has historically accounted for a substantial portion of our revenue. The ARK franchise contributed 89.5% of our net revenue for the fiscal year ended December 31, 2020, and our five best-selling franchises (including ARK), which may change year over year, in the aggregate accounted for 97.1% of our net revenue for the fiscal year ended December 31, 2020. If we fail to continue to develop and sell new commercially successful “hit” titles or sequels to such “hit” titles or experience any delays in product releases or disruptions following the commercial release of our “hit” titles or their sequels, our revenue and profits may decrease substantially and we may incur losses. In addition, competition in our industry is intense and a relatively small number of hit titles account for a large portion of total revenue in our industry. Hit products offered by our competitors may take a larger share of consumer spending than we anticipate, which could cause revenue generated from our products to fall below our expectations. If our competitors develop more successful products or services at lower price points or based on payment models perceived as offering better value, or if we do not continue to develop consistently high-quality and well-received products and services, our revenue and profitability may decline.

***If we do not consistently deliver popular, high-quality content in a timely manner, if we are not successful in meaningfully expanding our existing franchise, or if consumers prefer products from our competitors, our business may be negatively impacted.***

Consumer preferences for games are usually cyclical and difficult to predict. Even the most successful games can lose consumer audiences over time, and remaining popular is increasingly dependent on the games being refreshed with new content or other enhancements. In order to remain competitive and maximize the chances that consumers select our products as opposed to the various entertainment options available to them and with which we compete, we must continuously develop new products or new content for, or other enhancements to, our existing products. These products or enhancements may not be well-received by consumers, even if well-reviewed and of high quality. Our competitors include very large corporations with significantly greater financial, marketing and product development resources than we have and many smaller competitors, particularly on the mobile platform. Our larger competitors may be able to leverage their greater financial, technical, personnel and other resources to provide larger budgets for development and marketing and make higher offers to licensors and developers for commercially desirable properties, as well as adopt more aggressive pricing policies to develop more commercially successful video game products than we do. Further, competitors may develop content that imitates or competes with our best-selling games, potentially reducing our sales or our ability to charge the same prices we have historically charged for our products. These competing products may take a larger share of consumer spending than anticipated, which could cause product sales to fall below expectations. If we do not continue to develop consistently high-quality and well-received games or enhancements to those games, if our marketing fails to resonate with our consumers, if we are not successful in meaningfully expanding our franchises further on the mobile platform or if consumers lose interest in a genre of games we produce, our revenues and profit margins could decline. In addition, our own best-selling products could compete with our other games, reducing sales for those other games. Further, a failure by us to develop a high-quality product, or our development of a product that is otherwise not well-received, could potentially result in additional expenditures to respond to consumer demands, harm our reputation, and increase the likelihood that our future products will not be

well-received. The increased importance of DLC to our business amplifies these risks, as DLC for poorly-received games typically generates lower-than-expected sales. The increased demand for consistent enhancements to our products also requires a greater allocation of financial resources to those products.

Additionally, consumer expectations regarding the quality, performance and integrity of our products and services are high. Consumers may be critical of our brands, games, services and/or business practices for a wide variety of reasons, and such negative reactions may not be foreseeable or within our control to manage effectively. For example, if our games or services, such as our proprietary online gaming service, do not function as consumers expect, whether because they fail to function as advertised or otherwise, our sales may suffer. The risk that this may occur is particularly pronounced with respect to our games with online features because they involve ongoing consumer expectations, which we may not be able to consistently satisfy. Our games with online features are also frequently updated, increasing the risk that a game may contain significant errors, or “bugs.” If any of these issues occur, consumers may stop playing the game and may be less likely to return to the game as often in the future, which may negatively impact our business.

Further, delays in product releases or disruptions following the commercial release of one or more new products could negatively impact our business and reputation and could cause our results of operations to be materially different from expectations. If we fail to release our products in a timely manner, or if we are unable to continue to extend the life of existing games by adding features and functionality that will encourage continued engagement with the game, our business may be negatively impacted.

Additionally, the amount of lead time and cost involved in the development of high-quality products is increasing, and the longer the lead time involved in developing a product and the greater the allocation of financial resources to such product, the more critical it is that we accurately predict consumer demand for such product. If our future products do not achieve expected consumer acceptance or generate sufficient revenues upon introduction, we may not be able to recover the substantial up-front development and marketing costs associated with those products.

***We rely on license agreements to publish certain games, including games in our ARK franchise. Failure to renew our existing content licenses on favorable terms or at all or to obtain additional licenses would impair our ability to introduce new games, improvements or enhancements or to continue to offer our current games, which would materially harm our business, results of operations, financial condition and prospects.***

We license certain intellectual property rights from third parties, including related parties, and in the future we may enter into additional agreements that provide us with licenses to valuable intellectual property rights or technology. In particular, we license intellectual property rights related to our ARK franchise from SDE, the parent company of Studio Wildcard, which is also an entity that is owned and controlled by the spouse of our Founder and Chairman, Mr. Shi. We entered into an original exclusive software license agreement with SDE in November 2015, which has been subject to periodic amendments throughout the duration of the ARK franchise. We are presently in negotiations to enter into an amended and restated exclusive software license agreement with SDE. The terms of our license agreements with SDE may differ from those terms which would be negotiated with independent parties. In addition, we may have disputes with SDE that may impact our business, results of operations, financial condition and/or prospects. The ARK franchise contributed 89.5% of our net revenue for the fiscal year ended December 31, 2020. Even if our games that are dependent on third-party license agreements remain popular, any of our licensors could decide not to renew our existing license agreements or not to license additional intellectual property rights to us and instead license to our competitors or develop and publish its own games or other applications, competing with us in the marketplace. Moreover, many of our licensors develop games for other platforms and may have significant experience and development resources available to them should they decide to compete with us rather than license to us. For additional information concerning our license arrangements, including licensing agreements with affiliated third parties, see “Business — Intellectual Property.”

Failure to maintain or renew our existing material licenses or to obtain additional licenses could impair our ability to introduce new games and new content or to continue to offer our current games, which could materially harm our business, results of operations and financial condition. If we breach our obligations under existing or future licenses, we may be required to pay damages and our licensors may have the right to terminate the license or change an exclusive license to a non-exclusive license. Termination of our license agreements by a material licensor, such as SDE, would cause us to lose valuable rights, such as the rights

to our *ARK* franchise, and would inhibit our ability to commercialize future games, which would harm our business, results of operations and financial condition. In addition, certain intellectual property rights may be licensed to us on a non-exclusive basis. The owners of nonexclusively licensed intellectual property rights would be free to license such rights 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 rights that have 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 rights or technology from third parties and related 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 could harm our competitive position, business, financial condition, results of operations and prospects.

***We depend on our key management and product development personnel.***

Our continued success will depend to a significant extent on our senior management team and maintaining positive relationships with our games developers, including Studio Wildcard, and the product development personnel responsible for content creation and development of our *ARK* franchise. We are also highly dependent on the expertise, skill and knowledge of Mr. Shi, our Founder and Chairman, Mr. Jim Tsai, our Chief Executive Officer, and Mr. Peter Kang, our Chief Operating Officer.

The loss of the services of our executive officers, including Messrs. Shi, Tsai or Kang or certain key product development personnel, including those employed by studio partners, such as Studio Wildcard, could significantly harm our business. In addition, if one or more key employees were to join a competitor or form a competing company, we may lose additional personnel, experience material interruptions in product development, delays in bringing products to market and difficulties in our relationships with licensors, suppliers and customers, which would significantly harm our business. Failure to continue to attract and retain qualified management and creative personnel could adversely affect our business and prospects.

***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 regulators 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 could adversely impact our business, operating results and financial condition.

***The COVID-19 pandemic and containment efforts across the globe have materially altered how individuals interact with each other and have materially affected how we and our business partners are operating, and the extent to which this situation will impact our future results of operations and overall financial performance remains uncertain.***

The ongoing COVID-19 pandemic and resulting social distancing and shelter-in-place orders put in place around the world have caused widespread disruption in global economies, productivity and financial markets and have materially altered the way in which we conduct our day-to-day business.

As a result of the COVID-19 pandemic, we temporarily closed our corporate headquarters in Culver City, California and implemented travel restrictions. Towards the end of the first quarter of 2020, we implemented a remote working program, and we engaged with significant vendors (such as Amazon), platform providers (such as Microsoft, Sony, Steam, Epic Games, Google and Apple), advertising partners (such as Facebook and Google) and other business partners to understand their operating conditions and continue to evaluate our business continuity plans. The full extent to which the COVID-19 pandemic and the various responses to it impact our business, operations and financial results will depend on numerous

evolving factors that we may not be able to accurately predict, including: the duration and scope of the COVID-19 pandemic, including any potential future waves of the COVID-19 pandemic; governmental, business and individuals' actions that have been and continue to be taken in response to the COVID-19 pandemic; the availability and cost to access the capital markets; the effect on our players and their willingness and ability to pay for our games and services; disruptions or restrictions on our employees' ability to work and travel; and interruptions related to our cloud networking and gaming infrastructure and partners, including impacts on Amazon Web Services, gaming platform providers, advertising partners and customer service and support providers. During the COVID-19 pandemic, we may not be able to provide the same level of product features and customer support that our players expect from us, which could negatively impact our business and operations. While substantially all of our business operations can be performed remotely, many of our employees are juggling additional work-related and personal challenges, including preparing for a prolonged duration of remote working environments, adjusting communication and work practices to collaborate remotely with work colleagues and business partners, managing technical and communication challenges of working from home on a daily basis, looking after children as a result of remote-learning and school closures, making plans for childcare and caring for themselves, family members or other dependents who are or may become ill. We will continue to actively monitor the issues raised by the COVID-19 pandemic and may take further actions that alter our business operations, including as may be required by federal, state, local or foreign authorities or that we determine are in the best interests of our employees, players, partners and stockholders.

The COVID-19 pandemic and resulting social distancing, shelter-in-place and similar restrictions may have led to increased sales of our games, and correspondingly, increased revenues, relative to our quarterly historic trends. These increases in sales and revenues may not be indicative of our financial and operating results in future periods. The effects of the COVID-19 pandemic on society and player behavior are highly uncertain. For example, primarily during the second quarter of 2020, we saw increased sales and revenues relative to our quarterly forecasts and historic trends. During the third quarter of 2020, sales and revenues returned to levels more consistent with historical periods. These changes in sales and revenues may have been due to factors in addition to or other than the COVID-19 pandemic, such the release of new content.

In addition to the potential direct impacts to our business, the global economy has experienced significant volatility as a result of the actions taken in response to COVID-19, and future government intervention remains uncertain. An uncertain or weakened global economy may impact our players and their purchasing decisions within our games, consumers' buying decisions across the globe and their impact on the allocation of advertising investments and the ability of our business partners to navigate this complex social health and economic environment, any of which could result in disruption to our business and results of our operations.

The duration and extent of the impact from the COVID-19 pandemic depends on future developments that cannot be accurately predicted at this time, such as the severity and transmission rate of the virus and its variants, the existence of any additional waves of the COVID-19 pandemic, the extent and effectiveness of containment actions, continued progress towards widespread rapid testing and effective treatment alternatives and vaccinations, and the impact of these and other factors on our employees, players and business partners. If we are not able to respond to and manage the impact of such events effectively, our business may be harmed.

***Our business is subject to the risks of earthquakes, fire, floods, public health crises and other natural catastrophes and to interruption by man-made problems such as power disruptions, computer viruses, data security breaches or other incidents or terrorism.***

Our corporate headquarters are located in Culver City, California. Additionally, we rely on third-party infrastructure, enterprise applications and internal technology systems for our development, marketing, operational support and sales activities. The west coast of the United States, where our corporate headquarters are located, contains active earthquake zones and have been subject to numerous devastating wildfires and associated electrical blackouts. In the event of a catastrophic event, including a natural disaster such as an earthquake, hurricane, fire, flood, tsunami or tornado, or other catastrophic event such as power loss, telecommunications failure, software or hardware malfunction, cyber-attack, war, terrorist attack or incident

of mass violence in the Los Angeles area or elsewhere where our operations are located or where certain other systems and applications that we rely on are hosted, we may be unable to continue our operations and may endure significant system interruptions, reputational harm, delays in our application development, lengthy interruptions in our platform, breaches of data security and loss of critical data, all of which could have an adverse effect on our future operating results. In addition, natural disasters, cyber-attacks, acts of terrorism, public health crises, such as pandemics and epidemics, or other catastrophic events could cause disruptions in our or our customers' businesses, national economies or the world economy as a whole.

***Our industry is subject to rapid technological change, and if we do not adapt to, and appropriately allocate our resources among, emerging technologies and business models, our business may be negatively impacted.***

Technology changes rapidly in the interactive entertainment industry. We must continually anticipate and adapt to emerging technologies, such as cloud-based game streaming, and business models, such as free-to-play and subscription-based access to a portfolio of interactive content, to stay competitive. Forecasting the financial impact of these rapidly changing technologies and business models is inherently uncertain and volatile. Supporting a new technology or business model may require partnering with a new platform, business, or technology partner, which may be on terms that are less favorable to us than those for more traditional technologies or business models. If we invest in the development of interactive entertainment products for distribution channels that incorporate a new technology or business model that does not achieve significant commercial success, whether because of competition or otherwise, we may not recover the often substantial up-front costs of developing and marketing those products, or recover the opportunity cost of diverting management and financial resources away from other products or opportunities. Further, our competitors may adapt to an emerging technology or business model more quickly or effectively than we do, creating products that are technologically superior to ours, more appealing to consumers, or both.

If, on the other hand, we elect not to pursue the development of products incorporating a new technology, or otherwise elect not to pursue new business models that achieve significant commercial success, it may have adverse consequences. It may take significant time and expenditures to shift product development resources to that technology or business model, and it may be more difficult to compete against existing products incorporating that technology or using that business model.

***We rely on third-party platforms, such as Xbox Live and Game Pass, PlayStation Network, Steam, Epic Games Store, Google Stadia, the Apple App Store, the Google Play Store and the Amazon Appstore, to distribute our games and collect revenues generated on such platforms and rely on third-party payment service providers to collect revenues generated on our own platforms.***

Our games are primarily purchased, accessed and operated through Xbox Live and Game Pass, PlayStation Network, Steam, Epic Games Store, Google Stadia, and in the case of our mobile games, the Apple App Store, the Google Play Store and the Amazon Appstore. Substantially all of the games, DLC and in-game virtual items that we sell are purchased using the payment processing systems of these platforms and, for fiscal year ended December 31, 2020, 84% of our revenues were generated through Xbox Live and Game Pass, PlayStation Network, Steam, Epic Games Store, Google Stadia, the Apple App Store, the Google Play Store and the Amazon Appstore. Consequently, our expansion and prospects depend on our continued relationships with these providers, and any other emerging platform providers that are widely adopted by our target players. In addition, having such a large portion of our total net revenues concentrated in a few counterparties reduces our negotiating leverage. We are subject to the standard terms and conditions that these platform providers have for game developers, which govern the content, promotion, distribution, operation of games and other applications on their platforms, as well as the terms of the payment processing services provided by the platforms, and which the platform providers can change unilaterally on short notice or without notice. As such, our business would be harmed if:

- the platform providers discontinue or limit our access to their platforms;
- governments or private parties, such as internet providers, impose bandwidth restrictions, increase charges or restrict or prohibit access to those platforms;
- the platforms increase the fees they charge us;



- the platforms modify their algorithms, communication channels available to developers, respective terms of service or other policies;
- the platforms decline in popularity;
- the platforms adopt changes or updates to their technology that impede integration with other software systems or otherwise require us to modify our technology or update our games in order to ensure players can continue to access our games and content with ease;
- the platforms elect or are required to change how they label free-to-play games or take payment for in-game purchases;
- the platforms block or limit access to the genres of games that we provide in any jurisdiction;
- the platform experiences a bankruptcy or other form of insolvency event; or
- we are unable to comply with the platform providers' terms of service.

Moreover, if our platform providers do not perform their obligations in accordance with our platform agreements or otherwise meet our business requirements, we could be adversely impacted. For example, in the past, some of these platform providers have experienced outages for short periods of time, unexpectedly changed their terms or conditions, or experienced issues with their features that permit our players to purchase games or in-game virtual items. In addition, if we do not adhere to the terms and conditions of our platform providers, the platform providers may take actions to limit the operations of, suspend or remove our games from the platform, and/or we may be exposed to liability or litigation. For example, in August 2020, Epic Games, Inc. ("Epic Games"), attempted to bypass Apple and Google's payment systems for in-game purchases with an update that allowed users to make purchases directly through Epic Games in its game, Fortnite. Apple and Google promptly removed Fortnite from their respective app stores, and Apple filed a lawsuit seeking injunctive relief to block the use of Epic Games' payment system and sought monetary damages to recover funds made while the updated version of Fortnite was active.

If any such events described above occur on a short-term or long-term basis, or if these third-party platforms and online payment service providers otherwise experience issues that impact the ability of players to download or access our games, access social features, or make in-game purchases, it would have a material adverse effect on our brands and reputation, as well as our business, financial condition and results of operations.

***We depend on servers and networks to operate our games with online features. If we were to lose functionality in any of these areas for any reason, our business may be negatively impacted.***

Our business relies on the continuous operation of servers, the vast majority of which are owned and operated by third parties. Although we strive to maintain more than sufficient server capacity, and provide for active redundancy in the event of limited hardware failure, any broad-based catastrophic server malfunction, a significant service-disrupting attack or intrusion by hackers that circumvents security measures, a failure of disaster recovery service or the failure of a company on which we are relying for server capacity to provide that capacity for whatever reason would likely degrade or interrupt the functionality of our games with online features, and could prevent the operation of such games altogether, any of which could result in the loss of sales for, or in, such games. The risk is particularly pronounced with respect to our multiplayer game services, which rely on systems hosted in a hybrid of data centers across the world as well as cloud providers. Further, insufficient server capacity, in particular during times of peak player activity corresponding with the release of new games or DLC, could affect our ability to provide game services, which could negatively impact our business. Conversely, if we overestimate the amount of server capacity required by our business, we may incur additional operating costs.

We also rely on platforms and networks operated by third parties, such as Xbox Live and Game Pass, PlayStation Network, Steam, Epic Games Store and Google Stadia, for the sale and digital delivery of downloadable console and PC game content, the functionality of our games with online features. Similarly, we rely on those platforms and networks, as well as the continued operation of the Apple App Store, the Google Play Store and the Amazon Appstore for our free-to-play games. An extended interruption to any

of these services could adversely affect our ability to sell and distribute our digital products and operate our games with online features, which could result in a loss of revenue and otherwise negatively impact our business.

***We may be unable to effectively manage the continued growth and the scope and complexity of our business, including our expansion into new business models that are untested and into adjacent business opportunities with large, established competitors.***

In recent years, we have experienced significant growth in the scope and complexity of our business. From time to time we seek to establish and implement new business models, including eSports offerings, our NOIZ influencer platform and animation ventures. Forecasting the success of any new business model is inherently uncertain and depends on a number of factors both within and outside of our control. Our actual revenue and profit for these businesses may be significantly greater or less than our forecasts. In addition, these new business models could fail, resulting in the loss of our investment in the development and infrastructure needed to support these new business models, as well as the opportunity cost of diverting management and financial resources away from more successful and established businesses. While we anticipate growth in these areas of our business, consumer demand is difficult to predict as a result of a number of factors, including satisfaction with our products and services, our ability to provide engaging products and services, reliability of our infrastructure and the infrastructure of our partners, pricing, the actual or perceived security of our and our partners information technology systems and reductions in consumer spending levels.

We do not know to what extent these and any future expansions into new business models will be successful. Further, even if successful, our aspirations for growth in our core businesses and these adjacent businesses could create significant challenges for our management, operational, and financial resources. If not managed effectively, this growth could result in the over-extension of our operating infrastructure, and our management systems, information technology systems, and internal controls and procedures may not be adequate to support this growth. Failure by these new businesses or failure to adequately manage our growth in any of these ways may damage our brand or otherwise negatively impact our core business. Further, the success of these new businesses is largely contingent on the success of our underlying franchises and as such, a decline in the popularity of a franchise may impact the success of the new businesses adjacent to that franchise.

***The interactive entertainment software industry is highly competitive.***

We compete for the sale of interactive entertainment software with Sony and Microsoft, each of which is a large developer and marketer of software for its own platforms. We also compete with game publishers, such as Activision Blizzard, Inc., Electronic Arts Inc., Take-Two Interactive, Ubisoft, Epic Games, Tencent, Zynga, Netmarble, Sony, Microsoft and Nintendo primarily for game development on consoles, PCs and mobile devices. Across the sandbox survival game genre, we primarily compete with Embracer Group, Saber Group, Enand Global 7, FunCom, Axolot Games and Facepunch Studios. As our business is dependent upon our ability to develop hit titles, which require increasing budgets for development and marketing, the availability of significant financial resources has become a major competitive factor in developing and marketing software games. Some of our competitors have greater financial, technical, personnel and other resources than we do and are able to finance larger budgets for development and marketing and make higher offers to licensors and developers for commercially desirable properties. Our titles also compete with other forms of entertainment, such as social media and casual games, in addition to film, television and audio and video products featuring similar themes, online computer programs and other entertainment, which may be less expensive or provide other advantages to consumers.

A number of software publishers who compete with us have developed and commercialized or are currently developing online games. As technological advances significantly increase the availability of online games and as consumer acceptance of online gaming grows substantially, it could result in a decline in our platform-based software sales and negatively affect sales of such products.

Additionally, we compete with other forms of entertainment and leisure activities. While we monitor general market conditions, significant shifts in consumer demand that could materially alter public

preferences for different forms of entertainment and leisure activities are difficult to predict. Failure to adequately identify and adapt to these competitive pressures could have a negative impact on our business.

***We are subject to product development risks, which could result in delays and additional costs, and often times we must adapt to changes in software technologies.***

We depend on our internal development studios and related-party developers to develop new interactive entertainment software within anticipated release schedules and cost projections. Our development costs can be substantial. If we or our related-party developers experience unanticipated development delays, financial difficulties, or additional costs, for example, as a result of COVID-19, we may not be able to release titles according to our schedule and at budgeted costs. There can be no assurance that our products will be sufficiently successful so that we can recoup these costs or make a profit on these products.

Additionally, in order to stay competitive, our internal development studios must anticipate and adapt to rapid technological changes affecting software development, such as cloud-based game streaming. Any inability to respond to technological advances and implement new technologies could render our products obsolete or less marketable. Further, the failure to pursue the development of new technology, platforms, or business models that obtain meaningful commercial success in a timely manner may negatively affect our business, resulting in increased production or development costs and more strenuous competition.

***Our business is subject to our ability to develop commercially successful products for the current video game platforms, which may not generate immediate or near-term revenues, and as a result, our business and operating results may be more volatile and difficult to predict during console transitions than during other times.***

We derive most of our revenue from publishing video games on third-party platform providers, such as Xbox Live and Game Pass, PlayStation Network, Steam, Epic Games Store, Google Stadia, the Apple App Store, the Google Play Store and the Amazon Appstore, which, in the aggregate, comprised 84% of our net revenue by product platform for the fiscal year ended December 31, 2020. The success of our business is subject to the continued popularity of these platforms and our ability to develop commercially successful products for these platforms.

Historically, when next generation consoles are announced or introduced into the market, consumers have typically reduced their purchases of products for prior-generation consoles in anticipation of purchasing a next-generation console and products for that console. During these periods, sales of the products we publish may decline until new platforms achieve wide consumer acceptance. Console transitions may have a comparable impact on sales of DLC, amplifying the impact on our revenues. This decline may not be offset by increased sales of products for the next-generation consoles. In addition, as console hardware moves through its life cycle, hardware manufacturers typically enact price reductions, and decreasing prices may put downward pressure on software prices. During console transitions, we may simultaneously incur costs both in continuing to develop and market new titles for prior-generation video game platforms, which may not sell at premium prices, and also in developing products for next-generation platforms, which may not generate immediate or near-term revenues. As a result, our business and operating results may be more volatile and difficult to predict during console transitions than during other times.

***Our results of operations or reputation may be harmed as a result of objectionable consumer- or other third party-created content, or if our distributors, retailers, development and licensing partners, or other third parties with whom we are affiliated, act in ways that put our brand at risk.***

Certain of our games support collaborative online features that allow consumers to communicate with one another and post narrative comments, in real time, that are visible to other consumers. Additionally, certain of our games allow consumers to create and share “user-generated content” that is visible to other consumers. From time to time, objectionable and offensive consumer content may be distributed within our games and on our broadcasts through these features or to gaming websites or other sites or forums with online chat features or that otherwise allow consumers to post comments. We may be subject to lawsuits, governmental regulation or restrictions, and consumer backlash (including decreased sales and harmed reputation), as a result of consumers posting offensive content.

In many cases, our business partners and other third party affiliates are given access to sensitive and proprietary information or control over our intellectual property to provide services and support to our team. These third parties may misappropriate or misuse our information or intellectual property and engage in unauthorized use of it. Further, the failure of these third parties to provide adequate services and technologies or to adequately maintain or update their services and technologies could result in a disruption to our business operations or an adverse effect on our reputation and may negatively impact our business. At the same time, if the media, consumers or employees raise any concerns about our actions vis-à-vis third parties, including consumers who play our games, this could also harm our business, results of operations or our reputation.

***The products or services we release may contain defects, bugs or errors.***

Our products and services contain or rely upon extremely complex software programs and are difficult to develop and distribute. We have quality controls in place to detect defects, bugs or other errors in our products and services before they are released. Nonetheless, these quality controls are subject to human error, overriding and resource or technical constraints. In addition, the effectiveness of our quality controls and preventative measures may be negatively affected by the distribution of our workforce resulting from, among other things, the COVID-19 pandemic. As such, these quality controls and preventative measures may not be effective in detecting all defects, bugs or errors in our products and services before they have been released into the marketplace. In such an event, the technological reliability and stability of our products and services could be below our standards and the standards of our players, and our reputation, brand and sales could be adversely affected. In addition, we could be required to, or may find it necessary to, offer a refund for the product or service, suspend the availability or sale of the product or service or expend significant resources to cure the defect, bug or error each of which could significantly harm our business and operating results.

***External game developers may not meet product development schedules or otherwise fulfill their contractual obligations.***

We are heavily reliant upon contracts with external game developers to develop our games or distribute our games. While we maintain contractual protections, we have less control over the product development schedules of games developed by external developers. We depend on their ability to meet product development schedules which could be negatively affected by, among other things, the distributed workforce model resulting from the COVID-19 pandemic or the loss of key development personnel. In addition, disputes occasionally arise with external developers, including with respect to game content, launch timing, achievement of certain milestones, the game development timeline, marketing campaigns, contractual terms and interpretation of such terms. If we have disputes with external developers or they cannot meet product development schedules, acquire certain approvals or are otherwise unable or unwilling to fulfill their contractual obligations to us, we may delay or cancel previously announced games, alter our launch schedule or experience increased costs and expenses, which could result in a delay or significant shortfall in anticipated revenue, harm our profitability and reputation and cause our financial results to be materially affected.

***Any cybersecurity-related attack, significant data breach or disruption of the information technology systems or networks on which we rely could negatively impact our business.***

In the course of our day-to-day business, we and third parties operating on our behalf and from which we license certain intellectual property create, store, and/or use commercially sensitive information, such as the source code and game assets for our interactive entertainment software products and sensitive and confidential information with respect to our customers, consumers, and employees. Our ability to effectively manage our business and coordinate the manufacturing, sourcing, distribution and sale of our interactive entertainment software products depends significantly on the reliability and capacity of these systems. We are critically dependent on the integrity, security and consistent operations of these systems. A malicious cybersecurity-related attack, intrusion, or disruption by hackers (including through spyware, ransomware, viruses, phishing, denial of service, and similar attacks) or other breach of the systems on which such source code and assets, account information (including personal information), and other sensitive data is stored could lead to piracy of our software, fraudulent activity, disclosure, or misappropriation of, or access to, our customers', consumers', or employees' personal information, or our own business data. Such incidents

could also lead to product code-base and game distribution platform exploitation, should undetected viruses, spyware, or other malware be inserted into our products, services, or networks, or systems used by our consumers. We have implemented cybersecurity programs and the tools, technologies, processes, and procedures intended to secure our data and systems, and prevent and detect unauthorized access to, or loss of, our data, or the data of our customers, consumers or employees. However, because these cyberattacks may remain undetected for prolonged periods of time and the techniques used by criminal hackers and other third parties to breach systems are constantly evolving, change frequently and we may be unable to anticipate these techniques or implement adequate preventative measures. A data intrusion into a server for a game with online features or for our proprietary online gaming service could also disrupt the operation of such game or platform. If we are subject to cybersecurity breaches, or a security-related incident that materially disrupts the availability of our products and services, we may have a loss in sales or subscriptions or be forced to pay damages or incur other costs, including from the implementation of additional cyber and physical security measures, or suffer reputational damage. If there were a public perception that our data protection measures are inadequate, whether or not the case, it could result in reputational damage and potential harm to our business relationships or the public perception of our business model. In addition, such cybersecurity breaches may subject us to legal claims or proceedings, like individual claims and regulatory investigations and actions, including fines, especially if there is loss, disclosure, or misappropriation of, or access to, our customers' personal information or other sensitive information, or there is otherwise an intrusion into our customers' privacy.

***If we do not successfully invest in, establish and maintain awareness of our brand and games or if we incur excessive expenses promoting and maintaining our brand or our games, our business, financial condition, results of operations or reputation could be harmed.***

We believe that establishing and maintaining our brand is critical to maintaining and creating favorable relationships with players, platform providers, advertisers and content licensors, as well as competing for key talent. Increasing awareness of our brand and recognition of our games is particularly important in connection with our strategic focus on in-licensing games successfully cross-promoting such games. In addition, globalizing and extending our brand and recognition of our games requires significant investment and extensive management time to execute successfully. Although we make significant sales and marketing expenditures in connection with the launch of our games, these efforts may not succeed in increasing awareness of our brand or the new games. If we fail to increase and maintain brand awareness and consumer recognition of our games, our potential revenues could be limited, our costs could increase and our business, financial condition, results of operations or reputation could suffer.

In addition, if a game contains objectionable content or the messaging functionality of our games is abused, we could experience damage to our reputation and brand. Despite reasonable precautions, some consumers may be offended by certain game content, including user-generated content, the third-party advertisements displayed in our mobile games, or by treatment of other users. If consumers believe that a game we published or third-party advertisement displayed in a game contains objectionable content, it could harm our brand and consumers could refuse to play it and could pressure the platform providers to remove the game from their platforms. For example, we rely on third-party advertising partners to display advertisements within our mobile games, and may experience in the future instances where offensive or objectionable content has been displayed in our games through our advertising partners. While this may violate the terms of our agreements with these advertising partners, our reputation and player experience may suffer. Furthermore, steps that we may take in response to such instances, such as temporarily or permanently shutting off access of such advertising partner to our network, may negatively impact our revenue in such period.

***Our operating results may fluctuate from quarter to quarter, which makes our future results difficult to predict.***

Our quarterly operating results have fluctuated in the past and may fluctuate in the future. Additionally, we have a limited operating history with the current scale of our business, which makes it difficult to forecast our future results and subjects us to a number of uncertainties, including our ability to plan for and anticipate future growth. As a result, you should not rely upon our past quarterly operating results as indicators of future performance. We have encountered, and will continue to encounter, risks and uncertainties frequently experienced by growing companies in rapidly evolving markets, such as the risks and uncertainties

described herein. Our operating results in any given quarter can be influenced by numerous factors, many of which are unpredictable or are outside of our control, including:

- our ability to maintain and grow our player base;
- our ability to retain and increase revenue from existing customers;
- our ability to introduce new features and functionalities and enhance existing features and functionalities;
- our ability to respond to competitive developments, including pricing changes and the introduction of new products and features by our competitors, or the emergence of new competitors;
- seasonal purchasing patterns of our consumers;
- impact of downtime or defects in our game and reputational harm;
- changes to financial accounting standards and the interpretation of those standards that may affect the way we recognize and report our financial results, including changes in accounting rules governing recognition of revenue;
- general economic and political conditions and government regulations in the countries where we currently operate or plan to expand;
- decisions by us to incur additional expenses, such as increases in sales and marketing or research and development; and
- potential costs to attract, onboard, retain and motivate qualified personnel.

The impact of one or more of the foregoing and other factors may cause our operating results to vary significantly. As such, we believe that quarter-to-quarter comparisons of our operating results may not be meaningful and should not be relied upon as an indication of future performance. The variability and unpredictability of our operating results could result in our failure to meet our expectations or those of analysts that cover us or investors with respect to revenue or other operating results for a particular period. If we fail to meet or exceed such expectations, then the trading price of our Class A common stock could fall substantially, and we could face costly lawsuits, including securities class action suits.

***We have experienced rapid growth and expect to invest in our growth for the foreseeable future. If we fail to manage our growth effectively, then our business, operating results, and financial condition would be adversely affected.***

We have experienced rapid growth in recent periods, and we expect to continue to invest broadly across our organization to support our growth. Our total revenue has grown from \$86.3 million for the year ended December 31, 2019 to \$124.9 million for the year ended December 31, 2020. Although we have experienced rapid growth historically, we may not sustain our current growth rates, nor can we assure you that our investments to support our growth will be successful. The growth and expansion of our business will require us to invest significant financial and operational resources and the continuous dedication of our management team.

Failure to manage growth effectively could result in difficulty or delays in attracting new players, declines in quality or player satisfaction and demand for our games, increases in costs, difficulties in introducing new products and features or enhancing our offerings, loss of customers or consumers, difficulties in attracting or retaining talent or other operational difficulties, any of which could adversely affect our business, operating results and financial condition. Effectively managing our growth may also be more difficult to accomplish the longer that our employees, our customers and the overall economy is impacted due to the COVID-19 pandemic.

***Certain estimates of market opportunity, forecasts of market growth and our operating metrics included in this prospectus may prove to be inaccurate.***

Market opportunity estimates and growth forecasts are subject to significant uncertainty and are based on assumptions and estimates that may not prove to be accurate. The estimates and forecasts in this prospectus



relating to the size and expected growth of our target market may prove to be inaccurate. Even if the markets in which we compete meet the size estimates and growth forecasted in this prospectus, our business could fail to grow at similar rates, if at all. Certain of these estimates are calculated using internal data and the estimates in this prospectus are subject to a number of assumptions and extrapolations, and as a result, the actual market opportunity and growth forecasts may be different than our disclosed numbers. In addition, our growth is subject to many factors, including our success in executing our business strategy, which is subject to many risks and uncertainties. Accordingly, the estimates and forecasts of market size and growth we have provided in this prospectus should not be taken as indicative of our future growth.

#### **Risks Related to Intellectual Property**

***If we are unable to protect the intellectual property relating to our material software, the commercial value of our products will be adversely affected and our competitive position could be harmed.***

We are highly reliant upon in-licensed intellectual property and developing proprietary software, where we have obtained the rights to publish and distribute software developed by third parties and related parties. We and our licensors attempt to protect our software and production techniques under patent, copyright, trademark and trade secret laws as well as through contractual restrictions on disclosure, copying and distribution. Nonetheless, our software is susceptible to piracy and unauthorized copying, and third parties may potentially exploit, misappropriate or otherwise violate our intellectual property and proprietary information, causing significant reputational damage. Unauthorized third parties, for example, may be able to copy or to reverse engineer our software to obtain and use programming or production techniques that we regard as proprietary. Well organized piracy operations have also proliferated in recent years, resulting in the ability to download pirated copies of our software over the Internet. Although we attempt to incorporate protective measures into our software, piracy of our products could negatively affect our future profitability. In addition, “cheating” programs or other unauthorized software tools and modifications that enable consumers to cheat in games harm the experience of players who play fairly and could negatively impact the volume of microtransactions or purchases of DLC. Also, vulnerabilities in the design of our applications and of the platforms upon which they run could be discovered after their release. This may lead to lost revenues from paying consumers or increased cost of developing technological measures to respond to these vulnerabilities, either of which could negatively affect our business.

***If we infringe, misappropriate, or otherwise violate or are alleged to infringe, misappropriate or otherwise violate the intellectual property rights of third parties, our business could be adversely affected.***

As our industry grows, we may be subject to an increasing amount of litigation that is common in the software industry based on allegations of infringement or other alleged violations of patent, copyright, or trademarks. In addition, we believe that interactive entertainment software will increasingly become the subject of claims that such software infringes on the intellectual property rights of others with both the growth of online functionality and advances in technology, game content and software graphics as games become more realistic. From time to time, we may receive notices from third parties or be named in lawsuits by third parties alleging infringement of their proprietary rights. Although we believe that our software and technologies and the software and technologies of third-party developers and publishers with whom we have contractual relations do not and will not infringe or violate proprietary rights of others, it is possible that infringement of proprietary rights of others may occur. Any claims of infringement, with or without merit, could be time consuming, costly and difficult to defend. Moreover, intellectual property litigation or claims could require us to discontinue the distribution of products, obtain a license or redesign our products, which could result in additional substantial costs and material delays.

***If we are unable to protect the confidentiality of our trade secrets, our business and competitive position would be harmed.***

We rely on trade secrets and proprietary knowledge to protect our unpatented know-how, expertise, technology and other proprietary information and to maintain our competitive position. We enter into nondisclosure and confidentiality agreements with our employees and independent contractors regarding our trade secrets and proprietary information in order to limit access to, and disclosure and use of, our trade secrets and proprietary information. Nevertheless, we cannot guarantee that we have entered into such

agreements with each party that may have or has had access to our trade secrets or proprietary information. Furthermore, trade secrets are difficult to protect. We cannot assure you that the obligation to maintain the confidentiality of our trade secrets and proprietary information will be honored. Any of these parties may breach the agreements and disclose our proprietary information, including our trade secrets, and we may not be able to obtain adequate remedies for such breaches. Enforcing a claim that a party illegally disclosed or misappropriated a trade secret is difficult, expensive, and time-consuming, and the outcome is unpredictable. In addition, some courts inside and outside the United States are less willing or unwilling to protect trade secrets. Monitoring unauthorized disclosure is difficult, and we do not know whether the steps we have taken to prevent such disclosure are, or will be, adequate. If we were to enforce a claim that a third party had illegally obtained and was using our trade secrets, it would be expensive and time-consuming, and the outcome would be unpredictable. If any of our trade secrets were to be lawfully obtained or independently developed by a competitor or other third party, we would have no right to prevent them, or those to whom they communicate it, from using that technology or information to compete with us. If any of our material trade secrets were to be disclosed to or independently developed by a competitor, our competitive position would be harmed. In general, any loss of trade secret protection or other unpatented proprietary rights could harm our business, financial condition, results of operations, and prospects.

***We may be subject to claims that our employees, consultants or advisors have wrongfully used or disclosed alleged trade secrets of their current or former employers or claims asserting ownership of what we regard as our own intellectual property.***

Many of our employees, consultants and advisors are currently or were previously employed at other companies in our field, including our competitors or potential competitors. Many of them executed proprietary rights, non-disclosure and/or non-competition agreements in connection with such previous employment or engagement. Although we try to ensure that our employees, consultants, and advisors do not use the intellectual property rights, proprietary information know-how or trade secrets of others in their work for us, we may be subject to claims that we or they have, inadvertently or otherwise, used, infringed, misappropriated or otherwise violated intellectual property rights, or disclosed the alleged trade secrets or other proprietary information, of any such individual's current or former employer. Litigation may be necessary to defend against these claims. Any litigation or the threat of litigation may adversely affect our ability to hire employees or engage consultants and contractors. A loss of key personnel or their work product could hamper or prevent us from developing and commercializing products and product candidates, which could harm our business. If we fail in defending any such claims, in addition to paying monetary damages, we may lose valuable intellectual property rights or personnel. Even if we are successful in defending against such claims, litigation could result in substantial costs and be a distraction to management.

In addition, while it is our policy to require our employees, consultants and contractors who may be involved in the conception or development of intellectual property to execute agreements assigning such intellectual property to us, we may be unsuccessful in executing such an agreement with each party who, in fact, conceives, develops and/or reduces to practice intellectual property that we regard as our own. The assignment of intellectual property rights may not be self-executing, or the assignment agreements may be breached, and we may be forced to bring claims against third parties, or defend claims that they may bring against us, to determine the ownership of what we regard as our intellectual property. Any of the foregoing could harm our competitive position, business, financial condition, results of operations and prospects.

Accordingly, if we fail in prosecuting or defending any such claims, we may be required to pay monetary damages, and we may also lose valuable intellectual property rights or personnel, which could harm our competitive position and prospects. Such intellectual property rights could be awarded to a third-party, and we could be required to obtain a license from such third-party to commercialize our technology or products, which license may not be available on commercially reasonable terms, or at all, or such license may be non-exclusive. Even if we are successful in prosecuting or defending against such claims, litigation could result in substantial costs and be a distraction to our management and employees.

***We may become involved in lawsuits to protect or enforce our intellectual property, which could be expensive, time consuming and unsuccessful.***

Third parties, including our competitors, could be infringing, misappropriating or otherwise violating our owned and licensed trademarks, trade secrets or other intellectual property rights. Monitoring



unauthorized use of our intellectual property is difficult, time-consuming and costly. The steps we have taken to protect our proprietary rights may not be adequate to enforce our rights against infringement, misappropriation or other violation of our intellectual property. We may not be able to detect unauthorized use of, or take appropriate steps to enforce, our intellectual property rights. Any inability to meaningfully enforce our intellectual property rights could harm our ability to compete and reduce demand for our games.

In the future, we may make claims of infringement or misappropriation against third parties, or make claims that third-party intellectual property rights are invalid or unenforceable. These claims could:

- cause us to incur greater costs and expenses in the protection of our intellectual property;
- potentially negatively impact our intellectual property rights, for example, by causing one or more of our intellectual property rights to be ruled or rendered unenforceable or invalid; or
- divert our technical personnel's or management's attention and our resources.

In any lawsuit we bring to enforce our intellectual property rights, a court may refuse to stop the other party from using the technology at issue on grounds that our intellectual property rights do not cover the technology in question, are not valid, or otherwise not enforceable against such other party. Further, in such proceedings, the defendant could counterclaim that our intellectual property is invalid or unenforceable and the court may agree, in which case we could lose valuable intellectual property rights. The outcome in any such lawsuits are unpredictable.

Litigation or other legal proceedings relating to intellectual property claims, even if resolved in our favor, may cause us to incur significant expenses and could distract our technical and management personnel from their normal responsibilities. In addition, there could be public announcements of the results of hearings, motions, or other interim proceedings or developments, and if securities analysts or investors perceive these results to be negative, it could have a substantial adverse effect on the price of our Class A common stock or cause reputational harm. We may not have sufficient financial or other resources to conduct such litigation or proceedings adequately. Some of our competitors may be able to sustain the costs of such litigation or proceedings more effectively than we can because of their greater financial resources and more mature and developed intellectual property portfolios. Uncertainties resulting from the initiation and continuation of intellectual property proceedings could harm our ability to compete in the marketplace. In addition, because of the substantial amount of discovery required in connection with intellectual property litigation, there is a risk that some of our confidential information or trade secrets could be compromised by disclosure during this type of litigation. Any of the foregoing could harm our competitive position, business, financial condition, results of operations and prospects.

***We or our licensors may not be able to enforce our intellectual property rights throughout the world.***

We or our licensors may be required to protect our proprietary technology and content in an increasing number of jurisdictions, a process that is expensive and may not be successful, or which we or our licensors may not pursue in every location due to costs, complexities or other reasons. Filing, prosecuting, maintaining, defending, and enforcing our owned or in-licensed intellectual property rights in all jurisdictions throughout the world would be prohibitively expensive, and our intellectual property rights in some jurisdictions outside the United States may be less extensive than those in the United States. Competitors may use our technologies in jurisdictions where we have not obtained intellectual property protection to develop their own games and, further, may export otherwise infringing, misappropriating, or otherwise violating games to territories where we have intellectual property protection but enforcement is not as strong as that in the United States. These games may compete with our games, and our intellectual property rights may not be effective or sufficient to prevent such competition. In addition, the laws of some foreign jurisdictions do not protect proprietary rights to the same extent as the laws of the United States, and many companies have encountered significant challenges in establishing and enforcing their proprietary rights outside of the United States. These challenges can be caused by the absence or inconsistency of the application of rules and methods for the establishment and enforcement of intellectual property rights outside of the United States. In addition, the legal systems of some jurisdictions, particularly developing countries, do not favor the enforcement of intellectual property protection. This could make it difficult for us to stop the infringement, misappropriation or other violation of our intellectual property rights. Accordingly, we or our licensors may choose not to seek protection in certain jurisdictions, and we will not have the benefit of

protection in such jurisdictions. Proceedings to enforce our intellectual property rights in foreign jurisdictions could result in substantial costs and divert our efforts and attention from other aspects of our business. Accordingly, our or our licensors' efforts to protect our intellectual property rights in such jurisdictions may be inadequate. In addition, changes in the law and legal decisions by courts in the United States and foreign jurisdictions may affect our ability to obtain adequate protection for our games and other technologies and the enforcement of intellectual property rights. Any of the foregoing could harm our competitive position, business, financial condition, results of operations and prospects.

***If our trademarks and trade names are not adequately protected, we may not be able to build name recognition in our markets of interest and our competitive position may be harmed.***

The registered or unregistered trademarks or trade names that we own or license may be challenged, infringed, circumvented, declared generic, lapsed or determined to be infringing on or dilutive of other trademarks. We may not be able to protect our rights in these trademarks and trade names, which we need in order to build name recognition. In addition, third parties have filed, and may in the future file, for registration of trademarks similar or identical to our owned or licensed trademarks, thereby impeding our ability to build brand identity and possibly leading to market confusion. If such third parties succeed in registering or developing common law rights in such trademarks, and if we are not successful in challenging such third-party rights, we may not be able to use these trademarks to develop brand recognition of our games. In addition, there could be potential trade name or trademark infringement claims brought by owners of other registered trademarks or trademarks that incorporate variations of our registered or unregistered owned or licensed trademarks or trade names. If we are unable to establish or protect our trademarks and trade names, or if we are unable to build name recognition based on our owned or licensed trademarks and trade names, we may not be able to compete effectively, which could harm our competitive position, business, financial condition, results of operations and prospects.

***We use open source software in connection with certain of our games and services, which may pose particular risks to our proprietary software, products, and services in a manner that could have a negative impact on our business.***

We use open source software in connection with some of the games and services we offer and may continue to use open source software in the future. Some open source software licenses require users who distribute open source software as part of their software to publicly disclose all or part of the source code to such software or make available any derivative works of the open source code on unfavorable terms or at no cost. The terms of various open source licenses have not been interpreted by courts, and there is a risk that such licenses could be construed in a manner that imposes unanticipated conditions or restrictions on our use of the open source software. Were it determined that our use was not in compliance with a particular license, we may be required to release our proprietary source code, pay damages for breach of contract, re-engineer our games or products, discontinue distribution in the event re-engineering cannot be accomplished on a timely basis, or take other remedial action that may divert resources away from our game development efforts, any of which could negatively impact our business.

#### **Risks Related to Legal or Regulatory Compliance**

***Changing data privacy and security laws and regulations in the jurisdictions in which we or our consumers do business could increase the cost of our operations and subject us to possible sanctions, civil lawsuits (including class action or similar representative lawsuits) and other penalties; such laws and regulations are continually evolving. Our platform and service providers' actual or perceived failure to comply with these laws and regulations could harm our business financial condition and results of operations.***

We collect, process, store, use and share data in our operations. While our business receives limited, if any, personal information of our end users from our platform providers, we may elect to collect such information in the future. Our business and the business of our platform providers are therefore subject to a number of federal, state, local and foreign laws, regulations, regulatory codes and guidelines governing data privacy, data protection and security, including with respect to the collection, storage, use, processing, transmission, sharing and protection of personal information. Such laws, regulations, regulatory codes and guidelines may be inconsistent across jurisdictions or conflict with other rules.

The legislative and regulatory landscapes for data privacy and security continue to evolve in jurisdictions worldwide, with an increasing focus on privacy and data protection issues with the potential to affect our business. In the United States, such privacy and data security laws and regulations include federal laws and regulations like the federal Controlling the Assault of Non-Solicited Pornography and Marketing Act (“CANPAM Act”), the Telephone Consumer Protection Act, the Do-Not-Call Implementation Act, and rules and regulations promulgated under the authority of the Federal Trade Commission and state laws like the California Consumer Privacy Act (“CCPA”) and the varying data breach notification laws that have been enacted in all 50 U.S. states and the District of Columbia. The CCPA, which became effective on January 1, 2020 and became enforceable by the California Attorney General on July 1, 2020, along with related regulations that came into force on August 14, 2020, provides additional individual privacy rights for California residents and places increased data privacy and security obligations on entities handling certain personal information of California residents and households. Among other things, the CCPA expands rights related to such individuals personal information, including the right to access and require deletion of their personal information, opt out of certain personal information sharing, and receive detailed information about how their personal information is collected, used, and shared by covered business. Many of the CCPA’s requirements as applied to personal information obtained in a business to business context, as well as personal information of a business’s personnel and related individuals, are subject to a moratorium set to expire on January 1, 2023. The CCPA provides for civil penalties for violations, as well as a private right of action and statutory damages for security breaches that may increase security breach litigation. The effects of the CCPA are significant and have required, and could continue to require, us to modify our data collection or processing practices and policies and to incur substantial costs and expenses in an effort to comply. Some observers have noted that the CCPA could mark the beginning of a trend toward more stringent state privacy legislation in the U.S., which could increase our potential liability and adversely affect our business. Further, in November 2020, California voters passed the California Privacy Rights Act (“CPRA”). The CPRA, which will become effective in most material respects starting on January 1, 2023 with a one-year look back period, significantly amends and expands existing CCPA requirements, including, among other things, by introducing additional obligations such as data minimization and storage limitations on the sharing of personal information for cross on text behavioral advertising and on the use of “sensitive” personal information, granting additional rights to consumers, such as correction of personal information and additional opt-out rights, and creating a new entity, the California Privacy Protection Agency, to implement and enforce the law and impose administrative fines. Further, there currently are a number of additional proposals related to data privacy or security pending before federal, state, and foreign legislative and regulatory bodies, including in a number of U.S. states considering consumer protection laws similar to the CCPA. For example, in March 2021, Virginia enacted the Virginia Consumer Data Protection Act, and in June 2021, Colorado passed the Colorado Privacy Act, both of which are comprehensive privacy statutes that share similarities with the CCPA and CPRA and will become effective on January 1, 2023 and July 1, 2023, respectively. Such legislation may add complexity, variation in requirements, restrictions and potential legal risk, require additional investment in resources to compliance programs, and could impact strategies and availability of previously useful data and could result in increased compliance costs and/or changes in business practices and policies.

Many of the other jurisdictions where we or our customers do business, including the EU, also have restrictive laws and regulations dealing with the processing of personal information. In addition to regulating the processing of personal information within the relevant jurisdictions, these legal requirements often also apply to the processing of personal information outside these jurisdictions, where there is some specified link to the relevant jurisdiction. For example, the European Union’s Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the “General Data Protection Regulation” or “GDPR”) became effective in May 2018, imposes strict requirements on controllers and processors of personal data in the European Economic Area (“EEA”), including, for example, higher standards for obtaining consent from individuals to process their personal data, more robust disclosures to individuals and a strengthened individual data rights regime, greater control for data subjects (including the “right to be forgotten” and data portability) and shortened timelines for data breach notifications. The GDPR created new compliance obligations applicable to our business and our platform and service providers, which could require us to self-determine how to interpret and implement these obligations, change our business practices and expose us to lawsuits (including class action or similar

representative lawsuits) by consumers or consumer organizations for alleged breach of data protection laws. Failure to comply with the requirements of GDPR may result in significant fines of up to €20,000,000 or up to 4% of the total worldwide annual turnover of the preceding financial year, whichever is higher, and other administrative penalties. The United Kingdom operates a separate but similar regime to the European Union with which we will have to comply and that allows for fines of up to the greater of £17.5 million or 4% of the total worldwide annual turnover of the preceding financial year. Further, beginning January 1, 2021, we have to comply with the GDPR and also the United Kingdom GDPR (“UKGDPR”), which, together with the amended United Kingdom Data Protection Act 2018, retains the GDPR in United Kingdom national law. The relationship between the United Kingdom and the European Union in relation to certain aspects of data protection law remains unclear, and it is unclear how the United Kingdom’s data protection laws and regulations will develop in the medium to longer term, and how data transfers to and from the United Kingdom will be regulated in the long term. For example, while the EU Commission has adopted an adequacy decision in favor of the United Kingdom, enabling data transfers from European Union member states to the United Kingdom without additional safeguards, the decision will automatically expire in June 2025 unless the EU Commission re-assesses and renews/extends it. These changes may lead to additional costs and increase our overall risk exposure.

Recent legal developments also have created compliance uncertainty regarding the transfer of personal information from the U.K. and EEA to certain locations outside of the U.K. and EEA where we or our clients operate or conduct business. In July 2020, the Court of Justice of the European Union (“CJEU”) ruled the EU-US Privacy Shield Framework, one of the primary safeguards that allowed U.S. companies to import personal data from the EU to the U.S., was invalid. The CJEU’s decision also raised questions about whether the most commonly used mechanism for cross-border transfers of personal data out of the EEA, namely, the European Commission’s Standard Contractual Clauses, can lawfully be used for personal data transfers from the EU to the U.S. or other third countries the European Commission has determined do not provide adequate data protections under their laws. On June 4, 2021, the European Commission published new Standard Contractual Clauses (which became effective on June 27, 2021), which impose on companies additional obligations relating to data transfers, including in the transfer, to implement additional security measures and update internal privacy practices. If we elect to rely on the new Standard Contractual Clauses for applicable data transfers, we may be required to incur significant time and resources to update our contractual arrangements and to comply with new obligations. If we are unable to implement a valid mechanism for personal data transfers from the EEA, we could face increased exposure to regulatory actions, substantial fines and injunctions against processing personal data from the EEA. As discussed above, these same considerations must currently be taken into account with regard to the UK GDPR as well. Additionally, other countries outside of the EU have enacted or are considering enacting similar cross order data transfer restrictions and laws requiring local data residency, which could increase the cost and complexity of delivering our services and operating our business. The type of challenges we face in the EU and U.K. will likely also arise in other jurisdictions that adopt regulatory frameworks of equivalent complexity. Accordingly, any actual or perceived failure to comply with these laws and regulations could harm our business, financial condition and results of operations.

***Our business and products are subject to potential legislation and other governmental restrictions. The adoption of such proposed legislation and restrictions could limit the retail market for our products.***

Several proposals have been made for federal legislation to regulate our industry. Such proposals seek to prohibit the sale of products containing certain content included in some of our games. If any such proposals are enacted into law, it may limit the potential market for some of our games in the United States, and adversely affect our business, financial condition and operating results. Other countries have adopted laws regulating content both in packaged games and those transmitted over the Internet that are stricter than current U.S. law. While no such laws are currently in place in the United States, the adoption into law of such legislation in jurisdictions in which we do significant business could severely limit the retail market for some of our games.

On August 30, 2021, China’s National Press and Publication Administration announced a new regulation that required online gaming companies limit their services provided to minors to one hour per day on Fridays, Saturdays, Sundays and public holidays. We continue to assess the impact this new regulation may have on our results of operations however, at this time, the impact of this new regulation remains uncertain.

***Change in government regulations relating to the Internet could have a negative impact on our business.***

We rely on our consumers' access to significant levels of Internet bandwidth for the sale and digital delivery of our content and the functionality of our games with online features. Changes in laws or regulations that adversely affect the growth, popularity, or use of the Internet, including laws affecting "net neutrality" or measures enacted in certain jurisdictions as a result of the COVID-19 pandemic, could decrease the demand for our products and services or increase our cost of doing business.

Although certain jurisdictions have implemented laws and regulations intended to prevent Internet service providers from discriminating against particular types of legal traffic on their networks, other jurisdictions may lack such laws and regulations or repeal existing laws or regulations. For example, on December 14, 2017, the Federal Communications Commission voted to repeal net neutrality regulations in the United States, and, following that decision, several states enacted net neutrality regulations. Given the uncertainty around these rules, including changing interpretations, amendments or repeal, coupled with the potentially significant political and economic power of local Internet service providers and the relatively significant level of Internet bandwidth access our products and services require, we could experience discriminatory or anti-competitive practices that could impede our growth, cause us to incur additional expenses, or otherwise negatively affect our business.

***We may be involved in legal proceedings that have a negative impact on our business.***

From time to time, we have been, and in the future may be, involved in claims, suits, investigations, audits and proceedings arising in the ordinary course of our business, including with respect to labor and employment intellectual property, competition and antitrust, regulatory, tax, privacy and/or commercial matters. In addition, negative consumer sentiment about our business practices may result in inquiries or investigations from regulatory agencies and consumer groups, as well as litigation.

Claims, suits, investigations, audits and proceedings are inherently difficult to predict, and their results are subject to significant uncertainties, many of which are outside of our control. Regardless of the outcome, such legal proceedings can have a negative impact on us due to reputational harm, legal costs, diversion of management resources and other factors. It is also possible that a resolution of one or more such proceedings could result in substantial settlements, judgments, fines or penalties, injunctions, criminal sanctions, consent decrees or orders preventing us from offering certain features, functionalities, products or services, requiring us to change our development process or other business practices.

There is also inherent uncertainty in determining reserves for these matters. Significant judgment is required in the analysis of these matters, including assessing the probability of potential outcomes and determining whether a potential exposure can be reasonably estimated. In making these determinations, we, in consultation with outside counsel, examine the relevant facts and circumstances on a quarterly basis assuming, as applicable, a combination of settlement and litigated outcomes and strategies. Further, it may take time to develop factors on which reasonable judgments and estimates can be based.

We regard our software as proprietary and rely on a variety of methods, including a combination of copyright, patent, trademark and trade secret laws, and employee and third-party non-disclosure and invention assignment agreements, to protect our proprietary rights. We own or license various copyrights, patents, trademarks and trade secrets. The process of registering and protecting these rights in various jurisdictions is expensive and time-consuming. Further, we are aware that some unauthorized copying and piracy occurs, and if a significantly greater amount of unauthorized copying or piracy of our software products were to occur, it could negatively impact our business. We also cannot be certain that existing intellectual property laws will provide adequate protection for our products in connection with emerging technologies or that we will be able to effectively protect our intellectual property through litigation and other means.

**Financial and Economic Risks**

***If general economic conditions decline, demand for our games could decline. In addition, our business is vulnerable to changing economic conditions and to other factors that adversely affect the gaming industry, which could negatively impact our business.***

In-game purchases involve discretionary spending on the part of consumers. Consumers are generally more willing to make discretionary purchases, including purchases of games and services like ours, during

periods in which favorable economic conditions prevail. As a result, our games may be sensitive to general economic conditions and economic cycles. A reduction or shift in domestic or international consumer spending could result in an increase in our marketing and promotional expenses, in an effort to offset that reduction, and could negatively impact our business. Discretionary spending on entertainment activities could further decline for reasons beyond our control, such as natural disasters, acts of war, pandemics, terrorism, transportation disruptions or the results of adverse weather conditions. Additionally, disposable income available for discretionary spending may be reduced by unemployment, higher housing, energy, interest or other costs, or where the actual or perceived wealth of customers has decreased because of circumstances such as lower residential real estate values, increased foreclosure rates, inflation, increased tax rates or other economic disruptions. Any prolonged or significant decrease in consumer spending on entertainment activities could result in reduced play levels in decreased spending on our games, and could adversely impact our results of operations, cash flows and financial condition.

***Changes in tax laws or tax rulings, or the examination of our tax positions, could materially affect our financial condition and results of operations.***

Tax laws are dynamic and subject to change as new laws are passed and new interpretations of the law are issued or applied. Our existing corporate structure and intercompany arrangements have been implemented in a manner we believe is in compliance with current prevailing tax laws. However, the tax benefits that we intend to eventually take advantage of could be undermined due to changing tax laws, both in the United States and in other applicable jurisdictions. In addition, the taxing authorities in the United States and other jurisdictions where we do business regularly examine income and other tax returns and we expect that they may examine our income and other tax returns. The ultimate outcome of these examinations cannot be predicted with certainty.

***Tax law or tax rate changes could affect our effective tax rate and future profitability.***

Our effective tax rate was 18.6% for 2020 compared with 14.1% for 2019. In general, changes in applicable U.S. federal and state and foreign tax laws and regulations, or their interpretation and application, including the possibility of retroactive effect, could affect our tax expense. In addition, and in response to significant market volatility and disruptions to business operations resulting from the global spread of COVID-19, taxing authorities in many jurisdictions in which we operate may propose changes to their tax laws and regulations. These potential changes could have a material impact on our effective tax rate, long-term tax planning and financial results.

***Our reported financial results could be significantly impacted by changes in financial accounting standards or by the application of existing or future accounting standards to our business as it evolves.***

Our reported financial results are impacted by the accounting policies promulgated by the SEC and national accounting standards bodies and the methods, estimates and judgments that we use in applying our accounting policies. Policies affecting revenue recognition have affected, and could further significantly affect, the way we report revenues related to our products and services. We recognize a majority of the revenues from video games that include an online service on a deferred basis over an estimated service period for such games. In addition, we defer the cost of revenues of those products. Further, as we increase our DLC and add new features to our online services, our estimate of the service period may change, and we could be required to recognize revenues, and defer related costs, over a shorter or longer period of time. As we enhance, expand and diversify our business and product offerings, the application of existing or future financial accounting standards, particularly those relating to the way we account for revenues and income taxes, could have a significant impact on our reported net revenues, net income and earnings per share under generally accepted accounting principles in the United States in any given period.

#### **Risks Related to Our Corporate Structure**

***We are a “controlled company” under the corporate governance rules of Nasdaq and, as a result, will qualify for, and may rely on, exemptions from certain corporate governance requirements. If we rely on the exemptions available to a “controlled company” you will not have the same protections afforded to stockholders of companies that are subject to such corporate governance requirements.***

Our controlling stockholder, Founder and Chairman, Mr. Shi, controls a majority of our outstanding common stock. As a result, we are a “controlled company” within the meaning of the corporate governance



standards of the Nasdaq rules. Under these rules, a listed 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:

- requirement that a majority of its board of directors consist of independent directors;
- the requirement that its director nominations be made, or recommended to the full board of directors, by its independent directors or by a nominations committee that is comprised entirely of independent directors and that it adopts a written charter or board resolution addressing the nominations process; and
- the requirement that it has a compensation committee that is composed entirely of independent directors with a written charter addressing the committee’s purpose and responsibilities.

We may elect to rely on these exemptions upon becoming a public company. As a result, our board of directors may not have a majority of independent directors, our compensation committee may not consist entirely of independent directors and/or our directors may not be nominated or selected by independent directors. Accordingly, if we elect to rely on these exemptions, you will not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance requirements of the Nasdaq rules.

***Mr. Shi, our Founder and Chairman, controls us, and his ownership of our common stock will prevent you and other stockholders from influencing significant decisions.***

Upon completion of this offering, Mr. Shi will continue to control shares representing a majority of our combined voting power. As long as Mr. Shi continues to control shares representing a majority of our voting power, he will generally be able to determine the outcome of all corporate actions requiring stockholder approval, including the election and removal of directors (unless supermajority approval of such matter is required by applicable law and our certificate of incorporation). In the ordinary course of his business activities, Mr. Shi may engage in activities where his interests may not be the same as, or may conflict with, the interests of our other stockholders. Even if Mr. Shi were to control less than a majority of our voting power, he may be able to influence the outcome of corporate actions so long as he controls a significant portion of our voting power.

Our stockholders are not able to affect the outcome of any stockholder vote while Mr. Shi controls the majority of our voting power (or, in the case of removal of directors, two-thirds of our voting power). Due to his ownership and rights under our certificate of incorporation and our bylaws, Mr. Shi controls, subject to applicable law, the composition of our board of directors, which in turn controls all matters affecting us, including, among other things:

- any determination with respect to our business direction and policies, including the appointment and removal of officers and, in the event of a vacancy on our board of directors, additional or replacement directors;
- any determinations with respect to mergers, business combinations or dispositions of assets;
- determination of our management policies;
- determination of the composition of the committees on our board of directors;
- our financing policy;
- our compensation and benefit programs and other human resources policy decisions;
- changes to any other agreements that may adversely affect us;
- the payment of dividends on our common stock; and
- determinations with respect to our tax returns.

In addition, the concentration of Mr. Shi’s ownership could also discourage others from making tender offers, which could prevent holders from receiving a premium for their common stock. Because Mr. Shi’s

interests may differ from ours or from those of our other stockholders, actions that he takes with respect to us, as our controlling stockholder, may not be favorable to us or to you or our other stockholders.

***Mr. Shi, our Founder and Chairman, is a Chinese national. For so long as a Chinese individual continues to exercise majority voting control over us, changes in U.S. and Chinese laws in the future may make it more difficult for us to operate as a publicly traded company in the United States.***

Future developments in U.S. and Chinese laws may restrict our ability or willingness to operate as a publicly traded company in the United States for so long as Mr. Shi, who is a Chinese national, or other Chinese investors, continue to beneficially own a significant percentage of our outstanding shares of common stock. The relations between the United States and China are constantly changing. During his administration, President Donald J. Trump issued a memorandum directing the President’s Working Group on Financial Markets to convene to discuss the risks faced by U.S. investors in Chinese companies and issued several executive orders restricting the operations of Chinese companies, such as the company that owns TikTok, in the United States. Additionally, the federal government has recently proposed legislation intended to protect American investments in Chinese companies. President Joseph R. Biden has not put forth specific policy proposals regarding China and it is unclear at this time which of President Trump’s policies, if any, President Biden will continue to implement. In addition, various equity-based research organizations have published reports on Chinese companies after examining their corporate governance practices, related party transactions, sales practices and financial statements, and these reports have led to special investigations and listing suspensions on U.S. national exchanges. While we are not a Chinese company, any similar scrutiny of us, regardless of its merit, could have an adverse effect upon our business, including our results of operations, financial condition, cash flows and prospects. Additionally, should we be the subject of or indirectly covered by new legislation or executive orders addressed at protecting American investments in Chinese or Chinese-owned companies, our revenues and profitability would be materially reduced and our business and results of operations would be seriously harmed.

***The Committee on Foreign Investment in the United States may modify, delay or prevent our future acquisition or investment activities.***

For so long as Mr. Shi retains a material ownership interest in us, we will be deemed a “foreign person” under the regulations relating to the Committee on Foreign Investment in the United States (“CFIUS”). As such, acquisitions of or investments in U.S. businesses or foreign businesses with U.S. subsidiaries that we may wish to pursue may be subject to CFIUS review, the scope of which was expanded by the Foreign Investment Risk Review Modernization Act of 2018 (“FIRRMA”) to include certain non-passive, non-controlling investments (including certain investments in entities that hold or process personal information about U.S. nationals), certain acquisitions of real estate even with no underlying U.S. business, transactions designed or intended to evade or circumvent CFIUS jurisdiction and any transaction resulting in a “change in the rights” of a foreign person in a U.S. business if that change could result in either control of the business or a covered non-controlling investment. FIRRMA also subjects certain categories of investments to mandatory filings. If a particular proposed acquisition or investment in a U.S. business falls within CFIUS’s jurisdiction, we may determine that we are required to make a mandatory filing or that we will submit to CFIUS review on a voluntary basis, or to proceed with the transaction without submitting to CFIUS and risk CFIUS intervention, before or after closing the transaction. CFIUS may decide to block or delay an acquisition or investment by us, impose conditions with respect to such acquisition or investment or order us to divest all or a portion of a U.S. business that we acquired without first obtaining CFIUS approval, which may limit the attractiveness of or prevent us from pursuing certain acquisitions or investments that we believe would otherwise be beneficial to us and our stockholders. Our inability to complete acquisitions and integrate those businesses successfully could limit our growth or disrupt our plans and operations. In addition, among other things, FIRRMA authorizes CFIUS to prescribe regulations defining “foreign person” differently in different contexts, which could result in less favorable treatment for investments and acquisitions by companies from countries of “special concern.” If CFIUS were to promulgate regulations imposing additional burdens on acquisition and investment activities involving China or Chinese investor-controlled entities, our ability to consummate transactions falling within CFIUS’s jurisdiction that might otherwise be beneficial to us and our stockholders would be hindered.



***Sino Suzhou Industrial Park Venture Capital Co., Ltd., our minority stockholder, is a Chinese state-owned entity, which could subject us to risks involving U.S. -China relations and related risks***

Sino Suzhou Industrial Park Venture Capital Co., Ltd., which beneficially owns % of our common stock immediately prior to this offering (or % following the sale of Class A common stock in this offering), is a Chinese state-owned entity. Recent political and economic tensions between the United States and China have negatively impacted certain public companies with stockholders that are Chinese state-owned entities. For example, in May 2021, three telecommunications companies with controlling stockholders that are Chinese state-owned entities — China Mobile Limited, China Unicom and China Telecom Corp., Ltd. — announced they would be delisted by the New York Stock Exchange pursuant to U.S. investment restrictions enacted in 2020. In addition, the Holding Foreign Companies Accountable Act, enacted in December 2020, requires SEC registrants to disclose whether an issuer is owned or controlled by a governmental entity in a foreign jurisdiction that does not allow inspection by the Public Group Accounting Oversight Board, principally including issuers based in China.

Although Sino Suzhou Industrial Park Venture Capital Co., Ltd. does not own a controlling interest in us, its investment may subject us to risks related to having a principal stockholder that is a Chinese state-owned entity as well as risks arising from political and economic tensions between the United States and China generally.

**General Risk Factors**

***We are subject to risks related to corporate and social responsibility and reputation.***

Many factors influence our reputation including the perception held by our customers, business partners and other key stakeholders. Our business faces increasing scrutiny related to environmental, social and governance activities. We risk damage to our reputation if we fail to act responsibly in a number of areas, such as diversity and inclusion, environmental stewardship, supply chain management, climate change, workplace conduct, human rights and philanthropy. Any harm to our reputation could impact employee engagement and retention and the willingness of customers and our partners to do business with us, which could have a material adverse effect on our business, results of operations and cash flows.

***Our common stock has never been publicly traded, and, as such, the price of our Class A common stock may fluctuate substantially.***

Before this initial public offering, there was no public market for our common stock. The initial public offering price for our Class A common stock will be determined through negotiations between the underwriters and us and may vary substantially from the market price of our Class A common stock following this offering. An active public trading market may not develop after completion of this offering or, if developed, may not be sustained. The lack of an active market may impair your ability to sell your shares at the time you wish to sell them or at a price that you consider reasonable. An inactive market may also impair our ability to raise capital by selling shares and may impair our ability to acquire other products, technologies or businesses using our shares as consideration. Furthermore, if our Class A common stock is approved for listing on Nasdaq, there can be no guarantee that we will continue to satisfy the continued listing standards of Nasdaq. If we fail to satisfy the continued listing standards, we could be de-listed, which would have a negative effect on the price of our Class A common stock and impair your ability to sell your shares.

Following this offering, the market price of our Class A common stock may be highly volatile and may fluctuate or decline substantially as a result of a variety of factors, some of which are beyond our control or are related in complex ways, including:

- changes in analysts' estimates, investors' perceptions, recommendations by securities analysts or our failure to achieve analysts' estimates;
- quarterly variations in our or our competitors' results of operations;
- periodic fluctuations in our revenues, which could be due in part to the way in which we recognize revenues;

- the financial projections we may provide to the public, any changes in these projections or our failure to meet these projections;
- future sales of our Class A common stock or other securities, by us or our stockholders, as well as the anticipation of lock-up releases or lock-up waivers;
- the trading volume of our Class A common stock;
- general market conditions and other factors unrelated to our operating performance or the operating performance of our competitors;
- changes in operating performance and stock market valuations of other technology and entertainment companies generally, or those in the games industry in particular;
- actual or anticipated changes in regulatory oversight of our industry;
- the loss of key personnel, including changes in our board of directors and management;
- programming errors or other problems associated with our products;
- legislation or regulation of our market;
- lawsuits threatened or filed against us, including litigation by current or former employees alleging wrongful termination, sexual harassment, whistleblower or other claims;
- the announcement of new games, products or product enhancements by us or our competitors;
- announced or completed acquisitions of businesses or technologies by us or our competitors;
- announcements related to patents issued to us or our competitors and related litigation; and
- developments in our industry.

In recent years, the stock markets generally have experienced extreme price and volume fluctuations that have often been unrelated or disproportionate to the operating performance of listed companies. Broad market and industry factors may significantly affect the market price of our Class A common stock, regardless of our actual operating performance. These fluctuations may be even more pronounced in the trading market for our Class A common stock shortly following this offering. If the market price of shares of our Class A common stock after this offering does not ever exceed the initial public offering price, you may not realize any return on your investment in us and may lose some or all of your investment.

In addition, in the past, stockholders have instituted securities class action litigation following periods of market volatility. If we were to become involved in securities litigation, it could subject us to substantial costs, divert resources and the attention of management from our business and harm our business, results of operations, financial condition and reputation. These factors may materially and adversely affect the market price of our Class A common stock.

***We cannot predict the impact our dual class structure may have on the market price of our Class A common stock.***

We cannot predict whether our dual 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 restrictions on including companies with multiple-class share structures in certain of their indexes. In July 2017, FTSE Russell and Standard & Poor's 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. Under these policies, our dual class capital structure would make 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 will not be investing in our stock. Because of our dual 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.

***Securities analysts may not publish favorable research or reports about our business or may publish no information at all, which could cause our stock price or trading volume to decline.***

Our stock price and trading volume may be heavily influenced by the way analysts and investors interpret our financial information and other disclosures. If securities or industry analysts do not publish research or reports about our business, delay publishing reports about our business, or publish negative reports about our business, regardless of accuracy, our Class A common stock price and trading volume could decline.

If a trading market for our Class A common stock develops, the trading market will be influenced to some extent by the research and reports that industry or financial analysts publish about us and our business. We do not control these analysts. As a newly public company, we may be slow to attract research coverage and the analysts who publish information about our Class A common stock will have had relatively little experience with us or our industry, which could affect their ability to accurately forecast our results and could make it more likely that we fail to meet their estimates. If any of the analysts who cover us provide inaccurate or unfavorable research or issue an adverse opinion regarding our stock price, our stock price could decline. If one or more of these analysts cease coverage of us or fail to publish reports covering us regularly, we could lose visibility in the market, which in turn could cause our stock price or trading volume to decline.

Even if our Class A common stock is actively covered by analysts, we do not have any control over the analysts or the measures that analysts or investors may rely upon to forecast our future results. Over-reliance by analysts or investors on any particular metric to forecast our future results may lead to forecasts that differ significantly from our own.

***If our estimates or judgments relating to our critical accounting policies are based on assumptions that change or prove to be incorrect, our results of operations could fall below our publicly announced guidance or the expectations of securities analysts and investors, resulting in a decline in the market price of our Class A common stock.***

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in our 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, the results of which form the basis for making judgments about the carrying values of assets, liabilities, equity, revenues and expenses that are not readily apparent from other sources. If our assumptions change or if actual circumstances differ from our assumptions, our results of operations may be adversely affected and could fall below our publicly announced guidance or the expectations of securities analysts and investors, resulting in a decline in the market price of our Class A common stock.

***If you purchase our Class A common stock in this offering, you will incur immediate and substantial dilution in the book value of your shares.***

Investors purchasing our Class A common stock in this offering will pay a price per share that substantially exceeds the pro forma as adjusted net tangible book value per share. As a result, investors purchasing our Class A common stock in this offering will incur immediate dilution of \$ \_\_\_\_\_ per share, based on the initial public offering price of \$ \_\_\_\_\_ per share, and our pro forma as adjusted net tangible book value per share as of December 31, 2020. For more information on the dilution you may suffer as a result of investing in this offering, see the section of this prospectus entitled “Dilution.”

This dilution is due to the substantially lower price paid by our investors who purchased shares prior to this offering as compared to the price offered to the public in this offering.

***A significant portion of our total outstanding shares are restricted from immediate resale but may be sold into the market in the future. This could cause the market price of our Class A common stock to decline, even if our business is doing well.***

Sales of a substantial number of shares of our Class A common stock in the public market could occur at any time. These sales, or the perception in the market that the holders of a large number of shares intend

to sell their shares, could result in a decrease in the market price of our Class A common stock. Immediately after this offering, we will have \_\_\_\_\_ shares of common stock outstanding based on the number of shares outstanding as of \_\_\_\_\_, 2022. This includes the shares that we are selling in this offering, which may be resold in the public market immediately without restriction, unless purchased by our affiliates. Of the remaining shares, \_\_\_\_\_ shares are currently restricted as a result of securities laws or lock-up agreements, which may be waived, with or without notice, by BofA Securities, Inc. but will be able to be sold after this offering as described in the section of this prospectus entitled “Shares Eligible for Future Sale.” We also intend to register all shares of common stock that we may issue under our equity compensation plans. Once we register these shares, they can be freely sold in the public market, subject to volume limitations applicable to affiliates and the lock-up agreements described in the section of this prospectus entitled “Underwriting.”

***We may allocate the net proceeds from this offering in ways that you and other stockholders may not approve.***

Our management will have broad discretion in the application of the net proceeds from this offering, including for any of the purposes described in the section titled “Use of Proceeds.” Because of the number and variability of factors that will determine our use of the net proceeds from this offering, their ultimate use may vary substantially from their currently intended use. Our management might not apply our net proceeds in ways that ultimately increase the value of your investment, and the failure by our management to apply these funds effectively could harm our business. Pending their use, we may invest the net proceeds from this offering in short- and intermediate-term, interest-bearing obligations, investment-grade instruments, certificates of deposit or direct or guaranteed obligations of the U.S. government. These investments may not yield a favorable return to our stockholders. If we do not invest or apply the net proceeds from this offering in ways that enhance stockholder value, we may fail to achieve expected results, which could cause our stock price to decline.

***Provisions in our certificate of incorporation and bylaws and under Delaware law could make an acquisition of us more difficult and may prevent attempts by our stockholders to replace or remove our current management.***

Provisions in our certificate of incorporation and our amended and restated bylaws that will become effective upon the closing of this offering may discourage, delay or prevent a merger, acquisition or other change in control of us that stockholders may consider favorable, including transactions in which stockholders might otherwise receive a premium for their shares. These provisions could also limit the price that investors might be willing to pay in the future for shares of our Class A common stock, thereby depressing the market price of our Class A common stock. In addition, these provisions may frustrate or prevent any attempts by our stockholders to replace or remove our current management by making it more difficult for stockholders to replace members of our board of directors. Because our board of directors is responsible for appointing the members of our management team, these provisions could in turn affect any attempt by our stockholders to replace current members of our management team.

***Because we do not anticipate paying any cash dividends on our capital stock in the foreseeable future, capital appreciation, if any, will be your sole source of gain.***

We have never declared nor paid cash dividends on our capital stock. We currently intend to retain all of our future earnings, if any, to finance the growth and development of our business. Any determination to pay dividends in the future will be at the discretion of our board of directors and may be restricted by our Credit Agreement (as defined below) or any future debt or preferred securities or future debt agreements we may enter into. As a result, capital appreciation, if any, of our Class A common stock will be your sole source of gain for the foreseeable future.

***If we default on our credit obligations, our operations may be interrupted and our business could be seriously harmed.***

We have a credit facility that we may draw on to finance our operations and other corporate purposes. If we default on these credit obligations, our lenders may accelerate the debt and/or foreclose on property securing the debt.

If any of these events occur, our operations may be interrupted and our ability to fund our operations or obligations, as well as our business, could be seriously harmed. In addition, our credit facility contains operating covenants, including maintenance of certain financial ratios. Our ability to comply with these covenants may be affected by events beyond our control, and breaches of these covenants have in the past, and could in the future, result in a default under the credit facility and any future financial agreements into which we may enter. If not waived, defaults could cause our outstanding indebtedness under our credit facility and any future financing agreements that we may enter into to become immediately due and payable. For more information on our credit facility, see “Management’s Discussion and Analysis of Financial Condition and Results of Operations — Liquidity and Capital Resources.”

***Becoming a public company will increase our compliance costs significantly and require the expansion and enhancement of a variety of financial and management control systems and infrastructure and the hiring of significant additional qualified personnel.***

Prior to this offering, we have not been subject to the reporting requirements of the Exchange Act of 1934, as amended (the “Exchange Act”), or the other rules and regulations of the SEC, or any securities exchange relating to public companies. We are working with our legal, independent accounting and financial advisors to identify those areas in which changes should be made to our financial and management control systems to manage our growth and our obligations as a public company. These areas include financial planning and analysis, tax, corporate governance, accounting policies and procedures, internal controls, internal audit, disclosure controls and procedures and financial reporting and accounting systems. We have made, and will continue to make, significant changes in these and other areas. However, the expenses that will be required in order to adequately prepare for being a public company could be material. Compliance with the various reporting and other requirements applicable to public companies will also require considerable time and attention of management and will also require us to successfully hire and integrate a significant number of additional qualified personnel into our existing finance, legal, human resources and operations departments.

***If we fail to maintain effective internal control over financial reporting, as well as required disclosure controls and procedures, our ability to produce timely and accurate consolidated financial statements or comply with applicable regulations could be impaired.***

The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures and internal control over financial reporting. We are continuing to develop and refine our disclosure controls and other procedures that are designed to ensure that information required to be disclosed by us in the reports that we will file with the SEC is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms and that information required to be disclosed in reports under the Exchange Act is accumulated and communicated to our principal executive and financial officers. We are also continuing to develop and refine our internal control over financial reporting. Some members of our management team have limited or no experience managing a publicly traded company, interacting with public company investors, and complying with the increasingly complex laws pertaining to public companies, and we have limited accounting and financial reporting personnel and other resources with which to address our internal controls and related procedures. In order to maintain and improve the effectiveness of our disclosure controls and procedures and internal control over financial reporting, we have expended, and anticipate that we will continue to expend, significant resources, including accounting-related costs and significant management oversight.

Our current controls and any new controls that we develop may become inadequate because of changes in conditions in our business. In addition, changes in accounting principles or interpretations could also challenge our internal controls and require that we establish new business processes, systems and controls to accommodate such changes. We have limited experience with implementing the systems and controls that will be necessary to operate as a public company, as well as adopting changes in accounting principles or interpretations mandated by the relevant regulatory bodies. Additionally, if these new systems, controls or standards and the associated process changes do not give rise to the benefits that we expect or do not operate as intended, it could adversely affect our financial reporting systems and processes, our ability to produce timely and accurate financial reports or the effectiveness of our internal control over financial

reporting. Moreover, our business may be harmed if we experience problems with any new systems and controls that result in delays in their implementation or increased costs to correct any post-implementation issues that may arise.

Further, weaknesses in our disclosure controls and internal control over financial reporting may be discovered in the future. For example, in 2020 and 2019, our auditors identified a material weakness involving lack of sufficient financial reporting close controls and review of account reconciliations and income tax accounts. Our auditors identified several audit adjustments during the course of our 2020 and 2019 audits, the aggregate value of which are considered material to the consolidated financial statements. While we are diligently working to remedy this material weakness, any failure to develop or maintain effective controls or any difficulties encountered in their implementation or improvement could harm our business or cause us to fail to meet our reporting obligations and may result in a restatement of our consolidated financial statements for prior periods. Any failure to implement and maintain effective internal control over financial reporting could also adversely affect the results of periodic management evaluations and annual independent registered public accounting firm attestation reports regarding the effectiveness of our internal control over financial reporting that we will eventually be required to include in our periodic reports that will be filed with the SEC. Ineffective disclosure controls and procedures or internal control over financial reporting could also cause investors to lose confidence in the accuracy and completeness of our reported financial and other information, which would likely have a negative effect on the trading price of our Class A common stock. In addition, if we are unable to continue to meet these requirements, we may not be able to remain listed on the Nasdaq. As a private company, we are not currently required to comply with the SEC rules that implement Section 404 of the Sarbanes-Oxley 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 will be 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.

Our independent registered public accounting firm is not required to formally attest to the effectiveness of our internal control over financial reporting until the later of (1) our second Annual Report on Form 10-K or (2) the Annual Report on Form 10-K for the first year we no longer qualify as an emerging growth company. At such time, our independent registered public accounting firm may issue a report that is adverse in the event it is not satisfied with the level at which our internal control over financial reporting is documented, designed or operating. Any failure to maintain effective disclosure controls and internal control over financial reporting could harm our business and could cause a decline in the trading price of our Class A common stock. In addition, 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. These events could have a material and adverse effect on our business, results of operations, financial condition and prospects.

***Our amended and restated certificate of incorporation will provide that the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another State court in Delaware or the U.S. District Court for the District of Delaware) will be the sole and exclusive forum for substantially all disputes between us and our stockholders, which could limit our stockholders' abilities to obtain a favorable judicial forum for disputes with us or our directors, officers or employees.***

Our amended and restated certificate of incorporation that will become effective upon the closing of this offering will specify that, unless we consent in writing to the selection of an alternative forum, to the fullest extent permitted by law, the Court of Chancery of the State of Delaware will be the sole and exclusive forum for most legal actions involving actions brought against us by stockholders; provided that, the exclusive forum provision will not apply to suits brought to enforce any liability or duty created by the Exchange Act or any other claim for which the U.S. federal courts have exclusive jurisdiction; and provided further that, if and only if the Court of Chancery of the State of Delaware dismisses any such action for lack of subject matter jurisdiction, such action may be brought in another state or federal court sitting in the State of Delaware. Our amended and restated certificate of incorporation will also provide that the federal district courts of the United States of America will be the exclusive forum for the resolution of any complaint asserting a cause of action against us or any of our directors, officers, employees or agents and arising under the Securities Act of 1933, as amended, or the Securities Act. We believe these provisions may benefit us by providing increased consistency in the application of Delaware law and federal securities laws by

chancellors and judges, as applicable, particularly experienced in resolving corporate disputes, efficient administration of cases on a more expedited schedule relative to other forums and protection against the burdens of multi-forum litigation. However, these provisions may have the effect of discouraging lawsuits against our directors and officers. The enforceability of similar choice of forum provisions in other companies' certificates of incorporation has been challenged in legal proceedings, and it is possible that, in connection with any applicable action brought against us, a court could find the choice of forum provisions contained in our amended and restated certificate of incorporation to be inapplicable or unenforceable in such action.

***We are an “emerging growth company,” and the reduced disclosure requirements applicable to emerging growth companies may make our Class A common stock less attractive to investors.***

We are an “emerging growth company,” as defined in the JOBS Act. We could continue to be considered an emerging growth company for up to five years, although we would lose that status sooner if our annual gross revenues exceed \$1.07 billion, if we issue more than \$1.0 billion in nonconvertible debt in a three-year period or if the fair value of our Class A common stock held by non-affiliates exceeds \$700.0 million (and we have been a public company for at least 12 months and have filed at least one Annual Report on Form 10-K). For the fiscal year ended December 31, 2020, our total revenue was \$124.9 million.

For as long as we continue to be an emerging growth company, we may take advantage of exemptions from various reporting requirements that are applicable to other public companies that are not emerging growth companies, including reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. It is unclear whether investors will find our Class A common stock less attractive because we may rely on these exemptions. If some investors find our Class A common stock less attractive as a result, there may be a less active trading market for our Class A common stock and the trading price of our Class A common stock may be more volatile.



## CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This prospectus contains statements that constitute forward-looking statements. Many of the forward-looking statements contained in this prospectus can be identified by the use of forward-looking words such as “anticipate,” “believe,” “could,” “expect,” “should,” “plan,” “intend,” “may,” “predict,” “continue,” “estimate” and “potential,” or the negative of these terms or other similar expressions.

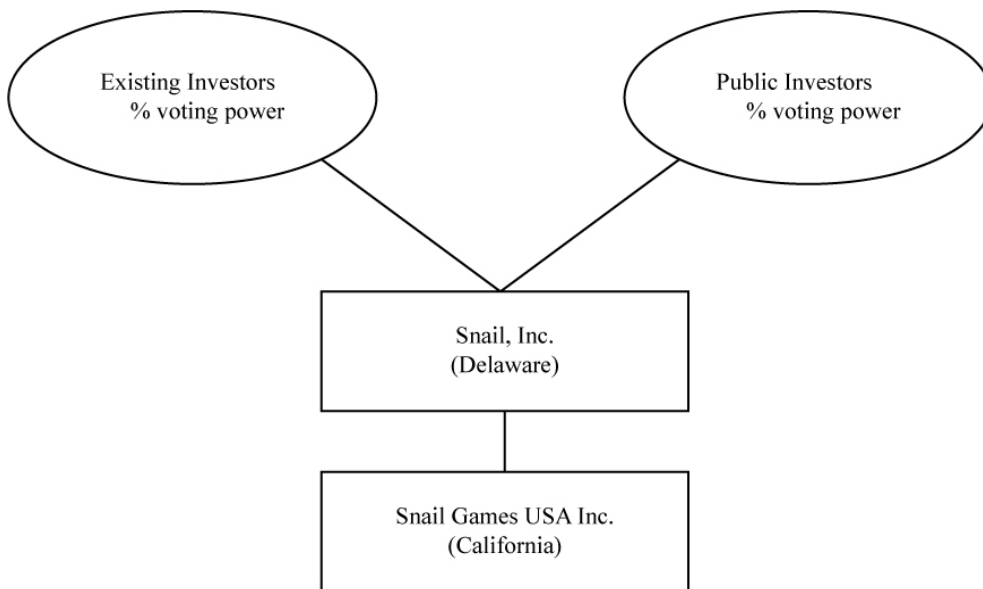
Forward-looking statements appear in a number of places in this prospectus and include, but are not limited to, statements regarding our intent, belief or current expectations. These forward-looking statements include information about possible or assumed future results of our business, financial condition, results of operations, liquidity, plans and objectives. Forward-looking statements are based on our management’s beliefs and assumptions and on information currently available to our management. Such statements are subject to risks and uncertainties, and actual results may differ materially from those expressed or implied in the forward-looking statements due to various factors, including, but not limited to, those identified under the section entitled “Risk Factors” in this prospectus. The statements we make regarding the following matters are forward-looking by their nature:

- our growth prospects and strategies;
- launching new games and additional functionality to games that are commercially successful;
- our expectations regarding significant drivers of our future growth;
- our ability to retain and increase our player base and develop new video games and enhance our existing games;
- competition from companies in a number of industries, including other casual game developers and publishers and both large and small, public and private Internet companies;
- our ability to attract and retain a qualified management team and other team members while controlling our labor costs;
- our relationships with third-party platforms such as Xbox Live and Game Pass, PlayStation Network, Steam, Epic Games Store, Google Stadia, the Apple App Store, the Google Play Store and the Amazon Appstore;
- the size of our addressable markets, market share and market trends;
- our ability to successfully enter new markets and manage our international expansion;
- protecting and developing our brand and intellectual property portfolio;
- costs associated with defending intellectual property infringement and other claims;
- our future business development, results of operations and financial condition;
- the effects of the COVID-19 pandemic on our business and the global economy generally;
- descriptions of tax laws;
- rulings by courts or other governmental authorities;
- our plans to pursue and successfully integrate strategic acquisitions;
- the use of proceeds from this offering;
- other risks and uncertainties described in this prospectus, including those described in “Risk Factors”; and
- assumptions underlying any of the foregoing.

Forward-looking statements speak only as of the date they are made, and we do not undertake any obligation to update them in light of new information or future developments or to release publicly any revisions to these statements in order to reflect later events or circumstances or to reflect the occurrence of unanticipated events.

**OUR ORGANIZATIONAL STRUCTURE**

Snail, a Delaware corporation, was formed on \_\_\_\_\_, 2022 and is the issuer of the Class A common stock offered by this prospectus. In connection with this offering, Snail Technology (HK) Limited, a subsidiary of Suzhou Snail Digital Technology Co., Ltd. and the sole stockholder of Snail Games USA, will contribute its interest in Snail Games USA to its shareholders who, in turn, will contribute such interests to Snail in exchange for a proportional amount of Class B common stock of Snail. Thereafter, Snail will be the sole stockholder of Snail Games USA, and all of our business operations will continue to be conducted through Snail Games USA and its direct and indirect subsidiaries. We refer to the aforementioned transactions as the “Transactions.” The chart below depicts our organizational structure after the consummation of the Transactions and the sale of \_\_\_\_\_ shares of Class A common stock in this offering.



## USE OF PROCEEDS

We estimate that the net proceeds from our issuance and sale of \_\_\_\_\_ shares of Class A common stock in this offering will be approximately \$ \_\_\_\_\_ (or \$ \_\_\_\_\_ million if the underwriters exercise in full their option to purchase additional shares), assuming an initial public offering price of \$ \_\_\_\_\_ per share, which is the midpoint of the range set forth on the cover page of this prospectus, and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us.

Each \$1.00 increase (decrease) in the assumed initial public offering price of \$ \_\_\_\_\_ per share of Class A common stock would increase (decrease) the net proceeds to us from this offering by approximately \$ \_\_\_\_\_, assuming the number of shares offered by us, as set forth on the cover page of this prospectus, remains the same and after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us. Each increase (decrease) of 1.0 million in the number of shares of Class A common stock we are offering would increase (decrease) the net proceeds to us from this offering, after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us, by approximately \$ \_\_\_\_\_ million, assuming the assumed initial public offering price stays the same.

We intend to use the net proceeds from this offering for general corporate purposes, which may include funding future products or technologies, maintaining liquidity and funding our working capital solutions offering. We may also use a portion of the net proceeds to acquire, in-license or make investments in businesses, products, offerings, and technologies, although we do not have agreements or commitments for any material acquisitions or investments at this time. We will have broad discretion in allocating the net proceeds from this offering. We will have broad discretion in allocating the net proceeds from this offering.

Although we currently anticipate that we will use the net proceeds from this offering as described above, there may be circumstances where a reallocation of funds is necessary. The amounts and timing of our actual expenditures will depend upon numerous factors, including the factors described under “Risk Factors” in this prospectus. Accordingly, our management will have flexibility in applying the net proceeds from this offering. An investor will not have the opportunity to evaluate the economic, financial or other information on which we base our decisions on how to use the proceeds.

**DIVIDEND POLICY**

We have never declared nor paid cash dividends on our capital stock. We currently intend to retain all available funds and any future earnings, if any, to fund the development and expansion of our business and we do not anticipate paying any cash dividends in the foreseeable future. Any future determination related to our dividend policy will be made at the discretion of our board of directors after considering our financial condition, results of operations, capital requirements, business prospects and other factors our board of directors deems relevant, and subject to the restrictions contained in any future financing instruments. In addition, our ability to pay cash dividends is currently restricted by the terms of our Credit Agreement. Our ability to pay cash dividends on our capital stock in the future may also be limited by the terms of any preferred securities we may issue or agreements governing any additional indebtedness we may incur.

## CAPITALIZATION

The table below sets forth our total capitalization (defined as long-term debt and stockholders' equity) as of December 31, 2020, as follows:

- on an actual basis; and
- as adjusted to give effect to (i) the Transactions and (ii) our sale of \_\_\_\_\_ shares of Class A common stock in the offering.

You should read this table together with the sections of this prospectus entitled "Summary Financial and Other Information" and "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and the notes thereto included elsewhere in this prospectus.

(in thousands except share data and per share data)	As of December 31, 2020	
	Actual	As Adjusted
Cash and cash equivalents:	\$ 27,588	\$ _____
Total liabilities	89,276	_____
Stockholders' equity:		
Preferred stock, \$ _____ par value; no shares authorized or issued and outstanding, actual; _____ shares authorized, no shares issued and outstanding, as adjusted	—	—
Common stock, \$0.01 par value; 1,000,000 shares authorized, 500,000 shares issued and outstanding, actual; no shares authorized or issued and outstanding, as adjusted	5	_____
Class A common stock \$ _____ par value; no shares authorized or issued and outstanding, actual; _____ shares authorized, shares issued and outstanding, as adjusted	—	—
Class B common stock \$ _____ par value; no shares authorized or issued and outstanding, actual; _____ shares authorized, shares issued and outstanding, as adjusted	—	—
Additional paid-in capital	94,159	_____
Due from stockholder – loan receivable	(60,744)	_____
Due from stockholder – interest receivable	(1,442)	_____
Accumulated other comprehensive loss	(197)	_____
Retained earnings (accumulated deficit)	7,577	_____
Total equity	39,357	_____
Noncontrolling interest	(5,018)	_____
Total stockholders' equity (deficit)	34,340	_____
<b>Total capitalization</b>	<b>\$ 123,616</b>	<b>\$ _____</b>

## DILUTION

As of December 31, 2020, we had a net tangible book value of \$ \_\_\_\_\_ million, corresponding to a net tangible book value of \$ \_\_\_\_\_ per share. After giving effect to the Transactions, our net tangible book value at December 31, 2020 would have been \$ \_\_\_\_\_ million, corresponding to a net tangible book value of \$ \_\_\_\_\_ per share. Net tangible book value represents the amount of our total assets less our total liabilities, excluding goodwill and other intangible assets, divided by \_\_\_\_\_, the total number of our shares outstanding as of December 31, 2020.

After giving effect to the sale by us of the \_\_\_\_\_ shares of Class A common stock offered by us in the offering at an assumed offering price of \$ \_\_\_\_\_ per share (the midpoint of the range set forth on the cover of this prospectus), after deducting the estimated underwriting discounts and commissions and estimated offering expenses payable by us, our net tangible book value estimated at December 31, 2020 would have been approximately \$ \_\_\_\_\_, representing \$ \_\_\_\_\_ per share. This represents an immediate increase in net tangible book value of \$ \_\_\_\_\_ per share to existing stockholders and an immediate dilution in net tangible book value of \$ \_\_\_\_\_ per share to new investors purchasing Class A common stock in this offering. Dilution for this purpose represents the difference between the price per share of Class A common stock paid by these purchasers and net tangible book value per share of Class A common stock immediately after the completion of the offering.

If you invest in our Class A common stock, your interest will be diluted to the extent of the difference between the initial public offering price per share of Class A common stock and the pro forma net tangible book value per share of Class A common stock after accounting for the issuance and sale of new Class A common stock in this offering.

The following table illustrates this dilution to new investors purchasing Class A common stock in the offering.

Initial public offering price per share	\$
Net tangible book value per share as of December 31, 2020	\$
Increase in net tangible book value per share attributable to new investors in this offering	\$
Pro forma net tangible book value per share after this offering	\$
Dilution per share to new investors in this offering	\$

The actual offering price per share of Class A common stock is not based on the pro forma net tangible book value of our common stock, but will be established based through a book building process.

The following table summarizes, on the same pro forma as adjusted basis at December 31, 2020, the number of common stock acquired from us, the total cash consideration paid and the average price per common stock paid to us by our existing stockholders and by new investors purchasing Class A common stock in this offering. As the table shows, new investors purchasing shares in this offering will pay an average price per share substantially higher than our existing stockholders paid. This information is based on the assumed initial public offering price of \$ \_\_\_\_\_ per share of Class A common stock, before deducting the underwriting discounts and commissions and estimated offering expenses payable by us in connection with this offering.

	Shares Purchased		Total Consideration		
	Number	Percent	Amount	Percent	Weighted Average Price per Share
Existing stockholders		%	\$	%	\$
New investors		%		%	\$
<b>Total</b>		<b>%</b>	<b>\$</b>	<b>%</b>	

If the underwriters fully exercise their option to purchase \_\_\_\_\_ additional shares of Class A common stock, the percentage of our common stock held by existing stockholders who are directors, officers or affiliated persons would be \_\_\_\_\_ % and the percentage of our common stock held by new investors would be \_\_\_\_\_ %.

A \$1.00 increase (decrease) in the offering price per share of Class A common stock (the midpoint of the range set forth on the cover of this prospectus) would increase (decrease) the net tangible book value after this offering by \$ \_\_\_\_\_ per share of Class A common stock and the dilution to investors in the offering by \$ \_\_\_\_\_ per share of Class A common stock.

To the extent that we grant options or restricted stock units to our employees in the future and those options are exercised or other issuances of Class A common stock are made, there will be further dilution to new investors.



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

*The following discussion and analysis should be read in conjunction with "Summary Consolidated Financial and Other Data," the consolidated financial statements and the related notes included elsewhere in this prospectus. This discussion and analysis contains forward-looking statements that involve certain risks and uncertainties. Our actual results could differ materially from those discussed in these statements. Factors that could cause or contribute to these differences include those discussed below and elsewhere in this prospectus, particularly under the "Risk Factors" and "Special Note Regarding Forward-Looking Statements" sections.*

### Overview

Our mission is to provide high-quality entertainment experiences to audiences around the world. We are a leading, global independent developer and publisher of interactive digital entertainment for consumers around the world. We have built a premier portfolio of premium games designed for use on a variety of platforms, including consoles, PCs, and mobile devices. For four of the last five years ended December 2020, *ARK: Survival Evolved* was a top-25 seller on the Steam platform across all game genres. Our expertise in technology, in-game ecosystems and monetization of online multiplayer games has enabled us to assemble a broad portfolio of intellectual property across multiple media formats and technology platforms. Our flagship franchise from which we generate the substantial majority of our revenues, *ARK: Survival Evolved*, is a leader within the sandbox survival genre with over 48.9 million console and PC installs through June 2021. Between June 2020 and June 2021, *ARK: Survival Evolved* has averaged a total of 267,000 daily active users ("DAUs") on the Steam and Epic platforms, and we experienced a peak of approximately 755,000 DAUs in early June 2020. We define "daily active users" as the number of unique users who play any given game on any given day. For the years ended December 31, 2020 and 2019, we generated 89.5% and 80.5%, respectively, of our revenues from *ARK: Survival Evolved*.

According to Newzoo, from 2015 to 2020, the global gaming industry grew approximately 94% from \$91.8 billion in 2015 to \$177.8 billion in 2020. The global gaming market is forecasted to generate revenue of \$175.8 billion in 2021, representing sales approximately 30% larger than the combined revenue generated by the global music, cinema, and OTT markets, according to Newzoo and PwC. The global gaming market is expected to further expand through 2024, growing 23% to \$218.7 billion, according to Newzoo. The shift towards online game play along with in-game monetization and new platforms have fundamentally transformed the way consumers interact with video games. Moreover, digital distribution has democratized developer access, leading to an expansion of new titles to address consumer preferences. At Snail, we focus on building compelling interactive entertainment franchises, with an aim of ultimately creating a world-class metaverse driven by player-created content. We believe success in delivering a highly engaging consumer experience results from a combination of best-in-class creativity and innovative use of leading, cutting-edge technology and platforms.

Our dedication to provide audiences with high-quality entertainment experiences utilizing the latest gaming technology has produced strong user engagement, continued revenue growth, and increased cash flows. Through June 30, 2021, our *ARK* franchise game has been played for more than 2.4 billion hours with an average playing time per user of more than 182 hours and with the top 24% of all players spending over 100 hours in the game, according to data related to the Steam platform. For the years ended December 31, 2020 and 2019, our revenue was \$124.9 million and \$86.3 million, respectively, representing annual growth of 44.7%. We have maintained a diversified revenue base across platforms, with approximately 49% of fiscal year 2020 revenue from consoles, 40% from PC and 11% from mobile platforms. We had net income of \$29.8 million for the year ended December 31, 2020 as compared to net loss of \$(15.2) million for the year ended December 31, 2019.



June 30, 2021, we sold 4.1 million units compared to 8.1 million and 4.1 million in the years ended December 31, 2020 and 2019, respectively. Our video games provide highly engaging, differentiated entertainment experiences where the combination of challenge and progress drives player engagement, high average player times, and long-term franchise value. The success of our franchise hinges on our ability to keep our current players engaged while also growing our user base by innovating our platform and monetizing on new offerings. The degree to which gamers are willing to engage with our platform is driven by our ability to create interactive and unique content that will enhance the game-play experience. We sell DLCs which are supplementary to our master games and expand the gaming universe to continuously evolve the game and retain players.

While we believe we have a significant opportunity to grow our install base, we anticipate that our overall install growth rate will fluctuate over time as we continue to release new master games and companion DLCs. Download rates and user engagement may increase or decrease based on other factors such as growth in console, PC and mobile games, ability to release content, and market effectively and distribute to users.

***Investments in our technology platform***

We are focused on innovation and technology leadership in order to maintain our competitive advantage. We spend a portion of our capital on our research and development platform to continuously improve our technological offerings and gaming platform. Our proprietary video game technology includes a versatile game engine, development pipeline tools, advanced rendering technology and advanced server and network operations. Continued investment in improving the technology behind our existing gaming platforms as well as developing new software tools for new product offerings is important to maintaining our strategic goals, developer and creator talent, and financial objectives. In order for us to continue providing cutting-edge technology to our users to bring digital interactive entertainment to market, we must also continue to invest in developmental and creative resources. For our users, we regularly invest in user-friendly features and enhance user experience in our games and platforms. As our industry moves towards increased use of cloud gaming and gaming as a service technologies, our ability to bring interactive technologies to market will be an increasingly important part of our business.

***Ability to release content, market effectively through cross media and expand the gaming group***

Establishing and maintaining a loyal network of players for our premium games is vital for our business and drives revenue growth. In order to grow and maintain our player base, we invest in developing new games to attract and engage players, and in providing existing audiences with proven content in the form of new DLCs. In the near-term, we may increase spending on original content creation with new studios, and on sales and marketing as a percentage of revenue to grow our player network. The scale of our player base is determined by a number of factors, including our ability to strengthen player engagement by producing content that players play regularly and our effectiveness in attracting new players, both of which may in turn affect our financial performance.

***Strategic relationship with developers, Studio Wildcard & Suzhou Snail***

We have grown and expect to continue to grow our business by collaborating with game studios that we believe can benefit from our team's decades of experience developing successful games. We have strategic relationships with many developer studios that create original content for us. The relationships allow for valuable knowledge sharing between Suzhou Snail, our current parent company, and the developer studios. We enjoy a long-term relationship with Studio Wildcard, which develops our *ARK* franchise. We have an exclusive license with Studio Wildcard for rights to *ARK*, and we work with them and our other studio developer partners to provide ongoing support across numerous aspects of game development. Our financial results may be affected by our relationship with game studios, including Studio Wildcard, and our ability to create self-developed titles.

***Relationship with third party distribution platforms***

We derive nearly all of our revenue from third-party distribution platforms, such as Xbox Live and Game Pass, PlayStation Network, Steam, Epic Games Store, Google Stadia, the Apple App Store, the

Google Play Store and the Amazon Appstore. These digital distribution platforms have policies that may impact our reachability to our potential audience, including the discretion to amend their terms of service, which could affect our current operations and our financial performance. As we expand to new markets, we anticipate similar relationships with additional distribution partners that could similarly impact our performance.

### ***Seasonality***

We experience fluctuations in quarterly and annual operating results as a result of the timing of the introduction of new titles, variations in sales of titles developed for particular platforms, market acceptance of our titles, development and promotional activities relating to the introduction of new titles, releases of expansion packs and DLCs, and to coincide with the global holiday season in the fourth and first quarters of each year. Seasonality in our revenue also tends to coincide with promotional cycles on platforms, typically on a quarterly basis.

### ***COVID-19***

Since March 2020, the COVID-19 pandemic has caused major disruption to all aspects of the global economy and daily life, particularly as quarantine and stay-at-home orders have been imposed by all levels of government. We have followed guidance by U.S. and other applicable foreign and local governments to protect our employees and operations during the pandemic and have implemented a remote environment for our business.

Despite the challenges we have faced in light of the COVID-19 pandemic, our revenues and number of installs have increased while the stay-at-home orders were in place across the United States. As individuals spend more time at home, we have seen an increase in time spent with digital entertainment, including casual gaming and games involving socially interactive experiences.

The COVID-19 pandemic has resulted in and may continue to result in consumers spending a greater portion of their time at home and sustained demand for entertainment options, which may continue to improve our financial results. However, the COVID-19 pandemic has caused an economic recession, high unemployment rates, and other disruptions, both in the United States and the rest of the world. We cannot predict the potential impacts of the COVID-19 pandemic on our business or operations, and there is no guarantee that these near-term trends will continue, particularly if the COVID-19 pandemic increases and the adverse consequences thereof in severity or continues for a protracted period of time, which could disrupt our operations, or put greater financial pressure on the economy and users' discretionary income or spending habits. In addition, we could experience a decrease in user activity or spending after the COVID-19 pandemic subsides, which could adversely impact our cash flows, operating results, and financial condition. See "Risk Factors — Risks Related to Our Business — The COVID-19 pandemic and containment efforts across the globe have materially altered how individuals interact with each other and have materially affected how we and our business partners are operating, and the extent to which this situation will impact our future results of operations and overall financial performance remains uncertain" for more information.

In 2020, we applied for, and received, funds under the Paycheck Protection Program ("PPP") in the amount of \$0.8 million. In December 2020, \$0.1 million of the PPP loan was forgiven by the U.S. Small Business Administration (the "SBA"). We subsequently received notification that an additional \$0.4 million principal amount of the PPP loan balance was forgiven by the SBA as of March 15, 2021.

We will continue to evaluate the nature and extent of the potential impact of the COVID-19 pandemic on our business, results of operations and liquidity.

### **Key Performance Metrics and Non-GAAP Measures**

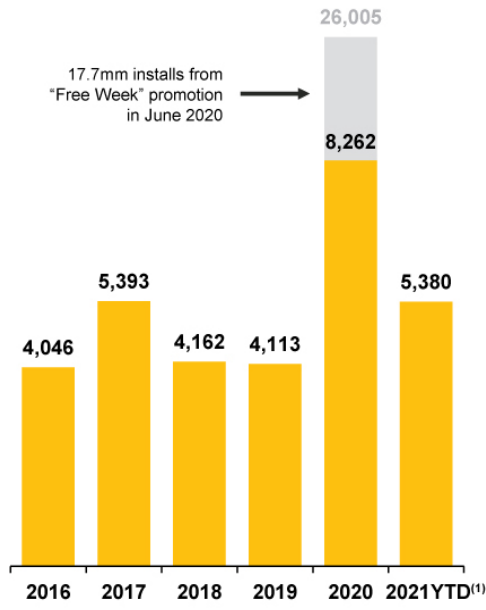
#### ***Units Sold***

We monitor Units Sold as a key performance metric in evaluating the performance of our console and PC game business. We define Units Sold as the number of game titles purchased through digital channels by an individual end user. Under this metric, the purchase of a standalone game, DLC, Season Pass or bundle

on a specific platform are individually counted as a unit. For example, an individual who purchases a standalone game and DLC on one platform, a Season Pass on another platform, and a bundle on a third platform would count as four Units Sold. Similarly, an individual who purchases three standalone game titles on the same platform would count as three Units Sold.

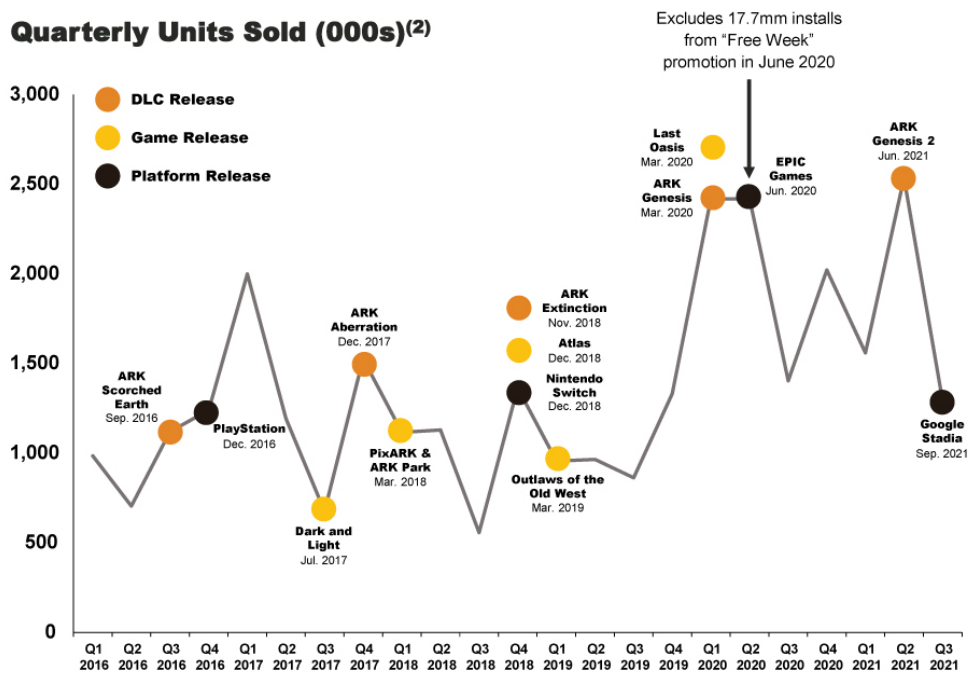
Units Sold may be impacted by several factors that could cause fluctuations on a quarterly basis, such as game releases, our promotional activities, which most often coincide with the global holiday season in the fourth and first quarters of each year, promotional sales on digital platforms, console release cycles and new digital platforms. Future growth in Units Sold will depend on our ability to launch new games and features and the effectiveness of marketing strategies.

**Annual Units Sold (000s)**



(1) 2021YTD represents the nine months ended September 30, 2021.

## Quarterly Units Sold (000s)<sup>(2)</sup>



(2) Units include master games, DLCs, season pass and bundles and excludes skins, soundtracks and other items.

### Bookings & Adjusted EBITDA

In addition to our financial results determined in accordance with U.S. generally accepted accounting principles, or GAAP, we believe Bookings and Adjusted EBITDA, as non-GAAP measures, are useful in evaluating our operating performance. Bookings and Adjusted EBITDA, as used in this prospectus, are non-GAAP financial measures that are presented as supplemental disclosures and should not be construed as alternatives to net income (loss) or revenue as indicators of operating performance, nor as alternatives to cash flow provided by operating activities as measures of liquidity, both as determined in accordance with GAAP.

We supplementally present Bookings and Adjusted EBITDA because they are key operating measures used by our management to assess our financial performance. Bookings adjusts for the impact of deferrals and, we believe, provides a useful indicator of sales in a given period. Adjusted EBITDA adjusts for items that we believe do not reflect the ongoing operating performance of our business, such as certain non-cash items, unusual or infrequent items or items that change from period to period without any material relevance to our operating performance. Management believes Bookings and Adjusted EBITDA are useful to investors and analysts in highlighting trends in our operating performance, while other measures can differ significantly depending on long-term strategic decisions regarding capital structure, the tax jurisdictions in which we operate and capital investments. Management uses Bookings and Adjusted EBITDA to supplement GAAP measures of performance in the evaluation of the effectiveness of our business strategies, to make budgeting decisions, and to compare our performance against other peer companies using similar measures. We evaluate Bookings and Adjusted EBITDA in conjunction with our results according to GAAP because we believe it provides investors and analysts a more complete understanding of factors and trends affecting our business than GAAP measures alone. Bookings and Adjusted EBITDA should not be considered as alternatives to net income (loss), as measures of financial performance or any other performance measure derived in accordance with GAAP.

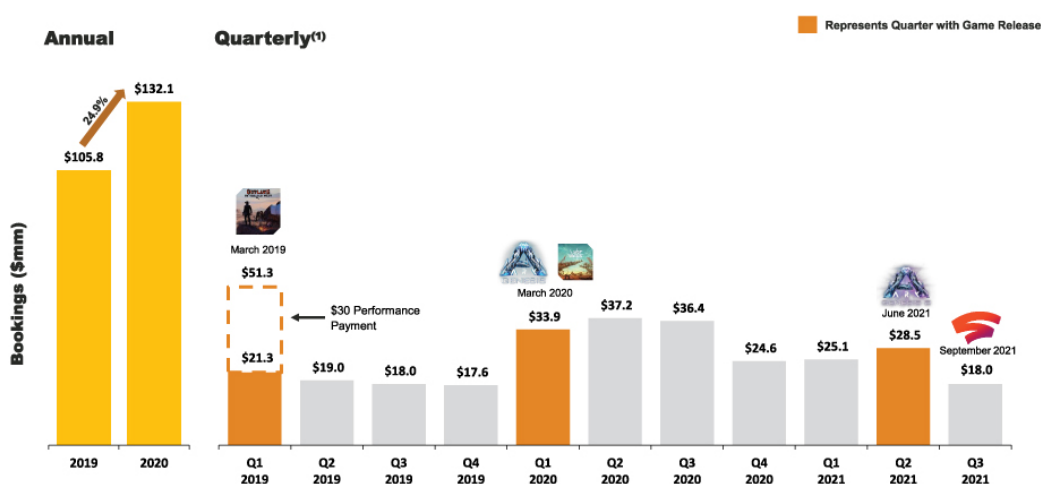
### Bookings

Below is a reconciliation of total net revenue to Bookings, the closest GAAP financial measure. Bookings is defined as the net amount of products and services sold digitally or physically in the period. Bookings is equal to revenues excluding the impact from deferrals.

(in millions)	Year ended December 31,	
	2020	2019
Total net revenue	\$ 124.9	\$ 86.3
Change in deferred net revenue	7.2	19.5
Bookings	\$ 132.1	\$ 105.8

Bookings increased by \$26.3 million, or 24.9%, in 2020 compared to 2019, primarily as a result of an increase in revenue in 2020 that was driven by *ARK: Genesis Part 1*, which we released in August 2019 and which increased our revenue by \$34.6 million in 2020 compared to 2019, and a decrease in deferred net revenue in 2020 as a result of a greater amount of prepayments from our platform partners in 2019 compared to the 2020 period.

Our bookings for the years ended December 31, 2019 and 2020 and for each completed quarter beginning with the quarter ended March 31, 2019, were as follows:



(1) Booking in millions

### Adjusted EBITDA

Below is a reconciliation of net income (loss) to Adjusted EBITDA, the closest GAAP financial measure. We define Adjusted EBITDA as net income (loss) before (i) interest expense, (ii) interest income, (iii) income tax provision (benefit), (iv) depreciation and amortization expense, (v) amortization — intangible assets (other), (vi) impairment of intangible assets, (vii) litigation settlement expense and (viii) gain on the sale of membership interest of equity investment.

Adjusted EBITDA as calculated herein may not be comparable to similarly titled measures reported by other companies within the industry and is not determined in accordance with GAAP. Our presentation of Adjusted EBITDA should not be construed as an inference that our future results will be unaffected by unusual or unexpected items. We may also incur expenses that are the same or similar to some of the adjustments in this presentation.



<i>(in millions)</i>	Year ended December 31,	
	2020	2019
<b>Net income (loss)</b>	\$ 29.8	\$ (15.2)
Interest expense	0.6	1.5
Interest income	(1.0)	(0.5)
Income tax provision (benefit)	6.8	(2.5)
Depreciation and amortization expense	0.9	1.0
Amortization – intangible assets (other)	0.2	0.6
<b>EBITDA</b>	\$ 37.3	\$ (15.1)
Impairment of intangible assets <sup>(1)</sup>	1.3	—
Litigation settlement expense <sup>(2)</sup>	5.5	—
Gain on the sale of membership interest of equity investment <sup>(3)</sup>	(4.9)	—
<b>Adjusted EBITDA</b>	\$ 39.2	\$ (15.1)

- (1) During 2020, we impaired the analytics technology related to a game developed by one of our subsidiaries, Frostkeep Studios, Inc. We believe that the analytics technology will no longer provide future value, and we do not intend to make future investment into developing the game. Therefore, we recognized \$1.3 million as impairment loss for the year ended December 31, 2020.
- (2) During 2020, we were subject to litigation and entered into a settlement agreement, payments for which began in 2021. Because of the non-recurring nature of the litigation, we have an accrual cost of \$5.5 million for the year ended December 31, 2020.
- (3) Reflects the gain recognized in connection with the sale of Pound Sound, LLC. See “— Liquidity and Capital Resources — Investing activities.”

### Components of our Results of Operations

#### Revenues

We primarily derive revenue from the sale of our games through various gaming platforms. Through these platforms, users can download our games and, for certain games, purchase virtual items to enhance their game-playing experience. We offer certain software products through third-party digital storefronts, such as Xbox Live and Game Pass, PlayStation Network, Steam, Epic Games Store, Google Stadia, the Apple App Store, the Google Play Store and the Amazon Appstore, and certain retail distributors. For sales arrangements through Xbox Live and Game Pass, PlayStation Network, Steam, Epic Game Stores, Google Stadia and retail distributors, the digital platforms and distributors have discretion in establishing the price for the specified good or service, and we have determined we are the agent in the sales transaction to the end user and therefore report revenue on a net basis based on the consideration received from the digital storefront. For sales arrangements through the Apple App Store and the Google Play Store, we have discretion in establishing the price for the specified good or service and have determined that we are the principal to the end user and therefore report revenue on a gross basis. Mobile platform fees charged by these digital storefronts are expensed as incurred and reported within cost of revenue as merchant fees.

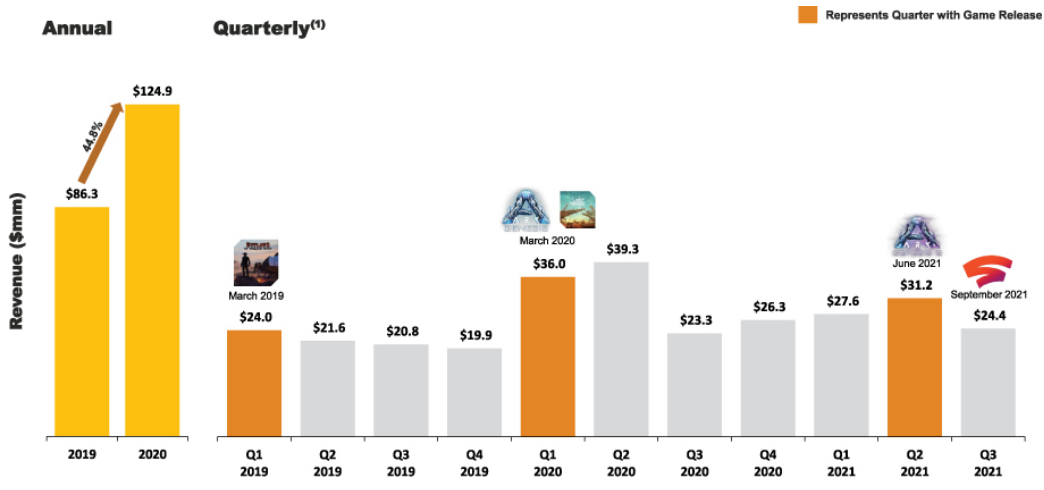
We record deferred revenue when payments are due or received in advance of the fulfillment of our associated performance obligations. Deferred revenue is comprised of the transaction price allocable to our performance obligation on technical support and the sale of virtual goods available for in-app purchases, and payments received from customers prior to launching the games on the platforms. We record deferred revenue when payments are due or received in advance of the fulfillment of our associated performance obligations. During the years ended December 31, 2020 and 2019, \$1.5 million and \$1.1 million of revenue was included in the deferred revenue balance at the beginning of the respective period.

Our net revenues through our top platform providers as a proportion of our total net revenue for the years ended December 31, 2020 and 2019 were as follows:

(in millions)	Year ended December 31,	
	2020	2019
	\$ 40.5	\$ 22.4
	31.6	27.3
	15.3	9.7
	12.3	8.0
All Other Revenue	25.2	18.9
Total	\$ 124.9	\$ 86.3

We expect changes in revenue to correlate with trends in the use and purchase of our games.

Our revenues for the years ended December 31, 2019 and 2020 and for each completed quarter beginning with the quarter ended March 31, 2019, were as follows:



(1) In millions

#### *Cost of revenue*

Cost of revenue includes license royalty fees, merchant fees, engine fees, server and database cost centers, game licenses and license right amortization. For a description of our licensing arrangements, please see “Business — Intellectual Property.” We generally expect cost of revenue to fluctuate proportionately with revenues.

#### *General and administrative*

General and administrative expenses include rent expense, outsourced professional services such as consulting, legal and accounting services, taxes and dues, insurance premiums, and costs associated with maintaining our property and infrastructure. General and administrative expenses also include salaries and wages, which consist of compensation we pay to our employees. We expect salaries and wages to increase in a manner that is proportional with the added expenses and expertise of operating as a public company. We also expect salaries and wages to increase as we increase headcount as we expand our product offerings. Future stock-based compensation will be recorded within general and administrative expense. We also record legal settlement expenses as components of general and administrative expenses. We expect general and administrative expenses will increase in absolute dollars due to the additional administrative and regulatory burden of becoming and operating as a public company.

**Research and development**

Research and development consists primarily of consulting expenses and salaries and wages devoted towards the development of new games and related technologies. We do not fund or enter into arrangements relating to the research and development activities from third-party developers from whom we license games. We expect our research and development to increase as we develop new content, games or technologies.

**Advertising and marketing**

Advertising and marketing consists of costs related to advertising and user acquisition efforts, including payments to third-party marketing agencies. We occasionally offer our early access trial, through which we sell our games that are in development and testing. The early access trial allows us to both monetize and receive feedback on how to improve our games over time. We plan to continue to invest in advertising and marketing to retain and acquire players. However, sales and marketing expenses may fluctuate as a percentage of revenues depending on the timing and efficiency of our marketing efforts.

**Interest expense and other, net**

Interest expense consists of interest incurred under our Term Loan, Revolver and 2020 Promissory Notes (each as defined herein). We expect to continue to incur interest expense under our debt instruments, although with respect to certain instruments, our interest expense will fluctuate based upon the underlying variable interest rates.

**Provision for income taxes**

The provision for income taxes consists of current income taxes in the various jurisdictions where we are subject to taxation, primarily the United States, as well as deferred income taxes reflecting the net tax effects of temporary differences between the carrying amounts of assets and liabilities in each of these jurisdictions for financial reporting purposes and the amounts used for income tax purposes. Under current U.S. tax law, the federal statutory tax rate applicable to corporations is 21%. Our effective tax rate differed from the federal statutory rate of 21% primarily as a result of changes in the valuation allowance on our deferred tax assets and the expected incremental benefit from the five-year net operating loss carryback provision permitted by the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act").

**Results of Operations****Comparison of the fiscal years ended December 31, 2020 versus the year ended December 31, 2019**

(\$ in millions)	Year ended December 31,		Change	
	2020	2019	2020 vs. 2019	
Revenues, net	\$124.9	\$ 86.3	\$ 38.6	44.8%
Cost of revenues	67.3	78.1	(10.8)	(13.8)
Gross profit	57.6	8.2	49.4	602.4%
<b>Operating expenses:</b>				
General and administrative	22.9	20.3	2.6	12.8
Research and development	1.4	2.0	(0.6)	(30.0)
Advertising and marketing	1.1	0.7	0.4	57.1
Depreciation and amortization	0.9	1.0	(0.1)	(10.0)
Loss on disposal of fixed assets	0.1	—	—	—
Impairment of intangible assets	1.3	—	—	—
Total operating expenses	27.7	23.9	3.8	15.9
<b>Income (loss) from operations</b>	<u>\$ 30.0</u>	<u>\$(15.7)</u>	<u>\$ 45.7</u>	<u>291.1%</u>

### Revenues

Revenues for the year ended December 31, 2020 increased by \$38.6 million, or 44.8%, compared to the year ended December 31, 2019. The increase in revenue was primarily due to (i) sales of *ARK: Genesis Part 1*, which we released in August 2019 and which increased our revenue by \$34.6 million in 2020 compared to 2019, (ii) \$4.0 million generated from platform provider driven promotional activities whereby certain of our games were available for a limited time for download by the platform providers' customers for free, and (iii) sales of *Last Oasis*, which we released in March 2020 and which contributed \$3.4 million in 2020, all partially offset by declines in sales of *Atlas*, which decreased \$2.4 million in 2020.

### Cost of revenues

Cost of revenues for the year ended December 31, 2020 decreased by \$10.8 million, or 13.8% compared to the year ended December 31, 2019. Cost of revenues for the years ended December 31, 2020 and 2019 comprised the following:

(in millions)	Year ended December 31,	
	2020	2019
Software license royalties	\$ 25.5	\$ 24.2
License cost and license right amortization	31.7	44.2
Merchant fee	4.1	4.7
Engine fee	3.9	2.4
Internet, server, and data center	2.0	2.5
Total	\$ 67.3	\$ 78.1

The decrease in cost of revenue was primarily due to a decline in license and license right amortization expense, primarily as a result of renegotiating certain license agreements in 2020 and additional expense in 2019 associated with the release of *ARK: Genesis Part 1*, which was offset by an increase in the engine fee, which change is correlated generally with changes in revenue.

### General and administrative expenses

General and administrative expenses for the year ended December 31, 2020 increased by \$2.6 million, or 13% compared to the year ended December 31, 2019. The increase in general and administrative expenses was primarily due to a litigation settlement we entered into during 2020.

### Research and development expenses

Research and development expenses for the year ended December 31, 2020 decreased by \$0.6 million, or 30%, compared to the year ended December 31, 2019. The decrease in research and development expenses was primarily due to a reduction in research and development activities surrounding artificial reality technology.

### Advertising and marketing expenses

Advertising and marketing expenses for the year ended December 31, 2020 increased by \$0.5 million, or 83%, compared to the year ended December 31, 2019. The increase in advertising and marketing expenses was primarily due to sponsoring a game awards event in 2020 that we did not sponsor in 2019.

### Depreciation and amortization expenses

Depreciation and amortization expenses for the year ended December 31, 2020 decreased by \$0.1 million, or 10%, compared to the year ended December 31, 2019. The decrease in depreciation and amortization expenses was primarily due to the write off of depreciable assets relating to the office of the in-house studio that we wound down in the first half of 2020.

**Other Factors Affecting Net Income (Loss)**

<i>(in millions)</i>	Year ended December 31,	
	2020	2019
Interest income	\$ 1.0	\$ 0.5
Interest expense	(0.6)	(1.5)
Interest expense – related parties	—	(0.1)
Other income	0.5	—
Gain on the sale of membership interest of equity investment	4.9	—
Equity in earnings (loss) of unconsolidated entity	0.7	(1.1)
Income tax provision (benefit)	6.8	(2.5)

***Interest expense***

Interest expense for the years ended December 31, 2020 and 2019 primarily related to our outstanding indebtedness with our third-party lenders. Interest expense decreased by \$0.9 million for the year ended December 31, 2020 as a result of the repayment of a portion of the outstanding principal.

***Gain on sale of membership interest of equity investment***

Gain on sale of membership interest of equity investment in 2020 related to the gain on our sale of membership interests in Pound Sand, LLC, an equity method investment. See Note 9, “*Equity Investments*” to our consolidated financial statements included in this prospectus.

***Taxes on income***

The provision for income tax (benefit from) was \$6.8 million and (\$2.5 million) for the years ended December 31, 2020 and 2019, respectively, an increase of \$9.3 million. Our effective income tax rate was 18.6% and 14.1% for the years ended December 31, 2020 and 2019, respectively. The year-over-year increase in our effective tax rate from 2019 to 2020 was primarily due to the valuation allowance of our deferred tax assets and the impact of our NOL carryback refund.

**Quarterly Results of Operations**

The following table sets forth our selected unaudited quarterly consolidated statements of operations data for each of the quarters beginning with the quarter ended March 31, 2020 and ending with the quarter ended . The information for each of these quarters has been prepared on the same basis as our audited annual consolidated financial statements and reflect, in the opinion of management, all adjustments of a normal, recurring nature that are necessary for the fair statement of the results of operations for these periods. This data should be read in conjunction with our audited consolidated financial statements included elsewhere in this prospectus. Historical results are not necessarily indicative of the results that may be expected for the full year or any other period.

**Liquidity and Capital Resources*****Capital spending***

We incur capital expenditures in the normal course of business and perform ongoing enhancements and updates to our social and mobile games to maintain their quality standards. Cash used for capital expenditures in the normal course of business is typically made available from cash flows generated by operating activities. We may also pursue acquisition opportunities for additional businesses or games that meet our strategic and return on investment criteria. Capital needs for investment opportunities are evaluated on an individual opportunity basis and may require significant capital commitments.

***Liquidity***

Our primary sources of liquidity are the cash flows generated from our operations, currently available unrestricted cash and cash equivalents. Our unrestricted cash and cash equivalents were \$27.6 million and \$3.7 million as of December 31, 2020 and 2019, respectively.

Our restricted cash and cash equivalents were \$6.3 million and \$7.6 million as of December 31, 2020 and 2019, respectively. Our restricted cash primarily consists of time deposits, and is used as security for certain of our debt instruments and to secure standby letters of credit with certain of our landlords.

### ***Cash flows***

The following tables present a summary of our cash flows for the periods indicated (in millions):

<i>(in millions)</i>	Year ended December 31,	
	2020	2019
Net cash provided by operating activities	\$ 48.5	\$ 55.2
Net cash used in investing activities	(18.1)	(32.0)
Net cash used in financing activities	(7.6)	(30.0)
Effect of currency translation on cash and cash equivalents	(0.1)	(0.1)
Net increase (decrease) in cash and cash equivalents and restricted cash and cash equivalents	\$ 22.7	\$ (6.9)

### ***Operating activities***

Net cash flows provided by operating activities for the year ended December 31, 2020 decreased \$6.7 million as compared to the year ended December 31, 2019, which resulted primarily from a period-over-period increase in net income of \$45.0 million, a decrease of \$34.9 million in non-cash reconciling items, and a \$16.8 million net decrease in change in net operating assets and liabilities.

Net income increased \$45.0 million between 2019 and 2020, from a net loss of \$(15.2) million in 2019 to net income of \$29.8 million in 2020. The increase was primarily due to a period-over-period increase in revenue of \$38.6 million and a decrease in license and license right amortization of \$12.5 million from 2019 to 2020, partially offset by a \$1.5 million increase in our engine fee and an increase in general and administrative expense of \$4.9 million.

Non-cash reconciling items decreased by \$34.9 million, from \$43.3 million in 2019 to \$8.4 million in 2020. The decrease in the non-cash reconciling items was primarily due to a decrease in the license amortization expense. In 2019, the Company prepaid its intangible assets — license to related parties, which resulted in \$43.0 million of amortization — intangible assets — license, related parties, whereas in 2020, the Company recognized \$13.0 million of amortization — intangible assets — license, related parties. The amortization — intangible assets — license, related parties period-over-period decreased the non-cash reconciling items adjustment by \$30 million. The Company also sold its membership interest in Pound Sand, LLC on December 30, 2020, which resulted in a gain on sale of membership interest by \$4.9 million.

The change in our net operating assets and liabilities was primarily the result of a net decrease in accounts receivable and accounts receivable — related party of \$6.8 million due to the timing of receipts of payments from customers and related party, a decrease in prepaid expenses of \$7.1 million primarily driven by the timing of payments of federal and state taxes and development costs, and a decrease in deferred revenue of \$12.4 million due to the revenue recognized due to performance obligations being met during 2020. These decreases were offset by an increase in accounts payable by \$4.9 million driven by our growth and the timing of payments to our vendors, and an increase of \$5.7 million in accrued expenses primarily as a result of our estimate of a pending litigation settlement.

### ***Investing activities***

Cash used in investing activities for the year ended December 31, 2020 decreased \$13.9 million compared to the year ended December 31, 2019 due to the proceeds received from the 2020 sale of membership interest in the amount of \$7.0 million of Pound Sand, LLC versus the payment of \$5.0 million in 2019 in connection with the acquisition of license rights from a related party.

### ***Financing activities***

Net cash flows used in financing activities for the year ended December 31, 2020 decreased \$22.4 million compared to the year ended December 31, 2019. Financing activities for the year ended December 31, 2020

included borrowings on long-term debt in the amount of \$5.0 million, and the repayment of long-term debt, line of credit and revolving indebtedness in the amount of \$13.3 million. In 2020, financing activities also included the proceeds from the PPP in the amount of \$0.8 million. Financing activities for the year ended December 31, 2019 included repayment of long-term debt in the amount of \$24.9 million and the repayment of a loan from a related party in the amount of \$7.0 million, which was offset by incurring additional long-term debt and borrowings from a related party in the amount of \$0.6 million and \$1.3 million, respectively.

#### *Loans to related parties*

Snail Games USA is party to a line of credit note with Mr. Shi, our Founder and Chairman, which provides for loans to Mr. Shi up to a maximum aggregate principal amount of \$100.0 million (the “Shi Loan”). Interest accrues on outstanding amounts at a rate of 2.00% per year, and all outstanding amounts are due and payable on demand. As of December 31, 2020, outstanding borrowings (including interest receivable) under the line of credit amounted to \$62.2 million. Subsequent to December 31, 2020 and through September 30, 2021, borrowings under the line of credit increased by an additional \$24.2 million. Snail Games USA intends to distribute the Shi Loan to its corporate parent prior to the Transactions, which will assume the loan as creditor. As a result of this distribution, the Shi Loan will no be longer reflected within the Company’s balance sheet.

#### *Capital resources*

We primarily fund our operations from our net cash flows provided by operating activities. In addition to these cash flows, we have entered into certain debt arrangements to provide additional liquidity and to finance our operations.

#### *Revolving Loan*

In December 2018, we entered into a revolving loan and security agreement with a financial institution for a revolving note in the amount of \$5.5 million. As of December 31, 2020, we had borrowings of \$2.5 million outstanding under our Revolver (as defined herein). On June 17, 2021, we amended and restated our revolving loan and security agreement (the “Revolver”) to increase our revolving line of credit to \$9.0 million. As amended, the Revolver matures on December 31, 2023 and bears interest at a rate equal to the prime rate less 0.25%. Interest is due and payable under the Revolver on a monthly basis, and borrowings under the revolver are secured by certain deposit accounts.

#### *Term Loan*

In June 2021, we entered into a loan agreement with a financial institution providing for a term loan in an aggregate principal amount of \$3.0 million (the “Term Loan”). The Term Loan, which matures in June 2031, bears interest at a fixed rate of 3.5% for the five years and then at a floating rate of the Wall Street Journal prime rate until maturity. The Term Loan is secured by our principal headquarters. The Term Loan replaced and refinanced a previously outstanding \$3.0 million promissory note due September 2021, of which \$2.8 million was outstanding at December 31, 2020.

#### *2020 Promissory Notes*

In February 2020, we issued \$5.0 million aggregate principal amount of promissory notes (the “2020 Promissory Notes”) due February 11, 2024 to a financial institution. Interest on the principal of the 2020 Promissory Notes, which is due and payable on a monthly basis, is computed and calculated based on the higher of 5% or 0.25% in excess of the Wall Street Journal prime rate. The balance outstanding as of December 31, 2020 was approximately \$4.0 million.

#### *Cares Act PPP Loan*

In 2020, we applied for, and received, funds under the PPP in the amount of \$0.8 million. In December 2020, \$0.1 million of the PPP loan was forgiven by the SBA. We subsequently received notification that an additional \$0.4 million principal amount of the PPP loan balance was forgiven by the SBA as of March 15, 2021.

### **Financial covenants**

The Revolver, Term Loan and 2020 Promissory Notes require us to maintain quarterly minimum EBITDA of \$3.0 million and to satisfy certain financial maintenance ratios, including a current ratio of 1.5 to 1.0, and minimum service coverage ratio of 1.5 to 1.0. We failed to satisfy the minimum coverage ratio for the period ended December 31, 2020 and obtained a waiver from our lenders for such breach that runs through the second quarter of 2021.

For additional information regarding our indebtedness, see Note 16, “Debt” to our consolidated financial statements included in this prospectus.

### **Contractual Obligations and Commitments**

The following table summarizes our contractual obligations as of December 31, 2020 (in millions):

	Payments Due by Period				
	Total	Less than 1 year	1–3 years	3–5 years	More than 5 years
Operating lease obligations	\$ 8.5	\$ 1.9	\$ 3.5	\$ 3.1	\$ —
Debt <sup>(1)</sup>	\$ 9.9	\$ 9.5	\$ 0.4	\$ —	\$ —
Accrued litigation expense	\$ 5.5	\$ 4.4	\$ 1.1	\$ —	\$ —

(1) Debt comprises outstanding amounts under the Revolver, Term Loan, the 2020 Promissory Notes and our PPP loan. We reflect the outstanding balance of such indebtedness as due in the current period.

### **Off-Balance Sheet Arrangements**

As of December 31, 2020, we did not have any off-balance sheet arrangements, as defined in Regulation S-K, that have or are reasonably likely to have a current or future effect on our financial condition, revenue, expenses, results of operations, liquidity, capital expenditures, or capital resources that are material to investors.

### **Qualitative and Quantitative Factors about Market Risk**

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

#### **Interest rate risk**

Our exposures to market risk for changes in interest rates relate primarily to our Term Loan, Revolver and the 2020 Promissory Notes. Our Revolver Loan and the 2020 Promissory Notes are floating rate facilities. Therefore, fluctuations in interest rates will impact the amount of interest expense we incur and have to pay. A hypothetical 100 basis point increase in weighted average interest rates under our 2020 Promissory Note and Revolver would have an immaterial impact on our overall interest expense. At this time, we do not, but we may in the future, enter into derivatives or other financial instruments in an attempt to hedge our interest rate risk. It is difficult to predict the impact hedging activities would have on our results of operations.

#### **Investment risk**

We had cash and cash equivalents including restricted cash and cash equivalents totaling \$33.9 million as of December 31, 2020, of which \$6.3 million is restricted and is used as security for certain of our debt instruments and to secure standby letters of credit with certain of our landlords. Our investment policy and strategy primarily attempts to preserve capital and meet liquidity requirements without significantly increasing risk. Our cash and cash equivalents primarily consist of cash deposits and money market funds. We do not enter into investments for trading or speculative purposes. Changes in rates would primarily impact interest income due to the relatively short-term nature of our investments. A hypothetical 100 basis point change in interest rates would have increased or decreased our interest income by an immaterial amount.



## Critical Accounting Policies and Estimates

We prepare our financial statements in conformity with GAAP.

Certain accounting policies require that we apply significant judgment in defining the appropriate assumptions for calculating financial estimates. By their nature, these judgments will be subject to an inherent degree of uncertainty. Our judgments are based upon our management's historical experience, terms of existing contracts, observance of trends in the industry, information provided by our customers and information available from other outside sources, as appropriate.

We consider accounting estimates to be critical accounting policies when:

- the estimates involve matters that are highly uncertain at the time the accounting estimate is made; and
- different estimates or changes to estimates could have a material impact on the reported financial positions, changes in financial position or results of operations.

When more than one accounting principle, or method of its application, is generally accepted, we select the principle or method that we consider to be the most appropriate when given the specific circumstances. The application of these accounting principles requires us to make estimates about the future resolution of existing uncertainties. Due to the inherent uncertainty involving estimates, actual results reported in the future may differ from such estimates. For additional information on our significant accounting policies, please refer to Note 2, "*Summary of Significant Accounting Policies*" to our consolidated financial statements included in this prospectus.

### *Revenue recognition*

Our revenue includes the publishing of software games delivered digitally and through physical discs (e.g., packaged goods). Our digital games may include additional DLCs that are new feature releases to digital full-game downloads. Revenue also includes sales of mobile in-app purchases that require our hosting support in order to utilize the game or related content. Such games include virtual goods that can be purchased by the end users as desired. When control of the promised products and services is transferred to the customers, we recognize revenue in the amount that reflects the consideration it expects to receive in exchange for these products and services. Revenue from delivery of products is recognized at a point in time when the end consumers download the games and the control of the license is transferred to them.

We recognize revenue using the following five steps as provided by Accounting Standards Codification, or ASC, Topic 606 *Revenue from Contracts with Customers*: (1) identify the contract(s) with the customer; (2) identify the performance obligations in each contract; (3) determine the transaction price; (4) allocate the transaction price to the performance obligations; and (5) recognize revenue when, or as, the entity satisfies a performance obligation. Our terms and conditions vary by customers, and typically provide 30-to-75 day terms or 45 days after each quarter ends.

### *Principal vs. Agent Consideration*

We offer certain software products via third-party digital storefronts, such as Microsoft's Xbox Live, Sony's PlayStation Network, Valve's Steam, Epic Games Store, the Apple App Store, the Google Play Store, and retail distributors. For sales of our software products via third-party digital storefronts and retail distributor, we determine whether or not we are acting as the principal in the sale to the end user, which we consider in determining if revenue should be reported based on the gross transaction price to the end user or based on the transaction price net of fees retained by the third-party digital storefront. An entity is the principal if it controls a good or service before it is transferred to the customer. Key indicators that we use in evaluating these sales transactions include, but are not limited to, the following:

- the underlying contract terms and conditions between the various parties to the transaction;
- which party is primarily responsible for fulfilling the promise to provide the specified good or service; and
- which party has discretion in establishing the price for the specified good or service.

Based on our evaluation of the above indicators, for sales arrangements via Microsoft's Xbox Live, Sony's PlayStation Network, Valve's Steam, Epic Games Store and certain retail distributors, the digital platforms and distributors have discretion in establishing the price for the specified good or service, and we have determined we are the agent in the sales transaction to the end user and therefore we report revenue on a net basis based on the consideration received from the digital storefront. For sales arrangements via the Apple App Store and the Google Play Store, we have discretion in establishing the price for the specified good or service and we have determined that we are the principal to the end user and thus report revenue on a gross basis and mobile platform fees charged by these digital storefronts are expensed as incurred and reported within cost of revenue.

#### *Contract Balance*

We record deferred revenue when cash payments are received or due in advance of its performance, even if amounts are refundable.

Deferred revenue is comprised of the transaction price allocable to our performance obligation on technical support and the sale of virtual goods available for in-app purchases, and payments received from customers prior to launching the games on the platforms. We categorize the virtual goods as either "consumable" or "durable." Consumable virtual goods represent goods that can be consumed by a specific player action; accordingly, we recognize revenue from the sale of consumable virtual goods as the goods are consumed and the performance obligation is satisfied. Durable virtual goods represent goods that are accessible to the players over an extended period of time; accordingly, we recognize revenues from the sale of durable virtual goods ratably over the period of time the goods are available to the player and the performance obligation is satisfied, which is generally the estimated service period.

We also have a long-term title license agreement ("game pass") with Microsoft for a period of three years. We recognize deferred revenue and amortizes this revenue according to the terms of the relevant agreement.

#### *Estimated Service Period*

For certain performance obligations satisfied over time, we have determined that the estimated service period is the time period in which an average user plays our software products ("user life") which most faithfully depicts the timing of satisfying our performance obligation. We consider a variety of data points when determining and subsequently reassessing the estimated service period for players of our software products. Primarily, we review the weighted average number of days between players' first and last days played online. When a new game is launched and no history of online player data is available, we consider other factors to determine the user life, such as the estimated service period of other games actively being sold with similar characteristics. We also consider known online trends, the service periods of our previously released software products, and, to the extent publicly available, the service periods of our competitors' software products that are similar in nature to ours. We believe this provides a reasonable depiction of the use of games by our customers, as it is the best representation of the period during which our customers play our software products. Determining the estimated service period is subjective and requires significant management judgment and estimates. Future usage patterns may differ from historical usage patterns, and therefore the estimated service period may change in the future. The estimated service periods for virtual goods are generally approximately 30 to 100 days.

#### *Significant Estimates*

Significant management judgment and estimates must be used in connection with many of the determinations described above, such as estimating the fair value allocation to distinct and separable performance obligations and the service period over which to defer recognition of revenue. We believe we can make reliable estimates. However, actual results may differ from initial estimates due to changes in circumstances, market conditions, and assumptions. Adjustments to estimates are recorded in the period in which they become known.

#### *Shipping and Handling*

The distributor, as the principal, is responsible for the shipping of the game discs to the retail stores and incurring the shipping costs. We are paid the net sales amount after deducting shipping costs and other related expenses by the distributor.

***Income taxes***

Income taxes are provided for the tax effects of transactions reported in the financial statements and consisted of taxes currently due and deferred taxes. Deferred taxes are recognized for the differences between the basis of assets and liabilities for financial statements and income tax purposes.

Financial Accounting Standards Board, or FASB, ASC 740, Income Taxes, which we follow, requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the consolidated financial statements or tax returns.

Under this method, deferred income taxes are recognized for the tax consequences in future years of differences between the tax bases of assets and liabilities and their financial reporting amounts at each period end based on enacted tax laws and statutory tax rates, applicable to the periods in which the differences are expected to affect taxable income. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount expected to be realized.

FASB ASC 740-10-25 provides criteria for the recognition, measurement, presentation, and disclosure of uncertain tax positions. We must recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate resolution. We recognized liabilities for uncertain tax positions pursuant to FASB ASC 740-10-25 in the amount of \$1.1 million and \$0.4 million for the years ended December 31, 2020 and 2019, respectively.

***Intangible assets—license usage rights***

We enter into license agreements with third-party developers and our related parties' developers that require us to make payments for license usage rights and game development and production services. These license agreements grant us the exclusive publishing and distribution rights to game titles as well as, in some cases, the underlying intellectual property rights. These license agreements also specify the payment schedules, royalty rates and the relevant licensing period. We capitalize the cost of license usage rights as intangible assets and amortizes them over the terms of the respective licensing rights.

***Amortizable Intangibles and other long-lived assets***

Our long-lived assets and other assets consisting of property, plant and equipment and purchased intangible assets, are reviewed for impairment in accordance with the guidance of the FASB ASC 360, Property, Plant, and Equipment.

Intangible assets subject to amortization are carried at cost less accumulated amortization and amortized over the estimated useful life in proportion to the economic benefits received. We evaluate the recoverability of definite-lived intangible assets and other long-lived assets in accordance with ASC Subtopic 360-10, which generally requires the assessment of these assets for recoverability when events or circumstances indicate a potential impairment exists. We consider certain events and circumstances in determining whether the carrying value of identifiable intangible assets and other long-lived assets, other than indefinite-lived intangible assets, may not be recoverable including, but not limited to: significant changes in performance relative to expected operating results; significant changes in the use of the assets; significant negative industry or economic trends; and changes in our business strategy. If we determine that the carrying value may not be recoverable, we estimate the undiscounted cash flows to be generated from the use and ultimate disposition of the asset group to determine whether an impairment exists. If an impairment is indicated based on a comparison of the asset groups' carrying values and the undiscounted cash flows, the impairment loss is measured as the amount by which the carrying amount of the asset group exceeds its fair value. There can be no assurance, however, that market conditions will not change or demand for our products under development will continue. Either of these could result in future impairment of long-lived assets. Actual useful lives and cash flows could be different from those estimated by management which could have a material effect on our consolidated reporting results and financial positions. Fair value is determined

through various valuation techniques including discounted cash flow models, quoted market values and third-party independent appraisals, as considered necessary.

### **Leases**

We have several leases relating primarily to office facilities. We determine if an arrangement is or contains a lease at contract inception. Right-of-use assets represent our right to use an underlying asset for the lease term, and lease liabilities represent our obligation to make lease payments arising from the lease. The lease liability is measured as the present value of the unpaid lease payments, and the right-of-use asset value is derived from the calculation of the lease liability. Lease payments include fixed and in-substance fixed payments, variable payments based on an index or rate, reasonably certain purchase options, and termination penalties. Variable lease payments are recognized as lease expenses as incurred, and generally relate to variable payments made based on the level of services provided by the landlords of our leases. For leased assets with similar lease terms and asset types, we applied a portfolio approach in determining a single incremental borrowing rate for the leased assets. We use our estimated incremental borrowing rate, which is derived from information available at the lease commencement date, in determining the present value of lease payments because we do not have the information necessary to determine the rate implicit in the lease. Lease expense for operating lease payments is recognized on a straight-line basis over the lease term. Our lease term includes any option to extend the lease when it is reasonably certain to be exercised based on considering all relevant factors. Leases with an initial term of 12 months or less are not recorded on the consolidated balance sheets and we recognize lease expense for these leases on a straight-line basis over the lease term. Operating leases are included in operating lease right-of-use assets, net, current portion of operating lease liabilities, and operating lease liabilities, net of current portion on the consolidated balance sheets.

### **Recently Issued Accounting Pronouncements**

See Note 2, “*Summary of Significant Accounting Policies*” to our consolidated financial statements included in this prospectus for a description of recently adopted accounting pronouncements and recently issued accounting pronouncements not yet adopted as of the date of this prospectus.

### **Material Weaknesses in Internal Controls**

Internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements in accordance with GAAP. Under standards established by the Public Company Accounting Oversight Board, a material weakness is a deficiency, or combination of deficiencies, in internal control over financial reporting such that there is a reasonable possibility that a material misstatement of our annual or interim financial statements will not be prevented or detected and corrected on a timely basis.

In connection with the audit of our consolidated financial statements for the years ended December 31, 2020 and 2019, our management and auditors determined that a material weakness existed in the internal control over financial reporting involving lack of sufficient financial reporting close controls and review of account reconciliations and income tax accounts. Our auditors identified numerous audit adjustment during the course of our 2020 and 2019 audits, the aggregate value of which are considered material to the consolidated financial statements. We intend to enhance our close control procedures and hire additional subject matter experts. See “Risk Factors — General Risk Factors — If we fail to maintain effective internal control over financial reporting, as well as required disclosure controls and procedures, our ability to produce timely and accurate consolidated financial statements or comply with applicable regulations could be impaired.”

## BUSINESS

Our mission is to provide high-quality entertainment experiences to audiences around the world.

We are a leading, global independent developer and publisher of interactive digital entertainment for consumers around the world. We have built a premier portfolio of premium games designed for use on a variety of platforms, including consoles, PCs, and mobile devices. For four of the last five years ended December 2020, *ARK: Survival Evolved* was a top-25 seller on the Steam platform across all game genres. Our expertise in technology, in-game ecosystems and monetization of online multiplayer games has enabled us to assemble a broad portfolio of intellectual property across multiple media formats and technology platforms. Our flagship franchise from which we generate the substantial majority of our revenues, *ARK: Survival Evolved*, is a leader within the sandbox survival genre with over 48.9 million console and PC installs through June 2021. Between June 2020 and June 2021, *ARK: Survival Evolved* has averaged a total of 267,000 daily active users (“DAUs”) on the Steam and Epic platforms, and we experienced a peak of approximately 755,000 DAUs in early June 2020. We define “daily active users” as the number of unique users who play any given game on any given day. For the years ended December 31, 2020 and 2019, we generated 89.5% and 80.5%, respectively, of our revenues from *ARK: Survival Evolved*.

According to Newzoo, from 2015 to 2020, the global gaming industry grew approximately 94% from \$91.8 billion in 2015 to \$177.8 billion in 2020. The global gaming market is forecasted to generate revenue of \$175.8 billion in 2021, representing sales approximately 30% larger than the combined revenue generated by the global music, cinema and OTT markets, according to Newzoo and PwC. The global gaming market is expected to further expand through 2024, growing 23% to \$218.7 billion, according to Newzoo. The shift towards online game play along with in-game monetization and new platforms have fundamentally transformed the way consumers interact with video games. Moreover, digital distribution has democratized developer access, leading to an expansion of new titles to address consumer preferences. At Snail, we focus on building compelling interactive entertainment franchises, with an aim of ultimately creating a world-class metaverse driven by player-created content. We believe success in delivering a highly engaging consumer experience results from a combination of best-in-class creativity and innovative use of leading, cutting-edge technology and platforms.

Our roots trace back to the beginnings of the massively multiplayer online role-playing games (“MMORPG”), with early titles including *Age of Wushu*. Our long history provides us with substantial experience that we leverage to identify and invest in promising game development studios and to manage the growth of our games into AAA titles. We collaborate with talented development teams, providing our expertise, capital, technological resources, customer service, marketing strategy and other services to achieve a successful outcome.

We optimize our development pipeline and target specific market segments by publishing games under several specialized brands through our two publishing labels, Snail Games USA and Wandering Wizard. Our distribution strategy utilizes Steam’s early access feature to achieve faster go-to-market times. We utilize proprietary technology, including a versatile game engine and advanced server technology, to heighten artistic detail and increase player engagement.

We attribute our continued success to several differentiating elements.

**Perseverance:** We are called Snail because we admire a snail’s perseverance in achieving its goals. We maintain a disciplined approach to our game development, financial management and strategic acquisitions as we seek to deliver long-term value.

**Innovation:** We believe innovation is at the core of a highly engaging entertainment experience. Our titles span from indie to our AAA franchise *ARK: Survival Evolved*. We created the Wandering Wizard label to allow us to invest and grow indie titles built by bright, passionate teams.

**Technology:** We utilize advanced and proprietary technologies to drive demand and optimize costs. Our proprietary micro-influencer platform, *NOIZ*, enables us to substantially broaden our influencer base at an advantaged cost, and our game and server technology provide a highly customizable development infrastructure.

**Collaboration:** We partner with talented independent studios for game development. Development teams, some of which are our wholly owned subsidiaries, are provided capital and other critical resources and are afforded a high degree of autonomy. We believe this model best preserves the culture and creativity of the development team and encourages the development of successful games.

**Developers:** We believe in the importance of maintaining a broad developer network to ensure the simultaneous development of high-quality games. We have seven internal development studios and we partner with two related-party development studios from AAA to indie located in the United States and internationally.

**Experience:** Our management team has deep knowledge of the gaming landscape based on more than two decades of experience in the gaming industry. Our Founder and Chairman, Mr. Shi, was a pioneer in sandbox and MMORPG games, and our Chief Executive Officer, Jim Tsai, has a deep understanding of game development and publishing with more than 25 years of experience. Our industry experience is foundational to our success in development and publishing and helps us to quickly identify attractive acquisitions and partnerships opportunities.

Our dedication to provide audiences with high-quality entertainment experiences utilizing the latest gaming technology has produced strong user engagement, continued revenue growth, and increased cash flows. Through June 30, 2021, our *ARK* franchise game has been played for more than 2.4 billion hours with an average playing time per user of more than 182 hours and with the top 24% of all players spending over 100 hours in the game, according to data related to the Steam platform. For the years ended December 31, 2020 and 2019, our revenue was \$124.9 million and \$86.3 million, respectively, representing annual growth of 44.7%. We have maintained a diversified revenue base across platforms, with approximately 49% of fiscal year 2020 revenue from consoles, 40% from PC and 11% from mobile platforms. We had net income of \$29.8 million for the year ended December 31, 2020 as compared to net loss of \$(15.2) million for the year ended December 31, 2019.

### **Our Heritage and Expertise**

We were founded in 2009 as a subsidiary of Suzhou Snail Digital Technology Co. Ltd. (“Suzhou Snail”), and our heritage and knowledge extends to our Founder and Chairman’s creation of Suzhou Snail. Suzhou Snail was founded in the early 2000s to fulfill a need for gaming in Asia. Our Founder and Chairman, Mr. Shi, became an early adopter of PC-based online free-to-play gaming, and Suzhou Snail became a pioneer in MMORPG games, releasing successful titles such as *Age of Wushu*.

The global gaming industry transformed in the mid-2000s with the advent of smartphones and the creation of digital distribution. Amid these transformations, we were founded with an initial goal of serving as the publisher for Suzhou Snail’s games in the United States. We rapidly transformed our business model to include development and publishing of independently sourced content. We pursued a premium game strategy anchored by diversified development teams. We have invested in video game development and publishing throughout North America and Europe, and have engaged in licensing deals with affiliated studios. In 2015, we partnered with Studio Wildcard to develop our flagship franchise, *ARK*. Our heritage in free-to-play games and operating history in premium games has afforded us with deep knowledge of the global gaming marketplace and has enabled us to develop a successful value proposition for our consumers and developers.

### **Market Opportunity**

We serve a large addressable market in a dynamic industry with strong growth tailwinds. Video games are rapidly growing as an entertainment platform on a global scale given the proliferation of mobile devices and numerous vectors of gaming experience. We are well positioned to capitalize on secular tailwinds as we own and/or maintain exclusive license rights to valuable IP that can be monetized through various channels across gaming and digital entertainment. We believe that our current market leadership in video games and growing presence in influencer platform through *NOIZ* is just our beginning.

From 2015 to 2020, the video game industry has grown at over 14% CAGR. According to Newzoo, the global gaming market was valued over \$177.8 billion in 2020 and is projected to grow to \$218.7 billion in

2024 representing a 5.3% CAGR as its popularity continues to flourish mainstream. In 2021, there were over one billion console and PC (excluding mobile) gamers worldwide, according to IDC. According to the State of Online Gaming — 2021 survey of 4,000 gamers, the average player spent over eight hours per week playing video games. More than 75% of gamers are age 21 or older, and the vast majority of gamers are medium-to-high earners with full-time jobs, according to Newzoo. The combination of these statistics illustrates a quickly growing market with a highly engaged target demographic with purchasing power towards entertainment.

Within the video game industry, the top console game franchises continue to dominate the market. The barrier to entry is high as most require high investment in development and user acquisition costs. According to Newzoo, the console and PC gaming segment of the global games industry is estimated to account for 48% of the total market in 2021. From 2020 to 2021, the player base increased at an impressive rate of 5.4%, and additional future growth is expected.

The sandbox survival category is an attractive genre within gaming because it is truly “one-size-fits-all.” Its appeal is broad as there are no rules, and no endgame, and players are in control of their own game lifecycle. Players enter into the gameplay without a tutorial and as a result face a more challenging environment and can learn and thrive in the experience of their own choosing.

We have developed and invested in various successful sandbox survival titles since 2015. Our video game production quality, our history of franchise success, and our technological leadership have contributed to a deeply engaged, global player community, many members of which continue to purchase DLCs for our existing games and related games published under our brand or co-brands. We also offer the advantage of providing equal accessibility to gamers of all experience levels and demographics for our sandbox survival games, allowing us to maximize audience reach. Furthermore, depending on players’ experience and intensity, our platform gives players the flexibility to play on our servers, user-created servers, or private servers, which allows us to target a wider range of gamers and lower operating expenses.

In addition to gaming, we believe there are several adjacent market opportunities driven by the proliferation of streaming and eSports: the global eSports audience is projected to reach 474 million viewers and surpass \$1 billion in revenue in 2021, according to Newzoo. In 2020, global gamers and eSports fans watched a record-breaking 27.9 billion hours of content across all live streaming platforms, according to Tech Digest. Twitch led the audience in live broadcast, with approximately 18.4 billion hours watched in 2020. We launched our *NOIZ* platform to support and provide tools for streamers, as well as marketing campaigns services. We believe that the survival-based genre is well suited for eSports and team-based interactive offerings.

According to Influencer Marketing Hub, the market size of influencer marketing has grown at 55% CAGR from 2016 to 2020, reaching \$9.7 billion in 2020, and provides attractive tailwinds for our micro-influencer platform, *NOIZ*.

### **Our Value Proposition**

**Value proposition for gamers:** We aim to provide high-quality entertainment experience to end users. We strive to create the best game play experience for gamers by offering frequent new content and endless game play possibility as key value propositions to our players.

**New Content:** We continuously incorporate feedback from players to improve existing games and build expansion packs, which are released periodically. DLCs offer gamers a familiar game play in a new virtual world with a different fantasy twist from Dinosaurs to Sci-Fi.

**Endless Possibility:** Our games provide hours of entertainment with features that permit dynamic environmental changes of the virtual world, user directed conquests, and cooperative or competitive gameplay with other users. Our sandbox games provide players with freedom, without the rules found in other genres such as racing games.

**Value proposition for developers:** Our business model is dependent on partnerships with developers, and we offer key value propositions of collaborative partnership, culture of innovation and technology to our developers.



**Collaborative Partnership:** We provide capital, technological resources, customer service, marketing strategy and other services to our video game development partners. We strategize with developers to customize marketing campaigns tailored to target markets. Our founder also provides developers with creative and other advice based on his deep expertise in the industry.

**Culture of Innovation:** We believe high-quality experiences result from a combination of forward thinking and fearless creativity. We encourage our development teams to experiment with emerging technologies and unique fantasy twists.

**Technology:** Our developers have access to our advanced development infrastructure as well as our proprietary technology including our micro-influencer technology, *NOIZ*, which helps brands engage with previously untapped small- to mid-sized influencers.

### Our Platform

Our strategic flywheel is anchored by our dedication to delivering high-quality, compelling entertainment experiences and is driven by our capabilities in publishing, developing and creating proprietary technology. Growth in the number of published titles allows us to invest in new development teams and proprietary technology, which expand the number of titles we publish in a self-reinforcing loop. As the quality of our games increases, we are well-positioned to attract more users and more influencers. With increased influencers through our propriety micro-influencer platform, *NOIZ*, we are able to reach a broader audience and increase user engagement within our games. This drives additional revenue, which we use to increase our developer network and to build proprietary technology. Our technology, along with our collaborative, innovative culture attracts talented developers, which in turn result in an increased number of high-quality games.



**Publishing:** We derive the majority of our revenue from titles we offer through licensing and publishing agreements. Our *ARK* franchise is led by our strategic partnership with Studio Wildcard. Our typical publishing cycle includes annual DLC releases for our major franchises, after which we repeat the same publishing cycle to attract new players and continue to entertain our existing players. We seek to bring new fantasy twists and genres to our players with innovative, creative content cultivated from strong partnerships with independent developers and published through our Wandering Wizard label.

**Development:** We also develop titles using a partnership approach in which we acquire ownership stakes in independent development teams. We preserve a development team's culture by allowing a high degree of autonomy in its operations, which we believe allows development teams to retain their creative license, while also extracting synergies by utilizing our shared resources including customer service and backend functions. Furthermore, we foster a culture of communication where employees at all levels at our partner studios are able to receive direct feedback from our CEO. We partnered with Donkey Crew to produce



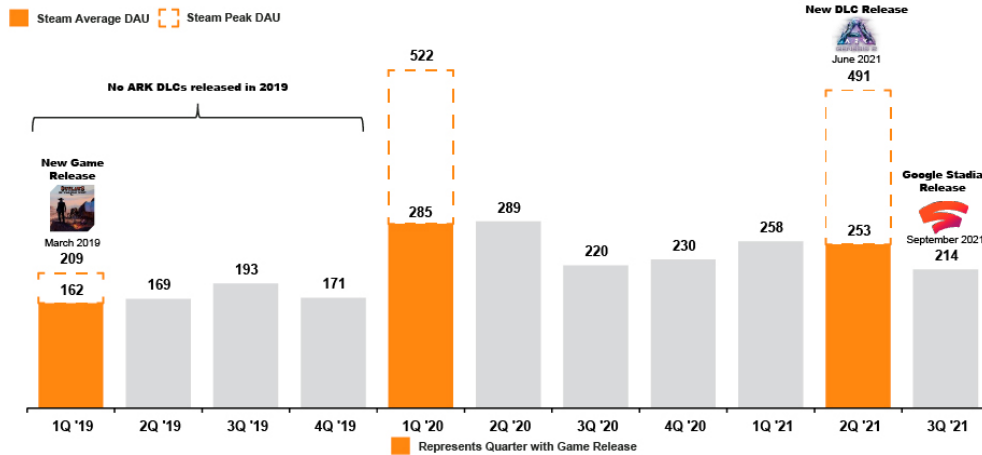
*Last Oasis*, a nomadic survival MMO with melee combat conquests, and with BTBX.io to produce *Life is Feudal II*, a sandbox survival game set in medieval times.

**Technology:** We are early adopters of the latest technology in our games and develop proprietary technology when necessary to address market opportunities. We maintain a flexible infrastructure to efficiently develop virtual worlds with advanced rendering and atmospheric effects across a wide array of video game types. We developed a proprietary micro-influencer marketing platform, *NOIZ*, to help game streamers and game companies reach a wider audience and diversify marketing spend. We work with our developers to create custom campaigns to optimize reach.

### Our Key Strengths

**Top-ranked category defining franchise with a track record of exponential growth:** Our dedication to our customers and innovative game development has resulted in our position as the top-ranked category defining franchise, with a track record of growth. Our flagship franchise, *ARK: Survival Evolved*, is a leader within the sandbox survival genre with over 48.9 million console and PC installs through June 2021. *ARK: Survival Evolved* has been a top-25 selling game on the Steam platform by gross revenue in each year we released an *ARK* DLC. As of June 2021, *ARK: Survival Evolved* reached a peak average audience of over 755,000 DAUs on PC platforms, and has been played over 2.4 billion hours since its release.

#### ARK PC DAU (000s)



**Proven expertise in creating successful gaming franchises:** We have proven expertise in creating successful gaming franchises. We are a multi-platform publisher with over 12 years of experience in creating culturally influential game titles, while demonstrating financial growth. As of June 30, 2021, we have more than 20 game titles. By recognizing the lucrative potential of the sandbox survival category at its nascent stages, we became a first mover in the category, and we now license and publish leading IP or license to the IP, including the global franchise *ARK: Survival Evolved*, *Atlas*, *Last Oasis*, *Dark and Light* and *Outlaws of the Old West*. Our approach to the industry is to create a one-size-fits-all game to draw people into the overall sandbox survival genre. In order to retain players, we invest in game quality to generate additional interest in addition to spending on advertising. Our collaborative relationships with video game development studios, industry leaders, technology providers and distribution platforms allow us to invest in promising video game projects and manage their growth into AAA video games and entertainment franchises. Our approach creates a continuous cycle of monetization opportunities across our gaming portfolio.

**IP portfolio spanning across multiple media formats and technology platforms to captivate end user:** We license and own an IP portfolio spanning across multiple media formats and technology platforms to captivate end users. Our primary use of IP is to generate successful video games within and beyond the sandbox survival genre. Currently, our games are available on Xbox Live and Game Pass, PlayStation Network, Steam, Epic Games Store, Google Stadia, the Apple App Store, the Google Play Store and the

Amazon Appstore, as well as through traditional retail channels. However, our vision for our valuable IP rights extend far beyond just gaming: our vision extends into media formats such as animation, TV, movies, eSports, and reality TV and interactive media, which we believe has tremendous potential. We have high aspirations across digital media and are poised to enter the animation and television industry with the *ARK, the Animated Series* in 2022.

**Collaborative development process between developers and management:** We continue to evolve with the industry with our deep pipeline of leading video game franchises such as *ARK: Survival Evolved*, *Atlas*, *Last Oasis*, *Dark and Light* and *Outlaws of the Old West*. Our success in game development and in keeping up with industry trends is partially attributed to our collaborative relationships with video game development studios, industry leaders, technology providers and distribution platforms. Our cooperative development process provides for a proprietary scalable model to publish multiple AAA video games based on current trends. We are proud of our collaborative relationship with our developers, as we believe it is truly unique in our industry and one of our main differentiators. We offer developers an ecosystem that aligns incentives and creates an environment for creativity to thrive. In addition to wonderful ideas for games, we value partners who share our vision and culture. After a partnership is formed, we offer developers a direct line of communication to Mr. Shi, our Founder and Chairman, who is viewed as a pioneer in the video game industry and business world. We offer developers freedom by giving them access to the wide breadth of the Snail platform and resources so they can do what they do best: create.

**Innovative use and creation of next-gen technologies and platforms:** We use innovative technology to serve our customers, allowing us to provide high-quality user experiences and services. Our proprietary video game technology includes a versatile game engine, development pipeline tools, advanced rendering technology and advanced server and network operations, although we also use currently accepted standard industry technologies. Additionally, our customizable development infrastructure provides a framework for efficiently developing all types of video game projects using advanced rendering technologies for realistic lighting, weather and atmospheric effects, for creating new types of virtual assets and for other effects that heighten artistic detail and increase player engagement. Since inception, we have been developing our proprietary engine, Flexi. Unlike mainstream commercial engines, we are developing Flexi to allow us to save on royalty costs and retain ownership of our modifications to engines. We are currently creating an AAA game fully utilizing the Flexi engine to display its incredible capabilities. Most commercial engines are designed for single session games and small number of concurrent players in a specific geo location. Our goal with Flexi, however, is to have the capability to handle a greater number of players in a particular area, which can be utilized for larger games with robust user interactions. Our micro-influencer business, *NOIZ*, strives to build an influencer marketing platform for brands to directly engage with small to-midsized influencers, through which influencers can reach millions of video game consumers and generate additional revenue at a cost advantage.

**Industry-leading financial profile combined with proven track-record of capital efficiency and growth:** We have an industry-leading financial profile, combined with a proven track-record of capital efficiency and growth. From 2019 to 2020, our net revenue grew 44.7%. Our net loss of \$(15.2) million in 2019 grew to a net income of \$29.8 million in 2020. Meanwhile, our Adjusted EBITDA grew from \$(15.1) million in 2019 to \$39.2 million in 2020. We are focused on an organic growth strategy in our already successful video gaming business, but also on leveraging the same IP across multiples vectors of digital entertainment and technology.

**Visionary management team well versed in industry and business:** We attribute much of our success to our visionary senior management and business development teams, which have a deep understanding of games and global video markets and aim to build innovative products for gamers. Our Founder and Chairman, Mr. Shi, is also the founder and Chief Executive Officer of Suzhou Snail and is a pioneer in the video game industry and the sandbox survival genre. Mr. Shi is responsible for our overall vision, which has included adapting our business model for the global markets, focusing on premium games and investing in video game development and publishing in North America and Europe. Our Chief Executive Officer, Jim Tsai, has 25 years of experience developing and publishing video games in both Asia and the United States. Our founder and other members of our management and business development teams are seasoned gamers, who lead and provide insight into gaming development from a first-hand user's perspective. We operate in an ecosystem in which our leaders employ a hands-on approach, as each developer is able to get direct contact with our founder and receive one-on-one feedback and mentorship.

## Our Growth Strategy

**Continue to grow our successful ARK: Survival Evolved franchise:** As one of the most creative and innovative companies in our industry, our primary strategy is to capitalize on our franchise and focus on delivering unique games and content, offering services that extend and enhance the experience, and connecting more players across more platforms. We believe the breadth and depth of our multi-platform, services offerings, and our use of multiple business models and distribution channels provide us with strategic advantages. We have established ourselves as a market leader and will continue to enhance our market-leading gaming franchises including *ARK: Survival Evolved*, *Atlas*, *Last Oasis*, *Dark and Light* and *Outlaws of the Old West*. We focus on publishing high-quality content, regularly updating our games after launch to encourage social interactions, adding new content and features, and improving monetization. For example, we have released five paid DLCs since the original release of *ARK: Survival Evolved* to support further growth in our *ARK* franchise.

**Continue to build a strong pipeline of new content via Snail Games USA and our independent label, Wandering Wizard:** Building on our strong established franchises and creating new franchises through compelling new content is at the core of our business. We are always seeking ways to expand our portfolio of franchises, launching new intellectual property or rolling out innovative platform for gamers to remain engaged and have a unique experience. We endeavor to reach as many consumers as possible by offering our content on multiple platforms and delivering compelling experiences across multiple business models. Currently, we have six console and PC games under development that are expected to be released in the next five years. Our independent label, Wandering Wizard, allows us to publish independent games of different graphical quality and different genres at lower acquisition cost while utilizing our proven development and distribution strategies. Titles published under Wandering Wizard include *Outlaws of the Old West* and *Expedition Agartha*. In addition to spending on advertising, we invest in the research and development of new games as a form of marketing to increase our exposure. We believe that utilizing resources in this manner allows us to better leverage our areas of developmental expertise before launching a title. Each new game serves as an opportunity to market ourselves, expose audiences to the sandbox survival genre, engage with existing players, and monetize on our platform's full breadth of opportunities.

**Continue to expand NOIZ, our micro-influencer marketing business, and use the platform to bolster our marketing initiatives and eCommerce revenue:** We are focused on reaching more players whenever and wherever they want to play. We believe that we can add value to our network by utilizing content creators and micro-influencers to connect to a world of play by offering an interactive platform for players to engage in. We created our proprietary, full-service marketing platform, *NOIZ*, where we have direct relationships with influencers and save on third-party costs. *NOIZ* helps aspiring game streamers and game companies reach a wider audience, diversify marketing spend and income streams, and build their own brands easily and professionally at a large scale. Influencers can join the platform and play for free over a three day period. *NOIZ* provides speed and payment to influencers, in addition to speed in the execution of marketing campaigns since no large scale agencies are involved. *NOIZ* benefits all of our marketing and promotional initiatives and serves as a source of eCommerce revenue. *NOIZ* is designed so that clients can choose to work on campaigns on their own or directly with our creative campaign managers in an end-to-end managed campaign process, with 24/7 support, by paying a fee. The management team at *NOIZ* is comprised of eSports and gaming industry veterans and has worked with clients such as Square Enix, Sega, Stunlock Studios, Facebook, Sansar, TikTok, Bose, Softgiving, Omaze. *NOIZ* directly contributes to our video game growth because each influencers' interaction with our games to their followers is a sales opportunity. Micro- and macro-influencers have taken advantage of *NOIZ*'s unique program, through which they receive a portion of the revenue from the video games they help sell. Through *NOIZ*, we can also collect data used to analyze new trends and self-market our products.

**Continue investing in new technologies and platforms to efficiently capitalize on emerging trends:** We provide a variety of digitally delivered products and games that are played online and on mobile platforms, such as tablets and smartphones; as such, there are various opportunities for us to grow and enhance profitability. We will continue investing in new distribution channels such as medias of streaming, animation, television and eSports as opportunities in platform distribution as well as DLCs arise to expand our reach and grow our business. We invest in the development of interactive entertainment products for new distribution channels, which incorporate a new technology or business model that enables us to compete more effectively

against our peers. For our future games, we ultimately aim to build a metaverse in which users can create their own gameplay content and interact in a virtual world with other players over a secured network. We intend to build our metaverse using our Flexi engine, which will allow for better data management and hosting of significantly more players per server. We intend to hold competitions where players can submit created content and receive rewards, with the potential of incorporation into a new map as DLC with the assistance of our development team.

**Scale our operations through international market expansion and strategic acquisitions:** In line with our growth strategy, we plan to complete acquisitions to expand our gaming offerings, obtain talent, and expand into new markets. We continue to evaluate strategic acquisition opportunities in areas such as studios, publishers, and agencies. We may also pursue joint ventures or establish subsidiaries with strategic partners as well as make investments in interactive gaming and entertainment business as part of our long-term business strategy. The global market for interactive entertainment continues to grow, and we seek to increase our presence internationally, particularly in South America, where video game demand is expected to increase as the region advances in technology. We have existing relationships and customers in South America and which we hope will continue to grow. We retain licensing rights to our intellectual properties in certain regions and intend to build on our existing licensing relationships and also continue to expand on license distribution strategies to grow our international business. As a result, we are actively exploring international strategic opportunities that fit our needs and culture. We also intend to release a Spanish version of *NOIZ*, expand publishing in South America, increase public relations and game announcements in the region, and grow our number of Spanish translators. We also seek to expand our licensing opportunities to new platforms and other geographies. We are continuing to execute on our growth initiatives where our strategy is to broaden the distribution of our licensing opportunities. We intend to continue to build on our licensing relationships and also continue to expand on distribution strategies to grow our business. Furthermore, the growth and development of electronic commerce will enable us to explore more licensing opportunities across various geographic regions.

## Our Games

**ARK: Survival Evolved:** Our flagship franchise, *ARK: Survival Evolved*, is an action-adventure survival sandbox game set in an open-world environment with a dynamic day-night cycle. Players must survive being stranded on an island filled with roaming dinosaurs and other prehistoric animals, natural hazards, and potentially hostile human players. The game, ranked #1 by market share within the sandbox survival genre, released to Early Access in June 2015 and to retail in August 2017. The game supports consoles (PS4, Xbox One, Xbox Series X/S, Nintendo Switch), PCs and mobile (Android, iOS). We developed *ARK* in partnership with Studio Wildcard, and have released five expansion packs, or DLCs.

- *Scorched Earth*. A desert map with minimum water and extreme weathers. The DLC was released on September 2016.
- *Aberration*. A radiation style expansion pack to explore the mysterious underground world. The DLC was released on December 2017.
- *Extinction*. A mechanical style expansion pack themed to fight against giant titans and save the post-apocalyptic earth. The DLC was released on November 2018.
- *Genesis 1 & 2*. A mission-based gameplay DLC with the ability to explore new worlds and mysterious stories. The DLCs were released in February 2020 and in June 2021, respectively.

**Last Oasis:** Developed in connection with our wholly owned subsidiary, Donkey Crew, *Last Oasis* is a Nomadic Survival MMO with a focus on PvP, clan warfare and social interactions. Set in the unique world where the Earth has stopped rotating, the last human survivors need to outrun the scorching Sun using giant wind walkers to avoid the ever moving cloud of magic mist. The game was released by Early Access on March 2020, and currently supports consoles (Xbox One and Xbox Series X/S) and PCs.

**Atlas:** Developed in partnership with Grapeshot Games, *Atlas* is a pirate themed sandbox survival game. The game features a massive world, using latest network technology, allowing for an infinite array of islands to explore and inhabit as the players sees fit. The game was released by Early Access on December 2018 and supports consoles (Xbox One, Xbox Series X/S) and PCs.

## Our Technology

We employ industry standard game engines for the majority of our games, which allows flexibility and accelerated game development. Our proprietary code modifies the game engines to fit the needs and features of our games as necessary, and for franchises like *ARK*, we are able to leverage that proprietary code in the development of new DLCs for existing games and development of entirely new games. We retain ownership of all code developed for our proprietary engine, Flexi, which is currently being used to develop certain games in our pipeline with the expectation of launching to external developers in the near future.

We offer an industry-leading micro-influencer platform, *NOIZ*, through which influencers can connect with brands in need. We continue to make technological enhancements to *NOIZ*, with a focus on streamlining the process to connect brands with influencers, and facilitating and simplifying the agreements that need to be executed between the two parties.

## Our Competition

The interactive entertainment market is highly competitive and evolves rapidly as new games, content and features are introduced. We compete with other interactive entertainment companies such as Activision Blizzard, Inc., Electronic Arts Inc., Take-Two Interactive, Ubisoft, Epic Games, Tencent, Zynga, Netmarble, Sony, Microsoft and Nintendo primarily for game development on consoles, PCs and mobile devices. Across the sandbox survival game genre, we primarily compete with Embracer Group, Saber Group, Enand Global 7, FunCom, Axolot Games, and Facepunch Studios. We also face competition from other independent developer studios. Important factors in the video game development and publishing industries include innovation, creative and technical talent, game quality, brand recognition, platform compatibility, pricing, accessibility to distribution channels and customer service.

Our micro-influencer platform *NOIZ* competes against other growth-stage companies in the space, such as Lurkit and Rainmaker Collective, although *NOIZ* is the only micro-influencer platform currently in the operating stage.

Our broader competitors include other providers of digital entertainment, such as film, television, social networking, streaming and music.

## Regulatory Matters

We are subject to various federal, state and international laws and regulations that affect companies conducting business on the Internet and mobile platforms, including those relating to privacy, use and protection of player and employee personal information and data (including the collection of data from minors), the Internet, behavioral tracking, mobile application, content, advertising and marketing activities (including sweepstakes, contests and giveaways) and anti-corruption. Additional laws in all of these areas are likely to be passed in the future, which could result in significant limitations on or changes to the ways in which we can collect, use, host, store or transmit the personal information and data of our customers or employees, communicate with our players and deliver products and services, which significantly increase our compliance costs. As our business expands to include new uses or collection of data that are subject to privacy or security regulations and our operations continue to expand across the globe, our compliance requirements and costs will increase and we may be subject to increased regulatory scrutiny.

For more information regarding risks relating to data privacy and security, see “Risk Factors — Risks Related to Legal or Regulatory Compliance — Changing data privacy and security laws and regulations in the jurisdictions in which we or our consumers do business could increase the cost of our operations and subject us to possible sanctions, civil lawsuits (including class action or similar representative lawsuits) and other penalties; such laws and regulations are continually evolving. Our platform and service providers’ actual or perceived failure to comply with these laws and regulations could harm our business, financial condition and results of operations.”

## Intellectual Property

Similar to other interactive entertainment companies, our business is significantly dependent on the creation, acquisition, use and protection of intellectual property. Some of this intellectual property is in the

form of software code, other technology, and trade secrets that we use to run our games. Other intellectual property includes of copyrighted audio-visual elements that consumers can see, hear, and interact with when they are playing our games. Most of the intellectual property we use is licensed to us by third-party game developers. We obtain such intellectual property rights through licenses and service agreements, and such licenses may limit our use of such intellectual property to specific uses and for specific time periods. We seek to advance and maintain our business through both a combination of licensed and owned intellectual property.

As of June 30, 2021, we owned the following trademarks related to the business: 15 registered trademarks in the United States and two registered trademark in non-U.S. jurisdictions. As of June 30, 2021, we did not have any pending trademark registration applications. As of June 30, 2021, we owned nine registered United States copyrights. As of June 30, 2021, we owned one issued U.S. design patent and one pending U.S. design patent application through one of our subsidiaries, which are scheduled to expire in 2033, assuming payment of all appropriate maintenance, renewal, annuity or other governmental fees. Additionally, we have registered domain names for websites that we use in our business, such as *snailgamesusa.com* and *playark.com*.

A majority of our revenue is derived from licensed intellectual property, such as our *ARK* franchise. We license the intellectual property underlying our *ARK* franchise from SDE, the parent company of Studio Wildcard. SDE is controlled by the spouse of Mr. Shi, our Founder and Chairman. We entered into an original exclusive software license agreement with SDE in November 2015, which has been subject to periodic amendments throughout the duration of the *ARK* franchise. We are presently in negotiations to enter into an amended and restated exclusive software license agreement with SDE. In 2020 and 2019, we paid \$24.1 million and \$5.0 million, respectively, in license costs and \$20.7 million and \$20.0 million, respectively, in royalty payments.

In addition to our primary license for the *ARK* franchise, we are also party to other licensing agreements with Suzhou Snail Digital Technology Co., our ultimate indirect parent company and an entity controlled by Mr. Shi, relating to the intellectual property for our mobile games. Under these license agreements, we receive an exclusive, sublicensable license to use, publish, distribute, market, operate and service games from third parties. The license agreements call for the developers to develop a certain number of titles for us, while we are responsible for the operation and launch of such games including the marketing, strategy, billing, and server maintenance for such games. In these agreements, payment terms will frequently include royalty payments to developers in the low to mid double-digit percentages range and will occasionally include up-front licensing payments. Under these agreements, the developer will own all of the intellectual property, and the agreements can be terminated for breach with a period to cure, for insolvency, or for our nonpayment. In 2020 and 2019, we accrued \$0.8 million and \$1.3 million, respectively, in license costs, which we record as accounts payable.

Further, our products that play on consoles and mobile platforms include technology that is owned by the platform provider and is licensed non-exclusively to us for use in the relevant product. We also license technology from providers other than console manufacturers in developing our content and services. While we may have renewal rights for some licenses, our business is dependent on our ability to continue to obtain the intellectual property rights from the owners of these rights on reasonable terms and at reasonable rates.

We are actively engaged in enforcement of our copyright, trademark, patent and trade secret rights against potential infringers of those rights along with other protective activities, including monitoring online channels for distribution of pirated copies and participating in various enforcement initiatives, education programs, and legislative activity around the world. For our PC products, we use technological protection measures to prevent piracy and the use of unauthorized copies of our products. For other platforms, the platform providers typically incorporate technological protections and other security measures in their platforms to prevent the use of unlicensed products on those platforms.

For more information regarding risks relating to data privacy and security, see “Risk Factors — Risks Related to Intellectual Property.”

### **Facilities**

Our principal executive offices, which we own, are located at 12049 Jefferson Boulevard, Culver City, California 90230. Our Term Loan is secured by our principal executive offices. We also lease additional



facilities to support our operations. We believe our existing facilities are sufficient for our current needs. We may add new facilities and expand our existing facilities as we add employees and expand into new locations. We believe suitable additional space will be available as needed to accommodate our needs.

### Human Capital Resources

As of June 30, 2021, we had 59 full-time employees worldwide, of whom approximately 73% are based in North America and approximately 27% are based in Europe, the Middle East and Africa (“EMEA”) region. We have approximately 42% of employees dedicated to technology and content development, 14% to marketing and 44% to general administration. Through our partnerships, we also have access to 653 additional team members, approximately 71% are dedicated to technology and content development. We do not have any part-time employees nor do we have any unions or collective bargaining agreements with any of our employees. We work to identify, attract and retain employees who are aligned with and will help us progress towards our mission, and we seek to provide competitive cash and equity compensation.

### Legal Proceedings

From time to time, we are subject to various claims, complaints and legal actions in the normal course of business. In addition, we may receive notifications alleging infringement of patent or other intellectual property rights.

On December 1, 2021, we and Studio Wildcard sent a notice of claimed infringement (the “DCMA Takedown Notice”) to Valve Corporation, which operates the Steam platform, pursuant to the Digital Millennium Copyright Act (“DCMA”). The DCMA Takedown Notice concerns a videogame titled *Myth of Empires*, which was developed by Suzhou Angela Online Game Technology Co., Ltd. (“Angela Game”) and published by Imperium Interactive Entertainment Limited (“Imperium”). The DCMA Takedown Notice alleges that Angela Game and Imperium misappropriated the copyrighted source code of *ARK: Survival Evolved* and used it to develop the game *Myth of Empires*. The DCMA Takedown Notice requested that Steam cease distributing *Myth of Empires* and remove the game from the Steam platform. Steam complied with the DCMA Takedown Notice and removed *Myth of Empires* from its platform. The DCMA Takedown Notice was also sent to Tencent Cloud LLC (“Tencent”), which hosts the United States servers for users who downloaded the game before it was removed from Steam, but Tencent has not complied with the DCMA Takedown Notice.

On December 9, 2021, Angela Game and Imperium filed a complaint against us and Studio Wildcard in the United States District Court for the Central District of California in response to the DCMA Takedown Notice. The lawsuit seeks a declaratory judgment on non-liability for copyright infringement and non-liability for trade secret misappropriation, as well as unspecified damages for alleged misrepresentations in the DCMA Takedown Notice. Angela Game and Imperium also filed an application for a temporary restraining order asking the court to order us and Studio Wildcard to rescind the DCMA Takedown Notice so that Steam could once again reinstate *Myth of Empires* for download. On December 20, 2021, we and Studio Wildcard filed an answer to the complaint, which included counterclaims against Angela Game and Imperium and a third-party complaint against Tencent seeking unspecified damages resulting from the alleged copyright infringement and misappropriation of trade secrets in connection with the *ARK: Survival Evolved* source code. On December 23, 2021 the court denied the application for a temporary restraining order, issued an order to show cause as to why a preliminary injunction should not be issued and set a hearing for January 31, 2022.

At this time, we are unable to quantify the magnitude of the potential loss should the plaintiffs’ lawsuit succeed.

## MANAGEMENT

### Executive Officers and Directors

The following table sets forth information regarding our executive officers and directors as of the date of this prospectus.

Name	Age	Position
Hai Shi	48	Founder and Chairman of the Board of Directors
Jim S. Tsai	62	Chief Executive Officer
Heidy Chow	43	Chief Financial Officer
Peter Kang	40	Chief Operating Officer

- 
- (1) Member of Audit Committee.
  - (2) Member of Compensation Committee.
  - (3) Member of the Nominating and Corporate Governance Committee.

### Executive Officers and Directors

**Hai Shi** has been a member of our Board of Directors since our incorporation and served as our Chief Executive Officer from our inception to November 2021. Prior to forming Snail Games USA Inc., Mr. Shi founded and has served as chairman and chief executive officer of Suzhou Snail Digital Technology Co., Ltd. since April 2001. Mr. Shi has been an active participant of the gaming industry for more than twenty years. Mr. Shi holds a Bachelor of Fine Arts from Nanjing Normal University. We believe Mr. Shi's executive management and gaming experience make him well qualified to serve as our chairman.

**Jim S. Tsai** has served as our Chief Executive Officer since November 2021. He previously served as our Chief Operating Officer from October 2020 to November 2021. From October 2015 to September 2020, Mr. Tsai served as chief executive officer of SDE Inc., a video game developer company. Prior to that, Mr. Tsai served as Vice President of Snail Games USA Inc. from April 2014 to September 2015. Mr. Tsai holds a bachelor of fine arts from Chinese Culture University.

**Heidy Chow** has served as our Chief Financial Officer since September 2020. Prior to joining the Company, Ms. Chow was a partner with the Pun Group, LLP from August 2015 to September 2020. From July 2014 to June 2015, Ms. Chow served as a manager of Ernst and Young, a certified public accounting and advisory firm. Since December 2019, Ms. Chow has also served as chair of the audit committee for Franklin Wireless Corp. Ms. Chow holds a Bachelor of Science degree from California Polytechnic University of Pomona. Ms. Chow is currently a licensed CPA from the California Board of Accountancy.

**Peter Kang** has served as our Chief Operating Officer since December 2021, a role he previously held from December 2012 to October 2020. Mr. Kang served as our Vice President of Business Development from October 2020 to November 2021, and also served as director of our business development unit between 2015 and 2020 and as a producer of our game operations team between 2012 and 2015. From 2018 to 2021, Mr. Kang acted as a representative of the Managing Director for Eminence Corp. DBA Noiz.gg. Mr. Kang holds a Bachelor of Science in Microbiology, Immunology and Molecular Genetics from the University of California at Los Angeles.

### Corporate Governance

#### *Controlled Company Exemption*

Upon completion of this offering, Mr. Shi will continue to control a majority of the voting power of our outstanding common stock. As a result, we will be a "controlled company" under Nasdaq corporate governance standards. As a controlled company, exemptions under the standards will free us from the obligation to comply with certain corporate governance requirements, including the requirements:

- that we have a compensation committee or nominating and corporate governance committee;



- that a majority of our board of directors consist of “independent directors,” as defined under the rules of Nasdaq;
- that any corporate governance and nominating committee or compensation committee be composed entirely of independent directors with a written charter addressing the committee’s purpose and responsibilities; and
- that we have an annual performance evaluation of the nominating and governance committees and compensation committee.

These exemptions do not modify the independence requirements for our Audit Committee, and we intend to comply with the requirements of Rule 10A-3 of the Exchange Act, and the rules of Nasdaq within the applicable time frame.

#### ***Board of Directors***

Upon the consummation of this offering, our board of directors will be composed of \_\_\_\_\_ members. Our certificate of incorporation will provide that our board of directors will be divided into three classes of directors, with the classes to be as nearly equal in number as possible, and with the directors serving three-year terms. For further information, see the section entitled “Description of Capital Stock — Anti-Takeover Provisions — Certificate of Incorporation and Bylaws — Classified Board.”

#### ***Director Independence***

In connection with this offering, our board of directors has undertaken a review of the independence of each director and considered whether each director has a material relationship with us that could compromise his or her ability to exercise independent judgment in carrying out his or her responsibilities. As a result of this review, our board of directors determined that each of \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ is an “independent director” as defined under the applicable rules and regulations of the SEC and the listing requirements and rules of Nasdaq, representing \_\_\_\_\_ % of our \_\_\_\_\_ directors. In making these determinations, our board of directors reviewed information provided by the directors and us with regard to each director’s business and personal activities and current and prior relationships as they may relate to us and our management, including the beneficial ownership of our capital stock by each non-employee director and any transactions involving them described in the section titled “Certain Relationships and Related Party Transactions.”

#### ***Board Committees***

Our board of directors has an audit committee, a compensation committee and a nominating and corporate governance committee, each of which has the composition and the responsibilities described below. In addition, from time to time, special committees may be established under the direction of our board of directors when necessary to address specific issues.

Each of the audit committee, the compensation committee and the nominating and corporate governance committee will operate under a written charter that will be approved by our board of directors in connection with this offering. A copy of each of the audit committee, compensation committee and nominating and corporate governance committee charters will be available in the investors section of our corporate website substantially concurrently with the closing of this offering. References to our corporate website in this prospectus does not include or incorporate by reference the information on our corporate website into this prospectus

#### ***Audit Committee***

Our audit committee oversees our corporate accounting and financial reporting process and assists our board of directors in monitoring our financial systems. Our audit committee will be responsible for, among other things:

- appointing, compensating, retaining, evaluating, terminating and overseeing our independent registered public accounting firm;

- discussing with our independent registered public accounting firm their independence from management;
- reviewing with our independent registered public accounting firm the scope and results of their audit;
- approving all audit and permissible non-audit services to be performed by our independent registered public accounting firm;
- overseeing the financial reporting process and discussing with management and our independent registered public accounting firm the interim and annual financial statements that we file with the SEC;
- reviewing and monitoring our accounting principles, accounting policies, financial and accounting controls and compliance with legal and regulatory requirements; and
- establishing procedures for the confidential anonymous submission of concerns regarding questionable accounting, internal controls or auditing matters.

Our audit committee consists of \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, with \_\_\_\_\_ serving as chair. Our board of directors has affirmatively determined that \_\_\_\_\_ and \_\_\_\_\_ each meet the requirements for independence under current Nasdaq listing standards and SEC rules and regulations. Under applicable Nasdaq listing standards and SEC rules and regulations, we are permitted to phase in our compliance with the audit committee independence requirements as follows: (1) one independent member at the time of listing, (2) a majority of independent members within 90 days of listing and (3) all independent members within one year of listing. Within one year of our listing on Nasdaq, we intend to ensure that all members of our audit committee will meet the applicable independence requirements under Nasdaq listing rules and Rule 10A-3 of the Exchange Act.

In addition, our board of directors has determined that each member of our audit committee is financially literate, and that each of \_\_\_\_\_ and \_\_\_\_\_ is an “audit committee financial expert” as defined in Item 407(d) of Regulation S-K promulgated under the Securities Act.

#### *Compensation Committee*

Our compensation committee oversees our compensation policies, plans and benefits programs. Our compensation committee will be responsible for, among other things:

- reviewing and approving corporate goals and objectives relevant to the compensation of our Chief Executive Officer, evaluating our Chief Executive Officer’s performance in light of these goals and objectives and setting compensation;
- reviewing and setting or making recommendations to our board of directors regarding the compensation of our other executive officers;
- reviewing and approving or making recommendations to our board of directors regarding our incentive compensation and equity-based plans and arrangements; and
- appointing and overseeing any compensation consultants.

Our compensation committee consists of \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, with \_\_\_\_\_ serving as chair. Our board of directors has affirmatively determined that each of \_\_\_\_\_ and \_\_\_\_\_ meets the requirements for independence under the current Nasdaq listing standards (including Nasdaq’s controlled-company exemption) and that each is a non-employee director, as defined in Section 16b-3 of the Exchange Act. Under applicable Nasdaq listing standards, we are permitted to phase in our compliance with the compensation committee independence as follows: (1) one independent member at the time of listing, (2) a majority of independent members within 90 days of listing and (3) all independent members within one year of listing.

#### *Nominating and Corporate Governance Committee*

Our nominating and corporate governance committee oversees and assists our board of directors in reviewing and recommending nominees for election as directors. Our nominating and corporate governance committee will be responsible for, among other things:

- identifying individuals qualified to become members of our board of directors, consistent with criteria approved by our board of directors;
- recommending to our board of directors the nominees for election to our board of directors at annual meetings of our stockholders;
- evaluating the overall effectiveness of our board of directors; and
- developing and recommending to our board of directors a set of corporate governance guidelines and principles.

Our nominating and corporate governance committee consists of \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, with \_\_\_\_\_ serving as chair. The composition of our nominating and corporate governance committee will meet the requirements for independence under current rules and regulations of the SEC and Nasdaq, including Nasdaq's controlled company exemption.

#### ***Role of the Board in Risk Oversight***

Our board of directors has an active role, as a whole and also at the committee level, in overseeing the management of our risks. Our board of directors is responsible for general oversight of risks and regular review of information regarding our risks, including credit risks, liquidity risks and operational risks. The compensation committee will be responsible for overseeing the management of risks relating to our executive compensation plans and arrangements. The audit committee is responsible for overseeing the management of risks relating to accounting matters and financial reporting. The audit committee is also responsible for overseeing the management of risks associated with the independence of our board of directors and potential conflicts of interest. Although each committee is responsible for evaluating certain risks and overseeing the management of such risks, the entire board of directors is regularly informed through discussions from committee members about such risks. Our board of directors believes its administration of its risk oversight function has not negatively affected our board of directors' leadership structure.

#### ***Code of Business Conduct and Ethics***

Our board of directors will adopt code of business conduct and ethics that applies to our directors, officers and employees, including our principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions prior to the completion of this offering. Substantially concurrently with the closing of this offering, a current copy of the code will be posted on the investor section of our corporate website.

#### ***Compensation Committee Interlocks and Insider Participation***

None of the members of our compensation committee is an officer or one of our employees. 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 or, in the absence of any such committee, the entire board of directors) of any entity that has one or more executive officers serving on our board of directors or compensation committee.

## COMPENSATION DISCUSSION AND ANALYSIS

We are an emerging growth company as defined in the JOBS Act. As an emerging growth company, we have reduced disclosure obligations regarding executive compensation compared to companies that are not emerging growth companies. Under the JOBS Act, we will remain an emerging growth company for the first five fiscal years after we complete our initial public offering, unless (a) we have total annual gross revenues of \$1.07 billion or more, (b) we issue more than \$1 billion in non-convertible debt over a three-year period, or (c) we are deemed to be a “large accelerated filer” under the Exchange Act.

### Summary Compensation Table

The following table sets forth information concerning the compensation paid to our principal executive officer, our two other most highly compensated executive officers during our fiscal year ended December 31, 2020 and our former chief financial officer (collectively referred to as our “named executive officers,” or “NEOs”).

**2020 SUMMARY COMPENSATION TABLE**

Name and Principal Position <sup>(1)</sup>	Year	Salary (\$)	Bonus (\$)	Stock Awards (\$)	Option Awards (\$)	Non-Equity Incentive Plan Compensation (\$)	Nonqualified Deferred Compensation Earnings (\$)	All Other Compensation (\$) <sup>(2)</sup>	Total (\$)
Hai Shi <i>Founder, Chairman</i>	2020	353,538	—	—	—	—	—	21,613	375,151
Jim Tsai, <i>Chief Executive Officer</i>	2020	—	—	—	—	—	—	—	—
Heidy K. Chow <i>Chief Financial Officer</i>	2020	93,535	—	—	—	—	—	588	94,123
Peter Kang <i>Chief Operating Officer</i>	2020	210,961	—	—	—	—	—	21,613	232,574
Simon Shi <i>Former Chief Financial Officer</i>	2020	181,857	—	—	—	—	—	78,650	260,507

(1)

- Mr. Hai Shi stepped down as Chief Executive Officer on November 1, 2021. He remains our Chairman.
- Mr. Tsai became our Chief Executive Officer as of November 1, 2021.
- Ms. Chow began her employment with us in September 2020.
- Prior to October 2020, Mr. Kang was our Chief Operating Officer. In October 2020, he became the Vice President of Business Development. Mr. Kang became our Chief Operating Officer as of December 1, 2021.
- Simon Shi terminated his employment with us in July 2020.

(2) Represents health care benefits paid for by the Company and severance payments of \$75,000 paid to Mr. Simon Shi in connection with his termination of employment.

### Narrative to the Summary Compensation Table

In 2020, the primary element of compensation for our NEOs was base salary. NEOs are also eligible to receive annual bonuses at the discretion of the Company’s board of directors. No bonuses were paid to the named executive officers for 2020. The NEOs also participate in employee benefit plans and programs that we offer to our other full-time employees on the same basis, including, starting in 2021, a 401(k) plan.

### Employment Arrangements

We have entered into employment letters with Mr. Tsai and Mr. Kang, as well as an offer letter with Ms. Chow and a separation agreement with Mr. Simon Shi, the terms of each of which are summarized below.

On November 1, 2021, we entered into an amended employment letter with Mr. Tsai, our Chief Executive Officer as of November 1, 2021, under which he is employed at-will. The amended employment letter provides for a base salary of \$660,000.

On December 1, 2021, we entered into an amended employment letter with Mr. Kang, our Chief Operating Officer as of December 1, 2021, under which he is employed at-will. The amended employment letter provides for a base salary of \$300,000.

On August 18, 2020, we entered into an offer letter with Ms. Chow, our Chief Financial Officer, under which she is employed at-will. Ms. Chow's offer letter provides for a base salary of \$380,000.

Mr. Tsai, Mr. Kang and Ms. Chow are eligible to participate in our stock option plans (once established). Their respective annual bonuses are to be determined by our board of directors, and they are each eligible to participate in our benefit plans. Mr. Tsai and Ms. Chow have agreed not to compete with us during the term of their employment, and to not solicit any of our customers or employees during a two-year restricted period following termination of employment.

#### ***Separation Agreement with Simon Shi***

On July 27, 2020, we entered into a separation agreement with Simon Shi, our former Chief Financial Officer. (the "Shi Agreement"). Mr. Simon Shi's separation agreement provides for a lump-sum cash separation payment of \$75,000, which has been made, in exchange for a general release of claims against us and our affiliates. In addition to his previously executed employee confidentiality and intellectual property agreement, Mr. Simon Shi agreed to confidentiality and non-disparagement covenants related to his separation.

#### ***Restrictive Covenants***

All employees, including the NEOs, are subject to customary confidentiality obligations and intellectual property protection covenants.

#### **Other Elements of Compensation**

##### ***Retirement Savings and Health and Welfare Benefits***

In 2021, we adopted a 401(k) plan for our employees (including our named executive officers) who satisfy certain eligibility requirements. Our NEOs are eligible to participate in the 401(k) plan on the same terms as other full-time employees. They receive a matching contribution equal to 50% of the participant's own contribution, up to 3% of the participant's eligible compensation.

All of our full-time employees, including our NEOs, are eligible to participate in a broad array of customary health and welfare plans.

##### ***Equity Compensation***

We have not granted any equity compensation and therefore our NEOs did not have any outstanding equity awards at 2020 fiscal year end.

In connection with this offering, we intend to adopt an equity incentive plan. The purpose of the equity incentive plan will be to motivate and reward performance of our directors, executives, other employees and consultants and to further the best interests of us and our stockholders. We will include details of the material terms and conditions of the equity incentive plan in a future filing.

#### **2020 Director Compensation**

Mr. Shi did not receive any additional compensation for his service in his capacity as a director in the year ended December 31, 2020. In addition, we have not granted any equity compensation and therefore our non-employee directors did not have any outstanding equity awards at 2020 fiscal year end. Following the closing of this offering, we intend to implement a new director compensation program, the terms of which have not yet been determined.

## PRINCIPAL STOCKHOLDERS

The following table and accompanying footnotes presents information relating to the beneficial ownership of our Class A and Class B common stock (1) immediately prior to the completion of this offering and (2) following the sale of Class A common stock in this offering, assuming no exercise of the underwriters' option to purchase additional shares:

- each person, or group of affiliated persons, known by us to own beneficially 5% or more of our outstanding shares;
- each of our directors and executive officers that will be in place as of the consummation of this offering, individually; and
- all directors and executive officers as a group.

The number of shares of common stock beneficially owned by each entity, person, executive officer or director is determined in accordance with the rules of the SEC, and the information is not necessarily indicative of beneficial ownership for any other purpose. Under such rules, beneficial ownership includes any shares over which the individual has sole or shared voting power or investment power as well as any shares that the individual has the right to acquire within 60 days through the exercise of any option, warrant or other right. Except as otherwise indicated, and subject to applicable community property laws, we believe that each stockholder identified in the table below possesses sole voting and investment power over all the Class A common stock or Class B common stock shown as beneficially owned by the stockholder in the table.

The percentages of beneficial ownership in the table below are calculated on the basis of the following numbers of shares outstanding:

- immediately prior to the completion of this offering:                      shares of Class A common stock and                      shares of Class B common stock; and
- following the sale of Class A common stock in this offering, assuming no exercise of the underwriters' option to purchase additional shares:                      shares of Class A common stock and                      shares of Class B common stock.

Unless otherwise indicated below, the address for each beneficial owner is c/o Snail, Inc., 12049 Jefferson Boulevard, Culver City, California 90230.

Stockholders	Shares of Class A Common Stock Beneficially Owned Prior to Offering				% of Total Voting Power Before Offering	Shares of Class A Common Stock Beneficially Owned After Offering <sup>(1)</sup>				% of Total Voting Power After Offering
	Class A		Class B			Class A		Class B		
	Shares	%	Shares	%		Shares	%	Shares	%	
<b>5% Stockholders</b>										
		%	%	%		%	%	%	%	%
<b>Directors and Named Executive Officers</b>										
Hai Shi		%	%	%		%	%	%	%	%
Jim S. Tsai		%	%	%		%	%	%	%	%
Heidy Chow		%	%	%		%	%	%	%	%
Peter Kang		%	%	%		%	%	%	%	%
<b>Total</b>		%	%	%		%	%	%	%	%

(1) Percentage of total voting power represents voting power with respect to all of our Class A and Class B common stock, as a single class. Holders of our Class A common stock are entitled to one vote per share, whereas holders of our Class B common stock are entitled to                      votes per share. For more information about the voting rights of our Class common stock and Class B common stock, see "Description of Capital Stock."

## CERTAIN RELATIONSHIPS AND RELATED PARTY TRANSACTIONS

In addition to the equity and other compensation, termination, change in control and other arrangements discussed in the section titled “Compensation Discussion and Analysis,” the following is a description of each transaction since January 1, 2018 and each currently proposed transaction which:

- we have been or are to be a participant;
- the amount involved exceeded or will exceed \$120,000; and
- any of our directors, executive officers or, to our knowledge, beneficial owners of more than 5% of our capital stock or any member of the immediate family of any of the foregoing persons had or will have a direct or indirect material interest.

### **Loans to Related Parties**

Snail Games USA is party to a line of credit note with Mr. Shi, our Founder and Chairman, which provides for loans to Mr. Shi up to a maximum aggregate principal amount of \$100.0 million (the “Shi Loan”). Interest accrues on outstanding amounts at a rate of 2.00% per year, and all outstanding amounts are due and payable on demand. As of December 31, 2020, outstanding borrowings (including interest receivable) under the line of credit amounted to \$62.2 million. Subsequent to December 31, 2020 and through September 30, 2021, borrowings under the line of credit increased by an additional \$24.2 million. Snail Games USA intends to distribute the Shi Loan to Snail Games USA’s corporate parent prior to the Transactions, which will assume the loan as creditor. As a result of this distribution, the Shi Loan will no longer be reflected within the Company’s balance sheet.

### **Loans from Related Parties**

We presently have a loan with an aggregate principal value of \$0.4 million due to Suzhou Snail Digital Technology Co., our current ultimate indirect parent company and an entity controlled by Mr. Shi, and a subsidiary of Suzhou Snail Digital Technology Co. Interest on the loan accrues at a rate of 2.00% per year, and all outstanding amounts are due and payable in November 2021. As of December 31, 2020 and 2019, the total loan payable to the related party amounted to \$0.4 million and \$0.4 million, respectively, and total unpaid interest amounted to \$0.5 and \$0.5 million, respectively. During 2020 and 2019, we paid \$0 and \$7.0 million, respectively, as principal repayments of the loan.

### **Consulting Agreements**

Between January 2017 and September 2020, and prior to his appointment as Chief Operating Officer, Jim Tsai and the company were party to a consulting agreement pursuant to which Mr. Tsai provided consulting services to the company in exchange for \$22,500 per month. The consulting services rendered by Mr. Tsai consisted of consultations with management of the company as needed during the consulting period. Such consultations with management were with respect to business growth and development, financial matters, and general business consultation. The consulting agreement with Mr. Tsai was terminated upon his appointment as Chief Operating Officer. See “Compensation Discussion and Analysis” for additional information.

### **License Agreements**

We have entered into license agreements relating to the intellectual property rights of certain of the games it publishes, including those under its *ARK* franchise. For additional information, please see “Business — Intellectual Property.”

### **Director and Officer Indemnification and Insurance**

We plan to enter into indemnification agreements with each of our directors and executive officers and have purchased directors’ and officers’ liability insurance. See “Description of Capital Stock — Limitations on Liability and Indemnification Matters.”

**Related Person Transaction Policy**

Our board of directors will adopt a written related person transaction policy setting forth the policies and procedures for the review and approval or ratification of related person transactions. This policy will cover, with certain exceptions set forth in Item 404 of Regulation S-K under the Securities Act, any transaction, arrangement or relationship, or any series of similar transactions, arrangements or relationships, in which we were or are to be a participant, where the amount involved exceeds \$120,000 in any fiscal year and a related person had, has or will have a direct or indirect material interest, including without limitation, purchases of goods or services by or from the related person or entities in which the related person has a material interest, indebtedness, guarantees of indebtedness and employment by us of a related person. In reviewing and approving any such transactions, our audit committee will be tasked to consider all relevant facts and circumstances, including, but not limited to, whether the transaction is on terms comparable to those that could be obtained in an arm's length transaction and the extent of the related person's interest in the transaction.



## DESCRIPTION OF CAPITAL STOCK

The following description of our capital stock and certain provisions of our certificate of incorporation and bylaws are summaries and are qualified by reference to the certificate of incorporation and the bylaws that will be in effect upon the closing of this offering. Copies of these documents will be filed with the SEC as exhibits to our registration statement, of which this prospectus forms a part. The descriptions of our common stock and preferred stock reflect changes to our capital structure that will occur upon the closing of this offering.

### General

Upon the closing of this offering, our authorized capital stock will consist of \_\_\_\_\_ shares, all with a par value of \$ \_\_\_\_\_ per share, of which:

- \_\_\_\_\_ shares shall be designated as Class A common stock;
- \_\_\_\_\_ shares shall be designated as Class B common stock; and
- \_\_\_\_\_ shares shall be designated as preferred stock.

### Common stock

As of \_\_\_\_\_, \_\_\_\_\_, after giving effect to the Transactions, we had outstanding \_\_\_\_\_ shares of Class A common stock outstanding held by \_\_\_\_\_ stockholders of record and \_\_\_\_\_ shares of Class B common stock outstanding held by \_\_\_\_\_ stockholders of record. An election of directors by our stockholders shall be determined by a plurality of the votes cast by the stockholders entitled to vote on the election. Holders of common stock are entitled to receive proportionately any dividends as may be declared by our board of directors, subject to any preferential dividend rights of any series of preferred stock that we may designate and issue in the future.

#### *Class A Common Stock*

*Voting rights.* The holders of our Class A common stock are entitled to one vote per share on all matters to be voted upon by the stockholders.

*Dividend rights.* Subject to preferences that may be applicable to any outstanding preferred stock, the holders of our Class A common stock are entitled to receive ratably such dividends, if any, as may be declared from time to time by the board of directors out of funds legally available therefor. See “Dividend Policy.”

*Rights upon liquidation.* In the event of liquidation, dissolution or winding up of \_\_\_\_\_, the holders of our Class A common stock are entitled to share ratably in all assets remaining after payment of liabilities, subject to prior distribution rights of preferred stock, if any, then outstanding.

*Other rights.* The holders of our Class A common stock have no preemptive or conversion rights or other subscription rights. There are no redemption or sinking fund provisions applicable to the common stock.

#### *Class B Common Stock*

*Voting rights.* The holders of our Class B common stock are entitled to \_\_\_\_\_ votes per share on all matters to be voted upon by the stockholders.

*Dividend rights.* Subject to preferences that may be applicable to any outstanding preferred stock, the holders of our Class B common stock are entitled to receive ratably such dividends, if any, as may be declared from time to time by the board of directors out of funds legally available therefor. See “Dividend Policy.”

*Rights upon liquidation.* In the event of liquidation, dissolution or winding up of the company, the holders of our Class B common stock are entitled to share ratably in all assets remaining after payment of liabilities, subject to prior distribution rights of preferred stock, if any, then outstanding.

*Conversion of Class B Common Stock.* Each share of Class B common stock is convertible at any time at the option of the holder into one share of Class A common stock. Following the completion of this offering, shares of Class B common stock will automatically convert into shares of Class A common stock upon sale or transfer except for certain permitted transfers described in our certificate of incorporation, including transfers effected for estate planning or other transfers among our founders, their family members and certain of their related entities. In addition, each share of Class B common stock held by a stockholder who is a natural person, or held by permitted transferees or permitted entities of such natural person (each as described in our certificate of incorporation) will automatically convert into shares of Class A common stock months following the death or permanent and total disability of such natural person, or such later date not to exceed a total period of months after such death or permanent and total disability as may be approved by a majority of our independent directors.

Each outstanding share of Class B common stock will convert automatically into one share of Class A common stock upon the earliest of (i) the date and time specified by the affirmative vote of the holders of at least % of the then-outstanding shares of Class B common stock, voting separately as a class, (ii) the date fixed by our board of directors that is no less than days and no more than days following the date on which the number of then-outstanding shares of Class B common stock represents less than % of the aggregate number of shares of Class A common stock and Class B common stock then outstanding or (iii) the date that is years from the completion of this offering.

*Other rights.* The holders of our common stock have no preemptive or conversion rights or other subscription rights. There are no redemption or sinking fund provisions applicable to the common stock.

### **Preferred Stock**

As of , after giving effect to the Transactions, there were no shares of preferred stock outstanding.

Under the terms of our certificate of incorporation, our board of directors will be authorized to direct us to issue shares of preferred stock in one or more series without stockholder approval. Our board of directors has the discretion to determine the rights, preferences, privileges and restrictions, including voting rights, dividend rights, conversion rights, redemption privileges and liquidation preferences, of each series of preferred stock.

The purpose of authorizing our board of directors to issue preferred stock and determine its rights and preferences is to eliminate delays associated with a stockholder vote on specific issuances. The issuance of preferred stock, while providing flexibility in connection with possible acquisitions, future financings and other corporate purposes, could have the effect of making it more difficult for a third-party to acquire, or could discourage a third-party from seeking to acquire, a majority of our outstanding voting stock. Upon the closing of this offering, there will be no shares of preferred stock outstanding, and we have no present plans to issue any shares of preferred stock.

### **Anti-Takeover Provisions**

#### *Certificate of Incorporation and Bylaws*

##### *Voting Matters; Requirements for Advanced Notification*

Because our stockholders do not have cumulative voting rights, our stockholders holding a majority of the voting power of our shares of common stock outstanding will be able to elect all of our directors. Our certificate of incorporation and bylaws will provide that from and after the time the company ceases to be a “controlled company” under the rules of Nasdaq, all stockholder actions must be effected at a duly called meeting of stockholders and not by consent in writing. Further, a special meeting of stockholders may be called only by a majority of our board of directors, the chair of our board of directors, our chief executive officer or, so long as the company qualifies as a “controlled company,” by the affirmative vote of at least fifty percent (50%) of the voting power of all of the then outstanding shares of voting stock, voting as a single class. Our certificate of incorporation and our bylaws prohibit the conduct of any business at a special meeting other than as specified in the notice for such meeting. In addition, any stockholder who wishes to

bring business before an annual meeting or nominate directors must comply with the advance notice requirements set forth in the bylaws.

*Approval for Amendment of Certificate of Incorporation and Bylaws*

Our certificate of incorporation will further provide that from and after the time the company ceases to be a “controlled company” under the rules of Nasdaq, the affirmative vote of holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then outstanding shares of voting stock, voting as a single class, will be required to amend certain provisions of our certificate of incorporation, including provisions relating to the size of the board, removal of directors, special meetings, actions by written consent and cumulative voting, and the affirmative vote of holders of at least sixty-six and two-thirds percent (66-2/3%) of the voting power of all of the then outstanding shares of voting stock, voting as a single class, will be required to amend or repeal our bylaws, although our bylaws may be amended by a simple majority vote of our board of directors. For so long as the company remains a “controlled company” under the rules of Nasdaq, the affirmative vote of holders of at least fifty percent (50%) of the voting power of all of the then outstanding shares of voting stock, voting as a single class, will be required to amend the provisions of our certificate of incorporation and our bylaws.

*Classified Board*

Our certificate of incorporation will further provide that our board of directors will be divided into three classes, Class I, Class II and Class III, with each class serving staggered terms, and will give our board of directors the exclusive right to expand the size of our board of directors and to elect directors to fill a vacancy created by the expansion of the board of directors or the resignation, death or removal of a director.

The foregoing provisions will make it more difficult for our existing stockholders to replace our board of directors as well as for another party to obtain control of our Company by replacing our board of directors. Since our board of directors has the power to retain and discharge our officers, these provisions could also make it more difficult for existing stockholders or another party to effect a change in management. In addition, the authorization of undesignated preferred stock makes it possible for our board of directors to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to change the control of our Company.

These provisions are intended to enhance the likelihood of continued 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 our Company. These provisions are also designed to reduce our vulnerability to an unsolicited acquisition proposal and to discourage certain tactics that may be used in proxy fights. However, these provisions could have the effect of discouraging others from making tender offers for our shares and may have the effect of deterring hostile takeovers or delaying changes in control of our Company or our management. As a consequence, these provisions also may inhibit fluctuations in the market price of our stock that could result from actual or rumored takeover attempts.

*Exclusive Venue*

Our certificate of incorporation will provide that, unless we consent in writing to the selection of an alternative forum, the Court of Chancery of the State of Delaware (or, if such court does not have jurisdiction, the federal district court for the District of Delaware or other state courts of the State of Delaware) shall, to the fullest extent permitted by law, be the sole and exclusive forum for (i) any derivative action, suit or proceeding brought on our behalf, (ii) any action, suit or proceeding asserting a claim of breach of a fiduciary duty owed by any of our directors, officers or stockholders to us or our stockholders, (iii) any action, suit or proceeding arising pursuant to any provision of the Delaware General Corporation Law (the “DGCL”) or the bylaws or the certificate of incorporation (as it may be amended and/or restated from time to time) or (iv) any action, suit or proceeding asserting a claim against us governed by the internal affairs doctrine, in each case subject to said Court of Chancery having personal jurisdiction over the indispensable parties named as defendants therein. Subject to the foregoing, the federal district courts of the United States of America shall be the exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act; however, there is uncertainty as to whether a court would enforce such provision, and investors cannot waive compliance with federal securities laws and the rules and

regulations thereunder. In addition, the foregoing provisions will not apply to suits brought to enforce any liability or duty created by the Exchange Act or any other claim for which the federal courts of the United States have exclusive jurisdiction. Although we believe these provisions benefit us by providing increased consistency in the application of Delaware law in the types of lawsuits to which it applies, these provisions may have the effect of discouraging lawsuits against our directors and officers.

***Section 203 of the Delaware General Corporation Law***

We are subject to Section 203 of the DGCL, which prohibits a Delaware corporation from engaging in any business combination with any interested stockholder for a period of three years after the date that such stockholder became an interested stockholder, with the following exceptions:

- before such date, our board of directors approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder;
- upon closing of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock of the corporation outstanding at the time the transaction began, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (1) persons who are directors and also officers and (2) 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
- on or after such date, the business combination is approved by our 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 66 2/3% of the outstanding voting stock that is not owned by the interested stockholder.

In general, Section 203 defines business combination to include the following:

- any merger or consolidation involving the corporation and the interested stockholder;
- any sale, transfer, pledge or other disposition of 10% or more of the assets of the corporation involving the interested stockholder;
- subject to certain exceptions, any transaction that results in the issuance or transfer by the corporation of any stock of the corporation to the interested stockholder;
- any transaction involving the corporation that has the effect of increasing the proportionate share of the stock or any class or series of the corporation beneficially owned by the interested stockholder; or
- the receipt by the interested stockholder of the benefit of any loss, advances, guarantees, pledges or other financial benefits by or through the corporation.

In general, Section 203 defines an “interested stockholder” as an entity or person who, together with the person’s affiliates and associates, beneficially owns, or within three years prior to the time of determination of interested stockholder status did own, 15% or more of the outstanding voting stock of the corporation.

**Limitations on Liability and Indemnification Matters**

Our certificate of incorporation and bylaws, which will become effective immediately prior to the closing of this offering, will provide that we will indemnify each of our directors and executive officers to the fullest extent permitted by the DGCL. We have entered into indemnification agreements with each of our directors and executive officers that may, in some cases, be broader than the specific indemnification provisions contained under Delaware law. Further, pursuant to our indemnification agreements and directors’ and officers’ liability insurance, our directors and executive officers are indemnified and insured against the cost of defense, settlement or payment of a judgment under certain circumstances. In addition, as permitted by Delaware law, our certificate of incorporation will include provisions that eliminate the personal liability of our directors for monetary damages resulting from breaches of certain fiduciary duties as a

director. The effect of this provision is to restrict our rights and the rights of our stockholders in derivative suits to recover monetary damages against a director for breach of fiduciary duties as a director.

These provisions may be held not to be enforceable for violations of the federal securities laws of the United States.

**Listing**

We intend to apply to list our Class A common stock on Nasdaq under the symbol “ .”

**Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is .

## SHARES ELIGIBLE FOR FUTURE SALE

Prior to this offering, there has been no public market for our Class A common stock. Future sales of substantial amounts of Class A common stock, including Class A common stock issued upon the conversion of Class B common stock, in the public market after this offering, or the possibility of these sales occurring, could adversely affect the prevailing market price for our Class A common stock or impair our ability to raise equity capital.

Upon the completion of this offering, we will have an aggregate of \_\_\_\_\_ shares of common stock outstanding. Of these shares, the \_\_\_\_\_ shares of Class A common stock sold in this offering by us will be freely tradable without restriction or further registration under the Securities Act, unless purchased by “affiliates” as that term is defined under Rule 144 of the Securities Act, who may sell only the volume of shares described below and whose sales would be subject to additional restrictions described below.

The remaining \_\_\_\_\_ shares of common stock, representing \_\_\_\_\_ % of our outstanding shares of common stock, will be held by our existing stockholders. These shares will be “restricted securities” as that phrase is defined in Rule 144 under the Securities Act. Subject to certain contractual restrictions, including the lock-up agreements described below, holders of restricted shares will be entitled to sell those shares in the public market pursuant to an effective registration statement under the Securities Act or if they qualify for an exemption from registration under Rule 144. Sales of these shares in the public market after the restrictions under the lock-up agreements lapse, or the perception that those sales may occur, could cause the prevailing market price to decrease or to be lower than it might be in the absence of those sales or perceptions. As a result of lock-up agreements and market standoff agreements described below, and the provisions of Rules 144 under the Securities Act, the restricted securities will be available for sale in the public market.

Sales of these shares in the public market after the restrictions under the lock-up agreements lapse, or the perception that those sales may occur, could cause the prevailing market price to decrease or to be lower than it might be in the absence of those sales or perceptions.

### **Lock-up Agreements**

We and each of our directors, executive officers and substantially all of our stockholders have agreed, subject to certain exceptions, not to sell or transfer any shares of Class A common stock or securities convertible into, exchangeable for, exercisable for, or repayable with shares of Class A common stock (including our Class B common stock), for \_\_\_\_\_ days after the date of this prospectus without first obtaining the written consent of BofA Securities, Inc.

Upon the expiration of the applicable lock-up periods, substantially all of the shares subject to such lock-up restrictions will become eligible for sale, subject to the limitations discussed above. For a further description of these lock-up agreements, please see “Underwriting.”

### **Eligibility of restricted shares for sale in the public market**

The \_\_\_\_\_ shares of Class A common stock that are not being sold in this offering, but which will be outstanding at the time this offering is complete, will be eligible for sale into the public market, under the provisions of Rule 144 commencing after the expiration of the restrictions under the lock-up agreements, subject to volume restrictions discussed below under “— Rule 144.”

### **Rule 144**

In general, under Rule 144 under the Securities Act, a person (or persons whose shares are aggregated) who is not deemed to have been an affiliate of ours at any time during the three months preceding a sale, and who has beneficially owned restricted securities within the meaning of Rule 144 for at least six months (including any period of consecutive ownership of preceding non-affiliated holders) would be entitled to sell those shares, subject only to the availability of current public information about us. A non-affiliated person who has beneficially owned restricted securities within the meaning of Rule 144 for at least one year would be entitled to sell those shares without regard to the provisions of Rule 144.

A person (or persons whose shares are aggregated) who is deemed to be an affiliate of ours and who has beneficially owned restricted securities within the meaning of Rule 144 for at least six months would be entitled to sell within any three-month period a number of shares that does not exceed the greater of one percent of the then outstanding shares of our Class A common stock or the average weekly trading volume of our Class A common stock on the during the four calendar weeks preceding such sale. Such sales are also subject to certain manner of sale provisions, notice requirements and the availability of current public information about us.



**MATERIAL U.S. FEDERAL INCOME AND ESTATE TAX CONSEQUENCES FOR  
NON-U.S. HOLDERS OF CLASS A COMMON STOCK**

The following are the material U.S. federal income and estate tax consequences of the ownership and disposition of our Class A common stock acquired in this offering by a “Non-U.S. Holder” that does not own, and has not owned, actually or constructively, more than 5% of Class A common stock. You are a Non-U.S. Holder if for U.S. federal income tax purposes you are a beneficial owner of our Class A common stock that is:

- a nonresident alien individual;
- a foreign corporation; or
- a foreign estate or trust.

You are not a Non-U.S. Holder if you are a nonresident alien individual present in the United States for 183 days or more in the taxable year of disposition, or if you are a former citizen or former resident of the United States for U.S. federal income tax purposes. If you are such a person, you should consult your tax adviser regarding the U.S. federal income tax consequences of the ownership and disposition of our Class A common stock.

If a partnership or other pass-through entity (including an entity or arrangement treated as a partnership or other type of pass-through entity for U.S. federal income tax purposes) owns our Class A common stock, the tax treatment of a partner or beneficial owner of the entity may depend upon the status of the owner, the activities of the entity and certain determinations made at the partner or beneficial owner level. Partners and beneficial owners in partnerships or other pass-through entities that own our Class A common stock should consult their own tax advisors as to the particular U.S. federal income and estate tax consequences applicable to them.

This discussion is based on the Internal Revenue Code of 1986, as amended to the date hereof (the “Code”), administrative pronouncements, judicial decisions and final, temporary and proposed Treasury regulations, changes to any of which subsequent to the date of this prospectus may affect the tax consequences described herein, possibly with retroactive effect. This discussion does not describe all of the tax consequences that may be relevant to you in light of your particular circumstances, including alternative minimum tax and Medicare contribution tax consequences and does not address any aspect of state, local or non-U.S. taxation, or any taxes other than income and estate taxes. You should consult your tax adviser with regard to the application of the U.S. federal tax laws to your particular situation, as well as any tax consequences arising under the laws of any state, local or non-U.S. taxing jurisdiction.

**Dividends**

As discussed under “Dividend Policy” above we do not anticipate paying any cash dividends in the foreseeable future. In the event that we do make distributions of cash or other property, those 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. To the extent those distributions exceed our current and accumulated earnings and profits, they will constitute a return of capital, which will first reduce your basis in our Class A common stock, but not below zero, and then will be treated as gain from the sale of our Class A common stock, as described below under “— Gain on Disposition of Our Class A Common Stock.”

Dividends paid to you generally will be subject to withholding tax at a 30% rate or a reduced rate specified by an applicable income tax treaty. In order to obtain a reduced rate of withholding, you will be required to provide a properly executed applicable Internal Revenue Service (“IRS”) Form W-8 certifying your entitlement to benefits under a treaty.

If dividends paid to you are effectively connected with your conduct of a trade or business in the United States (and, if required by an applicable income tax treaty, are attributable to a permanent establishment or fixed base maintained by you in the United States), you will generally be taxed on the dividends in the same manner as a U.S. person. In this case, you will be exempt from the withholding tax discussed in the preceding paragraph, although you will be required to provide a properly executed IRS

Form W-8ECI in order to claim an exemption from withholding. You should consult your tax adviser with respect to other U.S. tax consequences of the ownership and disposition of our Class A common stock, including the possible imposition of a branch profits tax at a rate of 30% (or a lower treaty rate) if you are a corporation.

#### **Gain on Disposition of Our Class A Common Stock**

Subject to the discussions below under “— Information Reporting and Backup Withholding” and “— FATCA Withholding Taxes,” you generally will not be subject to U.S. federal income or withholding tax on gain realized on a sale or other taxable disposition of our Class A common stock unless:

- the gain is effectively connected with your conduct of a trade or business in the United States (and, if required by an applicable income tax treaty, is attributable to a permanent establishment or fixed base maintained by you in the United States), or
- we are or have been a “United States real property holding corporation,” as defined in the Code, at any time within the five-year period preceding the disposition or your holding period, whichever period is shorter, and our Class A common stock has ceased to be regularly traded on an established securities market prior to the beginning of the calendar year in which the sale or disposition occurs.

We believe that we are not, and do not anticipate becoming, a United States real property holding corporation.

If you recognize gain on a sale or other disposition of our Class A common stock that is effectively connected with your conduct of a trade or business in the United States (and if required by an applicable income tax treaty, is attributable to a permanent establishment or fixed base maintained by you in the United States), you will generally be taxed on such gain in the same manner as a U.S. person. You should consult your tax adviser with respect to other U.S. tax consequences of the ownership and disposition of our Class A common stock, including the possible imposition of a branch profits tax at a rate of 30% (or a lower treaty rate) if you are a corporation.

#### **Information Reporting and Backup Withholding**

Information returns are required to be filed with the IRS in connection with payments of dividends on our Class A common stock. Unless you comply with certification procedures to establish that you are not a U.S. person, information returns may also be filed with the IRS in connection with the proceeds from a sale or other disposition of our Class A common stock. You may be subject to backup withholding on payments on our Class A common stock or on the proceeds from a sale or other disposition of our Class A common stock unless you comply with certification procedures to establish that you are not a U.S. person or otherwise establish an exemption. Your provision of a properly executed applicable IRS Form W-8 certifying your non-U.S. status will permit you to avoid backup withholding. Amounts withheld under the backup withholding rules are not additional taxes and may be refunded or credited against your U.S. federal income tax liability, provided the required information is timely furnished to the IRS.

#### **FATCA Withholding Taxes**

Payments to certain foreign entities of dividends on Class A common stock of a U.S. issuer are subject to a withholding tax (separate and apart from, but without duplication of, the withholding tax described above) at a rate of 30%, unless various U.S. information reporting and due diligence requirements (generally relating to ownership by U.S. persons of interests in or accounts with those entities) have been satisfied or an exemption from these rules applies. Under proposed regulations issued by the Treasury Department on December 13, 2018, which state that taxpayers may rely on the proposed regulations until final regulations are issued, this withholding tax will not apply to the gross proceeds from any sale or disposition of Class A common stock. An intergovernmental agreement between the United States and an applicable foreign country may modify these requirements. Non-U.S. holders should consult their tax advisors regarding the possible implications of this withholding tax on dividends on Class A common stock.

**Federal Estate Tax**

Individual Non-U.S. Holders and entities the property of which is potentially includible in such an individual's gross estate for U.S. federal estate tax purposes (for example, a trust funded by such an individual and with respect to which the individual has retained certain interests or powers), should note that, absent an applicable treaty exemption, our Class A common stock will be treated as U.S.-situs property subject to U.S. federal estate tax.

## UNDERWRITING

BofA Securities, Inc. is acting as representative of each of the underwriters named below. Subject to the terms and conditions set forth in an underwriting agreement among us and the underwriters, we have agreed to sell to the underwriters, and each of the underwriters has agreed, severally and not jointly, to purchase from us, the number of shares of Class A common stock set forth opposite its name below.

Underwriter	Number of Shares
BofA Securities, Inc.	
Total	

Subject to the terms and conditions set forth in the underwriting agreement, the underwriters have agreed, severally and not jointly, to purchase all of the shares sold under the underwriting agreement if any of these shares are purchased. If an underwriter defaults, the underwriting agreement provides that the purchase commitments of the nondefaulting underwriters may be increased or the underwriting agreement may be terminated.

We have agreed to indemnify the underwriters against certain liabilities, including liabilities under the Securities Act, or to contribute to payments the underwriters may be required to make in respect of those liabilities.

The underwriters are offering the shares, subject to prior sale, when, as and if issued to and accepted by them, subject to approval of legal matters by their counsel, including the validity of the shares, and other conditions contained in the underwriting agreement, such as the receipt by the underwriters of officer's certificates and legal opinions. The underwriters reserve the right to withdraw, cancel or modify offers to the public and to reject orders in whole or in part.

### Commissions and Discounts

The representative has advised us that the underwriters propose initially to offer the shares to the public at the public offering price set forth on the cover page of this prospectus and to dealers at that price less a concession not in excess of \$            per share. After the initial offering, the public offering price, concession or any other term of the offering may be changed.

The following table shows the public offering price, underwriting discount and proceeds before expenses to us. The information assumes either no exercise or full exercise by the underwriters of their option to purchase additional shares.

	Per Share	Without Option	With Option
Public offering price	\$	\$	\$
Underwriting discount	\$	\$	\$
Proceeds, before expenses, to us	\$	\$	\$

The expenses of the offering, not including the underwriting discount, are estimated at \$            and are payable by us.

### Option to Purchase Additional Shares

We have granted an option to the underwriters, exercisable for 30 days after the date of this prospectus, to purchase up to            additional shares at the public offering price, less the underwriting discount. If the underwriters exercise this option, each will be obligated, subject to conditions contained in the underwriting agreement, to purchase a number of additional shares proportionate to that underwriter's initial amount reflected in the above table.

### No Sales of Similar Securities

We, our executive officers and directors and our other existing security holders have agreed not to sell or transfer any common stock or securities convertible into, exchangeable for, exercisable for or repayable

with common stock, for \_\_\_\_\_ days after the date of this prospectus without first obtaining the written consent of BofA Securities, Inc. Specifically, we and these other persons have agreed, with certain limited exceptions, not to directly or indirectly:

- offer, pledge, sell or contract to sell any common stock;
- sell any option or contract to purchase any common stock;
- purchase any option or contract to sell any common stock;
- grant any option, right or warrant for the sale of any common stock;
- lend or otherwise dispose of or transfer any common stock;
- request or demand that we file or make a confidential submission of a registration statement related to the common stock; or
- enter into any swap or other agreement that transfers, in whole or in part, the economic consequence of ownership of any common stock whether any such swap or transaction is to be settled by delivery of shares or other securities, in cash or otherwise.

This lock-up provision applies to common stock and to securities convertible into or exchangeable or exercisable for or repayable with common stock. It also applies to common stock owned now or acquired later by the person executing the agreement or for which the person executing the agreement later acquires the power of disposition.

### **Nasdaq Global Market Listing**

We expect the shares of Class A common stock to be approved for listing on the Nasdaq Global Market under the symbol “\_\_\_\_\_.”

Before this offering, there has been no public market for our common stock. The initial public offering price will be determined through negotiations between us and the representative. In addition to prevailing market conditions, the factors to be considered in determining the initial public offering price are:

- the valuation multiples of publicly traded companies that the representative believes to be comparable to us;
- our financial information;
- the history of, and the prospects for, our company and the industry in which we compete;
- an assessment of our management, its past and present operations, and the prospects for, and timing of, our future revenues;
- the present state of our development; and
- the above factors in relation to market values and various valuation measures of other companies engaged in activities similar to ours.

An active trading market for the shares may not develop. It is also possible that after the offering the shares will not trade in the public market at or above the initial public offering price.

The underwriters do not expect to sell more than 5% of the shares in the aggregate to accounts over which they exercise discretionary authority.

### **Price Stabilization, Short Positions and Penalty Bids**

Until the distribution of the shares is completed, SEC rules may limit underwriters and selling group members from bidding for and purchasing our Class A common stock. However, the representative may engage in transactions that stabilize the price of our Class A common stock, such as bids or purchases to peg, fix or maintain that price.

In connection with the offering, the underwriters may purchase and sell our Class A common stock in the open market. These transactions may include short sales, purchases on the open market to cover positions

created by short sales and stabilizing transactions. Short sales involve the sale by the underwriters of a greater number of shares than they are required to purchase in the offering. “Covered” short sales are sales made in an amount not greater than the underwriters’ option to purchase additional shares described above. The underwriters may close out any covered short position by either exercising their option to purchase additional shares or purchasing shares in the open market. In determining the source of shares to close out the covered short position, the underwriters will consider, among other things, the price of shares available for purchase in the open market as compared to the price at which they may purchase shares through the option granted to them. “Naked” short sales are sales in excess of such option. The underwriters must close out any naked short position by purchasing shares in the open market. 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 our Class A common stock in the open market after pricing that could adversely affect investors who purchase in the offering. Stabilizing transactions consist of various bids for or purchases of shares of Class A common stock made by the underwriters in the open market prior to the completion of the offering.

The underwriters may also impose a penalty bid. This occurs when a particular underwriter repays to the underwriters a portion of the underwriting discount received by it because the representative has repurchased shares sold by or for the account of such underwriter in stabilizing or short covering transactions.

Similar to other purchase transactions, the underwriters’ purchases to cover the syndicate short sales may have the effect of raising or maintaining the market price of our Class A common stock or preventing or retarding a decline in the market price of our Class A common stock. As a result, the price of our Class A common stock may be higher than the price that might otherwise exist in the open market. The underwriters may conduct these transactions on the Nasdaq Global Market, in the over-the-counter market or otherwise.

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

#### **Electronic Distribution**

In connection with the offering, certain of the underwriters or securities dealers may distribute prospectuses by electronic means, such as e-mail.

#### **Other Relationships**

Some of the underwriters and their respective affiliates have engaged in, and may in the future engage in, investment banking and other commercial dealings in the ordinary course of business with us or our affiliates. They have received, or may in the future receive, customary fees and commissions for these transactions.

In addition, in the ordinary course of their business activities, the underwriters and their respective affiliates may make or hold a broad array of investments and actively trade debt and equity securities (or related derivative securities) and financial instruments (including bank loans) for their own account and for the accounts of their customers. Such investments and securities activities may involve securities and/or instruments of ours or our affiliates. The underwriters and their respective affiliates may also make investment recommendations and/or publish or express independent research views in respect of such securities or financial instruments and may hold, or recommend to clients that they acquire, long and/or short positions in such securities and instruments.

#### **Selling Restrictions**

##### ***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 of our Class A common stock 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 representative for any such offer; 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.

Each person in a Relevant State who initially acquires any shares of our Class A common stock or to whom any offer is made will be deemed to have represented, acknowledged and agreed to and with us and the underwriters that it is a qualified investor within the meaning of the Prospectus Regulation.

In the case of any shares of our Class A common stock being offered to a financial intermediary as that term is used in Article 5(1) of 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 non-discretionary 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 to the public other than their offer or resale in a Relevant State to qualified investors, in circumstances in which the prior consent of the underwriters has been obtained to each such proposed offer or resale.

We, the underwriters and their affiliates will rely upon the truth and accuracy of the foregoing representations, acknowledgements and agreements.

For the purposes of this provision, the expression an “offer to the public” in relation to any shares of our Class A common stock 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.

The above selling restriction is in addition to any other selling restrictions set out below.

In connection with the offering, the underwriters are not acting for anyone other than us and will not be responsible to anyone other than us for providing the protections afforded to their clients nor for providing advice in relation to the offering.

#### **Notice to Prospective Investors in the United Kingdom**

In relation to the United Kingdom (“UK”), no shares of our Class A common stock have been offered or will be offered pursuant to the offering to the public in the UK prior to the publication of a prospectus in relation to the shares which has been approved by the Financial Conduct Authority in the UK in accordance with the UK Prospectus Regulation and the FSMA, except that offers of shares may be made to the public in the UK at any time under the following exemptions under the UK Prospectus Regulation and the FSMA:

- a. to any legal entity which is a qualified investor as defined under the UK Prospectus Regulation;
- b. to fewer than 150 natural or legal persons (other than qualified investors as defined under the UK Prospectus Regulation), subject to obtaining the prior consent of the representative for any such offer; or
- c. at any time in other circumstances falling within section 86 of the FSMA;



provided that no such offer of shares shall require us or any underwriter to publish a prospectus pursuant to Section 85 of the FSMA or Article 3 of the UK Prospectus Regulation or supplement a prospectus pursuant to Article 23 of the UK Prospectus Regulation.

Each person in the UK who initially acquires any shares of our Class A common stock or to whom any offer is made will be deemed to have represented, acknowledged and agreed to and with us and the underwriters that it is a qualified investor within the meaning of the UK Prospectus Regulation.

In the case of any shares of our Class A common stock being offered to a financial intermediary as that term is used in Article 5(1) of the UK 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 non-discretionary 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 to the public other than their offer or resale in the UK to qualified investors, in circumstances in which the prior consent of the underwriters has been obtained to each such proposed offer or resale.

We, the underwriters and their affiliates will rely upon the truth and accuracy of the foregoing representations, acknowledgements and agreements.

For the purposes of this provision, the expression an “offer to the public” in relation to any shares in the UK means the communication in any form and by any means of sufficient information on the terms of the offer and any shares of our Class A common stock to be offered so as to enable an investor to decide to purchase or subscribe for any shares, 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, and the expression “FSMA” means the Financial Services and Markets Act 2000.

In connection with the offering, the underwriters are not acting for anyone other than the issuer and will not be responsible to anyone other than the issuer for providing the protections afforded to their clients nor for providing advice in relation to the offering.

This document is for distribution only to persons who (i) have professional experience in matters relating to investments and who qualify as investment professionals within the meaning of Article 19(5) of the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (as amended, the “Financial Promotion Order”), (ii) are persons falling within Article 49(2)(a) to (d) (“high net worth companies, unincorporated associations etc.”) of the Financial Promotion Order, (iii) are outside the United Kingdom, or (iv) are persons to whom an invitation or inducement to engage in investment activity (within the meaning of Section 21 of the Financial Services and Markets Act 2000, as amended (“FSMA”)) in connection with the issue or sale of any securities may otherwise lawfully be communicated or caused to be communicated (all such persons together being referred to as “relevant persons”). This document is directed only at relevant persons and must not be acted on or relied on by persons who are not relevant persons. Any investment or investment activity to which this document relates is available only to relevant persons and will be engaged in only with 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 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, us 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 the Dubai International Financial Centre**

This prospectus relates to an Exempt Offer in accordance with the Offered Securities Rules of the Dubai Financial Services Authority (“DFSA”). This prospectus is intended for distribution only to persons of a type specified in the Offered Securities Rules 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 nor taken steps to verify the information set forth herein and has no responsibility for the prospectus. The shares to which this prospectus relates may be illiquid and/or subject to restrictions on their resale. Prospective purchasers of the shares offered should conduct their own due diligence on the shares. If you do not understand the contents of this prospectus, you should consult an authorized financial advisor.

#### **Notice to Prospective Investors in Australia**

No placement document, prospectus, product disclosure statement or other disclosure document has been lodged with the Australian Securities and Investments Commission (“ASIC”), in relation to the offering. This prospectus does not constitute a prospectus, product disclosure statement or other disclosure document under the Corporations Act 2001 (the “Corporations Act”), and does not purport to include the information required for a prospectus, product disclosure statement or other disclosure document under the Corporations Act.

Any offer in Australia of the shares may only be made to persons (the “Exempt Investors”) who are “sophisticated investors” (within the meaning of section 708(8) of the Corporations Act), “professional investors” (within the meaning of section 708(11) of the Corporations Act) or otherwise pursuant to one or more exemptions contained in section 708 of the Corporations Act so that it is lawful to offer the shares without disclosure to investors under Chapter 6D of the Corporations Act.

The shares applied for by Exempt Investors in Australia must not be offered for sale in Australia in the period of 12 months after the date of allotment under the offering, except in circumstances where disclosure to investors under Chapter 6D of the Corporations Act would not be required pursuant to an exemption under section 708 of the Corporations Act or otherwise or where the offer is pursuant to a disclosure document which complies with Chapter 6D of the Corporations Act. Any person acquiring shares must observe such Australian on-sale restrictions.

This prospectus contains general information only and does not take account of the investment objectives, financial situation or particular needs of any particular person. It does not contain any securities recommendations or financial product advice. Before making an investment decision, investors need to consider whether the information in this prospectus is appropriate to their needs, objectives and circumstances, and, if necessary, seek expert advice on those matters.

#### **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 Hong Kong and any rules made under that Ordinance; or (b) in other circumstances which do not result in the document being a “prospectus” as defined in the Companies Ordinance (Cap. 32) of Hong Kong or which do not constitute an offer to the public within the meaning of that Ordinance. 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 Securities and Futures Ordinance and any rules made under that Ordinance.

### Notice to Prospective Investors in Japan

The shares have not been and will not be registered under the Financial Instruments and Exchange Law of Japan (Law No. 25 of 1948, as amended) and, accordingly, will not be offered or sold, directly or indirectly, in Japan, or for the benefit of any Japanese Person or to others for re-offering or resale, directly or indirectly, in Japan or to any Japanese Person, except in compliance with all applicable laws, regulations and ministerial guidelines promulgated by relevant Japanese governmental or regulatory authorities in effect at the relevant time. For the purposes of this paragraph, “Japanese Person” shall mean any person resident in Japan, including any corporation or other entity organized under the laws of Japan.

### Notice to Prospective Investors in Singapore

This prospectus has not been registered as a prospectus with the Monetary Authority of Singapore. Accordingly, the shares were not offered or sold or caused to be made the subject of an invitation for subscription or purchase and will not be offered or sold or caused to be made the subject of an invitation for subscription or purchase, and this prospectus or any other document or material in connection with the offer or sale, or invitation for subscription or purchase, of the shares, has not been circulated or distributed, nor will it be circulated or distributed, whether directly or indirectly, to any person in Singapore other than (i) 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, (ii) to a relevant person (as defined in Section 275(2) of the SFA pursuant to Section 275(1) of the SFA, or any person pursuant to Section 275(1A) of the SFA, and in accordance with the conditions specified in Section 275 of the SFA, or (iii) 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:

- a. to an institutional investor or to a relevant person, or to any person arising from an offer referred to in Section 275(1A) or Section 276(4)(i)(B) of the SFA;
- b. where no consideration is or will be given for the transfer;
- c. where the transfer is by operation of law; or
- d. as specified in Section 276(7) of the SFA.

In connection with 309B of the SFA and the Capital Markets Products (the “CMP”) Regulations 2018, the shares are “prescribed capital markets products” (as defined in the CMP Regulations 2018) and Excluded Investment Products (as defined in Monetary Authority of Singapore Notice SFA 04-N12: Notice on the Sale of Investment Products and Monetary Authority of Singapore Notice FAA-N16: Notice on Recommendations on Investment Products).

### 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 (or, in the case of securities issued or guaranteed by the government of a non-Canadian jurisdiction, section 3A.4) 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.

**LEGAL MATTERS**

The validity of the shares of our Class A common stock offered hereby will be passed upon for us by Davis Polk & Wardwell LLP, New York, New York. Certain legal matters will be passed upon for the underwriters by Latham & Watkins LLP, Menlo Park, California.

**EXPERTS**

The consolidated financial statements of Snail Games USA Inc. as of December 31, 2020 and 2019, and for the years then ended, included in this prospectus and registration statement have been so included in reliance on the report of BDO USA, LLP, an independent registered public accounting firm, appearing elsewhere herein and in the registration statement, given on the authority of said firm as experts in auditing and accounting.

**WHERE YOU CAN FIND MORE INFORMATION**

We have filed with the SEC a registration statement on Form S-1 under the Securities Act with respect to the shares of Class A common stock offered hereby. This prospectus, which constitutes a part of the registration statement, does not contain all of the information set forth in the registration statement or the exhibits and schedules filed therewith. For further information about us and the shares of Class A common stock offered hereby, reference is made to the registration statement and the exhibits and schedules filed therewith. Statements contained in this prospectus regarding the contents of any contract or any other document that is filed as an exhibit to the registration statement are not necessarily complete, and in each instance, such statement is qualified in all respects by reference to the full text of such contract or other document filed as an exhibit to the registration statement. You can read our SEC filings, including the registration statement, at the SEC's website which contains reports, proxy and information statements and other information regarding registrants, like us, that file electronically with the SEC. The address of the website is [www.sec.gov](http://www.sec.gov).

As a result of this offering, we will become subject to the information and reporting requirements of the Exchange Act and, in accordance with this law, will file periodic reports, proxy and information statements and other information with the SEC. These periodic reports, proxy and information statements and other information will be available for inspection at the website of the SEC referred to above. We also maintain a website at [www.snailgamesusa.com](http://www.snailgamesusa.com). Upon completion of this offering, you may access these materials free of charge as soon as reasonably practicable after they are filed electronically with, or furnished to, the SEC. The inclusion of our website address in this prospectus is an inactive textual reference only. The information contained on, or that can be accessed through, our website is not incorporated by reference into, and is not a part of, this prospectus or the registration statement of which this prospectus forms a part. Investors should not rely on any such information in deciding whether to purchase our Class A common stock.



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**Report of Independent Registered Public Accounting Firm**

Board of Director  
Snail Games USA Inc. and Subsidiaries  
Culver City, California

**Opinion on the Consolidated Financial Statements**

We have audited the accompanying consolidated balance sheets of Snail Games USA Inc. and its subsidiaries (the “Company”) as of December 31, 2020 and 2019, the related consolidated statements of operations and comprehensive income (loss), equity, and cash flows for the years then ended, and the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company at December 31, 2020 and 2019, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

**Basis for Opinion**

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

Our audits included performing procedures to assess the risks of material misstatement of the 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.

/s/ BDO USA, LLP

We have served as the Company’s auditor since 2021.

Costa Mesa, California

August 11, 2021

**Consolidated Financial Statements**  
**Snail Games USA Inc. and Subsidiaries**  
**Consolidated Balance Sheets**

	<b>December 31,</b>	
	<b>2020</b>	<b>2019</b>
<b>ASSETS</b>		
<b>Current Assets:</b>		
Cash and cash equivalents	\$ 27,587,970	\$ 3,669,351
Restricted cash	—	1,000,000
Accounts receivable, net of allowances for doubtful accounts of \$31,525 and \$31,525, respectively	12,938,797	11,364,297
Accounts receivable – related party	9,718,484	12,414,395
Prepaid expenses and other current assets	11,006,596	5,185,543
Total current assets	61,251,847	33,633,586
Restricted cash and cash equivalents	6,314,737	6,552,145
Property, plant and equipment, net	6,638,943	7,633,958
Intangible assets, net – license – related parties	34,768,496	47,773,577
Intangible assets, net – license	850,000	1,450,000
Intangible assets, net – other	284,187	1,709,845
Investments – equity method	—	2,897,064
Deferred income taxes	5,031,258	4,071,768
Other noncurrent assets	2,009,576	216,511
Operating lease right-of-use assets, net	6,466,750	8,509,282
Total assets <sup>(1)</sup>	<u>\$ 123,615,794</u>	<u>\$ 114,447,736</u>
<b>LIABILITIES, NONCONTROLLING INTERESTS AND EQUITY</b>		
<b>Current Liabilities:</b>		
Accounts payable	\$ 5,415,503	\$ 3,377,387
Loan payable – related parties	400,000	400,000
Accounts payable to parent	23,826,520	23,726,426
Accrued expenses and other liabilities	5,690,459	829,147
Interest payable – related parties	520,439	512,417
Line of credit	—	4,950,000
Revolving loan	2,500,000	5,500,000
Current portion of notes payable	189,808	—
Current portion of deferred revenue	18,407,746	14,385,501
Current portion of long-term debt	6,808,326	7,199,997
Current portion of operating lease liabilities	1,548,734	1,702,015
Total current liabilities	65,307,535	62,582,890
Accrued expenses	1,337,162	76,714
Long-term notes payable, net of current portion	445,002	—
Deferred revenue, net of current portion	16,121,589	12,987,391
Operating lease liabilities, net of current portion	6,064,750	8,073,934
Total liabilities	<u>89,276,038</u>	<u>83,720,929</u>
<b>Commitments and contingencies</b>		
<b>Equity:</b>		
Common stock, \$0.01 par value, 1,000,000 shares authorized, 500,000 shares issued and outstanding	5,000	5,000
Additional paid-in capital	94,159,167	94,159,167
Due from shareholder – loan receivable	(60,744,134)	(35,636,227)
Due from shareholder – interest receivable	(1,442,197)	(506,665)
Accumulated other comprehensive loss	(197,174)	(99,837)
Retained earnings (accumulated deficit)	7,576,835	(23,110,020)
Total Snail Games USA Inc. equity	39,357,497	34,811,418
Noncontrolling interests	(5,017,741)	(4,084,611)
Total equity	<u>34,339,756</u>	<u>30,726,807</u>
Total liabilities, noncontrolling interests and equity	<u>\$ 123,615,794</u>	<u>\$ 114,447,736</u>

- (1) The Company's consolidated balance sheets include the assets of its variable interest entity ("VIE"). The consolidated balance sheets include total assets of the VIE totaling \$419,714 and \$425,173 as of December 31, 2020 and 2019, respectively. See Note 1 – Basis of Presentation and Consolidation for further detail.

*See accompanying notes to consolidated financial statements.*

**Snail Games USA Inc. and Subsidiaries**  
**Consolidated Statements of Operations and Comprehensive Income (Loss)**

	Years Ended December 31,	
	2020	2019
Revenues, net	\$124,944,507	\$ 86,307,757
Cost of revenues	67,303,679	78,139,792
Gross profit	<u>57,640,828</u>	<u>8,167,965</u>
<b>Operating expenses:</b>		
General and administrative	22,875,058	20,302,331
Research and development	1,375,264	1,950,114
Advertising and marketing	1,142,848	657,301
Depreciation and amortization	904,647	973,043
Loss on disposal of fixed assets	121,638	—
Impairment of intangible assets	1,269,000	—
Total operating expenses	<u>27,688,455</u>	<u>23,882,789</u>
Income (loss) from operations	<u>29,952,373</u>	<u>(15,714,824)</u>
<b>Other income (expense):</b>		
Interest income	1,006,820	548,754
Interest expense	(559,154)	(1,471,134)
Interest expense – related parties	(8,021)	(56,323)
Other income	540,884	43,055
Gain on sale of membership interest of equity investment	4,903,502	—
Foreign currency transaction gain	24,634	—
Equity in earnings (loss) of unconsolidated entity	699,434	(1,064,315)
Total other income (expense), net	<u>6,608,099</u>	<u>(1,999,963)</u>
Income (loss) before provision for income taxes	36,560,472	(17,714,787)
Income tax provision (benefit)	6,806,747	(2,497,759)
Net income (loss)	29,753,725	(15,217,028)
Net loss attributable to non-controlling interests	(933,130)	(1,272,097)
<b>Net income (loss) attributable to Snail Games USA Inc.</b>	<b>30,686,855</b>	<b>(13,944,931)</b>
<b>Comprehensive income statement:</b>		
Other comprehensive loss	(97,337)	(70,711)
<b>Total other comprehensive income (loss)</b>	<b><u>\$ 30,589,518</u></b>	<b><u>\$(14,015,642)</u></b>

*See accompanying notes to consolidated financial statements.*

**Snail Games USA Inc. and Subsidiaries**  
**Consolidated Statements of Equity**

	Common Stock		Additional Paid-In-Capital	Due from Shareholder Loan and Interest Receivable	Accumulated Other Comprehensive Loss	Retained Earnings (Accumulated Deficit)	Snail Games USA Inc. Equity	Non controlling Interest	Total Equity
	Shares	Amount							
<b>Balance at January 1, 2019</b>	500,000	\$ 5,000	\$ 94,159,167	\$ (9,090,625)	\$ (29,126)	\$ (9,165,089)	\$ 75,879,327	\$(2,812,514)	\$ 73,066,813
Loan to shareholder	—	—	—	(27,052,267)	—	—	(27,052,267)	—	(27,052,267)
Foreign currency translation	—	—	—	—	(70,711)	—	(70,711)	—	(70,711)
Net loss	—	—	—	—	—	(13,944,931)	(13,944,931)	(1,272,097)	(15,217,028)
<b>Balance at December 31, 2019</b>	<u>500,000</u>	<u>5,000</u>	<u>94,159,167</u>	<u>(36,142,892)</u>	<u>(99,837)</u>	<u>(23,110,020)</u>	<u>34,811,418</u>	<u>(4,084,611)</u>	<u>30,726,807</u>
Loan to shareholder	—	—	—	(26,043,439)	—	—	(26,043,439)	—	(26,043,439)
Foreign currency translation	—	—	—	—	(97,337)	—	(97,337)	—	(97,337)
Net income	—	—	—	—	—	30,686,855	30,686,855	(933,130)	29,753,725
<b>Balance at December 31, 2020</b>	<u>500,000</u>	<u>\$ 5,000</u>	<u>\$ 94,159,167</u>	<u>\$(62,186,331)</u>	<u>\$ (197,174)</u>	<u>\$ 7,576,835</u>	<u>\$ 39,357,497</u>	<u>\$(5,017,741)</u>	<u>\$ 34,339,756</u>

*See accompanying notes to consolidated financial statements.*

**Snail Games USA Inc. and Subsidiaries**  
**Consolidated Statements of Cash Flows**

	<b>Years Ended December 31,</b>	
	<b>2020</b>	<b>2019</b>
<b>Cash flows from operating activities:</b>		
Net income (loss)	\$ 29,753,725	\$(15,217,028)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:		
Amortization – intangible assets – license	600,000	600,000
Amortization – intangible assets – license, related parties	13,005,081	43,042,303
Amortization – intangible assets – other	159,158	581,280
Depreciation and amortization – property and equipment	904,647	973,043
Gain on paycheck protection program loan forgiveness	(144,000)	—
Loss on disposal of fixed assets	121,638	—
Loss on disposal of impaired intangible asset	1,269,000	—
Equity in (earnings) loss of unconsolidated entity	(699,434)	1,064,315
Gain on sale of membership interest	(4,903,502)	—
Interest income from shareholder loan	(935,532)	(453,469)
Deferred taxes	(957,525)	(2,508,621)
Changes in assets and liabilities:		
Accounts receivable	(1,574,498)	17,574,608
Accounts receivable – related party	2,695,911	(9,608,632)
Prepaid expenses	(5,809,764)	1,264,609
Other noncurrent assets	(292,814)	(12,041)
Accounts payable	2,036,311	(2,844,333)
Accrued expenses	6,120,688	447,390
Interest payable – related parties	8,022	(85,154)
Accounts payable to parent – related party	100,094	898,446
Lease liabilities	(119,933)	(45,176)
Deferred revenue	7,156,443	19,539,149
Net cash provided by operating activities	<u>48,493,716</u>	<u>55,210,689</u>
<b>Cash flows from investing activities:</b>		
Loan provided to related party	(25,107,907)	(26,598,798)
Proceeds from sale of membership interest	7,000,000	—
Acquisition of intangible assets – other	(2,500)	(120,531)
Acquisition of license rights – related party	—	(5,000,000)
Purchases of property and equipment	(30,322)	(265,562)
Net cash used in investing activities	<u>(18,140,729)</u>	<u>(31,984,891)</u>
<b>Cash flows from financing activities:</b>		
Repayments on long-term debt	(5,391,671)	(24,850,003)
Repayments on line of credit	(4,950,000)	—
Borrowings on long-term debt	5,000,000	550,000
Repayments on loan payable to related party	—	(7,000,000)
Borrowings from related parties	—	1,300,000
Borrowings from paycheck protection program and economic injury disaster loan	778,810	—
Repayments on revolving loan	(3,000,000)	—
Net cash used in financing activities	<u>(7,562,861)</u>	<u>(30,000,003)</u>
Effect of currency translation on cash and cash equivalents	(108,915)	(84,895)
Net increase (decrease) in cash and cash equivalents, and restricted cash and cash equivalents	22,681,211	(6,859,100)
Cash and cash equivalents, and restricted cash and cash equivalents – beginning of year	11,221,496	18,080,596
<b>Cash and cash equivalents, and restricted cash and cash equivalents – end of year</b>	<b><u>\$ 33,902,707</u></b>	<b><u>\$ 11,221,496</u></b>
<b>Supplemental disclosures of cash flow information</b>		
<b>Cash paid during the year for:</b>		
Interest	\$ 534,351	\$ 1,562,950
Income taxes	\$ 9,400,000	\$ 1,624,453
<b>Non-cash transactions during the year for:</b>		
Notes receivable on sale of membership interest	\$ 1,500,000	\$ —

*See accompanying notes to consolidated financial statements.*

**Snail Games USA Inc. and Subsidiaries**  
**Notes to Consolidated Financial Statements**

**NOTE 1 — PRESENTATION AND NATURE OF OPERATIONS**

Snail Games USA Inc. is devoted to researching, developing, marketing, publishing, and distributing games, content and support that can be played on a variety of platforms including game consoles, PCs, mobile phones and tablets. The terms “Snail Games USA”, “we”, “our” and the “Company” are used to refer collectively to Snail Games USA Inc. and its subsidiaries.

The Company was founded in 2000 and is a wholly owned subsidiary of Suzhou Snail Digital Technology Co., Ltd. (“Suzhou Snail” or “Parent”) located in Suzhou, China. The Company is a global developer and publisher of interactive entertainment content and support on video game consoles, personal computers, mobile devices, and other platforms.

***Basis of Presentation and Consolidation***

The accompanying consolidated financial statements have been prepared in accordance with generally accepted accounting principles as promulgated in the United States of America (“GAAP”).

The consolidated financial statements include the accounts of Snail Games USA Inc. and the following subsidiaries:

Subsidiary Name	Equity % Owned
Snail Innovation Institute	70%
Frostkeep Studios, Inc.	100%
Eminence Corp	100%
Wandering Wizard, LLC	100%
Donkey Crew Limited Liability Company	99%
Project AWK Productions, LLC	100%
BTBX.io, LLC	70%
Elephant Snail, LLC	51%

All intercompany accounts, transactions, and profits have been eliminated upon consolidation.

The consolidated financial statements were prepared and presented in accordance with Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) 810, Consolidation. Non-controlling interests represent the portion of earnings that is not within the Company’s control. These amounts are required to be reported as equity instead of as a liability on the consolidated balance sheets. ASC 810 requires net income or net loss from non-controlling interests to be shown separately on the consolidated statements of operations and comprehensive income (loss).

The Company is also required to consolidate any variable interest entities (“VIEs”), of which it is the primary beneficiary, as defined. Based on the Company’s analysis pursuant to ASC 810-10-25, Consolidations, Elephant Snail, LLC is a VIE due to the promissory note between the entity and the Company to support its operations and the Company consolidates Elephant Snail, LLC as the primary beneficiary. The following table represents the assets of the variable interest entity and the intercompany loan from Snail Games, which is eliminated upon consolidation:

	2020	2019
<b>Assets:</b>		
Cash	\$ 144,451	\$ 398,440
Prepaid expense	1,100	26,733
Other noncurrent assets	274,163	—
<b>Total assets</b>	<u>\$ 419,714</u>	<u>\$ 425,173</u>
<b>Liabilities</b>		
Intercompany loan from Snail Games	\$ 500,000	\$ 500,000
<b>Total liabilities</b>	<u>\$ 500,000</u>	<u>\$ 500,000</u>

### *Use of Estimates*

The preparation of consolidated financial statements in conformity with GAAP requires the Company to make estimates and assumptions that affect the amounts reported in our consolidated financial statements and the accompanying notes. Such estimates include revenue recognition, provisions for doubtful accounts, deferred income tax assets and associated valuation allowances, deferred revenue, income taxes, valuation of intangibles, including those with related parties, impairment of intangible assets, and VIE considerations. These estimates generally involve complex issues and require management to make judgments, involve analysis of historical and future trends that can require extended periods of time to resolve, and are subject to change from period to period. In all cases, actual results could differ materially from estimates.

### *Segment Reporting*

The Company has one operating and reportable segment. Our operations involve similar products and customers worldwide. Revenue earned is primarily derived from the sale of software titles, which are developed internally or licensed from related parties. Financial information about our segment and geographic regions is included in Note 3 — Revenue from Contracts with Customers.

### *COVID-19*

On January 30, 2020, the World Health Organization (“WHO”) announced a global health emergency because of a new strain of coronavirus originating in Wuhan, China (the “COVID-19 outbreak”) and the risks to the international community as the virus spreads globally beyond its point of origin. In March 2020, the WHO classified the COVID-19 outbreak as a pandemic, based on the rapid increase in exposure globally.

The full impact of the COVID-19 outbreak continues to evolve as of the date of this report. Management is actively monitoring the global situation on its financial condition, liquidity, operations, suppliers, industry, and franchisees. Given the daily evolution of the COVID-19 outbreak and the global responses to curb its spread, there has been no significant negative impact of the COVID-19 outbreak on the Company’s results of operations, financial condition, or liquidity for the year ended December 31, 2020. Looking forward, the Company is unable to predict the impact that the pandemic may have on its future financial condition, results of operations and cash flows due to numerous uncertainties. The extent to which the COVID-19 pandemic impacts the Company’s operations and those of its customers in the near term will depend on future developments, which are highly uncertain and, beyond extrapolating our experience since the start of the pandemic, cannot be predicted with confidence. The Company applied and was approved for a loan under the Small Business Administration (SBA) Paycheck Protection Program (“PPP”) in the amount of approximately \$773,810 and \$5,000 Economic Injury Disaster Loan, see Note 13 — Notes Payable, which was used to fund operations during the year. For the PPP loans forgiveness, see Note 13 — Notes Payable and Note 20 — Subsequent Events. See CARES Act discussion in Note 2.

## **NOTE 2 — SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

### *Revenue Recognition*

The Company’s revenue includes the publishing of software games delivered digitally and through physical discs (e.g., packaged goods). The Company’s digital games may include additional downloadable



content that are new feature releases to digital full-game downloads. Revenue also includes sales of mobile in-app purchases that require the Company's hosting support in order to utilize the game or related content. Such games include virtual goods that can be purchased by the end users as desired. When control of the promised products and services is transferred to the customers, the Company recognizes revenue in the amount that reflects the consideration it expects to receive in exchange for these products and services. Revenue from delivery of products is recognized at a point in time when the end consumers download the games and the control of the license is transferred to them.

The Company recognizes revenue using the following five steps as provided by ASC Topic 606 *Revenue from Contracts with Customers*: 1) identify the contract(s) with the customer; 2) identify the performance obligations in each contract; 3) determine the transaction price; 4) allocate the transaction price to the performance obligations; and 5) recognize revenue when, or as, the entity satisfies a performance obligation. The Company's terms and conditions vary by customers and typically provide net 30 to 75 days terms or 45 days after each quarter ends.

#### *Principal vs. Agent Consideration*

The Company offers certain software products via third-party digital storefronts, such as Microsoft's Xbox Live, Sony's PlayStation Network, Valve's Steam, Epic Games Store, the Apple App Store, the Google Play Store, and retail distributor. For sales of our software products via third-party digital storefronts and retail distributor, we determine whether or not we are acting as the principal in the sale to the end user, which we consider in determining if revenue should be reported based on the gross transaction price to the end user or based on the transaction price net of fees retained by the third-party digital storefront. An entity is the principal if it controls a good or service before it is transferred to the customer. Key indicators that we use in evaluating these sales transactions include, but are not limited to, the following:

- The underlying contract terms and conditions between the various parties to the transaction;
- Which party is primarily responsible for fulfilling the promise to provide the specified good or service; and
- Which party has discretion in establishing the price for the specified good or service.

Based on our evaluation of the above indicators, for sales arrangements via Microsoft's Xbox Live, Sony's PlayStation Network, Valve's Steam, Epic Games Store and retail distributor, the digital platforms and distributors have discretion in establishing the price for the specified good or service and we have determined we are the agent in the sales transaction to the end user and therefore we report revenue on a net basis based on the consideration received from the digital storefront. For sales arrangements via the Apple App Store and the Google Play Store, we have discretion in establishing the price for the specified good or service and we have determined that we are the principal to the end user and thus report revenue on a gross basis and mobile platform fees charged by these digital storefronts are expensed as incurred and reported within cost of revenues.

#### *Contract Balance*

The Company records deferred revenue when cash payments are received or due in advance of its performance, even if amounts are refundable.

Deferred revenue is comprised of the transaction price allocable to the Company's performance obligation on technical support and the sale of virtual goods available for in-app purchases, and payments received from customers prior to launching the games on the platforms. The Company categorizes the virtual goods as either "consumable" or "durable." Consumable virtual goods represent goods that can be consumed by a specific player action; accordingly, the Company recognizes revenues from the sale of consumable virtual goods as the goods are consumed and the performance obligation is satisfied. Durable virtual goods represent goods that are accessible to the players over an extended period of time; accordingly, the Company recognizes revenues from the sale of durable virtual goods ratably over the period of time the goods are available to the player and the performance obligation is satisfied, which is generally the estimated service period.

The Company also has a long-term title license agreement (“game pass”) with Microsoft for a period of three years. The Company recognizes deferred revenue and amortizes this revenue according to the terms of the relevant agreement.

### **Revenue Recognition**

#### *Estimated Service Period*

For certain performance obligations satisfied over time, we have determined that the estimated service period is the time period in which an average user plays our software products (“user life”) which most faithfully depicts the timing of satisfying our performance obligation. We consider a variety of data points when determining and subsequently reassessing the estimated service period for players of our software products. Primarily, we review the weighted average number of days between players’ first and last days played online. When a new game is launched and no history of online player data is available, we consider other factors to determine the user life, such as the estimated service period of other games actively being sold with similar characteristics. We also consider known online trends, the service periods of our previously released software products, and, to the extent publicly available, the service periods of our competitors’ software products that are similar in nature to ours. We believe this provides a reasonable depiction of the use of games by our customers, as it is the best representation of the period during which our customers play our software products. Determining the estimated service period is subjective and requires significant management judgment and estimates. Future usage patterns may differ from historical usage patterns, and therefore the estimated service period may change in the future. The estimated service periods for virtual goods are generally approximately 30 to 100 days.

#### *Significant Estimates*

Significant management judgment and estimates must be used in connection with many of the determinations described above, such as estimating the fair value allocation to distinct and separable performance obligations and the service period over which to defer recognition of revenue. We believe we can make reliable estimates. However, actual results may differ from initial estimates due to changes in circumstances, market conditions, and assumptions. Adjustments to estimates are recorded in the period in which they become known.

#### *Shipping and Handling*

The distributor, as the principal, is responsible for the shipping of the game discs to the retail stores and incurring the shipping costs. The Company is paid the net sales amount after deducting shipping costs and other related expenses by the distributor.

### **Cost of Revenues**

Cost of revenues includes software license royalty fees, merchant fees, server and database center costs, game localization costs, game licenses and amortization costs. Cost of revenues for the years ended December 31, 2020 and 2019 comprised of the following:

	<u>2020</u>	<u>2019</u>
Software license royalties	\$25,456,716	\$24,229,567
License and license right amortization	31,746,977	44,207,198
Game localization	2,520	—
Merchant fee	4,147,490	4,743,550
Engine fee	3,905,013	2,430,495
Internet, server, and data center	2,044,963	2,528,982
<b>Total</b>	<u>\$67,303,679</u>	<u>\$78,139,792</u>

**Advertising Costs**

The Company expenses advertising costs as incurred. For the years ended December 31, 2020 and 2019, advertising expense totaled \$1,142,848 and \$657,301, respectively.

**Research and Development**

Research and development costs are expensed as incurred. Research and development costs include travel, payroll, and other general expenses specific to research and development activities. Research and development costs for the years ended December 31, 2020 and 2019 were \$1,375,264 and \$1,950,114, respectively.

**Non-controlling Interests**

Non-controlling interests on the consolidated balance sheets, and consolidated statements of operations and comprehensive income (loss) include the equity allocated to non-controlling interest holders. As of December 31, 2020 and 2019, there were non-controlling interests with the following subsidiaries:

Subsidiary Name	Equity % Owned	Non- Controlling %
Elephant Snail LLC	51%	49%
Snail Innovative Institute	70%	30%
BTBX.IO, LLC	70%	30%

**Cash and Cash Equivalents and Restricted Cash and Cash Equivalents**

Cash equivalents consist of highly liquid investments with insignificant interest rate risk and original or remaining maturities of three months or less at the time of purchase. Cash and cash equivalents are available for use in current operations or other activities such as capital expenditures and business combinations. Restricted cash and cash equivalents are time deposits, that are currently provided as securities to our debts with financial institution, and the issuance of a standby letter of credit to landlords. See Note 16 — Debt and Note 17 — Leases, respectively, for more details.

**Accounts Receivable**

The Company generally records a receivable related to revenue when it has an unconditional right to invoice and receive payment. Accounts receivable are carried at original invoice amount less a reserve made for doubtful accounts based on a review of all outstanding amounts on a periodic basis. The Company determines the allowance for doubtful accounts by evaluating customers' creditworthiness; historical experience; age of current accounts receivable balances; and changes in financial condition or payment terms of our customers. The allowance for doubtful accounts is typically immaterial and, if required, are based on management's best estimate. In estimating the allowance for doubtful accounts, the Company analyzes the age of current outstanding account balances, historical bad debts and customer concentrations. The provision for doubtful accounts is recorded as a charge to general and administrative expense when a potential loss is identified. Losses are written off against the allowance when the receivable is determined to be uncollectible. Significant management judgment is required to estimate our allowance for doubtful accounts in any accounting period. The amount and timing of our bad debt expense and cash collection could change significantly as a result of a change in any of the risk factors mentioned above.

**Property, Plant and Equipment, Net**

Property, plant and equipment, net, are stated at cost. Depreciation is calculated using the straight-line method over the following useful lives:

Buildings	39 years
Building improvements	7 years
Leasehold improvements	Lesser of the lease term or the estimated useful lives of the improvements, generally 5 to 15 years
Computer equipment and software	3 to 5 years
Furniture and fixtures	3 years
Auto and trucks	5 years

When assets are retired or disposed of, the cost and accumulated depreciation thereon are removed, and any resulting gains or losses are included in the consolidated statements of operations and comprehensive income (loss). Leasehold improvements are amortized using the straight-line method over the estimated life of the asset, not to exceed the length of the lease. Repairs and maintenance costs are expensed as incurred.

#### ***Investments — Equity Method***

The Company applies the equity method for investments in affiliates in which it has the ability to exercise significant influence over operating and financial policies of the affiliate. Significant influence is generally defined as 20% to 50% ownership in the voting stock of an investee or non-controlling power over management and operations. Under the equity method, the Company initially records the investment at cost and then adjusts the carrying value of the investment to recognize the proportional share of the equity-accounted affiliate's net income (loss) including changes in capital of the affiliate.

#### ***Foreign Currency***

The functional currency for our foreign operations is primarily the applicable local currency. Accounts of foreign operations are translated into U.S. dollars using exchange rates for assets and liabilities at the balance sheet date and average prevailing exchange rates for the period for revenue and expense accounts. Adjustments resulting from the translation are included in accumulated other comprehensive income (loss). Realized and unrealized transaction gains and losses arising from transactions denominated in foreign currencies different than the relevant functional currency are included in our consolidated statements of operations and comprehensive income (loss) in the period in which they occur.

#### ***Intangible Assets — License Usage Rights***

The Company enters into license agreements with third-party developers and related parties' developers that require the Company to make payments for license usage rights and game development and production services. These license agreements grant the Company the exclusive publishing and distribution rights to game titles as well as, in some cases, the underlying intellectual property rights. These license agreements also specify the payment schedules, royalty rates and the relevant licensing period. The Company capitalizes the cost of license usage rights as intangible assets and amortizes them over the terms of the respective licensing rights. Such agreements typically allow the Company to fully recover these payments to third-party developers and related parties' developers at an agreed upon royalty rate earned on the subsequent sales. Intangible assets — license usage rights subject to amortization are carried at cost less accumulated amortization and amortized over the useful life in proportion to the economic benefits received.

#### ***Fair Value Measurements***

The Company follows FASB ASC Topic 820, Fair Value Measurements. ASC 820 defines fair value, establishes a framework for measuring fair value under generally accepted accounting principles and enhances disclosures about fair value measurements. Fair value is defined under ASC 820 as the exchange price that would be received for an asset or paid to transfer a liability in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants.

ASC 820 establishes a hierarchy of valuation inputs based on the extent to which the inputs are observable in the marketplace. Observable inputs reflect market data obtained from sources independent of the reporting entity and unobservable inputs reflect the entity's own assumptions about how market

participants would value an asset or liability based on the best information available. Valuation techniques used to measure fair value under ASC 820 must maximize the use of observable inputs and minimize the use of unobservable inputs. The standard describes a fair value hierarchy based on three levels of inputs, of which the first two are considered observable and the last unobservable, that may be used to measure fair value.

The following describes the hierarchy of inputs used to measure fair value and the primary valuation methodologies used by the Company for financial instruments measured at fair value.

The three levels of inputs are as follows:

- **Level 1:** Quoted prices in active markets for identical assets or liabilities that the Company has an ability to access as of the measurement date.
- **Level 2:** Inputs that are observable, either directly or indirectly, such as quoted prices for similar assets or liabilities, quoted prices in markets that are not active, or other inputs that are observable or can be corroborated by observable market data for substantially the same term of the assets or liabilities.
- **Level 3:** Unobservable inputs that are supported by little or no market activity and that are significant to the fair value of the assets or liabilities.

A financial instrument's categorization within the valuation hierarchy is based upon the lowest level of input that is significant to the fair value measurement. Our financial instruments include cash and cash equivalents, restricted cash and cash equivalents, short-term financial instruments, short-term loans, accounts receivable, accounts payable and current liabilities. The carrying values of these financial instruments approximate their fair value due to their short maturities. The carrying amount of our debt approximates fair value because the interest rates on these instruments approximate the interest rate on debt with similar terms available to us for a similar duration. The Company does not have any assets or liabilities measured at fair value on a recurring or non-recurring basis at December 31, 2020 and 2019.

#### ***Amortizable Intangibles and Other Long-lived Assets***

The Company's long-lived assets and other assets consisting of property, plant and equipment and purchased intangible assets, are reviewed for impairment in accordance with the guidance of the FASB ASC 360, Property, Plant, and Equipment.

Intangible assets subject to amortization are carried at cost less accumulated amortization and amortized over the estimated useful life in proportion to the economic benefits received. The Company evaluates the recoverability of definite-lived intangible assets and other long-lived assets in accordance with ASC Subtopic 360-10, which generally requires the assessment of these assets for recoverability when events or circumstances indicate a potential impairment exists. The Company considers certain events and circumstances in determining whether the carrying value of identifiable intangible assets and other long-lived assets, other than indefinite lived intangible assets, may not be recoverable including, but not limited to: significant changes in performance relative to expected operating results; significant changes in the use of the assets; significant negative industry or economic trends; and changes in the Company's business strategy. If the Company determines that the carrying value may not be recoverable, the Company estimates the undiscounted cash flows to be generated from the use and ultimate disposition of the asset group to determine whether an impairment exists. If an impairment is indicated based on a comparison of the asset groups' carrying values and the undiscounted cash flows, the impairment loss is measured as the amount by which the carrying amount of the asset group exceeds its fair value. There can be no assurance, however, that market conditions will not change or demand for the Company's products under development will continue. Either of these could result in future impairment of long-lived assets. Actual useful lives and cash flows could be different from those estimated by management which could have a material effect on our consolidated reporting results and financial positions. Fair value is determined through various valuation techniques including discounted cash flow models, quoted market values, third-party independent appraisals and transfer pricing analysis, as considered necessary. For the years ended December 31, 2020 and 2019, the Company recorded \$1,269,000 and \$0, respectively as impairment loss related to analytic technology developed by its Frostkeep Studios, Inc. subsidiary.

***Income Taxes***

Income taxes are provided for the tax effects of transactions reported in the financial statements and consisted of taxes currently due and deferred taxes. Deferred taxes are recognized for the differences between the basis of assets and liabilities for financial statement and income tax purposes.

The Company follows FASB ASC 740, Income Taxes, which requires the recognition of deferred tax assets and liabilities for the expected future tax consequences of events that have been included in the consolidated financial statements or tax returns.

Under this method, deferred income taxes are recognized for the tax consequences in future years of differences between the tax bases of assets and liabilities and their financial reporting amounts at each period end based on enacted tax laws and statutory tax rates, applicable to the periods in which the differences are expected to affect taxable income. Valuation allowances are established, when necessary, to reduce deferred tax assets to the amount expected to be realized.

FASB ASC 740-10-25 provides criteria for the recognition, measurement, presentation, and disclosure of uncertain tax positions. The Company must recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities, based on the technical merits of the position. The tax benefits recognized in the financial statements from such a position are measured based on the largest benefit that has a greater than 50% likelihood of being realized upon ultimate resolution. The Company recognized liabilities for uncertain tax positions pursuant to FASB ASC 740-10-25 in the amount of \$1,054,081 and \$383,927 for the years ended December 31, 2020 and 2019, respectively.

***Concentration of Credit Risk and Significant Customers***

The Company maintains cash balances at several major financial institutions. While the Company attempts to limit credit exposure with any single institution, balances often exceed insurable amounts. As of December 31, 2020, and 2019, the Company had deposits of \$31,812,014 and \$8,209,882, respectively, that was not insured by the Federal Deposit Insurance Corporation.

The Company extends credit to various digital resellers and partners. Collection of trade receivables may be affected by changes in economic or other industry conditions and may, accordingly, impact our overall credit risk. The Company performs ongoing credit evaluations of customers and maintains reserves for potential credit losses. At December 31, 2020 and 2019, the Company had four and three customers, respectively, who accounted for approximately 89% and 80% of consolidated gross receivables, respectively. Among the four and three customers as of December 31, 2020 and 2019, each customer accounted for 25%, 25%, 23% and 16% as of December 31, 2020, and 33%, 24% and 23% as of December 31, 2019, respectively. During the years ended December 31, 2020 and 2019, approximately 80% and 66%, respectively, of net revenue was derived from these customers.

***Leases***

The Company has several leases relating primarily to office facilities. The Company determines if an arrangement is or contains a lease at contract inception. Right-of-use assets represent the Company's right to use an underlying asset for the lease term, and lease liabilities represent the Company's obligation to make lease payments arising from the lease. The lease liability is measured as the present value of the unpaid lease payments, and the right-of-use asset value is derived from the calculation of the lease liability. Lease payments include fixed and in-substance fixed payments, variable payments based on an index or rate, reasonably certain purchase options, and termination penalties. Variable lease payments are recognized as lease expenses as incurred, and generally relate to variable payments made based on the level of services provided by the landlords of our leases. For leased assets with similar lease terms and asset types, we applied a portfolio approach in determining a single incremental borrowing rate for the leased assets. The Company uses its estimated incremental borrowing rate, which is derived from information available at the lease commencement date, in determining the present value of lease payments because the Company does not have the information necessary to determine the rate implicit in the lease. Lease expense for operating lease payments is recognized on a straight-line basis over the lease term. The Company's lease term includes any

option to extend the lease when it is reasonably certain to be exercised based on considering all relevant factors. Leases with an initial term of 12 months or less are not recorded on the consolidated balance sheets and we recognize lease expense for these leases on a straight-line basis over the lease term. Operating leases are included in operating lease right-of-use assets, net, current portion of operating lease liabilities, and operating lease liabilities, net of current portion on the consolidated balance sheets.

#### **Recently Adopted Accounting Pronouncements**

##### *Revenue from Contracts with Customers*

The Company adopted the new accounting standard and related amendments Topic 606 effective January 1, 2019 using the full retrospective method. For contracts that were modified before the date of adoption, we elected to reflect the aggregate effect of all modifications when (i) identifying the satisfied and unsatisfied performance obligations, (ii) determining the transaction price, and (iii) allocating the transaction price to the satisfied and unsatisfied performance obligations.

##### *Leases*

The Company adopted the new lease Accounting Standards Update (ASU) 2016-02, *Leases (Topic 842)* effective January 1, 2019. As part of the adoption, the new lease accounting standard allows a number of practical expedients and exemptions. The Company elected the package of practical expedients permitted under ASC 842, which allows the Company not to reassess the following: (i) whether any expired or existing contracts as of the adoption date are or contain a lease, (ii) lease classification for any expired or existing leases as of the adoption date, and (iii) initial direct costs for any existing leases as of the adoption date. The Company also elected the practical expedient to not separate non-lease components from the related lease components and the exemption to not apply Topic 842 for leases with a lease term of 12 months or less. The most significant impact of applying ASC 842 was the recognition of right-of-use assets and lease liabilities for operating leases in its consolidated balance sheets.

##### *Impact of Adopting Lease Accounting*

As a result of adopting Topic 842, the following adjustments, including reclassifying prepaid and deferred rent to ROU assets, were made to our consolidated balance sheet at January 1, 2019:

	December 31, 2018	Adjustments	January 1, 2019
<b>Assets</b>			
Right-of-use assets	\$ —	\$ 9,002,675	\$ 9,002,675
<b>Liabilities and Equity</b>			
Lease liabilities	\$ —	\$ 10,165,564	\$ 10,165,564
Deferred rent	\$ 1,311,843	\$(1,311,843)	\$ —

#### **Recently Issued Accounting Pronouncements**

In June 2016, the FASB issued ASU 2016-13, *Financial Instruments — Credit Losses*, which replaces the incurred loss impairment methodology in current US GAAP with a methodology that requires the reflection of expected credit losses and also requires consideration of a broader range of reasonable and supportable information to determine credit loss estimates. It also eliminates the concept of other-than-temporary impairment and requires credit losses related to available-for-sale debt securities to be recorded through an allowance for credit losses rather than as a reduction in the amortized cost basis of the securities. For most financial instruments, the standard requires the use of a forward-looking expected loss model rather than the incurred loss model for recognizing credit losses, which generally results in the earlier recognition of credit losses on financial instruments. We are currently evaluating the potential impact of adopting this guidance on our Consolidated Financial Statements and expect to adopt ASC 2016-13 from January 1, 2023.



In December 2019, the FASB issued ASU 2019-12, *Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes*, which enhances and simplifies various aspects of the income tax accounting guidance, including requirements such as tax basis step-up in goodwill obtained in a transaction that is not a business combination, ownership changes in investments, and interim-period accounting for enacted changes in tax law. ASU 2019-12 is effective for fiscal years, and interim periods within those fiscal years, beginning after December 15, 2020, with early adoption permitted. We do not expect that the impact of the adoption will be material to our Consolidated Financial Statements.

In January 2020, the FASB issued ASU 2020-01, *Investment — Equity Securities (Topic 321), Investments — Equity Method and Joint Ventures (Topic), and Derivatives and Hedging (Topic 815)*, to clarify the interaction among the accounting standards for equity securities, equity method investments and certain derivatives. The new ASU clarifies that a company should consider observable transactions that require a company to either apply or discontinue the equity method of accounting under Topic 323, Investments — Equity Method and Joint Ventures, for the purposes of applying the measurement alternative in accordance with Topic 321 immediately before applying or upon discontinuing the equity method. For public business entities, the amendments in this update are effective for fiscal years beginning after December 15, 2020, and interim periods within those fiscal years. The Company believes the implementation of the new standard will not have a material effect on its consolidated financial position, results of operations, and cash flows.

In March 2020, the FASB issued ASU 2020-04, *Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting*, which provides temporary optional guidance to ease potential accounting impacts associated with transitioning away from reference rates that are expected to be discontinued, such as interbank offered rates and LIBOR. The guidance includes practical expedients for contract modifications due to reference rate reform. Generally, contract modifications related to reference rate reform may be considered an event that does not require remeasurement or reassessment of a previous accounting determination at the modification date. This guidance is effective immediately and is only available through December 31, 2022. We are currently evaluating the potential impact of adopting this guidance on our Consolidated Financial Statements.

#### **CARES Act**

On March 27, 2020, President Trump signed into law the “Coronavirus Aid, Relief, and Economic Security (CARES) Act.” The CARES Act, among other things, includes provisions relating to refundable payroll tax credits, deferral of employer side social security payments, net operating loss carryback periods, alternative minimum tax credit refunds, modifications to the net interest deduction limitations, increased limitations on qualified charitable contributions, and technical corrections to tax depreciation methods for qualified improvement property.

The CARES Act is a stimulus package that provides various forms of relief through, among other things, grants, loans and tax incentives to certain businesses and individuals. In particular, the CARES Act created an emergency lending facility known as the Paycheck Protection Program (“PPP”), which is administered by the U.S. Small Business Administration (“SBA”) and provides federally insured and, in some cases, forgivable loans to certain eligible businesses so that those businesses can continue to cover certain of their near-term operating expenses and retain employees. The Company obtained \$773,810 in paycheck protection program loans and \$5,000 Economic Injury Disaster Loan. See Note 13 — Notes Payable and Note 20 — Subsequent Events related to the PPP loan forgiveness. The Company plans to file an NOL carryback refund application after amending its 2019 federal return and expects to realize a total tax benefit approximately \$5,153,000 from carrying back its 2019 taxable loss to offset taxable income previously reported in 2016 and 2017.

#### **NOTE 3 — REVENUE FROM CONTRACTS WITH CUSTOMERS**

##### **Disaggregation of revenue**

##### **Geography**

We attribute net revenue to geographic regions based on software destination. Net revenue by geographic region for the years ended December 31, 2020 and 2019 were as follows:



	2020	2019
United States	\$109,123,834	\$76,574,328
International	15,820,673	9,733,429
Total revenue from contract with customers	<u>\$124,944,507</u>	<u>\$86,307,757</u>

#### *Platform*

Net revenue by platform for the years ended December 31, 2020 and 2019 were as follows:

	2020	2019
<b>Net revenue recognized:</b>		
Console	\$ 60,927,126	\$46,427,038
PC and other	64,017,381	39,880,719
Total revenue from contract with customers	<u>\$124,944,507</u>	<u>\$86,307,757</u>

#### *Distribution channel*

Our products are delivered through digital online services (digital download, online platforms, and cloud streaming), mobile, and retail distribution and other. Net revenue by distribution channel was as follows:

	2020	2019
Digital	\$107,335,314	\$69,085,165
Mobile	14,310,046	14,230,439
Retail and other	3,299,147	2,992,153
Total revenue from contract with customers	<u>\$124,944,507</u>	<u>\$86,307,757</u>

#### **Deferred Revenue**

The Company records deferred revenue when payments are due or received in advance of the fulfillment of our associated performance obligations. The balance of deferred revenue, including current and non-current balances, as of December 31, 2020 and 2019 were \$34,529,335 and \$27,372,892, respectively. For the year ended December 31, 2020, the additions to our deferred revenue balance were primarily due to cash payments received or due in advance of satisfying our performance obligations, while the reductions to our deferred revenue balance were due primarily to the recognition of revenue upon fulfillment of our performance obligations, both of which were in the ordinary course of business.

During the years ended December 31, 2020 and 2019, \$1,491,047 and \$1,111,922 of revenue was recognized that was included in the deferred revenue balance at the beginning of the period. As of December 31, 2020, the aggregate amount of contract revenue allocated to unsatisfied performance obligations is \$5,314,344, which includes our deferred revenue balances and recognized as revenue in future periods. We expect to recognize approximately \$1,942,755 of this balance as revenue over the next 12 months, and the remainder thereafter.

#### **NOTE 4 — CASH AND CASH EQUIVALENTS, AND RESTRICTED CASH AND CASH EQUIVALENTS**

Cash equivalents are valued using quoted market prices or other readily available market information. The Company has \$6,314,737 and \$7,552,145 as of December 31, 2020 and 2019, respectively, as security for the debt with financial institutions and to secure standby letters of credit with landlords. For further details, please see Note 16 — Debt. The following table summarizes the components of the Company's cash and cash equivalents, and restricted cash and cash equivalents as of December 31, 2020 and 2019:

	2020	2019
Cash and cash equivalents	\$27,587,970	\$ 3,669,351
Restricted cash and cash equivalents	6,314,737	7,552,145
Cash and cash equivalents, and restricted cash and cash equivalents	<u>\$33,902,707</u>	<u>\$11,221,496</u>

**NOTE 5—ACCOUNTS RECEIVABLE—RELATED PARTY**

Accounts receivable — related party represent receivables in the ordinary course of business attributable to certain mobile game revenues that, for administrative reasons, are collected by the related party that the related party has not remitted back to the Company. Accounts receivable — related party is non-interest bearing and due on demand. The related party is 100% owned and controlled by the wife of the Founder and Chairman, who is also the majority shareholder of the parent company. The Company licenses the gaming license rights from the related party. As of December 31, 2020 and 2019, the Company licensed \$143,500,000 and \$143,500,000, respectively, of license rights from the related party. See Note 10 — Intangible Assets for more details. For the years ended December 31, 2020 and 2019, the Company incurred \$20,679,142 and \$19,920,157, respectively, as part of the royalty payment. For the years ended December 31, 2020 and 2019, the Company paid \$24,125,000 and \$5,000,000, respectively, as license cost. For the years ended December 31, 2020 and 2019, the Company also paid \$2,438,983 and \$2,202,894, respectively, as part of the data center and marketing costs.

**NOTE 6—OTHER RECEIVABLES—RELATED PARTY**

Other receivables from related party consisted monies that the Company lent to the Company's Founder and Chairman, who is also the majority shareholder of the parent company, the loan bears 2.0% per annum interest, both the loan receivable and the interest are due on demand. Total interest receivable from related party amounted to \$1,442,197 and \$506,665 as of December 31, 2020 and 2019, respectively. Both the loan receivable and the interest receivable are presented as contra equity in our consolidated statements of equity for a total of \$62,186,331 and \$36,142,892 as of December 31, 2020 and 2019, respectively.

**NOTE 7—PREPAID EXPENSES AND OTHER CURRENT ASSETS**

Prepaid expenses and other current assets consisted of the following as of December 31, 2020 and 2019:

	2020	2019
Prepaid income taxes	\$ 6,456,886	\$4,843,927
Prepaid development costs	4,152,629	99,454
Other current assets	397,081	242,162
Total prepaid expenses and other current assets	<u>\$11,006,596</u>	<u>\$5,185,543</u>

**NOTE 8—PROPERTY, PLANT AND EQUIPMENT, NET**

Property, plant and equipment, net consisted of the following as of December 31, 2020 and 2019:

	2020	2019
Building	\$ 1,874,049	\$ 1,874,049
Land	2,700,000	2,700,000
Building improvements	1,010,217	1,010,218
Leasehold improvements	1,946,958	2,062,470
Autos and trucks	267,093	267,093
Computer equipment and software	1,871,733	1,905,167
Furniture and fixtures	411,801	427,520
	10,081,851	10,246,517
Accumulated depreciation	<u>(3,442,908)</u>	<u>(2,612,559)</u>
Property, plant and equipment, net	<u>\$ 6,638,943</u>	<u>\$ 7,633,958</u>

Depreciation expense was \$904,647 and \$973,043 for the years ended December 31, 2020 and 2019, respectively.

During the year ended December 31, 2020, the Company disposed of \$180,052 in assets with accumulated depreciation of \$58,414 as of the disposal date. The total loss resulting from the disposal of assets amounted to \$121,638 for the year ended December 31, 2020. No such disposals were made in 2019.

#### NOTE 9 — EQUITY INVESTMENTS

The Company had an equity method investment in Pound Sand, LLC representing a 72.28% membership interest with an original investment amount of \$7,000,000. Pound Sand, LLC's noncontrolling members hold substantive participating rights in management and operating decisions. Therefore, Pound Sand, LLC was accounted for under the equity method as the Company's interest is more than minor. On December 30, 2020, the Company entered into a membership interest redemption agreement with Pound Sand LLC and sold all of its rights, title and interests in membership units in Pound Sand, LLC, in exchange for \$8,500,000. Concurrently with the execution of the redemption agreement, Pound Sand, LLC also entered into a membership interest pledge agreement with the Company to pledge 76.59 Class C Membership Units of Pound Sand, LLC as security to the secured subordinated note. Pursuant to the terms of the redemption agreement, and concurrently with the execution of the membership interest pledge agreement, Pound Sand, LLC also executed and delivered a secured subordinated promissory note in the amount of \$1,500,000 payable over two years, the note receivable bears 4.5% interest and matures on the second-year anniversary of the transaction date. On December 30, 2020, the Company received \$7,000,000 of proceeds from the redemption of membership interests, and the remaining \$1,500,000 is recorded as a note receivable, which is included as part of noncurrent assets on the consolidated balance sheets. As a result, the Company recognized a gain on sale of membership interest in the amount of \$4,903,502.

The following is the roll-forward of our basis in the equity method investment:

Investments – equity method beginning balance	\$ 3,961,379
Equity in loss of unconsolidated entity	(1,064,315)
December 31, 2019	<u>2,897,064</u>
Equity in earnings of unconsolidated entity	699,434
Investment balance before sale of membership interest	<u>3,596,498</u>
Sale of membership interest	8,500,000
Gain on sale of membership interest	<u>\$ 4,903,502</u>

#### NOTE 10 — INTANGIBLE ASSETS

Intangible assets on trademark, technology, and workforce consist of game license software underlying intellectual property rights, game trademark name, logo, and other branding items. The Company amortizes the intangible assets over its useful life. For more details related to the license rights from related parties, see Note 5 — Accounts Receivable — Related Party.

The following table sets all the intangible assets presented on the consolidated balance sheets as of December 31, 2020:

## December 31, 2020

	Gross Carrying Amount	Accumulated Amortization	Impairment Loss	Net Book Value	Weighted Average Useful Life
License rights from related parties	\$147,990,000	\$(113,221,504)	\$ —	\$34,768,496	3 – 5 years
License rights	\$ 3,000,000	\$ (2,150,000)	\$ —	\$ 850,000	5 years
Intangible assets – other:					
Analytics technology	\$ 2,820,000	\$ (1,551,000)	\$(1,269,000)	\$ —	5 years
Software	51,784	(44,764)	—	7,020	3 years
Trademark	10,745	(4,464)	—	6,281	15 years
In-progress patent	270,886	—	—	270,886	
Total	\$ 3,153,415	\$ (1,600,228)	\$(1,269,000)	\$ 284,187	

During 2020, the Company impaired the analytics technology related to the game developed by one of its subsidiaries, Frostkeep Studios, Inc. The Company believes that the analytics technology will no longer provide future value nor will the Company be investing further into the development game. Therefore, the Company recognized \$1,269,000 as impairment loss during the year ended December 31, 2020.

The following table sets all the intangible assets presented on the consolidated balance sheets as of December 31, 2019:

## December 31, 2019

	Gross Carrying Amount	Accumulated Amortization	Net Book Value	Weighted Average Useful Life
License rights from related parties	\$147,990,000	\$(100,216,423)	\$47,773,577	3 – 5 years
License rights	\$ 3,000,000	\$ (1,550,000)	\$ 1,450,000	5 years
Intangible assets – other:				
Analytics technology	\$ 2,820,000	\$ (1,410,000)	\$ 1,410,000	5 years
Software	51,784	(27,502)	24,282	3 years
Trademark	10,745	(3,568)	7,177	15 years
In-progress patent	268,386	—	268,386	
Total	\$ 3,150,915	\$ (1,441,070)	\$ 1,709,845	

Amortization expense was \$13,764,239 and \$44,223,583 for the years ended December 31, 2020 and 2019, respectively. Future amortization expense of intangible assets is as follows:

Years ending December 31,	Amount
2021	\$13,420,454
2022	13,015,186
2023	9,192,535
2024	804
2025	804
Thereafter	272,900
	<u>\$35,902,683</u>

**NOTE 11 — ACCOUNTS PAYABLE TO PARENT**

Accounts payable to Parent represent payables in the ordinary course of business primarily for purchases of game distribution licenses and also the royalties due to the Parent. As of December 31, 2020

and 2019, \$4,490,000 and \$4,490,000, respectively, of license rights from the parent company. See Note 10 — Intangible Assets for more details. During the years ended December 31, 2020 and 2019, the Company incurred \$836,483 and \$1,275,397, respectively as license costs to parent.

#### **NOTE 12 — LOAN PAYABLE — RELATED PARTIES**

The Company has a loan amount due to related parties of \$400,000 bearing 2% per annum interest which is due on November 21, 2021. \$300,000 of the loan is from a wholly owned subsidiary of the Parent, and \$100,000 from the Parent. As of December 31, 2020 and 2019, total loan payable — related parties amounted to \$400,000 and \$400,000, respectively, and total unpaid interest amounted to \$520,439 and \$512,417, as of December 31, 2020 and 2019, respectively. During the year of 2020 and 2019, the Company paid \$0 and \$7,000,000, respectively, to related parties as part of the loan principal.

#### **NOTE 13 — NOTES PAYABLE**

The CARES Act is a stimulus package that provides various forms of relief through, among other things, grants, loans and tax incentives to certain businesses and individuals. The application for these funds requires the Company to, in good faith, certify that the current economic uncertainty made the loan request necessary to support the ongoing operations of the Company. This certification further requires the Company to take into account current business activity and ability to access other sources of liquidity sufficient to support ongoing operations in a manner that is not significantly detrimental to the business. The receipt of these funds, and the forgiveness of the loan attendant to these funds, is dependent on the Company having initially qualified for the loans and qualifying for the forgiveness of such loans based on our future adherence to the forgiveness criteria. The Company has applied for, and has received, funds under the Paycheck Protection Program (“PPP”) in the amount of \$773,810. These notes and interests are due within two years from the date that the notes funded. The Company recorded \$445,002 as long-term notes payable and \$189,808 as current portion of notes payable according to the notes agreements.

In December 2020, \$144,000 of the PPP loan was forgiven by the SBA, the forgiveness portion was recorded as part of other income on the accompanying consolidated statements of operations and comprehensive income (loss).

#### **NOTE 14 — LINE OF CREDIT**

On April 18, 2018, the Company entered into a facility agreement with a financial institution in the amount of \$4,950,000. The line matured on July 18, 2019 and was further extended to July 18, 2020. As of December 31, 2020 and 2019, the outstanding line of credit amounted to \$0 and \$4,950,000, respectively. The line of credit was secured by the Standby Letter of Credit issued by Bank of Ningbo in the amount of \$5,000,000. The Standby Letter of Credit was guaranteed by the Company’s Parent. As of December 31, 2019, \$1,000,000 of cash was pledged for the line of credit and included in restricted cash on the accompanying consolidated balance sheets. The Company paid off the line of credit on April 18, 2020, and the \$1,000,000 restriction on the cash balance was removed. See Note 16 — Debt.

#### **NOTE 15 — REVOLVER LOAN**

In December 2018, the Company modified its loan by decreasing the outstanding amount of the 2018 Promissory Notes by \$5,500,000 and replaced with a Revolving Loan and Security Agreement for a revolving note (the “Revolver”) in the amount of \$5,500,000, due December 31, 2020. As of December 31, 2020 and 2019, the total outstanding amount on the Revolver was \$2,500,000 and \$5,500,000, respectively. In June 2021, the Company renewed and amended its debt arrangements, see Note 20 — Subsequent Events.

Interest is due and payable monthly for the Revolver at the prime rate plus 0.125%. The applicable interest rate as of December 31, 2020 and 2019, was 3.375% and 4.875% for the Revolver, respectively. See Note 16 — Debt for discussion on debt covenants related to the Revolver.

**NOTE 16—DEBT**

Long-term debt is summarized as follows:

	2020	2019
<b>2018 Promissory Notes</b> – Promissory notes with annual interest rate at prime plus 0.125% with interest payable monthly and commencing in April 2019; monthly principal payments in the amount of approximately \$317,000 until maturity date and any outstanding balance due upon maturity (September 2021, as amended)	\$2,849,993	\$6,649,997
<b>2020 Promissory Notes</b> – On February 11, 2020, the Company entered into agreement with the relevant financial institution. The interest is calculated based upon the higher of 5% or 0.25% in excess of the wall street journal prime rate. Interest shall be due and payable monthly. The promissory note matures on February 11, 2024	3,958,333	—
<b>2019 Bridge Loan</b> – In December 2019, the Company’s financial institution issued a bridge loan in the amount of \$550,000. The bridge loan was repaid in 2020	—	550,000
Current portion of long-term debt	<u>\$6,808,326</u>	<u>\$7,199,997</u>

On December 26, 2018, the Company entered into a security agreement with a financial institution, that certain deposit accounts maintained with the lender are being used as a cash collateral account, the Company recorded these cash deposits as restricted cash. Together with the cash collateral account, the Company also places its building as part of the debt collateral.

**July 2017 — \$22,700,000 Credit Facility**

In July 2017, the Company entered into a secured credit facility (the “Credit Facility”) with Agricultural Bank of China Limited — Tokyo Branch in the amount of up to \$22,700,000. The Credit Facility matured on July 12, 2019 and was paid off.

**September 2018 — \$15,000,000 Promissory Note**

In September 2018, the Company issued \$15,000,000 aggregate principal amounts of promissory notes (the “2018 Promissory Notes”) due September 30, 2021, with associated debt issuance costs of approximately \$57,000. The issuance costs are amortized to interest expense over the term of the 2018 Promissory Notes using the effective interest rate method. On December 26, 2018, the Company amended its agreement with the relevant financial institution. The Company modified its loan by decreasing the Promissory Notes by \$5,500,000 and replaced it by executing a Revolving Loan and Security Agreement (the “Revolver”) in the amount of \$5,500,000 due on December 31, 2019. On February 13, 2020, the Company extended the maturity date of the Revolver to December 31, 2020 and decreased the outstanding amount by \$3,000,000. As of December 31, 2020 and 2019, the total outstanding amounts for the 2018 Promissory Notes were \$2,849,993 and \$6,649,997, respectively. In June 2021, the Company renewed and amended its debt arrangements, see Note 20 — Subsequent Events.

Interest is due and payable monthly for the 2018 Promissory Notes at the prime rate plus 0.125%. The applicable interest rate as of December 31, 2020 and 2019, was 3.375% and 4.875%, respectively. In addition to the monthly payments of interest, commencing on April 30, 2019 the Company will be required to make monthly principal payments in the amount of approximately \$317,000 on the 2018 Promissory Note until the maturity date, with any unpaid interest and principal payments coming due and payable on the maturity date as well.

**December 2019 — \$550,000 Bridge Loan**

In December 2019, the Company’s financial institution issued a bridge loan (“2019 Bridge Loan”) in the amount of \$550,000, the bridge loan was cancelled in 2020.

**February 2020 — \$5,000,000 Promissory Note**

In February 2020, the Company issued \$5,000,000 aggregate principal amount of promissory notes (the “2020 Promissory Notes”) due February 11, 2024. Interest on the outstanding principal is computed and calculated based upon the higher of 5% or 0.25% in excess of the Wall Street Journal prime rate. Interest shall be due and payable monthly. In addition to the monthly payment of interest, the Company also made monthly installment payments of principal in the amount of \$104,167 commencing March 31, 2020. As of December 31, 2020, the total outstanding balance amounted to \$3,958,333.

For the above debts and revolver loan — Note 15, the Company is required to maintain quarterly minimum \$3,000,000 EBITDA, current ratio 1.5 to 1.0, and 1.5 to 1.0 minimum debt service coverage ratio. The Company has obtained a waiver from the financial institution to the above financial covenants compliance requirements for the years ended December 31, 2020 and 2019 and also for the first two quarters ended June 30 and March 31, 2021. In June 2021, the Company amended and restated its revolving loan and security agreement, see Note 20 — Subsequent Events. The Company continuously monitors its debt covenant requirement and is not expected to meet the covenant requirement in the near future. Accordingly, the outstanding debt balances are reflected as current in the accompanying consolidated balance sheets. However, the Company has sufficient funds to pay off its debt and revolver loan on the maturity date. Total interest expense for the above debts and revolver loan — Note 15 amounted to \$559,154 and \$1,471,134 for the years ended December 31, 2020 and 2019, respectively. Amortization of loan origination expenses \$26,020 and \$18,913 included as part of interest expense for the years ended December 31, 2020 and 2019, respectively.

The following table provides future minimum payments as of December 31:

Years ending December 31,	Amount
2021	\$6,808,326
	<u>\$6,808,326</u>

**NOTE 17 — LEASES**

The Company’s lease arrangements relate primarily to office facilities and are all classified as operating leases. In April 2017, a commercial bank issued an irrevocable standby letter of credit on behalf of the Company to the landlord for \$296,612 to lease office space in San Jose, California. The standby letter of credit is valid for a one year term and automatically renews upon the expiration and is collateralized by the time deposit in the amount of \$297,000. On December 18, 2019, the standby letter of credit was amended and reduced to \$148,306. In April 2018, a commercial bank issued an irrevocable standby letter of credit on behalf of the Company to the landlord for \$1,075,000 to lease office space in Los Angeles, California. The standby letter of credit is valid for a one year term and is collateralized by the time deposit in the amount of \$1,075,000. On January 20, 2021, the standby letter of credit was amended and extended to January 31, 2026. These amounts are being recorded as restricted cash and cash equivalents on the Company’s consolidated balance sheets.

As of December 31, 2020, existing leases have remaining lease terms ranging from 1.5 years to 5.3 years. Components of lease costs are as follows:

	For the years ended December 31,	
	2020	2019
<b>Operating lease</b>		
Operating lease costs	\$1,519,725	\$1,900,089
Short term lease costs	87,724	120,650
<b>Total operating lease costs</b>	<u>\$1,607,449</u>	<u>\$2,020,739</u>

Supplemental information related to operating leases is as follows:

	For the years ended December 31,	
	2020	2019
<b>Operating lease</b>		
Cash paid for amounts included in the measurement of lease liabilities	\$1,855,538	\$1,945,266
Weighted average remaining lease term	5.3 years	4.4 years
Weighted average discount rate	4.77%	4.81%

Future undiscounted lease payments for operating leases and reconciliation of these payments to our operating lease liabilities at December 31, 2020 are as follows:

	Future lease payments	Imputed Interest	Lease Liabilities
	Amount		
<b>Years ending December 31,</b>			
2021	\$1,879,355	\$330,621	\$1,548,734
2022	1,943,034	254,069	1,688,965
2023	1,623,042	177,785	1,445,257
2024	1,610,844	105,810	1,505,034
2025	1,453,784	28,290	1,425,494
Total future lease payments	<u>\$8,510,059</u>	<u>\$896,575</u>	<u>\$7,613,484</u>

#### NOTE 18—INCOME TAXES

The components of income (loss) before income taxes are as follows:

	2020	2019
United States	\$36,106,434	\$(17,832,127)
Foreign	454,038	117,340
	<u>\$36,560,472</u>	<u>\$(17,714,787)</u>

The income tax provision (benefit) for the years ended December 31, 2020 and 2019 are as follows:

	2020	2019
<b>Current:</b>		
U.S. federal	\$7,377,846	\$ 6,062
U.S. State	264,388	4,800
Foreign	122,038	—
Total current income taxes	<u>7,764,272</u>	<u>10,862</u>
<b>Deferred:</b>		
U.S. federal	(938,907)	(2,402,952)
U.S. State	(14,850)	(105,669)
Foreign	(3,768)	—
Total deferred income taxes	<u>(957,525)</u>	<u>(2,508,621)</u>
Income tax provision (benefit)	<u>\$6,806,747</u>	<u>\$(2,497,759)</u>

The provision for income taxes differs from the amounts computed by applying the federal statutory tax rate of 21% to earnings before income taxes, as follows:



	2020	2019
Federal statutory income tax rate	21.00%	21.00%
Valuation allowance	0.59%	(6.91)%
NOL carryback refund	(4.78)%	0.00%
Other	1.81%	0.01%
<b>Tax provision</b>	<b><u>18.62%</u></b>	<b><u>14.10%</u></b>

At December 31, 2020, the Company's effective tax rate differed from the federal statutory rate of 21% primarily as a result of changes in valuation allowance on the Company's deferred tax assets and the expected incremental benefit from the five-year NOL carryback provision permitted by the CARES ACT.

The tax effects of temporary differences that give rise to significant portions of the deferred tax assets and liabilities consisted of the following as of December 31, 2020 and 2019:

	2020	2019
<b>Deferred tax assets (noncurrent):</b>		
Net operating losses	\$ 4,740,321	\$ 6,932,986
Deferred revenue	3,287,009	1,138,646
Research and development credit	189,431	651,856
Book lease liability (ASC 842)	1,807,018	2,191,459
Fixed assets and intangibles	161,201	—
Other	1,772,518	254,359
<b>Total deferred tax assets</b>	<b><u>11,957,498</u></b>	<b><u>11,169,306</u></b>
<b>Deferred tax liabilities (noncurrent):</b>		
Fixed assets and intangibles	—	(269,828)
Book ROU assets (ASC 842)	(1,543,686)	(1,899,115)
<b>Total deferred tax liabilities</b>	<b><u>(1,543,686)</u></b>	<b><u>(2,168,943)</u></b>
Long-term deferred tax asset	10,413,812	9,000,363
Valuation allowance	(5,382,554)	(4,928,595)
<b>Net deferred tax asset</b>	<b><u>\$ 5,031,258</u></b>	<b><u>\$ 4,071,768</u></b>

Included in these financial statements are two entities that are not consolidated in the U.S. tax return filing due to less than 80% ownership by Snail Games USA Inc. As of December 31, 2020, the non-includable entities have U.S. federal net operating loss carryforwards of \$654,653 which begin to expire in 2037 and \$2,844,714 with an indefinite carryforward period. As of December 31, 2020, the non-includable entities have \$1,240,954 of California net operating loss carryforwards, which begin to expire in 2037.

The Company maintained a valuation allowance of \$5,382,554 and \$4,928,595 as of December 31, 2020 and 2019, respectively, the valuation allowance relates primarily to the NOLs of the non-includable entities mentioned above, which have had historical losses, and which management has assessed are not more likely than not to be able to realize those NOLs. As of December 31, 2020, the Company has foreign net operating loss carryforwards of \$499,013, all of which are fully reserved. Additionally, there is a full valuation allowance placed on the \$647,000 deferred tax asset related to the investment that was written off for books but not yet for tax. The Company has placed a full valuation allowance on this deferred tax asset due to its capital loss nature and the current lack of other capital gain items that could offset said future loss.

Based upon the level of historical taxable income and projections of future taxable income over the periods during which the deferred tax assets are deductible, except as noted above, management believes it is more likely than not that the Company will realize the benefits of these deductible differences.

As of December 31, 2020, the Company has foreign tax credit carryforwards of \$192,000 which, if not utilized, begin to expire in 2027. The Company has booked a FIN 48 reserve on the entire amount of foreign tax credit carryforwards due to uncertainty regarding their nature and future utilization.

The Company and its subsidiaries currently file tax returns in the United States (federal and state) and Poland. The statute of limitations for its consolidated federal income tax returns are open for tax years ending December 31, 2017 and after. The statute of limitations for its consolidated California income tax returns are open for tax years ending December 31, 2016 and after. All tax periods for its Polish subsidiary are currently subject to examination since its inception in 2018. While the Company has historically only filed a state tax return in California, management has agreed to file initial state income tax returns in four new states for the year ended December 31, 2020 and also undergo the VDA process in an additional three states.

After enactment of TCJA in 2017, any current earnings of a foreign subsidiary are subject to the Global Intangible Low-Taxed Income (“GILTI”) tax and any future repatriation of foreign earnings back to the U.S. would be subject to a 100% dividends-received deduction, thus, not subject to federal taxes. The Company owns one foreign corporation, Donkey Crew, which is subject to the GILTI tax and will have a GILTI inclusion during the year ended December 31, 2020. It is Management’s intent to permanently reinvest any future foreign earnings to support operations and business growth of its affiliated company in Poland.

The following table reflects changes in gross unrecognized tax benefits for the years ended December 31, 2020 and 2019:

	<u>2020</u>	<u>2019</u>
Unrecognized tax benefits at beginning of year	\$ 383,928	\$ 99,924
Gross Increases – current year positions	657,386	224,832
Gross Increases – prior year positions	13,439	85,761
Gross Decreases – prior year positions	—	(6,723)
Gross Decreases – settlements	(672)	(19,867)
Unrecognized tax benefits at end of year	<u>\$1,054,081</u>	<u>\$ 383,927</u>

As of December 31, 2020 and 2019, the Company has \$1,054,081 and \$383,927, respectively, of unrecognized tax benefits. If recognized a number of these items would impact the Company’s effective tax rate including the underpayment of 2018 federal tax liability, state income tax exposure, transfer pricing exposure, R&D credits, foreign NOLs and foreign tax credits. The Company accrued and recognized interest and penalties related to unrecognized tax benefits in operating expense. As of December 31, 2020 and 2019, the Company had accrued \$1,959 and \$0 of interest and penalties, respectively. The Company does not expect the amount to change within 12 months and is currently not under audit by any taxing jurisdictions.

#### **NOTE 19 — COMMITMENTS AND CONTINGENCIES**

##### ***Litigation***

The Company is subject to claims and contingencies related to lawsuits and other matters arising out to the normal course of business. Management believes the ultimate liabilities associated with such claims and contingencies, if any, are not likely to have a material adverse effect on the financial position or results of the Company. The Company has elected to expense legal costs associated with legal contingencies as incurred. As of December 31, 2020 and 2019, the Company has an estimated accrual cost of \$5,450,000 and \$0, respectively, as a result of a pending litigation settlement. Such amount is included in accrued expenses on the accompanying consolidated balance sheets. The Company expects to pay off the litigation settlement on or before April 30, 2022. See Note 20 — Subsequent Events for the recent payments.

#### **NOTE 20 — SUBSEQUENT EVENTS**

The Company has evaluated all events or transactions that occurred after December 31, 2020 through August 11, 2021, the date the consolidated financial statements were available to be issued. During this period, the Company did not have any material recognizable subsequent events required to be disclosed as of and for the year ended December 31, 2020, other than the following:

- On January 29, 2021, the Company set up a 100% owned subsidiary Interactive Films, LLC. The purpose of Interactive Films, LLC is to develop and publish interactive video games.

- On February 15, 2021, the Company executed a promissory note and lent \$200,000 to a related party. The note bears a 2% annual interest rate, principal and interest due in one year.
- The Company received notification that its PPP loan balance as of March 15, 2021 was forgiven by the SBA in the amount of \$392,200.
- On April 15, 2021, Elephant Snail, LLC, of which the Company has 51% membership interest, filed the dissolution and winding up of the Limited Liability Company. As a result of the dissolution, the Company incurred approximately \$356,000 loss from investment.
- In June 2021, the Company paid \$2,500,000 as part of the litigation settlement, and the first installment of \$270,000 was paid in July 2021.
- On June 17, 2021, the Company amended and restated its revolving loan and security agreement dated December 26, 2018. The revolving loan, as amended, matures on December 31, 2023, and the maximum amount of revolving line of credit was increased to \$9,000,000 with an annual interest rate equal to the Prime Rate less 0.25%. The revolving loan is secured by certain deposit accounts.
- On June 17, 2021, the Company entered into a loan agreement with a financial institution in the amount of \$3,000,000, the loan matures on June 30, 2031 with an annual interest rate of 3.5% for the first 5 years and then floating at the Wall Street Journal prime rate from years 6 to 10. The loan is secured by the Company's building.
- During 2021, the Company's Founder and Chairman, who is also the majority shareholder of the parent company, borrowed additional \$19,430,000 from the Company, the loan bears 2.0% per annum interest.

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Through and including \_\_\_\_\_, 2022 (the 25th day after the date of this prospectus), all dealers effecting transactions in these securities, whether or not participating in this offering, may be required to deliver a prospectus. This is in addition to the dealers' obligation to deliver a prospectus when acting as underwriters and with respect to their unsold allotments or subscriptions.

**Shares**



**Snail, Inc.**

**Class A Common Stock**

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**PROSPECTUS**

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**BofA Securities**

, 2022

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## PART II

## Information Not Required in the Prospectus

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

The following table indicates the expenses to be incurred in connection with the offering described in this registration statement, other than underwriting discounts and commissions. All amounts are estimated except the Securities and Exchange Commission registration fee, the Financial Industry Regulatory Authority, Inc., or FINRA, filing fee and the Nasdaq listing fee.

	<b>Amount to be Paid</b>
Securities and Exchange Commission registration fee	\$ *
FINRA filing fee	*
Initial Nasdaq listing fee	*
Accountants' fees and expenses	*
Legal fees and expenses	*
Blue Sky fees and expenses	*
Transfer Agent's fees and expenses	*
Printing and engraving expenses	*
Miscellaneous	*
Total expenses	<u>\$ *</u>

\* To be provided by amendment.

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

We will be governed by the Delaware General Corporation Law ("DGCL"). Section 145 of the DGCL provides that a corporation may indemnify any person, including an officer or director, who was or is, or is threatened to be made, a party to any threatened, pending or completed legal action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of such corporation), by reason of the fact that such person was or is an officer, director, employee or agent of such corporation or is or was serving at the request of such corporation as a director, officer, employee or agent of another corporation or enterprise. The indemnity may include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding, provided such officer, director, employee or agent acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the corporation's best interest and, for criminal proceedings, had no reasonable cause to believe that such person's conduct was unlawful. A Delaware corporation may indemnify any person, including an officer or director, who was or is, or is threatened to be made, a party to any threatened, pending or contemplated action or suit by or in the right of such corporation, under the same conditions, except that such indemnification is limited to expenses (including attorneys' fees) actually and reasonably incurred by such person, and except that no indemnification is permitted without judicial approval if such person is adjudged to be liable to such corporation. Where an officer or director of a corporation is successful, on the merits or otherwise, in the defense of any action, suit or proceeding referred to above, or any claim, issue or matter therein, the corporation must indemnify that person against the expenses (including attorneys' fees) which such officer or director actually and reasonably incurred in connection therewith.

Our certificate of incorporation will authorize the indemnification of its officers and directors, consistent with Section 145 of the DGCL.

Reference is made to Section 102(b)(7) of the DGCL, which enables a corporation in its original certificate of incorporation or an amendment thereto to eliminate or limit the personal liability of a director for violations of the director's fiduciary duty, except (i) for any breach of the director's duty of loyalty to

the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL, which provides for liability of directors for unlawful payments of dividends of unlawful stock purchase or redemptions or (iv) for any transaction from which a director derived an improper personal benefit.

We intend to enter into indemnification agreements with each of our directors and officers. These indemnification agreements may, in some cases, be broader than the specific indemnification provisions contained under Delaware law. These indemnification agreements may require us, among other things, to indemnify our directors and officers for some expenses, including attorneys' fees, judgments, fines and settlement amounts incurred by a director or officer in any action or proceeding arising out of his or her service as one of our directors or officers, or any of our subsidiaries or any other company or enterprise to which the person provides services at our request. In addition, as permitted by Delaware law, our certificate of incorporation will include provisions that eliminate the personal liability of our directors for monetary damages resulting from breaches of certain fiduciary duties as a director. The effect of this provision is to restrict our rights and the rights of our stockholders in derivative suits to recover monetary damages against a director for breach of fiduciary duties as a director.

We intend to arrange general liability insurance policy that covers certain liabilities of directors and officers of our corporation arising out of claims based on acts or omissions in their capacities as directors or officers.

In any underwriting agreement we enter into in connection with the sale of Class A common stock being registered hereby, which such agreement will be filed as Exhibit 1.1 to this registration statement, the underwriters will agree to indemnify, under certain conditions, us, our directors, our officers and persons who control us within the meaning of the Securities Act against certain liabilities.

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

None.

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

(a) Exhibits.

The following documents are filed as exhibits to this registration statement.

- 1.1\* Form of Underwriting Agreement
- 3.1\* Certificate of Incorporation, as amended to date and as currently in effect
- 3.2\* Form of Certificate of Incorporation, to be effective upon the completion of this offering
- 3.4\* Form of Bylaws, to be effective upon the completion of this offering
- 4.1\* Form of Certificate of Class A Common Stock
- 5.1\* Opinion of Davis Polk & Wardwell LLP
- 10.1\* Form of Indemnification Agreement between Snail, Inc. and its directors and officers
- 10.2 [Amended and Restated Revolving Loan and Security Agreement, dated as of June 17, 2021, by and between Snail Games USA Inc. and Cathay Bank](#)
- 10.3 [Loan Agreement, dated as of June 17, 2021, by and between Snail Games USA Inc. and Cathay Bank](#)
- 10.4^ [Offer Letter, dated as of August 31, 2020, between Jim S. Tsai and Snail Games USA Inc.](#)
- 10.5^ [Amendment, effective as of November 1, 2021, to Offer Letter between Jim S. Tsai and Snail Games USA Inc.](#)
- 10.6^ [Offer Letter, dated as of August 28, 2020, between Heidi Chow and Snail Games USA Inc.](#)
- 10.7^ [Employment Agreement, dated as of December 10, 2012, between Peter Kang and Snail Games USA Inc.](#)
- 10.8^ [Amendment, effective as of December 1, 2021, to Employment Agreement between Peter Kang and Snail Games USA Inc.](#)

- 21.1\* List of subsidiaries
- 23.1\* Consent of BDO USA, LLP
- 23.2\* Consent of Davis Polk & Wardwell LLP (included in Exhibit 5.1)
- 24.1\* Powers of attorney (included on signature page to the registration statement)

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\* To be filed by amendment.

^ Indicates management contract or compensatory plan.

(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.**

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.

Insofar as indemnification 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 Securities and Exchange Commission 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 its 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.

The undersigned 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 the purpose 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.

**Signatures**

Pursuant to the requirements of the Securities Act, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in Culver City, California, on this                    day of                    , 2022.

Snail Games USA Inc.

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

Name: Jim S. Tsai

Title: Chief Executive Officer



**SIGNATURES AND POWER OF ATTORNEY**

We, the undersigned officers and director of Snail Games USA Inc., hereby severally constitute and appoint Jim S. Tsai and Heidi Chow, and each of them singly (with full power to each of them to act alone), our true and lawful attorneys-in-fact and agents, with full power of substitution and resubstitution in each of them for him or her and in his or her name, place and stead, and in any and all capacities, to sign any and all amendments (including post-effective amendments) to this registration statement (or any other registration statement for the same offering that is to be effective upon filing pursuant to Rule 462(b) under the Securities Act of 1933), 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 or necessary to be done in and about the premises, as full to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities held on the dates indicated.

Signature	Title	Date
_____ Jim S. Tsai	Chief Executive Officer (principal executive officer)	, 2022
_____ Hai Shi	Founder and Chairman of the Board of Directors	, 2022
_____ Heidi Chow	Chief Financial Officer (principal financial and accounting officer)	, 2022

**AMENDED AND RESTATED REVOLVING LOAN AND SECURITY AGREEMENT**

**SNAIL GAMES USA INC.,**  
a California corporation

and

**CATHAY BANK,**  
a California banking corporation

Dated as of June 17, 2021

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**THIS AMENDED AND RESTATED REVOLVING LOAN AND SECURITY AGREEMENT** (“Agreement”) is entered into as of June 17, 2021, by and among **SNAIL GAMES USA INC.**, a California corporation (“Borrower”), on the one hand, and **CATHAY BANK**, a California banking corporation (“Lender”), on the other hand. This Agreement amends, restates, replaces and supercedes in its entirety that certain Loan and Security Agreement dated December 26, 2018, as amended from time to time.

## **1. DEFINITIONS AND INTERPRETATIONS.**

**1.1 Definitions.** As used in this Agreement, the following terms have the meanings set forth below. Capitalized terms not defined herein shall have the meanings set forth in the Code, as defined below.

“Account” has the meaning set forth in Section 9102(a)(2) of the Code.

“Account Debtor” means a Person obligated on an Account, chattel paper or General Intangibles.

“Advance” shall mean each advance, loan and financial accommodation from Lender to Borrower, whether now existing or hereafter arising and however evidenced, including those advances, loans and financial accommodations described herein or described on any exhibit or schedule attached to this Agreement from time to time.

“Affiliate” means, with respect to any Person, a relative, partner, shareholder, director, officer, or employee of such Person, or any Parent or subsidiary of such Person, or any Person controlling, controlled by or under common control with such Person.

“Agreement” means this Loan and Security Agreement as amended, modified or supplemented from time to time. Each reference herein to “this Agreement,” “this Loan Agreement” “herein,” “hereunder,” “hereof” or other like words shall include this Agreement, and any annex, exhibit or schedule attached hereto or referred to herein.

“Anti-Money Laundering Laws” shall mean the USA Patriot Act of 2001, the Bank Secrecy Act, as amended through the date hereof, Executive Order 13324-Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended through the date hereof, and other federal laws and regulations and executive orders administered by OFAC which prohibit, among other things, the engagement in transactions with, and the provision of services to, certain foreign countries, territories, entities and individuals (such individuals include specially designated nationals, specially designated narcotics traffickers and other parties subject to OFAC sanction and embargo programs), and such additional laws and programs administered by OFAC which prohibit dealing with individuals or entities in certain countries regardless of whether such individuals or entities appear on any of the OFAC lists.

“Assignment of Deposit” shall mean that certain that certain Security Agreement (Assignment of Deposit Account) dated June -\_, 2021.

“Borrower’s Operating Account” means Borrower’s demand deposit account with Lender, into which substantially all of Borrower receipts from its operations are deposited and from which substantially all of Borrower disbursements for its operations are made.

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“Borrowing Base” shall mean an amount equal to \$5,000,000.00 plus eighty percent (80%) of the balance due on Eligible Accounts Receivable . After calculating the Borrowing Base as provided above, Lender may deduct such reserves as Lender may establish from time to time in its reasonable credit judgment, including, without limitation, reserves for rent at leased locations subject to statutory or contractual landlord’s liens, inventory shrinkage, dilution, customs charges, warehousemen’s or bailees’ charges, and the amount of estimated maximum exposure, as determined by Lender from time to time, under any interest rate contracts which Borrower enters into with Lender (including interest rate swaps, caps, floors, options thereon, combinations thereof, or similar contracts).

“Borrowing Base Certificate” means a Borrowing Base Certificate substantially in the form of Exhibit “B” attached hereto.

“Borrowing Base Supporting Documentation” has the meaning set forth in Section 9.3(a) of this Agreement.

“Business Day” means any day that is not a Saturday, Sunday, or other day on which California banks are authorized or required to close.

“Change of Control” shall be deemed to have occurred at such time as a “person” or “group” (within the meaning of Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934) (other than the current holders of the ownership interests in Borrower) becomes the “beneficial owner” (as defined in Rule 13d-3 under the Securities Exchange Act of 1934), directly or indirectly, as a result of any single transaction, of fifty percent (50%) or more, of the total voting power of all classes of stock or other ownership interests then outstanding of any Borrower normally entitled to vote in the election of directors or analogous governing body.

“Closing Date” means the date that all conditions precedent under Section 6.1 of this Agreement are satisfied.

“Code” means the Uniform Commercial Code as adopted and in effect in the State of California, from time to time.

“Collateral” shall mean all real and personal property of Borrower, or others, in which Lender has been and may hereafter be granted a lien, assignment or security interest to secure payment and performance of Borrower’s obligation under the Loan.

“Contract Rate” shall have the meaning set forth in Section 3.1 hereof .

“Current Liabilities” shall mean at any date the current liabilities of Borrower determined as of such date in accordance with GAAP.

“Debt Service Coverage Ratio” shall mean the ratio of (i) Borrower’s EBITDA, divided by (ii) the aggregate of all interests and the scheduled payments of principal and interest payable by Borrower to Lender under the Note, and all other scheduled payments of principal and interest payable by Borrower to Lender under any other notes.

“Default” means any event which, with notice or passage of time or both, would constitute an Event of Default.

“Default Rate” shall have the meaning set forth in Section 3.3 hereof.

“Deposit Account” means any deposit account (as defined in the Code) now or hereafter maintained by or for the benefit of Borrower, and all amounts therein, whether or not restricted or designated for a particular purpose, that has been pledged as collateral for any Obligation under this Agreement.

“Dollars or \$” means United States dollars.

“EBITDA” means net income before tax, plus interest expense (net of capitalized income expense), depreciation expense and amortization expense.

“Eligible Accounts Receivable” means Accounts arising in the ordinary course of Borrower’s business from the sale of goods or rendition of services, which Lender, in its sole judgment exercised in good faith, shall deem eligible for borrowing, based on such considerations as Lender may from time to time deem appropriate. Eligible Accounts Receivable shall not include the following:

- (a) Accounts with respect to which the Account Debtor is an employee, Affiliate, or agent of Borrower including, without limitation, SOE, Inc. and Suzhou Snail Digital Technology Co.;
- (b) Accounts with respect to which goods are placed on (i) consignment, (ii) guaranteed sale, (iii) sale or return, (iv) sale on approval, (v) bill and hold, (vi) demonstration or promotion, (vii) credit memos or (viii) other terms by reason of which the payment by the Account Debtor may be conditional;
- (c) [Reserved];
- (d) Accounts with respect to which the Account Debtor is the United States or any department, agency, or instrumentality of the United States;
- (e) Accounts with respect to which the Account Debtor is a creditor of Borrower, has or has asserted a right of setoff, has disputed its liability, or has made any claim with respect to the Accounts;
- (f) Accounts with respect to which the Account Debtor is subject to any reorganization, bankruptcy, insolvency, arrangement, readjustment of debt, dissolution or liquidation proceeding, or becomes insolvent, or goes out of business, or has had a trustee or receiver appointed for any part of its property, has made an assignment for the benefit of creditors, or has failed generally to pay its debts (including its payroll) as such debts become due;
- (g) Accounts the collection of which Lender, in its sole discretion, believes to be doubtful by reason of the Account Debtor’s financial condition or which Lender, in its sole discretion, deems the creditworthiness or financial condition of the Account Debtor to be unsatisfactory;
- (h) Accounts with respect to which the goods giving rise to such Account have not been shipped and billed to the Account Debtor, the services giving rise to such Account have not been performed and accepted by the Account Debtor, or the Account otherwise does not represent a final sale;

- Account);
- (i) Accounts designated by Borrower with the term, “unapplied credits” (i.e. payments received but not yet applied to a specific Account);
  - (j) Accounts which arise from the sale of goods which remain in the Borrower’s possession or under the Borrower’s control;
  - (k) Accounts which are evidenced by a promissory note or chattel paper;
  - (l) Accounts that represent progress payments or other advance billings that are due prior to the completion of performance by Borrower of the subject contract for goods or services;
  - (m) Accounts which have not been paid in full within one hundred twenty (120) days from the invoice date, or within sixty (60) days from the original due date thereof or within sixty (60) days from the original due date there remains a balance of more than fifty percent (50%) of the amount due.
  - (n) Accounts that do not arise from the sale of goods or performance of services by Borrower in the ordinary course of its business;
  - (o) Accounts that (i) are not owned by Borrower or (ii) are subject to any lien of any other person, other than Lender;
  - (p) That portion of the Accounts of any single Account Debtor which exceeds twenty percent (20%) of all of Borrower’s Accounts , provided that such percentage shall be increased to one hundred percent (100%) for Valve, Microsoft and Sony;
  - (q) Accounts that the amount thereof is not yet represented by an invoice or bill issued in the name of the applicable Account Debtor;
  - (r) Accounts not covered by credit insurance acceptable to Lender naming Lender as loss payee;
  - (s) Contra-Accounts (that is, an Account payable to and receivable from the same payee-payor;)and
  - (t) Cash-on-delivery Accounts.

“Environmental Indemnity” shall mean that certain Hazardous Substances Indemnity Agreement duly executed by Borrower, as it may from time to time be supplemented, modified or amended, pursuant to which such parties shall indemnify and defend Lender from and against any loss or liability, direct or indirect, with respect to the presence or release of any hazardous or toxic material in, on, about or under the Property.

“Environmental Laws” shall mean all federal, state and local environmental land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

“Equipment” has the meaning set forth in Section 9102(a)(33) of the Code and includes, without limitation, all of Borrower’s furniture, fixtures, trade fixtures, tenant improvements owned by Borrower, all attachments, accessories, accessions, replacements, substitutions, additions or improvements to any of the foregoing, wherever located .

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended from time to time, or any successor statute, and any and all regulations thereunder.

“Event of Default” means any of the events set forth in Section 10.1 of this Agreement.

“Fees and Costs” has the meaning set forth in Section 11.12 of this Agreement.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States, applied on a consistent basis, applied both to classification of items and amounts.

“General Intangibles” has the meaning set forth in Section 9102(a)(42) of the Code and shall include, without limitation, payment intangibles, all choses in action, causes of action, corporate or other business records, inventions, designs, drawings, blueprints, patents, patent applications, trademarks and the goodwill of the business symbolized thereby, names, trade names, trade secrets, goodwill, copyrights, registrations , licenses, franchises, customer lists, security and other deposits, rights in all litigation presently or hereafter pending for any cause or claim (whether in contract, tort or otherwise), and all judgments now or hereafter arising therefrom, all claims of Borrower against Lender, rights to purchase or sell real or personal property, rights as a licensor or licensee of any kind, royalties, telephone numbers, proprietary information , purchase orders, and all insurance policies and claims (including without limitation, life insurance, key man insurance, credit insurance, liability insurance, property insurance and other insurance), tax refunds and claims, software, discs, tapes and tape files, claims under guaranties, security interests or other security held by or granted to Borrower, all rights to indemnification and all other intangible property of every kind and nature (other than Receivables).

“Goods” has the meaning set forth in section 9102(a)(44) of the Code.

“Hazardous Substance” shall mean, without limitation , any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, Hazardous Wastes, hazardous or Toxic Substances or related materials as defined in CERCLA, the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), RCRA, or any other applicable Environmental Law and in the regulations adopted pursuant thereto.

“Hazardous Wastes” shall mean all waste materials subject to regulation under CERCLA, RCRA or applicable state law, and any other applicable Federal and state laws now in force or hereafter enacted relating to hazardous waste disposal.

“Indemnified Person” has the meaning set forth in Section 10.4(c) of this Agreement.

“Inventory” means all of Borrower’s now owned and hereafter acquired goods, including software embedded in such goods, merchandise or other personal property, wherever located, to be furnished under any contract of service or held for sale or lease (including without limitation all raw materials, work in process, finished goods and goods in transit, and, including without limitation, all farm products), and all materials and supplies of every kind, nature and description which are or might be used or consumed in Borrower’s business or used in connection with the manufacture, packing, shipping, advertising, selling or finishing of such goods, merchandise or other personal property, and all warehouse receipts, documents of title and other documents representing any of the foregoing.

“Loan Account” has the meaning set forth in Section 2.4.

“Material Adverse Effect” means a material adverse effect on (i) the business, assets, condition (financial or otherwise) or results of operations of Borrower or any subsidiary of Borrower, (ii) the ability of Borrower to duly and punctually pay or perform its obligations under this Agreement (including, without limitation, repayment of the Obligations as they come due), (iii) the value of the Collateral, or Lender’s liens on the Collateral or the privity of any such lien, or (iv) the validity or enforceability of this Agreement or any other agreement or document entered into by any party in connection herewith, or the practical realization of the benefits of Lender’s rights or remedies.

“Material Litigation” shall have the meaning set forth in Section 7.10 hereof.

“Maturity Date” means December 31, 2023.

“Maximum Advance Amount” shall mean \$9,000,000.00, subject to Section 2.1 hereof.

“Note” shall mean the promissory note issued by Borrower to Lender, which shall be in the form of Exhibit “A” attached hereto.

“Obligations” means all present and future Advances, loans, overdrafts, debts, liabilities, obligations, including, without limitation, all obligations of Borrower under any guaranties, covenants, duties and indebtedness at any time owing by Borrower to Lender, whether evidenced by this Agreement or any note or other instrument or document or the Other Documents, whether arising from an extension of credit, opening of a letter of credit, banker’s acceptance, trust receipt, loan, overdraft, guaranty, indemnification or otherwise, whether direct or indirect (including, without limitation, those acquired by assignment and any participation by Lender in Borrower’s debts owing to others), absolute or contingent, due or to become due, including, without limitation, all interest, charges, expenses, fees, attorneys’ fees (including attorneys’ fees and expenses incurred in bankruptcy), expert witness fees and expenses, fees and expenses of consultants, audit fees, letter of credit fees, closing fees, facility fees, termination fees, and any other sums chargeable to Borrower under this Agreement or the Other Documents.

“OFAC” shall mean the United States Department of the Treasury, Office of Foreign Assets Control.

“OFAC Prohibited Person” shall mean a country, territory, individual or person (i) listed on, included within or associated with any of the countries, territories, individuals or entities referred to on The Office of Foreign Assets Control’s List of Specially Designated Nationals and Blocked Persons or any other prohibited person lists maintained by governmental authorities, or otherwise included within or associated with any of the countries, territories, individuals or entities referred to in or prohibited by OFAC or any other Anti-Money Laundering Laws, or (ii) which is obligated or has any interest to pay, donate, transfer or otherwise assign any property, money, goods, services, or other benefits from the property directly or indirectly, to any countries, territories, individuals or entities on or associated with anyone on such list or in such laws.



“Official Body” means any government or political subdivision or any agency, authority, bureau, commission, court or tribunal whether foreign or domestic.

“Other Documents” shall mean the Notes and all other agreements, instruments and documents now or hereafter executed by Borrower and delivered to Lender in respect of the transactions contemplated by this Agreement.

“Overadvance” has the meaning set forth in Section 4.1.

“Parent” means any Person holding a majority of the equity interest in a corporation or limited liability company.

“Permitted Encumbrances” shall mean only those matters and exceptions to title to the Property, as shown in the preliminary report of title and all supplements thereto, issued by the Title Company, and approved by Lender, in regard to the Property.

“Permitted Liens” means all of the following:

- (a) liens in favor of Lender;
- (b) purchase money security interests in specific items of Equipment;
- (c) leases of specific items of Equipment;
- (d) liens for taxes not yet payable;
- (e) security interests being terminated substantially concurrently with this Agreement; and
- (f) liens of materialmen, mechanics, warehousemen, carriers, or other similar liens arising in the ordinary course of business and securing obligations which are not delinquent.

“Person” means any individual, sole proprietorship, general partnership, limited partnership, limited liability partnership, limited liability company, joint venture, trust, unincorporated organization, association, corporation, government, or any agency or political division thereof, or any other entity.

“Potential Default” means any event, act or condition which, with notice or lapse of time or both, would constitute an Event of Default.

“Prime Rate” means an interest rate which is subject to change from time to time based on changes in an independent index, which is the Wall Street Journal Prime Rate (the “Index”). The Index is not necessarily the lowest rate charged by Lender on its loans. If the Index becomes unavailable during the term of this Agreement, Lender may designate a substitute index after notifying Borrower. The interest rate change will not occur more often than each day. Borrower understands that Lender may make loans based on other rates as well. NOTICE: Under no circumstances will the effective rate of interest on any Advance be more than the maximum rate allowed by applicable law.

“RCRA” shall mean the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., as same may be amended from time to time.

“Receivables” means all of Borrower’s now owned and hereafter acquired Accounts, letter of credit rights, license fees, contract rights, chattel paper (including tangible chattel paper, electronic chattel paper, and intangible chattel paper), instruments (including promissory notes), drafts, securities, documents, securities accounts, security entitlements, commodity contracts, commodity accounts, Investment Property, supporting obligations and all other forms of obligations at any time owing to Borrower, all guaranties and other security therefor, all merchandise returned to or repossessed by Borrower, and all rights of stoppage in transit and all other rights or remedies of an unpaid vendor, lienor or secured party.

“Revolving Line of Credit” shall mean the revolving credit facility described in Section 2.1 hereof.

“Solvent” means, with respect to any Person on a particular date, that on such date (a) at fair valuations, all of the properties and assets of such Person are greater than the sum of the debts, including contingent liabilities, of such Person, (b) the present fair salable value of the properties and assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person is able to realize upon its properties and assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (d) such Person does not intend to, and does not believe that it will, incur debts beyond such Person’s ability to pay as such debts mature, and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s properties and assets would constitute unreasonably small capital after giving due consideration to the prevailing practices in the industry in which such Person is engaged. In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed at the amount that, in light of all the facts and circumstances existing at such time, represents the amount that reasonably can be expected to become an actual or matured liability.

“Subordinated Liabilities” means liabilities subordinated to the Borrower’s obligations to Lender in a manner acceptable to Lender, in its sole discretion.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing (other than securities or interest having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person.

“Supporting Obligations” has the meaning set forth in Section 9102(77) of the Code.

“Toxic Substance” shall mean and include any material present on any facility of Borrower which has been shown to have significant adverse effect on human health or which is subject to regulation under the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601 et seq., applicable state law, or any other applicable Federal or state laws now in force or hereafter enacted relating to toxic substances. “Toxic Substance” includes but is not limited to asbestos, polychlorinated biphenyls (PCBs) and lead-based paints.

**1.2 Accounting Terms and Determinations.** Unless otherwise specified herein, all accounting terms used in this Agreement, unless otherwise indicated, shall have the meanings given to such terms in accordance with GAAP. In addition, unless otherwise specified herein all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with GAAP. All other terms contained in this Agreement, unless otherwise indicated, shall have the meanings provided by the Code, to the extent such terms are defined therein.

**1.3 Construction.** Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular and references to the singular include the plural; references to any gender include any other gender; the part includes the whole; the term “including” is not limiting, and the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or”. The words, “hereof,” “herein,” “hereby,” “hereunder,” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Article, section, subsection, clause, exhibit and schedule references are to this Agreement, unless otherwise specified. Any reference in this Agreement or any of the Other Documents to this Agreement or any of the Other Documents includes any and all permitted alterations, amendments, changes, extensions, modifications, renewals, or supplements thereto or thereof, as applicable.

**1.4 Exhibits and Schedules.** All of the exhibits and schedules attached hereto shall be deemed incorporated herein by reference.

**1.5 No Presumption Against Any Party.** Neither this Agreement, any of the Other Documents, any other documents, agreement, or instrument entered into in connection herewith, nor any uncertainty or ambiguity herein or therein shall be construed or resolved using any presumption against any party hereto, whether under any rule of construction or otherwise. On the contrary, this Agreement, the Other Documents, and all other documents, instruments, and agreements entered into in connection herewith have been reviewed by each of the parties and by their respective counsel and shall be construed and interpreted according to the ordinary meanings of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

**1.6 Independence of Provisions.** All agreements and covenants hereunder, under the Other Documents and the other documents, instruments, and agreements entered into in connection herewith shall be given independent effect such that if a particular action or condition is prohibited by the terms of any such agreement or covenant, the fact that such action or condition would be permitted within the limitations of another agreement or covenant shall not be construed as allowing such action to be taken or condition to exist.

## **2. CREDIT FACILITIES.**

### **2.1 Revolving Line of Credit.**

(a) Subject to the terms and conditions contained herein, Lender will make Advances to Borrower from the Closing Date until the Maturity Date, which may be borrowed, repaid and reborrowed, in aggregate amounts outstanding at any one time equal to the lesser of:

(x) the sum of: (i) the Maximum Advance Amount, less (ii) the outstanding Advances, or

(y) an amount equal to the sum of: (i) the Borrowing Base, minus (ii) the outstanding Advances, minus such reserves as Lender may reasonably deem proper and appropriate from time to time (the “Revolving Line of Credit”).

(b) Borrowing Base Calculations. The Borrowing Base shall be calculated by Lender upon receipt from Borrower of the Borrowing Base Certificate and all supporting documentation required under this Agreement pursuant to Section 9.3 below. Lender will provide a Borrowing Base calculation to Borrower setting forth its determination of the Borrowing Base, which calculation will be conclusive and binding in the absence of manifest error. The Borrowing Base as determined by Lender will become effective upon calculation by Lender and will remain in effect until a new Borrowing Base is calculated by Lender in accordance with this Agreement.

(c) Advance Request Procedures. Borrower shall notify Lender prior to 10:00 a.m., Los Angeles time, on a Business Day, of Borrower's request for an Advance that day. Each such notice shall specify the date such Advance is to be made, the amount of such Advance, and shall comply with such other requirements as Lender determines are reasonable or desirable in connection therewith. Any written request for an Advance received by Lender after 10:00 a.m. (Los Angeles time) shall not be considered by Lender until the next Business Day. Should any amount be required to be paid as interest hereunder, or as fees or other charges under this Agreement or any Other Agreement, or with respect to any Obligations, the same shall be deemed a request for an Advance as of the date such payment is due in the amount required to pay in full such interest, fees, charges or Obligation under this Agreement or any Other Agreement, and such request shall be irrevocable.

(d) Note. Advances shall be evidenced by the Note issued by Borrower to Lender.

(e) Payments. The principal amount of each Advance shall be due and payable in full on the Maturity Date, subject to earlier prepayment as herein provided. Interest shall be due and payable as set forth in Section 3.1 hereof. All payments of principal, interest and other amounts payable hereunder, or under any of the Other Documents shall be made to Lender not later than 12:00 noon (Los Angeles time) on the due date therefore in lawful money of the United States of America in federal funds or other funds immediately available to Lender. Lender shall have the right to effectuate payment on any and all Obligations due and owing hereunder by charging Borrower's Operating Account or by making Advances as provided herein. Borrower shall pay principal, interest, and all other amounts payable hereunder, or under any of the Other Documents, without any deduction whatsoever, including, but not limited to, any deduction for any setoff or counterclaim.

## 2.2 Use of Proceeds

(a) All Advances made to or for the benefit of Borrower shall be used solely for working capital and general corporate purposes. Lender shall have no obligation to monitor or verify the use or application of any Advance disbursed by Lender.

(b) Borrower shall not, directly or indirectly, use all or any part of any Advance for the purpose of purchasing or carrying any margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System (the "Board of Governors") or to extend credit to any Person for the purpose of purchasing or carrying any such margin stock or for any purpose which violates or is inconsistent with Regulation X of the Board of Governors, unless such use has been expressly approved in writing by Lender, in its discretion.

### 2.3 Loan Account/Deposit Account

Lender shall maintain on its books a record of account (“Loan Account”) in which Lender shall make entries for each Advance and such other debits and credits as shall be appropriate in connection with the credit facility set forth in this Agreement ; provided, however, the failure by Lender to so record each Advance shall not adversely affect Lender. Each Advance made by Lender shall be deposited in Borrower’s Operating Account, as applicable.

### 2.4 Manner of Borrowing and Payment.

(a) Except as expressly provided herein, all payments (including prepayments) to be made by Borrower on account of principal, interest and fees shall be made without set off or counterclaim and shall be made to Lender, in each case on or prior to 12:00 p.m., Los Angeles time, in Dollars and in immediately available funds.

(b) Notwithstanding anything to the contrary contained herein, commencing with the first Business Day following the Closing Date, each borrowing of an Advance shall be advanced by Lender and each payment by Borrower on account of an Advance shall be applied first to those Advances advanced by Lender.

## 3. INTEREST.

**3.1 Interest Rate.** Each Advance shall bear interest at a per annum rate equal to the Prime Rate less two hundred fifty one thousandths percent (0.250%), calculated on the basis of a 360-day year for the actual number of days elapsed (“Contract Rate”).

**3.2 Interest Payments.** Except as otherwise provided herein, commencing on July 31, 2021, and continuing on the last day of each and every calendar month thereafter until the Maturity Date, Borrower shall pay to Lender all accrued and unpaid interest on the outstanding principal balance of the Advances under this Agreement. Borrower understands that that Lender is entitled to a minimum interest charge of \$100.00 per month.

**3.3 Default Interest.** Upon the occurrence and during the continuance of an Event of Default, Borrower shall pay interest on the unpaid principal amount of each Advance or other Obligation owing to Lender and on the unpaid amount of all interest, fees and other amounts payable hereunder that is not paid when due, payable on demand by Lender, at a rate per annum (the “Default Rate”) equal at all times to five percent (5%) per annum above the Contract Rate.

## 4. PAYMENT OF OBLIGATIONS.

**4.1 Overadvance.** If, at any time and for any reason, the aggregate principal amount of the outstanding Advances exceeds the lesser of (i) the Maximum Advance Amount or (ii) the Borrowing Base (an “Overadvance”), Borrower shall immediately pay Lender, in cash, the amount of such Overadvance. Lender may apply such payments to the outstanding Advances or Obligations in such order and manner as Lender, in its sole and absolute discretion, may determine.

**4.2 Maturity Date.** On the Maturity Date, Borrower shall pay and perform in full all outstanding Advances and all other Obligations arising thereunder, whether for principal, interest, costs, fees or otherwise.

**4.3 Manner of Payment.** Payment of the Advances and all other Obligations shall be withdrawn from Borrower's Operating Account with Lender, or such other account with Lender as designated in writing by Borrower.

**4.4 Late Charge.** If any payment due hereunder is not received or made within ten (10) days of the due date or there are insufficient funds in the Operating Account on the date Lender enters any debit authorized by this Agreement, without limitation, Lender's other remedies in such an event, Lender shall apply a late charge in an amount equal to five percent (5%) of the unpaid portion of the scheduled payment or \$35.00, whichever is less.

## **5. SECURITY INTEREST.**

**5.1 Grant of Interest.** To secure the payment and performance of all of the Obligations as and when due, Borrower hereby grants to Lender a first priority security interest in all Collateral and those evidenced by the Assignment of Deposit Account.

### **5.2 Perfection.**

(a) Lender may file or amend one or more financing statements disclosing Lender's security interest in the Collateral. Borrower agrees that a photographic, photostatic or other reproduction of this Agreement or of a financing statement is sufficient as a financing statement. Borrower approves, authorizes and ratifies any filings or recordings made by or on behalf of Lender in connection with the perfection and continuation of Lender's security interest with respect to the Collateral.

(b) Lender may file UCC-1 financing statements against specific items of Equipment, (or amend existing UCC-1 financing statements) in Lender's sole discretion, and Borrower agrees to furnish to Lender sufficient identifying information, such as make, model and serial numbers, as Lender may request. Lender may also file a fixture filing in the real property records of the applicable county in California, to perfect its security interest in such items of Equipment as are or become fixtures.

(c) Upon demand, Borrower will deliver to Lender such other items of Collateral or will execute such documents as are appropriate to grant Lender possession or control of such Collateral as necessary to further perfect Lender's security interest therein.

## **6. CONDITIONS PRECEDENT.**

**6.1 Conditions to Initial Advance.** The obligation of Lender to make the initial Advance is subject to the satisfaction, in the sole discretion of Lender, at or prior to the first Advance hereunder, of each, every and all of the following conditions:

(a) Accuracy of Representations and Warranties; No Default. The representations and warranties contained in Sections 7 and 8 below shall have been true and correct when made and shall be true and correct on and as of the Closing Date; and on the Closing Date, no Event of Default and no Potential Default shall have occurred and be continuing.

(b) Documents and Agreements. Borrower shall deliver to Lender the following documents, in form and substance satisfactory to Lender, in its sole and absolute discretion :

- (i) An executed original of this Agreement;
- (ii) The Note;
- (iii) A Borrowing Base Certificate, showing borrowing availability pursuant to the terms hereof;
- (iv) Such other documents, instruments and information as Lender shall require.

(c) Priority of Lender's Liens. Lender shall have received the results of "of record" searches satisfactory to Lender in its sole and absolute discretion, reflecting its Uniform Commercial Code filing against Borrower indicating that Lender has a perfected, first priority lien in and upon all of the Collateral, subject only to such Permitted Liens which are also permitted to be senior to the lien of Lender.

(d) Insurance. Lender shall have received copies of the insurance binders or certificates evidencing Borrower's compliance with Section 9.2 of this Agreement, including lender's loss payee endorsements.

(e) Organizational Documents. Lender shall have received copies of Borrower's articles of incorporation or articles of organization, as applicable, and all amendments thereto, and a certificate of good standing (each certified by the California Secretary of State, and dated a recent date prior to the Closing Date), and Lender shall have received Certificates of Foreign Qualification for Borrower from the Secretary of State of each state wherein the failure to be so qualified could have a Material Adverse Effect.

(f) Certified Resolutions/Authorizations. Lender shall have received (i) copies of Borrower's by-laws or operating agreement, as applicable, and all amendments thereto, and (ii) copies of the resolutions of the board of directors of Borrower or authorization of the managers of Borrower, as applicable, authorizing the execution and delivery of this Agreement, and the other documents contemplated hereby, and authorizing the transactions contemplated hereunder and thereunder, and authorizing specific officers or managers of Borrower to execute the same on behalf of Borrower certified by the Secretary or other acceptable officer, or the manager, as applicable, of Borrower as of the Closing Date.

(g) Landlord Waivers. If required by Lender, Lender shall have received duly executed landlord waivers and access agreements, in form and substance satisfactory to Lender, in Lender's sole and absolute discretion, and, when deemed appropriate by Lender, in form for recording in the appropriate recording office, with respect to all leased locations where Borrower maintains any Collateral.

(h) Third Party Custody. In the event that any Collateral is in the possession of a third party, Borrower shall join with Lender in notifying such third party of Lender's security interest and obtaining an acknowledgement from such third party that it is holding such Collateral for the benefit of Lender.

(i) Permits and Approvals. Verification and approval of all permits, approvals and authorizations required to pledge the Collateral to Lender.

(j) Fees. Borrower shall have paid all Fees and Costs payable by Borrower hereunder, including legal fees and costs incurred by Lender in connection with the preparation, negotiation and closing of this Agreement.

(k) Field Audit. Review and approval of field audit of Borrower verifying methodology and valuation of accounts receivable and inventory, performed by an agent designated by Lender, all to the satisfaction of Lender in its sole opinion and judgment.

(l) Borrower's Financial Statements. Review and approval of Borrower's latest year to date month-end internally prepared consolidated financial statements and tax returns (with all forms K-1 attached), together with the similar dated aged accounts receivable and inventory reports, and any other financial statements and reports as required by Lender.

(m) Other Documents and Agreements. Lender shall have received such other agreements, instruments and documents as Lender may require in connection with the transactions contemplated hereby, all in form and substance satisfactory to Lender in Lender's sole and absolute discretion, and in form for filing in the appropriate filing office, including, but not limited to, those documents listed in Section 6.1(c).

**6.2 Conditions to all Advances.** The obligation of Lender to make any Advance to Borrower (including the initial Advance) is further subject to and contingent upon the fulfillment of each of the following conditions to the satisfaction of Lender:

(a) The fact that, immediately before and after the making of any Advance, no Event of Default or Default shall have occurred or be continuing; and

(b) The fact that the representations and warranties of Borrower contained in this Agreement shall be true and correct on and as of the date of such borrowing.

**7. REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER.** In order to induce Lender to enter into this Agreement and to make the Advances, Borrower represents and warrants to Lender as follows, and Borrower covenants that the following representations will continue to be true, and that Borrower will at all times comply with all of the following covenants:

**7.1 State of Organization, Existence and Authority.**

(a) Borrower is and will continue to be, duly organized, validly existing and in good standing under the laws of the State of California. Borrower has all requisite corporate power and authority to own and operate its properties and to carry on its business as now conducted and as presently planned to be conducted. Borrower is and will continue to be qualified and licensed to do business in California and all jurisdictions in which any failure to do so would have a Material Adverse Effect.

(b) Borrower is not in violation of any term of any of its organizational documents, agreement or instrument to which Borrower is a party or by which it or any of its properties (now or hereafter acquired) may be bound (except for violations which in the aggregate do not have a Material Adverse Effect).



(c) The execution, delivery and performance by Borrower of this Agreement, and all other documents contemplated hereby, and the creation of the lien granted under this Agreement: (i) have been duly and validly authorized, (ii) create legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their terms (except as enforcement may be limited by equitable principles and by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to creditors' rights generally), (iii) do not violate Borrower's articles or certificate of incorporation, or Borrower's by-laws, or any law which is binding upon Borrower or its property, (iv) do not constitute a breach of, or grounds for acceleration of, any material indebtedness or obligation under any material agreement or instrument which is binding upon Borrower or its property and (v) do not require any consent, approval, license exemption or other action by any Official Body or any other person or entity except such as have already been given or shall be obtained on or before the Closing Date.

**7.2 Name; Trade Names and Styles.** The name of Borrower set forth in the heading to this Agreement is its correct name. All prior names of Borrower and all of Borrower's present and prior trade names are listed on Exhibit "C" attached hereto. Borrower shall give Lender thirty (30) days' prior written notice before changing its name or doing business under any other trade name. Borrower has complied, and will in the future comply, with all laws relating to the conduct of business under a fictitious business name.

**7.3 Place of Business; Location of Collateral.** Borrower's address set forth in Section 11.4 hereof is the address and location of Borrower's chief executive office. In addition, Borrower has places of business and tangible Collateral located only at the locations set forth on Exhibit "D" attached hereto. Borrower will give Lender at least thirty (30) days' prior written notice before opening any additional place of business, changing its chief executive office, or moving any of the Collateral to a location other than Borrower's address set forth in Section 11.4 or one of the locations set forth on Exhibit "D" hereto.

**7.4 Title to Collateral; Permitted Liens.** Borrower is now, and will at all times in the future, be the sole owner of all the Collateral. Borrower has rights in and the power to transfer the Collateral. The Collateral is now, and will remain, free and clear of any and all liens, charges, security interests, encumbrances and adverse claims, except for Permitted Liens. Lender has now, and will continue to have, a first-priority perfected and enforceable security interest in all of the Collateral, subject only to the Permitted Liens which are also permitted to be senior to the lien of Lender, and Borrower will at all times defend Lender and the Collateral against all claims of others. Borrower is not and will not become a lessee under any real property lease which does, or will, prohibit, restrain, impair Borrower's right to remove any Collateral from the leased premises. Borrower will keep in full force and effect, and will comply with all the terms of, any lease of real property where any of the Collateral now or in the future may be located.

**7.5 Maintenance of Collateral.** Borrower will maintain the Collateral consisting of Equipment in good working condition, and Borrower will not use the Collateral for any unlawful purpose. Borrower will immediately advise Lender in writing of any material loss or damage to the Collateral.

**7.6 Books and Records.** Borrower has maintained and will maintain at Borrower's Address complete and accurate books and records, comprising an accounting system in accordance with GAAP.

**7.7 Financial Condition, Statements and Reports.** All financial statements now or in the future delivered to Lender have been, and will be, prepared in conformity with GAAP (except, in the case of unaudited financial statements, for the absence of footnotes and subject to normal year-end adjustments) and now and in the future will fairly reflect the financial condition of Borrower, at the times and for the periods therein stated. Between the last date covered by any such statement provided to Lender and the date hereof, there has been no Material Adverse Effect. Borrower is now and will continue to be Solvent.

**7.8 Tax Returns and Payments; Pension Contributions.** Borrower has timely filed, and will timely file, all tax returns and reports required by foreign, federal, state and local law; and Borrower has timely paid, and will timely pay, all foreign, federal, state and local taxes, assessments, deposits and contributions now or in the future owed by Borrower. As of the date hereof, Borrower is unaware of any claims or adjustments proposed for any of Borrower's prior tax years which could result in additional taxes becoming due and payable by Borrower. To the best of Borrower's knowledge, Borrower has paid, and shall continue to pay all amounts necessary to fund all present and future pension, profit sharing and deferred compensation plans in accordance with their terms; and Borrower has not and will not withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any such plan which could result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other governmental agency.

**7.9 Compliance with Law.** Borrower has complied, and will comply, in all material respects, with all provisions of all material foreign, federal, state and local laws and regulations relating to Borrower, including, but not limited to, the Fair Labor Standards Act, and those relating to Borrower's ownership of real or personal property, the conduct and licensing of Borrower's business, and environmental matters.

**7.10 Litigation.** There is no claim, suit, litigation, proceeding or investigation, pending, or to the best of Borrower's knowledge, threatened by or against or affecting Borrower in any court or before any governmental agency (or any basis therefor known to Borrower) which if adversely determined against Borrower would result, either separately or in the aggregate, in a Material Adverse Effect (collectively, the "Material Litigation"). Borrower will promptly inform Lender in writing of any Material Litigation.

**7.11 No Default.** No event has occurred and is continuing and no condition exists which constitutes an Event of Default or Potential Default.

**7.12 No Advice.** Borrower is not relying on Lender, Lender's agents, or Lender's consultants or attorneys as to the legal sufficiency, legal effect or tax consequences of this Agreement or the acquisition of assets relating hereto.

**7.13 Continuing Warranties.** Borrower's representations and warranties set forth in this Agreement shall be true and correct at the time of execution of this Agreement and as of the Closing Date and shall survive the Closing Date and shall remain true and correct as of the date given.

## **8. RECEIVABLES/ ACCOUNTS.**

### **8.1 Representations Relating to Documents and Legal Compliance.**

Borrower represents and warrants to Lender as follows:

(a) All statements made and all unpaid balances appearing in all invoices, instruments and other documents evidencing the Accounts are and shall be true and correct in all material respects and all such invoices, instruments and other documents and all of Borrower's books and records are and shall be genuine and in all respects what they purport to be.

(b) All sales and other transactions underlying or giving rise to each Account shall fully comply with all applicable laws and governmental rules and regulations.

(c) All documents, instruments, and agreements relating to all Accounts are and shall be legally enforceable in accordance with their terms.

**8.2 Account Debtor Notifications.** Borrower agrees and understands that this Loan shall be on a notification basis pursuant to which Lender shall directly collect and receive all proceeds and payments from the Accounts *in* which Lender has a security interest. In order to facilitate the foregoing, Borrower agrees to deliver to Lender, upon demand, any and all of Borrower's records, ledger sheets, payment cards, and other documentation, in the form requested by Lender, with regard to the Accounts. Borrower further agrees that Lender shall have the right to notify each Account Debtor, pay such proceeds and payments directly to Lender, and to do any and all other things as Lender may deem to be necessary and appropriate, within its sole discretion, to carry out the terms and intent of this Agreement. Lender shall have the further right, where appropriate and within Lender's sole discretion, to file suit, either in its own name or in the name of Borrower, to collect any and all such Accounts. Borrower further agrees that Lender may take such other actions, either in Borrower's name or Lender's name, as Lender may deem appropriate and within its sole judgment, with regard to collection and payment of the Accounts, without affecting the liability of Borrower under this Agreement or on the Indebtedness.

**8.3 Verification.** Lender may conduct monthly verifications of the outstanding balances of the account debtors to ensure accuracy of the aging and validity of the balances or the Collateral. Lender shall conduct verification requests from balances based on the most recent reporting period account receivables aging report. Any discrepancy found in such verification shall be treated as an ineligible item for the purpose of calculating the borrowing base unless Lender decides otherwise in its sole discretion.

**8.4 Lock Box.** Borrower agrees that Lender may at any time require Borrower to institute procedures whereby the payments and other proceeds of the Accounts shall be paid by the Account Debtors under a remittance account or lock box arrangement with Lender, or Lender's agent, or with one or more financial institutions designated by Lender. Borrower further agrees that, if no Event of Default exists under this Agreement, any and all of such funds received under such a remittance account or lock box arrangement shall, at Lender's sole election and discretion, either be (1) paid or turned over to Borrower; (2) deposited into one or more accounts for the benefit of Borrower (which deposit accounts shall be subject to a security assignment in favor of Lender); (3) deposited into one or more accounts for the joint benefit of Borrower and Lender (which deposit accounts shall likewise be subject to a security assignment in favor of Lender); (4) paid or turned over to Lender to be applied to the Indebtedness in such order and priority as Lender may determine within its sole discretion; or (5) any combination of the foregoing as Lender shall determine from time to time. Borrower further agrees that, should one or more Events of Default exist, any and all funds received under such a remittance account or lock box arrangement shall be paid or turned over to Lender to be applied to the Indebtedness, again in such order and priority as Lender may determine within its sole discretion.

**9. ADDITIONAL COVENANTS OF THE BORROWER.**

**9.1 Financial and Other Covenants.** Borrower shall at all times comply with the following covenants:

(a) Operating Account. Borrower shall, so long as any Advance remains unpaid and any commitment to make any Advance remains outstanding, maintain Borrower's Operating Account with Lender.

(b) [Reserved]

(c) Minimum Debt Service Coverage Ratio. Borrower shall maintain a minimum Debt Service Coverage Ratio of at least 1.50 to 1.00, which shall be measured quarterly, beginning with the calendar quarter ending June 30, 2020."

(d) [Reserved]

**9.2 Insurance.** Borrower shall, at all times, insure all of the tangible personal property Collateral and carry such other business insurance, with insurers reasonably acceptable to Lender, in such form and amounts as Lender may reasonably require (including, without limitation, credit insurance), and Borrower shall provide evidence of such insurance to Lender, so that Lender is satisfied that such insurance is, at all times, in full force and effect. All liability insurance policies of Borrower with respect to the Collateral shall name Lender as an additional insured, and all property, casualty and related insurance policies of Borrower with respect to the Collateral shall name Lender as a loss payee thereon and Borrower shall cause the issuance of a lender's loss payee endorsement in form reasonably acceptable to Lender. Upon receipt of the proceeds of any such insurance, Lender, at its sole option, either (i) shall apply such proceeds to the prepayment of the Obligations in such order or manner as Lender may elect, or (ii) shall disburse such proceeds to Borrower for application to the cost of repairs, replacements, or restorations. All repairs, replacements or restorations shall be effected with reasonable promptness and shall be of a value at least equal to the value of the items or property destroyed prior to such damage or destruction. Lender may require reasonable assurance that the insurance proceeds so released will be so used. If Borrower fails to provide or pay for any insurance, Lender may, but is not obligated to, obtain the same at Borrower's expense. Borrower shall give Lender no less than thirty (30) days written notice of any cancellation of any insurance required hereunder and shall promptly forward any Notice of Cancellation it receives from any of its insurers.

**9.3 Reports.** Borrower, at its expense, shall provide Lender with the written reports set forth below, (all in form, substance and detail satisfactory to Lender) by the dates specified:

(a) As soon as available but in no event later than forty-five (45) days following the end of each calendar quarter, commencing with the calendar month ending June 30, 2021, Borrower shall deliver to Lender (i) an accounts receivable aging report as of the last day of the prior calendar month, and (ii) an accounts payable aging report as of the last day of the prior calendar month, accompanied by any and all supporting documentation requested by Lender in its sole and absolute discretion, duly certified by Borrower's authorized signatory.

(b) As soon as available but in no event later than sixty (60) days following the end of each calendar quarter, commencing with the calendar quarter ending June 30, 2021, Borrower shall deliver to Lender company prepared consolidated and consolidating quarterly financial statements of Borrower.

(c) As soon as available but in no event later than forty-five (45) days following the end of each calendar quarter, commencing with the calendar quarter ending June 30, 2021, Borrower shall deliver to Lender its Borrowing Base Certificate.

(d) As soon as available but in no event later than one hundred fifty (150) days following the end of Borrower's fiscal year, a detailed customer address listing report for that fiscal year, including the customer's name, address, telephone number and such other information required by Lender.

(e) [Reserved]

(f) As soon as available, and in no event later than one hundred fifty (150) days after the end of Borrower's fiscal year, commencing with the fiscal year ending December 31, 2021, Borrower shall deliver to Lender annual consolidated financial statements of Borrower audited by an independent certified public accountant acceptable to Lender.

(g) Commencing with the 2020 tax year, as soon as available, and in no event later than 30 days after filing, Borrower shall deliver to Lender true and correct copies of Borrower's Federal income tax returns (including all schedules and attachments) of Borrower (and copies of any filing extensions) prepared by an independent certified public accountant acceptable to Lender.

(h) No later than forty-five (45) calendar days following the end of each period, Borrower shall deliver to Lender (i) quarterly royalty reports from each of Microsoft, Sony and Valve, beginning with the calendar quarter ending June 30, 2021, and (ii) If required by Bank, within twenty (20) days of Bank's request, Borrower shall provide monthly bank statements describing any and all royalty payments from Microsoft and Sony for the prior time period. The royalty reports submitted to Lender shall contain supporting bank statements.

(i) Borrower shall, during normal business hours, from time to time upon two (2) Business Days' prior notice as frequently as Lender reasonably determines to be appropriate, but in no event less than once each year: (a) provide Lender and its officers, employees and agents access to its properties, facilities, advisors, officers and employees of Borrower and to the Collateral of Borrower, and (b) permit Lender and any of its officers, employees and agents, to inspect, audit and make extracts from Borrower's books and records. Borrower shall, during normal business hours, from time to time upon two (2) Business Days' prior notice permit Lender and its officers, employees and agents, to inspect, review, evaluate and make test verifications and counts for the Accounts, Inventory and other Collateral of Borrower. If an Event of Default has occurred and is continuing, Borrower shall provide such access to Lender at all times and without advance notice. Furthermore, so long as any Event of Default has occurred and is continuing, Borrower shall provide Lender with access to each of its suppliers and customers. Borrower shall make available to Lender and its counsel reasonably promptly originals or copies of all books and records that Lender may reasonably request. Borrower shall delivery any document or instrument necessary for Lender as it may from time to time reasonably request, to obtain records from any service bureau or other Person that maintains records for Borrower, and shall maintain duplicate records or supporting documentation on media, including computer tapes and discs owned by Borrower. Lender will give Borrower at least two (2) days' prior written notice of regularly scheduled audits.

(j) Promptly upon Lender's request, such other books, records, statements, lists of property and accounts, budgets, forecasts or reports as to Borrower as Lender may reasonably request.

#### **9.4 Information.**

- (a) Borrower shall also furnish, or cause to be furnished, to Lender such additional information as Lender may from time to time reasonably request concerning Borrower's business, and/or financial condition, or any item of Collateral.
- (b) Promptly upon Borrower becoming aware of any Event of Default or Potential Default, Borrower shall give Lender notice thereof, together with a written statement setting forth the nature thereof and the steps which Borrower has taken or is taking to cure the same.
- (c) Promptly upon Borrower becoming aware thereof, Borrower shall give Lender written notice of: (i) any Material Adverse Effect and (ii) the commencement or existence of any proceeding by or before any Official Body against or affecting Borrower which is reasonably likely to be adversely determined and, if adversely decided, would have a Material Adverse Effect.

#### **9.5 Access to Books and Records and Collateral.**

- (a) Borrower agrees to reimburse Lender immediately upon demand for all fees and out-of-pocket expenses for field exams and audits incurred as the result of the occurrence of an Event of Default which is continuing.
- (b) Borrower will not enter into any agreement with any accounting firm, service bureau or third party to store Borrower's books or records at any location other than the location identified in Section 11.4 hereof without first notifying Lender of the same and obtaining the written agreement from such accounting firm, service bureau or other third party to give Lender the same rights with respect to access to books and records and related rights as Lender has under this Agreement.

#### **9.6 Negative Covenants.** Borrower shall not, without Lender's prior written consent, do any of the following:

- (a) create, incur, assume or permit to exist any indebtedness or liabilities resulting from borrowings, guaranties, leasing, loans or advances, whether secured or unsecured, matured or un-matured, liquidated or unliquidated, direct or contingent, joint or several, except the liabilities of Borrower to Lender, and any other liabilities of Borrower existing as of, and disclosed to Lender prior to, the date of this Agreement;
- (b) loan, invest in, or advance money or assets to any other person, enterprise or entity other than any loan, investment or advance to Borrower's affiliates and subsidiaries;
- (c) purchase, create or acquire any interest in any other enterprise or entity other than any purchase, creation or acquisition of interests in Borrower's affiliates and subsidiaries;

- (d) incur any obligation as surety or guarantor other than in the ordinary course of business;
- (e) use any of the proceeds extended pursuant to this Agreement except for the purposes stated in this Agreement and related documents;
- (f) declare or pay any dividends or other distributions with respect to, purchase, redeem, or otherwise acquire for value any of its outstanding stock, partnership interests or membership interests or return any capital of its shareholders, partners, members or managers without Lender's prior written consent;
- (g) merge or consolidate with another entity;
- (h) make any substantial change in the nature of Borrower's business as conducted as of the date hereof;
- (i) acquire all or substantially all of the assets of any other entity;
- (j) sell, transfer, assign, lease, license, or dispose of, all or a substantial or material portion of Borrower's assets, except in the ordinary course of its business;
- (k) mortgage, pledge, grant or permit to exist a security interest in, or lien upon, all or any portion of Borrower's assets owned as of the date of this Agreement or hereafter acquired, or accelerate payment on any existing debt, except any of the foregoing in favor of Lender or which is existing as of, and disclosed to Lender in writing prior to, the date of this Agreement;
- (l) make any change in Borrower's capital structure which would have a Material Adverse Effect;
- (m) dissolve or elect to dissolve;
- (n) change the state of its incorporation;
- (o) change its legal name; or
- (p) use the loan proceeds for any purpose other than as set forth in this
- (q) Agreement.

Transactions permitted by the foregoing provisions of this Section are only permitted if no Potential Default or Event of Default is continuing or would occur as a result of such transaction.

**9.7 Litigation Cooperation.** Borrower shall promptly inform Lender in writing of any proceedings (whether or not purportedly on behalf of Borrower) against Borrower involving an amount in excess of \$150,000.00. Should any third-party suit or proceeding be instituted by or against Lender with respect to any Collateral or relating to Borrower, Borrower shall, without expense to Lender, make available Borrower and its officers, employees and agents and Borrower's books and records, to the extent that Lender may deem them reasonably necessary in order to prosecute or defend any such suit or proceeding.

**9.8 Further Assurances.** Borrower agrees, at its expense, on request by Lender, to execute all documents and take all actions, as Lender, may deem reasonably necessary or useful in order to perfect and maintain Lender's perfected security interest in the Collateral, and in order to fully consummate the transactions contemplated by this Agreement.

**9.9 Operating Account.** Until such time as all of Borrower's Advances have been paid in full and this Agreement has been terminated, Borrower agrees to maintain Borrower's Operating Account at Lender. Borrower authorizes Lender to automatically deduct all payments required to be made by this Agreement from Borrower's Operating Account.

**9.10 Field Audits.** Borrower shall permit Lender, on ten (10) Business Days' prior notice, to conduct a field audit of Borrower verifying Borrower's methodology and valuation of the Accounts, Inventory and other Collateral of Borrower, performed by an agent designated by Lender, all to the satisfaction of Lender in its sole opinion and judgment. In addition, Borrower shall, during normal business hours, from time to time upon ten (10) Business Days prior notice: (a) provide Lender and any of its officers, employees and agents access to its properties, facilities, advisors, officers and employees of Borrower and to the Collateral of Borrower, and (b) permit Lender and any of its officers, employees and agents to inspect, audit and make extracts from Borrower's books and records. Borrower shall, during normal business hours, from time to time upon one (1) Business Days prior notice permit Lender, and its officers, employees and agents, to inspect, review, evaluate and make test verifications and counts for the Accounts, Inventory and other Collateral of Borrower. If an Event of Default has occurred and is continuing, Borrower shall, at Borrower's expense, provide such access to Lender at all times and without advance notice. Furthermore, so long as any Event of Default has occurred and is continuing, Borrower shall provide Lender with access to each of its suppliers and customers. Borrower shall reasonably promptly make available to Lender and its counsel originals or copies of all books and records that Lender may reasonably request. Borrower shall deliver any document or instrument necessary for Lender as it may from time to time reasonably request, to obtain records from any service bureau or other Person that maintains records for Borrower, and shall maintain duplicate records or supporting documentation on media, including computer tapes and discs owned by Borrower. Lender will give Borrower at least ten (10) Business Days' prior written notice of regularly scheduled field audits. Borrower shall reimburse Lender for any cost incurred for such field audits. Unless an Event of Default has occurred, Borrower shall be responsible for the cost of any such audit one (1) time each year and, in no event, at a cost not to exceed \$300.00. Borrower hereby authorized Lender to debit (without offset) any such cost from Borrower's primary operating account with Lender. **In the event that Lender deems the results of any such audit to be unsatisfactory, in Lender's sole opinion and judgment, then in such event, Lender may declare an Event of Default and terminate the Revolving Line of Credit.**

**9.11 Terrorism and Anti-Money Laundering. Borrower warrants and agrees as follows:**

(a) As of the date hereof and throughout the term of the Revolving Line of Credit: (i) Borrower; (ii) any Person controlling or controlled by Borrower; (iii) if Borrower is a privately held entity, any Person having a beneficial interest in Borrower; or (iv) any Person for whom Borrower is acting as agent or nominee in connection with this transaction, is not an OFAC Prohibited Person.

(b) To comply with applicable U.S. Anti-Money Laundering Laws and regulations, all payments by Borrower to Lender or from Lender to Borrower will only be made in Borrower's name and to and from a bank account of a bank based or incorporated in or formed under the laws of the United States or a bank that is not a "foreign shell bank" within the meaning of the U.S. Bank Secrecy Act (31 U.S.C. § 5311 et seq.), as amended, and the regulations promulgated thereunder by the U.S. Department of the Treasury, as such regulations may be amended from time to time.



(c) To provide Lender at any time and from time to time during the term of the Revolving Line of Credit with such information as Lender determines to be necessary or appropriate to comply with the Anti-Money Laundering Laws and regulations of any applicable jurisdiction, or to respond to requests for information concerning the identity of Borrower, any Person controlling or controlled by Borrower or any Person having a beneficial interest in Borrower, from any governmental authority, self-regulatory organization or financial institution in connection with its anti-money laundering compliance procedures, or to update such information.

(d) The representations and warranties set forth in this Section 9.10 shall be deemed repeated and reaffirmed by Borrower as of each date that Borrower makes a payment to Lender under this Agreement and the Other Documents or receives any payment from Lender. Borrower agrees promptly to notify Lender in writing should Borrower become aware of any change in the information set forth in these representations.

## **10. EVENTS OF DEFAULT AND REMEDIES.**

**10.1 Events of Default.** The occurrence of any of the following events shall constitute an “Event of Default” under this Agreement:

(a) Borrower shall fail to pay any amounts owed under this Agreement or any interest thereon or any other monetary Obligation; or

(b) Borrower shall fail to provide to Lender any notices or financial reports specified in this Agreement; or

(c) Borrower shall fail to perform any other non-monetary Obligation; or

(d) Any warranty, representation, statement, report or certificate made or delivered to Lender by Borrower or any of Borrower’s officers, employees or agents, now or in the future, shall be untrue or misleading and results in a Material Adverse Effect; or

(e) Borrower shall fail to give Lender access to its books and records or the Collateral as provided herein, or shall breach any negative covenant set forth in Section 9.6 above; or

(f) Borrower shall fail to comply with the financial covenants (if any) set forth in Section 9.1 or shall fail to perform any other non-monetary Obligation which by its nature cannot be cured; or

(g) Any levy, assessment, attachment, seizure, lien or encumbrance (other than a Permitted Lien) is made on all or any part of the Collateral; or

- (h) Any default or event of default occurs under any obligation secured by a Permitted Lien, which is not cured within any applicable cure period or waived in writing by the holder of the Permitted Lien; or
- (i) Borrower breaches any material contract, lease or other obligation, which has or may reasonably be expected to have a Material Adverse Effect; or
- (j) Dissolution, termination of existence, termination of business, insolvency or business failure of Borrower; or the appointment of a receiver, trustee or custodian, for all or any part of the other property of Borrower; or the assignment for the benefit of creditors by, or the commencement of any proceeding by Borrower under any reorganization, bankruptcy, insolvency, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, now or in the future in effect; or
- (k) Commencement of any proceeding against Borrower under any reorganization, bankruptcy, insolvency, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, now or in the future in effect, which is not dismissed within sixty (60) days after the date commenced; or
- (l) Borrower shall conceal, remove or transfer any part of its property, with intent to hinder, delay or defraud its creditors, or make or suffer any transfer of any of its property which would constitute a fraudulent, void or voidable transfer or transaction under the California Uniform Voidable Transactions Act; or
- (m) Revocation or termination of, or limitation or denial of liability upon, any pledge of any material asset of any kind pledged by any third party to secure any or all of the Obligations, or any attempt to do any of the foregoing, or commencement of proceedings by or against any such third party under any bankruptcy or insolvency law ; or
- (n) Borrower makes any payment on account of any indebtedness or obligation which has been subordinated to the Obligations, other than as permitted in the applicable subordination agreement, or if any Person who has subordinated such indebtedness or obligations terminates or in any way limits his subordination agreement; or
- (o) Borrower shall suffer or experience any Change of Control without Lender 's prior written consent, which consent shall be in the discretion of Lender in the exercise of its reasonable business judgment; or
- (p) Lender shall not have a valid first priority security interest in any item of Collateral, except as to items of Collateral which are subject to Permitted Liens that are also permitted to be prior; or
- (q) There is any Material Adverse Effect; or
- (r) Borrower or any of its Affiliates fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Other Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower or Affiliate of Borrower; or
- (s) Borrower or any of its Affiliates commits a breach or default in the payment or performance of any other obligation of Borrower or such Affiliate under any instrument , agreement, guaranty or document evidencing, supporting or securing any other loan or credit extended by any other creditor to Borrower or its Affiliates, or

(t) Borrower commits a breach or default in the payment or performance of any other obligation of Borrower, or breaches any warranty or representation of Borrower, under the provisions of any other instrument, agreement, guaranty, or document evidencing, supporting, or securing any other loan or credit extended by Lender, or by any affiliate of Lender, to Borrower (said financing is hereinafter referred to as "other financing"), including, but not limited to, any and all term loans, revolving credits; or flooring lines of credit extended from time to time to Borrower, or any Person signing this Agreement on behalf of Borrower, or any other Person with which Borrower is affiliated and is conducting business on the Property; or Borrower causes the other financing, or any portion thereof, to be refinanced or repaid with funds lent, advanced, paid, or contributed, in whole or in part, directly or indirectly, by any other commercial lender to or for the benefit of Borrower. For purposes of this Agreement, the term "commercial lender", shall mean any bank, savings and loan association, savings association, savings bank, credit union, insurance company, commercial finance lender, and any other person or entity which engages in the business of lending money for commercial, investment, or business purposes.

**10.2 Remedies.** Upon the occurrence and during the continuance of any Event of Default, Lender, at its option, and without notice or demand of any kind (all of which are hereby expressly waived by Borrower), may do any one or more of the following:

- (a) Cease making any Advances under this Agreement or otherwise extending credit to Borrower under this Agreement or any other document or agreement;
- (b) Accelerate and declare all or any part of the Obligations to be immediately due, payable and performable, notwithstanding any deferred or installment payments allowed by any instrument evidencing or relating to any Obligation;
- (c) Exercise all rights and remedies available to a secured party under the Code;
- (d) Take possession of, or obtain the appointment of a receiver to take control of, any or all of the Collateral wherever it may be found. For that purpose Borrower hereby authorizes Lender and Lender's representatives to enter onto any of Borrower's premises without interference to take possession of any of the Collateral, and remain on the premises, without charge for so long as Lender deems it reasonably necessary in order to complete the enforcement of its rights under this Agreement.
- (e) Require Borrower to assemble any or all of the Collateral and make it available to Lender or Lender's representatives at places designated by Lender which are reasonably convenient to Lender or Lender's representatives and Borrower;
- (f) Complete the processing or repair of any Collateral prior to a disposition thereof; and, for such purpose and for the purpose of removal, Lender shall have the right to use Borrower's premises, vehicles and other equipment and all other property without charge. Lender is hereby granted a license or other right to use, without charge, Borrower's labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks, service marks, as it pertains to the Collateral, in completing production of, advertising for sale, and selling or otherwise disposing of any Collateral as provided in the Code;

(g) Sell, lease, license or otherwise dispose of any of the Collateral as provided in the Code, in its condition at the time Lender obtains possession of it or after further manufacturing, processing or repair, at one or more public and/or private dispositions, in lots or in bulk, for cash, exchange or other property, or on credit, and to adjourn any such sale from time to time without notice other than oral announcement at the time scheduled for sale. Lender shall have the right to conduct such disposition on Borrower's premises without charge, for such time or times as Lender deems reasonable, or on Lender's premises, or elsewhere and the Collateral need not be located at the place of disposition. Lender may directly or through any affiliated company purchase or lease any Collateral at any such public disposition, and if permissible under applicable law, at any private disposition. Any sale, lease, license or other disposition of Collateral shall not relieve Borrower of any liability Borrower may have if any Collateral is defective as to title or physical condition or otherwise at the time of sale;

(h) Demand payment of, and collect any Receivables and General Intangibles comprising Collateral and, in connection therewith, Borrower irrevocably authorizes Lender to endorse or sign Borrower's name on all collections, receipts, instruments and other documents, and, in Lender's sole discretion, to grant extensions of time to pay, compromise claims and settle Receivables and the like for less than face value; and

(i) Demand and receive possession of any of Borrower's federal and state income tax returns and the books and records utilized in the preparation thereof or referring thereto.

Notwithstanding the foregoing, Lender shall not dispose of any trademarks, trade names, copyrights, registrations, licenses, franchises or customer lists except in connection with foreclosure upon substantially all of Borrower's assets as provided in the Code.

All expenses, costs, liabilities and obligations incurred by Lender (including attorneys' Fees and Costs with respect to the foregoing) shall be due from Borrower to Lender on demand. Lender may charge the same to Borrower's Loan Account, and the same shall thereafter bear interest at the same rate as is applicable in this Agreement.

### **10.3 Standards for Determining Commercial Reasonableness.**

(a) Borrower and Lender agree that any disposition, as defined in the Code ("disposition") of any Collateral which complies with the following standards will conclusively be deemed to be commercially reasonable:

(i) Notice of the disposition is given to Borrower at least ten (10) days prior to the sale, and, in the case of a public sale, notice of the sale is published at least ten (10) days before the sale in a newspaper of general circulation in the county where the sale is to be conducted;

(ii) Notice of the disposition describes the Collateral in general, non-specific terms ;

(iii) The disposition is conducted at a place designated by Lender, with or without the Collateral being present;

(iv) The disposition commences at any time between 8:00 a.m. and 6:00 p.m., Los Angeles time; and

(v) With respect to any disposition of any of the Collateral, Lender may (but is not obligated to) *direct* any prospective purchaser to ascertain directly from Borrower any and all information concerning the same.

(b) Lender shall be free to employ other methods of noticing and disposing of the Collateral, in its discretion.

(c) Lender shall have no obligation to attempt to satisfy the Obligations by collecting them from any third Person which may be liable for them or any portion thereof, and Lender may release, modify or waive any collateral provided by any other third Person as security for the Obligation or any portion thereof, all without affecting Lender's rights against Borrower. Borrower waives any right it may have to require Lender to pursue any third Person for any of the Obligations.

(d) Lender may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral, and Lender's compliance therewith will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(e) Lender may dispose of the Collateral without giving any warranties as to the Collateral. Lender may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(f) If Lender disposes of any of the Collateral upon credit, Borrower will be credited only with payments actually made by the purchaser, received by Lender and applied to the indebtedness of the purchaser. In the event that the purchaser fails to pay for the Collateral, Lender may resell the Collateral and Borrower will be credited with the proceeds of such disposition.

#### **10.4 Power of Attorney.**

(a) Borrower grants to Lender an irrevocable power of attorney coupled with an interest, authorizing and permitting Lender (acting through any of its employees, attorneys or agents) at any time, at its option, but without obligation, with or without notice to Borrower, and at Borrower's expense, to do any or all of the following, in Borrower's name or otherwise, but Lender agrees to exercise the following powers in a commercially reasonable manner:

(i) Execute on behalf of Borrower any documents that Lender may, in its sole discretion, deem advisable in order to perfect and maintain Lender's security interest in the Collateral, or in order to exercise a right of Borrower or Lender, or in order to fully consummate all the transactions contemplated under this Agreement, and all other present and future agreements;

(ii) Execute on behalf of Borrower any document exercising, transferring or assigning any option to purchase, sell or otherwise dispose of or to lease (as lessor or lessee) any real or personal property which is part of Lender's Collateral or in which Lender has an interest;

(iii) Execute on behalf of Borrower, any invoices relating to any Receivable, any draft against any Account Debtor and any notice to any Account Debtor, any proof of claim in bankruptcy, any notice of lien, claim of mechanic's, materialman's or other lien, or assignment or satisfaction of mechanic's, materialman's or other lien;

- (iv) Take control in any manner of any cash or non-cash items of payment or proceeds of Collateral; endorse the name of Borrower upon any instruments, or documents, evidence of payment or Collateral that may come into Lender's possession;
- (v) Endorse all checks and other forms of remittances received by Lender;
- (vi) Pay, contest or settle any lien, charge, encumbrance, security interest and adverse claim in or to any of the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same;
- (vii) Grant extensions of time to pay, compromise claims and settle Receivables and General Intangibles for less than face value and execute all releases and other documents in connection therewith;
- (viii) Pay any sums required on account of Borrower's taxes or to secure the release of any liens therefor, or both;
- (ix) Settle and adjust, and give releases of, any insurance claim that relates to any of the Collateral and obtain payment therefor;
- (x) Instruct any third party having custody or control of any books or records belonging to, or relating to, Borrower to give Lender the same rights of access and other rights with respect thereto as Lender has under this Agreement; and
- (xi) Take any action or pay any sum required of Borrower pursuant to this Agreement and any other present or future agreements.

(b) Any and all sums paid and any and all costs, expenses, liabilities, obligations and attorneys' fees incurred by Lender (including attorneys' fees and expenses incurred pursuant to bankruptcy) with respect to the foregoing shall be added to and become part of the Obligations, and shall be payable on demand. Lender may charge the foregoing to Borrower's Loan Account and the foregoing shall thereafter bear interest at the same rate specified in this Agreement. In no event shall Lender's rights under the foregoing power of attorney, or any of Lender's other rights under this Agreement, be deemed to indicate that Lender is in control of the business, management or properties of Borrower.

(c) Borrower shall pay, indemnify, defend, and hold Lender, Lender's affiliates and each of their respective officers, directors, employees, counsel, agents, and attorneys-in-fact (each, an "Indemnified Person") harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, and damages, and all attorneys fees and disbursements and other costs and expenses actually incurred in connection therewith (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them in connection with, or as a result of, or related to: (i) the execution, delivery, enforcement, performance, and administration of this Agreement and any Other Documents or the transactions contemplated herein, or (ii) any investigation, litigation, or proceeding related to this Agreement, any Other Document, or (iii) the use of the proceeds of the Advances provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or (iv) any act, omission, event or circumstance in any manner related thereto (all the foregoing, collectively, the "Indemnified Liabilities").

(d) Borrower shall have no obligation to any Indemnified Person hereunder with respect to any Indemnified Liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Indemnified Person. This Section 10.4 shall survive the termination of this Agreement and the repayment of the Obligations.

**10.5 Application of Proceeds After Event of Default.** Notwithstanding any other provisions of this Agreement to the contrary, after the occurrence and during the continuance of an Event of Default, all amounts collected or received by Lender on account of the Obligations or any other amounts outstanding under any of the Other Documents or in respect of the Collateral may, at Lender's discretion, be paid over or delivered as follows:

FIRST, to the payment of all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees) of Lender in connection with enforcing its rights and the rights of Lender under this Agreement and the Other Documents and any protective advances made by Lender with respect to the Collateral under or pursuant to the terms of this Agreement;

SECOND, to payment of any fees owed to Lender;

THIRD, to the payment of all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees) of Lender to the extent owing to Lender pursuant to the terms of this Agreement;

FOURTH, to the payment of interest and fees due with respect to the Obligations; FIFTH, to the payment of the outstanding principal amount of the Obligations;

SIXTH, to all other Obligations and other obligations which shall have become due and payable under the Other Documents or otherwise and not repaid pursuant to clauses "FIRST" through "FIFTH" above; and

SEVENTH, to the payment of the surplus, if any, to the Borrower and/or whoever may be lawfully entitled to receive such surplus.

In carrying out the foregoing, amounts received shall be applied in the numerical order provided until exhausted prior to application to the next succeeding category; and (ii) Lender shall receive amounts available to be applied pursuant to clauses "FOURTH" and "FIFTH" above.

**10.6 Remedies Cumulative.** In addition to the rights and remedies set forth in this Agreement, Lender shall have all the other rights and remedies accorded a secured party in equity and under all other applicable laws, and under any other instrument or agreement now or in the future entered into between Lender and Borrower, and all of such rights and remedies are cumulative and none is exclusive. Exercise or partial exercise by Lender of one or more of its rights or remedies shall not be deemed an election, nor bar Lender from subsequent exercise or partial exercise of any other rights or remedies. The failure or delay of Lender to exercise any rights or remedies shall not operate as a waiver thereof, but all rights and remedies shall continue in full force and effect until all of the Obligations have been indefeasibly paid and performed.

## 11. GENERAL PROVISIONS.

**11.1 Application of Payments.** Subject to Section 10.5 of this Agreement, all payments with respect to the Obligations may be applied, and in Lender's sole discretion reversed and re-applied, to the Obligations, in such order and manner as Lender shall determine in its sole discretion.

**11.2 Charges to Accounts.** Lender may, in its discretion, require that Borrower pay monetary Obligations in cash to Lender, or charge them to Borrower's Loan Account, in which event they will bear interest from the date due to the date paid at the same rate applicable to the Advances.

**11.3 [Reserved] Notices.** Any notice, demand or request required hereunder shall be given in writing (at the addresses set forth below) by any of the following means: (a) personal service; (b) electronic communication, whether by telex, telegram or telecopying; (c) overnight courier; or (d) registered or certified, first class U.S. mail, return receipt requested.

To Borrower:

SNAIL GAMES USA INC.  
12049 Jefferson Boulevard  
Culver City, California 90230  
Attn: Heidi Chow, CFO

To Lender:

CATHAY BANK  
9650 Flair Drive, 7th Floor  
El Monte, CA 91731  
Attn: Jane Ho, SVP

or at such other address as such party may designate by ten (10) days' advance written notice to the other party hereto pursuant to this section. Any notice, demand or request sent pursuant to subsection (c), above, shall be deemed received on the business day immediately following deposit with the overnight courier, and, if sent pursuant to subsection (d), above, shall be deemed received forty-eight (48) hours following deposit into the U.S. mail.

**11.5 Severability.** Should any provision of this Agreement be held by any court of competent jurisdiction to be void or unenforceable, such defect shall not affect the remainder of this Agreement, which shall continue in full force and effect.

**11.6 Integration.** This Agreement and the Other Documents and such other written agreements, documents and instruments as may be executed in connection herewith are the final, entire and complete agreement between Borrower and Lender and supersede all prior and contemporaneous negotiations and oral representations and agreements, all of which are merged and integrated in this Agreement. There are no oral understandings, representations or agreements between the parties which are not set forth in this Agreement or in other written agreements signed by the parties in connection herewith. Lender and Borrower agree that this Agreement and the Other Documents reflect the intentions of the parties thereto and that parol evidence is not required to interpret them.

**11.7 Amendment and Waivers.** The terms and provisions of this Agreement may not be waived or amended, except in a writing executed by Borrower and a duly authorized officer of Lender and clearly specifying the extent of the amendment or the waiver. Any waiver of an Event of Default or Potential Default shall not be deemed as continuing and shall not extend to any subsequent or other Event of Default or Potential Default. The failure of Lender at any time or times to require Borrower to strictly comply with any of the provisions of this Agreement or any other present or future agreement between Borrower and Lender shall not waive or diminish any right of Lender later to demand and receive strict compliance therewith.



**11.8 Borrower Waivers.** Unless otherwise expressly required by this Agreement, Borrower hereby waives: (i) demand, protest, notice of protest and notice of dishonor, notice of payment and nonpayment, release, compromise, settlement, extension or renewal of any commercial paper, instrument, account, General Intangible, document or guaranty at any time held by Lender on which Borrower is or may in any way be liable, (ii) notice of default and (iii) notice of any action taken by Lender, unless expressly required by this Agreement.

**11.9 No Liability for Ordinary Negligence.** Neither Lender, nor any of its directors, officers, employees, agents, attorneys or any other Person affiliated with or representing Lender shall be liable for any claims, demands, losses or damages, of any kind whatsoever, made, claimed, incurred or suffered by Borrower or any other party through the ordinary negligence of Lender, or any of its directors, officers, employees, agents, attorneys or any other Person affiliated with or representing Lender, but nothing herein shall relieve Lender from liability for its own gross negligence or willful misconduct.

**11.10 Actions.** Whether or not an Event of Default has occurred, Lender shall have the right, but not the obligation, to commence, appear in, or defend any action or proceeding which affects or which Lender determines may affect (a) the Collateral; (b) Borrower's or Lender's respective rights or obligations under this Agreement; (c) the Advances; or (d) the disbursement of any proceeds of any Advance. Whether or not an Event of Default or Potential Default has occurred, Lender shall at all times have the right to take any or all actions which Lender determines to be necessary or appropriate to protect Lender's interest in connection with the Advances.

**11.11 Time of Essence.** Time is of the essence in the performance by Borrower of each and every obligation under this Agreement.

**11.12 Attorneys' Fees, Costs and Charges.**

(a) On demand, Borrower shall reimburse Lender for all costs and expenses, including, without limitation, reasonable attorneys' fees costs and disbursements (and fees and disbursements of Lender's in-house counsel) (collectively the "Fees and Costs") expended or incurred by Lender in any way in connection with: (i) the enforcement of this Agreement or any Other Documents and the rights and remedies thereunder, including, without limitation, Fees and Costs incurred in connection with any workout, attempted workout, and/or in connection with the rendering of legal advice as to Lender's rights, remedies and obligations under this Agreement in connection with such enforcement or workout; (ii) collecting any sum which is or becomes due to Lender; (iii) any proceeding, or any appeal; or (iv) the exercise of the power of attorney granted to Lender in this Agreement. Fees and Costs shall include, without limitation, all out-of-pocket fees and costs incurred by Lender in connection with the appraisal, inspection, assessment, evaluation and insuring of the Collateral, and all fees and costs incurred by Lender in connection with the negotiation and preparation of the this Agreement and the Other Documents, including reasonable attorneys' fees. If litigation or other legal action is filed or commenced in connection with this Agreement or any of the Other Documents the prevailing party shall be entitled to its Fees and Costs. Fees and Costs shall include, without limitation, attorneys' fees and costs incurred in connection with the following: (1) contempt proceedings; (2) discovery; (3) any motion, adversary proceeding, contested matter, submission or confirmation or opposition to plan of reorganization or any other activity of any kind in connection with a bankruptcy case or relating to any petition or the filing thereof under Title 11 of the United States Code; (4) garnishment, levy, and debtor and third party examinations; and (5) post judgment motions and proceedings of any kind taken to clarify, collect or enforce any judgment or award.

(b) All Fees and Costs to which Lender may be entitled pursuant to this Agreement may be charged by Lender to Borrower's Loan Account and shall thereafter bear interest at the Contract Rate specified in this Agreement.

**11.13 Benefit of Agreement and Assignment.**

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, heirs, beneficiaries and representatives of Borrower and Lender; provided, however, that Borrower may not assign or transfer any of its rights under this Agreement without the prior written consent of Lender, and any prohibited assignment shall be void.

(b) No consent by Lender to any assignment shall release Borrower from its liability for the Obligations. Lender may assign its rights and delegate their duties hereunder without the consent of Borrower.

(c) Lender reserves the right to syndicate all or a portion of the transaction created herein or sell, assign, transfer, negotiate, or grant participations in all or any part of, or any interest in Lender's rights and benefits hereunder. In connection with any such syndication, assignment or participation, Lender may disclose all documents and information which Lender now or hereafter may have relating to Borrower or Borrower's business. Any such syndication by Lender shall not require the consent of the Borrower or any other Lender. To the extent that Lender assigns its rights and obligations hereunder to a third Person, Lender thereafter shall be released from such assigned obligations to Borrower.

**11.14 Entire Understanding.**

(a) This Agreement and the documents executed concurrently herewith contain the entire understanding between Borrower and Lender and supersedes all prior agreements and understandings, if any, relating to the subject matter hereof. Any promises, representations, warranties or guarantees not herein contained and hereinafter made shall have no force and effect unless in writing, signed by Borrower's and Lender's respective officers. Neither this Agreement nor any portion or provisions hereof may be changed, modified, amended, waived, supplemented, discharged, cancelled or terminated orally or by any course of dealing, or in any manner other than by an agreement in writing, signed by the party to be charged. Borrower acknowledges that it has been advised by counsel in connection with the execution of this Agreement and Other Documents and is not relying upon oral representations or statements inconsistent with the terms and provisions of this Agreement.

**11.15 Successors and Assigns; Participations; New Lenders.**

(a) This Agreement shall be binding upon and inure to the benefit of Borrower, Lender, all future holders of the Obligations and their respective successors and permitted assigns, except that Borrower may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Lender.

(b) **Participations.**

(i) Lender may at any time, without the consent of, or notice to Borrower, sell participations (each a "Participation") in all or a portion of Lender's rights and obligations under this Agreement ; provided that (x) Lender's obligations under this Agreement shall remain unchanged; (y) Lender shall remain solely responsible to the other parties hereto for the performance of such obligation; and (z) Borrower, Lender shall continue to deal solely and directly with Lender in connection with Lender's rights and obligations under this Agreement. Any agreement pursuant to which Lender sells such a participation shall provide that Lender shall retain the right to enforce this Agreement and approve any amendment, modification, or waiver of any provision of this Agreement.

(ii) Borrower acknowledges that in the regular course of commercial banking business one or more lenders may at any time and from time to time sell participating interests in the Advances to other financial institutions (each such transferee or purchaser of a participating interest, a "Participant"). Each Participant may exercise all rights of payment (including rights of set-off) with respect to the portion of such Advances held by it or other Obligations payable hereunder as fully as if such Participant were the direct holder thereof provided that Borrower shall not be required to pay to any Participant more than the amount which it would have been required to pay to Lender which granted an interest in its Advances or other Obligations payable hereunder to such Participant had Lender retained such interest in the Advances hereunder or other Obligations payable hereunder and in no event shall Borrower be required to pay any such amount arising from the same circumstances and with respect to the same Advances or other Obligations payable hereunder to both Lender and such Participant. Borrower hereby grants to any Participant a continuing security interest in any deposits, moneys or other property actually or constructively held by such Participant as security for the Participant's interest in the Advances.

(iii) Borrower authorizes Lender to disclose to any Participant, or any prospective Participant, any and all financial information in Lender's possession concerning Borrower which has been delivered to such Lender by or on behalf of Borrower pursuant to this Agreement or in connection with such Lender's credit evaluation of Borrower.

**11.16 Application of Payments.** Lender shall have the continuing and exclusive right to apply or reverse and re-apply any payment and any and all proceeds of Collateral to any portion of the Obligations. To the extent that Borrower makes a payment or Lender receives any payment or proceeds of the Collateral for Borrower's benefit, which are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver, custodian or any other party under any bankruptcy law, common law or equitable cause, then, to such extent, the Obligations or part thereof intended to be satisfied shall be revived and continue as if such payment or proceeds had not been received by Lender.

**11.17 Indemnity.** Borrower shall indemnify Lender and each of Lender's respective officers, directors, Affiliates, attorneys, employees and agents from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever (including fees and disbursements of counsel) which may be imposed on, incurred by, or asserted against Lender in any claim, litigation, proceeding or investigation instituted or conducted by any Governmental Body or instrumentality or any other Person with respect to any aspect of, or any transaction contemplated by, or referred to in, or any matter related to, this Agreement or the Other Documents, whether or not Lender is a party thereto, except to the extent that any of the foregoing arises out of the willful misconduct of the party being indemnified (as determined by a court of competent jurisdiction in a final and non-appealable judgment). Without limiting the generality of the foregoing, this indemnity shall extend to any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever (including reasonable fees and disbursements of counsel) asserted against or incurred by any of the indemnitees described above in this Section 11.17 by any Person under any Environmental Laws or similar laws by reason of Borrower's or any other Person's failure to comply with laws applicable to solid or hazardous waste materials, including Hazardous Substances and Hazardous Waste, or other Toxic Substances. Additionally, if any taxes (excluding taxes imposed upon or measured solely by the net income of Lender, but including any intangibles taxes, stamp tax, recording tax or franchise tax) shall be payable by Lender or Borrower on account of the execution or delivery of this Agreement, or the execution, delivery, issuance or recording of any of the Other Documents, or the creation or repayment of any of the Obligations hereunder, by reason of any applicable law now or hereafter in effect, Borrower will pay (or will promptly reimburse Lender for payment of) all such taxes, including interest and penalties thereon, and will indemnify and hold the indemnitees described above in this Section 11.17 harmless from and against all liability in connection therewith.

**11.18 Captions.** Headings have been set forth herein for convenience only and shall not affect the interpretation or meanings of any provisions of this Agreement. Unless the contrary is compelled by the context, everything contained in each article and section applies equally to this entire Agreement.

**11.19 Independent Counsel.** Borrower and Lender each acknowledge that: (i) they have had the opportunity to be represented by independent counsel in connection with this Agreement; (ii) they have executed this Agreement with the advice of such counsel, as applicable; (iii) this Agreement is the result of negotiations between the parties hereto and the advice and assistance of their representative counsel, as applicable; and (iv) the fact that this Agreement was prepared by Lender's counsel as a matter of convenience shall have no import or significance.

**11.20 Publicity.** Lender is hereby authorized, at its expense and in its sole discretion, to issue appropriate press releases and to cause a tombstone to be published announcing the consummation of this transaction and the aggregate amount thereof.

**11.21 Governing Law; Jurisdiction; Venue.**

(a) This Agreement and all acts and transactions hereunder and all rights and obligations of Lender and Borrower shall be governed by the internal laws of the State of California, without regard to its conflicts of law principles.

(b) As a material part of the consideration to Lender to enter into this Agreement, Borrower (a) agrees that all actions and proceedings relating directly or indirectly to this Agreement shall, at Lender's option, be litigated in courts located within California, and that the exclusive venue therefor shall be Los Angeles County; (b) consents to the jurisdiction and venue of any such court and consents to service of process in any such action or proceeding by personal delivery or any other method permitted by law; and (c) waives any and all rights Borrower may have to object to the jurisdiction of any such court, or to transfer or change the venue of any such action or proceeding.

**11.22 Relationship of Parties.** Lender shall not be deemed to be, nor does Lender or Borrower intend that Lender shall ever become, a partner, joint venturer, fiduciary, manager, controlling person or participant of any kind in the business or affairs of Borrower, whether as a result of this Agreement or any of the transactions contemplated by this Agreement. In exercising its rights and remedies under this Agreement, Lender shall at all times be acting only as a lender to Borrower within the normal and usual scope of activities of a lender.

**11.23 Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document.

**11.24 WAIVER OF RIGHT TO TRIAL BY JURY; JUDICIAL REFERENCE IN THE EVENT OF JURY TRIAL WAIVER UNENFORCEABILITY.** EACH PARTY TO THIS AGREEMENT HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (1) ARISING UNDER THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION THEREWITH, OR (2) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THIS AGREEMENT OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY. NOTWITHSTANDING THE FOREGOING TO THE CONTRARY, IN THE EVENT THAT THE JURY TRIAL WAIVER CONTAINED HEREIN SHALL BE HELD OR DEEMED TO BE UNENFORCEABLE, EACH PARTY HERETO HEREBY EXPRESSLY AGREES TO SUBMIT TO JUDICIAL REFERENCE ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING HEREUNDER FOR WHICH A JURY TRIAL WOULD OTHERWISE BE APPLICABLE OR AVAILABLE. PURSUANT TO SUCH JUDICIAL REFERENCE, THE PARTIES AGREE TO THE APPOINTMENT OF A SINGLE REFEREE AND SHALL USE THEIR BEST EFFORTS TO AGREE ON THE SELECTION OF A REFEREE. IF THE PARTIES ARE UNABLE TO AGREE ON A SINGLE REFEREE, A REFEREE SHALL BE APPOINTED BY THE COURT TO HEAR ANY DISPUTES HEREUNDER IN LIEU OF ANY SUCH JURY TRIAL EACH PARTY ACKNOWLEDGES AND AGREES THAT THE APPOINTED REFEREE SHALL HAVE THE POWER TO DECIDE ALL ISSUES IN THE APPLICABLE ACTION OR PROCEEDING, WHETHER OF FACT OR LAW, AND SHALL REPORT A STATEMENT OF DECISION THEREON; PROVIDED, HOWEVER, THAT ANY MATTERS WHICH WOULD NOT OTHERWISE BE THE SUBJECT OF A JURY TRIAL WILL BE UNAFFECTED BY THIS WAIVER AND THE AGREEMENTS CONTAINED HEREIN. THE PARTIES HERETO HEREBY AGREE THAT THE PROVISIONS CONTAINED HEREIN HAVE BEEN FAIRLY NEGOTIATED ON AN ARM'S-LENGTH BASIS, WITH BOTH SIDES AGREEING TO THE SAME KNOWINGLY AND BEING AFFORDED THE OPPORTUNITY TO HAVE THEIR RESPECTIVE LEGAL COUNSEL CONSENT TO THE MATTERS CONTAINED HEREIN. ANY PARTY TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY AND THE AGREEMENTS CONTAINED HEREIN REGARDING THE APPLICATION OF JUDICIAL REFERENCE IN THE EVENT OF THE INVALIDITY OF SUCH JURY TRIAL WAIVER.



IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth in the heading to this Agreement.

BORROWER:

**SNAIL GAMES USA INC.,**  
a California corporation

By: /s/ Heidi Chow  
Name: Heidi Chow  
Its: CFO

Address: 12049 Jefferson Boulevard  
Culver City, CA 90230

[Signatures Continued on Next Page]

LENDER:

**CATHAY BANK,**  
a California banking corporation

By: /s/ Kevin Chen  
Name: Kevin Chen  
Its: AVP LPO

Address: 9650 Flair Drive  
El Monte, CA 91731  
Telephone: (626) 279-3676  
Facsimile: (626) 279-3705



**EXHIBIT A**

**FORM OF NOTE**

\$9,000,000.00

EL MONTE, CALIFORNIA

June 17, 2021

FOR VALUE RECEIVED, the undersigned ("**Borrower**"), hereby promises to pay to CATHAY BANK, a California banking corporation or registered assigns ("**Lender**"), in accordance with the provisions of the Loan Agreement (as hereinafter defined), the principal amount of each Advance from time to time made by Lender to Borrower under that certain Loan and Security Agreement, dated as of June 17, 2021 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "**Loan Agreement**"; the terms defined therein being used herein as therein defined), among Borrower and Cathay Bank ("**Lender**").

Borrower promises to pay interest on the unpaid principal amount of each Advance from the date of such Advance until such principal amount is paid in full, at such interest rates and at such times as provided in the Loan Agreement. All payments of principal and interest shall be made to Lender for the account of Lender in Dollars in immediately available funds at Lender's Office. If any amount is not paid in full when due hereunder, such unpaid amount shall bear interest, to be paid upon demand, from the due date thereof until the date of actual payment (and before as well as after judgment) computed at the per annum rate set forth in the Loan Agreement. This Note is issued pursuant to, and evidences Advances and Obligations under the Loan Agreement, to which reference is made for a statement of the rights and obligations of Lender and the duties and obligations of Borrower. The Loan Agreement contains provisions for acceleration of the maturity of this Note upon the happening of certain stated events, and for the borrowing, prepayment and reborrowing of amounts upon specified terms and conditions.

The holder of this Note is hereby authorized by Borrower to record on a schedule annexed to this Note (or on a supplemental schedule or on a ledger or other account maintained by Lender) the amounts owing with respect to Advances and Obligations, and the payments thereof. Failure to make any notation, however, shall not affect the rights of the holder of this Note or any obligations of Borrower hereunder or under the Loan Agreement or the Other Documents.

Time is of the essence of this Note. Borrower and all endorsers, sureties and guarantors of this Note hereby severally waive demand, presentment for payment, protest, notice of protest, notice of intention to accelerate the maturity of this Note, diligence in collecting, the bringing of any suit against any party, and any notice of or defense on account of any extensions, renewals, partial payments, or changes in any manner of or in this Note or in any of its terms, provisions and covenants, or any releases or substitutions of any security, or any delay, indulgence or other act of any trustee or any holder hereof, whether before or after maturity.

This Note is the Note referred to in the Loan Agreement, is entitled to the benefits thereof and may be prepaid in whole or in part subject to the terms and conditions provided therein. Upon the occurrence and continuation of one or more of the Events of Default specified in the Loan Agreement, all amounts then remaining unpaid on this Note shall become, or may be declared to be, immediately due and payable all as provided in the Loan Agreement. Advances made by Lender shall be evidenced by one or more loan accounts or records maintained by Lender in the ordinary course of business. Lender may also attach schedules to this Note and endorse thereon the date, amount and maturity of its Advances and payments with respect thereto.

Borrower, for itself, its successors and assigns, hereby waives diligence, presentment, protest and demand and notice of protest, demand, dishonor and non-payment of this Note.

THIS REVOLVING NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA.

**SNAIL GAMES USA INC.,**  
a California corporation

By: /s/ Heidi Chow  
Name: Heidi Chow  
Its: CFO

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EXHIBIT A-2

**ADVANCES AND PAYMENTS WITH RESPECT THERETO**

<b>Date</b>	<b>Type of Advance Made</b>	<b>Amount of Advance Made</b>	<b>Amount of Principal or Interest Paid This Date</b>	<b>Outstanding Principal Balance This Date</b>	<b>Notation Made By</b>

**EXHIBIT B**

**FORM OF BORROWING BASE CERTIFICATE**

**(to be attached)**

EXHIBIT B-1

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**EXHIBIT C**

**TRADE NAMES**

N/A

EXHIBIT C-1

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**EXHIBIT D**

**LOCATIONS OF COLLATERAL**

1. 12049 Jefferson Boulevard, Culver City, CA 90230

**LOAN AGREEMENT**

**SNAIL GAMES USA INC.,**  
a California corporation,

and

**CATHAY BANK,**  
a California banking corporation

Dated as of June 17, 2021

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**THIS LOAN AGREEMENT** (“Agreement”) is entered into as of June 17, 2021 by and between **SNAIL GAMES USA INC.**, a California corporation (“Borrower”), and **CATHAY BANK**, a California banking corporation (“Lender”).

## **1. DEFINITIONS AND INTERPRETATIONS.**

**1.1 Definitions.** As used in this Agreement, the following terms have the meanings set forth below. Capitalized terms not defined herein shall have the meanings set forth in the Code, as defined below.

“Account” has the meaning set forth in Section 9102(a)(2) of the Code.

“Account Debtor” means a Person obligated on an Account, chattel paper or General Intangibles.

“Advance” shall mean each advance, loan and financial accommodation from Lender to Borrower, whether now existing or hereafter arising and however evidenced, including those advances, loans and financial accommodations described herein or described on any exhibit or schedule attached to this Agreement from time to time, and shall include the Loan.

“Affiliate” means, with respect to any Person, a relative, partner, shareholder, director, officer, or employee of such Person, or any Parent or subsidiary of such Person, or any Person controlling, controlled by or under common control with such Person.

“Agreement” means this Loan Agreement, as amended, modified or supplemented from time to time. Each reference herein to “this Agreement,” “this Loan Agreement” “herein,” “hereunder,” “hereof” or other like words shall include this Agreement, and any annex, exhibit or schedule attached hereto or referred to herein.

“Agreement To Furnish Insurance” shall mean the Agreement To Furnish Insurance duly executed by Borrower in form and content as required by Lender and as it may from time to time be supplemented, modified or amended.

“Anti-Money Laundering Laws” shall mean the USA Patriot Act of 2001, the Bank Secrecy Act, as amended through the date hereof, Executive Order 13324-Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended through the date hereof, and other federal laws and regulations and executive orders administered by OFAC which prohibit, among other things, the engagement in transactions with, and the provision of services to, certain foreign countries, territories, entities and individuals (such individuals include specially designated nationals, specially designated narcotics traffickers and other parties subject to OFAC sanction and embargo programs), and such additional laws and programs administered by OFAC which prohibit dealing with individuals or entities in certain countries regardless of whether such individuals or entities appear on any of the OFAC lists.

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“Appraisal” shall mean an appraisal of the Property, or any portion thereof, performed and prepared for Lender at Borrower’s sole expense by a duly licensed or certified appraiser designated by Lender and possessing all qualifications required by Lender and applicable Laws, setting forth the appraiser’s opinion and determination of the fair market value of the Property; said Appraisal shall be prepared in full narrative form meeting all requirements and approaches to value as shall be necessary or appropriate in order to comply with all customary and generally accepted appraisal standards within the appraisal industry and in accordance with Lender’s requirements, and to Lender’s satisfaction and all applicable Laws governing Lender’s operations.

“Assignment of Leases” shall mean the Absolute Assignment of Leases, Lease Guaranties, Rents, Issues and Profits duly executed and delivered to Lender by Borrower, assigning to Lender all present and future leases, subleases, rents, and concession rights, if any, and all related rights and interests of Borrower thereunder, affecting the Property, or any part thereof, and in form and content acceptable to Lender in its sole opinion and judgment, and shall include delivery to Lender of the executed originals of each of said leases.

“Borrower’s Operating Account” means Borrower’s demand deposit account with Lender, into which substantially all of Borrower’s receipts from its operations are deposited and from which substantially all of Borrower’s disbursements for its operations are made.

“Business Day” means any day that is not a Saturday, Sunday, or other day on which California banks are authorized or required to close.

“Change of Control” shall be deemed to have occurred at such time as a “person” or “group” (within the meaning of Sections 13(d) and 14(d)(2) of the Securities Exchange Act of 1934) (other than the current holders of the ownership interests in Borrower) becomes the “beneficial owner” (as defined in Rule 13d-3 under the Securities Exchange Act of 1934), directly or indirectly, as a result of any single transaction, of fifty percent (50%) or more, of the total voting power of all classes of stock or other ownership interests then outstanding of Borrower normally entitled to vote in the election of directors or analogous governing body.

“Closing Date” means the date that all conditions precedent under Section 6.1 of this Agreement are satisfied.

“Code” means the Uniform Commercial Code as adopted and in effect in the State of California, from time to time.

“Collateral” shall mean all real and personal property of Borrower, or others, in which Lender has been and may hereafter be granted a lien, assignment or security interest to secure payment and performance of Borrower’s obligation under the Loan.

“Debt Service Coverage Ratio” shall mean the ratio of (i) Borrower’s EBITDA, divided by (ii) the aggregate of all interests and the scheduled payments of principal and interest payable by Borrower to Lender under the Note, and all other scheduled payments of principal and interest payable by Borrower to Lender under any other notes.

“Deed of Trust” shall mean the Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing duly executed and acknowledged by Borrower for the benefit of Lender, to secure the Loan and encumbering the Property and other assets and rights as therein provided, together with all such riders and exhibits thereto as Lender shall require.

“Default” means any event which, with notice or passage of time or both, would constitute an Event of Default.

“Default Rate” shall have the meaning set forth in Section 3 hereof.

“Dollars” or “\$” means United States dollars.

“EBITDA” means Net Income before tax, plus interest expense (net of capitalized income expense), depreciation expense and amortization expense.

“Environmental Indemnity” shall mean that certain Hazardous Substances Indemnity Agreement duly executed by Borrower, as it may from time to time be supplemented, modified or amended, pursuant to which such parties shall indemnify and defend Lender from and against any loss or liability, direct or indirect, with respect to the presence or release of any hazardous or toxic material in, on, about or under the Property.

“Environmental Laws” shall mean all federal, state and local environmental, land use, zoning, health, chemical use, safety and sanitation laws, statutes, ordinances and codes relating to the protection of the environment and/or governing the use, storage, treatment, generation, transportation, processing, handling, production or disposal of Hazardous Substances and the rules, regulations, policies, guidelines, interpretations, decisions, orders and directives of federal, state and local governmental agencies and authorities with respect thereto.

“Equipment” has the meaning set forth in Section 9102(a)(33) of the Code and includes, without limitation, all of Borrower’s furniture, fixtures, trade fixtures, tenant improvements owned by Borrower, all attachments, accessories, accessions, replacements, substitutions, additions or improvements to any of the foregoing, wherever located.

“Event of Default” means any of the events set forth in Section 10.1 of this Agreement.

“Fees and Costs” has the meaning set forth in Section 11.12 of this Agreement.

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States, applied on a consistent basis, applied both to classification of items and amounts.

“General Intangibles” has the meaning set forth in Section 9102(a)(42) of the Code and shall include, without limitation, payment intangibles, all choses in action, causes of action, corporate or other business records, inventions, designs, drawings, blueprints, patents, patent applications, trademarks and the goodwill of the business symbolized thereby, names, trade names, trade secrets, goodwill, copyrights, registrations, licenses, franchises, customer lists, security and other deposits, rights in all litigation presently or hereafter pending for any cause or claim (whether in contract, tort or otherwise), and all judgments now or hereafter arising therefrom, all claims of Borrower against Lender, rights to purchase or sell real or personal property, rights as a licensor or licensee of any kind, royalties, telephone numbers, proprietary information, purchase orders, and all insurance policies and claims (including without limitation, life insurance, key man insurance, credit insurance, liability insurance, property insurance and other insurance), tax refunds and claims, software, discs, tapes and tape files, claims under guaranties, security interests or other security held by or granted to Borrower, all rights to indemnification and all other intangible property of every kind and nature (other than Receivables) .

“Governmental Agency” shall mean any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, court, administrative tribunal, or public utility.

“Hazard Insurance Disclosure” shall mean the Hazard Insurance Disclosure duly executed by Borrower in form and content as required by Lender.

“Hazardous Substance” shall mean, without limitation, any flammable explosives, radon, radioactive materials, asbestos, urea formaldehyde foam insulation, polychlorinated biphenyls, petroleum and petroleum products, methane, hazardous materials, Hazardous Wastes, hazardous or Toxic Substances or related materials as defined in CERCLA, the Hazardous Materials Transportation Act, as amended (49 U.S.C. Sections 1801, et seq.), RCRA, or any other applicable Environmental Law and in the regulations adopted pursuant thereto.

“Hazardous Wastes” shall mean all waste materials subject to regulation under CERCLA, RCRA or applicable state law, and any other applicable Federal and state laws now in force or hereafter enacted relating to hazardous waste disposal.

“Indemnified Person” has the meaning set forth in Section 10.4(c) of this Agreement.

“Inventory” means all of Borrower’s now owned and hereafter acquired goods, including software embedded in such goods, merchandise or other personal property, wherever located, to be furnished under any contract of service or held for sale or lease (including without limitation all raw materials, work in process, finished goods and goods in transit, and, including without limitation, all farm products), and all materials and supplies of every kind, nature and description which are or might be used or consumed in Borrower’s business or used in connection with the manufacture, packing, shipping, advertising, selling or finishing of such goods, merchandise or other personal property, and all warehouse receipts, documents of title and other documents representing any of the foregoing.

“Investment Property” has the meaning set forth in Section 9102(a)(49) of the Code.

“Laws” shall mean, individually and collectively, all federal, state, and local laws, rules, regulations, ordinances, and codes.

“Lender” shall mean Cathay Bank, a California banking corporation.

“Loan” has the meaning set forth in Section 2.1(a).

“Material Adverse Effect” means a material adverse effect on (i) the business, assets, condition (financial or otherwise) or results of operations of Borrower or any subsidiary of Borrower, (ii) the ability of Borrower to duly and punctually pay or perform its obligations under this Agreement (including, without limitation, repayment of the Obligations as they come due), (iii) the value of the Collateral, or Lender’s liens on the Collateral or the privity of any such lien, or (iv) the validity or enforceability of this Agreement or any other agreement or document entered into by any party in connection herewith, or the practical realization of the benefits of Lender’s rights or remedies.

“Material Litigation” shall have the meaning set forth in Section 7.10 hereof.

“Maturity Date” means June 30, 2031.

“Net Income” shall mean, for any period, the net income of the Borrower as determined in accordance with GAAP.

“Note” shall mean the Promissory Note of Borrower in the amount of the Loan payable to the order of Lender, duly executed by Borrower, as required by Lender to evidence the Loan, as originally executed and as it may from time to time be supplemented, modified or amended.

“Obligations” means all present and future Advances , loans, overdrafts , debts, liabilities, obligations, including , without limitation, all obligations of Borrower under any guaranties, covenants, duties and indebtedness at any time owing by Borrower to Lender, whether evidenced by this Agreement or any note or other instrument or document or the Other Documents, whether arising from an extension of credit, opening of a letter of credit, banker’s acceptance, trust receipt, loan, overdraft, guaranty, indemnification or otherwise, whether direct or indirect (including, without limitation, those acquired by assignment and any participation by Lender in Borrower’s debts owing to others), absolute or contingent, due or to become due, including, without limitation, all interest, charges, expenses, fees, attorneys’ fees (including attorneys’ fees and expenses incurred in bankruptcy), expert witness fees and expenses, fees and expenses of consultants, audit fees, letter of credit fees, closing fees, facility fees, termination fees, and any other sums chargeable to Borrower under this Agreement or the Other Documents.

“OFAC” shall mean the United States Department of the Treasury, Office of Foreign Assets Control.

“OFAC Prohibited Person” shall mean a country, territory, individual or person (i) listed on, included within or associated with any of the countries, territories, individuals or entities referred to on The Office of Foreign Assets Control’s List of Specially Designated Nationals and Blocked Persons or any other prohibited person lists maintained by governmental authorities, or otherwise included within or associated with any of the countries, territories, individuals or entities referred to in or prohibited by OFAC or any other Anti-Money Laundering Laws, or (ii) which is obligated or has any interest to pay, donate, transfer or otherwise assign any property, money, goods, services, or other benefits from the property directly or indirectly, to any countries, territories, individuals or entities on or associated with anyone on such list or in such laws.

“Official Body” means any government or political subdivision or any agency, authority, bureau, commission, court or tribunal whether foreign or domestic.

“Other Documents” shall mean the Note and all other agreements, instruments and documents now or hereafter executed by Borrower and delivered to Lender in respect of the transactions contemplated by this Agreement.

“Parent” means any Person holding a majority of the equity interest in a corporation or limited liability company.

“Permitted Liens” means all of the following:

- (a) liens in favor of Lender;
- (b) purchase money security interests in specific items of Equipment;
- (c) leases of specific items of Equipment;
- (d) liens for taxes not yet payable;
- (e) and security interests being terminated substantially concurrently with this Agreement;
- (f) liens of materialmen, mechanics, warehousemen, carriers, or other similar liens arising in the ordinary course of business and securing obligations which are not delinquent.

“Permitted Encumbrances” shall mean only those matters and exceptions to title to the Property, as shown in the preliminary report of title and all supplements thereto, issued by the Title Company, and approved by Lender, in regard to the Property.

“Person” means any individual, sole proprietorship, general partnership, limited partnership, limited liability partnership, limited liability company, joint venture, trust, unincorporated organization, association, corporation, government, or any agency or political division thereof, or any other entity.

“Potential Default” means any event, act or condition which, with notice or lapse of time or both, would constitute an Event of Default.

“Property” shall mean the real property described in Exhibit “A” hereto and in the Deed of Trust and all present and future improvements thereon and appurtenances thereto.

“RCRA” shall mean the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq., as same may be amended from time to time.

“Receivables” means all of Borrower’s now owned and hereafter acquired Accounts, letter of credit rights, license fees, contract rights, chattel paper (including tangible chattel paper, electronic chattel paper, and intangible chattel paper), instruments (including promissory notes), drafts, securities, documents, securities accounts, security entitlements, commodity contracts, commodity accounts, Investment Property, supporting obligations and all other forms of obligations at any time owing to Borrower, all guaranties and other security therefore, all merchandise returned to or repossessed by Borrower, and all rights of stoppage in transit and all other rights or remedies of an unpaid vendor, lienor or secured party.

“Solvent” means, with respect to any Person on a particular date, that on such date (a) at fair valuations, all of the properties and assets of such Person are greater than the sum of the debts, including contingent liabilities, of such Person, (b) the present fair salable value of the properties and assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person is able to realize upon its properties and assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the normal course of business, (d) such Person does not intend to, and does not believe that it will, incur debts beyond such Person’s ability to pay as such debts mature, and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s properties and assets would constitute unreasonably small capital after giving due consideration to the prevailing practices in the industry in which such Person is engaged. In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed at the amount that, in light of all the facts and circumstances existing at such time, represents the amount that reasonably can be expected to become an actual or matured liability.

“Subordinated Liabilities” means liabilities subordinated to the Borrower’s obligations to Lender in a manner acceptable to Lender, in its sole discretion.

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing (other than securities or interest having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person.

“Supporting Obligations” has the meaning set forth in Section 9102(77) of the Code.

“Title Company” shall mean the title insurer designated by Lender, in its sole opinion and judgment, which shall issue the Title Policy.

“Title Policy” shall mean an ALTA Loan Policy (2006 Policy Form), *written* as such at Loan Closing and issued by the Title Company, with liability equal to the full amount of the Loan, in favor of Lender, as insured, insuring the lien of the Deed of Trust to be a valid first lien on the Property subject only to the Permitted Encumbrances. The Title Policy shall have such endorsements thereto as Lender shall require. If required by Lender, the title insurance coverage will provide for reinsurance.

“Toxic Substance” shall mean and include any material present on any facility of Borrower which has been shown to have significant adverse effect on human health or which is subject to regulation under the Toxic Substances Control Act (TSCA), 15 U.S.C. §§ 2601 et seq., applicable state law, or any other applicable Federal or state laws now in force or hereafter enacted relating to toxic substances. “Toxic Substance” includes but is not limited to asbestos, polychlorinated biphenyls (PCBs) and lead-based paints.

**1.2 Accounting Terms and Determinations.** Unless otherwise specified herein, all accounting terms used in this Agreement, unless otherwise indicated, shall have the meanings given to such terms in accordance with GAAP. In addition, unless otherwise specified herein all accounting terms used herein shall be interpreted, all accounting determinations hereunder shall be made, and all financial statements required to be delivered hereunder shall be prepared in accordance with GAAP. All other terms contained in this Agreement, unless otherwise indicated, shall have the meanings provided by the Code, to the extent such terms are defined therein.

**1.3 Construction.** Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular and references to the singular include the plural; references to any gender include any other gender; the part includes the whole; the term “including” is not limiting, and the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or”. The words, “hereof,” “herein,” “hereby,” “hereunder,” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. Article, section, subsection, clause, exhibit and schedule references are to this Agreement, unless otherwise specified. Any reference in this Agreement or any of the Other Documents to this Agreement or any of the Other Documents includes any and all permitted alterations, amendments, changes, extensions, modifications, renewals, or supplements thereto or thereof, as applicable.

**1.4 Exhibits and Schedules.** All of the exhibits and schedules attached hereto shall be deemed incorporated herein by reference.

**1.5 No Presumption Against Any Party.** Neither this Agreement, any of the Other Documents, any other documents, agreement, or instrument entered into in connection herewith, nor any uncertainty or ambiguity herein or therein shall be construed or resolved using any presumption against any party hereto, whether under any rule of construction or otherwise. On the contrary, this Agreement, the Other Documents, and all other documents, instruments, and agreements entered into in connection herewith have been reviewed by each of the parties and by their respective counsel and shall be construed and interpreted according to the ordinary meanings of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

**1.6 Independence of Provisions.** All agreements and covenants hereunder, under the Other Documents and the other documents, instruments, and agreements entered into in connection herewith shall be given independent effect such that if a particular action or condition is prohibited by the terms of any such agreement or covenant, the fact that such action or condition would be permitted within the limitations of another agreement or covenant shall not be construed as allowing such action to be taken or condition to exist.

## **2. CREDIT FACILITIES.**

**2.1 Term Loan.** Subject to the terms and conditions of this Agreement, Lender shall make a term loan to Borrower in the principal sum of Three Million and No/100 Dollars (\$3,000,000.00) (the "Loan").

(a) Interest and principal payments under the Loan shall be due and payable to Lender pursuant to the provisions of the Note.

**2.2 Use of Proceeds.** All Advances made to or for the benefit of Borrower shall be used solely to refinance Borrower's existing indebtedness secured by the Property. Lender shall have no obligation to monitor or verify the use or application of any Advance disbursed by Lender.

(a) Borrower shall not, directly or indirectly, use all or any part of any Advance for the purpose of purchasing or carrying any margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System (the "Board of Governors") or to extend credit to any Person for the purpose of purchasing or carrying any such margin stock or for any purpose which violates or is inconsistent with Regulation X of the Board of Governors, unless such use has been expressly approved in writing by Lender, in its discretion.

**2.3 Manner of Payment.** Except as expressly provided herein, all payments (including prepayments) to be made by Borrower on account of principal, interest and fees shall be made without set off or counterclaim and shall be made to Lender in each case on or prior to 12:00 p.m., Los Angeles time, in Dollars and in immediately available funds.



**3. INTEREST.**

**3.1 Interest Rate.** The Loan shall bear interest at the rate as set forth in the Note ("Contract Rate").

**3.2 Default Interest.** Upon the occurrence and during the continuance of an Event of Default, Borrower shall pay interest on the unpaid principal amount of each Advance or other Obligation owing to Lender and on the unpaid amount of all interest, fees and other amounts payable hereunder that is not paid when due, payable on demand by Lender, at a rate per annum (the "Default Rate") equal at all times to five percent (5%) per annum above the Contract Rate.

**4. PAYMENT OF OBLIGATIONS.**

**4.1 Maturity Date.** On the Maturity Date, Borrower shall pay and perform in full the entire principal balance of the Loan and all other Obligations, whether for interest, costs, fees or otherwise.

**4.2 Manner of Payment.** Principal and interest payments due under the Note and all other Obligations shall be withdrawn from Borrower's Operating Account with Lender, or such other account with Lender as designated in writing by Borrower. In the event that Borrower's Operating Account with Lender contains insufficient funds to make any payments under this Agreement, Borrower shall remit such payment from Borrower's own funds.

**4.3 Late Charge.** If any payment due hereunder is not received or made within ten (10) days of the due date or there are insufficient funds in Borrower's Operating Account on the date Lender enters any debit authorized by this Agreement, without limitation, Lender's other remedies in such an event, Lender shall apply a late charge in an amount equal to five percent (5%) of the unpaid portion of the scheduled payment or \$35.00, whichever is less.

**4.4 Loan Fees.** On the Closing Date, Borrower agrees to pay to Lender, from Borrower's own funds, for the benefit of Lender, a loan fee in the amount of \$6,000. The loan fee shall be deemed fully earned when paid, and therefore, is nonrefundable.

**5. SECURITY INTERESTS.**

**5.1 Grant of Interest.** To secure the payment and performance of all of the Obligations under Loan, as and when due, Borrower hereby grants to Lender for the benefit of Lender a first priority security interest in all Collateral pursuant to the Deed of Trust.

**5.2 Perfection.** Lender may file one or more financing statements disclosing Lender's security interest in the Collateral. Borrower agrees that a photographic, photostatic or other reproduction of this Agreement or of a financing statement is sufficient as a financing statement. Borrower approves, authorizes and ratifies any filings or recordings made by or on behalf of Lender in connection with the perfection and continuation of Lender's security interest with respect to the Collateral.

(a) Lender may file UCC-1 financing statements against specific items of Equipment, (or amend existing UCC-1 financing statements) in Lender's sole discretion, and Borrower agrees to furnish to Lender sufficient identifying information, such as make, model and serial numbers, as Lender may request. Lender may also file a fixture filing in the real property records of the applicable county in California, to perfect its security interest in such items of Equipment as are or become fixtures.

(b) Upon demand, Borrower will deliver to Lender such other items of Collateral or will execute such documents as are appropriate to grant Lender possession or control of such Collateral as necessary to further perfect Lender's security interest therein.

## 6. CONDITIONS PRECEDENT.

**6.1 Conditions to Loan Closing.** The Loan will close if, and only if, on or before \_\_\_\_\_, 2021, subject to the satisfaction, in the sole discretion of Lender, of each, every and all of the following conditions:

(a) Accuracy of Representations and Warranties: No Default. The representations and warranties contained in Sections 7 and 8 below shall have been true and correct when made and shall be true and correct on and as of the Closing Date; and on the Closing Date, no Event of Default and no Potential Default shall have occurred and be continuing.

(b) Documents and Agreements. Borrower shall deliver to Lender the following documents, in form and substance satisfactory to Lender, in its sole and absolute discretion:

- (i) An executed original of this Agreement;
- (ii) The Note, fully executed;
- (iii) The Deed of Trust, fully executed;
- (iv) The Assignment of Leases, fully executed;
- (v) The Environmental Indemnity , fully executed;
- (vi) [Reserved]
- (vii) Agreement to Furnish Insurance, fully executed;
- (viii) Hazard Insurance Disclosure, fully executed;

- (ix) A Corporate Resolution to Borrow for Borrower, fully executed;
  - (x) An Appraisal of the Property, satisfactory in all respects to Lender, in Lender's sole opinion and judgment;
  - (xi) The Title Policy or evidence of a commitment therefor. The exceptions contained in the Title Policy and all matters concerning the Property and the operation thereof must be approved by Lender and, among other provisions, shall show no blanket exceptions for anything a survey would show; and
  - (xii) Such other documents, instruments and information as Lender shall require.
- (c) Priority of Lender's Liens. Lender shall have received the results of "of record" searches satisfactory to Lender in its sole and absolute discretion, reflecting its Uniform Commercial Code filing against Borrower indicating that Lender has a perfected, first priority lien in and upon all of the Collateral, subject only to such Permitted Liens which are also permitted to be senior to the lien of Lender.
- (d) Insurance. Lender shall have received copies of the insurance binders or certificates evidencing Borrower's compliance with Section 9.2 of this Agreement, including lender's loss payee endorsements.
- (e) Organizational Documents. Lender shall have received copies of Borrower's articles of incorporation or articles of organization, as applicable, and all amendments thereto, and a certificate of good standing (each certified by the California Secretary of State, and dated a recent date prior to the Closing Date), and Lender shall have received Certificates of Foreign Qualification for Borrower from the Secretary of State of each state wherein the failure to be so qualified could have a Material Adverse Effect.
- (f) Certified Resolutions/Authorizations. Lender shall have received (i) copies of Borrower's by-laws or operating agreement, as applicable, and all amendments thereto, and (ii) copies of the resolutions of the board of directors of Borrower authorizing the execution and delivery of this Agreement, and the other documents contemplated hereby, and authorizing the transactions contemplated hereunder and thereunder, and authorizing specific officers or managers of Borrower to execute the same on behalf of Borrower certified by the Secretary or other acceptable officer, or the manager, as applicable, of Borrower as of the Closing Date.
- (g) [Reserved].
- (h) Third Party Custody. In the event that any Collateral is in the possession of a third party, Borrower shall join with Lender in notifying such third party of Lender's security interest and obtaining an acknowledgement from such third party that it is holding such Collateral for the benefit of Lender.

- (i) Permits and Approvals. Verification and approval of all permits, approvals and authorizations required to pledge the Collateral to Lender.
- (j) Fees. Borrower shall have paid all Fees and Costs payable by Borrower hereunder, including legal fees and costs incurred by Lender in connection with the preparation, negotiation and closing of this Agreement.
- (k) Borrower's Financial Statements. Review and approval of Borrower's latest year to date month-end internally prepared consolidated financial statements and tax returns (with all forms K-1 attached), together with the similar dated aged accounts receivable and inventory reports, and any other financial statements and reports as required by Lender.
- (l) [Reserved].
- (m) Field Audit. An auditor selected by Lender shall have completed a field audit verifying Borrower's methodology and valuation of the Accounts, Inventory and other Collateral of Borrower, in Lender's sole opinion and judgment.
- (n) Other Documents and Agreements . Lender shall have received such other agreements, instruments and documents as Lender may require in connection with the transactions contemplated hereby, all in form and substance satisfactory to Lender in Lender's sole and absolute discretion, and in form for filing in the appropriate filing office, including, but not limited to, those documents listed in Section 6.1(c).

**7. REPRESENTATIONS, WARRANTIES AND COVENANTS OF BORROWER.** In order to induce Lender to enter into this Agreement and to make the Advance, Borrower represents and warrants to Lender as follows, and Borrower covenants that the following representations will continue to be true, and that Borrower will at all times comply with all of the following covenants:

**7.1 State of Organization, Existence and Authority.** Borrower is and will continue to be, a corporation, duly incorporated, validly existing and in good standing under the laws of the State of California. Borrower has all requisite corporate power and authority to own and operate its properties and to carry on its business as now conducted and as presently planned to be conducted. Borrower is and will continue to be qualified and licensed to do business in California and all jurisdictions in which any failure to do so would have a Material Adverse Effect.

(a) Borrower is not in violation of any term of any of its organizational documents, agreement or instrument to which Borrower is a party or by which it or any of its properties (now or hereafter acquired) may be bound (except for violations which in the aggregate do not have a Material Adverse Effect).

(b) The execution, delivery and performance by Borrower of this Agreement, and all other documents contemplated hereby, and the creation of the lien granted under this Agreement: (i) have been duly and validly authorized, (ii) create legal, valid and binding obligations of Borrower enforceable against Borrower in accordance with their terms (except as enforcement may be limited by equitable principles and by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to creditors' rights generally), (iii) do not violate Borrower's articles or certificate of incorporation, or Borrower's by-laws, or any law which is binding upon Borrower or its property, (iv) do not constitute a breach of, or grounds for acceleration of, any material indebtedness or obligation under any material agreement or instrument which is binding upon Borrower or its property and (v) do not require any consent, approval, license exemption or other action by any Official Body or any other person or entity except such as have already been given or shall be obtained on or before the Closing Date.

**7.2 Name; Trade Names and Styles.** The name of Borrower set forth in the heading to this Agreement is its correct name. All prior names of Borrower and all of Borrower's present and prior trade names are listed on Exhibit "B" attached hereto. Borrower shall give Lender thirty (30) days' prior written notice before changing its name or doing business under any other trade name. Borrower has complied, and will in the future comply, with all laws relating to the conduct of business under a fictitious business name.

**7.3 Place of Business; Location of Collateral.** Borrower's address set forth in Section 12.4 hereof is the address and location of Borrower's chief executive office. In addition, Borrower has places of business and tangible Collateral located only at the locations set forth on Exhibit "C" attached hereto. Borrower will give Lender at least thirty (30) days' prior written notice before opening any additional place of business, changing its chief executive office, or moving any of the Collateral to a location other than Borrower's address set forth in Section 12.4 or one of the locations set forth on Exhibit "C" hereto.

**7.4 Title to Collateral; Permitted Liens.** Borrower is now, and will at all times in the future, be the sole owner of all the Collateral. Borrower has rights in and the power to transfer the Collateral. The Collateral is now, and will remain, free and clear of any and all liens, charges, security interests, encumbrances and adverse claims, except for Permitted Liens. Lender has now, and will continue to have, a first-priority perfected and enforceable security interest in all of the Collateral, subject only to the Permitted Liens which are also permitted to be senior to the lien of Lender, and Borrower will at all times defend Lender and the Collateral against all claims of others. Borrower is not and will not become a lessee under any real property lease which does, or will, prohibit, restrain, impair Borrower's right to remove any Collateral from the leased premises. Borrower will keep in full force and effect, and will comply with all the terms of, any lease of real property where any of the Collateral now or in the future may be located.

**7.5 Maintenance of Collateral.** Borrower will maintain the Collateral consisting of Equipment in good working condition, and Borrower will not use the Collateral for any unlawful purpose. Borrower will immediately advise Lender in writing of any material loss or damage to the Collateral.

**7.6 Books and Records.** Borrower has maintained and will maintain at Borrower's Address complete and accurate books and records, comprising an accounting system in accordance with GAAP.

**7.7 Financial Condition, Statements and Reports.** All financial statements now or in the future delivered to Lender have been, and will be, prepared in conformity with GAAP (except, in the case of unaudited financial statements, for the absence of footnotes and subject to normal year-end adjustments) and now and in the future will fairly reflect the financial condition of Borrower, at the times and for the periods therein stated. Between the last date covered by any such statement provided to Lender and the date hereof, there has been no Material Adverse Effect. Borrower is now and will continue to be Solvent.

**7.8 Tax Returns and Payments; Pension Contributions.** Borrower has timely filed, and will timely file, all tax returns and reports required by foreign, federal, state and local law; and Borrower has timely paid, and will timely pay, all foreign, federal, state and local taxes, assessments, deposits and contributions now or in the future owed by Borrower. As of the date hereof, Borrower is unaware of any claims or adjustments proposed for any of Borrower's prior tax years which could result in additional taxes becoming due and payable by Borrower. To the best of Borrower's knowledge, Borrower has paid, and shall continue to pay all amounts necessary to fund all present and future pension, profit sharing and deferred compensation plans in accordance with their terms; and Borrower has not and will not withdraw from participation in, permit partial or complete termination of, or permit the occurrence of any other event with respect to, any such plan which could result in any liability of Borrower, including any liability to the Pension Benefit Guaranty Corporation or its successors or any other Governmental Agency.

**7.9 Violation of Laws.** There are no violations or notices of violations of any Laws relating to any of the Collateral.

**7.10 Litigation.** There is no claim, suit, litigation, proceeding or investigation, pending, or to the best of Borrower's knowledge, threatened by or against or affecting Borrower in any court or before any Governmental Agency (or any basis therefore known to Borrower) which *if* adversely determined against Borrower would result, either separately or in the aggregate, in a Material Adverse Effect (collectively, the "Material Litigation"). Borrower will promptly inform Lender in writing of any Material Litigation.

**7.11 No Default.** No event has occurred and is continuing and no condition exists which constitutes an Event of Default or Potential Default.

**7.12 No Advice.** Borrower is not relying on Lender or Lender's agents, consultants or attorneys as to the legal sufficiency, legal effect or tax consequences of this Agreement or the acquisition of assets relating hereto (if applicable).

**7.13 Compliance with Zoning Ordinances and Similar Laws.** The Property complies with all applicable Laws and all permits and approvals issued thereunder, affecting the Property, the sale, operation, leasing or financing of the Property and the intended occupancy, use and enjoyment of the Property, including, but not limited to, applicable subdivision Laws, licenses and permits, building codes, zoning ordinances, flood disaster, environmental protection and equal employment regulations and appropriate supervising boards of fire underwriters and similar agencies. Borrower shall not seek, make or consent to any change *in* the zoning, conditions of use, or any other applicable land use permits, approvals or regulations pertaining to the Property, or any portion thereof, which would constitute a violation of the warranties and representations herein contained, or would change the nature of the use or occupancy of the Property.

**7.14 Availability of Utilities.** All utility services necessary for the proper operation of the Property for its intended purposes are available at the Property.

**Condition of Property.** The Property is not now damaged or injured as a result of any fire, explosion, accident, flood, or other casualty, nor subject to any action in eminent domain or any condemnation proceeding.

**Brokerage Commissions.** No brokerage commissions are or will be owed by Borrower in connection with the Loan, or if there are commissions due or payable, the same will be paid by Borrower. Borrower agrees to and shall indemnify and hold harmless Lender from all liability, claims, or losses arising by reason of any such brokerage commissions related to any or all acts of Borrower in connection with the Loan. This provision shall survive the repayment of the Loan and shall continue in full force and effect so long as the possibility of such liability, claims or losses exists.

**Access.** The Property fronts on a publicly maintained road or street and has both legal and practical access to the same.

**Subordinate Financing and Leases.** Borrower will not, without the prior written consent of Lender, cause there to be deeds of trust, mortgages, security agreements, liens or encumbrances on the Property or any portion thereof or interest therein. Borrower will not, without the prior written consent of Lender, enter into a lease for all or any portion of the Property.

**Air Rights.** Borrower has not and will not transfer, assign, convey, hypothecate or encumber any of the air rights pertaining to the Property.

**Compliance with Environmental Laws.** Borrower will not use, store, manufacture, generate, transport to or from, or dispose of any toxic substances, hazardous materials, hazardous wastes, radioactive materials, flammable explosives, or related material on or in connection with any property or the business of Borrower on any property. Borrower will not permit any lessee on any property to use, store, manufacture, generate, transport to or from, or dispose of any toxic substances, hazardous materials, hazardous waste, radioactive materials, flammable explosives or related material on or in connection with any property or the business on any property. ("Toxic substances," "hazardous materials," and "hazardous waste" shall include, but not be limited to, such substances, materials and wastes which are or become regulated under applicable Laws or which are classified as hazardous or toxic under applicable Laws.)

**Continuing Warranties.** Borrower's representations and warranties set forth in this Agreement shall be true and correct at the time of execution of this Agreement and as of the Closing Date and shall survive the Closing Date and shall remain true and correct as of the date given.

**8. RECEIVABLES/ ACCOUNTS.**

**8.1 Representations Relating to Documents and Legal Compliance.** Borrower represents and warrants to Lender as follows:

(a) All statements made and all unpaid balances appearing in all invoices, instruments and other documents evidencing the Accounts are and shall be true and correct in all material respects and all such invoices, instruments and other documents and all of Borrower's books and records are and shall be genuine and in all respects what they purport to be.

(b) All sales and other transactions underlying or giving rise to each Account shall fully comply with all applicable laws and governmental rules and regulations.

(c) All documents, instruments, and agreements relating to all Accounts are and shall be legally enforceable in accordance with their terms.

**9. ADDITIONAL COVENANTS OF THE BORROWER.**

**9.1 Financial and Other Covenants.** Borrower shall at all times comply with the following covenants:

(a) Operating Account. Borrower shall, so long as any Advance remains unpaid and any commitment to make any Advance remains outstanding, maintain Borrower's Operating Account with Lender.

(b) [Reserved]

(c) Minimum Debt Service Coverage Ratio. Borrower shall maintain a minimum Debt Service Coverage Ratio of at least 1.50 to 1.00, which shall be measured quarterly, beginning with the calendar quarter ending March 31, 2020."

(d) [Reserved]



**9.2 Insurance.** Borrower shall, at all times, insure all of the tangible personal property Collateral and carry such other business insurance, with insurers reasonably acceptable to Lender, in such form and amounts as Lender may reasonably require (including, without limitation, credit insurance) , and Borrower shall provide evidence of such insurance to Lender, so that Lender is satisfied that such insurance is, at all times, in full force and effect. All liability insurance policies of Borrower with respect to the Collateral shall name Lender as an additional insured, and all property, casualty and related insurance policies of Borrower with respect to the Collateral shall name Lender as a loss payee thereon and Borrower shall cause the issuance of a lender's loss payee endorsement in form reasonably acceptable to Lender. Upon receipt of the proceeds of any such insurance, Lender, at its sole option, either (i) shall apply such proceeds to the prepayment of the Obligations in such order or manner as Lender may elect, or (ii) shall disburse such proceeds to Borrower for application to the cost of repairs, replacements, or restorations. All repairs, replacements or restorations shall be effected with reasonable promptness and shall be of a value at least equal to the value of the items or property destroyed prior to such damage or destruction. Lender may require reasonable assurance that the insurance proceeds so released will be so used. If Borrower fails to provide or pay for any insurance, Lender may, but is not obligated to, obtain the same at Borrower's expense. Borrower shall give Lender no less than thirty (30) days written notice of any cancellation of any insurance required hereunder and shall promptly forward any Notice of Cancellation it receives from any of its insurers.

**9.3 Reports.** Borrower, at its expense, shall provide Lender with the written reports set forth below, (all in form, substance and detail satisfactory to Lender) by the dates specified:

(a) As soon as available, and in no event later than one hundred fifty (150) days after the end of Borrower's fiscal year, commencing with the fiscal year ending December 31, 2020, Borrower shall deliver to Lender annual consolidated financial statements of Borrower audited by an independent certified public accountant acceptable to Lender.

(b) Commencing with the 2020 tax year, as soon as available, and in no event later than 30 days after filing, Borrower shall deliver to Lender true and correct copies of Borrower's Federal income tax returns (including all schedules and attachments) of Borrower (and copies of any filing extensions) prepared by an independent certified public accountant acceptable to Lender.

(c) Borrower shall, during normal business hours, from time to time upon two (2) Business Days' prior notice as frequently as Lender reasonably determines to be appropriate, but in no event less than once each year: (a) provide Lender and its officers, employees and agents access to its properties, facilities, advisors, officers and employees of Borrower and to the Collateral of Borrower, and (b) permit Lender and any of its officers, employees and agents, to inspect, audit and make extracts from Borrower's books and records. Borrower shall, during normal business hours, from time to time upon two (2) Business Days' prior notice permit Lender and its officers, employees and agents, to inspect, review, evaluate and make test verifications and counts for the Accounts, Inventory and other Collateral of Borrower. If an Event of Default has occurred and is continuing, Borrower shall provide such access to Lender at all times and without advance notice. Furthermore, so long as any Event of Default has occurred and is continuing, Borrower shall provide Lender with access to each of its suppliers and customers. Borrower shall make available to Lender and its counsel reasonably promptly originals or copies of all books and records that Lender may reasonably request. Borrower shall delivery any document or instrument necessary for Lender as it may from time to time reasonably request, to obtain records from any service bureau or other Person that maintains records for Borrower, and shall maintain duplicate records or supporting documentation on media, including computer tapes and discs owned by Borrower. Lender will give Borrower at least two (2) days' prior written notice of regularly scheduled audits.

(d) Promptly upon Lender's request, such other books, records, statements, lists of property and accounts, budgets, forecasts or reports as to Borrower as Lender may reasonably request.

**9.4 Information.** Borrower shall also furnish, or cause to be furnished, to Lender such additional information as Lender may from time to time reasonably request concerning Borrower's business, and/or financial condition, or any item of Collateral.

(a) Promptly upon Borrower becoming aware of any Event of Default or Potential Default, Borrower shall give Lender notice thereof, together with a written statement setting forth the nature thereof and the steps which Borrower has taken or is taking to cure the same.

(b) Promptly upon Borrower becoming aware thereof, Borrower shall give Lender written notice of: (i) any Material Adverse Effect and (ii) the commencement or existence of any proceeding by or before any Official Body against or affecting Borrower which is reasonably likely to be adversely determined and, if adversely decided, would have a Material Adverse Effect.

**9.5 Access to Books and Records and Collateral.** Borrower agrees to reimburse Lender immediately upon demand for all fees and out-of-pocket expenses for field exams and audits incurred as the result of the occurrence of an Event of Default which is continuing.

(a) Borrower will not enter into any agreement with any accounting firm, service bureau or third party to store Borrower's books or records at any location other than the location identified in Section 11.4 hereof without first notifying Lender of the same and obtaining the written agreement from such accounting firm, service bureau or other third party to give Lender the same rights with respect to access to books and records and related rights as Lender has under this Agreement.

**9.6 Negative Covenants.** Borrower shall not, without Lender's prior written consent, do any of the following:

(a) create, incur, assume or permit to exist any indebtedness or liabilities resulting from borrowings, guaranties, leasing, loans or advances, whether secured or unsecured, matured or Un-matured, liquidated or unliquidated, direct or contingent, joint or several, except the liabilities of Borrower to Lender, and any other liabilities of Borrower existing as of, and disclosed to Lender prior to, the date of this Agreement ;

- (b) loan, invest in, or advance money or assets to any other person, enterprise or entity other than any loan, investment or advance to Borrower's affiliates and subsidiaries;
- (c) purchase, create or acquire any interest in any other enterprise or entity other than any purchase, creation or acquisition of interests in Borrower's affiliates and subsidiaries;
- (d) incur any obligation as surety or guarantor other than in the ordinary course of business;
- (e) use any of the proceeds extended pursuant to this Agreement except for the purposes stated in this Agreement and related documents;
- (f) merge or consolidate with another entity;
- (g) make any substantial change in the nature of Borrower's business as conducted as of the date hereof;
- (h) acquire all or substantially all of the assets of any other entity;
- (i) sell, transfer, assign, lease, license, or dispose of, all or a substantial or material portion of Borrower's assets, except in the ordinary course of its business;
- (j) mortgage, pledge, grant or permit to exist a security interest in, or lien upon, all or any portion of Borrower's assets owned as of the date of this Agreement or hereafter acquired, or accelerate payment on any existing debt, except any of the foregoing in favor of Lender or which is existing as of, and disclosed to Lender in writing prior to, the date of this Agreement;
- (k) make any change in Borrower's capital structure which would have a Material Adverse Effect;
- (l) dissolve or elect to dissolve;
- (m) change the state of its incorporation;
- (n) change its legal name; or
- (o) use the loan proceeds for any purpose other than as set forth in this Agreement.

Transactions permitted by the foregoing provisions of this Section are only permitted if no Potential Default or Event of Default is continuing or would occur as a result of such transaction.

**9.7 Litigation Cooperation.** Borrower shall promptly inform Lender in writing of any proceedings (whether or not purportedly on behalf of Borrower) against Borrower involving an amount in excess of \$150,000.00. Should any third-party suit or proceeding be instituted by or against Lender with respect to any Collateral or relating to Borrower, Borrower shall, without expense to Lender, make available Borrower and its officers, employees and agents and Borrower's books and records, to the extent that Lender may deem them reasonably necessary in order to prosecute or defend any such suit or proceeding.

**9.8 Further Assurances.** Borrower agrees, at its expense, on request by Lender, to execute all documents and take all actions, as Lender, may deem reasonably necessary or useful in order to perfect and maintain Lender's perfected security interest in the Collateral, and in order to fully consummate the transactions contemplated by this Agreement.

**9.9 Operating Account.** Until such time as all of Borrower's Advances have been paid in full and this Agreement has been terminated, Borrower agrees to maintain Borrower's Operating Account with Lender. Borrower authorizes Lender to automatically deduct all payments required to be made by this Agreement from Borrower's Operating Account.

**9.10 Field Audits .**

Borrower shall permit Lender, on ten (10) Business Days' prior notice, to conduct a field audit of Borrower verifying Borrower's methodology and valuation of the Accounts, Inventory and other Collateral of Borrower, performed by an agent designated by Lender, all to the satisfaction of Lender in its sole opinion and judgment. In addition, Borrower shall, during normal business hours, from time to time upon ten (10) Business Days prior notice: (a) provide Lender and any of its officers, employees and agents access to its properties, facilities, advisors, officers and employees of Borrower and to the Collateral of Borrower, and (b) permit Lender and any of its officers, employees and agents to inspect, audit and make extracts from Borrower's books and records. Borrower shall, during normal business hours, from time to time upon one (1) Business Days prior notice, permit Lender, and its officers, employees and agents, to inspect, review, evaluate and make test verifications and counts for the Accounts, Inventory and other Collateral of Borrower. If an Event of Default has occurred and is continuing, Borrower shall, at Borrower's expense, provide such access to Lender at all times and without advance notice. Furthermore, so long as any Event of Default has occurred and is continuing, Borrower shall provide Lender with access to each of its suppliers and customers. Borrower shall reasonably promptly make available to Lender and its counsel originals or copies of all books and records that Lender may reasonably request. Borrower shall deliver any document or instrument necessary for Lender as it may from time to time reasonably request, to obtain records from any service bureau or other Person that maintains records for Borrower, and shall maintain duplicate records or supporting documentation on media, including computer tapes and discs owned by Borrower. Lender will give Borrower at least ten (10) Business Days' prior written notice of regularly scheduled field audits. Borrower shall reimburse Lender for any cost incurred for such field audits. Unless an Event of Default has occurred, Borrower shall be responsible for the cost of any such audit one (1) time each year and, in no event, at a cost not to exceed \$3,000.00. Borrower hereby authorized Lender to debit (without offset) any such cost from Borrower's Operating Account. **In the event that Lender deems the results of any such audit to be unsatisfactory, in Lender's sole opinion and judgment, then in such event, Lender may declare an Event of Default.**

**9.11 Terrorism and Anti-Money Laundering.** Borrower warrants and agrees as follows:

(a) As of the date hereof and throughout the term of the Loan until the Maturity Date and the repayment in full of the Obligations, (i) Borrower; (ii) any Person controlling or controlled by Borrower; (iii) if Borrower is a privately held entity, any Person having a beneficial interest in Borrower; or (iv) any Person for whom Borrower is acting as agent or nominee in connection with this transaction, is not an OFAC Prohibited Person.

(b) To comply with applicable U.S. Anti-Money Laundering Laws and regulations, all payments by Borrower to Lender or from Lender to Borrower will only be made in Borrower's name and to and from a bank account of a bank based or incorporated in or formed under the laws of the United States or a bank that is not a "foreign shell bank" within the meaning of the U.S. Bank Secrecy Act (31 U.S.C. § 5311 et seq.), as amended, and the regulations promulgated thereunder by the U.S. Department of the Treasury, as such regulations may be amended from time to time.

(c) To provide Lender at any time and from time to time during the term of the Loan until the Maturity Date and the repayment in full of the Obligations with such information as Lender determines to be necessary or appropriate to comply with the Anti-Money Laundering Laws and regulations of any applicable jurisdiction, or to respond to requests for information concerning the identity of Borrower, any Person controlling or controlled by Borrower or any Person having a beneficial interest in Borrower, from any governmental authority, self-regulatory organization or financial institution in connection with its anti-money laundering compliance procedures, or to update such information.

(d) The representations and warranties set forth in this Section 9.11 shall be deemed repeated and reaffirmed by Borrower as of each date that Borrower makes a payment to Lender under this Agreement and the Other Documents or receives any payment from Lender. Borrower agrees promptly to notify Lender in writing should Borrower become aware of any change in the information set forth in these representations.

**9.12 Payment of Taxes**

Borrower shall pay, or cause to be paid, and discharge, or cause to be discharged, (a) before delinquency all taxes, assessments, and governmental charges or levies imposed upon it, upon its income or profits, or upon any property belonging to it (including, without limitation, the Property); (b) when due all lawful claims, which, if unpaid, might become a lien, charge or encumbrance upon any of its assets or property (including, without limitation, the Property); and (c) all its other obligations and indebtedness when due.

**9.13 Insurance.**

Borrower shall obtain and at all times maintain liability insurance in amount, form and issued by a company or companies satisfactory to Lender, as required under the Deed of Trust and/or the Agreement To Furnish Insurance.

**9.14 Maintenance of Property.**

Borrower shall maintain and preserve, or cause to be maintained and preserved, all of its properties, necessary or useful in the proper conduct of its business, including such as may be under lease, in good working order and condition, ordinary wear and tear excepted.

**9.15 Appraisals.**

In addition to any rights or remedies accorded to Lender under this Agreement or any of the Other Documents, Lender may, at any time and from time to time and as and when Lender deems it to be appropriate, in its sole and absolute discretion, whether or not an Event of Default has occurred, cause to be performed and prepared an updated Appraisal of the Property (each, an Updated Appraisal"). All costs and expenses incurred by Lender in connection with any such inspection or Updated Appraisal shall be payable by Borrower to Lender upon demand if any such Updated Appraisal is ordered at such time as an Event of Default exists.

**9.16 Comply With Applicable Laws.**

Borrower shall comply with all applicable restrictive covenants, zoning and subdivision ordinances, building codes, health and environmental Laws and all other applicable Laws, directions, orders and notices of violations issued by any Governmental Agency relating to or affecting the premises or the business or activity being conducted thereon, whether by Borrower or by any occupant thereof, including without limitation, any and all Laws relating to hazardous or toxic waste or waste products or hazardous substances. Further, Borrower shall indemnify and hold Lender and the Trustee under the Deed of Trust harmless from the failure by Borrower to comply with such Laws in any respect.

**10. EVENTS OF DEFAULT AND REMEDIES.**

**10.1 Events of Default.** The occurrence of any of the following events shall constitute an "Event of Default" under this Agreement:

- (a) Borrower shall fail to pay any amounts owed under this Agreement or any interest thereon or any other monetary Obligation; or

- (b) Borrower shall fail to provide to Lender any notices or financial reports specified in this Agreement; or
- (c) Borrower shall fail to perform any other non-monetary Obligation; or
- (d) Any warranty, representation, statement, report or certificate made or delivered to Lender by Borrower or any of Borrower's officers, employees or agents, now or in the future, shall be untrue or misleading and results in a Material Adverse Effect; or
- (e) Borrower shall fail to give Lender access to its books and records or the Collateral as provided herein, or shall breach any negative covenant set forth in Section 9.6 above; or
- (f) Borrower shall fail to comply with the financial covenants (if any) set forth in Section 9.1 or shall fail to perform any other non-monetary Obligation which by its nature cannot be cured; or
- (g) Any levy, assessment, attachment, seizure, lien or encumbrance (other than a Permitted Lien) is made on all or any part of the Collateral; or
- (h) Any default or event of default occurs under any obligation secured by a Permitted Lien, which is not cured within any applicable cure period or waived in writing by the holder of the Permitted Lien; or
- (i) Borrower breaches any material contract, lease or other obligation, which has or may reasonably be expected to have a Material Adverse Effect; or
- (j) Dissolution, termination of existence, termination of business, insolvency or business failure of Borrower; or the appointment of a receiver, trustee or custodian, for all or any part of the other property of Borrower; or the assignment for the benefit of creditors by, or the commencement of any proceeding by Borrower under any reorganization, bankruptcy, insolvency, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, now or in the future in effect; or
- (k) Commencement of any proceeding against Borrower under any reorganization, bankruptcy, insolvency, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, now or in the future in effect, which is not dismissed within sixty (60) days after the date commenced; or
- (l) Borrower shall conceal, remove or transfer any part of its property, with intent to hinder, delay or defraud its creditors, or make or suffer any transfer of any of its property which would constitute a fraudulent, void or voidable transfer or transaction under the California Uniform Voidable Transactions Act; or

- (m) Revocation or termination of, or limitation or denial of liability upon, any pledge of any material asset of any kind pledged by any third party to secure any or all of the Obligations, or any attempt to do any of the foregoing, or commencement of proceedings by or against any such third party under any bankruptcy or insolvency law; or
- (n) Borrower makes any payment on account of any indebtedness or obligation which has been subordinated to the Obligations, other than as permitted in the applicable subordination agreement, or if any Person who has subordinated such indebtedness or obligations terminates or in any way limits his subordination agreement; or
- (o) Borrower shall suffer or experience any Change of Control without Lender's prior written consent, which consent shall be in the discretion of Lender in the exercise of its reasonable business judgment; or
- (p) Lender shall not have a valid first priority security interest in any item of Collateral, except as to items of Collateral which are subject to Permitted Liens that are also permitted to be prior; or
- (q) There is any Material Adverse Effect; or
- (r) Borrower or any of its Affiliates fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Other Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower or Affiliate of Borrower; or
- (s) Borrower or any of its Affiliates commits a breach or default in the payment or performance of any other obligation of Borrower or such Affiliate under any instrument, agreement, guaranty or document evidencing, supporting or securing any other loan or credit extended by any other creditor to Borrower or its Affiliates; or
- (t) Any lien for labor, material, taxes or otherwise shall be filed against the Property and such lien shall not be either satisfied or bonded over within thirty (30) days of such filing in the full amount, to Lender's satisfaction; or
- (u) Execution shall have been levied against the Property or any lien creditor(s) commence(s) suit to enforce a judgment lien against the Property and such action or suit shall not have been bonded over and shall continue unstayed and in effect for a period of more than thirty (30) calendar days; or
- (v) Borrower shall voluntarily or by operation of Law, sell, transfer, convey, lease, or encumber the Property, or any interest therein, or shall contract for such sale, transfer, conveyance, or encumbrance without the prior written consent of Lender, which consent Lender may either give or withhold in its sole and absolute opinion and judgment; or
- (w) The Property shall be the subject of an eminent domain proceeding or a taking adverse to the interest of Lender; or



(x) The Property is damaged or destroyed by fire or other casualty and the loss shall prove to be inadequately covered by insurance actually collected or in the process of collection; or

(y) The Property is or becomes subject to any proceedings for abatement of a public nuisance.

**10.2 Remedies.** Upon the occurrence and during the continuance of any Event of Default, Lender, at its option, and without notice or demand of any kind (all of which are hereby expressly waived by Borrower), may do any one or more of the following:

(a) Cease making any Advances under this Agreement or otherwise extending credit to Borrower under this Agreement or any other document or agreement;

(b) Accelerate and declare all or any part of the Obligations to be immediately due, payable and performable, notwithstanding any deferred or installment payments allowed by any instrument evidencing or relating to any Obligation;

(c) Exercise all rights and remedies available to a secured party under the Code;

(d) Take possession of, or obtain the appointment of a receiver to take control of, any or all of the Collateral wherever it may be found. For that purpose Borrower hereby authorizes Lender and Lender's representatives to enter onto any of Borrower's premises without interference to take possession of any of the Collateral, and remain on the premises, without charge for so long as Lender deems it reasonably necessary in order to complete the enforcement of its rights under this Agreement.

(e) Require Borrower to assemble any or all of the Collateral and make it available to Lender or Lender's representatives at places designated by Lender which are reasonably convenient to Lender or Lender's representatives and Borrower;

(f) Complete the processing or repair of any Collateral prior to a disposition thereof; and, for such purpose and for the purpose of removal, Lender shall have the right to use Borrower's premises, vehicles and other equipment and all other property without charge. Lender is hereby granted a license or other right to use, without charge, Borrower's labels, patents, copyrights, rights of use of any name, trade secrets, trade names, trademarks, service marks, as it pertains to the Collateral, in completing production of, advertising for sale, and selling or otherwise disposing of any Collateral as provided in the Code;

(g) Sell, lease, license or otherwise dispose of any of the Collateral as provided in the Code, in its condition at the time Lender obtains possession of it or after further manufacturing, processing or repair, at one or more public and/or private dispositions, in lots or in bulk, for cash, exchange or other property, or on credit, and to adjourn any such sale from time to time without notice other than oral announcement at the time scheduled for sale. Lender shall have the right to conduct such disposition on Borrower's premises without charge, for such time or times as Lender deems reasonable, or on Lender's premises, or elsewhere and the Collateral need not be located at the place of disposition. Lender may directly or through any affiliated company purchase or lease any Collateral at any such public disposition, and if permissible under applicable law, at any private disposition. Any sale, lease, license or other disposition of Collateral shall not relieve Borrower of any liability Borrower may have if any Collateral is defective as to title or physical condition or otherwise at the time of sale;

Notwithstanding the foregoing, Lender shall not dispose of any trademarks, trade names, copyrights, registrations, licenses, franchises or customer lists except in connection with foreclosure upon substantially all of Borrower's assets as provided in the Code.

All expenses, costs, liabilities and obligations incurred by Lender (including attorneys' Fees and Costs with respect to the foregoing) shall be due from Borrower to Lender on demand. Lender may charge the same to Borrower's Loan Account, and the same shall thereafter bear interest at the same rate as is applicable in this Agreement.

In addition to the specific rights and remedies hereinabove mentioned, Lender shall have the right to avail itself of any other rights or remedies to which it may be entitled under any then existing Laws including, but not limited to, the right to realize upon any or all of its security, and to do so in any order. Furthermore, the rights and remedies set forth above are not exclusive, and Lender may avail itself of any individual right or remedy set forth in this Agreement, or available under such Laws, without utilizing any other right or remedy.

**10.3 Standards for Determining Commercial Reasonableness.** Borrower and Lender agree that any disposition, as defined in the Code ("disposition") of any Collateral which complies with the following standards will conclusively be deemed to be commercially reasonable:

- (i) Notice of the disposition is given to Borrower at least ten (10) days prior to the sale, and, in the case of a public sale, notice of the sale is published at least ten (10) days before the sale in a newspaper of general circulation in the county where the sale is to be conducted;
- (ii) Notice of the disposition describes the Collateral in general, non-specific terms;
- (iii) The disposition is conducted at a place designated by Lender, with or without the Collateral being present;
- (iv) The disposition commences at any time between 8:00 a.m. and 6:00 p.m., Los Angeles time; and
- (v) With respect to any disposition of any of the Collateral, Lender may (but is not obligated to) direct any prospective purchaser to ascertain directly from Borrower any and all information concerning the same.

(b) Lender shall be free to employ other methods of noticing and disposing of the Collateral, in its discretion.

(c) Lender shall have no obligation to attempt to satisfy the Obligations by collecting them from any third Person which may be liable for them or any portion thereof, and Lender may release, modify or waive any collateral provided by any other third Person as security for the Obligation or any portion thereof, all without affecting Lender's rights against Borrower. Borrower waives any right it may have to require Lender to pursue any third Person for any of the Obligations.

(d) Lender may comply with any applicable state or federal law requirements in connection with a disposition of the Collateral, and Lender's compliance therewith will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(e) Lender may dispose of the Collateral without giving any warranties as to the Collateral. Lender may specifically disclaim any warranties of title or the like. This procedure will not be considered to adversely affect the commercial reasonableness of any sale of the Collateral.

(f) If Lender disposes of any of the Collateral upon credit, Borrower will be credited only with payments actually made by the purchaser, received by Lender and applied to the indebtedness of the purchaser. In the event that the purchaser fails to pay for the Collateral, Lender may resell the Collateral and Borrower will be credited with the proceeds of such disposition.

**10.4 Power of Attorney.** Borrower grants to Lender an irrevocable power of attorney coupled with an interest, authorizing and permitting Lender (acting through any of its employees, attorneys or agents) at any time, at its option, but without obligation, with or without notice to Borrower, and at Borrower's expense, to do any or all of the following, in Borrower's name or otherwise, but Lender agrees to exercise the following powers in a commercially reasonable manner:

(i) Execute on behalf of Borrower any documents that Lender may, in its sole discretion, deem advisable in order to perfect and maintain Lender's security interest in the Collateral, or in order to exercise a right of Borrower or Lender, or in order to fully consummate all the transactions contemplated under this Agreement, and all other present and future agreements;

(ii) Execute on behalf of Borrower any document exercising, transferring or assigning any option to purchase, sell or otherwise dispose of or to lease (as lessor or lessee) any real or personal property which is part of Lender's Collateral or in which Lender has an interest;

(iii) Execute on behalf of Borrower, any invoices relating to any Receivable, any draft against any Account Debtor and any notice to any Account Debtor, any proof of claim in bankruptcy, any notice of lien, claim of mechanic's, materialman's or other lien, or assignment or satisfaction of mechanic's, materialman's or other lien;

- (iv) Take control in any manner of any cash or non-cash items of payment or proceeds of Collateral; endorse the name of Borrower upon any instruments, or documents, evidence of payment or Collateral that may come into Lender's possession;
- (v) Endorse all checks and other forms of remittances received by Lender;
- (vi) Pay, contest or settle any lien, charge, encumbrance, security interest and adverse claim in or to any of the Collateral, or any judgment based thereon, or otherwise take any action to terminate or discharge the same;
- (vii) Grant extensions of time to pay, compromise claims and settle Receivables and General Intangibles for less than face value and execute all releases and other documents in connection therewith;
- (viii) Pay any sums required on account of Borrower's taxes or to secure the release of any liens therefore, or both;
- (ix) Settle and adjust, and give releases of, any insurance claim that relates to any of the Collateral and obtain payment therefore;
- (x) Instruct any third party having custody or control of any books or records belonging to, or relating to, Borrower to give Lender the same rights of access and other rights with respect thereto as Lender has under this Agreement; and
- (xi) Take any action or pay any sum required of Borrower pursuant to this Agreement and any other present or future agreements.

(b) Any and all sums paid and any and all costs, expenses, liabilities, obligations and attorneys' fees incurred by Lender (including attorneys' fees and expenses incurred pursuant to bankruptcy) with respect to the foregoing shall be added to and become part of the Obligations, and shall be payable on demand. Lender may charge the foregoing to Borrower's Loan Account and the foregoing shall thereafter bear interest at the same rate specified in this Agreement. In no event shall Lender's rights under the foregoing power of attorney, or any of Lender's other rights under this Agreement, be deemed to indicate that Lender, is in control of the business, management or properties of Borrower.

(c) Borrower shall pay, indemnify, defend, and hold Lender and each of its respective officers, directors, employees, counsel, agents, and attorneys-in-fact (each, an "Indemnified Person") harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, and damages, and all attorneys fees and disbursements and other costs and expenses actually incurred in connection therewith (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them in connection with, or as a result of, or related to: (i) the execution, delivery, enforcement, performance, and administration of this Agreement and any Other Documents or the transactions contemplated herein, or (ii) any investigation, litigation, or proceeding related to this Agreement, any Other Document, or (iii) the use of the proceeds of the Advances provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or (iv) any act, omission, event or circumstance in any manner related thereto (all the foregoing, collectively, the "Indemnified Liabilities").

(d) Borrower shall have no obligation to any Indemnified Person hereunder with respect to any Indemnified Liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Indemnified Person.

This Section 10.4 shall survive the termination of this Agreement and the repayment of the Obligations.

**10.5 Application of Proceeds After Event of Default.** Notwithstanding any other provisions of this Agreement to the contrary, after the occurrence and during the continuance of an Event of Default, all amounts collected or received by the Lender on account of the Obligations or any other amounts outstanding under any of the Other Documents or in respect of the Collateral may, at Lender's discretion, be paid over or delivered as follows:

FIRST, to the payment of all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees) of the Lender in connection with enforcing its rights and the rights of Lender under this Agreement and the Other Documents and any protective advances made by the Lender with respect to the Collateral under or pursuant to the terms of this Agreement;

SECOND, to payment of any fees owed to the Lender;

THIRD, to the payment of all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees) of Lender to the extent owing to Lender pursuant to the terms of this Agreement;

FOURTH, to the payment of interest and fees due with respect to the Obligations;

FIFTH, to the payment of the outstanding principal amount of the Obligations;

SIXTH, to all other Obligations and other obligations which shall have become due and payable under the Other Documents or otherwise and not repaid pursuant to clauses "FIRST" through "FIFTH" above; and

SEVENTH, to the payment of the surplus, if any, to the Borrower and/or whoever may be lawfully entitled to receive such surplus.

In carrying out the foregoing, (i) amounts received shall be applied in the numerical order provided until exhausted prior to application to the next succeeding category; and (ii) Lender shall receive amounts available to be applied pursuant to clauses "FOURTH" and "FIFTH" above.

**10.6 Remedies Cumulative.** In addition to the rights and remedies set forth in this Agreement, Lender shall have all the other rights and remedies accorded a secured party in equity and under all other applicable laws, and under any other instrument or agreement now or in the future entered into between Lender and Borrower, and all of such rights and remedies are cumulative and none is exclusive. Exercise or partial exercise by Lender of one or more of its rights or remedies shall not be deemed an election, nor bar Lender from subsequent exercise or partial exercise of any other rights or remedies. The failure or delay Lender to exercise any rights or remedies shall not operate as a waiver thereof, but all rights and remedies shall continue in full force and effect until all of the Obligations have been indefeasibly paid and performed.

## **11. GENERAL PROVISIONS.**

**11.1 Application of Payments and Waiver of Marshaling.** Subject to Section 10.5 of this Agreement, all payments with respect to the Obligations may be applied, and in Lender's sole discretion reversed and re-applied, to the Obligations, in such order and manner as Lender shall determine in its sole discretion. In addition, Borrower hereby waives all rights, legal and equitable, it may now or hereafter have to require marshaling of assets or to direct the order in which the Property will be sold, or how the proceeds of any such sale will be allocated, in the event of any sale under the Deed of Trust, including, but not limited to, any and all rights provided by California Civil Code Sections 2899 and 3433, as such Sections may be amended from time to time.

**11.2 Charges to Accounts.** Lender may, in its discretion, require that Borrower pay monetary Obligations in cash to Lender, or charge them to Borrower's Loan Account, in which event they will bear interest from the date due to the date paid at the same rate applicable to the Advances.

**11.3 Notice of Right to Copy of Appraisal Report.** California Law provides that applicants on loans secured by real estate are entitled to receive a copy of an appraisal report which has been prepared as a result of a property appraisal. If Borrower qualifies and pays for the appraisal, it may request a copy of the appraisal report by writing to the Lender. Such written request must be received by Lender no later than 90 days after (a) Lender provides notice of the action taken on Borrower's loan application, including a notice of incompleteness, or (b) in the case of a withdrawn application, after Borrower withdraws its application. Lender's transmittal of a copy of the appraisal will be conditioned upon Borrower's payment of the cost of the appraisal. **Notices.** Any notice, demand or request required hereunder shall be given in writing (at the addresses set forth below) by any of the following means: (a) personal service; (b) electronic communication, whether by telex, telegram or telecopying; (c) overnight courier; or (d) registered or certified, first class U.S. mail, return receipt requested.

To Borrower:

SNAIL GAMES USA, INC.  
12049 Jefferson Boulevard  
Los Angeles, California 90230  
Attn: \_\_\_\_\_

To Lender:

CATHAY BANK  
9650 Flair Drive, 7th Floor  
El Monte, CA 91731  
Attn: Jane Ho, SVP

or at such other address as such party may designate by ten (10) days' advance written notice to the other party hereto pursuant to this section. Any notice, demand or request sent pursuant to subsection (c), above, shall be deemed received on the business day immediately following deposit with the overnight courier, and, if sent pursuant to subsection (d), above, shall be deemed received forty-eight (48) hours following deposit into the U.S. mail.

**11.4 Severability.** Should any provision of this Agreement be held by any court of competent jurisdiction to be void or unenforceable, such defect shall not affect the remainder of this Agreement, which shall continue in full force and effect.

**11.5 Integration.** This Agreement and the Other Documents and such other written agreements, documents and instruments as may be executed in connection herewith are the final, entire and complete agreement between Borrower and Lender and supersede all prior and contemporaneous negotiations and oral representations and agreements, all of which are merged and integrated in this Agreement. There are no oral understandings, representations or agreements between the parties which are not set forth in this Agreement or in other written agreements signed by the parties in connection herewith. Lender and Borrower agree that this Agreement and the Other Documents reflect the intentions of the parties thereto and that parol evidence is not required to interpret them.

**11.6 Amendment and Waivers.** The terms and provisions of this Agreement may not be waived or amended, except in a writing executed by Borrower and a duly authorized officer of Lender and clearly specifying the extent of the amendment or the waiver. Any waiver of an Event of Default or Potential Default shall not be deemed as continuing and shall not extend to any subsequent or other Event of Default or Potential Default. The failure of Lender at any time or times to require Borrower to strictly comply with any of the provisions of this Agreement or any other present or future agreement between Borrower and Lender shall not waive or diminish any right of Lender later to demand and receive strict compliance therewith.

**11.7 Borrower Waivers.** Unless otherwise expressly required by this Agreement, Borrower hereby waives: (i) demand, protest, notice of protest and notice of dishonor, notice of payment and nonpayment, release, compromise, settlement, extension or renewal of any commercial paper, instrument, account, General Intangible, document or guaranty at any time held by Lender on which Borrower is or may in any way be liable, (ii) notice of default and (iii) notice of any action taken by Lender, unless expressly required by this Agreement.

**11.8 No Liability for Ordinary Negligence.** Neither Lender nor any of its directors, officers, employees, agents, attorneys or any other Person affiliated with or representing Lender shall be liable for any claims, demands, losses or damages, of any kind whatsoever, made, claimed, incurred or suffered by Borrower or any other party through the ordinary negligence of Lender, or any of its directors, officers, employees, agents, attorneys or any other Person affiliated with or representing Lender, but nothing herein shall relieve Lender from liability for its own gross negligence or willful misconduct.

**11.9 Actions ..** Whether or not an Event of Default has occurred, Lender shall have the right, but not the obligation, to commence, appear in, or defend any action or proceeding which affects or which Lender determines may affect (a) the Collateral; (b) Borrower's or Lender's respective rights or obligations under this Agreement; (c) the Advances; or (d) the disbursement of any proceeds of any Advance. Whether or not an Event of Default or Potential Default has occurred, Lender shall at all times have the right to take any or all actions which Lender determines to be necessary or appropriate to protect Lender's interest in connection with the Advances .

**11.10 Time of Essence.** Time is of the essence in the performance by Borrower of each and every obligation under this Agreement.

**11.11 Attorneys' Fees, Costs and Charges.** On demand, Borrower shall reimburse Lender for all costs and expenses, including, without limitation, reasonable attorneys' fees costs and disbursements (and fees and disbursements of Lender's in-house counsel) (collectively the "Fees and Costs") expended or incurred by Lender in any way in connection with: (i) the enforcement of this Agreement or any Other Documents and the rights and remedies thereunder, including, without limitation, Fees and Costs incurred in connection with any workout, attempted workout, and/or in connection with the rendering of legal advice as to Lender's rights, remedies and obligations under this Agreement in connection with such enforcement or workout; (ii) collecting any sum which is or becomes due to Lender; (iii) any proceeding, or any appeal ; or (iv) the exercise of the power of attorney granted to Lender in this Agreement. Fees and Costs shall include, without limitation, all out-of-pocket fees and costs incurred by Lender in connection with the appraisal, inspection, assessment, evaluation and insuring of the Collateral, and all fees and costs incurred by Lender in connection with the negotiation and preparation of the this Agreement and the Other Documents, including reasonable attorneys' fees. If litigation or other legal action is filed or commenced in connection with this Agreement or any of the Other Documents the prevailing party shall be entitled to its Fees and Costs. Fees and Costs shall include, without limitation, attorneys fees and costs incurred in connection with the following: (1) contempt proceedings; (2) discovery; (3) any motion, adversary proceeding, contested matter, submission or confirmation or opposition to plan of reorganization or any other activity of any kind in connection with a bankruptcy case or relating to any petition or the filing thereof under Title 11 of the United States Code; (4) garnishment, levy, and debtor and third party examinations; and (5) post judgment motions and proceedings of any kind taken to clarify, collect or enforce any judgment or award.

(a) All Fees and Costs to which Lender may be entitled pursuant to this Agreement may be charged by Lender to Borrower's Loan Account and shall thereafter bear interest at the Contract Rate specified in this Agreement.



**11.12 Benefit of Agreement and Assignment.** The provisions of this Agreement shall be binding upon and inure to the benefit of the respective successors, assigns, heirs, beneficiaries and representatives of Borrower and Lender; provided, however, that Borrower may not assign or transfer any of its rights under this Agreement without the prior written consent of Lender, and any prohibited assignment shall be void.

(a) No consent by Lender to any assignment shall release Borrower from its liability for the Obligations. Lender may assign its rights and delegate their duties hereunder without the consent of Borrower.

(b) Lender reserves the right to syndicate all or a portion of the transaction created herein or sell, assign, transfer, negotiate, or grant participations in all or any part of, or any interest in Lender's rights and benefits hereunder. In connection with any such syndication, assignment or participation, Lender may disclose all documents and information which Lender now or hereafter may have relating to Borrower or Borrower's business. Any such syndication by Lender shall not require the consent of the Borrower or any other Lender. To the extent that Lender assigns its rights and obligations hereunder to a third Person, Lender thereafter shall be released from such assigned obligations to Borrower.

**11.13 Entire Understanding.** This Agreement and the documents executed concurrently herewith contain the entire understanding between Borrower and Lender and supersedes all prior agreements and understandings, if any, relating to the subject matter hereof. Any promises, representations, warranties or guarantees not herein contained and hereinafter made shall have no force and effect unless in writing, signed by Borrower's and Lender's respective officers. Neither this Agreement nor any portion or provisions hereof may be changed, modified, amended, waived, supplemented, discharged, cancelled or terminated orally or by any course of dealing, or in any manner other than by an agreement in writing, signed by the party to be charged. Borrower acknowledges that it has been advised by counsel in connection with the execution of this Agreement and Other Documents and is not relying upon oral representations or statements inconsistent with the terms and provisions of this Agreement.

**11.14 Successors and Assigns; Participations.**

(a) This Agreement shall be binding upon and inure to the benefit of Borrower, Lender, all future holders of the Obligations and their respective successors and permitted assigns, except that Borrower may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of Lender.

**(b) Participations.**

(i) Lender may at any time, without the consent of, or notice to Borrower, sell participations (each a "Participation") in all or a portion of Lender's rights and obligations under this Agreement; provided that (x) Lender's obligations under this Agreement shall remain unchanged; (y) Lender shall remain solely responsible to Borrower for the performance of such obligation; and (z) Borrower shall continue to deal solely and directly with Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement pursuant to which Lender sells such a participation shall provide that Lender shall retain the right to enforce this Agreement and approve any amendment, modification, or waiver of any provision of this Agreement.

(ii) Borrower acknowledges that in the regular course of commercial banking business, Lender may at any time and from time to time sell participating interests in the Advances to other financial institutions (each such transferee or purchaser of a participating interest, a "Participant"). Each Participant may exercise all rights of payment (including rights of set-off) with respect to the portion of such Advances held by it or other Obligations payable hereunder as fully as if such Participant were the direct holder thereof provided that Borrower shall not be required to pay to any Participant more than the amount which it would have been required to pay to Lender which granted an interest in its Advances or other Obligations payable hereunder to such Participant had Lender retained such interest in the Advances hereunder or other Obligations payable hereunder and in no event shall Borrower be required to pay any such amount arising from the same circumstances and with respect to the same Advances or other Obligations payable hereunder to both Lender and such Participant. Borrower hereby grants to any Participant a continuing security interest in any deposits, moneys or other property actually or constructively held by such Participant as security for the Participant's interest in the Advances.

(c) Borrower authorizes Lender to disclose to any Participant, or any prospective Participant, any and all financial information in Lender's possession concerning Borrower which has been delivered to such Lender by or on behalf of Borrower pursuant to this Agreement or in connection with such Lender's credit evaluation of Borrower.

**11.15 Application of Payments.** Lender shall have the continuing and exclusive right to apply or reverse and re-apply any payment and any and all proceeds of Collateral to any portion of the Obligations. To the extent that Borrower makes a payment or Lender receives any payment or proceeds of the Collateral for Borrower's benefit, which are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, debtor in possession, receiver, custodian or any other party under any bankruptcy law, common law or equitable cause, then, to such extent, the Obligations or part thereof intended to be satisfied shall be revived and continue as if such payment or proceeds had not been received by Lender.

**11.16 Indemnity.** Borrower hereby indemnifies and agrees to hold Lender and each of Lender's respective officers, directors, Affiliates, attorneys, employees and agents (individually and collectively, "Indemnitee(s)") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever (including fees and disbursements of counsel) which may be imposed on, incurred by, or asserted against Lender in any claim, litigation, proceeding or investigation instituted or conducted by any Governmental Agency or instrumentality or any other Person with respect to any aspect of, or any transaction contemplated by, or referred to in, or any matter related to, this Agreement or the Other Documents, whether or not Lender is a party thereto, except to the extent that any of the foregoing arises out of the willful misconduct of the party being indemnified (as determined by a court of competent jurisdiction in a final and non-appealable judgment). Without limiting the generality of the foregoing, this indemnity shall extend to any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses and disbursements of any kind or nature whatsoever (including reasonable fees and disbursements of counsel) asserted against or incurred by any of the Indemnitees described above in this Section 11.17 by any Person (i) under any Environmental Laws or similar laws by reason of Borrower's or any other Person's failure to comply with laws applicable to solid or hazardous waste materials, including Hazardous Substances and Hazardous Waste, or other Toxic Substances; or (ii) which arise from or relate to any mechanics' lien or related proceeding relating to the Property or any other actual or alleged failure to pay or perform in connection with the Property. Additionally, if any taxes (excluding taxes imposed upon or measured solely by the net income of Lender, but including any intangibles taxes, stamp tax, recording tax or franchise tax) shall be payable by Lender or Borrower on account of the execution or delivery of this Agreement, or the execution, delivery, issuance or recording of any of the Other Documents, or the creation or repayment of any of the Obligations hereunder, by reason of any applicable law now or hereafter in effect, Borrower will pay (or will promptly reimburse Lender for payment of) all such taxes, including interest and penalties thereon, and will indemnify and hold the indemnitees described above in this Section 11.17 harmless from and against all liability in connection therewith.

**11.17 Captions.** Headings have been set forth herein for convenience only and shall not affect the interpretation or meanings of any provisions of this Agreement. Unless the contrary is compelled by the context, everything contained in each article and section applies equally to this entire Agreement.

**11.18 Independent Counsel.** Borrower and Lender each acknowledge that: (i) they have had the opportunity to be represented by independent counsel in connection with this Agreement; (ii) they have executed this Agreement with the advice of such counsel, as applicable; (iii) this Agreement is the result of negotiations between the parties hereto and the advice and assistance of their representative counsel, as applicable; and (iv) the fact that this Agreement was prepared by Lender's counsel as a matter of convenience shall have no import or significance.

**11.19 Publicity.** Lender is hereby authorized, at its expense and in its sole discretion, to issue appropriate press releases and to cause a tombstone to be published announcing the consummation of this transaction and the aggregate amount thereof.

**11.20 Governing Law; Jurisdiction; Venue.** This Agreement and all acts and transactions hereunder and all rights and obligations of Lender and Borrower shall be governed by the internal laws of the State of California, without regard to its conflicts of law principles.

(a) As a material part of the consideration to Lender to enter into this Agreement, Borrower (a) agrees that all actions and proceedings relating directly or indirectly to this Agreement shall, at Lender's option, be litigated in courts located within California, and that the exclusive venue therefore shall be Los Angeles County; (b) consents to the jurisdiction and venue of any such court and consents to service of process in any such action or proceeding by personal delivery or any other method permitted by law; and (c) waives any and all rights Borrower may have to object to the jurisdiction of any such court, or to transfer or change the venue of any such action or proceeding.

**11.21 Relationship of Parties.** Lender shall not be deemed to be, nor does Lender or Borrower intend that Lender shall ever become, a partner, joint venturer, fiduciary, manager, controlling person or participant of any kind in the business or affairs of Borrower, whether as a result of this Agreement or any of the transactions contemplated by this Agreement. In exercising its rights and remedies under this Agreement, Lender shall at all times be acting only as a lender to Borrower within the normal and usual scope of activities of a Lender.

**11.22 Counterparts.** This Agreement may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document.

**11.23 Change In Laws.** In the event of the enactment, after the date of this Agreement, of any Laws: (a) deducting from the value of property for the purpose of taxation any lien or security interest thereon; (b) imposing upon Lender the payment of the whole or any part of the taxes or assessments or charges or liens herein required to be paid by Borrower; (c) changing in any way the Laws relating to the taxation of deeds of trust or mortgages or security agreements, or debts secured by deeds of trust or mortgages or security agreements, or the interest of the mortgagee or secured party in the property covered thereby; or (d) changing the manner of collection of such taxes; then, to the extent any of the foregoing may affect the Deed of Trust or the indebtedness secured thereby or Lender, then, and in any such event, Borrower, upon ten (10) days' written demand by Lender, shall pay such taxes, assessments, charges, or liens, or reimburse Lender therefor. If Borrower shall be prohibited from paying such tax or from reimbursing Lender for the amount thereof, Borrower shall execute a modification to the Other Documents and the Note, which modification shall increase the interest rate payable pursuant to the Note so as to permit Lender to maintain its yield as if such tax had not been imposed. If Borrower shall be prohibited from executing the above-referenced modifications, Lender may, in Lender's sole discretion, declare the principal of all amounts disbursed and owing under the Note, this Agreement, and the Other Documents (including all obligations secured by the Other Documents) and all other indebtedness of Borrower to Lender, together with interest thereon, to be forthwith due and payable within forty-five (45) days of written demand, regardless of any other specified maturity or due date.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

**JUDICIAL REFERENCE.** The parties hereby agree that any claims, controversies, disputes, or questions of interpretation, whether legal or equitable, arising out of, concerning or related to this Agreement and all loan documents executed by Borrower shall be heard by a single referee by consensual general judicial reference pursuant to the provisions of California Code of Civil Procedure Sections 638 et seq., who shall determine all issues of fact or law and to report a statement of decision. The referee shall also have the power to hear and determine proceedings for ancillary relief, including, but not limited to, applications for attachment, issuance of injunctive relief, appointment of a receiver, and/or claim and delivery. The costs of the proceeding shall be borne equally by the parties to the dispute, subject to the discretion of the referee to allocate such costs based on a determination as to the prevailing party(ies) in the proceeding. ***By initialing below the parties acknowledge that they have read and understand the foregoing Judicial Reference provisions and understand that they are waiving their right to a jury trial.***

/s/ H.C.

**Borrower's Initials**

/s/ K.C.

**Lender's Initials**

[Signature page follows.]

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth in the heading to this Agreement.

BORROWER:

SNAIL GAMES USA, INC.,  
a California corporation

By: /s/ Shi Hai  
Name: Shi Hai  
Title: CEO

LENDER:

CATHAY BANK,  
a California banking corporation

By: /s/ Kevin Chen  
Name: Kevin Chen  
Title: AVP / LPO

---

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

The land hereinafter referred to is situated in the City of Los Angeles, County of Los Angeles, State of CA, and is described as follows:

Lots 346, 347 and 348 of Tract No. 9483, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in Book 132 Pages 81 to 83 inclusive of maps, in the Office of the County Recorder of said County.

Excepting all oil, gas and mineral rights of said land, lying below a depth of 500 feet from the present surface thereof, but without right of surface entry reserved unto Douglas Mark Apatow and Andrea Gardner Apatow, husband and wife as community property by Grant Deed dated June 12 , 1997 recorded as Instrument No. 97-904149 of Official Records.

APN: 4220-008-028

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EXHIBIT A-1

**EXHIBIT "B"**

**TRADE NAMES**

[To be attached.]

EXHIBIT B-1

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**EXHIBIT "C"**  
**LOCATIONS OF COLLATERAL**

1. \_\_\_\_\_

2. \_\_\_\_\_

3. \_\_\_\_\_

EXHIBIT C-1

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SNAIL GAMES USA, INC.  
12049 Jefferson Blvd.  
Culver City, CA 90230

Date: 08/31/2020

Dear Jim S. Tsai:

I am pleased to confirm Snail Games USA, Inc. (the "Company") conditional offer of employment to you in the position of **[Chief Operation Officer]**.

The Company's main office is located at 12049 Jefferson Blvd., Culver City, CA 90230.

Your compensation will be **[Three hundred Thirty thousand dollars (\$330,000) per year]**. You will be paid on the Company's regularly scheduled paydays on a **[bi-weekly/semi-monthly]** basis.

Your employment with the Company is at-will. This means that the terms and conditions of your employment may be changed with or without notice, with or without cause, including, but not limited to termination, demotion, promotion, transfer, benefits, duties, and location of work. There is no express or implied agreement between the Company and yourself for continued or long-term employment. No representative of the Company has the authority to alter this at-will relationship.

You will be eligible to participate in the Company's benefit plans subject to the terms, conditions, and limitations contained in the applicable plans. Currently the Company provides **[medical, dental, vision, long-term disability, 401K matching, DNO and life insurance]** coverage options for its employees.

**You will be eligible to be considered of participating the stock options plan and will be awarded based on objective or subjective criteria established by the Company's management and approved by the Company's Board of Directors. Any bonus for the fiscal year in which your employment begins will be prorated, based on the number of days you are employed by the Company during that fiscal year. Any bonus for a fiscal year will be paid within [3] months after the close of that fiscal year, but only if you are still employed by the Company at the time of payment. Where issued, bonuses will not be deemed earned by you unless and until it is awarded by the Company. Determinations of the Company's Board of Directors with respect to your bonus, if any, will be final and binding.**

Any controversy between the parties to this offer letter involving the construction or application of any of the terms, covenants, or conditions of this offer letter, or the performance of either party's obligations hereunder, will, on the written request of one party served on the other, be submitted to final and binding arbitration pursuant to the Employment Arbitration Rules of the American Arbitration Association. The arbitration will comply with and be governed by the law and procedures developed under the California Arbitration Act, California Code of Civil Procedure Sections 1280 through 1294.2, and the Federal Arbitration Act, 9 U.S.C. Sections 1-16.

This offer letter supersedes any and all agreements, either oral or written, between the parties with respect to the rendering of services by you for the Company, and contains all the representations, covenants, and agreements between the parties with respect to the rendering of those services. Each party hereto acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not contained herein, and that no other agreements, statements, or promises not contained in this offer letter will be valid or binding. Any modification of the terms of this offer letter will be effective only if it is in a writing signed by the party to be charged.

We look forward to your arrival on 10/01/2020. If you have any questions prior to that time, please feel free to contact me.

If you accept this offer of employment, please sign and date this correspondence below and return the original to me before 09/15/2020. As a condition of your employment, you must also sign and return the attached Employee Confidentiality and Intellectual Property Agreement.

Sincerely,

/s/ Hai Shi

\_\_\_\_\_  
Hai Shi

CEO

I accept the above offer of employment.

/s/ Jim S. Tsai

\_\_\_\_\_  
Jim S. Tsai

**EMPLOYEE CONFIDENTIALITY AND  
INTELLECTUAL PROPERTY AGREEMENT**

This EMPLOYEE CONFIDENTIALITY AND INTELLECTUAL PROPERTY AGREEMENT (the "Agreement") is made and entered into on the date set forth below by and between Snail Games USA, Inc., a California corporation (the "Employer"), and the undersigned employee of the Company (the "Employee").

In consideration of the employment of Employee, the parties hereby agree as follows:

1. Restrictions on Use of Trade Secrets and Other Proprietary Information.

(a) During the term of Employee's employment by the Company, Employee will have access to and become acquainted with various proprietary information of Employer, including discoveries, developments, designs, formulas, patterns, devices, secret inventions, processes, software programs, technical data, financial data, customer and supplier lists, and compilations of information, records, and specifications, and other matters constituting trade secrets as defined under California Civil Code Section 3426.1, all of which are owned by Employer and regularly used in the operation of Employer's business. Employee may also have access to the confidential information of third parties that has been provided to Employer subject to a confidential disclosure agreement. The information described in this section constitutes "Proprietary Information."

(b) All Proprietary Information and all files, records, documents, drawings, specifications, equipment, computer files, computer records, computer programs, and similar items relating to the business of Employer, whether they are prepared by Employee or come into Employee's possession in any other way and whether or not they contain or constitute trade secrets owned by Employer, are and shall remain the exclusive property of Employer and shall not be removed from the premises of Employer, or reproduced or distributed in any manner, under any circumstances whatsoever without the prior written consent of Employer.

(c) Employee promises and agrees that Employee shall not misuse, misappropriate, or disclose any Proprietary Information or trade secrets described herein, directly or indirectly, or use them in any way, either during the term of this Agreement or at any time thereafter, except as required in the course of Employee's employment by the Company.

(d) Employee acknowledges and agrees that the sale or unauthorized use or disclosure of any of Employer's trade secrets obtained by Employee during Employee's employment with Employer, including information concerning Employer's current products and any future or proposed products or services, the facts that those products or services are planned, under consideration, or in production, as well as any descriptions of the features of those products or services, constitute unfair competition. Employee promises and agrees not to engage in any unfair competition with Employer either during the term of this Agreement or at any time thereafter.

2. Inventions and Patents.

(a) Employee agrees that any inventions made by Employee, solely or jointly with others, during the term of this Agreement, that are made with Employer's equipment, supplies, facilities, trade secrets, or time; or that relate, at the time of conception or of reduction to practice, to the business of Employer or Employer's actual or demonstrably anticipated research or development; or that result from any work performed by Employee for Employer, shall belong to Employer. Employee shall assign the rights to all such inventions to Employer.

(b) For purposes of this provision, "inventions" includes anything that may be patentable or copyrightable, as well as any discovery, development, design, formula, improvement, invention, software program, process, technique, trade secret, and any other form of information that derives independent economic value from not being generally known to the public or to other persons who can obtain economic value from its disclosure, whether or not registerable or protectable under patent laws, copyright laws, or other laws. The "rights" to any such invention include patents, copyrights, trademarks, service marks, and any other proprietary rights associated with the invention.

(c) Employee also agrees that Employer shall have the right to keep any such inventions as trade secrets if Employer chooses.

(d) This section shall not apply to assign to Employer any of Employee's rights in any invention that Employee develops entirely on Employee's own time without using Employer's equipment, supplies, facilities, or trade secret information, except for inventions that either (1) relate, at the time that the invention is conceived or reduced to practice, to Employer's business or to actual or demonstrably anticipated research or development of Employer; or (2) result from any work performed by Employee for Employer.

(e) In order to permit Employer to claim rights to which it may be entitled, Employee agrees to disclose to Employer in confidence all inventions that Employee makes during the course of Employee's employment and all patent applications filed by Employee within a year after termination of Employee's employment.

(f) Employee shall assist Employer in obtaining and enforcing patents and copyrights on all inventions, in the United States and in all foreign countries, and shall execute all documents and do all things necessary to obtain letters patent or copyright protection, to vest Employer with full and extensive titles thereto, and to protect the same against infringement by others. Employee's obligation to assist Employer in obtaining and enforcing such rights will continue after the termination of Employee's employment, and for such assistance rendered after the termination of employment Employer will compensate Employee at the same base rate of pay as earned by Employee from Employer for time actually spent by Employee at Employer's request.

(g) For the purposes of this Agreement, an invention is deemed to have been made during the period of Employee's employment if the invention was conceived or first actually reduced to practice during that period, and Employee agrees that any patent application filed within a year after termination of Employee's employment by Employer shall be presumed to relate to an invention made during the term of Employee's employment unless Employee can provide evidence to the contrary.

3. Return of Employer's Property.

On the termination of Employee's employment or whenever requested by Employer, Employee shall immediately deliver to Employer all property in Employee's possession or under Employee's control belonging to Employer in good condition, ordinary wear and tear and damage by any cause beyond the reasonable control of Employee excepted.

4. Noncompetition During Term of Employment.

(a) During the term of Employee's employment by Employer, Employee shall not, directly or indirectly, either as an employee, employer, consultant, agent, principal, partner, stockholder, corporate officer, director, or in any other individual or representative capacity, engage or participate in any business that is in competition in any manner whatsoever with the business of Employer.

(b) The foregoing obligation of Employee not to compete with Employer shall not prohibit Employee from owning or purchasing any corporate securities that are regularly traded on a recognized stock exchange or over-the-counter market.

5. Soliciting Customers and Employees After Termination of Employment.

(a) Employee acknowledges and agrees that the names and addresses of Employer's customers and other information contained in the customer files (the "Customer Information") constitute trade secrets of Employer and that the sale or unauthorized use or disclosure of any of Employer's trade secrets obtained by Employee during Employee's employment with Employer constitute unfair competition. Employee further acknowledges that Employer's employees are a valuable asset in the operation of Employer's business. Employee promises and agrees not to engage in any unfair competition with Employer.

(b) For a period of **[two (2)]** years immediately following the termination of Employee's employment with Employer, Employee shall not directly or indirectly use or make known to any person, firm, or corporation that sells products in competition with Employer any of the Customer Information or other trade secrets of Employer to call on, solicit, take away, or to attempt to call on, solicit, or take away any of the customers, either for the Employee or for any other person, firm, or corporation for the purpose of selling products in competition with Employer.

(c) For a period of **[two (2)]** years immediately following the termination of Employee's employment with Employer, Employee shall not directly or indirectly solicit, recruit, or encourage any other employee of Employer to leave the Employer or work for any person or entity.

6. General Provisions.

(a) This Agreement may not be altered or modified except by a writing signed by the parties.

(b) This Agreement shall be governed by and construed according to the laws of the State of California that would apply if all parties were residents of California and the Agreement was made and performed in California.

(c) A party's failure to insist on the strict performance of any covenant or duty required by this Agreement, or to pursue any remedy under this Agreement, shall not constitute a waiver of the breach or the remedy.

(d) The remedies of the parties under this Agreement are cumulative and shall not exclude any other remedies to which the parties may be lawfully entitled.

(e) If any part of the Agreement is determined to be illegal or unenforceable, all other parts shall remain in effect.

(f) In any dispute between the parties, whether or not resulting in litigation, the party substantially prevailing shall be entitled to recover from the other party all reasonable costs, including, without limitation, reasonable attorneys' fees.

The parties hereto have entered into this Employee Confidentiality and Intellectual Property Agreement on the date set forth below.

Date: 08/31/2020, EMPLOYER:

Snail Games USA, Inc.

By: /s/ Hai Shi  
Name: Hai Shi  
Its: CEO

**EMPLOYEE**

Signature: /s/ Jim S. Tsai  
Print Name: Jim S. Tsai

SNAIL GAMES USA, INC.  
12049 Jefferson Blvd.  
Culver City, CA 90230

November 1, 2021

Dear Jim,

On behalf of Snail Games USA, Inc., a California Corporation ("Snail Games" or the "Company"), I am excited to inform you that the Board of Directors of the Company has promoted and appointed you to be the Chief Executive Officer of Company, effective November 1, 2021. In such capacity, you will be subject to the authority of, and will report to, the Company's Board of Directors.

Effective November 1, 2021, the terms of your current employment with the Company, as reflected in that certain Letter Agreement dated August 31, 2020, between you and the Company, are amended as follows:

1. Your title shall be the Chief Executive Officer of the Company.
2. Your annual base salary shall be Six Hundred Sixty Thousand Dollars (\$660,000).

Except as noted above, all other terms of your employment with the Company remain unchanged.

If you choose to accept above, please sign a copy of this letter and return it to us at your earliest convenience.

Congratulations! If you have any questions regarding this offer for employment or benefits, please do not hesitate to contact me.

Sincerely,

By: /s/ Hai Shi  
Name: Hai Shi  
Title: President and Chair of the Board

**ACCEPTED**

/s/ Jim S. Tsai  
Jim S. Tsai

Dated: Dec 20 2021

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SNAIL GAMES USA, INC.  
12049 Jefferson Blvd.  
Culver City, CA 90230

Date: 08/18/2020

Dear Heidy Chow:

I am pleased to confirm Snail Games USA, Inc. (the "Company") conditional offer of employment to you in the position of **[Chief Financial Officer]**.

The Company's main office is located at 12049 Jefferson Blvd., Culver City, CA 90230.

Your compensation will be **[Three hundred Eighty thousand dollars (\$380,000) per year]**. You will be paid on the Company's regularly scheduled paydays on a **[bi-weekly/semimonthly]** basis.

The first **[90]** days of your employment will be considered an introductory period. However, both during and upon the conclusion of your introductory period, employment with the Company is at-will. This means that the terms and conditions of your employment may be changed with or without notice, with or without cause, including, but not limited to termination, demotion, promotion, transfer, benefits, duties, and location of work. There is no express or implied agreement between the Company and yourself for continued or long-term employment. No representative of the Company has the authority to alter this at-will relationship.

At the conclusion of your introductory period, you will be eligible to participate in the Company's benefit plans subject to the terms, conditions, and limitations contained in the applicable plans. Currently the Company provides **[medical, dental, vision, long-term disability, 401K and life insurance]** coverage options for its employees.

**[You will be eligible to be considered of participating the stock options plan and will be awarded based on objective or subjective criteria established by the Company's management and approved by the Company's Board of Directors. Any bonus for the fiscal year in which your employment begins will be prorated, based on the number of days you are employed by the Company during that fiscal year. Any bonus for a fiscal year will be paid within [3] months after the close of that fiscal year, but only if you are still employed by the Company at the time of payment. Where issued, bonuses will not be deemed earned by you unless and until it is awarded by the Company. Determinations of the Company's Board of Directors with respect to your bonus, if any, will be final and binding.]**

Any controversy between the parties to this offer letter involving the construction or application of any of the terms, covenants, or conditions of this offer letter, or the performance of either party's obligations hereunder, will, on the written request of one party served on the other, be submitted to final and binding arbitration pursuant to the Employment Arbitration Rules of the American Arbitration Association. The arbitration will comply with and be governed by the law and procedures developed under the California Arbitration Act, California Code of Civil Procedure Sections 1280 through 1294.2, and the Federal Arbitration Act, 9 U.S.C. Sections 1-16.

This offer letter supersedes any and all agreements, either oral or written, between the parties with respect to the rendering of services by you for the Company, and contains all the representations, covenants, and agreements between the parties with respect to the rendering of those services. Each party hereto acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not contained herein, and that no other agreements, statements, or promises not contained in this offer letter will be valid or binding. Any modification of the terms of this offer letter will be effective only if it is in a writing signed by the party to be charged.

We look forward to your arrival on 09/21/2020. If you have any questions prior to that time, please feel free to contact me.

If you accept this offer of employment, please sign and date this correspondence below and return the original to me before 08/28/2020. As a condition of your employment, you must also sign and return the attached Employee Confidentiality and Intellectual Property Agreement.

Sincerely,

/s/ Hai Shi  
\_\_\_\_\_  
CEO

I accept the above offer of employment.

Heidy Chow /s/ Heidy Chow \_\_\_\_\_ 8/24/2020 \_\_\_\_\_

**EMPLOYEE CONFIDENTIALITY AND  
INTELLECTUAL PROPERTY AGREEMENT**

This EMPLOYEE CONFIDENTIALITY AND INTELLECTUAL PROPERTY AGREEMENT (the "Agreement") is made and entered into on the date set forth below by and between Snail Games USA, Inc., a California corporation (the "Employer"), and the undersigned employee of the Company (the "Employee").

In consideration of the employment of Employee, the parties hereby agree as follows:

1. Restrictions on Use of Trade Secrets and Other Proprietary Information.

(a) During the term of Employee's employment by the Company, Employee will have access to and become acquainted with various proprietary information of Employer, including discoveries, developments, designs, formulas, patterns, devices, secret inventions, processes, software programs, technical data, financial data, customer and supplier lists, and compilations of information, records, and specifications, and other matters constituting trade secrets as defined under California Civil Code Section 3426.1, all of which are owned by Employer and regularly used in the operation of Employer's business. Employee may also have access to the confidential information of third parties that has been provided to Employer subject to a confidential disclosure agreement. The information described in this section constitutes "Proprietary Information."

(b) All Proprietary Information and all files, records, documents, drawings, specifications, equipment, computer files, computer records, computer programs, and similar items relating to the business of Employer, whether they are prepared by Employee or come into Employee's possession in any other way and whether or not they contain or constitute trade secrets owned by Employer, are and shall remain the exclusive property of Employer and shall not be removed from the premises of Employer, or reproduced or distributed in any manner, under any circumstances whatsoever without the prior written consent of Employer.

(c) Employee promises and agrees that Employee shall not misuse, misappropriate, or disclose any Proprietary Information or trade secrets described herein, directly or indirectly, or use them in any way, either during the term of this Agreement or at any time thereafter, except as required in the course of Employee's employment by the Company.

(d) Employee acknowledges and agrees that the sale or unauthorized use or disclosure of any of Employer's trade secrets obtained by Employee during Employee's employment with Employer, including information concerning Employer's current products and any future or proposed products or services, the facts that those products or services are planned, under consideration, or in production, as well as any descriptions of the features of those products or services, constitute unfair competition. Employee promises and agrees not to engage in any unfair competition with Employer either during the term of this Agreement or at any time thereafter.

2. Inventions and Patents.

(a) Employee agrees that any inventions made by Employee, solely or jointly with others, during the term of this Agreement, that are made with Employer's equipment, supplies, facilities, trade secrets, or time; or that relate, at the time of conception or of reduction to practice, to the business of Employer or Employer's actual or demonstrably anticipated research or development; or that result from any work performed by Employee for Employer, shall belong to Employer. Employee shall assign the rights to all such inventions to Employer.

(b) For purposes of this provision, "inventions" includes anything that may be patentable or copyrightable, as well as any discovery, development, design, formula, improvement, invention, software program, process, technique, trade secret, and any other form of information that derives independent economic value from not being generally known to the public or to other persons who can obtain economic value from its disclosure, whether or not registerable or protectable under patent laws, copyright laws, or other laws. The "rights" to any such invention include patents, copyrights, trademarks, service marks, and any other proprietary rights associated with the invention.

(c) Employee also agrees that Employer shall have the right to keep any such inventions as trade secrets if Employer chooses.

(d) This section shall not apply to assign to Employer any of Employee's rights in any invention that Employee develops entirely on Employee's own time without using Employer's equipment, supplies, facilities, or trade secret information, except for inventions that either (1) relate, at the time that the invention is conceived or reduced to practice, to Employer's business or to actual or demonstrably anticipated research or development of Employer; or (2) result from any work performed by Employee for Employer.

(e) In order to permit Employer to claim rights to which it may be entitled, Employee agrees to disclose to Employer in confidence all inventions that Employee makes during the course of Employee's employment and all patent applications filed by Employee within a year after termination of Employee's employment.

(f) Employee shall assist Employer in obtaining and enforcing patents and copyrights on all inventions, in the United States and in all foreign countries, and shall execute all documents and do all things necessary to obtain letters patent or copyright protection, to vest Employer with full and extensive titles thereto, and to protect the same against infringement by others. Employee's obligation to assist Employer in obtaining and enforcing such rights will continue after the termination of Employee's employment, and for such assistance rendered after the termination of employment Employer will compensate Employee at the same base rate of pay as earned by Employee from Employer for time actually spent by Employee at Employer's request.

(g) For the purposes of this Agreement, an invention is deemed to have been made during the period of Employee's employment if the invention was conceived or first actually reduced to practice during that period, and Employee agrees that any patent application filed within a year after termination of Employee's employment by Employer shall be presumed to relate to an invention made during the term of Employee's employment unless Employee can provide evidence to the contrary.

3. Return of Employer's Property.

On the termination of Employee's employment or whenever requested by Employer, Employee shall immediately deliver to Employer all property in Employee's possession or under Employee's control belonging to Employer in good condition, ordinary wear and tear and damage by any cause beyond the reasonable control of Employee excepted.

4. Noncompetition During Term of Employment.

(a) During the term of Employee's employment by Employer, Employee shall not, directly or indirectly, either as an employee, employer, consultant, agent, principal, partner, stockholder, corporate officer, director, or in any other individual or representative capacity, engage or participate in any business that is in competition in any manner whatsoever with the business of Employer.

(b) The foregoing obligation of Employee not to compete with Employer shall not prohibit Employee from owning or purchasing any corporate securities that are regularly traded on a recognized stock exchange or over-the-counter market.

5. Soliciting Customers and Employees After Termination of Employment.

(a) Employee acknowledges and agrees that the names and addresses of Employer's customers and other information contained in the customer files (the "Customer Information") constitute trade secrets of Employer and that the sale or unauthorized use or disclosure of any of Employer's trade secrets obtained by Employee during Employee's employment with Employer constitute unfair competition. Employee further acknowledges that Employer's employees are a valuable asset in the operation of Employer's business. Employee promises and agrees not to engage in any unfair competition with Employer.

(b) For a period of **[two (2)]** years immediately following the termination of Employee's employment with Employer, Employee shall not directly or indirectly use or make known to any person, firm, or corporation that sells products in competition with Employer any of the Customer Information or other trade secrets of Employer to call on, solicit, take away, or to attempt to call on, solicit, or take away any of the customers, either for the Employee or for any other person, firm, or corporation for the purpose of selling products in competition with Employer.

(c) For a period of **[two (2)]** years immediately following the termination of Employee's employment with Employer, Employee shall not directly or indirectly solicit, recruit, or encourage any other employee of Employer to leave the Employer or work for any person or entity.

6. General Provisions.

(a) This Agreement may not be altered or modified except by a writing signed by the parties.

(b) This Agreement shall be governed by and construed according to the laws of the State of California that would apply if all parties were residents of California and the Agreement was made and performed in California.

(c) A party's failure to insist on the strict performance of any covenant or duty required by this Agreement, or to pursue any remedy under this Agreement, shall not constitute a waiver of the breach or the remedy.

(d) The remedies of the parties under this Agreement are cumulative and shall not exclude any other remedies to which the parties may be lawfully entitled.

(e) If any part of the Agreement is determined to be illegal or unenforceable, all other parts shall remain in effect.

(f) In any dispute between the parties, whether or not resulting in litigation, the party substantially prevailing shall be entitled to recover from the other party all reasonable costs, including, without limitation, reasonable attorneys' fees.

The parties hereto have entered into this Employee Confidentiality and Intellectual Property Agreement on the date set forth below.

Date: 08/18/2020 **EMPLOYER:**

Snail Games USA, Inc.

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

Name: Jim Tsai

Its: President

**EMPLOYEE**

Signature: /s/ Heidi Chow

Print Name: Heidi Chow



Snail Games USA

5300 Beethoven Street  
Penthouse Floor  
Los Angeles, CA 90066  
323.207.6245**EMPLOYMENT AGREEMENT**

This Agreement is made between Snail Games USA Inc., a California corporation (“Snail USA”), and Peter Kang, a resident of the State of California (“Employee”) on December 10, 2012.

WHEREAS, the Parties enter into this Agreement through amicable negotiation and in consideration of the promises contained in this Agreement, the Parties hereby agree as follows:

1. Term of Employment. Employee shall be a full time, non-exempt, at-will employee of Snail USA and his or her contract with Snail USA may be terminated at any point in time at will by either party. Your official starting date shall be Monday, December 10, 2012 at 10:00am.
  2. Positions and Responsibilities.
    - a. Position. The Employee is employed as Community Representative with the following duties and responsibilities:
      - i. Perform basic forum moderation (deleting posts, locking threads, warning users)
      - ii. Create basic informational posts (scheduled maintenance, game updates)
      - iii. Monitor CS Facebook and Twitter pages for unwanted content
    - b. Responsibilities. Snail USA may, within reason, change or amend Employee’s duties and responsibilities based upon job requirements and the Employee’s work performance and capabilities.
  3. Remuneration.
    - a. Salary. The Employee shall be paid an hourly rate of \$13/hour. Employee shall be paid according to the standard policies of Snail USA, which is currently on a twice per month system (first day and middle of each calendar month).
    - b. United States Taxes. Snail USA will have the right to deduct or withhold from compensation due to Employee all amounts required to be withheld by law for social Security, Medicare, federal, state, and local taxes as applicable from time to time, and such other amounts as required by law or as Employee authorizes Snail USA to withhold.
    - c. Vacation days. Employee accrues 3.33 hours toward a paid vacation day for every half month worked. 8 (eight) accrued hours equals one full paid vacation day. Therefore, for every full calendar year of continuous employment, Employee would accrue 10 (ten) paid vacation days. Vacation days roll over year to year. An employee is permitted to accrue up to thirty vacation days.
-

- d. Sick Days. Employee is given six sick days per year, prorated based on starting date of employment. Unused sick days do not rollover at the end of each calendar year.
  - e. Employee is eligible for medical, dental and vision coverage starting January 1, 2013.
4. Intellectual Property.
- a. Patent Rights. Any invention, discovery, design, improvement and achievement made by the Employee while using Snail USA or Suzhou Snail Electronic Co., Ltd.'s materials and technical resources during the Employee's employment is owned by Snail USA or Suzhou Snail Electronic Co., Ltd. The Employee shall not disclose such invention, discovery, design, improvement and achievement to any third party or have the right to commercially exploit them without Snail USA or Suzhou Snail Electronic Co., Ltd.'s written consent.
  - b. Copyrights. The copyrights of any project design, product pattern, computer software, drawings or other work of the Employee using Snail USA or Suzhou Snail Electronic Co., Ltd.'s materials and technical resources during the Employee's employment shall be owned by Snail USA or Suzhou Snail Electronic Co., Ltd. Employee acknowledges that all original work of authorship which are made by Employee (solely or jointly with others) within the scope of his or her employment and which are protectable by copyright are "works made for hire," pursuant to the United States Copyright Act. In the event any work cannot be deemed a "work made for hire" as such is defined under the United States copyright law and other applicable law, Employee hereby agrees to assign all of his or her rights, title and interest in and to any such work to Snail USA.
  - c. Term. The rights and obligations under this Section 4 shall continue in force after termination of this Agreement in perpetuity.
5. Confidentiality. The Employee hereby acknowledges that Snail USA and or Suzhou Snail Electronic Co., Ltd have and own certain confidential information and secrets which are not accessible to the public, capable of generating economic benefits and having certain business value, and that Snail USA and or Suzhou Snail Electronic Co., Ltd have adopted appropriate measures to safeguard this confidential information and secrets ("Confidential Information"). Confidential Information does not include any of the items referred to above or below which has become publicly known or made generally available through no wrongful act of Employee or of others who were under confidentiality obligation as to the item or items involved. Due to his or her position with Snail USA, the Employee has access to or has the possibility to access such Confidential Information. Confidential Information includes without limitation:



- a. Technical Secrets, including but not limited to software scheme and conception, technical drawings, software, any source codes, internal design, algorithm, file format, business procedure, software programming, making method, drawings, process, formula, production report and plan, technical development, planning and method, as well as all kinds of carriers containing aforementioned contents.
  - b. Data Secrets, including but not limited to operation data, sales data, promotion data, price strategy, as well as all kinds of carriers containing aforementioned contents.
  - c. Business Secrets, including but not limited to business targets and plans, purchase channels, prices and networks, purchase plans, human resources systems, management systems, sales plans and policies, sales price information, advertisement plans, customer networks.
6. Conflicts of Interest. During the term of employment, Employee will not, without the written consent of Snail USA,
- a. Directly or indirectly, engage, participate, or assist in any business which competes with, or is preparing to compete with, Snail USA in any manner whatsoever in any line of business engaged in or for which Snail USA is preparing to engage.
  - b. Entice, induce, or encourage, directly or indirectly, any of Snail USA's employees or consultants to engage in any activity which, were it done by Employee, would violate this Agreement.
7. Warranties. The Employee hereby agrees and warrants that, during the term of this Agreement and the termination or dissolution or rescission thereafter, the Employee shall not utilize Confidential Information for his or her personal purpose or gain, and that, unless otherwise permitted by Snail USA in writing, he or she shall not disclose any such Confidential Information to any company or person, organization or entity for any purpose and in any manner. Notwithstanding the foregoing, Employee may disclose any Confidential Information if required to do so by state or federal law or any state or federal agency as required for compliance with United States laws and regulations. The Employee further acknowledges that Snail USA and or Suzhou Snail Electronic Co., Ltd have absolute title to such Confidential Information, and the Employee will not raise any objection or claim any right to the ownership of such Confidential Information, and that, unless in the name of Snail USA and or Suzhou Snail Electronic Co., Ltd, he or she shall not apply for any registration or filing of the ownership right to the Confidential Information in any place of the world under his/her or any other person or company's name.
8. Amendment and Termination.
- a. This Agreement may be amended with the written consent of both Parties.
  - b. This Agreement may be terminated at will by either Snail USA or Employee.

9. Disputes.

- a. Governing Law. This agreement shall be governed by and interpreted in accordance with the laws and regulations of the State of California and the United States of America.
- b. Arbitration. In the event a dispute arises between the parties out of this Agreement or relating in any way to Employee's employment or termination of employment, the Parties agree to submit to binding arbitration, to be held in Los Angeles County, California, before a single arbitrator, in accordance with the then-current JAMS Arbitration Rules and Procedures.

10. Miscellaneous.

- a. Construction. In the event that any of the provisions contained in this Agreement will be or are, for any reason, held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability will not affect the other provisions of this Agreement. If any of the provisions of this Agreement will be or are, for any reason, held to be excessively broad as to duration, geographical scope, activity, or subject, it will be construed by limiting and reducing it, so as to be enforceable to the extent compatible with the then applicable law. Any matters not covered by this Agreement shall be conducted in accordance with the policies and rules of Snail USA and relevant United States laws and regulations.
- b. Assignment. This Agreement and the rights and obligations contained in this Agreement may be assigned by Snail USA to a successor entity, provided that such successor entity agrees in writing to be bound by and to perform each provision of this Agreement. Notwithstanding the foregoing, neither party will have the right to assign this Agreement nor the rights and obligations contained therein.
- c. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to Employee's employment with Snail USA. Such agreements supersede all prior agreements, understandings, and communications between the parties with respect to such subject matter.
- d. Signatures. This Agreement shall come into effect upon signature by an authorized representative of Snail USA, as well as the signature of Employee.
- e. Counterparts. This Agreement may be executed by the parties in counterpart, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the date first written above.

SNAIL GAMES USA INC.

EMPLOYEE

/s/ Jeanette Zhou  
Jeanette Zhou, President

/s/ Peter Kang  
Peter Kang

SNAIL GAMES USA, INC.  
12049 Jefferson Blvd.  
Culver City, CA 90230

December 1, 2021

Peter Kang

\_\_\_\_\_  
\_\_\_\_\_

Dear Peter,

On behalf of Snail Games USA, Inc., a California Corporation (“Snail Games” or the “Company”), I am excited to inform you that the Board of Directors of the Company has promoted and appointed you to be the Chief Operating Officer of Company, effective December 1, 2021. In such capacity, you will be subject to the authority of, and will report to, the Company’s Chief Executive Officer.

Effective December 1, 2021, the terms of your current employment with the Company, as reflected in that certain Employment Agreement dated December 10, 2012, between you and the Company, are amended as follows:

1. Your title shall be the Chief Operating Officer of the Company.
2. Your annual base salary shall be Three Hundred Thousand Dollars (\$300,000).
3. Your duties shall be full time attention exclusively to rendering the services to the Company customarily incident to a Chief Operating Officer position and to such other services as may be reasonably requested by the Company’s CEO and/or the Board of Directors.

Except as noted above, all other terms of your employment with the Company remain unchanged.

If you choose to accept above, please sign a copy of this letter and return it to us at your earliest convenience.

Congratulations! If you have any questions regarding this offer for employment or benefits, please do not hesitate to contact me.

Sincerely,

By: /s/ Jim Tsai  
Name: Jim Tsai  
Title: COO

**ACCEPTED**

/s/ Peter Kang  
Peter Kang  
Dated: 12/20/2021

\_\_\_\_\_