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

## FORM 10-K

(Mark One)

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

**For the fiscal year ended December 31, 2020**
OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
**For the transition period from ____________ to ____________**

**Commission File Number: 001-36384**

# MAGNITE, INC.
**(Exact name of registrant as specified in its charter)**

| | |
|---|---|
| **Delaware** | **20-8881738** |
| (State or other jurisdiction of incorporation or organization) | (I.R.S. Employer Identification No.) |

**12181 Bluff Creek Drive, 4th Floor Los Angeles, CA 90094**
(Address of principal executive offices, including zip code)

Registrant's telephone number, including area code:
**310 207-0272**

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

| Title of each class | Trading Symbol(s) | Name of each exchange on which registered |
|---|---|---|
| **Common stock, par value $0.00001 per share** | **MGNI** | **Nasdaq Global Select Market** |

Securities registered pursuant to Section 12(g) of the Act:
**None**

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

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

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

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). ☒ Yes ☐ No

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

| | | | |
|---|---|---|---|
| Large accelerated filer | ☐ | 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 13(a) of the Exchange Act. ☐

Indicate by check mark whether the registrant has filed a report on and attestation to its management’s assessment of the effectiveness of its internal control over financial reporting under Section 404(b) of the Sarbanes-Oxley Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report. ☒

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

As of June 30, 2020, the aggregate market value of shares held by non-affiliates of the registrant (based on the closing sales price of such shares on the Nasdaq Global Select Market on June 30, 2020) was approximately $646.3 million.

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date.

| Class | Outstanding as of February 19, 2021 |
| --- | --- |
| **Common Stock, $0.00001 par value** | **115,570,100** |

DOCUMENTS INCORPORATED BY REFERENCE: To the extent herein specifically referenced in Part III, portions of the Registrant's definitive Proxy Statement for the 2021 Annual General Meeting of Shareholders to be filed with the Securities and Exchange Commission pursuant to Regulation 14A. See Part III.

**MAGNITE, INC.**
**FORM 10-K**
**FOR THE FISCAL YEAR ENDED DECEMBER 31, 2020**
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*SPECIAL NOTE ABOUT FORWARD-LOOKING STATEMENTS; SUMMARY OF RISK FACTORS*

*This Annual Report on Form 10-K and related statements by the Company contain forward-looking statements, including statements based upon or relating to our expectations, assumptions, estimates, and projections. In some cases, you can identify forward-looking statements by terms such as "may," "might," "will," "objective," "intend," "should," "could," "can," "would," "expect," "believe," "design," "anticipate," "estimate," "predict," "potential," "plan" or the negative of these terms, and similar expressions. Forward-looking statements may include, but are not limited to, statements concerning the proposed acquisition of SpotX, Inc. ("SpotX," and such proposed acquisition the "SpotX Acquisition") or the anticipated benefits thereof; completion of the proposed SpotX Acquisition on anticipated terms and timing; statements concerning the potential impacts of the COVID-19 pandemic on our business operations, financial condition, and results of operations and on the world economy; our anticipated financial performance; anticipated benefits or effects related to our completed merger with Telaria, Inc. ("Telaria" and such merger the "Merger"); strategic objectives, including our focus on connected television ("CTV"), mobile, video, header bidding, Demand Manager, identity solutions, and private marketplace opportunities; investments in our business; development of our technology; industry growth rates for ad-supported CTV and the shift in video consumption from linear TV to CTV; introduction of new offerings; the impact of transparency initiatives we may undertake; the impact of our traffic shaping technology on our business; the effects of our cost reduction initiatives; scope and duration of client relationships; the fees we may charge in the future; business mix and expansion of our CTV, mobile, video, and private marketplace offerings; sales growth; client utilization of our offerings; our competitive differentiation; our market share and leadership position in the industry; market conditions, trends, and opportunities; certain statements regarding future operational performance measures including ad requests, fill rate, paid impressions, average CPM, take rate, and advertising spend; benefits from supply path optimization; and other statements that are not historical facts. These statements are not guarantees of future performance; they reflect our current views with respect to future events and are based on assumptions and estimates and subject to known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements to be materially different from expectations or results projected or implied by forward-looking statements.*

*Risks that our business face include, but are not limited to, the following:*

- *we may not complete the acquisition of SpotX or realize the anticipated benefits of the SpotX Acquisition;*
- *our proposed financing of the SpotX Acquisition will significantly increase our leverage, which may put us at risk of defaulting on our debt obligations and limit our ability to conduct certain activities;*
- *the completion of the SpotX Acquisition will result in dilution to our stockholders;*
- *the severity, magnitude, and duration of the COVID-19 pandemic, including impacts of the pandemic and of responses to the pandemic by governments, business and individuals on our operations, personnel, buyers, sellers, and on the global economy and the advertising marketplace;*
- *our vulnerability to the depletion of cash resources as a result of impacts of the COVID-19 pandemic;*
- *our CTV spend may grow more slowly than we expect if industry growth rates for ad supported CTV are not accurate, if CTV sellers fail to adopt programmatic advertising solutions or if we are unable to maintain or increase access to CTV advertising inventory;*
- *we may not realize the anticipated benefits of the Merger;*
- *we may be unsuccessful in our Supply Path Optimization efforts;*
- *our ability to introduce new offerings and bring them to market in a timely manner, and otherwise adapt in response to client demands and industry trends;*
- *uncertainty of our estimates and expectations associated with new offerings;*
- *lack of adoption and market acceptance of our Demand Manager solution;*
- *our technology development efforts may be inefficient or ineffective, or not keep pace with competitors;*
- *we must increase the scale and efficiency of our technology infrastructure to support our growth;*
- *the emergence of header bidding has increased competition from other demand sources and may cause infrastructure strain and added costs;*
- *our access to mobile inventory may be limited by third-party technology or lack of direct relationships with mobile sellers;*
- *we may experience lower take rates, which may not be offset by increase in the volume of ad requests, improvements in fill-rate, and/or increases in the value of transactions through our platform;*
- *the impact of requests for discounts, fee concessions, rebates, refunds or favorable payment terms;*
- *our history of losses, and the fact that in the past our operating results have and may in the future fluctuate significantly, be difficult to predict, and fall below analysts' and investors' expectations;*
- *the effect on the advertising market and our business from difficult economic conditions or uncertainty;*
- *the effects of seasonal trends on our results of operations;*

- *we operate in an intensely competitive market that includes companies that have greater financial, technical and marketing resources than we do;*
- *the effects of consolidation in the ad tech industry;*
- *the growing percentage of online and mobile advertising spending captured by closed "walled gardens" (such as Google, Facebook, Comcast, and Amazon);*
- *our ability to differentiate our offerings and compete effectively to combat commodification and disintermediation;*
- *potential limitations on our ability to collect or use data as a result of consumer tools, regulatory restrictions and technological limitations;*
- *the development and use of new identity solutions as a replacement for third-party cookies and other identifiers may disrupt the programmatic ecosystem and cause the performance of our platform to decline;*
- *the industry may not adopt or may be slow to adopt the use of first-party publisher segments as an alternative to third-party cookies;*
- *our ability to comply with, and the effect on our business of, evolving legal standards and regulations, particularly concerning data protection and privacy;*
- *our ability to comply with industry self-regulation;*
- *failure by us or our clients to meet advertising and inventory content standards could harm our brand and reputation and those of our partners;*
- *our ability to attract and retain buyers and sellers of digital advertising inventory and increase our business with them;*
- *the freedom of buyers and sellers to direct their spending and inventory to competing sources of inventory and demand;*
- *the ability of buyers and sellers to establish direct relationships and integrations without the use of our platform;*
- *our reliance on large aggregators of advertising inventory, and the concentration of CTV among a small number of large sellers that enjoy significant negotiating leverage;*
- *our ability to provide value to both buyers and sellers of advertising without being perceived as favoring one over the other or being perceived as competing with them through our service offerings;*
- *our reliance on large sources of advertising demand, including demand side platforms ("DSPs") that may have or develop high-risk credit profiles or fail to pay invoices when due;*
- *we may be exposed to claims from clients for breach of contracts;*
- *errors or failures in the operation of our solution, interruptions in our access to network infrastructure or data, and breaches of our computer systems;*
- *our ability to ensure a high level of brand safety for our clients and to detect "bot" traffic and other fraudulent or malicious activity;*
- *our ability to access inventory with high viewability and completion rates;*
- *the use of our net operating losses and tax credit carryforwards may be subject to certain limitations;*
- *the possibility of adjustments to the purchase price allocation and valuation relating to the Merger;*
- *our ability to raise additional capital if needed;*
- *volatility in the price of our common stock;*
- *the impact of negative analyst or investor research reports;*
- *our ability to attract and retain qualified employees and key personnel;*
- *costs associated with enforcing our intellectual property rights or defending intellectual property infringement and other claims;*
- *failure to successfully execute our international growth plans; and*
- *our ability to identify future acquisitions of or investments in complementary companies or technologies and our ability to consummate the acquisitions and integrate such companies or technologies.*

*We discuss many of these risks and additional factors that could cause actual results to differ materially from those anticipated by our forward-looking statements under the headings "Risk Factors" and "Management's Discussion and Analysis of Financial Condition and Results of Operations," and elsewhere in this report and in other filings we have made and will make from time to time with the Securities and Exchange Commission, or SEC, including Quarterly Reports on Form 10-Q for 2021. These forward-looking statements represent our estimates and assumptions only as of the date of the report in which they are included. Unless required by federal securities laws, we assume no obligation to update any of these forward-looking statements, or to update the reasons actual results could differ materially from those anticipated, to reflect circumstances or events that occur after the statements are made. Without limiting the foregoing, any guidance we may provide will generally be given only in connection with quarterly and annual earnings announcements, without interim updates, and we may appear at* *industry conferences or make other public statements without disclosing material nonpublic information in our possession. Given these uncertainties, investors should not place undue reliance on these forward-looking statements.*

*Investors should read this Annual Report on Form 10-K and the documents that we reference in this report and have filed or will file with the SEC completely and with the understanding that our actual future results may be materially different from what we expect. We qualify all of our forward-looking statements by these cautionary statements.*

*NOTE REGARDING THIRD-PARTY INFORMATION*

*This Annual Report on Form 10-K includes data that we obtained from industry publications and third-party research, surveys and studies. While we believe the industry publications and third-party research, surveys and studies are reliable, we have not independently verified such data. Such third-party data and our internal estimates and research are necessarily subject to a high degree of uncertainty and risk due to a variety of factors, including those described in "Item 1A. Risk Factors" in this Annual Report on Form 10-K. These and other factors could cause results to differ materially from those included in this report.*

# PART I

## Item 1. Business

### Overview

Magnite, Inc., formerly known as The Rubicon Project, Inc. ("we," or "us"), provides technology solutions to automate the purchase and sale of digital advertising inventory.

On April 1, 2020, we completed a stock-for-stock merger with Telaria, Inc , a leading provider of connected television ("CTV") technology, creating what we believe is the world's largest independent sell-side advertising platform, offering a single partner for transacting globally across all channels, formats, and auction types.

On February 4, 2021, we entered into a Stock Purchase Agreement (the "SpotX Purchase Agreement") with RTL US Holding, Inc. ("RTL") to acquire 100% of the issued and outstanding shares of capital stock of SpotX, Inc., a Delaware corporation, for a purchase price equal to $560 million in cash plus 14 million shares of the Company's common stock. SpotX is one of the leading platforms shaping CTV and video advertising globally. We believe the acquisition will create the largest independent CTV advertising platform in the programmatic marketplace, making it easier for buyers to reach CTV audiences at scale from industry-leading streaming content providers, broadcasters, platforms and device manufacturers. The SpotX Acquisition is subject to receipt of regulatory approvals and satisfaction of customary closing conditions and is expected to close in the second quarter of 2021.

Our platform features applications and services for sellers of digital advertising inventory, or publishers, that own and operate CTV channels, applications, websites and other digital media properties, to manage and monetize their inventory; applications and services for buyers, including advertisers, agencies, agency trading desks, and demand side platforms, ("DSPs"), to buy digital advertising inventory; and a transparent, independent marketplace that brings buyers and sellers together and facilitates intelligent decision making and automated transaction execution at scale. Our clients include many of the world's leading buyers and sellers of digital advertising inventory. Our platform processes over 6 trillion ad requests per month allowing buyers access to a global, scaled, independent alternative to "walled gardens," who both own and sell inventory and maintain control on the demand side.

We provide a full suite of tools for sellers to control their advertising business and protect the consumer viewing experience. These controls are particularly important to CTV sellers who need to ensure a TV-like viewing and advertising experience for consumers.

Buyers leverage our platform to manage their advertising spending and reach their target audiences on brand-safe premium inventory, simplify order management and campaign tracking, obtain actionable insights into audiences for their advertising, and access impression-level purchasing from thousands of sellers. We believe that our scale, platform features, and omni-channel offering makes us an essential partner for buyers.

The Company is headquartered in Los Angeles, California with a presence in New York, New York. We operate our business on a worldwide basis, with an established operating presence in North America, Australia and Europe, and a developing presence in Asia and South America. Our non-U.S. subsidiaries and operations perform primarily sales, marketing, and service functions.

### COVID-19 Pandemic Impact on the Business

The COVID-19 pandemic and resulting global disruptions negatively affected our revenue, results of operations, cash flows, and financial condition. Our business depends on the overall demand for advertising and on the economic health of our current and prospective sellers and buyers. In response to the pandemic and associated economic challenges, a significant number of advertisers, in particular with respect to certain categories of advertising that were particularly impacted by the pandemic and resulting stay-at-home orders, reduced their advertising budgets, resulting in an overall decrease in advertising spend through our platform compared to our pre-COVID expectations. This decrease was particularly pronounced through the first half of the year, where we experienced a significant decline in our revenues compared to our expectations. Our revenue trends improved significantly during the third and fourth quarters of 2020 as our revenue returned to positive growth.

In addition to the United States, we have personnel and operations in the United Kingdom, Canada, France, Australia, New Zealand, Germany, Italy, Japan, Singapore, and Brazil, and each of these countries has been affected by the pandemic and taken measures to try to contain it. Our global workforce maintained a work from home policy for the entirety of the second quarter through year-end 2020 and this policy is expected to continue in the foreseeable future for the majority of our employees. We believe that our employees have been able to work productively during the time period in which our global offices have been shut down. However, to the extent we have extended work from home requirements, or that work patterns are permanently altered, it is unclear how productivity may be impacted in the long-term. We intend to approach returning to our offices with caution and to prioritize the safety and health of our employees, while following the guidance set by local authorities and our landlords.

The economic health of our current and prospective buyers also impacts the collectability of our accounts receivable. Although our liquidity has not been significantly affected by the effects of COVID-19 to date, any downturn in economic conditions in the future may severely impact our liquidity as we may need additional time to collect from buyers, which may impact our ability to pay sellers.

Due to the substantial uncertainties associated with the COVID-19 pandemic, the extent to which the pandemic (and actions taken in response to it by governments, businesses, and individuals) will ultimately impact our business is currently unknown, and depends on various factors, many of which are outside of our control. Refer to Item 1A. "Risk Factors" for additional information related to this risk.

**Industry Trends**

***Continued Shift Toward Digital Advertising***

Consumers are rapidly shifting their viewing habits towards digital mediums and expect to be able to consume content seamlessly across multiple devices, including computers, tablets, smartphones, and CTVs whenever and wherever they want. Several factors, including the availability of high-speed broadband and mobile network infrastructure, penetration of internet-connected devices, a proliferation of online content sellers and a behavioral shift towards online and on demand viewing are driving robust growth in digital content consumption. The shift to digital has created opportunities for buyers and sellers of advertising inventory to improve return on advertising investment by using data to more accurately target and measure campaigns. As digital content consumption continues to proliferate, we believe the percentage of advertising dollars spent through digital channels will continue to grow.

***Automation of Buying and Selling***

Due to the size and complexity of the advertising ecosystem and purchasing process, manual processes cannot effectively manage digital advertising inventory at scale. In addition, both buyers and sellers are demanding more transparency, better controls and more relevant insights from their advertising inventory purchases and sales. This has created a need for software solutions, known as programmatic advertising, that automate the process for planning, buying, selling and measuring digital advertising across screens. Programmatic buying enables the use of real-time bidding technology that allows for the dynamic purchase and sale of advertising inventory on an impression-by-impression basis, which includes direct sale of premium inventory to a buyer, which we refer to as private marketplace ("PMP"), and open auction bidding, where buyers bid against each other in real-time auction for the right to purchase a publisher's inventory, which we refer to as open marketplace ("OMP"). Programmatic transactions complement a publisher’s direct sales force by enabling them to automate their sales process and improve workflow capabilities to increase productivity. These transactions also create additional revenue opportunities by enabling buyers and sellers to directly communicate and share data to deliver more valuable targeted advertising. Programmatic has become the dominant method of transacting for desktop and mobile inventory and we expect it to continue to grow as a percentage of CTV advertising.

***Convergence of TV and Digital***

We expect CTV to be a significant driver of our revenue growth. CTV refers to the viewing of digital content on internet connected televisions, including through stand-alone streaming devices, gaming consoles and smart TV operating systems.

CTV viewership is growing rapidly and the pace of adoption is accelerating the transition of linear television to CTV programming. According to a November 2020 poll conducted by the Interactive Advertising Bureau, approximately 60% of US advertisers planned to shift ad dollars from linear TV to either CTV or OTT in 2021. eMarketer forecasted that advertisers will spent an additional $1.16 billion on programmatic CTV video ads in 2020 compared with 2019, and incremental spending in 2021 will increase to $2.37 billion. The adoption of CTV has disrupted the traditional linear TV distribution model, as eMarketer estimates that approximately 31.2 million U.S. households have "cut-the-cord" (i.e., canceled a pay TV service and continued without it) as of the end of 2020, and this number is expected to increase to close to 50% of all U.S. households by the end of 2024. This disruption has created new options for consumers and new economic opportunities for content sellers to compete with traditional linear TV.

Despite the growth in CTV viewership, the CTV advertising market, in particular programmatic advertising, is still in its early stages. Historically, the largest streaming applications have been subscription-based, and CTV sellers with ad-supported models have been slower to adopt programmatic solutions compared to desktop and mobile sellers due to a variety of technical and business reasons.

As the number of CTV channels continues to proliferate, we believe that ad-supported models or hybrid models that rely on a combination of subscription fees and advertising revenue will continue to gain traction. Furthermore, as the CTV market continues to mature, we believe that a greater percentage of CTV advertising inventory will be sold programmatically, similar to trends that occurred in desktop and mobile.

Although the COVID-19 pandemic caused temporary headwinds related to demand challenges, we believe that the pandemic and resulting shelter-in-place orders have accelerated these positive long-term CTV trends. With people spending more time at home, we have seen a large increase in viewership on CTV. This increase in viewership has the potential to create long-term changes in viewing habits. Many CTV providers have committed to significant increases in investment in quality content, which we believe will further drive increases in viewership. At the same time, macroeconomic challenges are driving consumers away from pay subscriptions towards ad supported models. Prolonged macroeconomic challenges may lead CTV advertisers and sellers to more readily embrace programmatic advertising as they look to create economic efficiencies and reduce costs.

We believe that as streaming continues to become mainstream and ad supported models become more prevalent, brand advertisers that look to engage with streaming viewers will continue to shift their budgets from linear to CTV. As such, we expect CTV to be a significant driver of our revenue growth for the foreseeable future. We expect the pending acquisition of SpotX to further fuel this growth.

***Identity Solutions***

A number of participants in the advertising technology ecosystem have taken or are expected to take action to eliminate or restrict the use of third-party cookies and other primary identifiers that have historically been used to deliver targeted advertisements. For instance, Google has announced plans to fully eliminate the use of third-party cookies by January 2022, while Apple has further restricted the use of mobile identifiers on its devices. We believe that the elimination of third-party cookies has the potential to shift the programmatic ecosystem from an identity model powered by buyers that are able to aggregate and target audiences through cookies to one enabled by sellers that have direct relationships with consumers and are therefore better positioned to obtain user data and consent for implementing first party identifiers. We believe that our platform and scale position us well to provide the infrastructure and tools needed for a publisher-centric identity model to succeed, and we are already enabling sellers to create audience segments with their first-party data. In addition to actively working with sellers to develop solutions that could leverage their first party data, we are leading efforts through Prebid.org, with industry support, to create standardized open identity solutions that ensure a smooth transition to a cookieless environment, and offer an alternative to proprietary solutions. Prebid.org is an independent organization that we co-founded, which is dedicated to promoting fair, transparent open source solutions for the programmatic ecosystem. We are also participating in the Wc3 Web standards initiatives, which are being led by Google Chrome, to create anonymized advertising segments. We have contributed several product and design ideas to this process and expects to start production prototypes in the first half of 2021. Finally, we are also actively supporting single sign-on initiatives such as Universal ID 2.0 (UID) and other industry efforts.

We support industry privacy initiatives and believe that the next generation of identity solutions need to be open and ubiquitous, with consumer privacy, transparency and control at the core. We further believe that these solutions will ultimately lead to greater trust and consumer confidence in digital advertising, which will be positive for the advertising ecosystem in the long term. In the short term, however, these changes could create some variability in our revenue across certain buyers or sellers, depending on the timing of changes and developed solutions.

***Supply Path Optimization***

Supply Path Optimization ("SPO") refers to efforts by buyers to consolidate the number of vendors with which they work to find the most effective and cost-efficient paths to procure media. SPO is important to buyers because it can increase the proportion of their advertising ultimately spent on working media, with the goal of increasing return on their advertising spending, and can help them gain efficiencies by reducing the number of vendors with which they work in a complex ecosystem. We believe we are well positioned to benefit from SPO in the long run as a result of our transparency, our broad and unique inventory supply across all channels and formats, including CTV, buyer tools, such as traffic shaping that reduce the cost of working with us, and our brand safety measures.

***Header Bidding and Data Processing***

Header bidding is a programmatic technique by which sellers offer inventory to multiple ad exchanges and supply side platforms, such as our platform, simultaneously. Header bidding has been rapidly adopted in recent years in the desktop and mobile channels, and while the rise and rapid adoption of header bidding increased revenue for sellers, it has also created new challenges and technical complexities. Header bidding has led to a significant increase in the number of ad impressions to be processed and analyzed through our platform as well as by DSPs, which can lead to increased costs if not properly addressed.

We have invested in technology solutions to help manage the increased infrastructure costs of header-bidding while increasing our access to valuable seller inventory.

**How We Generate Revenue**

We generate revenue from the use of our platform for the purchase and sale of digital advertising inventory. We also generate revenue from the fee we charge clients for use of our Demand Manager product, which generally is a percentage of the client's advertising spending on any advertising marketplace.

Digital advertising inventory is created when consumers access sellers' content. Sellers provide digital advertising inventory to our platform in the form of advertising requests, or ad requests. When we receive ad requests from sellers, we send bid requests to buyers, which enable buyers to bid on sellers’ digital advertising inventory. Winning bids can create advertising, or paid impressions, for the seller to present to the consumer. The volume of paid impressions measured as a percentage of ad requests is referred to as fill rate. The price that buyers pay for each thousand paid impressions purchased is measured in units referred to as CPM, or cost per thousand.

The total volume of spending between buyers and sellers on our platform is referred to as advertising spend. We keep a percentage of that advertising spend as a fee, and remit the remainder to the seller. The fee that we retain from the gross advertising spend on our platform is recognized as revenue. The fee earned on each transaction is based on the pre-existing agreement between us and the seller and the clearing price of the winning bid. We also refer to revenue divided by advertising spend as our take rate.

**Magnite: Competitive Strengths of Our Platform.** Key competitive strengths of our platform include:

***Leadership in CTV***

Our platform has been strategically built to meet the unique requirements of CTV sellers. Many of these sellers have their roots in linear television and it is important that established business practices in television advertising can be translated to programmatic CTV advertising. For instance, our "ad-pod" feature provides long-form content sellers with a tool analogous to commercial breaks in traditional linear television, so that they can request and manage several ads at once from different demand sources, in a single ad-pod. In addition, we provide dynamic ad insertion to serve live streaming events, audio normalization tools to control for the volume of an ad relative to content, frequency capping to avoid exposing viewers to repetitive ad placements, and creative review so that a publisher can review and approve the ad units being served to its properties.

We have invested significant time and resources cultivating relationships with CTV sellers and have built a specialized team of CTV experts across our engineering and sales functions to support our clients and evangelize the benefits of CTV advertising. In addition, for certain larger CTV sellers, we may build custom features or functionality to help drive deeper adoption.

***Scaled Omni-Channel Platform***

We offer a scaled omni-channel platform that brings value to both buyers and sellers of ad inventory. For buyers, we offer a single omni-channel partner to reach target audiences globally across all channels, including CTV, mobile, desktop, and digital out-of-home, and formats, including video, display, and audio. For sellers, we partner as a one stop shop where they can sell digital advertising across all of their properties, regardless of device or format, and gain instant access to the world’s largest automated digital advertising buyers with the flexibility to sell their advertising inventory in an automated fashion on an impression-by-impression basis. We believe large numbers of diverse sellers on our platform attract more buyers and vice versa, resulting in a self-reinforcing network effect that adds value for all our clients and creates a stickier platform solution.

***Private Marketplace Solutions***

A significant portion of premium inventory is purchased and sold through PMPs, in particular with respect to CTV. Some sellers will continue to rely on their own sales forces for sales of premium inventory, but will benefit from automation to better price, match, and place campaigns, and to automate manual operations such as ad trafficking, quality assurance, and billing and collections. Our capabilities support sales functions rather than replacing them, which eliminates friction in the sales process. Buyers and sellers can also leverage their first-party data assets and third-party data assets in our platform to increase the value of sellers' inventory and the precision of buyers' targeting efforts.

***Big Data Analytics and Machine-Learning Algorithms; Bid Filtering***

A core aspect of our value proposition is our big data and machine-learning platform that is able to discover unique insights from our massive data repositories. Our systems collect and analyze a myriad of information such as historical clearing prices, bid responses, buyer preferences, ad formats , user location, buyer audience preferences, how many ads the user has seen, browser or device information, and sellers' first party data about users. Our access to data puts us in a unique position to develop differentiated insights to help both buyers and sellers. Our solution is constantly self-improving as we process more volume and accumulate more data, which in turn helps make our machine-learning algorithms more intelligent and contributes to higher-quality matching between buyers and sellers. This data also fuels our bid filtering technology, allowing us to more aggressively block traffic that is not likely to monetize. We believe that our traffic optimization coupled with bid filtering improves return on investment for buyers and increases revenue for sellers, which in turn attracts more buyers and sellers to our platform creating a dual network effect that makes our platform stickier. These capabilities also help us manage the costs associated with the high volumes of ad requests we receive.

***Identity Solutions***

We offer identity solutions that help buyers and sellers create better matches and increase advertising ROI and the value of the underlying impression. Our tools enable sellers to create audience segments based on first-party data, which makes their advertising inventory more valuable to buyers looking to achieve specific campaign goals. In addition, our technology is integrated with a number of third party data, attribution and identity vendors, allowing buyers and sellers to leverage these solutions directly through our platform without the need for multiple vendor contracts.

***Header Bidding and Demand Manager Solutions***

We are integrated with all of the major header-bidding standards, including Prebid.org, which we co-founded, as well as the solutions offered by Google and Amazon. We believe the various header bidding alternatives we offer, our buyer reach and scale, our buying efficiency, and our machine-learning capabilities put us in a strong position to compete for seller impressions monetized through header-bidding solutions, and we expect these header bidding solutions to deliver a meaningful volume of impressions. We have also launched Demand Manager, a software solution that helps desktop and mobile sellers manage all of their header-bidding advertising inventory, regardless of who wins the impression, for a fee based on a percentage of that advertising spending. We believe that adoption and proliferation of these tools will further strengthen our relationship with sellers and contribute to our future revenue growth.

***Transparency and Controls***

We generate revenue each time an impression is monetized on our platform based on a simple and transparent fee structure established with our publisher partners, and do not collect any fees directly from buyers. Our clients direct the sale and management of ad inventory through our platform, including the ability to define supply hierarchies and demand tiers, set minimum price floors, and establish advertiser and category level blocked and allowed lists. We provide sellers with detailed analytics, which allows them to effectively monitor buying patterns and make real-time changes to take advantage of market dynamics and maximize their yield.

***Self-Service Model***

We offer a self-service model that lets sellers access our platform without extensive involvement by our personnel. This model allows us to scale efficiently and grow our business at a faster pace than the growth of our sales and support organization. As a result, we are able to achieve a high degree of operating leverage, which positions our business for growing profitability.

***Buyer Tools***

We have a suite of buyer tools designed to improve ROI for buyers and help them meet their campaign strategies. Our Direct Connect offering allows agency holding companies and major brands to create their own private label marketplaces and establish direct connections with sellers through our platform, while our custom auction packages provide buyers with a versatile and cost effective way of curating and targeting open market inventory based on categories such as audience, context, and viewability. In addition, our innovative bid shading technology, Estimated Market Rate, helps buyers bid more effectively in a first price auction environment.

***Independence***

We are fully aligned with the interests of our publisher clients. Unlike some large industry participants, we do not have our own media properties that compete for advertising spending with our sellers. Therefore, we are agnostic and have no preference towards delivering demand to any specific publisher. In addition, because we do not offer a demand side platform, we are able to avoid inherent conflicts of interest that exist when serving both the buy- and sell-side.

**Magnite: Growth Strategies.** The key elements to our long-term growth strategy include:

***Focus on CTV***

We expect CTV to be the biggest driver of our growth. As streaming video continues to become mainstream and ad-supported models become more prevalent, we believe brand advertisers will continue to shift their budgets from linear television to CTV. We plan to invest significant resources in technology, sales and support related to our CTV growth initiatives. Consistent with this growth objective, on February 4, 2021, we entered into an agreement to acquire SpotX, a leading platform shaping CTV and video advertising globally. We expect the pending SpotX Acquisition to accelerate our CTV growth.

***Supply Path Optimization***

As described above, SPO refers to efforts by buyers to consolidate the number of vendors with which they work to find the most effective and cost-efficient paths to procure media. We believe we are well positioned to benefit from SPO due to the factors described above and that it presents an opportunity for us to capture market share and increase the volume of advertising spend on our platform. To capitalize on SPO opportunities, we have invested in our buyer focused sales team to pursue more direct relationships with advertisers and agencies.

***Identity Solutions***

As described above, we believe that the elimination of third party cookies has the potential to shift the programmatic ecosystem from an identity model powered by buyers that are able to aggregate and target audiences through cookies to one enabled by sellers that have direct relationships with consumers and are therefore better positioned to obtain user data and consent for implementing first party identifiers. As the largest independent supply side platform, we believe we are well positioned to take a leadership position in driving open identity solutions that will benefit buyers and sellers on our platform.

***Increase Efficiencies on our Exchange***

We aim to increase the operational efficiency of our platform, so as to enable buyers and sellers to achieve their campaign and monetization objectives in a cost-effective manner. Our solution is constantly self-improving as we process more volume and accumulate more data, which in turn helps make our machine-learning algorithms more intelligent and contributes to higher quality matching between buyers and sellers. We are continuing to invest in traffic optimization and bid filtering technology to allow us to monetize a higher proportion of the ad requests on our platform, which reduces costs for us as well as the process costs for buyers. We believe these cost savings make our platform more attractive to buyers, which in turn improves revenue opportunities for sellers.

***Increasing Seller Inventory***

In order to increase the transaction volume on our platform we are continuously looking to add new high quality sellers to our platform. In addition, we are seeking to expand our existing relationships with sellers to increase our share of their inventory, in particular in the CTV and OTT space where inventory is controlled by fewer sellers. Our plan for increasing our inventory volumes includes establishing and deepening our direct relationships with sellers, including through custom integrations, expanding our seller tools, capitalizing on our omni-channel capabilities and leveraging our header bidding integrations, including through Demand Manager.

***Expand our International Footprint, Especially in Asia and South America***

With established operating presence in North America, Australia and Europe, and a developing presence in Asia and South America, we serve buyers and sellers on a global basis. We plan to continue to expand our international presence and make additional investments in sales, marketing and infrastructure to support our long-term growth and to position ourselves for expected increases in the penetration of programmatic advertising globally. We expect programmatic advertising to grow at different rates in different geographic markets, and are constantly evaluating new markets with a strategy to use our existing infrastructure and adjacent sales offices or by expanding our infrastructure footprint and placing personnel directly in those markets.

***Continue to Innovate and Enhance our Platform***

We are working on a number of platform innovations and enhancements designed to improve the value to our clients. We intend to invest in new features that facilitate the creation of first-party publisher segments, improve upon our traffic optimization and bid filtering, enhance our brand safety controls, and help sellers to optimize their yield. For example, we recently launched the open beta of Unified Decisioning, which gives sellers the tools and controls to define when and how direct sold and programmatic demand should compete. The solution works alongside all major ad servers so that the optimal ad set is chosen taking into consideration both direct and programmatic deal priority and yield while ensuring publisher’s business rules, including frequency capping and competitive separation, are enforced.

## Technology and Development

To support a majority of our non-CTV transactions, we have developed a globally distributed infrastructure hosted at data centers in the U.S., Europe, and Asia that run our proprietary software. Our CTV transactions run primarily on a cloud-based infrastructure. These two approaches optimize the type of traffic we handle - hosted data centers for high-frequency, lowlatency transactions and cloud-supported for lower frequency transactions subject to more volatile viewing patterns, for example CTV prime-time viewing spikes.

Our approach supports the volume, diversity, and complexity of buyers' bidding patterns, which increases market liquidity. Bid efficiency algorithms provide bid prediction (i.e., which buyers are most likely to bid on a given impression) and throttling (i.e., the volume of bid requests a given buyer can process), to improve infrastructure load and execute transactions efficiently by only sending bid requests to those buyers of advertising inventory who can handle the volume and are likely to respond.

This infrastructure is supported by real-time data pipelines, a system that quickly moves volumes of data generated by our business into reporting and machine-learning systems that allow usage both internally and by buyers and sellers. It also is supported by a 24-hour Network Operations Center, which provides failure protection by monitoring and rerouting traffic in the event of equipment failure or network performance issues between buyers and our marketplace, and our core technology and development team, which is responsible for the design, development, operation, and maintenance of our platform, and employs an agile development process that emphasizes frequent, iterative, and incremental development cycles.

We believe that continued investment in our platform, including its technologies and functionalities, is critical to our success and long-term growth.

**Sales and Marketing**

We market our solution to buyers and sellers through a global sales teams that operate from various locations around the world. These teams leverage market knowledge and expertise to demonstrate the benefits of advertising automation and our solution to buyers and sellers. We deploy a professional services team with each seller integration to assist sellers in getting the most value from our solution. Our client services teams work closely with clients to support campaigns. Our buyer team focuses on the unique challenges and priorities of buyers and is separately managed in order to properly represent this important client group. Our marketing initiatives are focused on managing our brand, increasing market awareness, and driving advertising spend to our platform. We often present at industry conferences, create custom events, and invest in public relations. In addition, our marketing team advertises online, in print, and in other forms of media, creates case studies, sponsors research, writes whitepapers, publishes marketing collateral, generates blog posts, and undertakes client research studies.

**Competition**

Our industry is highly competitive. Overall digital advertising spending is highly concentrated in a small number of very large companies that have their own inventory, including Google, Facebook, Comcast, Verizon, AT&T and Amazon, with which we compete for digital advertising inventory and demand. These companies are formidable competitors due to their huge resources and direct user relationships, and will become even more dominant as third-party cookie use decreases. Despite the dominance of large companies, there is still a large addressable market that is highly fragmented and includes many providers of transaction services with which we compete, including supply side platforms, or SSPs, and advertising exchanges. As we introduce new offerings, as our existing offerings evolve, or as other companies introduce new products and services, we may be subject to additional competition. There has been rapid evolution and consolidation in the advertising technology industry, and we expect these trends to continue, thereby increasing the capabilities and competitive posture of larger companies, particularly those that are already dominant in various ways, and enabling new or stronger competitors to emerge. There are many ways for buyers and sellers of digital advertising inventory to connect and transact, including directly and through many other exchanges, and buyers are increasingly demanding more transparency and lower transaction costs and establishing relationships directly with sellers of advertising inventory, which puts significant pressure on us. Our offering must remain competitive in scope, ease of use, scalability, speed, data access, price, inventory quality, brand security, customer service, identity protection and other technological features that help sellers monetize their inventory and buyers increase the return on their advertising investment. While our industry is evolving rapidly and becoming increasingly competitive, we believe that our solution enables us to compete favorably on these factors. In addition, we believe we enjoy a number of competitive strengths, as further detailed above.

**Human Capital: Our Team and Culture**

Our team draws from a broad spectrum of experience, including data science, machine-learning algorithms, infrastructure, software development, and from experienced leadership on the seller and buyer sides, including CTV, mobile and video. In addition to the United States, we have personnel and operations in the United Kingdom, Canada, France, Australia, New Zealand, Germany, Italy, Japan, Singapore, and Brazil in order to service buyers and sellers on a global scale.

***Culture***

We strive to build a culture that is high-performing and results-oriented while emphasizing transparency, collaboration and innovation. Our recruitment team seeks individuals that are committed to seeing the big picture and being catalysts of change. We ask our employees to empower others, make a difference and ensure our company is an exciting place to work, not just a "job."

***Diversity, Equity and Inclusion***

Our Magnify Council is focused on enhancing diversity, equity and inclusion. Our objectives, through the support of the Magnify Council, are to create "the best" employee experience, continually deploy programs to develop diverse talent, and support external partners that emphasize the global promotion of diversity, equity and inclusion.

***Talent Retention***

We reward team and individual excellence and are committed to creating an exceptional workplace environment in which we seek feedback from our employees in annual engagement surveys. We believe in continual feedback on performance. Our employees set goals at a regular cadence throughout the year and managers provide achievement ratings. Additionally, we routinely analyze voluntary employee turnover to understand and address trends. We give equity to our employees to promote alignment and ownership.

***Employee Wellness and Safety***

Due to the COVID-19 pandemic, our global workforce maintained a work from home policy for the entirety of the second, third, and fourth quarters of 2020 and is expected to continue in the foreseeable future for the majority of our employees. We believe that our employees have been able to work productively during the time period in which our global offices have been shut down. However, we recognize that stressful circumstances require us to provide additional care for our employees. In 2020, we introduced quarterly mental health days, deployed a global employee assistance program, and a digital platform with access to live classes and discussions supporting wellness.

***Conduct***

We are committed to promoting high standards of honest and ethical business conduct and compliance in alignment with our cultural values. We do not tolerate harassment or discrimination. Our employees are required to take annual harassment and discrimination training as well as acknowledge our Code of Business and Ethics Policy.

As of December 31, 2020, we had 569 full-time employees.

## Our Intellectual Property

Our proprietary technologies are important and we rely upon trade secret, trademark, copyright, and patent laws in the United States and abroad to establish and protect our intellectual property and protect our proprietary technologies.

We have several issued patents and pending patent applications, some of which may ultimately be abandoned if we determine that the cost of prosecution or maintenance does not justify the utility of receiving the patent. None of these patents has been litigated and we are not licensing any of the patents, and we do not believe that any individual patent or patent application is material to our business. Their importance to our business is uncertain and there are no guarantees that any of the patents will serve as protection for our technology or market in the United States or any other country in which an application has been filed.

We register certain domain names, trademarks and service marks in the United States and in certain locations outside the United States. We also rely upon common law protection for certain trademarks. We generally enter into confidentiality and invention assignment agreements with our employees and contractors, and confidentiality agreements with parties with whom we conduct business, in order to limit access to, and disclosure and use of, our proprietary information. We also use measures designed to control access to our technology and proprietary information. We view our trade secrets and know-how as a significant component of our intellectual property assets, which we believe differentiate us from our competitors.

Any impairment of our intellectual property rights, or any unauthorized disclosure or use of our intellectual property or technology, could harm our business, our ability to compete and our operating results.

**Client Dynamics**

***Sellers***

Sellers own or operate media properties, websites and applications through which advertisements can be delivered to consumers as they navigate across screens. Sellers use our platform to monetize and manage their advertising inventory.

While we work with many clients, a relatively small number of them provide a large share of the unique user audiences accessible by buyers. This is particularly true in CTV, where sellers tend to be larger and more sophisticated compared to other online sellers. Given the limited number of CTV sellers, we are focused on building deeper, long-term strategic partnerships with these clients through a full-service business development strategy. We have invested significant resources in identifying and cultivating these relationships and our sales executives and account managers often serve a consultative role within a client’s sales organization to help establish best practices and evangelize the benefits of programmatic CTV advertising. This team is further supported by our product and engineering team with deep technical expertise, and for larger clients, we may build out custom features or functionality to help drive deeper adoption of our platform.

In the mobile channel, most of the application providers that make inventory available through our platform utilize system development kits ("SDKs") and other proprietary technology of third parties, such as aggregators, and it is those third parties, not the application providers themselves, that contract with us to help monetize the inventory. Termination or diminution of our relationships with these third parties could result in a material reduction of the amount of mobile inventory available through our platform. We encourage application developers to use our own SDK when appropriate, but it is difficult to displace existing SDKs.

***Buyers***

On the buy-side of our business, while demand for advertising inventory is very distributed, spending by advertisers and agencies on digital advertising inventory has historically been channeled through technological intermediaries, principally DSPs.

These DSPs are directly connected to our technology through server-to-server integrations and are responsible for bidding on and purchasing advertising inventory on our platform pursuant to master service agreements. We have relationships with almost all of these major DSPs, and because there are relatively few of them, each of these relationships is important to us and represents a source of demand that could be difficult for us to replace.

We maintain close relationships with DSPs to maximize the amount of spend being transacted through our platform. For instance, our sales team collaborates with DSPs to create custom private marketplaces that fit specific targeting criteria for a given campaign and our team of technical account managers continually monitors DSP bidding activities and provides recommendations that inform their trading practices.

While the DSP is directly responsible for purchasing advertising inventory, the overall direction of an advertising campaign is typically determined by the advertiser or advertising agency that has engaged the DSP. For certain private marketplace transactions, the specific parameters of a campaign may be negotiated directly with the advertiser or agency without involvement of a DSP. Accordingly, in order to increase the amount of spend transacted on our platform, and in furtherance of our SPO efforts, we also maintain close relationships directly with brand advertisers and agencies.

**Geographic Scope of Our Operations**

The growth of programmatic advertising is expanding into geographic markets outside of the United States, and in some markets, the adoption rate of programmatic digital advertising is greater than in the United States. We face staffing challenges, including difficulty in recruiting, retaining, and managing a diverse and distributed workforce across time zones, cultures, and languages. We must also adapt our practices to satisfy local requirements and standards (including differing privacy requirements that are sometimes more stringent than in the U.S.), and manage the effects of global and regional recessions and economic and political instability. Transactions denominated in various non-U.S. currencies expose us to potentially unfavorable changes in exchange rates and added transaction costs. Foreign operations expose us to potentially adverse tax consequences in the United States and abroad and costs and restrictions affecting the repatriation of funds to the

United States. For detailed information regarding our revenue and property and equipment, net by geographical region, see Note 4 and Note 7 of the "Notes to Consolidated Financial Statements."

**Regulation**

Our business is highly susceptible to emerging privacy regulations and oversight concerning the collection, use and sharing of data. Data protection authorities in a number of territories have expressed a desire to focus on the advertising technology ecosystem. In particular, this scrutiny has focused on the use of technology (including "cookies") to collect or aggregate information about Internet users' online browsing activity. Because we, and our clients, rely upon large volumes of such data, it is essential that we monitor developments in this area domestically and globally, and engage in responsible privacy practices.

We do not collect information, such as name, address, or phone number, that can be used directly to identify a real person, and we take steps not to collect and store such information. Instead, we rely on IP addresses, geo-location information, and persistent identifiers about Internet users and do not attempt to associate this data with other data that can be used to identify real people. This type of information is considered "personal" in some jurisdictions or otherwise may be the subject of future legislation or regulation. The definition of personal data varies by country, and continues to evolve in ways that may require us to adapt our practices to avoid violating laws or regulations related to the collection, storage, and use of consumer data. As a result, our technology platform and business practices must be assessed regularly in each country in which we do business.

There are also a number of specific laws and regulations governing the collection and use of certain types of consumer data relevant to our business. For example, the Children's Online Privacy Protection Act ("COPPA"), imposes restrictions on the collection and use of data about users of child-directed websites. With respect to COPPA, we have taken various steps to implement a system that: (i) flags seller-identified child-directed sites to buyers, (ii) limits advertisers' ability to serve personalized advertisements on child-directed sites, (iii) helps limit the types of information that our advertisers have access to when placing advertisements on child-directed sites, and (iv) limits the data that we collect and use on such child-directed sites.

The use and transfer of personal data in the European Economic Area ("EEA") member states and the United Kingdom ("UK") is currently governed by the General Data Protection Regulation (the "GDPR"). The GDPR sets out higher potential liabilities for certain data protection violations and establishes significant new regulatory requirements resulting in a greater compliance burden for us in the course of delivering our solution in the EEA and UK. While data protection authorities have started to clarify certain requirements under GDPR, significant uncertainty remains as to how the regulation will be applied and enforced.

In addition to the GDPR, a number of new privacy regulations will or have already come into effect. The California legislature passed the California Consumer Privacy Act ("CCPA") in 2018, which became effective January 1, 2020. This law imposes new obligations on businesses that handle the personal information of California residents. The obligations imposed require us to maintain ongoing significant resources for compliance purposes. Certain requirements remain unclear due to ambiguities in the drafting of or incomplete guidance. Adding to the uncertainty facing the ad tech industry, a new law, titled the California Privacy Rights Act ("CPRA") recently passed as a ballot initiative in California and will impose additional notice and opt out obligations on the digital advertising space. This law, which will take effect in January 2023, will cause us to incur additional compliance costs and impose additional restrictions on us and on our industry partners. These ambiguities and resulting impact on our business will need to be resolved over time. In addition, other privacy bills have been introduced at both the state and federal level. Certain international territories are also imposing new or expanded privacy obligations. In the coming years, we expect further consumer privacy regulation worldwide.

Further, the European Union is expected to replace the EU ePrivacy Directive governing the use of technologies to collect consumer information with the ePrivacy Regulation. Current drafts of the ePrivacy Regulation impose fines for violations that are materially higher than those imposed under the ePrivacy Directive.

The GDPR also prohibits the transfer of personal data of EU and UK subjects outside of the EEA and the UK, unless the party exporting the data from the EU or UK implements a compliance mechanism designed to ensure that the receiving party will adequately protect such data. We have historically relied on certain compliance mechanisms that have since been invalidated, and had to shift our business practices to rely on other legally sufficient compliance measures. However, guidance on exactly what measures must be taken to allow the lawful transfer of personal data to the United States remains unclear. While we will interpret the guidance and continue to explore the additional measures that can be implemented to protect personal data that is transferred to us in the United States, we remain subject to regulatory enforcement by data protection authorities located in the EU, UK and the United States. By relying on these compliance measures, we risk becoming the subject of regulatory investigations in any of the individual jurisdictions in which we operate. Each such investigation could cost us significant time and resources, and could potentially result in fines, criminal prosecution, or other penalties. Further, to the extent any new guidance emerges to these compliance measures, it could further invalidate our approach to data export from the EEA and UK. It may take us significant time, resources, and effort to restructure our business and/or rely on another legally sufficient compliance measure.

Additionally, our compliance with our privacy policies and our general consumer privacy practices are also subject to review by the Federal Trade Commission, which may bring enforcement actions to challenge allegedly unfair and deceptive trade practices, including the violation of privacy policies and representations therein. Certain State Attorneys General may also bring enforcement actions based on comparable state laws or federal laws that permit state-level enforcement. Outside of the United States, our privacy and data practices are subject to regulation by data protection authorities and other regulators in the countries in which we do business.

Beyond laws and regulations, we are members of self-regulatory bodies that impose additional requirements related to the collection, use, and disclosure of consumer data, including the Internet Advertising Bureau ("IAB"), the Digital Advertising Alliance, the Network Advertising Initiative, and the Europe Interactive Digital Advertising Alliance. Under the requirements of these self-regulatory bodies, in addition to other compliance obligations, we provide consumers with notice via our privacy policy about our use of cookies and other technologies to collect consumer data, and of our collection and use of consumer data to deliver personalized advertisements. We allow consumers to opt-out from the use of data we collect for purposes of behavioral advertising through a mechanism on our website, linked through our privacy policy as well as through portals maintained by some of these self-regulatory bodies. Some of these self-regulatory bodies have the ability to discipline members or participants, which could result in fines, penalties, and/or public censure (which could in turn cause reputational harm). Additionally, some of these self-regulatory bodies might refer violations of their requirements to the Federal Trade Commission or other regulatory bodies.

Until prevailing compliance practices standardize, the impact of worldwide privacy regulations on our business and, consequently, our revenue could be negatively impacted.

For additional information regarding regulatory risks to our business, see "Item 1A. Risk Factors."

**Seasonality**

Our advertising spend, revenue, cash flow from operations, Adjusted EBITDA, operating results, and other key operating and financial measures may vary from quarter to quarter due to the seasonal nature of buyer spending. For example, many buyers devote a disproportionate amount of their advertising budgets to the fourth quarter of the calendar year to coincide with increased holiday purchasing. We expect our revenue, cash flow, operating results and other key operating and financial measures to fluctuate based on seasonal factors from period to period and expect these measures to be higher in the fourth quarters than in other quarters.

**Working Capital Requirements**

Our revenue is generated from advertising spend transacted on our platform using our technology solution. Generally, we invoice and collect from buyers the full purchase price for impressions they have purchased, retain our fees, and remit the balance to sellers. We attempt to coordinate collections from our buyers so as to fund our payment obligations to our sellers. However, in some cases, we may be required to pay sellers for impressions delivered before we have collected, or even if we are unable to collect, from the buyer of those impressions. There can be no assurances that we will not experience bad debt in the future. Any such write-offs for bad debt could have a materially negative effect on our results of operations for the periods in which the write-offs occur. In addition, growth and increased competitive pressure in the digital advertising industry are causing overall increased focus by all industry participants on pricing, transparency, and cash and collection cycles.

Some buyers have experienced financial pressures that have motivated them to challenge some details of our invoices or to slow the timing of their payments to us. In addition, although our liquidity has not been significantly affected by the effects of COVID-19 to date, any downturn in economic conditions in the future may severely impact our liquidity as we may need additional time to collect from buyers, which may impact our ability to pay sellers. If buyers slow their payments to us or our cash collections are significantly diminished as a result of these dynamics, our revenue and/or cash flow could be adversely affected and we may need to use working capital to fund our accounts payable pending collection from buyers. This may result in additional cash expenditures and cause us to forgo or defer other more productive uses of that working capital.

**Available Information**

The Company is subject to the reporting requirements of the Securities Exchange Act of 1934, as amended, or the Exchange Act, and accordingly files Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K, proxy statements, and related amendments and other information with the U.S. Securities and Exchange Commission, or the SEC, pursuant to Sections 13(a) and 15(d) of the Exchange Act. Information filed by the Company with the SEC is available free of charge on the Company’s website at investor.magnite.com as soon as reasonably practicable after such materials are filed with or furnished to the SEC.

## Item 1A. Risk Factors

*Investing in our common stock involves a high degree of risk, including the risks described below, each of which may be relevant to decisions regarding an investment in or ownership of our stock. The occurrence of any of these risks could have a significant adverse effect on our reputation, business, financial condition, revenue, results of operations, growth, or ability to accomplish our strategic objectives, and could cause the trading price of our common stock to decline. You should carefully consider the risks set forth below and the other information contained in this report, including our consolidated financial statements and related notes and Management's Discussion and Analysis of Financial Condition and Results of Operations, before making investment decisions related to our common stock. However, this report cannot anticipate and fully address all possible risks of investing in our common stock, the risks of investing in our common stock may change over time, and additional risks and uncertainties that we are not aware of, or that we do not consider to be material, may emerge. Accordingly, you are advised to consider additional sources of information and exercise your own judgment in addition to the information we provide.*

### Risks Related to the Proposed Acquisition of SpotX

***We may not complete the acquisition of SpotX or complete the acquisition within the time frame we anticipate. Failure to complete the acquisition could have material adverse effects on us.***

The completion of the acquisition is subject to a number of customary closing conditions, including, among other things, the absence of certain legal impediments and the expiration or termination of the required waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, which make the completion and timing of the acquisition uncertain. The failure to satisfy all of the required conditions could delay the completion of the acquisition for a significant period of time or prevent it from occurring at all. There can be no assurance that the conditions to the completion of the acquisition will be satisfied or waived or that the acquisition will be completed.

If the acquisition is not completed, we may be materially adversely affected and, without realizing any of the benefits of having completed the acquisition, will be subject to a number of risks, including the following:

- the market price of our common stock could decline;
- we could be liable for damages incurred or suffered by the seller of SpotX in specified circumstances;
- if the SpotX Purchase Agreement is terminated and our board seeks another acquisition, our stockholders cannot be certain that we will be able to find a party willing to enter into a transaction on terms equivalent to or more attractive than the terms of the SpotX Purchase Agreement;
- time and resources, financial and other, committed by our management to matters relating to the acquisition could otherwise have been devoted to pursuing other beneficial opportunities;
- we may experience negative reactions from the financial markets or from our customers, suppliers or employees; and
- we will be required to pay certain costs relating to the acquisition, such as legal, accounting, financial advisory and printing fees, whether or not the acquisition is completed.

In addition, if the acquisition is not completed, we could be subject to litigation related to any failure to complete the acquisition or related to any enforcement proceeding commenced against us to perform our obligations under the SpotX Purchase Agreement. Because our obligations under the SpotX Purchase Agreement are not conditioned on our receipt of or ability to obtain financing, there is a risk we could be liable for damages to the seller of SpotX or subject to litigation or enforcement proceedings even in circumstances where our inability to close the transaction is due to a failure to timely obtain financing on the terms contemplated by the Commitment Letter (discussed below) or at all. Any of these risks could materially and adversely impact our ongoing business, financial condition, financial results and stock price.

Similarly, delays in the completion of the acquisition could, among other things, result in additional transaction costs, loss of revenue or other negative effects associated with delay and uncertainty about completion of the acquisition and could materially and adversely impact our ongoing business, financial condition, financial results and stock price following the completion of the acquisition.

***We may not be able to achieve anticipated cost savings or other anticipated benefits of our acquisition of SpotX.***

The success of the acquisition will depend, in part, on our ability to successfully integrate SpotX with our business and realize the anticipated benefits, including synergies, cost savings, innovation and technological opportunities and operational efficiencies from the acquisition in a manner that does not materially disrupt existing customer, supplier and employee relations and does not result in decreased revenues due to losses of, or decreases in use of our solutions by, buyers and sellers of advertising inventory. If we are unable to achieve these objectives within the anticipated time frame, or at all, the anticipated benefits may not be realized fully or at all, or may take longer to realize than expected, and the value of our common stock may decline. We may fail to realize some or all of the anticipated benefits of the acquisition if the integration process takes longer than expected or is more costly than expected. The integration of SpotX with our business may result in material challenges, including, without limitation:

- managing a larger, more complex business;
- maintaining employee morale and retaining key management and other employees;
- retaining existing business and operational relationships, including customers, suppliers and employees and other counterparties, as may be impacted by contracts containing consent and/or other provisions that may be triggered by the acquisition, and attracting new business and operational relationships;
- consolidating corporate and administrative infrastructures and eliminating duplicative operations, including unanticipated issues in integrating information technology, communications and other systems;
- coordinating geographically separate organizations; and
- unforeseen expenses or delays associated with the acquisition.

Many of these factors will be outside of our control, and any one of them could result in delays, increased costs, decreases in the amount of expected revenues or cost synergies, and other adverse impacts, which could materially affect our financial position, results of operations and cash flows.

Due to legal restrictions, we are currently permitted to conduct only limited planning for the integration of SpotX following the acquisition. The actual integration may result in additional and unforeseen expenses, and the anticipated benefits of the integration plan may not be realized on a timely basis, if at all.

***Our proposed financing of the acquisition of SpotX will significantly increase our leverage, which may put us at greater risk of defaulting on our debt obligations and limit our ability to conduct necessary operating activities, make strategic investments, respond to changing market conditions, or obtain future financing on favorable terms.***

We intend to finance the cash portion of the SpotX acquisition consideration in part through borrowings under certain proposed new credit facilities. In connection with the SpotX Purchase Agreement, we entered into a commitment letter (the "Commitment Letter" pursuant to which, subject to the terms and conditions set forth therein, Goldman Sachs Bank USA has committed to provide a senior secured term loan facility in an aggregate principal amount of up to $560 million (the "Term Loan Facility"). The funding of the Term Loan Facility provided for in the Commitment Letter is contingent on the satisfaction of customary conditions, including the execution and delivery of definitive documentation with respect to credit facilities in accordance with the terms set forth in the Commitment Letter and the consummation of the SpotX acquisition in accordance with the SpotX Purchase Agreement.

The completion of the Term Loan Facility, if at all, would significantly increase our indebtedness and require us to comply with certain financial metrics and restrictive covenants. The increased leverage could adversely affect our business and operating results by:

- making it more difficult for us to make payments on our indebtedness and comply with applicable financial metrics and covenants;
- requiring us to use a substantial portion of our cash flow to pay interest and principal, which reduces the amount available for operations, distributions, acquisitions and capital expenditures;
- making us more vulnerable to economic and industry downturns and reducing our flexibility to respond to changing business and economic conditions;
- requiring us to agree to less favorable terms, including higher interest rates, in order to incur additional debt, and otherwise limiting our ability to borrow for operations, working capital or to finance acquisitions in the future; or
- limiting our flexibility in conducting our business, which may place us at a disadvantage compared to competitors with less debt or debt with less restrictive terms.

We may be able to incur substantial additional indebtedness in the future, subject to the restrictions governing our existing indebtedness, which would further exacerbate the leverage risks described above.

***If the acquisition of SpotX is completed, our current stockholders will generally have a reduced ownership and voting interest after the acquisition.***

Our stockholders currently have the right to vote to elect our directors and on other matters affecting the company. Immediately after the completion of the acquisition, each of our stockholders will remain a stockholder, but with a percentage ownership that will be smaller than such stockholder’s percentage ownership as of immediately prior to the acquisition. As a result of this reduced ownership percentage, our stockholders will generally have less voting power after the acquisition than they did prior to the acquisition.

***If the acquisition of SpotX is completed, the seller of SpotX will own a substantial portion of our outstanding common stock, and their interests may not always coincide with the interests of the other holders.***

If the acquisition of SpotX is completed, the seller of SpotX, RTL or an affiliate of RTL designated pursuant to the SpotX Purchase Agreement, will receive 14 million shares of our common stock, subject to certain adjustments. As a result, RTL may have significant influence over all matters presented to our stockholders for approval, including election and removal of our directors and change in control transactions. The interests of RTL may not always coincide with the interests of the other holders of our common stock. As part of the SpotX Purchase Agreement, RTL has agreed to abide by certain standstill covenants with respect to us and our securities for a period of three years following the closing of the transaction.

***Completion of the acquisition of SpotX may trigger change in control or other provisions in agreements to which SpotX is a party, which may have an adverse impact on our business and results of operations following completion of the acquisition.***

The completion of the acquisition may trigger change in control and other provisions in certain agreements to which SpotX is a party. If SpotX and we are unable to negotiate waivers of those provisions, counterparties may exercise their rights and remedies under the agreements, including terminating the agreements or seeking monetary damages or equitable remedies. Even if we are able to negotiate consents or waivers, the counterparties may require a fee for such waivers or seek to renegotiate the agreements on terms less favorable to us. Any of the foregoing or similar developments may have an adverse impact on our business and results of operations following completion of the acquisition, including by diminishing or making it more difficult for us to realize some or all of the anticipated benefits of the acquisition, or by increasing the costs to us of completing the acquisition.

***Any acquisitions we undertake may disrupt our business, adversely affect operations, dilute stockholders, and expose us to costs and liabilities.***

Acquisitions have been an important element of our business strategy, and we may pursue future acquisitions in an effort to increase revenue, expand our market position, add to our service offering and technological capabilities, respond to dynamic market conditions, or for other strategic or financial purposes. However, there is no assurance that we will identify suitable acquisition candidates or complete any acquisitions on favorable terms, or at all. Further, any acquisitions we do complete, including, if completed, our acquisition of SpotX, would involve a number of risks, which may include the following:

- the identification, acquisition, and integration of acquired businesses require substantial attention from management. The diversion of management's attention and any difficulties encountered in the transition process could hurt our business;
- the identification, acquisition, and integration of acquired businesses requires significant investment, including to determine which new service offerings we might wish to acquire, harmonize service offerings, expand management capabilities and market presence, and improve or increase development efforts and technology features and functions;
- the anticipated benefits from the acquisition may not be achieved, including as a result of loss of clients or personnel of the target, other difficulties in supporting and transitioning the target's clients, the inability to realize expected synergies from an acquisition, or negative organizational cultural effects arising from the integration of new personnel;
- we may face difficulties in integrating the personnel, technologies, solutions, operations, and existing contracts of the acquired business;
- we may fail to identify all of the problems, liabilities or other shortcomings or challenges of an acquired company, technology, or solution, including issues related to intellectual property, solution quality or architecture, income tax and other regulatory compliance practices, revenue recognition or other accounting practices, or employee or client issues;
- to pay for future acquisitions, we could issue additional shares of our common stock or pay cash. Issuance of shares would dilute stockholders. Use of cash reserves could diminish our ability to respond to other opportunities or challenges. Borrowing to fund any cash purchase price would result in increased fixed obligations and could also include covenants or other restrictions that would impair our ability to manage our operations;
- acquisitions expose us to the risk of assumed known and unknown liabilities including contract, tax, regulatory or other legal, and other obligations incurred by the acquired business or fines or penalties, for which indemnity obligations, escrow arrangements or insurance may not be available or may not be sufficient to provide coverage;
- new business acquisitions can generate significant intangible assets that result in substantial related amortization charges and possible impairments;
- the operations of acquired businesses, or our adaptation of those operations, may require that we apply revenue recognition or other accounting methodologies, assumptions, and estimates that are different from those we use in our current business, which could complicate our financial statements, expose us to additional accounting and audit costs, and increase the risk of accounting errors;

- acquired businesses may have insufficient internal controls that we must remediate, and the integration of acquired businesses may require us to modify or enhance our own internal controls, in each case resulting in increased administrative expense and risk that we fail to comply with the requirements of Section 404 of the Sarbanes-Oxley Act of 2002 (the "Sarbanes-Oxley Act");
- acquisition of businesses based outside the United States would require us to operate in foreign languages and manage non-U.S. currency, billing, and contracting needs, comply with laws and regulations, including labor laws and privacy laws that in some cases may be more restrictive on our operations than laws applicable to our business in the United States; and
- acquisitions can sometimes lead to disputes with the former owners of the acquired company, which can result in increased legal expenses, management distraction and the risk that we may suffer an adverse judgment if we are not the prevailing party in the dispute.

**Risks Related to COVID-19**

***The recent COVID-19 pandemic and spread of COVID-19 has impacted and may have material adverse effects on our business, financial position, results of operations and/or cash flows.***

Our business has been impacted and may be materially adversely impacted by the effects of the COVID-19 pandemic. In addition to the United States, we have personnel and operations in the United Kingdom, Canada, France, Australia, New Zealand, Germany, Italy, Japan, Singapore, and Brazil, and each of these countries has been affected by the pandemic and taken measures to try to contain it. These measures have impacted and may further impact our workforce and operations, and the operations of our sellers and buyers.

The COVID-19 pandemic has in the short-run and may over the longer term adversely affect the economies and financial markets of many countries. Adverse economic conditions and general uncertainty about economic recovery or growth, particularly in North America and Europe, where we conduct most of our business, has caused advertisers to significantly reduce their advertising budgets. Our business depends on the overall demand for advertising and on the economic health of our current and prospective sellers and buyers. As a result of advertisers significantly reducing their overall advertising spending, our revenue and results of operations have been directly affected. Though our revenue trends improved and stabilized in the second half of 2020, there can be no assurance that these trends will continue.

In addition, the economic health of our current and prospective buyers impacts the collectability of our accounts receivable. Although our liquidity has not been significantly affected by the effects of COVID-19 to date, any prolonged downturn in economic conditions in the future may severely impact our liquidity as we may need additional time to collect from buyers, which may impact our ability to pay sellers.

The degree to which the COVID-19 pandemic and responses thereto impacts our results will depend on future developments, which are highly uncertain and cannot be predicted, including, but not limited to, the duration and spread of the pandemic, its severity, including any resurgence, the actions to contain the virus or treat its impact, and how quickly and to what extent normal economic and operating conditions can resume. Although the full magnitude of the impact of the COVID-19 pandemic on our business and operations remains uncertain, the spread of COVID-19 and the imposition of related public health measures and travel and business restrictions has and is expected to continue to adversely impact our forecasted business, financial condition, operating results and cash flows.

Additional or unforeseen effects from the COVID-19 pandemic and the resulting economic distress could implicate or amplify many of the other risks discussed below.

**Risks Related to Our Business, Growth Prospects and Operating Results**

***If CTV advertising spend grows more slowly than we expect our operating results and growth prospects could be harmed.***

The growth of our platform is dependent, in part, on the continued growth in CTV advertising spend. Growth in the CTV advertising market is dependent on a number of factors, including the pace of cord-cutting (the replacement of tradition linear TV for CTV streaming), the continued proliferation of digital content and CTV providers, the adoption of ad-supported models by CTV sellers in lieu of, or in addition to, subscription models, and an acceleration in the shift of ad dollars from traditional linear TV to CTV to keep pace with changing viewership habits. If the market for ad-supported CTV develops more slowly than we expect or fails to develop as a result of these or other factors, our operating results and growth prospects could be harmed.

***If CTV sellers fail to adopt programmatic advertising solutions, or adopt such solutions more slowly that we expect, our operating and growth prospects could be harmed.***

As digital advertising has continued to scale and evolve, the amount of advertising being bought and sold programmatically has increased dramatically. Despite the opportunities created by programmatic advertising, CTV sellers have been slower to adopt programmatic solutions compared to desktop and mobile video sellers. Many CTV sellers have backgrounds in cable or broadcast television and have limited experience with digital advertising, and in particular programmatic advertising. For these sellers, it is extremely important to protect the quality of the viewer experience to maintain brand goodwill and ensure that online advertising efforts do not create sales channel conflicts or otherwise detract from their direct sales force. In this regard, programmatic advertising presents a number of potential challenges, including the ability to ensure that ads are brand safe, comply with business rules around competitive separation, are not overly repetitive, are played at the appropriate volume and do not cause delays in load-time of content. Our platform was designed to address these challenges and we have invested significant time and resources cultivating relationships with CTV sellers to establish best practices and evangelize the benefits of programmatic CTV.

While we believe that programmatic advertising will continue to grow as a percentage of overall CTV advertising, there can be no assurances that CTV sellers will adopt programmatic solutions or the speed at which they may adopt such solutions. Any such failure or delay in adoption could negatively impact our finance results and growth prospects.

We may not be able to maintain or increase access to the CTV advertising inventory monetized through our platform on terms acceptable to us.

Our success requires us to maintain and expand our access to premium and unique advertising inventory. We do not own or control the ad inventory upon which our business depends and do not own or create content. Sellers are generally not required to offer a specified level of inventory on our platform, and we cannot be assured that any publisher will continue to make their ad inventory available on our platform. Sellers may seek to change the terms on which they offer inventory on our platform, including with respect to pricing, or may elect to make advertising inventory available to our competitors who offer more favorable economic terms. Furthermore, sellers may enter into exclusive relationships with our competitors, which preclude us from offering their inventory.

These risks are particularly pronounced with CTV sellers. CTV inventory is highly sought after, and unlike desktop or mobile advertising, which may come from disparate sources, CTV inventory tends to be concentrated on a smaller number of larger sellers that enjoy significant negotiating leverage. This dynamic has been exacerbated by consolidation in the industry, as a number of digital-first CTV sellers have been acquired by larger established television and media brands. In some instances, consolidation may result in the loss of business with an existing client (for example, if an acquiror has a preferred relationship with one of our competitors or has a proprietary solution). As a result of this concentration, the loss of a CTV client may result in a significant decrease in the amount of CTV inventory available through our platform. Any decrease in our ability to access CTV inventory could negatively impact our results, as we view CTV revenue as a key differentiator and driver for our growth.

***We may not be able to achieve anticipated benefits of the merger with Telaria.***

The success of the Merger will depend, in part, on our ability to successfully combine and integrate our business with Telaria, and realize the anticipated benefits, including synergies, cost savings, innovation and technological opportunities and operational efficiencies from the Merger in a manner that does not materially disrupt existing customer, supplier and employee relations and does not result in decreased revenues due to losses of, or decreases in use of our solutions by, buyers and sellers of advertising inventory. If the combined company is unable to achieve these objectives within the anticipated time frame, or at all, the anticipated benefits may not be realized fully or at all, or may take longer to realize than expected, and the value of the combined company common stock may decline. The combined company may fail to realize some or all of the anticipated benefits of the Merger if the integration process takes longer than expected or is more costly than expected. The integration of the two companies may result in material challenges, including, without limitation:

- managing a larger, more complex combined business;
- maintaining employee morale and retaining key management and other employees;
- retaining existing business and operational relationships, including customers, suppliers and employees and other counterparties, as may be impacted by contracts containing consent and/or other provisions that may be triggered by the Merger, and attracting new business and operational relationships;
- consolidating corporate and administrative infrastructures and eliminating duplicative operations, including unanticipated issues in integrating information technology, communications and other systems;
- coordinating geographically separate organizations; and
- unforeseen expenses or delays associated with the Merger.

Many of these factors will be outside of our control, and any one of them could result in delays, increased costs, decreases in the amount of expected revenues or cost synergies, and other adverse impacts, which could materially affect the combined company’s financial position, results of operations and cash flows.

***We may be unsuccessful in our Supply Path Optimization efforts.***

SPO refers to efforts by buyers to consolidate the number of vendors with which they work to find the most effective and cost-efficient paths to procure media. There are a number of criteria that buyers use to evaluate supply partners. While we believe we are well positioned to benefit from supply path optimization in the long run as a result of our transparency, our pricing tools, which reduce the overall cost of working with us, our broad and unique inventory supply across all channels and formats, buyer tools such as traffic shaping that reduce the cost of working with us, and our brand safety measures, we compete for demand with a number of well-established companies, and buyers have not always embraced our offering due to various factors, including the perception that competitors have superior technology or produce better results.

We must continue to adapt and improve our offerings to win buyers' business. In order to achieve increased advertising spend, we may negotiate discounts to our seller fees with agencies and advertisers, and we have increasingly been receiving requests from buyers for discounts, rebates, or similar incentives to move more advertising spending to our platform. We believe that because our business has many fixed costs, increases in advertising spend volume create opportunity to disproportionately improve net income, even with increased seller fee discounts. However, our results could be negatively impacted if our advertising spend increases and cost leverage is not adequate to compensate for discounted fees.

***Our Demand Manager service requires significant upfront investments, has a long on-boarding and ramp-up period, and may not be successful.***

In 2019 we announced a new offering called Demand Manager. Demand Manager helps sellers effectively monetize their advertising inventory through configuration tools and analytics to make it easier to deploy, configure, and optimize Prebid-based header bidding solutions. Before clients are able to begin using Demand Manager, we expend a significant amount of time and costs in the initial setup and implementation, and we do not recognize revenue from Demand Manager clients until we commence services, often after an additional initial trial period. The pace of adoption of Demand Manager depends on the features and capabilities provided by our solution, as well as acceptance and expansion of the underlying Prebid-based header bidding solutions, which we do not control. While we anticipate long-term revenue growth from Demand Manager, there can be no assurance that we will be able to add additional clients to our service or expand the inventory managed by current clients and thus grow revenue.

***We made a strategic decision to eliminate our buyer fees in 2017, which at the time accounted for a significant percentage of our revenue.***

In response to increasing market pressure and in an effort to be more competitive, on November 1, 2017 we eliminated ***buyer*** transaction fees. Buyer transaction fees represented approximately 49% of our revenue for the first ten months of 2017, which is the period during which we charged buyer fees in 2017. Consequently, the elimination of our buyer transaction fees has had a severe adverse effect on our revenue and margins. In order to adjust for the elimination of these fees, we refocused our business on growing advertising spend through increased volume of transactions and operating with increased efficiencies. These initiatives included investments in bid shaping and bid filtering technology that has allowed us to improve our fill rate, or the percentage of ad requests on our platform that are monetized.

Though we've taken steps to significantly increase advertising spend on our platform, we may not succeed in continuing to increase transaction volume or improve fill rates. To the extent we are unable to compensate for our price reductions by continuing to increase advertising spend on our platform, our revenue will decline, we will not be able to grow our business, our cash resources may be depleted, and we may be forced to seek additional capital to support our business and operations. If we are required to cut costs further in order to remain competitive, we may have difficulty identifying and implementing significant additional cost reduction measures without adversely impacting our operations and our ability to provide competitive services to our clients.

***Our technology development efforts may be inefficient or ineffective, which may impair our ability to attract buyers and sellers.***

We face intense competition in the marketplace and are confronted by rapidly changing technology, evolving industry standards and consumer needs, regulatory changes, and the frequent introduction of new solutions by our competitors to which we must adapt and respond. Our future success will depend in part upon our ability to enhance our existing solution and to develop and introduce competing new solutions in a timely manner with features and pricing that meet changing client and market requirements. Our solutions are complex and can require a significant investment of time and resources to develop, test, introduce, and enhance. These activities can take longer than we expect. We schedule and prioritize our development efforts according to a variety of factors, including our perceptions of market trends, client requirements, and resource availability; however, we may encounter unanticipated difficulties that require us to re-direct, scale back, or modify our efforts. If development of our solution becomes significantly more expensive due to changes in regulatory requirements or industry practices, or other factors, we may find ourselves at a disadvantage to larger competitors with more resources to devote to development. These factors place significant demands upon our engineering organization, require complex planning, and can result in acceleration of some initiatives and delay of others. We have expanded our use of outsourced software development, which may put the company at greater risk with respect to our technology development because we may have less control over the performance of outside programmers and we may be at greater risk of losing their services. To the extent we do not manage our development efforts efficiently and effectively, we may fail to produce solutions that respond appropriately to the needs of buyers and sellers, and competitors may more successfully develop responsive offerings. If our solution is not competitive, buyers and sellers can be expected to shift their business to competing solutions. Buyers and sellers may also resist adopting our new solutions for various reasons, including reluctance to disrupt existing relationships and business practices or to invest in necessary technological integration.

***The emergence of header bidding has increased competition from other demand sources and may cause infrastructure strain and added cost.***

In the mobile and desktop channels, sellers have embraced header bidding, a technology solution by which impressions that would have previously been exposed to different potential sources of demand in a sequence dictated by ad server priorities are instead available for concurrent competitive bidding by demand sources. This can help sellers increase revenue by exposing their inventory to more bidders, thereby allocating more inventory to demand sources that value it most highly. While header bidding has the potential to increase our access to inventory that otherwise would have been allocated first to other exchanges, thus increasing our revenue opportunity, it has also resulted in a number of challenges for our business. First, some sellers with which we have had direct relationships may choose not to integrate with us as a header-bidding demand source, in which case we will have less opportunity to access their advertising inventory through our platform. Second, certain sources of demand, including owners of the header bidding solutions, may be prioritized by sellers in their header bidding implementation, leaving us at a competitive disadvantage in the auction. Third, just as header bidding allows us to compete with demand sources that would previously have been above us in sellers' ad server sequences, it exposes us to additional competition by demand sources that, prior to the emergence of header bidding, might have been below us in the sellers' ad server sequences or otherwise unable to compete effectively for inventory. Lastly, header-bidding has vastly increased the volume of ad requests that need to be processed and analyzed through our system, resulting in increased infrastructure costs.

If we are unable improve the efficiency and effectiveness of our current header bidding solution and installations we may not fully offset these increased infrastructure costs, and we will not be able to take full advantage of the opportunities made available through current header bidding technology to access a larger addressable market and increase our revenue by capturing a greater share of inventory. In addition, our success in monetizing impressions through header-bidding solutions is dependent on the interoperability of our platform with proprietary header-bidding solutions, some of which are owned by our competitors. As a result, we may be susceptible to evolution in technology and changes in business practices by the owners of such header-bidding solutions that we cannot predict.

While header-bidding technologies have not been largely adopted by CTV sellers, such solutions or similar solutions geared towards unifying demand may become more prevalent in the future. If we are not able to effectively adapt our technology to such solutions or if their adoption results in increased competition for CTV inventory, we may have reduced opportunities or it may be more costly to monetize this inventory, which would negatively affect our results.

***We must increase the scale and efficiency of our technology infrastructure to support our growth and transaction volumes.***

Our technology must scale to process the increased ad requests on our platform. Additionally, for each individual advertising impression created when a user visits a website or uses an application where our auctions technology is integrated, our technology must send bid requests to appropriate buyers, receive and process their responses, select a winner, and, increasingly, integrate with downstream decisioning systems. It must perform these transactions end-to-end within milliseconds. We must continue to increase the capacity of our platform to support our high-volume strategy, to cope with increased data volumes and parties resulting from header bidding and an increasing variety of advertising formats and platforms, and to maintain a stable service infrastructure and reliable service delivery. To the extent we are unable, for cost or other reasons, to effectively increase the capacity of our platform, continue to process transactions at fast enough speeds, and support emerging advertising formats or services preferred by buyers, our revenue will suffer. We expect to continue to invest in our platform to meet increasing demand. Such investment may negatively affect our profitability and results of operations.

***Our belief that there is significant and growing demand for private marketplace solutions may be inaccurate, and we may not realize a return from our investments in that area.***

We believe there is significant and growing demand for PMPs, and we have made significant investments to meet that demand and grow our market share of PMPs. Currently, the majority of CTV transactions are executed through PMPs and we expect PMPs to grow as a percentage of revenue in mobile and desktop as well. PMPs may involve lower fees than we can charge for OMP, which may not be fully offset by anticipated higher CPMs. In some cases, we have experienced fee pressure as we have built out our PMP offering, and we expect this fee pressure to increase as more competitors, including new entrants as well as sellers themselves, build their own technology and infrastructure to enable PMPs. Even if the market for these solutions develops as we anticipate, and our buyers and sellers embrace our offerings, the positive effect of our PMP offerings on our results of operations may be offset or negated if PMPs cannibalize our open marketplace transaction volumes, by similar offerings from our competitors, or through other adverse developments.

***We have invested heavily in our mobile technology, which poses additional risks that did not affect our legacy desktop display business. To the extent our access to mobile inventory is limited by third-party technology or lack of direct relationships with mobile sellers, our ability to grow our business will be impaired.***

Due to increased usage of mobile devices and resulting migration of advertising spending to mobile platforms, we have invested heavily in our mobile technology and are relying on our mobile offerings to fuel our continued growth. Our success in the mobile channel depends upon the ability of our technology solution to provide advertising for most mobile-connected devices, as well as the major operating systems or Internet browsers that run on them and the thousands of applications that are downloaded onto them. The design of mobile devices and operating systems, applications, or Internet browsers is controlled by third parties. These parties frequently introduce new devices and applications, and from time to time they may introduce new operating systems or Internet browsers or modify existing ones in ways that may significantly affect our business, such as by providing ad-blocking capabilities or by limiting access to Internet user data. Network carriers may also affect the ability to access specified content on mobile devices. To the extent our solution is unable to work on these devices, operating systems, applications, or Internet browsers for any reason, our ability to generate revenue through mobile advertising is significantly impaired, and that impairment may be material.

We expect mobile applications to be the largest driver of our mobile business. Many mobile apps utilize software development kits, or SDKs, and other proprietary technology of third parties, such as aggregators, and it is those third parties, not the application providers themselves, that contract with us to provide exchange services to help monetize the inventory. Due to this consolidation, if our relationships with these third parties decline or are terminated, it may result in a larger than usual loss of access to mobile inventory. Any rapid and/or significant decline in the availability of mobile inventory can adversely affect our mobile advertising spend and growth prospects.

***Fee issues have in the past and could in the future have a material adverse effect on our business.***

A majority of our revenue comes from DSP buyers purchasing advertising inventory made available by sellers on our platform. We experience requests from buyers for discounts, fee concessions or revisions, rebates or other forms of consideration, refunds, and greater levels of pricing transparency and specificity, in some cases as a condition to maintain the relationship or to increase the amount of advertising spend that the buyer sends to our platform. In addition, we charge fees to sellers for use of our technology, typically as a percentage of the cost of media, and we may decide to offer discounts or other pricing concessions in order to attract more inventory or demand, or to compete effectively with other providers that have different or lower pricing structures and may be able to undercut our pricing due to greater scale or other factors. Our revenue, take rate (our fee as a percentage of advertising spend), the value of our business, and the price of our stock could be adversely affected if we cannot maintain and grow our revenue and profitability through volume increases that compensate for price reductions, or if we are forced to make significant fee concessions, rebates, or refunds, or if buyers reduce spending with us or sellers reduce inventory available through our exchange due to fee disputes or pricing issues.

***Our take rates may be difficult to forecast and may decrease in future periods; any decrease in our take rates may result in a decrease in our revenue notwithstanding an increase in the amount of spend transacted through our platform.***

We generate revenue through our platform on a transactional basis where we are paid by a publisher each time an impression is monetized on our platform. Typically, this fee is structured as a percentage of advertising spend that the publisher receives for its inventory. Our take rate varies by publisher and transaction type. For instance, our take rate tends to be lower for PMP transactions compared to open auction, and tends to be lower on CTV transactions compared to other channels. We may also negotiate lower take rates with large sellers to win additional business or share of inventory, in particular in CTV.

Even if we are able to accurately forecast the anticipated total advertising spend transacted by buyers across our platform, we may have limited visibility regarding the revenue we will generate because we do not control what publisher inventory is purchased by a buyer. For substantially all transactions executed through our platform, our revenue is recognized net of any inventory costs that we remit to sellers. As a result, a decrease in our take rate could cause our revenue to decrease notwithstanding an increase in the total spend transacted through our seller platform.

***We have a history of losses and we face many risks that may prevent us from achieving or sustaining profitability in the future.***

We reported net losses of $53.4 million and $25.5 million during the years ended December 31, 2020 and 2019, respectively. As of December 31, 2020, we had an accumulated deficit of $394.5 million. We have implemented strategic plans designed to improve our financial performance and continue to increase revenue, and have taken steps to reduce unnecessary expenses and redirect spending to areas we expect to produce higher growth; however, these plans and steps may ultimately prove to be unsuccessful.

Notwithstanding these measures, and in light of the overall decline in advertising spend experienced in 2020, revenue may continue to decrease due to competitive pressures, maturation of our business, or other factors, and additional cost-reduction measures may be required even as we must continue to increase investment in technology in response to industry developments and to retain competitiveness. We may not be able to sustain growth or to achieve or sustain profitability in the future.

***As a result of various factors, our operating results have in the past and may in the future fluctuate significantly, be difficult to predict, and fall below analysts' and investors' expectations.***

Our operating results are difficult to predict, particularly because we generally do not have long-term contracts with buyers or sellers. We have experienced significant variations in revenue and operating results from period to period, and operating results may continue to fluctuate and be difficult to predict due to a number of factors, including:

- seasonality in demand for digital advertising, as many advertisers devote a disproportionate amount of their advertising budgets to the fourth quarter of the calendar year to coincide with increased holiday purchasing, and advertising inventory in the fourth quarter may be more expensive due to increased demand for advertising inventory;
- changes in pricing of advertising inventory or pricing for our solution and our competitors' offerings, including potential further reductions in our pricing and overall take rate as a result of competitive pressure, changes in supply, improvements in technology and extension of automation to higher-value inventory, uncertainty regarding rate of adoption, changes in the allocation of demand spend by buyers, changes in revenue mix, auction dynamics, pricing discussions or negotiations with clients and potential clients, header bidding and other factors;
- diversification of our revenue mix to include new services, some of which may have lower pricing than our historic lower-value inventory business or may cannibalize existing business;
- the addition or loss of buyers or sellers;
- general economic conditions and the economic health of our current and prospective sellers and buyers;
- changes in the advertising strategies or budgets or financial condition of advertisers;
- the performance of our technology and the cost, timeliness, and results of our technology innovation efforts;
- advertising technology and digital media industry conditions and the overall demand for advertising, or changes and uncertainty in the regulatory environment for us or buyers or sellers, including with respect to privacy regulation;
- the introduction of new technologies or service offerings by our competitors and market acceptance of such technologies or services;
- the phasing out of third-party cookies throughout the industry;
- our level of expenses, including investment required to support our technology development, scale our technology infrastructure and business expansion efforts, including acquisitions, hiring and capital expenditures, or expenses related to litigation;
- the impact of changes in our stock price on valuation of stock-based compensation or other instruments that are marked to market;
- the effectiveness of our financial and information technology infrastructure and controls;
- geopolitical and social factors, such as concerns regarding negative, unstable or changing economic conditions in the countries and regions where we operate, global and regional recessions, political instability, and trade disputes;
- foreign exchange rate fluctuations; and
- changes in accounting policies and principles and the significant judgments and estimates made by management in the application of these policies and principles.

Because significant portions of our expenses are relatively fixed, variation in our quarterly revenue can cause significant variations in operating results and resulting stock price volatility from period to period. Period-to-period comparisons of our historical results of operations are not necessarily meaningful, and historical operating results may not be indicative of future performance. If our revenue or operating results fall below the expectations of investors or securities analysts, or below any guidance we may provide to the market, the price of our common stock could decline substantially.

**Risks Related to the Advertising Technology Industry, Market, and Competition**

***Our revenue and operating results are highly dependent on the overall demand for advertising. Factors that affect the amount of advertising spending, such as economic downturns, can make it difficult to predict our revenue and could adversely affect our business.***

Our business depends on the overall demand for advertising and on the economic health of our current and prospective sellers and buyers. If advertisers reduce their overall advertising spending, our revenue and results of operations are directly affected. Various macro factors could cause advertisers to reduce their advertising budgets, including adverse economic conditions and general uncertainty about economic recovery or growth, particularly in North America and Europe, where we do most of our business, the occurrence of a pandemic or other health crisis, instability in political or market conditions generally, imposition of digital service taxes, and any changes in favorable tax treatment of advertising expenses and the deductibility thereof. Reductions in inventory due to loss of sellers make our solution less robust and attractive to buyers.

***The digital advertising market is relatively new. If this market develops more slowly or differently than we expect, our business, growth prospects and financial condition would be adversely affected.***

Our future growth will be constrained if we are not able to adapt successfully to market evolution. In addition, the success of our efforts to advance new solutions for increased advertising automation will depend upon adoption of our solution by personnel at buyers and sellers in lieu of their traditional methods of order placement. It is difficult to predict adoption rates, demand for our solution, the future growth rate and size of the digital advertising solutions market or the entry of competitive solutions. Any expansion of the market for digital advertising solutions depends on a number of factors, including social and regulatory acceptance, the growth of the overall digital advertising market and the growth of specific sectors including social, mobile, video, and out-of-home as well as the actual or perceived technological viability, quality, cost, performance and value associated with emerging digital advertising solutions. If digital marketing does not develop in the manner we expect, our business and financial condition would be adversely affected.

***We operate in an intensely competitive market that includes companies that have greater financial, technical and marketing resources than we do.***

We face intense competition in the marketplace. We compete for advertising spending against competitors that, in some cases, are also buyers and/or sellers on our platform. We also compete for supply of advertising inventory against a variety of competitors. Some of our existing and potential competitors are better established, benefit from greater name recognition, may have offerings and technology that we do not have or have significantly more financial, technical, sales, and marketing resources than we do. In addition, some competitors, particularly those with greater scale or a more diversified revenue base and a broader offering, have greater flexibility than we do to compete aggressively on the basis of price and other contract terms, or to compete with us by including in their product offerings services that we may not provide. Some existing and potential buyers have their own relationships with sellers or are seeking to establish such relationships, and many sellers are investing in capabilities that enable them to connect more effectively directly with buyers. Our business suffers to the extent that buyers and sellers purchase and sell advertising inventory directly from one another or through intermediaries other than us, reducing the amount of advertising spend on our platform. New or stronger competitors may emerge through acquisitions and industry consolidation or through development of disruptive technologies. If our offerings are not perceived as competitively differentiated, we could lose clients, market share or be compelled to reduce our prices, making it more difficult to grow our business profitably.

There has been rapid evolution and consolidation in the advertising technology industry, and we expect these trends to continue, thereby increasing the capabilities and competitive posture of larger companies, particularly those that are already dominant in various ways, and enabling new or stronger competitors to emerge. There is a finite number of large buyers and sellers in our target markets, and any consolidation of buyers or sellers may give the resulting enterprises greater bargaining power or result in the loss of buyers and sellers that use our platform, and thus reduce our potential base of buyers and sellers, each of which would lead to erosion of our revenue.

As technology continues to improve and market factors continue to attract investment, competition and pricing pressure may increase and market saturation may change the competitive landscape in favor of larger competitors with greater scale and broader offerings, including those that can afford to spend more than we can to grow more quickly and strengthen their competitive position. In addition, our competitors or potential competitors may adopt certain aspects of our business model, which could reduce our ability to differentiate our solutions.

For all of these reasons, we may not be able to compete successfully against our current and future competitors.

**Risks Related to Our Collection, Use and Disclosure of Data**

***Our business depends on our ability to collect and use data to deliver advertisements, and to disclose data relating to the performance of advertisements. Any limitation imposed on our collection, use or disclosure of this data could significantly diminish the value of our solution and cause us to lose sellers, buyers, and revenue. Consumer tools, regulatory restrictions and technological limitations all threaten our ability to use and disclose data.***

The more informed advertising is about its audience, the more valuable it is. Programmatic advertising enables more precise audience targeting based on the identity and actions of the user. Targeted advertising is generally more effective and valuable for buyers than other types of advertising, resulting in more revenue for sellers. In order to target advertising, we and our clients must be permitted to use data in a variety of ways. Our ability to collect, use, and share data about advertising purchase and sale transactions and user behavior and interaction with content is critical to the value of our services, and any limitation on our data practices could impair our ability to deliver effective solutions to our clients. Any restriction on the types of data we collect could make placement of advertising through our solution less valuable, with commensurate reductions in revenue.

Internet users can, with increasing ease, implement practices or technologies that may limit our ability, or that of our sellers, buyers and business partners, to collect data. For example, users may delete or block the use of the cookies used to collect data, including through their browser or mobile device settings. Internet users may also download "ad blocking" software that prevents certain cookies from being stored on a user's computer or mobile device, including to prevent the display of targeted advertisements. In addition, most widely used web browsers allow users to send "Do Not Track" signals to indicate that they do not wish to have their web usage tracked, while many device manufacturers and operating systems are increasingly promoting features that allow users to disable the collection of data. Even if ad blockers do not ultimately have a material impact on our business, investor concerns about ad blockers could cause our stock price to decline.

In addition, new laws and regulations, such as the GDPR and CCPA, restrict the ability to collect and process certain types of user data, including, in the case of GDPR, requiring user consent or another legal basis in order to collect or process personal data and, in the case of CCPA, giving the user a right to opt out of the collection or processing of personal data. To the extent sellers are unable to obtain valid consent or otherwise provide a legal basis for collecting and processing personal data, it would impair the ability to deliver targeted advertisements on their inventory.

Further, much of the data we collect and use belongs to our buyers or sellers, and we receive their permission to use it. Although our sellers and buyers generally permit us to aggregate and use data from advertising placements, subject to certain restrictions, sellers or buyers might decide to restrict our collection or use of their data. There could be various reasons for this, including perceptions by buyers that their data can be used by sellers to extract higher prices for impressions, or perceptions by sellers that their data can be used by buyers to bid tactically to reduce pricing for impressions. As consumers continue to increase their use of digital technology and to incorporate multiple devices into their lives, linking and using data across such devices will become increasingly important. Various challenges affect our ability to link data relating to discrete devices or browsers, including different technologies, increased user awareness and sensitivity regarding use of data about their device usage, and evolving regulatory and self-regulatory standards. These challenges may slow growth, and if we are not able to cope with these challenges as effectively as other companies, we will be competitively disadvantaged. Any limitation on our ability to collect data about user behavior and interaction with content could make it more difficult for us to deliver effective solutions that meet the needs of sellers and buyers.

***If cookies are replaced by alternative tracking mechanisms, our performance may decline and we may lose buyers and revenue.***

Industry participants in the advertising technology ecosystem have taken or may take action to eliminate or restrict the use of cookies and other identifiers, and we expect the use of third-party cookies to be largely phased out by 2022. For instance, Google has announced plans to fully eliminate the use of third-party cookies, while Apple has further restricted the use of mobile identifiers on its devices. In the absence of third-party cookies, it is possible that these or other companies in our ecosystem may rely on proprietary algorithms or statistical methods to track web users without cookies, or may utilize log-in credentials entered by users, to track web usage, including usage across multiple devices, without cookies. Alternatively, such companies may build different and potentially proprietary user tracking methods into their widely-used web browsers. While these new identification solutions will likely provide some level of consistency and compatibility with our platform, they are unreleased and unproven, and will require substantial development and commercial changes for us to support. There is also further risk that the changes will disproportionately benefit the owners of these platforms or the large walled gardens that have access to large amounts of first party data. Even if cookies are effectively replaced by open industry-wide tracking standards rather than proprietary standards, we may still incur substantial re-engineering costs to replace cookies with these new technologies. This may also diminish the quality or value of our services to buyers if such new technologies do not provide us with the quality or timeliness of the data that we currently generate from cookies.

***Our belief that the elimination of third-party cookies will lead to an increased use of first-party publisher segments may be incorrect.***

We believe that the elimination of third party cookies has the potential to shift the programmatic ecosystem from an identity model powered by buyers that are able to aggregate and target audiences through cookies to one enabled by sellers that have direct relationships with consumers and are therefore better positioned to obtain user data and consent for implementing first party identifiers. While we believe that our platform and scale position us well to provide the infrastructure and tools needed for a publisher-centric identity model to succeed, there is no guarantee that our efforts will lead to an increase of the use of first-party publisher segments in the ecosystem. It is also possible that the increased use of first-party publisher segments will disproportionately benefit sellers or the large walled gardens that have access to large amounts of first party data. Additionally, these changes could create some variability in our revenue across certain buyers or sellers, depending on the timing of changes and developed solutions, and even if there is an increase in the proliferation of first-party publisher segments, we may still incur substantial re-engineering costs to optimize our solution for use with such segments.

### Risks Related to Regulation

***Legislation and regulation of digital businesses, including privacy and data protection regimes, could create unexpected additional costs, subject us to enforcement actions for compliance failures, or cause us to change our technology solution or business model, which may have an adverse effect on the demand for our solution.***

Many local, state, federal, and international laws and regulations apply to the collection, use, retention, protection, disclosure, transfer, and other processing of data collected from and about consumers and devices, and the regulatory framework for privacy issues is evolving worldwide. Various U.S. and foreign governments, consumer agencies, self-regulatory bodies, and public advocacy groups have called for or implemented new regulation directed at the digital advertising industry in particular, and we expect to see an increase in legislation and regulation related to the collection and use of data to target advertisements and communicate with consumers. Such legislation or regulation could affect the costs of doing business online and may adversely affect the demand for or the effectiveness and value of our solution. Some of our competitors may have more access to lobbyists or governmental officials and may use such access to effect statutory or regulatory changes in a manner that commercially harms us while favoring their solutions.

Various federal privacy bills have been introduced in the U.S. Congress recently and a number of states, including California, have passed or are considering privacy bills. These regulations may place significant restrictions on the collection and use of certain types of data used for behavioral advertising. The FTC has issued guidance on how companies should apply privacy principles to tracking and delivering targeted advertisements to consumers across multiple devices. The FTC has also adopted revisions to the Children's Online Privacy Protection Act that expand liability for the collection of information (including certain device information such as persistent identifiers) by operators of websites and other online services that are directed to children or that otherwise use (for certain purposes) information collected from or about children.

Recently, California passed two privacy laws broadly regulating business' processing of personal information, the California Consumer Privacy Act of 2018 ("CCPA") and the California Privacy Rights Act ("CPRA"). The CCPA, which went into effect on January 1, 2020, is the most comprehensive data privacy regulation to date in the United States, and could be the precursor to other similar legislation in other states or at the federal level. The CCPA defines personal information in a way that captures the types of data that we collect, such as device identifiers and IP addresses. Under the CCPA, California residents have new privacy rights (including rights of access and deletion), which bear similarity to some of the data subject rights granted to EU residents under the GDPR. In addition, the CCPA gives California residents the right to opt-out of the sale of their personal information or to opt in to such sales, in the case of data relating to minors). The CCPA defines "sale" broadly, which could be interpreted to include typical advertising technology activities; this opt-out right may impact the ability of ad tech companies to provide services to their customers. The law establishes a new privacy framework for covered businesses, imposing additional compliance obligations on sellers and ad tech companies. Interpretation of the requirements remains unclear due to ambiguities in the regulations and a lack of enforcement actions to date. The California Attorney General issued final regulations implementing the CCPA that became enforceable in 2020. Additional modifications were subsequently proposed, though those modifications have yet to be finalized.

The recently-passed CPRA will take effect in January 2023 and will impose additional notice and opt out obligations on the digital advertising space, including an obligation to provide an opt-out for behavioral advertising. It will also give the Attorney General broad rule making authority to issue regulations that could have additional impacts on our business. The CPRA, like the CCPA, will cause us to incur additional compliance costs and may impose additional restrictions on us and on our industry partners.

The CCPA and CPRA may precipitate additional privacy regulation by federal, state and local governments, which may increase our compliance costs and strain our technical capabilities, and which may conflict with each other. If we are unable to comply with the CCPA, CPRA, or other related legislation in the future, we may be subject to regulatory or private investigations, and if we are unable to use information for behavioral advertising as we have in the past, our business could be materially affected.

In the European Economic Area ("EEA") and the United Kingdom ("UK"), the General Data Protection Regulation, Regulation (EU) 2016/679 ("GDPR"), has now been in effect for more than two years. A key feature of the GDPR is that it treats much of the end-user information that is critical to programmatic digital advertising as "personal data" and therefore subject to significant conditions and restrictions on its collection and use. Without this end-user information, the value of programmatic advertising inventory diminishes, resulting in lower demand and prices, and potentially less advertising spend and revenue for us and other industry participants. If European sellers react by choosing to monetize their content through non-advertising-based methods (such as paid subscriptions), or reduce use of personal data subject to the GDPR in order to reduce compliance cost and risk, the volume and value of impressions available through our exchange would decrease, with potentially significant adverse consequences for our business.

The GDPR also sets out higher potential liabilities for certain data protection violations and creates a greater compliance burden for us in the course of delivering our solution in Europe. Compliance stakes are high because penalties for violation of the law can reach up to the greater of 20 million Euros or 4% of total worldwide annual turnover (revenue).

Moreover, the regulatory climate in Europe, in particular, has grown increasingly unfavorable and we anticipate increased regulatory scrutiny on the digital advertising industry as a whole.

Further, many governments are restricting the transmission or storage of information about individuals beyond their national borders. Such restrictions could, depending upon their scope, limit our ability to utilize technology infrastructure consolidation, redundancy, and load-balancing techniques, resulting in increased infrastructure costs, decreased operational efficiencies and performance, and increased risk of system failure.

These laws and regulations are continually evolving, not always clear, and not always consistent across the jurisdictions in which we do business. Any failure to protect, and comply with applicable laws and regulations or industry standards applicable to, personal data or other data relating to consumers could result in enforcement action against us, including fines, imprisonment of our officers, and public censure, claims for damages by consumers and other affected individuals, damage to our reputation, and loss of goodwill.

***Recent rulings from the Court of Justice of the European Union invalidated the EU-U.S. Privacy Shield as a lawful means for transferring personal data from the European Union to the United States; this introduces increased uncertainty and may require us to change our EEA and UK data practices and/or rely on an alternative legally sufficient compliance measure.***

The GDPR generally prohibits the transfer of personal data of EEA and UK subjects outside of the European Union and the UK to countries whose laws do not ensure an adequate level of protection, unless a lawful data transfer solution has been implemented. On July 16, 2020, in a case known as "Schrems II," the Court of Justice of the European Union ("CJEU") ruled on the validity of two of the primary data transfer solutions. The first method, EU-U.S. Privacy Shield operated by the U.S. Department of Commerce, was declared invalid as a legal mechanism to transfer data from the EEA and UK to the U.S. As a result, despite the fact that we have certified our compliance to the EU-U.S. Privacy Shield, this mechanism can no longer be used as a lawful means to transfer EEA and UK data to us in the U.S. For the time being, the Department of Commerce continues to operate the EU-U.S. Privacy Shield, however, and if we fail to comply with the Privacy Shield requirements, we risk investigation and sanction by U.S. regulatory authorities, including the Federal Trade Commission. Such investigation could cost us significant time and resources, and could potentially result in fines, criminal prosecution, or other penalties.

The second mechanism, Standard Contractual Clauses ("SCCs"), an alternative transfer measure that we also offer to our EEA and UK customers for extra-EEA and UK data transfers, was upheld as a valid legal mechanism for transnational data transfer. However, the ruling requires that EEA and UK organizations seeking to rely on the SCCs to export data out of the EEA and UK to ensure the data is protected to a standard that is "essentially equivalent" to that under the GDPR including, where necessary, by taking "supplementary measures" to protect the data. It remains unclear what "supplementary measures" must be taken to allow the lawful transfer of personal data to the United States, and it is possible that EEA and UK data protection authorities may determine that there are no supplementary measures that can legitimize data transfers from the EEA and the UK to the U.S. For the time being, we will rely on SCCs for transfers of EEA and UK personal data to the U.S. and explore what "supplementary measures" can be implemented to protect such personal data that is transferred to us in the United States. We may also need to restructure our data export practices as a result of Brexit. At the end of 2020, European Union law ceased to apply to the UK, and the UK and EU are currently working under a temporary cooperation agreement to establish rules governing the data flow between the UK and EEA.

***The GDPR and changes in U.S. laws impose new requirements for end user consent or opt-out that are not yet well understood.***

End-user consent to data collection through device access (including the placement of cookies) has been required for some time under the European Union Privacy and Electronic Communications Directive (Directive 2002/58/EC), commonly referred to as the "ePrivacy Directive," but the GDPR has added complexity and risk regarding the obligations to obtain valid consent.

End-user consent is difficult for ad tech intermediaries like us to obtain because we do not have direct relationships with such end users, so we have historically relied upon sellers to obtain consent for use of our technology. To the extent any seller does not adequately satisfy its consent obligations for our technology, we may face regulatory risk. Further, emerging regulatory guidance in the EU has challenged this method of obtaining consent. To the extent we (and/or our buyers) are required to obtain or confirm consent directly from end users, our ability to use cookies or access devices within applicable jurisdictions may become significantly restricted.

In 2018, IAB Europe released a tool, the Transparency and Consent Framework (the "TCF"), in order to assist sellers, advertisers and advertising technology providers, with the process of obtaining consent from end users in accordance with the GDPR (and also to provide end users with greater transparency in the advertising chain). There is limited guidance regarding proper implementation of the tool and some sellers and ad tech providers may not be using the tool or interpreting consent signals correctly. The TCF continues to evolve and we will need to devote internal resources to support any additional requirements imposed by the TCF (and possibly other consent tools). It is not yet clear whether the TCF (or any other) consent tool will be accepted by regulators as appropriate consent mechanisms.

In the US, some government regulators and privacy advocates have suggested creating a "Do Not Track" standard that would allow Internet users to express a preference, independent of cookie settings in their browser, not to have their online browsing activities tracked. "Do Not Track" has garnered renewed interest in light of the CCPA. The CCPA regulations contemplate browser-based or similar "do not sell" signals. Further, the CPRA contemplates the use of technical opt-outs for the sale and sharing of personal information for advertising purposes as well as to opt out of the use of sensitive information for advertising purposes.

Legal standards and regulatory guidance will continue to evolve. National regulators in the UK and EU are evolving their guidance on the use of advertising technologies and compliance with the GDPR and ePrivacy Directive. This guidance may be burdensome or inconsistent across countries, and present challenges to the way we operate. Some regulators are undertaking enforcement investigations into advertising technology companies, and the outcome of these investigations may present risks to our business.

As a result of all of the factors set forth above, our or our clients' ability to serve target advertisements may become significantly impaired or complicated in certain jurisdictions.

***In Europe, it remains unclear whether certain legal bases for data processing are permitted for behavioral advertising.***

The GDPR sets forth six alternative legal bases for processing personal data, but only two are relevant to ad tech: consent by the data subject and "legitimate interests," which means that "processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject." We generally rely upon legitimate interests. There is minimal guidance on the factors that would override any legitimate interest for processing. Some EU regulators or courts may conclude that the processing of personal data for the purposes of behavioral advertising does not satisfy the legitimate interests of the controller, or that such interests do not outweigh the privacy rights of end users, even with respect to ad tech parties that only collect pseudonymous personal data. Unavailability of this basis for processing end users' personal data would require us to obtain end-user consent for processing under the GDPR, which may not be possible for us, or other ad tech intermediaries, without changes to the ad tech business that would be difficult, time-consuming, expensive, and perhaps unattainable. These complexities are compounded by the ability of different national and state governmental authorities within the EU to adopt differing interpretative and enforcement approaches to the law.

***Legal uncertainty and industry unpreparedness may mean substantial disruption and inefficiency, demand constraints, and reduced inventory supply and value.***

Some sellers may be unprepared to comply with evolving regulatory guidance under US and foreign privacy laws, and therefore may remove personal data from their inventory before passing it into the bid stream, which would reduce the value of the inventory to buyers. Even well-prepared sellers and buyers will be confronted with difficult choices and administrative and technical hurdles to implement their privacy compliance programs and integrate with multiple other parties in the ecosystem. Further, compliance program design and implementation will be an ongoing process as understanding of the new law increases and industry compliance standards evolve. The resulting process friction could result in substantial inefficiency and loss of inventory and demand, as well as increased burdens upon our organization as we seek to assist clients and adapt our own technology and processes as necessary to comply with the law and adapt to industry practice. The uncertain regulatory environment caused by changes to privacy laws discussed in the sections above may benefit large, integrated competitors like Google, Facebook, Comcast Verizon, AT&T and Amazon, which have greater compliance resources and can take advantage of their direct relationships with end users to secure consents from, and offer necessary choices to, end users that we and other intermediaries without direct user relationships are less able to obtain under current industry conditions.

***We are subject to regulation with respect to political advertising, which lacks clarity and uniformity.***

We are subject to regulation with respect to political advertising activities, which are governed by various federal and state laws in the U.S., and national and provincial laws worldwide. Online political advertising laws are rapidly evolving and in certain jurisdictions we have compliance requirements with respect to political ads delivered on our platform. In some jurisdictions we may determine not to serve political advertisements due to uncertainty around these requirements and potential burdens of compliance. In addition, our sellers may impose restrictions on receiving political advertising. The lack of uniformity and increasing compliance requirements around political advertising may adversely impact the amount of political advertising spent through our platform, increase our operating and compliance costs, and subject us to potential liability from regulatory agencies.

***Failure to comply with industry self-regulation could harm our brand, reputation, and our business.***

In addition to compliance with government regulations, we voluntarily participate in trade associations and industry self-regulatory groups that promulgate best practices or codes of conduct addressing privacy and the provision of digital advertising. If we encounter difficulties abiding by these principles, we may be subject to negative publicity, as well as investigation and litigation by governmental authorities, self-regulatory bodies or other accountability groups, buyers, sellers, or other private parties. Any such action against us could be costly and time consuming, require us to change our business practices, divert management's attention and our resources, and be damaging to our reputation and our business. In addition, we could be adversely affected by new or altered self-regulatory guidelines that are inconsistent with our practices.

**Risks Related to Our Relationships with Buyers and Sellers and Other Strategic Relationships**

***We rely on buyers and sellers to abide by contractual requirements and relevant laws, rules, and regulations when using our solution. The acts or omissions of buyers or sellers, or our own failure to meet advertising and inventory content standards and provide services that our buyers and sellers trust, could harm our brand and reputation and those of our partners, and negatively impact our business, financial condition and results of operations.***

The buyers and sellers engaging in transactions through our platform impose various requirements upon each other, and they and the underlying advertisers are subject to regulatory requirements by governments and standards bodies applicable to their activities. Though we contractually require buyers and sellers to abide by relevant laws, rules and regulations, as well as restrictions by their counterparties, when transacting on our platform, we do not provide or control the content of the advertisements that we serve or the content of the websites providing the inventory, and there are many circumstances in which it is difficult or impossible for us to monitor or evaluate the compliance of our buyers and sellers. If buyers or sellers fail to abide by relevant laws, rules and regulations, or contract requirements, we could potentially face liability for such misuse.

In addition, both advertisers and inventory suppliers are concerned about being associated with content they consider inappropriate, competitive or inconsistent with their brands, or illegal, and they are hesitant to spend money or make inventory available, respectively, without some guarantee of brand security. Buyers increasingly require us to accept liability for inventory quality and sellers increasingly require us to accept liability for ad content. Consequently, our reputation depends in part on providing services that our buyers and sellers trust, and we have contractual obligations to meet content and inventory standards. We contractually prohibit the misuse of our platform by our buyers and sellers and actively monitor inventory against our quality guidelines. Despite such efforts, we may provide access to inventory that is objectionable to our buyers or serve advertising that contains objectionable content, which could harm our or our clients' brand and reputation, decrease their trust in our platform, and negatively impact our business, financial condition and results of operations. Furthermore, we may receive public pressure to discontinue working with certain sellers or buyers on our platform.

***Our contracts with buyers and sellers are generally not exclusive, may be terminated upon relatively short notice, and generally do not require minimum volumes or long-term commitments. If buyers or sellers representing a significant portion of the demand or inventory in our marketplace decide to materially reduce the use of our solution, we could experience an immediate and significant decline in our revenue and profitability and harm to our business.***

Generally, our buyers and sellers are not obligated to provide us with any minimum volumes of business, may do business with our competitors as well as with us, may reduce or cancel their business with us or terminate our contracts without penalty, and may bypass us and transact directly with each other or through other intermediaries that compete with us. Accordingly, our business is highly vulnerable to changes in the macro environment, price competition, and development of new or more compelling offerings by our competitors, which could reduce business generally or motivate buyers or sellers to migrate to competitors' offerings.

Sellers and buyers may seek to change the terms on which they do business with us, or allocate their advertising inventory or demand to our competitors who provide advertising demand and supply to them on more favorable terms or whose offerings are considered more beneficial. Supply of advertising inventory is also limited for some sellers, such as special sites or new technologies, and sellers may request higher prices, fixed price arrangements or guarantees that we cannot provide as effectively as our competitors, or that would reduce the profitability of that business. In addition, sellers sometimes place significant restrictions on the sale of their advertising inventory, such as strict security requirements, limitations on data sharing, prohibitions on advertisements from specific advertisers or specific industries, and restrictions on the use of specified creative content or format. Finally, with the proliferation of header bidding, sellers' inventory is available for purchase through multiple exchanges simultaneously. Buyers, in turn, are free to direct their spend to us or one or more of our competitors, and increasingly are seeking price concessions, rebates, or other consideration to direct more spend towards us.

We serve many buyers and sellers, but certain large buyers and sellers have accounted for and will continue to account for a disproportionate share of business transacted through our solution. In 2020 there were two buyers of advertising inventory that indirectly contributed to approximately 40% of revenue through their buying activity from sellers on our platform. If a buyer or group of buyers representing a significant portion of the demand in our marketplace, or a seller or group of sellers representing a significant portion of the inventory in our marketplace decides to materially reduce use of our solutions, it could cause an immediate and significant decline in our revenue and profitability and harm to our business. In addition, loss of substantial inventory or demand could degrade our marketplace. Loss of major DSP sources of demand could adversely affect bid density or pricing in our auctions, and reduction in fees if we are not able to redirect inventory to other demand sources. Loss of important unique inventory could reduce fees from demand that cannot be shifted to other sellers and make it harder to differentiate ourselves from our competitors. The number of large media buyers and sellers in the market is finite, and it could be difficult for us to replace the losses from any buyers or sellers whose relationships with us diminish or terminate. Additionally, if we overestimate future usage, we may incur additional expenses in adding infrastructure without a commensurate increase in revenue, which would harm our profitability and other operating results.

Because of these factors, we seek to expand and diversify our client relationships. In particular, as part of our strategy to increase the volume of advertising inventory on our exchange, we are continuing relationships with aggregators of inventory and with large sources of supply that have their own monetization capabilities but also allow third parties to connect to their exchanges and bid on their inventory. These relationships represent additional risks in terms of inventory quality, transaction discrepancies, and collections, and may be less profitable because we may be required to compensate these partners or share the fees available for intermediaries in these transactions, and may incur higher serving costs relative to revenue.

***We must provide value to both buyers and sellers of advertising without being perceived as favoring one over the other or being perceived as competing with them through our service offerings.***

We are interposed between buyers and sellers, and to be successful, we must continue to find ways of providing value to both without being perceived as favoring one at the expense of the other. For example, our proprietary auction algorithms, which are designed to improve auction outcomes, influence the allocation and pricing of impressions and must do so in ways that add value to both buyers and sellers. Continued technological evolution in the availability and use of more data to inform buying and selling decisions necessitates that we, as an intermediary, use data in a manner that complies with the expectations of both our seller and buyer clients. Furthermore, because new business models continue to emerge, we must constantly adapt our relationship with buyers and sellers and how we market ourselves to each. Consistent with our goal of connecting buyers and sellers, we seek to grow our connections to each, and we must take care that our deeper connections with buyers, on the one hand, or sellers, on the other hand, do not come at the expense of the other's interests. In addition, as our own capabilities evolve, we may be perceived by clients, particularly buyers, as competing with them. If we fail to balance our clients' interests appropriately, our ability to provide a full suite of services and our growth prospects may be compromised.

***We rely on technological intermediaries such as DSPs to purchase advertising on behalf of advertisers. Such buyers may have or develop high-risk credit profiles or pay slowly, which may result in credit risk to us or require additional working capital to fund our accounts payable. In addition, direct billing arrangements between buyers and sellers may result in unfavorable fee dynamics and increased working capital demands.***

Generally, we invoice and collect from buyers the full purchase price for impressions they have purchased, retain our fees, and remit the balance to sellers. However, in some cases, we may be required or choose to pay sellers for impressions delivered before we have collected, or even if we are unable to collect, from the buyer of those impressions. There can be no assurances that we will not experience bad debt in the future, and write-offs for bad debt could have a materially negative effect on our results of operations for the periods in which the write-offs occur. In addition, we attempt to coordinate collections from our buyers so as to fund our payment obligations to our sellers. However, some buyers and sellers may require direct billing and collection arrangements between themselves, and some providers of header bidding wrappers or other downstream decisioning mechanisms in which we participate (such as Google EB) may control billing and collection for transactions we win through their platforms. Further, growth and increased competitive pressure in the digital advertising industry is causing advertisers and buyers to become more demanding, resulting in overall increased focus by all industry participants on pricing, transparency, and cash and collection cycles. Some buyers have experienced financial pressures that have motivated them to slow the timing of their payments to us. If buyers slow their payments to us or our cash collections are significantly diminished as a result of these dynamics, our revenue and/or cash flow could be adversely affected and we may need to use working capital to fund our accounts payable pending collection from the buyers. This may result in additional costs and cause us to forgo or defer other more productive uses of that working capital.

***Our sales efforts with buyers and sellers may require significant time and expense and may not yield the results we seek.***

Attracting new buyers and sellers and increasing our business with existing buyers and sellers involves substantial time and expense, and we may not be successful in our efforts. We may spend substantial time and effort educating buyers and sellers about our offerings, including providing demonstrations and comparisons against other available solutions. This process can be costly and time-consuming, and is complicated by us having to spend time integrating our solution with software of buyers and sellers. Because our solution may be less familiar in some markets outside the United States, the time and expense involved with attracting, educating and integrating buyers and sellers in international markets may be even greater than in the United States. If we are not successful in targeting, supporting and streamlining our sales processes, our ability to grow our business may be adversely affected. In addition, because of competitive market conditions and negotiating leverage enjoyed by large buyers and sellers, we are sometimes forced to choose between loss of business or contracting on terms that allocate more risk to us than we would prefer to accept.

***Our business relationships expose us to risk of substantial liability for contract breach, violation of laws and regulations, intellectual property infringement and other losses, and our contractual indemnities and limitations of liability may not protect us adequately.***

Our agreements with sellers, buyers and other third parties typically obligate us to provide indemnity and defense for losses resulting from claims of intellectual property infringement, damages to property or persons, business losses or other liabilities. Generally, these indemnity and defense obligations relate to our own business operations, obligations and acts or omissions. However, under some circumstances, we agree to indemnify and defend contract counterparties against losses resulting from their own business operations, obligations and acts or omissions, or the business operations, obligations and acts or omissions of third parties. For example, because our business interposes us between buyers and sellers in various ways, buyers often require us to indemnify them against acts and omissions of sellers, and sellers often require us to indemnify them against acts and omissions of buyers. Large indemnity obligations, or obligations to third parties not adequately covered by the indemnity obligations of our contract counterparties, could expose us to significant costs.

***Our solution relies on third-party open source software components. Failure to comply with the terms of the underlying open source software licenses could expose us to liabilities, and the combination of certain open source software with code that we develop could compromise the proprietary nature of our solution.***

Our solution utilizes software licensed to us by third-party authors under "open source" licenses. The use of open source software may entail greater risks than the use of third-party commercial software, as open source licensors generally do not provide warranties or other contractual protections regarding infringement claims or the quality of the code. If we combine our proprietary software with open source software in a certain manner, we could, under certain open source licenses, be required to release the source code of our proprietary software to the public. This would allow our competitors to create similar solutions with lower development effort and time and ultimately put us at a competitive disadvantage.

The terms of many open source licenses have not been interpreted by U.S. courts, and there is a risk that these licenses could be construed in a way that could impose unanticipated conditions or restrictions on us. Moreover, we cannot guarantee that our processes for controlling our use of open source software will be effective. If we are held to have breached the terms of an open source software license, we could be required to seek licenses from third parties to continue operating using our solution on terms that are not economically feasible, to re-engineer our solution or the supporting computational infrastructure to discontinue use of certain code, or to make generally available, in source code form, portions of our proprietary code.

**Risks Related to Our Operations**

***Real or perceived errors or failures in the operation of our solution could damage our reputation and impair our sales.***

We must operate our technology infrastructure without interruption to support the needs of sellers and buyers. Because our software is complex, undetected errors and failures may occur, especially when new versions or updates are made to our software or network infrastructure, changes are made to sellers' or buyers' software interfacing with our solution, or as we further integrate Telaria's technologies with our own. Errors or bugs in our software, faulty algorithms, technical or infrastructure problems, or updates to our systems could lead to an inability to effect transactions or process data to place advertisements or price inventory effectively, cause the inadvertent disclosure of proprietary data, or cause advertisements to display improperly or be placed in proximity to inappropriate content. Such errors or failures could also result in negative publicity, disclosure of confidential information, damage to our reputation, loss of or delay in market acceptance of our solution, increased costs or loss of revenue, loss of competitive position, or claims by advertisers for losses sustained by them. We may make errors in the measurement of transactions conducted through our solution, causing discrepancies with the measurements of buyers and sellers, which can lead to a lack of confidence in us and require us to reduce our fees or provide refunds to buyers and sellers. Alleviating problems resulting from errors in our software could require significant expenditures of capital and other resources and could cause interruptions, delays, or the cessation of our business.

***Various risks could interrupt access to our network infrastructure or data, exposing us to significant costs and other liabilities.***

Our revenue depends on the technological ability of our solution to deliver and measure advertising impressions, and the operation of our exchange and our ability to place impressions depend on the continuing and uninterrupted performance of our IT systems. Our platform operates on our data processing equipment that is housed in third-party commercial data centers that we do not control or on servers owned and operated by cloud-based service providers. We rely on multiple bandwidth providers, multiple internet service providers, as well as content delivery network, or CDN providers, and domain name systems, or DNS providers, and mobile networks to deliver video ads. In addition, our systems interact with systems of buyers and sellers and their contractors. Any damage to, or failure of, these systems could result in interruptions to the availability or functionality of our service. Moreover, the failure of our data center hosting facilities or any other third-party providers to meet our capacity requirements could result in interruptions in the availability or functionality of our solutions or impede our ability to scale our operations. All of these facilities and systems are vulnerable to interruption and/or damage from a number of sources, many of which are beyond our control, including, without limitation: (i) loss of adequate power or cooling and telecommunications failures; (ii) fire, flood, earthquake, hurricane, and other natural disasters; (iii) software and hardware errors, failures, or crashes; (iv) financial insolvency; and (v) computer viruses, malware, hacking, terrorism, and similar disruptive problems. In particular, intentional cyber-attacks present a serious issue because they are difficult to prevent and remediate and can be used to defraud our buyers and sellers and their clients and to steal confidential or proprietary data from us, our clients, or their users. Further, because our Los Angeles headquarters and San Francisco offices and our California data center sites are in seismically active areas, earthquakes present a particularly serious risk of business disruption. These vulnerabilities may increase with the complexity and scope of our systems and their interactions with buyer and seller systems. Malfunction or failure of our systems, or other systems that interact with our systems, or inaccessibility or corruption of data, could disrupt our operations and negatively affect our business and results of operations to a level in excess of any applicable business interruption insurance, result in potential liability to buyers and sellers, and negatively affect our reputation and ability to sell our solution.

***Any breach of our computer systems or confidential data in our possession could expose us to significant expense and liabilities and harm our reputation.***

We maintain our own confidential and proprietary information in our IT systems, and we control or have access to confidential, proprietary, and personal data belonging or related to buyers, sellers, and their clients and users, as well as vendors and business partners. Our clients and various third parties have access to our confidential and proprietary information. There is no guarantee that inadvertent or unauthorized use or disclosure will not occur or that third parties will not gain unauthorized access to this data despite our efforts to protect this data. Though we undertake robust security measures, any security incident could disrupt computer systems or networks, interfere with services to our sellers, buyers, or their clients, and result in unauthorized access to personally identifiable information, intellectual property, and other confidential business information owned by us or our buyers, sellers, or vendors. As a result, we could be exposed to legal claims and litigation, indemnity obligations, regulatory fines and penalties, contractual obligations, other liabilities, significant costs for remediation and re-engineering to prevent future occurrences, significant distraction to our business, and damage to our reputation, our relationships with buyers and sellers, and our ability to retain and attract new buyers and sellers. If personally identifiable information is compromised, we may be required to undertake notification and remediation procedures, provide indemnity, and undergo regulatory investigations and penalties, all of which can be extremely costly and result in adverse publicity.

***Failure to detect or prevent fraud, intrusion of malware through our platform into the systems or devices of our clients and their customers, or other actions that impact the integrity of our solution or advertisement performance, could cause sellers and buyers to lose confidence in our solution and expose us to legal claims, which would cause our business to suffer. If we terminate relationships with sellers as a result of our screening efforts, our volume of paid impressions may decline.***

We have in the past, and may in the future, be subject to fraudulent and malicious activities undertaken by persons seeking to use our platform for improper purposes, including to divert or artificially inflate purchases by buyers through our platform, or to disrupt or divert the operation of the systems and devices of our clients and their customers to misappropriate information, generate fraudulent billings, stage hostile attacks, or for other illicit purposes. Examples of such activities include the use of bots or other automated or manual mechanisms to generate fraudulent impressions that are delivered through our platform, which could overstate the performance of advertising impressions. Such activities could also include the introduction of malware through our platform by persons seeking to commandeer, or gain access to information on, consumers' devices. We use proprietary and third party technology to identify non-human inventory and traffic, as well as malware, and we generally terminate relationships with parties that appear to be engaging in such activities, which may result in fewer paid impressions in the year the relationships are terminated than would have otherwise occurred. Despite our efforts, it can be difficult to detect fraudulent or malicious activity for various reasons. If we fail to detect or prevent fraudulent or other malicious activity, we could face legal claims from clients and/or consumers and the affected advertisers may experience or perceive a reduced return on their investment or heightened risk associated with use of our solution, resulting in dissatisfaction with our solution, refusals to pay, refund demands, loss of confidence of buyers or sellers, or withdrawal of future business. We also face claims from sellers that we terminate because of known or perceived fraudulent activity, and any such claim could be material.

***Failure to maintain the brand security features of our solution could harm our reputation and expose us to liabilities.***

It is important to sellers that the advertising placed on their media not conflict with existing seller arrangements and be of high quality, consistent with applicable seller standards and compliant with applicable legal and regulatory requirements. It is important to buyers that their advertisements are placed on appropriate media, in proximity with appropriate content, that the impressions for which they are charged are legitimate, and that their advertising campaigns yield their desired results. We use various measures, including proprietary technology, in an effort to store, manage and process rules set by buyers and sellers and to ensure the quality and integrity of the results delivered to sellers and buyers through our solution. If we fail to properly implement or honor rules established by buyers and sellers, or if our measures are not adequate, advertisements may be improperly placed through our platform, which can result in harm to our reputation as well as the need to pay refunds and other potential legal liabilities.

***The evolving concept of viewability involves competitive uncertainty and may cause us to incur additional costs and liability risk.***

Viewability of digital advertising inventory is relevant to marketers because it represents a way of assessing the value of particular inventory as a means to reach a target audience. However, there is no consensus definition of viewability. Some approaches focus on whether an advertisement can be seen at all, and others focus on whether an advertisement that can be seen is actually seen, in whole or part, or for how long. Low viewability can be caused by various factors, including technical issues (e.g. device screen size, browser functionality and settings, web site load times), media design (e.g. below-the-fold or sub-page placements), and user behavior (e.g. the decision whether to scroll down a website or click on an advertisement or how long to watch a video). Non-viewability is a separate issue and may result, for example, from stacking ads so the one in the back is obscured, or serving ads into a single pixel space too small to be seen.

If we do not handle viewability well, we could be competitively disadvantaged. In addition, inventory that is well differentiated on the basis of viewability will be differentiated on the basis of value, with less viewable inventory valued lower. In this context, if we are not positioned to transact the higher viewability inventory competitively, our revenue and profitability could be adversely affected.

As we have experienced in the past, buyers could attempt to hold us responsible, and not to pay us, for impressions that do not satisfy their viewability requirements or expectations, and depending upon how viewability evolves, market practice or emerging regulation may require us to incur compliance costs and assume some responsibility for viewability of advertisements transacted through our solution. Divergent views of how to measure viewability and imperfect measurement technology could lead to disagreement, increasing risk of disputes, demands for refunds, and reputational harm.

***If we fail to attract, motivate, train, and retain highly qualified engineering, marketing, sales and management personnel, our ability to execute our business strategy could be impaired.***

We are a technology-driven company and it is imperative that we have highly skilled computer scientists, data scientists, engineers and engineering management to innovate and deliver our complex solutions. Increasing our base of buyers and sellers depends to a significant extent on our ability to expand our sales and marketing operations and activities, and our solution requires a sophisticated sales force with specific sales skills and specialized technical knowledge that takes time to develop. Appropriately qualified personnel can be difficult to recruit and retain. In particular, it may be difficult to find qualified sales personnel in international markets, or sales personnel with experience in emerging segments of the market. Skilled and experienced management is critical to our ability to achieve revenue growth, execute against our strategic vision and maintain our performance through the growth and change we anticipate.

Our success depends significantly upon our ability to recruit, train, motivate, and retain key technology, engineering, sales, and management personnel, and competition for employees with experience in our industry can be intense, particularly in California, New York, London and Sydney, where our operations and the operations of other digital media companies are concentrated and where other technology companies compete for management and engineering talent. Other employers may be able to provide better compensation, more diverse opportunities and better chances for career advancement. None of our officers or other key employees have an employment agreement for a specific term, and any of such individuals may terminate his or her employment with us at any time.

In addition, in connection with the merger with Telaria the Company entered into certain retention compensation packages. As such agreements expire, it may be more difficult to retain such individuals or we may need to enter into new retention arrangements.

It can be difficult, time-consuming, and expensive to recruit personnel with the combination of skills and attributes required to execute our business strategy, and we may be unable to hire or retain sufficient numbers of qualified individuals in the markets where we do business or plan to do business. New hires require significant training and it may take significant time (often six months or more) before they achieve full productivity. As a result, we may incur significant costs to attract and retain employees, including significant expenditures related to salaries and benefits and compensation expenses related to equity awards before new hires contribute to sales or productivity, and we may lose new employees to our competitors or other companies before we realize the benefit of our investment in recruiting and training. Moreover, new employees may not be or become as productive as we expect, and we may face challenges in adequately or appropriately integrating them into our workforce and culture. At times we have experienced elevated levels of unwanted attrition, and as our organization grows and changes and competition for talent increases, this type of attrition may increase.

***Our proprietary rights may be difficult to enforce, which could enable others to copy or use aspects of our solution without compensating us, thereby eroding our competitive advantages and harming our business.***

Our success depends, in part, on our ability to protect proprietary methods and technologies that we develop or otherwise acquire, so that we can prevent others from using our inventions and proprietary information. Establishing trade secret, copyright, trademark, domain name, and patent protection is difficult and expensive. We rely on trademark, copyright, trade secret laws, confidentiality procedures and contractual provisions to protect our proprietary methods and technologies. It may be possible for unauthorized third parties to copy or reverse engineer aspects of our technology or otherwise obtain and use information that we regard as proprietary, or to develop technologies similar or superior to our technology or design around our proprietary rights, despite the steps we have taken to protect our proprietary rights. From time to time, we may take legal action to enforce our intellectual property rights, protect our trade secrets, determine the validity and scope of the proprietary rights of others, or defend against claims of infringement. Such litigation could result in substantial costs and the diversion of limited resources, and might not be successful. If we are unable to protect our proprietary rights (including aspects of our technology solution) we may find ourselves at a competitive disadvantage.

***We may be subject to intellectual property rights claims by third parties, which are costly to defend, could require us to pay significant damages and could limit our ability to use certain technologies and intellectual property.***

Third parties may assert claims of infringement or misappropriation of intellectual property rights against us or buyers, sellers, or third parties with which we work; we cannot be certain that we are not infringing any third-party intellectual property rights, and we may have liability or indemnification obligations as a result of such claims. Regardless of whether claims that we are infringing patents or infringing or misappropriating other intellectual property rights have any merit, these claims are time-consuming and costly to evaluate and defend, and can impose a significant burden on management and employees. The outcome of any claim is inherently uncertain, and we may receive unfavorable interim or preliminary rulings in the course of litigation, or we may decide to settle lawsuits and disputes on terms that are unfavorable to us. We may also have no way of remediating intellectual property violations, and failure to do so could cause our business, results of operations or financial condition to be materially and adversely affected.

**Risks Related to Our International Business Strategy.**

***Our international operations require increased expenditures and impose additional risks and compliance imperatives, and failure to successfully execute our international plans will adversely affect our growth and operating results.***

We have operations outside of North America, in the UK, EU, Australia, New Zealand, Japan, Singapore, and Brazil, and achievement of our international objectives will require a significant amount of attention from our management, finance, legal, analytics, operations, sales, and engineering teams, as well as significant investment in developing the technology infrastructure necessary to deliver our solution and maintain sales, delivery, support, and administrative capabilities in the countries where we operate. Attracting new buyers and sellers outside the United States may require more time and expense than in the United States, in part due to language barriers and the need to educate such buyers and sellers about our solution, and we may not be successful in establishing and maintaining these relationships. The data center and telecommunications infrastructure in some overseas markets may not be as reliable as in North America and Europe, which could disrupt our operations. In addition, our international operations will require us to develop and administer our internal controls and legal and compliance practices in countries with different cultural norms, languages, currencies, legal requirements, and business practices than the United States.

International operations also impose risks and challenges in addition to those faced in the United States, including management of a distributed workforce; the need to adapt our offering to satisfy local requirements and standards (including differing privacy policies and labor laws that are sometimes more stringent); laws and business practices that may favor local competitors; legal requirements or business expectations that agreements be drafted and negotiated in the local language and disputes be resolved in local courts according to local laws; the need to enable transactions in local currencies; longer accounts receivable payment cycles and other collection difficulties; the effect of global and regional recessions and economic and political instability; potentially adverse tax consequences in the United States and abroad; staffing challenges, including difficulty in recruiting and retaining qualified personnel as well as managing such a diversity in personnel; reduced or ineffective protection of our intellectual property rights in some countries; and costs and restrictions affecting the repatriation of funds to the United States.

One or more of these requirements and risks may make our international operations more difficult and expensive or less successful than we expect, and may preclude us from operating in some markets. There is no assurance that our international expansion efforts will be successful, and we may not generate sufficient revenue or margins from our international business to cover our expenses or contribute to our growth.

***Operating in multiple countries requires us to comply with different legal and regulatory requirements.***

Our international operations subject us to laws and regulations of multiple jurisdictions, as well as U.S. laws governing international operations, which are often evolving and sometimes conflict. For example, the Foreign Corrupt Practices Act ("FCPA"), and comparable foreign laws and regulations (including the U.K. Bribery Act) prohibit improper payments or offers of payments to foreign governments and their officials and political parties by U.S. and other business entities for the purpose of obtaining or retaining business. Other laws and regulations prohibit bribery of private parties and other forms of corruption. As we expand our international operations, there is some risk of unauthorized payment or offers of payment or other inappropriate conduct by one of our employees, consultants, agents, or other contractors, including by persons engaged or employed by a business we acquire, which could result in violation by us of various laws, including the FCPA. Safeguards we implement to discourage these practices may prove to be ineffective and violations of the FCPA and other laws may result in severe criminal or civil sanctions, or other liabilities or proceedings against us, including class action lawsuits and enforcement actions from the SEC, Department of Justice, and foreign regulators. Other laws applicable to our international business include local employment, tax, privacy, data security, and intellectual property protection laws and regulations, including restrictions on movement of information about individuals beyond national borders. In particular, as explained in more detail elsewhere in this report, the GDPR imposes substantial compliance obligations and increases the risks associated with collection and processing of personal data. In some cases, buyers and sellers operating in non-U.S. markets may impose additional requirements on our non-U.S. business in efforts to comply with their interpretation of their own or our legal obligations. These requirements may differ significantly from the requirements applicable to our business in the United States and may require engineering, infrastructure and other costly resources to accommodate, and may result in decreased operational efficiencies and performance. As these laws continue to evolve and we expand to more jurisdictions or acquire new businesses, compliance will become more complex and expensive, and the risk of non-compliance will increase.

Compliance with complex foreign and U.S. laws and regulations that apply to our international operations increases our cost of doing business abroad, and violation of these laws or regulations may interfere with our ability to offer our solution competitively in one or more countries, expose us or our employees to fines and penalties, and result in the limitation or prohibition of our conduct of business. In addition, we have recently received numerous inquiries from foreign regulators asking for information about the advertising technology generally and our business specifically. These investigations are costly and time consuming to respond to and divert management attention.

**Risks Related to Our Internal Controls and Finances**

***If we fail to maintain an effective system of internal control over financial reporting in the future, we may not be able to accurately or timely report our financial condition or results of operations. If our internal control over financial reporting is not effective, it may adversely affect investor confidence in us and the price of our common stock.***

As a public company, we are required to maintain internal control over financial reporting and to report any material weaknesses in such internal control. Section 404 of the Sarbanes-Oxley Act requires that we evaluate and determine the effectiveness of our internal control over financial reporting and provide a management report on our internal control over financial reporting.

Our platform system applications are complex, multi-faceted and include applications that are highly customized in order to serve and support our clients, advertising inventory and data suppliers, as well as support our financial reporting obligations. We regularly make improvements to our platform to maintain and enhance our competitive position. In the future, we may implement new offerings and engage in business transactions, such as acquisitions, reorganizations or implementation of new information systems. These factors require us to develop and maintain our internal controls, processes and reporting systems, and we expect to incur ongoing costs in this effort. We may not be successful in developing and maintaining effective internal controls, and any failure to develop or maintain effective controls, or any difficulties encountered in their implementation or improvement, could harm our operating results or cause us to fail to meet our reporting obligations and may result in a restatement of our financial statements for prior periods.

If we identify material weaknesses in our internal control over financial reporting, we will be unable to assert that our internal control over financial reporting is effective. If we are unable to assert that our internal control over financial reporting is effective, if our independent registered public accounting firm is unable to express an opinion as to the effectiveness of our internal control over financial reporting, or if we are unable to comply with the requirements of the Sarbanes-Oxley Act in a timely manner, then, we may be late with the filing of our periodic reports, investors may lose confidence in the accuracy and completeness of our financial reports and the market price of our common stock could be negatively affected. Such failures could also subject us to investigations by Nasdaq, the stock exchange on which our securities are listed, the SEC or other regulatory authorities, and to litigation from stockholders, which could harm our reputation, financial condition or divert financial and management resources from our core business.

***Our ability to use our net operating losses and tax credit carryforwards to offset future taxable income may be subject to certain limitations, which could result in higher tax liabilities.***

Our ability to fully utilize our net operating loss and tax credit carryforwards to offset future taxable income may be limited.

At December 31, 2020, we had U.S. federal net operating loss carryforwards, or NOLs, of approximately $453.2 million, state NOLs of approximately $280.0 million, foreign NOLs of approximately $25.0 million, and state research and development tax credit carryforwards of approximately $8.0 million. A lack of future taxable income would adversely affect our ability to utilize these NOLs and credit carryforwards. In addition, under Sections 382 and 383 of the Internal Revenue Code of 1986, as amended, or the Code, and comparable state income tax laws, a corporation that undergoes an "ownership change" is subject to limitations on its ability to utilize its NOLs and credit carryforwards to offset future taxable income following the ownership change. As a result, future changes in our stock ownership, including because of issuance of shares of common stock in connection with acquisitions or other direct or indirect changes in our ownership that may be outside of our control, could result in limitations on our ability to fully utilize our NOLs and credit carryforwards. The Company had an ownership change on December 31, 2016 subjecting the federal and state NOLs to annual limitations that have expired. Additionally, the Company had an ownership change in January 2008 resulting in not material limitation of federal and state NOLs under Section 382 of the Code and comparable state income tax laws. Moreover, not material federal and state NOLs were generated during the pre-acquisition period by corporations that we acquired, and thus those NOLs already are subject to limitation under Section 382 of the Code and comparable state income tax laws. Also, prior to the merger, Telaria acquired corporations with pre-acquisition NOLs that are subject to limitation under Section 382 of the Code and comparable state income tax laws.

In addition, the Company and Telaria both underwent ownership changes for tax purposes (i.e. a more than 50% change in stock ownership in aggregated 5% shareholders) on April 1, 2020 due to the Merger. As a result, the use of the Company's total domestic NOL carryforwards and tax credits generated prior to the ownership change will be subject to annual use limitations under Section 382 and Section 383 of the Code and comparable state income tax laws. The Company believes that the ownership changes will not impact the ability to utilize substantially all of our NOLs and state research and development tax credits to the extent we generate taxable income that can be offset by such losses. The Company reasonably expects its federal research and development tax credits will not be recovered prior to expiration.

Also, depending on the timing and level of our taxable income, a portion of our NOLs may expire unutilized, which could prevent us from offsetting future taxable income we may generate by the amount of our NOLs and credit carryforwards generated in tax years beginning before December 31, 2018. U.S. federal NOLs generated for tax years beginning before December 31, 2018 can offset 100% of taxable income, however, these NOLs can only be carried forward for 20 years. U.S. federal NOLs generated for tax years beginning after December 31, 2018 can offset 80% of taxable income, however, these NOLs can be carried forward indefinitely. We have recorded a full valuation allowance related to our NOLs, credit carryforwards, and other net deferred tax assets due to the uncertainty of the ultimate realization of the future benefits of those assets. To the extent we determine that all, or a portion of, our valuation allowance is no longer necessary, we will reverse the valuation allowance and recognize an income tax benefit in the reported financial statement earnings in that period. Once the valuation allowance is eliminated or reduced, its reversal will no longer be available to offset our current financial statement tax provision in future periods. Release of the valuation allowance would result in the recognition of certain net deferred tax assets and a decrease to income tax expense for the period the release is recorded. However, the exact timing and amount of the valuation allowance release are subject to change on the basis of the level of profitability that we are able to actually achieve and the impact of Section 382.

***The purchase price allocation for any acquisition we complete, including our merger with Telaria, is generally not finalized until one year after the closing of the acquisition, and any final adjustment to the valuation could have a material change on what is reported as the fair value assigned to the assets and liabilities.***

The final purchase price allocation for any acquisition we complete, including our merger with Telaria that was completed on April 1, 2020, depends upon the finalization of asset and liability valuations, among other things. The valuation studies necessary to estimate the fair values of acquired assets and assumed liabilities and the related allocation of purchase price generally are not finalized until one year after the closing of the acquisition. Initially, we allocate the total estimated purchase price to the acquired assets and assumed liabilities based on preliminary estimates of their fair values. The final determination of these fair values is subsequently determined based upon the actual net tangible and intangible assets that existed on the closing date of the acquisition. Any final adjustment could change the fair values assigned to the assets and liabilities, resulting in a change to our consolidated financial statements, including a change to goodwill. Such change could be material.

***We may require additional capital to support our business, and such capital might not be available on terms acceptable to us, if at all. Inability to obtain financing could limit our ability to conduct necessary operating activities and make strategic investments.***

Various business challenges and opportunities may require additional funds, including the need to respond to competitive threats or market evolution by developing new solutions and improving our operating infrastructure through additional hiring or acquisition of complementary businesses or technologies, or both. In addition, we could incur significant expenses or shortfalls in anticipated cash generated as a result of unanticipated events in our business or competitive, regulatory, or other changes in our market, or longer payment cycles required or imposed by our buyers.

Our available cash and cash equivalents, any cash we may generate from operations, and our available line of credit under our credit facility may not be adequate to meet our capital needs, and therefore we may need to engage in equity or debt financings to secure additional funds. We may not be able to obtain additional financing on terms favorable to us, if at all. If we are unable to obtain adequate financing on terms satisfactory to us when we require it or are unable to renew our credit facility when it matures or enter into a new one, our ability to continue to support our business growth and respond to business challenges could be significantly impaired, and our business may be adversely affected.

If we do raise additional funds through future issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences and privileges superior to those of holders of our common stock. Any debt financing that we secure in the future could involve restrictive covenants relating to our capital raising activities and other financial and operational matters, including the ability to pay dividends. This may make it more difficult for us to obtain additional capital and to pursue business opportunities, including potential acquisitions. In addition, if we issue debt, the holders of that debt would have prior claims on the Company's assets, and in case of insolvency, the claims of creditors would be satisfied before distribution of value to equity holders, which would result in significant reduction or total loss of the value of our equity.

We intend to finance the cash portion of the SpotX acquisition consideration in part through the Term Loan Facility contemplated by the Commitment Letter. If we fail to satisfy the closing conditions set forth in the Commitment Letter or Goldman Sachs Bank USA is unable to perform its obligations under the Commitment Letter for any reason, we will be required to find other sources of capital to fund the acquisition of SpotX, which would exacerbate the risks described above.

***Our credit facility subjects us to operating restrictions and financial covenants that impose risk of default and may restrict our business and financing activities.***

We have a $60.0 million credit facility with Silicon Valley Bank. Borrowings are secured by substantially all of our tangible personal property assets and all of our intangible assets are subject to a negative pledge in favor of Silicon Valley Bank. This credit facility is subject to certain covenants and borrowing conditions, including those related to financial ratios and liquidity. If we fail to perform in accordance with covenants or to satisfy conditions, we may not be able to make borrowings under the facility. The credit facility is, and any replacement credit facility that we may secure will be, also subject to restrictions that limit our ability, among other things, to:

- dispose of or sell our assets;
- make material changes in our business or management;
- acquire, consolidate or merge with other entities;
- incur additional indebtedness;
- create liens on our assets;
- pay dividends;
- make investments;
- enter into transactions with affiliates; and
- pay off or redeem subordinated indebtedness.

These covenants may restrict our ability to finance our operations and to pursue our business activities and strategies. Our ability to comply with these covenants may be affected by events beyond our control. If a default were to occur and not be waived, such default could cause, among other remedies, all of the outstanding indebtedness under our loan and security agreement to become immediately due and payable. In such an event, our liquid assets might not be sufficient to meet our repayment obligations, and we might be forced to liquidate collateral assets at unfavorable prices or our assets may be foreclosed upon and sold at unfavorable valuations.

Our ability to renew our existing credit facility, which matures in September 2022, or to enter into a new credit facility to replace or supplement the existing facility may be limited due to various factors, including the status of our business, global credit market conditions, and perceptions of our business or industry by sources of financing. In particular, it may be difficult to renew or replace our existing credit facility if we are not able to produce, or demonstrate a path to produce, positive cash flow. In addition, if credit is available, lenders may seek more restrictive covenants and higher interest rates that may reduce our borrowing capacity, increase our costs, and reduce our operating flexibility.

If we make borrowings under the facility and do not have or are unable to generate sufficient cash available to repay our debt obligations when they become due and payable, either upon maturity or in the event of a default, we may not be able to obtain additional debt or equity financing on favorable terms, if at all. Our inability to obtain financing may negatively impact our ability to operate and continue our business as a going concern.

## Risks Related to the Securities Markets and Ownership of our Common Stock

***The price of our common stock has been and may continue to be volatile and the value of an investment in our common stock could decline.***

The trading price of our common stock has fluctuated substantially and may continue to do so. These fluctuations could result in significant decreases in the value of an investment in our common stock. Factors that could cause fluctuations in the trading price of our common stock include the following:

- announcements of new offerings, products, services or technologies, commercial relationships, acquisitions, or other events by us or our competitors;
- price and volume fluctuations in the overall stock market from time to time;
- significant volatility in the market price and trading volume of technology companies in general and of companies in the digital advertising industry in particular;
- fluctuations in the trading volume of our shares or the size of our public float;
- actual or anticipated changes or fluctuations in our results of operations;
- actual or anticipated changes in the expectations of investors or securities analysts, and whether our results of operations meet these expectations;
- issuance of research reports by analysts or investors;
- litigation involving us, our industry, or both;
- regulatory developments in the United States, foreign countries, or both;
- general economic conditions and trends;
- major catastrophic events;
- political uncertainty;
- breaches or system outages;
- departures of officers or other key employees; or
- an adverse impact on the company resulting from other causes, including any of the other risks described in this report.

In addition, if the market for advertising technology stocks or the stock market, in general, experiences a loss of investor confidence, the trading price of our common stock could decline for reasons unrelated to our business. The trading price of our common stock might also decline in reaction to events that affect other companies in our industry even if these events do not directly affect us. Declines in the price of our common stock, even following increases, may result in securities litigation against us, which would result in substantial costs and divert our management's attention and resources from our business.

***Competition for investors could adversely affect the price of our stock.***

There are many companies in the advertising technology or "ad tech" space, but we are one of a relatively small portion of those companies that is publicly traded. Some of the other publicly traded ad tech companies are substantially larger than we are and have more diversified offerings, or may be perceived by investors as having greater stability or growth potential. Others may be focused on parts of the business that investors may view as more appealing. Ad tech or related advertising companies that are not yet public may become public, and publicly traded companies may enter the ad tech business through acquisitions. Increase in the number of publicly traded companies available to investors wishing to invest in ad tech may result in a decrease in demand for our shares, either because overall demand for ad tech investment does not increase commensurately with the increase in public companies in the ad tech space, or because we are not perceived as competitively differentiated or offering superior value compared to other such companies. Decrease in demand for our shares would result in suppressed growth, or decrease, in the value of our stock.

***If securities or industry analysts do not publish, or cease publishing, research or reports about us, our business or our market, if they publish negative evaluations of our stock, or if we fail to meet the expectations of analysts, the price of our stock and trading volume could decline.***

The trading market for our common stock will be influenced by the research and reports that industry or securities analysts may publish about us, our business, our market or our competitors. We do not have any control over these analysts, and their reports or analysts' consensus may not reflect our guidance, plans or expectations. If one or more of the analysts covering our business issues an adverse opinion of our company because we fail to meet their expectations or otherwise, the price of our stock could decline. If one or more of these analysts cease to cover our stock, we could lose visibility in the market for our stock, which in turn could cause our stock price to decline.

***Provisions of our charter documents and Delaware law may inhibit a potential acquisition of the company and limit the ability of stockholders to cause changes in company management.***

Our amended and restated certificate of incorporation and amended and restated bylaws include provisions, as described below, that could delay or prevent a change in control of the company, and make it difficult for stockholders to elect directors who are not nominated by the current members of our board of directors or take other actions to change company management.

- Our certificate of incorporation gives our board of directors the authority to issue shares of preferred stock in one or more series, and to establish the number of shares in each series and to fix the price, designations, powers, preferences and relative, participating, optional or other rights, if any, and the qualifications, limitations, or restrictions of each series of the preferred stock without any further vote or action by stockholders. The issuance of shares of preferred stock may discourage, delay or prevent a merger or acquisition of the company by significantly diluting the ownership of a hostile acquirer, resulting in the loss of voting power and reduced ability to cause a takeover or effect other changes.

- Our certificate of incorporation provides that our board of directors is classified, with only one of its three classes elected each year, and directors may be removed only for cause and only with the vote of 66 $^{2}/_{3}$% of the voting power of stock outstanding and entitled to vote thereon. Further, the number of directors is determined solely by our board of directors, and because we do not allow for cumulative voting rights, holders of a majority of shares of common stock entitled to vote may elect all of the directors standing for election. These provisions could delay the ability of stockholders to change the membership of a majority of our board of directors.
- Our bylaws provide that until April 1, 2022, our board of directors shall be composed of four legacy Rubicon Project directors, four Telaria directors, and the Chief Executive Officer of the Company.
- Under our bylaws, only the board of directors or a majority of remaining directors, even if less than a quorum, may fill vacancies resulting from an increase in the authorized number of directors or the resignation, death or removal of a director.
- Our certificate of incorporation prohibits stockholder action by written consent, so any action by stockholders may only be taken at an annual or special meeting.
- Our certificate of incorporation provides that a special meeting of stockholders may be called only by the board of directors. This could delay any effort by stockholders to force consideration of a proposal or to take action, including the removal of directors.
- Under our bylaws, advance notice must be given to nominate directors or submit proposals for consideration at stockholders' meetings. This gives our board of directors time to defend against takeover attempts and could discourage or deter a potential acquirer from soliciting proxies or making proposals related to an unsolicited takeover attempt.
- The provisions of our certificate of incorporation noted above may be amended only with the affirmative vote of holders of at least 66 $^{2}/_{3}$% of the voting power of all of the then-outstanding shares of the company's voting stock, voting together as a single class. The same two-thirds vote is required to amend the provision of our certificate of incorporation imposing these supermajority voting requirements. Further, our bylaws may be amended only by our board of directors or by the same percentage vote of stockholders noted above as required to amend our certificate of incorporation. These supermajority voting requirements may inhibit the ability of a potential acquirer to effect such amendments to facilitate an unsolicited takeover attempt.
- Our board of directors may amend our bylaws by majority vote. This could allow the board to use bylaw amendments to delay or prevent an unsolicited takeover, and limits the ability of an acquirer to amend the bylaws to facilitate an unsolicited takeover attempt.

We are also subject to Section 203 of the Delaware General Corporation Law, which prohibits us from engaging in any business combination with an interested stockholder for a period of three years from the date the person became an interested stockholder, unless certain conditions are met. These provisions make it more difficult for stockholders or potential acquirers to acquire the company without negotiation and may apply even if some of our stockholders consider the proposed transaction beneficial to them. For example, these provisions might discourage a potential acquisition proposal or tender offer, even if the acquisition proposal or tender offer were to be at a premium over the then-current market price for our common stock. These provisions could also limit the price that investors are willing to pay in the future for shares of our common stock.

**Item 1B. Unresolved Staff Comments**

None.

**Item 2. Properties**

Our corporate headquarters are located in Los Angeles, California, where we occupy office space totaling approximately 47,000 square feet under a lease that expires on April 30, 2021. We use these facilities for our principal administration, sales and marketing, technology and development, and engineering activities.

On November 20, 2020, we signed a new lease for our corporate headquarters in Los Angeles, California, where we will occupy office space totaling 38,754 square feet. Our lease begins in May 2021 and expires in April 2031.

We have two offices in New York under leases that expire in 2029 and 2030 that are approximately 26,664 square feet and 15,000 square feet, respectively, and lease additional offices and maintain data centers in other locations in North America, South America, Europe, Australia, and Asia. We believe that our current facilities are adequate to meet our current needs, and that, if we require additional space, we will be able to obtain additional facilities on commercially reasonable terms.

**Item 3. Legal Proceedings**

We and our subsidiaries may from time to time be parties to legal or regulatory proceedings, lawsuits and other claims incident to our business activities and to our status as a public company. Such routine matters may include, among other things, assertions of contract breach or intellectual property infringement, claims for indemnity arising in the course of our business, regulatory investigations or enforcement proceedings, and claims by persons whose employment has been terminated. Such matters are subject to many uncertainties, and outcomes are not predictable with assurance. Consequently, we are unable to ascertain the ultimate aggregate amount of monetary liability, amounts which may be covered by insurance or recoverable from third parties, or the financial impact with respect to such matters as of December 31, 2020. However, based on our knowledge as of December 31, 2020, we believe that the final resolution of such matters pending at the time of this report, individually and in the aggregate, will not have a material adverse effect upon our consolidated financial position, results of operations or cash flows.

Refer to Note 17—"Commitments and Contingencies" for additional information related to legal proceedings.

**Item 4. Mine Safety Disclosures**

Not applicable.

## PART II

### Item 5. Market for Registrant's Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities

Our common stock was listed on the New York Stock Exchange, or the NYSE, from April 1, 2014 through June 8, 2020, under the symbol "RUBI."

On June 8, 2020, the Company voluntarily delisted its common stock from the NYSE and commenced listing on The Nasdaq Global Select Market of The Nasdaq Stock Market LLC ("Nasdaq"). On June 30, 2020, the Company changed its name from "The Rubicon Project, Inc." to "Magnite, Inc." In connection with the name change, the Company changed its ticker symbol from "RUBI" to "MGNI."

**Holders of Record**

As of February 19, 2021, there were approximately 62 holders of record of our common stock. The actual number of stockholders is greater than this number of record holders and includes stockholders who are beneficial owners but whose shares are held in street name by brokers and other nominees. This number of holders also does not include stockholders whose shares may be held in trust by other entities.

**Dividend Policy**

We have never declared or paid any dividends and we do not anticipate paying any cash dividends in the foreseeable future. In addition, our credit facility contains restrictions on our ability to pay dividends.

**Recent Sales of Unregistered Securities**

None.

**Purchases of Equity Securities by the Issuer and Affiliated Purchasers**

We presently have no publicly announced repurchase plan or program.

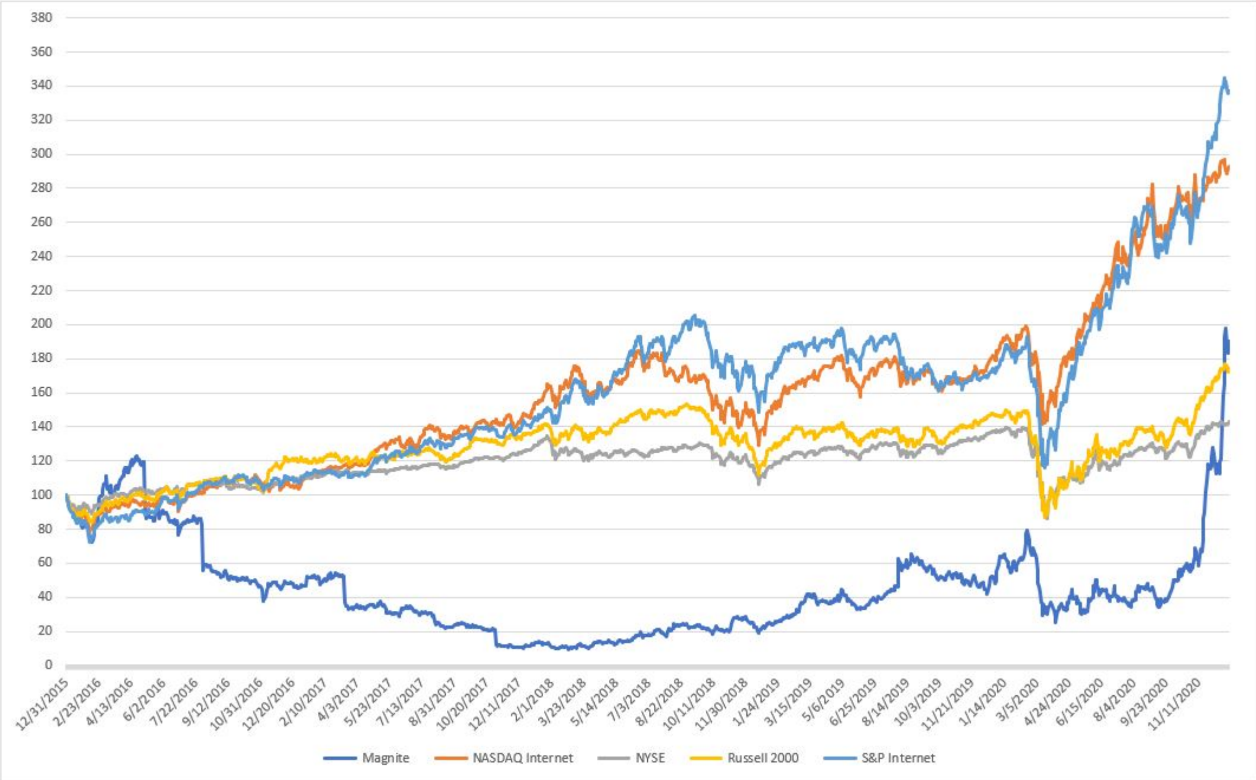
Upon vesting of most restricted stock units or stock awards, we are required to deposit minimum statutory employee withholding taxes on behalf of the holders of the vested awards. As reimbursement for these tax deposits, we have the option to withhold from shares otherwise issuable upon vesting a portion of those shares with a fair market value equal to the amount of the deposits we paid. Withholding of shares in this manner is accounted for as a repurchase of common stock. There were no repurchases during the quarter ended December 31, 2020.

**Stock Performance Graph**

This performance graph shall not be deemed "soliciting material" or to be "filed" with the SEC for purposes of Section 18 of the Exchange Act, or otherwise subject to the liabilities under that Section, and shall not be deemed to be incorporated by reference into any filing of ours under the Securities Act of 1933, as amended, except as shall be expressly set forth by specific reference in such filing.

The following graph compares the cumulative total stockholder return on an initial investment of $100 in our common stock between December 31, 2015 and December 31, 2020, with the comparative cumulative total returns of the S&P 500 Index, Nasdaq,Internet Index, S&P Internet Select Industry Index and Russell 2000 Index over the same period. As previously discussed, we have not paid any cash dividends and, therefore, the cumulative total return calculation for us is based solely upon stock price appreciation (depreciation) and not reinvestment of cash dividends, whereas the data for the comparative indexes assumes reinvestments of dividends. The graph assumes our closing sales price on December 31, 2015 of $16.45 per share as the initial value of our common stock. The returns shown are based on historical results and are not necessarily indicative of, nor intended to forecast, future stock price performance.

**COMPARISON OF CUMULATIVE TOTAL RETURN**




**Item 6. Selected Financial Data**

The following selected consolidated financial data should be read in conjunction with Item 7 "Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements and the related notes appearing in Item 8 "Financial Statements and Supplementary Data" of this Annual Report on Form 10-K.

The following table sets forth our selected consolidated historical financial and operating data for the periods indicated. The consolidated statements of operations data for the years ended December 31, 2020, 2019, and 2018 and the consolidated balance sheet data as of December 31, 2020 and 2019 have been derived from our audited consolidated financial statements included elsewhere in this Annual Report on Form 10-K.

| | Year Ended | | | | |
|---|---|---|---|---|---|
| | December 31, 2020 | December 31, 2019 | December 31, 2018 | December 31, 2017 | December 31, 2016 |
| | (in thousands, except per share data) | | | | |
| Revenue | $ 221,628 | $ 156,414 | $ 124,685 | $ 155,545 | $ 278,221 |
| Expenses: | | | | | |
| Cost of revenue | 77,747 | 57,391 | 60,003 | 56,836 | 73,247 |
| Sales and marketing | 76,030 | 44,565 | 44,556 | 51,794 | 83,328 |
| Technology and development | 51,546 | 40,250 | 37,863 | 47,500 | 51,184 |
| General and administrative | 52,987 | 39,750 | 42,431 | 55,596 | 68,570 |
| Restructuring and other exit costs | 17,552 | 2,041 | 3,440 | 5,959 | 3,316 |
| Impairment of intangible assets | — | — | — | 4,585 | 23,473 |
| Impairment of goodwill | — | — | — | 90,251 | — |
| Total expenses | 275,862 | 183,997 | 188,293 | 312,521 | 303,118 |
| Loss from operations | (54,234) | (27,583) | (63,608) | (156,976) | (24,897) |
| Other (income) expense: | (1,495) | (593) | (2,143) | (431) | (1,984) |
| Loss before income taxes | (52,739) | (26,990) | (61,465) | (156,545) | (22,913) |
| Provision (benefit) for income taxes | 693 | (1,512) | 357 | (1,762) | (4,860) |
| Net income (loss) | (53,432) | (25,478) | (61,822) | (154,783) | (18,053) |
| Net income (loss) per share attributable to common stockholders[1]: | | | | | |
| Basic | $ (0.55) | $ (0.48) | $ (1.23) | $ (3.17) | $ (0.39) |
| Diluted | $ (0.55) | $ (0.48) | $ (1.23) | $ (3.17) | $ (0.39) |
| Weighted-average shares used to compute net income (loss) per share attributable to common stockholders[1]: | | | | | |
| Basic | 96,700 | 52,614 | 50,259 | 48,869 | 46,655 |
| Diluted | 96,700 | 52,614 | 50,259 | 48,869 | 46,655 |

(1) See Note 3 to our consolidated financial statements for a description of the method used to compute basic and diluted net income (loss) per share attributable to common stockholders.

**Consolidated Balance Sheet Data**

| | At December 31 | | | | |
|---|---|---|---|---|---|
| | 2020 | 2019 | 2018 | 2017 | 2016 |
| | (in thousands) | | | | |
| Cash and cash equivalents | $ 117,676 | $ 88,888 | $ 80,452 | $ 76,642 | $ 149,423 |
| Marketable securities, current and non-current | $ — | $ — | $ 7,524 | $ 54,999 | $ 40,550 |
| Accounts receivable, net | $ 471,666 | $ 217,571 | $ 205,683 | $ 165,890 | $ 192,064 |
| Property, equipment and internal use software development costs, net | $ 39,841 | $ 39,720 | $ 48,057 | $ 60,127 | $ 52,768 |
| Total assets | $ 938,960 | $ 395,120 | $ 360,012 | $ 383,635 | $ 519,775 |
| Total long-term liabilities | $ 35,149 | $ 15,685 | $ 1,017 | $ 1,780 | $ 1,825 |
| Total liabilities | $ 557,347 | $ 283,184 | $ 241,999 | $ 219,024 | $ 220,262 |
| Common stockholders' equity (deficit) | $ 381,613 | $ 111,936 | $ 118,013 | $ 164,611 | $ 299,513 |

## Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations

*You should read the following discussion and analysis of our financial condition and results of operations in conjunction with the consolidated financial statements and the related notes to those statements included in Item 8 to this Annual Report on Form 10-K. In addition to historical financial information, the following discussion contains forward-looking statements that reflect our plans, estimates, beliefs, and expectations and that involve risks and uncertainties. Our actual results and the timing of events could differ materially from those discussed in these forward-looking statements. Factors that could cause or contribute to these differences include those discussed below and elsewhere in this Annual Report on Form 10-K, particularly in "Item 1A. Risk Factors" and the "Special Note About Forward-Looking Statements."*

### Overview and Trends

See "Item 1. Business" for an overview of our business, the industry in which we operate, and important industry and business trends.

#### *2020 Channel Trends*

Sellers use our technology to monetize their content across all digital channels, including CTV, mobile and desktop, and each of these channels will continue to represent a meaningful portion of our revenue in future periods. We track the breakdown of revenue across channels to better understand how our clients are transacting on our platform, which informs decisions as to business strategy and the allocation of resources and capital. The following table presents revenue by channel and as a percentage of total revenue for the years ended December 31, 2020, 2019, and 2018.

| | Revenue | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | Year Ended | | | | | | | | |
| | December 31, 2020 | | | December 31, 2019 | | | December 31, 2018 | | |
| | (in thousands, except percentages) | | | | | | | | |
| Channel: | | | | | | | | | |
| CTV | $ | 34,319 | 15 % | $ | — | — % | $ | — | — % |
| Desktop | $ | 78,956 | 36 | $ | 68,302 | 44 | $ | 59,039 | 47 |
| Mobile | $ | 108,353 | 49 | $ | 88,112 | 56 | $ | 65,646 | 53 |
| Total | $ | 221,628 | 100 % | $ | 156,414 | 100 % | $ | 124,685 | 100 % |

Each of these digital channels has its own industry growth rate, with CTV and mobile projected to continue to grow steadily, while desktop growth flattens. MAGNA's October 2020 Programmatic Market forecast has estimated compound annual growth rates from 2020 to 2024 for mobile and desktop at 18% and down 1%, respectively, and over the same period, eMarketer projected CTV to grow at a 23% compound annual growth rate.

We believe that CTV will be our biggest growth driver in future periods, and following the SpotX Acquisition we expect CTV revenue to represent a significantly higher percentage of our overall revenue.

We expect our mobile business to grow at a higher rate than desktop, consistent with industry trends and our historical results. Our mobile business consists of two components, mobile web and mobile applications. Initially our mobile business consisted primarily of mobile web, which is similar to our desktop business, but our mobile application business has been the growth driver behind our mobile business, and prior to the COVID-19 pandemic showed growth rates in excess of industry projections. We therefore expect our growth within mobile to come largely from our mobile applications business and, in particular, mobile video.

Lower industry growth rates in desktop will make growing desktop revenue more challenging; however, in future periods we believe we will be able to grow our desktop business in excess of industry projections by capturing market share through SPO and expansion of publisher relationships. We expect our desktop business to decline as an overall percentage of our revenue in future periods. However, we expect that it will continue to represent a significant part of our revenue in the near term. Therefore, the mix of our desktop business will continue to have a negative effect on our overall growth rate.

#### *Telaria Merger*

On April 1, 2020, we completed the stock-for-stock merger with Telaria, Inc., a leading provider of CTV technology, which created a combined company offering a single partner for transacting CTV, desktop display, video, audio, and mobile inventory across all geographies and auction types. The combination of Magnite's programmatic scale and expertise with Telaria’s leadership in CTV technology and premium partnerships created what we believe to be the world’s largest independent sell-side advertising platform, with scale, capabilities, and solutions exceeding those offered by competitors. As CTV viewership is growing rapidly and the pace of adoption is accelerating the shift of advertising budgets from linear television to CTV, the Telaria merger strategically positioned us to take advantage of this growth trend, and we believe that CTV will be our biggest growth driver in future periods.

***Telaria Merger Costs Synergies and Other Expense Reduction Initiatives***

In connection with the Merger, we restructured certain areas of our operations during 2020. As part of those efforts, we achieved annual run rate cost synergies of over $20.0 million, mainly related to duplicative public company costs, vendor rationalization, overlapping general and administrative costs, and other operational streamlining. Employees of the merged company were functionally aligned under a unified leadership team and we reduced our headcount by approximately 8% of our combined workforce during 2020.

Given the significant impact resulting from the COVID-19 pandemic, we instituted certain additional short-term actions during the second quarter, including compensation reductions, a hiring freeze, and deferment of certain capital expenditures. When we experienced a recovery in revenue in the third quarter, we reinstated compensation and removed certain of these temporary cost-cutting initiatives during the fourth quarter.

***SpotX Acquisition***

On February 4, 2021, we entered into a Stock Purchase Agreement (the "SpotX Purchase Agreement") with RTL to acquire 100% of the issued and outstanding shares of capital stock of SpotX, Inc., a Delaware corporation ("SpotX"), for a purchase price equal to $560 million in cash plus 14 million shares of the Company’s common stock (the "SpotX Acquisition"). SpotX is one of the leading platforms shaping CTV and video advertising globally. We believe the acquisition will create the largest independent CTV advertising platform in the programmatic marketplace, making it easier for buyers to reach CTV audiences at scale from industry-leading streaming content providers, broadcasters, platforms and device manufacturers. Subject to receipt of regulatory approvals and satisfaction of customary closing conditions, the SpotX Acquisition is expected to close in the second quarter of 2021. The SpotX Acquisition will result in a significant increase in our revenue, in particular in CTV and other video. Following the transaction, we expect CTV to represent a higher percentage of our overall revenue, and because CTV is largely transacted through PMPs, we also expect to see an increase in the percentage of PMP transactions transacted on our platform. If the SpotX Acquisition successfully closes, the acquisition would result in a substantial increase in related operating expenses, primarily associated with costs for personnel, payments to sellers for revenue reported on a gross basis, and other ancillary costs to support the business. We expect some of those increases to be offset by cost saving activities we plan to undertake. We are targeting in excess of $35 million in run-rate operating cost synergies, with more than half of the synergies to be realized within the first year of combined operations.

## Components of Our Results of Operations

We report our financial results as one operating segment. Our consolidated operating results, together with non-GAAP financial measures, are regularly reviewed by our chief operating decision maker, principally to make decisions about how we allocate our resources and to measure our consolidated operating performance.

***Revenue***

We generate revenue from the purchase and sale of digital advertising inventory through our platform. We also generate revenue from the fee we charge clients for use of our Demand Manager product, which generally is a percentage of the client's advertising spending on any advertising marketplace. We recognize revenue upon the fulfillment of our contractual obligations in connection with a completed transaction, subject to satisfying all other revenue recognition criteria. For substantially all transactions executed through our platform, we act as an agent on behalf of the publisher that is monetizing its inventory, and revenue is recognized net of any advertising inventory costs that we remit to sellers. With respect to certain revenue streams acquired in connection with the Merger with Telaria, we report revenue on a gross basis, based primarily on our determination that the Company acts as the primary obligor in the delivery of advertising campaigns for our buyer clients with respect to such transactions. The revenue that we recognized on a gross basis was less than 2% of total revenue in 2020. Our revenue recognition policies are discussed in more detail in Note 4 of the accompanying Notes to the Consolidated Financial Statements.

***Expenses***

We classify our expenses into the following categories:

*Cost of Revenue*. Our cost of revenue consists primarily of data center costs, bandwidth costs, ad protection costs, depreciation and maintenance expense of hardware supporting our revenue-producing platform, amortization of software costs for the development of our revenue-producing platform, amortization expense associated with acquired developed technologies, personnel costs, facilities-related costs, and cloud computing costs. Personnel costs included in cost of revenue include salaries, bonuses, and stock-based compensation, and are primarily attributable to personnel in our network operations group who support our platform. We capitalize costs associated with software that is developed or obtained for internal use and amortize the costs associated with our revenue-producing platform in cost of revenue over their estimated useful lives. We amortize acquired developed technologies over their estimated useful lives.

*Sales and Marketing*. Our sales and marketing expenses consist primarily of personnel costs, including salaries, bonuses, and stock-based compensation, as well as marketing expenses such as brand marketing, travel expenses, trade shows and marketing materials, professional services, and amortization expense associated with client relationships and backlog from our business acquisitions, and to a lesser extent, facilities-related costs and depreciation and amortization. Our sales organization focuses on increasing the adoption of our solution by existing and new buyers and sellers. We amortize acquired intangibles associated with client relationships and backlog from our business acquisitions over their estimated useful lives.

*Technology and Development*. Our technology and development expenses consist primarily of personnel costs, including salaries, bonuses, and stock-based compensation, as well as professional services associated with the ongoing development and maintenance of our solution, depreciation and amortization, and to a lesser extent, facilities-related costs. These expenses include costs incurred in the development, implementation, and maintenance of internal use software, including platform and related infrastructure. Technology and development costs are expensed as incurred, except to the extent that such costs are associated with internal use software development that qualifies for capitalization, which are then recorded as internal use software development costs, net, on our consolidated balance sheets. We amortize internal use software development costs that relate to our revenue-producing activities on our platform to cost of revenue and amortize other internal use software development costs to technology and development costs or general and administrative expenses, depending on the nature of the related project. We amortize acquired intangibles associated with technology and development functions from our business acquisitions over their estimated useful lives.

*General and Administrative*. Our general and administrative expenses consist primarily of personnel costs, including salaries, bonuses, and stock-based compensation, associated with our executive, finance, legal, human resources, compliance, and other administrative personnel, as well as accounting and legal professional services fees, facilities-related costs and depreciation and amortization, and other corporate-related expenses. General and administrative expenses also include amortization of internal use software development costs and acquired intangible assets from our business acquisitions over their estimated useful lives that relate to general and administrative functions.

*Merger and Restructuring Costs.* Our merger and restructuring costs consist primarily of professional service fees associated with the merger and acquisition activities, including cash-based employee termination costs, stock-based compensation charges associated with the Merger, and other restructuring activities, including facility closures, relocation costs, and contract termination costs.

***Other (Income) Expense***

*Interest (Income) Expense, Net.* Interest income consists of interest earned on our cash equivalents and marketable securities. Interest expense is mainly related to our credit facility.

*Other Income.* Other income consists primarily of rental income from commercial office space we hold under lease and have sublet to other tenants.

*Foreign Currency Exchange (Gain) Loss, Net*. Foreign currency exchange (gain) loss, net consists primarily of gains and losses on foreign currency transactions. We have foreign currency exposure related to our accounts receivable and accounts payable that are denominated in currencies other than the U.S. Dollar, principally the British Pound, Australian Dollar, Canadian Dollar, and Euro.

***Provision (Benefit) for Income Taxes***

We are subject to income taxes in the U.S. (federal and state) and numerous foreign jurisdictions. Tax laws, regulations, administrative practices, principles, and interpretations in various jurisdictions may be subject to significant change, with or without notice, due to economic, political, and other conditions, and significant judgment is required in evaluating and estimating our provision and accruals for these taxes. There are many transactions that occur during the ordinary course of business for which the ultimate tax determination is uncertain. Our effective tax rates could be affected by numerous factors, such as changes in our business operations, acquisitions, investments, entry into new businesses and geographies, intercompany transactions, the relative amount of our foreign earnings, including earnings being lower than anticipated in jurisdictions where we have lower statutory rates and higher than anticipated in jurisdictions where we have higher statutory rates, losses incurred in jurisdictions for which we are not able to realize related tax benefits, the applicability of special tax regimes, changes in foreign currency exchange rates, changes in our stock price, changes in our deferred tax assets and liabilities and their valuation, changes in the laws, regulations, administrative practices, principles, and interpretations related to tax, including changes to the global tax framework, competition, and other laws and accounting rules in various jurisdictions.

**Results of Operations**

The following table sets forth our consolidated results of operations:

| | Year Ended | | | Favorable/(Unfavorable) % | |
|---|---|---|---|---|---|
| | December 31, 2020 | December 31, 2019 | December 31, 2018 | 2020 vs 2019 | 2019 vs 2018 |
| | (in thousands) | | | | |
| Revenue | $ 221,628 | $ 156,414 | $ 124,685 | 42 % | 25 % |
| Expenses [1][2]: | | | | | |
| Cost of revenue | 77,747 | 57,391 | 60,003 | (35)% | 4 % |
| Sales and marketing | 76,030 | 44,565 | 44,556 | (71)% | — % |
| Technology and development | 51,546 | 40,250 | 37,863 | (28)% | (6)% |
| General and administrative | 52,987 | 39,750 | 42,431 | (33)% | 6 % |
| Merger and restructuring costs | 17,552 | 2,041 | 3,440 | (760)% | 41 % |
| Total expenses | 275,862 | 183,997 | 188,293 | (50)% | 2 % |
| Loss from operations | (54,234) | (27,583) | (63,608) | (97)% | 57 % |
| Other (income) expense, net | (1,495) | (593) | (2,143) | 152 % | (72)% |
| Loss before income taxes | (52,739) | (26,990) | (61,465) | (95)% | 56 % |
| Provision (benefit) for income taxes | 693 | (1,512) | 357 | (146)% | 524 % |
| Net loss | $ (53,432) | $ (25,478) | $ (61,822) | (110)% | 59 % |

(1) Stock-based compensation expense included in our expenses was as follows:

| | Year Ended | | |
|---|---|---|---|
| | December 31, 2020 | December 31, 2019 | December 31, 2018 |
| | (in thousands) | | |
| Cost of revenue | $ 525 | $ 421 | $ 321 |
| Sales and marketing | 8,229 | 5,638 | 4,557 |
| Technology and development | 7,451 | 4,757 | 2,867 |
| General and administrative | 10,416 | 8,009 | 8,139 |
| Merger and restructuring costs | 1,870 | — | 398 |
| Total stock-based compensation expense | $ 28,491 | $ 18,825 | $ 16,282 |

(2) Depreciation and amortization expense included in our expenses was as follows:

| | Year Ended | | |
|---|---|---|---|
| | December 31, 2020 | December 31, 2019 | December 31, 2018 |
| | (in thousands) | | |
| Cost of revenue | $ 34,879 | $ 30,345 | $ 33,306 |
| Sales and marketing | 13,313 | 537 | 586 |
| Technology and development | 454 | 573 | 882 |
| General and administrative | 602 | 671 | 564 |
| Total depreciation and amortization expense | $ 49,248 | $ 32,126 | $ 35,338 |

The following table sets forth our consolidated results of operations for the specified periods as a percentage of our revenue for those periods presented:

| | Year Ended | | |
|---|---|---|---|
| | December 31, 2020 | December 31, 2019 | December 31, 2018 |
| Revenue | 100 % | 100 % | 100 % |
| Cost of revenue | 35 | 37 | 48 |
| Sales and marketing | 34 | 28 | 36 |
| Technology and development | 23 | 26 | 30 |
| General and administrative | 24 | 26 | 34 |
| Merger and restructuring costs | 8 | 1 | 3 |
| Total expenses | 124 | 118 | 151 |
| Loss from operations | (24) | (18) | (51) |
| Other (income) expense, net | — | (1) | (1) |
| Loss before income taxes | (24) | (17) | (50) |
| Provision (benefit) for income taxes | — | (1) | — |
| Net loss | (24)% | (16) % | (50) % |

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

***Revenue***

Revenue increased $65.2 million, or 42%, for the year ended December 31, 2020 compared to the prior year. Our revenue growth was driven primarily by the Merger, completed on April 1, 2020, which contributed $60.1 million in revenue during the year ended December 31, 2020. On a per channel basis, CTV revenue increased $34.3 million, compared to the prior year (all as a result of the Merger), while mobile revenue increased $20.2 million, or a 23%, compared to the prior year, and desktop revenue increased $10.7 million, or 16%, compared to the prior year. Excluding the impact of the Merger, our revenue increased 3% year-over-year. Despite some recovery in our revenue trends, beginning in the third quarter of 2020, our overall annual revenue growth was significantly negatively affected by the impact of the COVID-19 pandemic.

Revenue increased $31.7 million, or 25%, for the year ended December 31, 2019 compared to the year ended December 31, 2018. Our revenue growth was driven primarily by ongoing increases in advertising spend transacted on our platform, particularly video and mobile advertising spend.

We expect revenue to increase in 2021 compared to 2020, with CTV as our primary growth driver. Our revenue is largely a function of the number of advertising transactions and the price, or CPM, at which the inventory is sold, which results in total advertising spend on our platform, and the take rate we charge for our services. Because pricing and take rate vary across publisher, channel and transaction type, our revenue is impacted by shifts in the mix of advertising spend on our platform. For instance, an increase in PMP transactions as a percentage of the transactions on our platform could also result in reduced revenue, if not offset by increased advertising spend, because PMP transactions can carry lower take rates than OMP transactions. We believe that contributions to revenue from PMPs, in particular with respect to CTV which is largely transacted through PMPs, will continue to grow as a percentage of our total revenue. In general, we expect this shift will result in an overall increase in advertising spend through our platform due to both an increase in volume and average CPM which will be partially offset by a decrease in our average take rate.

Our revenue growth has been tempered, and may be negatively impacted in the future, by reductions in revenue resulting from the economic impact of the COVID-19 pandemic. Refer to Item 1A. "Risk Factors" for additional information related to this risk factor and the impact it may have on our business.

***Cost of Revenue***

Cost of revenue increased by $20.4 million, or 35%, for the year ended December 31, 2020 compared to the prior year primarily due to the Merger. Cost of revenue includes an increase of $11.8 million in data and bandwidth expenses, $4.5 million in depreciation and amortization, and $2.0 in media costs.

Cost of revenue decreased $2.6 million, or 4%, for the year ended December 31, 2019 compared to the year ended December 31, 2018 mainly due to our continued focus on infrastructure serving efficiency, which resulted in a decrease of $3.0 million in depreciation and amortization and a decrease of $1.0 million in data and bandwidth expenses. These decreases were partially offset by an increase of $1.1 million in ad protection costs.

We expect the cost of revenue to be higher in 2021 compared to 2020 in absolute dollars due primarily to the increased amortization of intangible assets resulting from the Merger and higher cloud service costs to support the growth of our business.

Cost of revenue may fluctuate from quarter to quarter and period to period, on an absolute dollar basis and as a percentage of revenue, depending on revenue levels and the volume of transactions we process supporting those revenues, and the timing and amounts of depreciation and amortization of equipment and software.

***Sales and Marketing***

Sales and marketing expenses increased by $31.5 million, or 71%, for the year ended December 31, 2020 compared to the prior year primarily due to the Merger and associated increases in amortization related to acquired intangibles and other assets and increases in headcount. Sales and marketing expenses increased by $20.4 million related to personnel expenses and $12.8 million related to depreciation and amortization associated with the Merger. These increases were partially offset by a decrease in expenses of $2.4 million related to travel and industry events due to the impact of the COVID-19 pandemic.

Sales and marketing expenses stayed flat for the year ended December 31, 2019 compared to the year ended December 31, 2018 primarily due to the benefit of the prior year's cost control initiatives.

We expect sales and marketing expenses to increase in 2021 compared to 2020 in absolute dollars primarily due to a full year of additional headcount costs and amortization of acquired intangible assets as a result of the Merger and increased Travel and Entertainment expenses post COVID-19.

Sales and marketing expenses may fluctuate quarter to quarter and period to period, on an absolute dollar basis and as a percentage of revenue, based on revenue levels, the timing of our investments and seasonality in our industry and business.

***Technology and Development***

Technology and development expenses increased by $11.3 million, or 28%, for the year ended December 31, 2020 compared to the prior year, primarily due to an increase of $11.6 million in personnel costs as a result of the increased headcount associated with the Merger.

Technology and development expenses increased by $2.4 million, or 6%, for the year ended December 31, 2019 compared to the year ended December 31, 2018, primarily due to an increase of $3.0 million in personnel costs as a result of strategic headcount additions to focus on the engineering aspect of our new developments, including Demand Manager and other initiatives.

We expect technology and development expenses to continue to increase in 2021 compared to 2020 in absolute dollars, primarily due to the additional headcount investment in our key growth opportunities.

The timing and amount of our capitalized development and enhancement projects may affect the amount of development costs expensed in any given period. As a percentage of revenue, technology and development expense may fluctuate from quarter to quarter and period to period based on revenue levels, the timing and amounts of technology and development efforts, the timing and the rate of the amortization of capitalized projects and the timing and amounts of future capitalized internal use software development costs.

***General and Administrative***

General and administrative expenses increased by $13.2 million, or 33%, for the year ended December 31, 2020 compared to the prior year, primarily due to increases of $7.1 million in personnel expenses and $4.0 million in facilities related expenses, both primarily associated with the Merger. In addition, professional services increased by $3.0 million in professional services mainly attributed to the growth of the overall business as a result of the Merger. These increases were partially offset by a decrease in bad debt expense of $1.3 million.

General and administrative expenses decreased by $0.7 million, or 2%, for the year ended December 31, 2019 compared to the year ended December 31, 2018, primarily due to a decrease of $1.2 million in personnel related expenses due to the benefit of prior year's cost control initiatives.

We expect general and administrative expenses to increase in 2021 compared to 2020 in absolute dollars primarily due to the additional headcount and assuming a return to office work environment later in the year.

General and administrative expenses may fluctuate from quarter to quarter and period to period based on the timing and amounts of expenditures in our general and administrative functions as they vary in scope and scale over periods. Such fluctuations may not be directly proportional to changes in revenue.

***Merger and Restructuring Costs***

We incurred merger and restructuring costs of $17.6 million and $2.0 million during the year ended December 31, 2020 and 2019, respectively, primarily related with the Merger. In 2020, these costs included professional fees of $9.9 million related to investment banking advisory, legal, and other professional service fees, one-time cash-based employee termination benefit costs of $5.7 million, and non-cash stock-based compensation expense associated with double-trigger accelerations and severance benefits of $1.9 million. In 2019, these costs consisted of professional services associated with the Merger, which were all incurred during the fourth quarter.

Merger and restructuring costs increased by $15.5 million during the year ended December 31, 2020 compared to the prior year primarily due cash and non-cash acceleration and termination benefits, as referenced above, and increased professional services associated with the Merger and resulting restructuring activities.

During the year ended December 31, 2018, we incurred restructuring costs of $3.4 million for severance and other one-time employee termination benefits related to headcount reductions that were made in 2018. These costs included one-time cash-based employee termination benefit costs of $3.0 million and non-cash stock-based compensation expenses associated with severance benefits of $0.4 million. These headcount reductions were as part of evaluation of efficiency and implementation of cost-control measures. As part of these measures, we reduced headcount by approximately 100 people, or 19% of our workforce, and reduced other operating costs. Our actions included reductions in administrative staff to bring our general and administrative operations into better alignment with the current size of the business, as well as in sales and technical personnel as a result of offshoring certain development functions, organizational delayering and restructuring, and reducing investment in unprofitable projects.

We expect merger and restructuring costs to increase in 2021 compared to 2020 in absolute dollars if the SpotX Acquisition successfully closes.

***Other (Income) Expense, Net***

| | Year Ended | | |
|---|---|---|---|
| | December 31, 2020 | December 31, 2019 | December 31, 2018 |
| | (in thousands) | | |
| Interest (income) expense, net | $ (50) | $ (789) | $ (988) |
| Other income | (3,665) | (285) | (766) |
| Foreign exchange (gain) loss, net | 2,220 | 481 | (389) |
| Total other (income) expense, net | $ (1,495) | $ (593) | $ (2,143) |

Other income increased by $3.4 million during the year ended December 31, 2020 compared to the prior year due to rental income for two real estate leases for which we sublease the property to a third parties. We expect rental income for real estate leases subleased to third parties to be approximately $3.8 million in 2021, $3.2 million in 2022 and 2023, $3.0 million in 2024, and $0.3 million in 2025, based on the subleases in place as of December 31, 2020.

Foreign exchange (gain) loss, net is impacted by movements in exchange rates and the amount of foreign currency-denominated receivables and payables, which are impacted by our billings to buyers and payments to sellers. The foreign currency loss, net during the year ended December 31, 2020 was primarily attributable to the currency movements between the British Pound, Australian Dollar, Canadian Dollar, and Euro relative to the U.S. Dollar. The foreign currency loss, net during the years ended December 31, 2019 and 2018 was primarily attributable to the currency movements between the British Pound and the Euro relative to the U.S. Dollar.

***Provision (Benefit) for Income Taxes***

We recorded an income tax expense of $0.7 million for the year ended December 31, 2020 compared to an income benefit of $1.5 million and income tax expense of $0.4 million for the years ended December 31, 2019 and 2018, respectively. The tax expense for the years ended December 31, 2020 and December 31, 2018 was primarily the result of the domestic valuation allowance and the tax liability associated with the foreign subsidiaries. The net tax benefit for the year ended December 31, 2019 was the result of a deferred tax liability associated with the RTKio acquisition, the release of a foreign valuation allowance resulting from a change to a cost-plus arrangement for a foreign subsidiary, the domestic valuation allowance, and the tax liability associated with foreign subsidiaries.

**Non-GAAP Financial Measures**

In addition to our GAAP results, we review Adjusted EBITDA, a non-GAAP financial measure, to help us evaluate our business, measure our performance, identify trends affecting our business, establish budgets, measure the effectiveness of investments in our technology and development and sales and marketing, and assess our operational efficiencies. Adjusted EBITDA is discussed immediately following the table below. Revenue is discussed under the headings "Components of Our Results of Operations" and "Results of Operations."

| | Year Ended | | |
|---|---|---|---|
| | December 31, 2020 | December 31, 2019 | December 31, 2018 |
| | (in thousands) | | |
| Financial Measures and non-GAAP Financial Measures: | | | |
| Revenue | $ 221,628 | $ 156,414 | $ 124,685 |
| Net loss | $ (53,432) | $ (25,478) | $ (61,822) |
| Adjusted EBITDA | $ 43,065 | $ 25,694 | $ (11,222) |

***Adjusted EBITDA***

We define Adjusted EBITDA as net income (loss) adjusted to exclude stock-based compensation expense, depreciation and amortization, amortization of acquired intangible assets, impairment charges, interest income or expense, and other cash and non-cash based income or expenses that we do not consider indicative of our core operating performance, including, but not limited to foreign exchange gains and losses, acquisition and related items, and provision (benefit) for income taxes. We believe Adjusted EBITDA is useful to investors in evaluating our performance for the following reasons:

- Adjusted EBITDA is widely used by investors and securities analysts to measure a company’s performance without regard to items such as those we exclude in calculating this measure, which can vary substantially from company to company depending upon their financing, capital structures, and the method by which assets were acquired.
- Our management uses Adjusted EBITDA in conjunction with GAAP financial measures for planning purposes, including the preparation of our annual operating budget, as a measure of performance and the effectiveness of our business strategies, and in communications with our board of directors concerning our performance. Adjusted EBITDA may also be used as a metric for determining payment of cash incentive compensation.
- Adjusted EBITDA provides a measure of consistency and comparability with our past performance that many investors find useful, facilitates period-to-period comparisons of operations, and also facilitates comparisons with other peer companies, many of which use similar non-GAAP financial measures to supplement their GAAP results.

Although Adjusted EBITDA is frequently used by investors and securities analysts in their evaluations of companies, Adjusted EBITDA has limitations as an analytical tool, and should not be considered in isolation or as a substitute for analysis of our results of operations as reported under GAAP. These limitations include:

- Stock-based compensation is a non-cash charge and will remain an element of our long-term incentive compensation package, although we exclude it as an expense when evaluating our ongoing operating performance for a particular period.
- Depreciation and amortization are non-cash charges, and the assets being depreciated or amortized will often have to be replaced in the future, but Adjusted EBITDA does not reflect any cash requirements for these replacements.
- Impairment charges are non-cash charges related to goodwill, intangible assets and/or long-lived assets.
- Adjusted EBITDA does not reflect non-cash charges related to acquisition and related items, such as amortization of acquired intangible assets and changes in the fair value of contingent consideration.
- Adjusted EBITDA does not reflect cash and non-cash charges and changes in, or cash requirements for, acquisition and related items, such as certain transaction expenses and expenses associated with earn-out amounts.
- Adjusted EBITDA does not reflect changes in our working capital needs, capital expenditures, or contractual commitments.
- Adjusted EBITDA does not reflect cash requirements for income taxes and the cash impact of other income or expense.
- Other companies may calculate Adjusted EBITDA differently than we do, limiting its usefulness as a comparative measure.

Our Adjusted EBITDA is influenced by fluctuations in our revenue and the timing and amounts of our investments in our operations. Adjusted EBITDA should not be considered as an alternative to net income (loss), income (loss) from operations, or any other measure of financial performance calculated and presented in accordance with GAAP.

The following table presents a reconciliation of net loss, the most comparable GAAP measure, to Adjusted EBITDA for the years ended December 31, 2020 and 2019.

| | Year Ended | | |
|---|---|---|---|
| | December 31, 2020 | December 31, 2019 | December 31, 2018 |
| | (in thousands) | | |
| Net income (loss) | $ (53,432) | $ (25,478) | $ (61,822) |
| Add back (deduct): | | | |
| Depreciation and amortization expense, excluding amortization of acquired intangible assets | 24,337 | 28,818 | 32,153 |
| Amortization of acquired intangibles | 24,911 | 3,308 | 3,185 |
| Stock-based compensation expense | 28,491 | 18,825 | 16,282 |
| Merger and acquisition related items | 15,682 | 2,041 | — |
| Non-operational real estate expense (income), net | 198 | — | — |
| Interest (income) expense, net | (50) | (789) | (988) |
| Foreign exchange (gain) loss, net | 2,220 | 481 | (389) |
| Other non-operating (income) expense, net | 15 | — | — |
| Provision (benefit) for income taxes | 693 | (1,512) | 357 |
| Adjusted EBITDA | $ 43,065 | $ 25,694 | $ (11,222) |

**Liquidity and Capital Resources**

Our principal sources of liquidity are our cash and cash equivalents, marketable securities, cash generated from operations, and our credit facility with Silicon Valley Bank ("SVB"). At December 31, 2020, we had cash and cash equivalents of $117.7 million, of which $23.5 million was held in foreign currency cash accounts. Our cash and marketable securities balances are affected by our results of operations, the timing of capital expenditures, which are typically greater in the second half of the year, and by changes in our working capital, particularly changes in accounts receivable and accounts payable. The timing of cash receipts from buyers and payments to sellers can significantly impact our cash flows from operating activities and our liquidity for, and within, any period presented. Our collection and payment cycle can vary from period to period depending upon various circumstances, including seasonality, and may be negatively impacted as a result of COVID-19.

On September 25, 2020, we amended and restated our loan and security agreement with SVB (the "Loan Agreement"). The Loan Agreement provides a senior secured revolving credit facility of up to $60.0 million with a maturity date of September 25, 2022. The Loan Agreement includes a letter of credit, foreign exchange and cash management facility with a sublimit up to $10.0 million, of which $6.3 million was utilized for letters of credit related to leases as of December 31, 2020. As of December 31, 2020, the amount available for borrowing was $53.7 million (net of letters of credit).

Pursuant to the Loan Agreement, we are required to comply with financial covenants, measured quarterly, with respect to a minimum liquidity ratio and maximum quarterly cash burn. We are required to maintain a minimum liquidity ratio of at least 1.25 on the last day of each quarter and not exceed, on an absolute basis, a maximum quarterly cash burn for specific periods, as defined in the Loan Agreement. The Liquidity Ratio is defined as Cash and Cash Equivalents, plus Accounts Receivable, less Accounts Payable - Seller, divided by all obligations due to SVB, including all debt balances, interest, service fees, and unused credit line fees, net of outstanding letters of credit as of the balance sheet date. Cash Burn is defined as Adjusted EBITDA less Capital Expenditures during the trailing periods as outlined in the Loan Agreement. The Loan Agreement defines Capital Expenditures as the current period unfinanced cash expenditures that are capitalized and amortized, including but not limited to property and equipment and capitalized labor costs as they relate to internal use software development costs. December 31, 2020, the Company was in compliance with its financial covenants. While we are currently in compliance with these covenants, this could change in the future depending on our operating results. At December 31, 2020, we had no amounts outstanding under our Loan Agreement other than with respect to letters of credit). Future availability under the credit facility is dependent on several factors, including the available borrowing base and compliance with future covenant requirements. See Note 18 of "Notes to Consolidated Financial Statements" for additional information regarding the Loan Agreement.

We believe our existing cash and cash equivalents, investment balances, and available borrowings under our Loan Agreement will be sufficient to meet our working capital requirements for at least the next twelve months from the issuance of our financial statements. However, there are multiple factors that could impact our cash balances in the future. For example, we typically collect from buyers in advance of payments to sellers, and our collection and payment cycle can vary from period to period depending upon various circumstances, including seasonality. In addition, in the event a buyer defaults on payment, we may still be required to pay sellers for the inventory purchased even if we are unable to collect from buyers. These challenges have been exacerbated by the COVID-19 pandemic and resulting economic impact, as many of our buyers are experiencing financial difficulties and liquidity constraints. In certain cases, buyers have been unable to timely make payments and we have agreed to revised payment schedules. To date, these actions have not had a material negative impact on our cash flow or liquidity. At December 31, 2020, two buyers accounted for 33% and 12%, respectively, of consolidated accounts receivable. The future capital requirements and the adequacy of available funds will depend on many factors, including the duration and severity of the COVID-19 pandemic and its impact on buyers and sellers and factors set forth in Part I, Item 1A: "Risk Factors" of this Annual Report on Form 10-K.

We intend to finance the cash portion of the SpotX Acquisition consideration in part from cash on our balance sheet and in part through borrowings under certain proposed new credit facilities. In connection with entering into the SpotX Purchase Agreement, we entered into the Commitment Letter, dated as of February 4, 2021, with Goldman Sachs Bank USA (the "Commitment Party"), pursuant to which, subject to the terms and conditions set forth therein, the Commitment Party has committed to provide the senior secured Term Loan Facility in an aggregate principal amount of up to $560 million. If we fail to satisfy the closing conditions set forth in the Commitment Letter or the Commitment Party is unable to perform its obligations under the Commitment Letter for any reason, we will be required to find other sources of capital to fund the acquisition of SpotX.

In the future, we may attempt to raise additional capital through the sale of equity securities or through equity-linked or debt financing arrangements. If we raise additional funds by issuing equity or equity-linked securities, the ownership of our existing stockholders will be diluted. If we raise additional financing by incurring indebtedness, we will be subject to increased fixed payment obligations and could also be subject to restrictive covenants, such as limitations on our ability to incur additional debt, and other operating restrictions that could adversely impact our ability to conduct our business. Any future indebtedness we incur may result in terms that could be unfavorable to equity investors. Due to the economic uncertainty caused by the COVID-19 pandemic, the debt and equity markets have become less predictable and obtaining financing on favorable terms and at favorable rates has become more difficult.

An inability to raise additional capital could adversely affect our ability to achieve our business objectives. In addition, if our operating performance during the next twelve months is below our expectations, our liquidity and ability to operate our business could be adversely affected.

***Cash Flows***

The following table summarizes our cash flows for the periods presented:

| | Year Ended | | |
|---|---|---|---|
| | **December 31, 2020** | **December 31, 2019** | **December 31, 2018** |
| | **(in thousands)** | | |
| Cash flows provided by (used in) operating activities | $ (12,065) | $ 31,983 | $ (22,686) |
| Cash flows provided by (used in) investing activities | 32,636 | (23,388) | 27,947 |
| Cash flows provided by (used in) financing activities | 7,354 | (205) | (1,279) |
| Effects of exchange rate changes on cash, cash equivalents and restricted cash | 918 | 46 | (172) |
| Change in cash, cash equivalents and restricted cash | $ 28,843 | $ 8,436 | $ 3,810 |

***Operating Activities***

Our cash flows from operating activities are primarily driven by revenues generated from advertising activity, offset by the cash costs of operations, and are significantly influenced by the timing of and fluctuations in receipts from buyers and related payments to sellers. Our future cash flows will be diminished if we cannot increase our revenue levels and manage costs appropriately. Cash flows from operating activities have been further affected by changes in our working capital, particularly changes in accounts receivable and accounts payable. The timing of cash receipts from buyers and payments to sellers can significantly impact our cash flows from operating activities for any period presented.

During the year ended December 31, 2020, net cash used in operating activities was $12.1 million, compared to net cash provided by operating activities of $32.0 million during the year ended December 31, 2019 and net cash used in operating activities of $22.7 million during the year ended December 31, 2018. Our operating activities included our net losses of $53.4 million, $25.5 million, and $61.8 million for the years ended December 31, 2020 and 2019, and 2018, respectively, which were offset by non-cash adjustments of $76.4 million, $51.5 million, and $51.3 million, respectively. In 2020, net changes in our working capital increased cash used in operating activities by $35.1 million, mainly driven by increased accounts receivable and accounts payable balances. In 2019, net changes in our working capital increased cash provided by operating activities by $5.9 million. In 2018, net changes in our working capital increased cash used in operating activities by $12.1 million. The net changes in working capital for all periods presented are primarily due to the timing of cash receipts from buyers and the timing of payments to sellers.

We believe that cash flows from operations will continue to be negatively impacted by our ongoing net losses and working capital needs.

***Investing Activities***

Our primary investing activities have consisted of acquisitions of businesses, purchases of property and equipment, capital expenditures to develop our internal use software in support of creating and enhancing our technology infrastructure, and investments in, and maturities of, available-for-sale securities. Purchases of property and equipment and investments in internal use software development may vary from period-to-period due to the timing of the expansion of our operations, changes to headcount, and the cycles of our internal use software development. As we execute on our strategy to be a high volume, low cost advertising exchange, we are developing solutions to manage the growth of our digital advertising inventory volume more efficiently. We anticipate investment in internal use software development to increase compared to past years' investment levels as we continue to innovate new solutions on our platform. As the business continues to grow, we expect our investment in property and equipment to slightly increase compared to 2020. Historically, a majority of our purchases in property and equipment have occurred in the latter half of the year in preparation for the peak volumes of the fourth quarter and early in the first quarter of the following year. We expect those trends to continue, with higher levels of property and equipment spend in the latter half of next year compared to the first half of the year. Investments in, and maturities of, available-for-sale securities and acquisitions of businesses vary from period-to-period.

During the year ended December 31, 2020, net cash provided by investing activities was $32.6 million compared to net cash used by investing activities of $23.4 million during the year ended December 31, 2019 and net cash provided by investing activities of $27.9 million during the year ended December 31, 2018. During the year ended December 31, 2020, 2019, and 2018, we used cash for purchases of property and equipment of $14.3 million, $11.4 million, and $11.4 million, respectively, and used cash for investments in our internally developed software of $7.7 million, $8.5 million, and $8.5 million, respectively, The cash provided by investing activity for the year ended December 31, 2020 included $54.6 million of cash and restricted cash acquired as part of the Merger. Net cash used in our investing activities in 2019 included $11.0 million to acquire RTK.io. For the years ended December 31, 2019 and 2018 we had net maturities of investments in available-for-sale securities of $7.5 million and $38.7 million, respectively. In addition, we had cash inflows of $9.2 million during the year ended December 31, 2018 related to sales of available-for-sale securities.

***Financing Activities***

Our financing activities consisted of transactions related to the issuance of our common stock under our equity plans. For the years ended December 31, 2020, 2019, and 2018 we provided net cash of $7.4 million, and used net cash of $0.2 million, and $1.3 million, respectively, for financing activities. Cash outflows from financing activities for the years ended December 31, 2020, 2019, and 2018 included payments of $7.9 million, $1.8 million, and $1.6 million, respectively, for income tax deposits paid in respect of vesting of stock-based compensation awards that were reimbursed by the award recipients through surrender of shares. Offsetting these outflows were cash inflows of $15.2 million, $1.6 million, and $0.4 million, from the issuance of common stock under the employee stock purchase plan and exercise of stock options for the years ended December 31, 2020, 2019, and 2018, respectively.

**Off-Balance Sheet Arrangements**

We do not have any relationships with other entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities that have been established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. We did not have any other off-balance sheet arrangements at December 31, 2020 other than the short-term operating leases and the indemnification agreements described below.

**Contractual Obligations and Known Future Cash Requirements**

Our principal commitments consist of leases for our various office facilities, including our corporate headquarters in Los Angeles, California and offices in New York, New York, and operating lease agreements, including data centers and cloud managed services that expire at various times through 2030. In certain cases, the terms of the lease agreements provide for rental payments on a graduated basis.

We received rental income from subleases totaling $3.7 million for the year ended December 31, 2020.

The following table summarizes our future lease obligations, related sublease income, and other future payments due under non-cancelable agreements at December 31, 2020.

| | 2021 | 2022 | 2023 | 2024 | 2025 | Thereafter | Total |
|---|---|---|---|---|---|---|---|
| | | | | (in thousands) | | | |
| Lease liabilities associated with leases included Right of Use Assets as of December 31, 2020 | $ 11,653 | $ 8,392 | $ 7,428 | $ 6,740 | $ 3,551 | $ 11,403 | $ 49,167 |
| Obligations for leases not included in Lease liabilities as of December 31, 2020 | 1,549 | 3,593 | 3,713 | 3,835 | 2,827 | 13,323 | 28,840 |
| Operating sublease income | (3,814) | (3,245) | (3,194) | (3,042) | (253) | — | (13,548) |
| Other non-cancelable obligations | 9,010 | 8,073 | 5,158 | 4,031 | 2,000 | — | 28,272 |
| Total | $ 18,398 | $ 16,813 | $ 13,105 | $ 11,564 | $ 8,125 | $ 24,726 | $ 92,731 |

Obligations for leases not included in the lease liabilities as of December 31, 2020 include commitments under agreements for an office lease for our new corporate headquarters in Los Angeles and a data center in Singapore which have not commenced as of December 31, 2020.

Other non-cancelable obligations include other agreements in the normal course of business, including an agreement for third-party cloud-managed services. As part of the agreement, we have a minimum commitment to pay $20.0 million over the course of five years, with no annual minimum commitment. As of December 31, 2020, the Company's commitment is $18.0 million.

In addition, on February 4, 2021, we entered into a Stock Purchase Agreement with RTL US Holding, Inc., to purchase all of the issued and outstanding shares of capital stock of SpotX, a Delaware corporation and wholly owned subsidiary of RTL, for a purchase price equal to $560 million in cash ("Cash Consideration") and 14 million shares of the Company's common stock. The Cash Consideration is subject to customary working capital and other adjustments. We intend to finance the Cash Consideration in part from cash on our balance sheet and in part through borrowings under the Term Loan Facility. The funding of the Term Loan Facility provided for in the Commitment Letter is contingent on the satisfaction of customary conditions, including the execution and delivery of definitive documentation with respect to credit facilities in accordance with the terms set forth in the Commitment Letter and the consummation of the SpotX acquisition in accordance with the Purchase Agreement.

Our unrecognized tax benefits changes for the year ended December 31, 2020 resulted from a closed IRS audit and the Company's reasonable expectation that federal research and development credits will expire unutilized pursuant to Section 383 of the Code, which allowed us to decrease our unrecognized tax benefit. The Merger with Telaria resulted in an increase to our unrecognized tax benefit for prior year taxes in foreign jurisdictions. The increase to unrecognized tax benefit for the period is not material.

In the ordinary course of business, we enter into agreements with sellers, buyers, and other third parties pursuant to which we agree to indemnify buyers, sellers, vendors, lessors, business partners, lenders, stockholders, and other parties with respect to certain matters, including, but not limited to, losses resulting from claims of intellectual property infringement, damages to property or persons, business losses, or other liabilities. Generally, these indemnity and defense obligations relate to our own business operations, obligations, and acts or omissions. However, under some circumstances, we agree to indemnify and defend contract counterparties against losses resulting from their own business operations, obligations, and acts or omissions, or the business operations, obligations, and acts or omissions of third parties. These indemnity provisions generally survive termination or expiration of the agreements in which they appear. In addition, we have entered into indemnification agreements with our directors, executive officers and certain other officers that will require us, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors, officers, or employees. No demands for indemnification have been made as of December 31, 2020.

**Critical Accounting Policies and Estimates**

Our consolidated financial statements are prepared in accordance with GAAP. The preparation of these consolidated financial statements requires us to make estimates and assumptions that affect the reported amounts of assets, liabilities, revenue, expenses, and related disclosures. We evaluate our estimates and assumptions on an ongoing basis. Our estimates are based on historical experience and various other assumptions that we believe to be reasonable under the circumstances. Our actual results could differ from these estimates.

We believe that the following assumptions and estimates have the greatest potential impact on our consolidated financial statements: (i) the determination of revenue recognition as net versus gross in our revenue arrangements, (ii) the determination of the estimated useful lives of internal-use software development costs, (iii) the recoverability of intangible asset and goodwill, (iv) assumptions used in the valuation models to determine the fair value of stock options and stock-based compensation expense, (v) the assumptions used in the valuation of acquired assets and liabilities in business combinations, and (vi) income taxes, including the realization of tax assets and estimates of tax liabilities. There have been no significant changes in our accounting policies or estimates from those disclosed in our audited consolidated financial statements and notes thereto for the years ended December 31, 2020 and 2019.

We believe that the accounting policies disclosed below include estimates and assumptions critical to our business and their application could have a material impact on our consolidated financial statements. In addition to these critical policies, our significant accounting policies are included within Note 2 of our "Notes to Consolidated Financial Statements" within this Annual Report on Form 10-K.

***Revenue Recognition***

We generate revenue from transactions where we provide a platform for the purchase and sale of digital advertising inventory. We also generate revenue from the fee we charge clients for use of our Demand Manager product, which generally is a percentage of the client's advertising spending on any advertising marketplace. Our platform dynamically connects sellers and buyers of advertising inventory in a digital marketplace. Our solution incorporates proprietary machine-learning algorithms, sophisticated data processing, high-volume storage, detailed analytics capabilities, and a distributed infrastructure. Digital advertising inventory is created when consumers access sellers' content. Sellers provide digital advertising inventory to our platform in the form of advertising requests, or ad requests. When we receive ad requests from sellers, we send bid requests to buyers, which enable buyers to bid on sellers' digital advertising inventory. Winning bids can create advertising, or paid impressions, for the seller to present to the consumer.

The total volume of spending between buyers and sellers on our platform is referred to as advertising spend. We keep a percentage of that advertising spend as a fee, and remit the remainder to the seller. The fee that we retain from the gross advertising spend on our platform is recognized as revenue. The fee earned on each transaction is based on the pre-existing agreement we have with the seller and the clearing price of the winning bid. We recognize revenue upon fulfillment of our performance obligation to a client, which occurs at the point in time an ad renders and is counted as a paid impression, subject to a contract existing with the client and a fixed or determinable transaction price. Performance obligations for all transactions are satisfied, and the corresponding revenue is recognized, at a distinct point in time. We have no arrangements with multiple performance obligations. We consider the following when determining if a contract exists (i) contract approval by all parties, (ii) identification of each party's rights regarding the goods or services to be transferred, (iii) specified payment terms, (iv) commercial substance of the contract, and (v) collectability of substantially all of the consideration is probable.

The determination of whether revenue should be reported on a gross or net basis is based on an assessment of whether we are acting as the principal or an agent in the transaction. In determining whether we are acting as the principal or an agent, we followed the accounting guidance for principal-agent considerations. Making such determinations involves judgment and is based on an evaluation of the terms of each arrangement, none of which are considered presumptive or determinative.

For substantially all transactions on our platform, we have determined that we do not act as the principal in the purchase and sale of digital advertising inventory because we are not the primary obligor as we do not have control of the digital advertising inventory and do not set prices agreed upon within the auction marketplace, and therefore we report revenue on a net basis. However, for certain transactions related to revenue streams acquired in connection with the Merger with Telaria, we report revenue on a gross basis, based primarily on our determination that we act as the primary obligor in the delivery of advertising campaigns for buyers with respect to such transactions.

***Internal Use Software Development Costs***

We capitalize certain internal use software development costs associated with creating and enhancing internally developed software related to our technology infrastructure. These costs include personnel and related employee benefits expenses for employees who are directly associated with and who devote time to software projects, and external direct costs of materials and services consumed in developing or obtaining the software. Software development costs that do not meet the qualification for capitalization, as further discussed below, are expensed as incurred and recorded in technology and development expenses in the results of operations.

Software development activities generally consist of three stages, (i) the planning stage, (ii) the application and infrastructure development stage, and (iii) the post implementation stage. Costs incurred in the planning and post implementation stages of software development, including costs associated with the post-configuration training and repairs and maintenance of the developed technologies, are expensed as incurred. We capitalize costs associated with software developed for internal use when the planning stage is completed, management has authorized further funding for the completion of the project, and it is probable that the project will be completed and perform as intended. Costs incurred in the application and infrastructure development stages, including significant enhancements and upgrades, are capitalized. Capitalization ends once a project is substantially complete and the software and technologies are ready for their intended purpose.

We amortize internal use software development costs using a straight-line method over the estimated useful life, commencing when the software is ready for its intended use. The straight-line recognition method approximates the manner in which the expected benefit will be derived.

***Valuation of Goodwill and Intangibles***

The valuation of assets acquired in a business combination and asset impairment reviews require the use of significant estimates and assumptions. The acquisition method of accounting for business combinations requires us to estimate the fair value of assets acquired, liabilities assumed, and any noncontrolling interest in an acquired business to properly allocate purchase price consideration between assets that are depreciated or amortized and goodwill.

Long-lived assets, including property and equipment, long-term prepayments, and intangible assets, excluding goodwill, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. The evaluation is performed at the lowest level of identifiable cash flows independent of other assets. An impairment loss would be recognized when estimated undiscounted future cash flows generated from the assets are less than their carrying amount. Measurement of an impairment loss would be based on the excess of the carrying amount of the asset group over its fair value.

We evaluate goodwill annually or more frequently if events or changes in circumstances indicate that goodwill may be impaired. In accordance with guidance related to impairment testing, we have the option to first assess qualitative factors to determine whether or not it is necessary to perform the quantitative goodwill impairment test. If the qualitative assessment option is not elected, or if the qualitative assessment indicates that it is more likely than not that the fair value is less than its carrying amount, a quantitative analysis is then performed. The quantitative analysis, if performed, compares the estimated fair value of the Company with its respective carrying amount, including goodwill. If the estimated fair value of the Company exceeds its carrying amount, including goodwill, goodwill is considered not to be impaired and no additional steps are necessary. If the fair value is less than the carrying amount, including goodwill, then an impairment adjustment must be recorded up to the carrying amount of goodwill.

***Stock-Based Compensation***

Compensation expense related to employee stock-based awards is measured and recognized on the fair value of the awards granted. We have granted awards to employees that vest based solely on continued service, or service conditions, awards that vest based on the achievement of performance targets, or performance conditions, and awards that vest based on our stock price exceeding a peer index, or market conditions. The fair value of each option award containing service and/or performance conditions is estimated on the grant date using the Black-Scholes option-pricing model. The fair value of awards containing market conditions is estimated using a Monte-Carlo lattice model. For service condition awards, stock-based compensation expense is recognized on a straight-line basis over the requisite service periods of the awards, which is generally four years. For performance condition and market condition awards, stock-based compensation expense is recognized using a graded vesting model over the requisite service period of the awards. For market condition awards, expense recognized is not subsequently reversed if the market conditions are not achieved.

Stock-based awards issued to non-employees are accounted for at fair value determined by using the Black-Scholes option-pricing model. We believe that the fair value of the stock options is more reliably measured than the fair value of the services received. The fair value of each non-employee stock-based compensation award is re-measured each period until a commitment date is reached, which is generally the vesting date.

Determining the fair value of stock-based awards at the grant date requires judgment. Our use of the Black-Scholes option-pricing model and Monte-Carlo lattice model requires the input of subjective assumptions such as the expected term of the option, the expected volatility of the price of our common stock, risk-free interest rates, the expected dividend yield of our common stock, and the fair value of our common stock. The assumptions used in our valuation models represent management’s best estimates. These estimates involve inherent uncertainties and the application of management’s judgment. If factors change and different assumptions are used, our stock-based compensation expense could be materially different in the future.

***Business Combinations***

The results of businesses acquired in a business combination are included in our consolidated financial statements from the date of acquisition. We allocate the purchase price of a business combination, which is the sum of the consideration provided, which may consist of cash, equity or a combination of the two, to the identifiable assets and liabilities of the acquired business at their acquisition date fair values. The excess of the purchase price over the amount allocated to the identifiable assets and liabilities, if any, is recorded as goodwill. Determining the fair value of assets acquired and liabilities assumed requires management to use significant judgment and estimates including the selection of valuation methodologies, estimates of future revenues and cash flows, discount rates and selection of comparable companies.

When we issue stock-based or cash awards to an acquired company’s stockholders, we evaluate whether the awards are contingent consideration or compensation for post-business combination services. The evaluation includes, among other things, whether the vesting of the awards is contingent on the continued employment of the selling stockholder beyond the acquisition date. If continued employment is required for vesting, the awards are treated as compensation for post-acquisition services and recognized as expense over the requisite service period.

We estimate the fair value of intangible assets acquired generally using a discounted cash flow approach, which includes an analysis of the future cash flows expected to be generated by the asset and the risk associated with achieving these cash flows. The key assumptions used in the discounted cash flow model include the discount rate that is applied to the forecasted future cash flows to calculate the present value of those cash flows and the estimate of future cash flows attributable to the acquired intangible asset, which include revenue, expenses and taxes. The carrying value of acquired working capital assets and liabilities approximates its fair value, given the short-term nature of these assets and liabilities.

***Income Taxes***

We are subject to income taxes in the U.S. and foreign jurisdictions. Significant judgment is required in evaluating our uncertain tax positions and determining our provision for income taxes.

Although we believe we have adequately reserved for our uncertain tax positions, no assurance can be given that the final tax outcome of these matters will not be different. We adjust these reserves as facts and circumstances change, such as the closing of a tax audit or the refinement of an estimate. To the extent that the final tax outcome of these matters is different than the amounts recorded, such differences will affect the provision for income taxes and the effective tax rate in the period in which such determination is made.

The provision for income taxes includes the effect of reserve provisions and changes to reserves that are considered appropriate as well as the related net interest and penalties. In addition, we are subject to the continuous examination of our income tax returns by the Internal Revenue Services ("IRS") and other tax authorities which may assert assessments against us. We regularly assess the likelihood of adverse outcomes resulting from these examinations and assessments to determine the adequacy of our provision for income taxes.

**Recently Issued Accounting Pronouncements**

The information set forth under Note 2 to our "Notes to Consolidated Financial Statements" under the caption "Organization and Summary of Significant Accounting Policies" is incorporated herein by reference.

## Item 7A. Quantitative and Qualitative Disclosure About Market Risk

We have operations both in the United States and internationally, and we are exposed to market risks in the ordinary course of our business. These risks include primarily interest rate, foreign exchange, and inflation risks. The risks below may be further exacerbated by the effects of the COVID-19 pandemic on global macroeconomic and market conditions.

***Interest Rate Fluctuation Risk***

Our cash and cash equivalents consist of cash, money market funds, and commercial paper, with original maturities of three months or less. Our investments consist of repurchase agreements, U.S. government agency debt, and U.S. treasury debt. The primary objective of our investment activities is to preserve principal while maximizing income without significantly increasing risk. Because our cash, cash equivalents, and investments have a relatively short maturity, our portfolio’s fair value is relatively insensitive to interest rate changes. Our line of credit is at variable interest rates. We had no amounts outstanding under our credit facility at December 31, 2020. We do not believe that an increase or decrease in interest rates of 100 basis points would have a material effect on our operating results or financial condition. In future periods, we will continue to evaluate our investment policy relative to our overall objectives.

***Foreign Currency Exchange Risk***

We have foreign currency risks related to our revenue and expenses denominated in currencies other than the U.S. Dollar, principally the British Pounds, Australian Dollar, Canadian Dollar and Euro. The volatility of exchange rates depends on many factors that we cannot forecast with reliable accuracy. We have experienced and will continue to experience fluctuations in our net income (loss) as a result of transaction gains and losses related to translating certain cash balances, trade accounts receivable and payable balances and intercompany balances that are denominated in currencies other than the U.S. Dollar. The effect of an immediate 10% adverse change in foreign exchange rates on foreign-denominated accounts at December 31, 2020, including intercompany balances, would result in a foreign currency loss of approximately $3.1 million. In the event our non-U.S. Dollar denominated sales and expenses increase, our operating results may be more greatly affected by fluctuations in the exchange rates of the currencies in which we do business. 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 foreign currency exchange risk. It is difficult to predict the impact hedging activities would have on our results of operations.

***Inflation Risk***

We do not believe that inflation has had a material effect on our business, financial condition, or results of operations. If our costs were to become subject to significant inflationary pressures, we might not be able to fully offset such higher costs through price increases. Our inability or failure to do so could harm our business, financial condition, and results of operations.

**Item 8. Financial Statements and Supplementary Data**

MAGNITE, INC.

INDEX TO CONSOLIDATED FINANCIAL STATEMENTS

## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the stockholders and the Board of Directors of Magnite, Inc.

### Opinions on the Financial Statements and Internal Control over Financial Reporting

We have audited the accompanying consolidated balance sheets of Magnite, Inc. and subsidiaries (the "Company") as of December 31, 2020 and 2019, the related consolidated statements of operations, comprehensive loss, stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2020 and the related notes (collectively referred to as the "financial statements"). We also have audited the Company's internal control over financial reporting as of December 31, 2020, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2020 and 2019, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2020, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2020, based on criteria established in *Internal Control — Integrated Framework (2013)* issued by COSO.

As described in Management's Report on Internal Control over Financial Reporting, management excluded from its assessment of internal control over financial reporting certain elements related to Telaria, Inc., which was acquired on April 1, 2020. The excluded elements of the Telaria business represented 25% of the Company's revenue and 25% of the Company's total assets as of and for the year ended December 31, 2020. Accordingly, our audit did not include the internal control over financial reporting for certain elements related to Telaria, Inc.

### Basis for Opinions

The Company's management is responsible for these financial statements, for maintaining effective internal control over financial reporting, and for its assessment of the effectiveness of internal control over financial reporting, included in the accompanying Management's Report on Internal Control Over Financial Reporting. Our responsibility is to express an opinion on these financial statements and an opinion on the Company's internal control over financial reporting based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

We conducted our audits in accordance with the standards of the PCAOB. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether due to error or fraud, and whether effective internal control over financial reporting was maintained in all material respects.

Our audits of the financial statements included performing procedures to assess the risks of material misstatement of the financial statements, whether due to error or fraud, and performing procedures to respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

### Definition and Limitations of Internal Control over Financial Reporting

A company's 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 for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

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

**Critical Audit Matters**

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

***Business Combinations – Telaria, Inc. Merger – Technology, Customer Relationships, and In-process Research and Development Intangible Assets — Refer to Note 10 to the financial statements***

*Critical Audit Matter Description*

On April 1, 2020, the Company completed a stock for stock merger with Telaria, Inc. whereby each share of Telaria common stock issued and outstanding was converted into 1.082 shares of the Company's common stock. This resulted in the issuance of 52,098,945 shares of the Company's common stock. The Company accounted for the acquisition using the acquisition method of accounting for business combinations and the fair value of the purchase price of $287,417,460 was allocated to the assets acquired and liabilities assumed based on their respective fair values, including the technology, customer relationships, and in-process research and development intangible assets of $58,000,000, $36,300,000, and $8,030,000, respectively. Management estimated the fair value of technology, customer relationships, and in-process research and development intangible assets using a discounted cash flow approach, which included an analysis of future cash flows expected to be generated by each intangible asset. The fair value of the acquired technology and in-process research and development was valued using The Revenue Split Method. The Company used the Loss-of-Revenue and Income Method in its valuation of the existing Customer Relationships. The fair value determination of these intangible assets required management to make significant, subjective estimates and assumptions related to forecasted future cash flows and the selected discount rate.

We identified the aforementioned intangible assets as a critical audit matter because of the significant estimates and assumptions management makes to determine the fair value of these intangible assets. This required a high degree of auditor judgment and an increased extent of effort when performing audit procedures, including the need to involve our fair value specialists.

*How the Critical Audit Matter Was Addressed in the Audit*

Our audit procedures related to the forecasts of future cash flows and the selection of the discount rate for the technology, customer relationships, and in-process research and development intangible assets included the following, among others:

- We tested the effectiveness of controls over the valuation of intangible assets, including management's controls over forecasts of future cash flows and the determination of the discount rate.
- We assessed the reasonableness of management's forecasts of future cash flows by comparing the revenue and disaggregated cost projections to historical results, certain peer companies, third-party industry forecasts, as well as performing inquiries with certain members of management.
- With the assistance of our fair value specialists, we evaluated the valuation methodology used to determined fair value along with the reasonableness of the discount rate, including independently estimating the discount rate using a process consistent with generally accepted valuation practices.
- We evaluated whether the estimated future cash flows were consistent with evidence obtained in other areas of the audit.

***Revenue — Highly Automated Systems to Process and Record Revenue - Refer to Note 4 to the financial statements*.**

*Critical Audit Matter Description*

The Company's revenue consists of transaction-based fees and is made up of a significant volume of low-dollar transactions, sourced from multiple systems, databases, and other tools. Due to the fact that revenue transactions do not consist of the transfer of physical goods, but are web- or app-based, the processing and recording of revenue is highly automated and is based on contractual terms with advertisers and publishers. Because of the nature of the Company's transaction-based fees, the Company uses automated systems to process and record its revenue transactions.

We identified revenue as a critical audit matter because the of the information technology (IT)-dependent nature of the Company's revenue stream and the significant audit effort required in performing our audit procedures, including involvement of professionals with expertise in IT to identify, test, and evaluate the Company's systems, software applications, and automated controls related to the revenue cycle.

*How the Critical Audit Matter Was Addressed in the Audit*

Our audit procedures related to the Company's systems to process revenue transactions included the following, among others:

- With the assistance of our IT specialists, we:
  - Identified the significant systems used to process revenue transactions and tested the effectiveness of general IT controls over the systems, including testing of user access controls, change management controls, and IT operations controls.
  - We tested the effectiveness of system interface controls and automated controls within the revenue process, as well as controls designed to ensure the accuracy and completeness of revenue.
- We tested the effectiveness of controls within the relevant revenue business processes, including those in place to reconcile the various systems to the Company's general ledger.
- We evaluated recorded revenue and revenue trends and used data analytics to analyze transactional revenue data.
- We tested revenue for completeness and accuracy by confirming related accounts receivable selections.
- We performed a proof of cash reconciliation that reconciled cash to revenue and related revenue accounts.

/s/ Deloitte & Touche LLP
Los Angeles, California February 24, 2021

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

**MAGNITE, INC.**
**CONSOLIDATED BALANCE SHEETS**
**(In thousands, except per share amounts)**

| | December 31, 2020 | December 31, 2019 |
|---|---|---|
| **ASSETS** | | |
| Current assets: | | |
| Cash and cash equivalents | $ 117,676 | $ 88,888 |
| Accounts receivable, net | 471,666 | 217,571 |
| Prepaid expenses and other current assets | 17,729 | 6,591 |
| TOTAL CURRENT ASSETS | 607,071 | 313,050 |
| Property and equipment, net | 23,681 | 23,667 |
| Right of use lease asset | 39,599 | 21,491 |
| Internal use software development costs, net | 16,160 | 16,053 |
| Intangible assets, net | 89,884 | 11,386 |
| Goodwill | 158,125 | 7,370 |
| Other assets, non-current | 4,440 | 2,103 |
| TOTAL ASSETS | $ 938,960 | $ 395,120 |
| **LIABILITIES AND STOCKHOLDERS' EQUITY** | | |
| Current liabilities: | | |
| Accounts payable and accrued expenses | $ 509,315 | $ 259,439 |
| Lease liabilities - current portion | 9,813 | 7,282 |
| Other current liabilities | 3,070 | 778 |
| TOTAL CURRENT LIABILITIES | 522,198 | 267,499 |
| Lease liabilities - non-current portion | 32,278 | 15,231 |
| Deferred tax liability, net | 199 | — |
| Other liabilities, non-current | 2,672 | 454 |
| TOTAL LIABILITIES | 557,347 | 283,184 |
| Commitments and contingencies (Note 17) | | |
| STOCKHOLDERS' EQUITY | | |
| Preferred stock, $0.00001 par value, 10,000 shares authorized at December 31, 2020 and December 31, 2019; 0 shares issued and outstanding at December 31, 2020 and December 31, 2019 | — | — |
| Common stock, $0.00001 par value; 500,000 shares authorized at December 31, 2020 and December 31, 2019; 114,029 and 53,888 shares issued and outstanding at December 31, 2020 and December 31, 2019, respectively | 2 | 1 |
| Additional paid-in capital | 777,084 | 453,064 |
| Accumulated other comprehensive income (loss) | (957) | (45) |
| Accumulated deficit | (394,516) | (341,084) |
| TOTAL STOCKHOLDERS' EQUITY | 381,613 | 111,936 |
| TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY | $ 938,960 | $ 395,120 |

The accompanying notes to consolidated financial statements are an integral part of these statements.

**MAGNITE, INC.**
**CONSOLIDATED STATEMENTS OF OPERATIONS**
**(In thousands, except per share amounts)**

| | Year Ended | | |
|---|---|---|---|
| | December 31, 2020 | December 31, 2019 | December 31, 2018 |
| Revenue | $ 221,628 | $ 156,414 | $ 124,685 |
| Expenses: | | | |
| Cost of revenue | 77,747 | 57,391 | 60,003 |
| Sales and marketing | 76,030 | 44,565 | 44,556 |
| Technology and development | 51,546 | 40,250 | 37,863 |
| General and administrative | 52,987 | 39,750 | 42,431 |
| Merger and restructuring costs | 17,552 | 2,041 | 3,440 |
| Total expenses | 275,862 | 183,997 | 188,293 |
| Loss from operations | (54,234) | (27,583) | (63,608) |
| Other (income) expense: | | | |
| Interest (income) expense, net | (50) | (789) | (988) |
| Other income | (3,665) | (285) | (766) |
| Foreign exchange (gain) loss, net | 2,220 | 481 | (389) |
| Total other (income) expense, net | (1,495) | (593) | (2,143) |
| Loss before income taxes | (52,739) | (26,990) | (61,465) |
| Provision (benefit) for income taxes | 693 | (1,512) | 357 |
| Net loss | $ (53,432) | $ (25,478) | $ (61,822) |
| Net loss per share: | | | |
| Basic and Diluted | $ (0.55) | $ (0.48) | $ (1.23) |
| Weighted average shares used to compute net loss per share: | | | |
| Basic and Diluted | 96,700 | 52,614 | 50,259 |

The accompanying notes to consolidated financial statements are an integral part of these statements.

**MAGNITE, INC.**
**CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS**
**(In thousands)**

| | Year Ended | | |
|---|---|---|---|
| | December 31, 2020 | December 31, 2019 | December 31, 2018 |
| Net loss | $ (53,432) | $ (25,478) | $ (61,822) |
| Other comprehensive income (loss): | | | |
| Unrealized gain (loss) on investments | — | 2 | 27 |
| Foreign currency translation adjustments | (912) | 212 | (327) |
| Other comprehensive income (loss) | (912) | 214 | (300) |
| Comprehensive loss | $ (54,344) | $ (25,264) | $ (62,122) |

The accompanying notes to consolidated financial statements are an integral part of these statements.

**MAGNITE, INC.**
**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY**
**(In thousands)**

| | Common Stock | | Additional Paid-In Capital | Accumulated Other Comprehensive Income (Loss) | Accumulated Deficit | Total Stockholders' Equity |
|---|---|---|---|---|---|---|
| | Shares | Amount | | | | |
| Balance at Balance at December 31, 2017 | 50,239 | $ — | $ 418,354 | $ 41 | $ (253,784) | $ 164,611 |
| Exercise of common stock options | 50 | — | 45 | — | — | 45 |
| Restricted stock awards, net | (156) | — | — | — | — | — |
| Issuance of common stock related to employee stock purchase plan | 174 | — | 314 | — | — | 314 |
| Issuance of common stock related to RSU vesting | 1,367 | 1 | — | — | — | 1 |
| Shares withheld related to net share settlement | (515) | — | (1,638) | — | — | (1,638) |
| Stock-based compensation | — | — | 16,802 | — | — | 16,802 |
| Other comprehensive loss | — | — | — | (300) | — | (300) |
| Net loss | — | — | — | — | (61,822) | (61,822) |
| Balance at Balance at December 31, 2018 | 51,159 | $ 1 | $ 433,877 | $ (259) | $ (315,606) | $ 118,013 |
| Exercise of common stock options | 285 | — | 588 | — | — | 588 |
| Restricted stock awards, net | (182) | — | — | — | — | — |
| Issuance of common stock related to employee stock purchase plan | 227 | — | 1,054 | — | — | 1,054 |
| Issuance of common stock related to RSU vesting | 2,858 | — | — | — | — | — |
| Shares withheld related to net share settlement | (459) | — | (1,847) | — | — | (1,847) |
| Stock-based compensation | — | — | 19,392 | — | — | 19,392 |
| Other comprehensive income | — | — | — | 214 | — | 214 |
| Net loss | — | — | — | — | (25,478) | (25,478) |
| Balance at December 31, 2019 | 53,888 | 1 | 453,064 | (45) | (341,084) | 111,936 |
| Exercise of common stock options | 3,359 | — | 13,548 | — | — | 13,548 |
| Issuance of common stock related to employee stock purchase plan | 381 | — | 1,660 | — | — | 1,660 |
| Issuance of common stock related to RSU vesting | 5,126 | — | — | — | — | — |
| Shares withheld related to net share settlement | (824) | — | (7,854) | — | — | (7,854) |
| Issuance of common stock associated with the Merger | 52,099 | 1 | 275,772 | — | — | 275,773 |
| Exchange of stock options and RSU related to Merger | — | — | 11,646 | — | — | 11,646 |
| Stock-based compensation | — | — | 29,248 | — | — | 29,248 |
| Other comprehensive loss | — | — | — | (912) | — | (912) |
| Net loss | — | — | — | — | (53,432) | (53,432) |
| Balance at December 31, 2020 | 114,029 | $ 2 | $ 777,084 | $ (957) | $ (394,516) | $ 381,613 |

The accompanying notes to consolidated financial statements are an integral part of these statements.

**MAGNITE, INC.**
**CONSOLIDATED STATEMENTS OF CASH FLOWS**
**(In thousands)**

| | Year Ended | | |
|---|---|---|---|
| | December 31, 2020 | December 31, 2019 | December 31, 2018 |
| OPERATING ACTIVITIES: | | | |
| Net loss | $ (53,432) | $ (25,478) | $ (61,822) |
| Adjustments to reconcile net loss to net cash provided by (used in) operating activities: | | | |
| Depreciation and amortization | 49,248 | 32,126 | 35,338 |
| Stock-based compensation | 28,491 | 18,825 | 16,282 |
| (Gain) loss on disposal of property and equipment | (22) | 114 | 243 |
| Provision for doubtful accounts | (138) | 2,060 | 758 |
| Accretion of available for sale securities | — | 24 | (412) |
| Non-cash lease expense | (784) | (209) | — |
| Deferred income taxes | 789 | (595) | (42) |
| Unrealized foreign currency gains, net | (1,161) | (823) | (897) |
| Changes in operating assets and liabilities, net of effect of business acquisitions: | | | |
| Accounts receivable | (103,836) | (10,705) | (40,688) |
| Prepaid expenses and other assets | (10,095) | (51) | 4,519 |
| Accounts payable and accrued expenses | 75,064 | 16,288 | 26,612 |
| Other liabilities | 3,811 | 407 | (2,577) |
| Net cash provided by (used in) operating activities | (12,065) | 31,983 | (22,686) |
| INVESTING ACTIVITIES: | | | |
| Purchases of property and equipment | (14,292) | (11,425) | (11,433) |
| Capitalized internal use software development costs | (7,667) | (8,463) | (8,507) |
| Acquisitions, net of cash acquired | 54,595 | (11,000) | — |
| Investments in available-for-sale securities | — | — | (23,991) |
| Maturities of available-for-sale securities | — | 7,500 | 62,650 |
| Sales of available-for-sale securities | — | — | 9,228 |
| Net cash provided by (used in) investing activities | 32,636 | (23,388) | 27,947 |
| FINANCING ACTIVITIES: | | | |
| Proceeds from exercise of stock options | 13,548 | 588 | 45 |
| Proceeds from issuance of common stock under employee stock purchase plan | 1,660 | 1,054 | 314 |
| Taxes paid related to net share settlement | (7,854) | (1,847) | (1,638) |
| Net cash provided by (used in) financing activities | 7,354 | (205) | (1,279) |
| EFFECT OF EXCHANGE RATE CHANGES ON CASH, CASH EQUIVALENTS AND RESTRICTED CASH | 918 | 46 | (172) |
| CHANGE IN CASH, CASH EQUIVALENTS AND RESTRICTED CASH | 28,843 | 8,436 | 3,810 |
| CASH, CASH EQUIVALENTS AND RESTRICTED CASH — Beginning of period | 88,888 | 80,452 | 76,642 |
| CASH, CASH EQUIVALENTS AND RESTRICTED CASH — End of period | $ 117,731 | $ 88,888 | $ 80,452 |
| RECONCILIATION OF CASH, CASH EQUIVALENTS AND RESTRICTED CASH TO CONSOLIDATED BALANCE SHEETS | | | |
| Cash and cash equivalents | $ 117,676 | $ 88,888 | $ 80,452 |
| Restricted cash included in other asset, non-current | 55 | — | — |
| Total cash, cash equivalents and restricted cash | $ 117,731 | $ 88,888 | $ 80,452 |

The accompanying notes to consolidated financial statements are an integral part of these statements.

**MAGNITE, INC.**
**CONSOLIDATED STATEMENTS OF CASH FLOWS-(Continued)**
**(In thousands)**

| | Year Ended | | |
|---|---|---|---|
| SUPPLEMENTAL DISCLOSURES OF OTHER CASH FLOW INFORMATION: | December 31, 2020 | December 31, 2019 | December 31, 2018 |
| Cash paid for income taxes | $ 1,614 | $ 291 | $ 379 |
| Cash paid for interest | $ 101 | $ 61 | $ 46 |
| Capitalized assets financed by accounts payable and accrued expenses | $ 42 | $ 141 | $ 6 |
| Capitalized stock-based compensation | $ 757 | $ 567 | $ 520 |
| Operating lease right-of-use assets obtained in exchange for new operating lease liabilities | $ 2,036 | $ 13,533 | $ — |
| Common stock and options issued for Merger | $ 287,418 | $ — | $ — |

**MAGNITE, INC.**
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**

## Note 1—Nature of Operations

### *Company Overview*

Magnite, Inc. ("Magnite" or the "Company"), formerly known as The Rubicon Project, Inc., was formed in Delaware and began operations on April 20, 2007. On April 1, 2020, Magnite completed a stock-for-stock merger ("Merger") with Telaria, Inc., ("Telaria"), a leading provider of connected television ("CTV") technology. The Company operates a sell side advertising platform that offers buyers and sellers of digital advertising a single partner for transacting globally across all channels, formats, and auction types. The Company is headquartered in Los Angeles, California.

On June 8, 2020, the Company voluntarily delisted its common stock from the New York Stock Exchange ("NYSE") and commenced listing on The Nasdaq Global Select Market of The Nasdaq Stock Market LLC ("Nasdaq"). On June 30, 2020, the Company changed its name from "The Rubicon Project, Inc." to "Magnite, Inc." In connection with the name change, the Company also changed its ticker symbol from "RUBI" to "MGNI." Magnite has its principal offices in Los Angeles, New York City, London, and Sydney, and additional offices in Europe, Asia, North America, and South America.

The Company provides a technology solution to automate the purchase and sale of digital advertising inventory for buyers and sellers. The Company's platform features applications and services for sellers of digital advertising inventory, or publishers, that own or operate websites, applications, CTV channels, and other digital media properties, to manage and monetize their inventory; applications and services for buyers, including advertisers, agencies, agency trading desks, and demand side platforms, to buy digital advertising inventory; and a transparent, independent marketplace that brings buyers and sellers together and facilitates intelligent decision making and automated transaction execution at scale. The Company's clients include many of the world's leading sellers and buyers of digital advertising inventory.

Sellers monetize their inventory through the Company’s platform by seamlessly connecting to a global market of integrated buyers that transact through real-time bidding, which includes direct sale of premium inventory to a buyer, referred to as private marketplace, and open auction bidding, where buyers bid against each other in a real-time auction for the right to purchase a publisher’s inventory, referred to as open marketplace. At the same time, buyers leverage the Company’s platform to manage their advertising spending and reach their target audiences, simplify order management and campaign tracking, obtain actionable insights into audiences for their advertising, and access impression-level purchasing from thousands of sellers.

## Note 2—Organization and Summary of Significant Accounting Policies

### *Basis of Consolidation*

The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America, or GAAP, and include the operations of the Company and its wholly owned subsidiaries. All significant intercompany transactions and balances have been eliminated in consolidation.

### *Reclassifications*

Amounts for merger and restructuring costs incurred in the year ended December 31, 2019 have been reclassified to conform to the presentation for the year ended December 31, 2020 consolidated statements of operations. Reclassifications consist of $2.0 million from general and administrative expenses to merger and restructuring costs in the consolidated statement of operations for the year ended December 31, 2019. These expenses were related to professional services associated with the Merger with Telaria. The Merger with Telaria was announced during December 2019, during which period the Company was incurring such expenses; however, the Company did not separately present the expenses in the 2019 consolidated statement of operations.

### *Segments*

Management has determined that the Company operates as one segment. The Company’s chief operating decision maker reviews financial information on an aggregated and consolidated basis, together with certain operating and performance measures principally to make decisions about how to allocate resources and to measure the Company’s performance.

### *Use of Estimates*

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported and disclosed financial statements and accompanying footnotes. Due to the economic uncertainty as a result of the COVID-19 pandemic, it has become more difficult to apply certain assumptions and judgments into these estimates. The extent of the impact of COVID-19 pandemic on the Company's operational and financial performance will depend on future developments, which are highly uncertain and cannot be predicted, including but not limited to, the duration and spread of the pandemic, its severity, including any resurgence, the actions to contain the virus or treat its impact, and how quickly and to what extent normal economic and operating conditions can resume. As of the date of issuance of these financial statements, the Company is not aware of any specific event or circumstance that would require the Company to update its estimates, judgments, or revise the carrying value of its assets or liabilities. These estimates may change, as new events occur and additional information is obtained, and are recognized in the consolidated financial statements as soon as they become known. Actual results could differ materially from these estimates.

On an ongoing basis, management evaluates its estimates, primarily those related to: (i) revenue recognition criteria, including the determination of revenue reporting as net versus gross in the Company’s revenue arrangements, (ii) accounts receivable and allowances for doubtful accounts, (iii) the useful lives of intangible assets, internal use software development costs, and property and equipment, (iv) valuation of long-lived assets and their recoverability, including goodwill, (v) the realization of tax assets and estimates of tax liabilities, (vi) assumptions used in valuation models to determine the fair value of stock-based awards, (vii) fair value of financial instruments, (viii) the recognition and disclosure of contingent liabilities, and (ix) the assumptions used in valuing acquired assets and assumed liabilities in business combinations.

These estimates are based on historical data and experience, as well as various other factors that management believes to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying value of assets and liabilities that are not readily apparent from other sources. Estimates relating to the estimated useful lives of internal-use software development costs, assumptions used in the valuation models to determine the fair value of stock options and stock-based compensation expense, business combinations, estimated useful lives of long-lived assets, recoverability of intangible assets and goodwill, the assumptions used in the valuation of acquired assets and liabilities in business combinations, and income taxes, including the realization of tax assets and estimates of tax liabilities. require the selection of appropriate valuation methodologies and models, and significant judgment in evaluating ranges of assumptions and financial inputs. Actual results may differ materially from those estimates under different assumptions or circumstances.

***Revenue Recognition***

On January 1, 2018, the Company adopted Accounting Standards Update 2014-09—Revenue from Contracts with Customers (Topic 606) ("ASU 2014-09") using a modified retrospective approach applied to all contracts that generated revenue in the preceding year. The adoption of this guidance did not have an impact on the amount or timing of revenue recognized by the Company.

The Company generates revenue from transactions where it provides a platform for the purchase and sale of digital advertising inventory. The Company also generates revenue from the fee it charges clients for use of its Demand Manager product, which generally is a percentage of the client's advertising spending on any advertising marketplace. The Company's platform dynamically connects sellers and buyers of advertising inventory in a digital marketplace. The Company's solution incorporates proprietary machine-learning algorithms, sophisticated data processing, high-volume storage, detailed analytics capabilities, and a distributed infrastructure. Digital advertising inventory is created when consumers access sellers’ content. Sellers provide digital advertising inventory to the Company's platform in the form of advertising requests, or ad requests. When the Company receives ad requests from sellers, it sends bid requests to buyers, which enable buyers to bid on sellers’ digital advertising inventory. Winning bids can create advertising, or paid impressions, for the seller to present to the consumer.

The total volume of spending between buyers and sellers on the Company's platform is referred to as advertising spend. The Company keeps a percentage of that advertising spend as a fee, and remits the remainder to the seller. The fee that the Company retains from the gross advertising spend on its platform is recognized as revenue. The fee earned on each transaction is based on the pre-existing agreement between the Company and the seller and the clearing price of the winning bid. The Company recognizes revenue upon fulfillment of its performance obligation to a client, which occurs at the point in time an ad renders and is counted as a paid impression, subject to a contract existing with the client and a fixed or determinable transaction price. The Company does not have arrangements with multiple performance obligations. The Company considers the following when determining if a contract exists (i) contract approval by all parties, (ii) identification of each party’s rights regarding the goods or services to be transferred, (iii) specified payment terms, (iv) commercial substance of the contract, and (v) collectability of substantially all of the consideration is probable.

The determination of whether revenue should be reported on a gross or net basis is based on an assessment of whether the Company is acting as the principal or an agent in the transaction. In determining whether the Company is acting as the principal or an agent, the Company follows the accounting guidance for principal-agent considerations. Making such determinations involves judgment and is based on an evaluation of the terms of each arrangement, none of which are considered presumptive or determinative.

***Expenses***

The Company classifies its expenses into the following categories:

*Cost of Revenue.* The Company's cost of revenue consists primarily of data center costs, bandwidth costs, ad protection costs, depreciation and maintenance expense of hardware supporting the Company's revenue-producing platform, amortization of software costs for the development of the Company's revenue-producing platform, amortization expense associated with acquired developed technologies, personnel costs, facilities-related costs, and cloud computing costs. Personnel costs included in cost of revenue include salaries, bonuses, and stock-based compensation, and are primarily attributable to personnel in the Company's network operations group who support the Company's platform. The Company capitalizes costs associated with software that is developed or obtained for internal use and amortizes the costs associated with its revenue-producing platform in cost of revenue over their estimated useful lives. The Company amortizes acquired developed technologies over their estimated useful lives.

*Sales and Marketing.* The Company's sales and marketing expenses consist primarily of personnel costs, including salaries, bonuses, and stock-based compensation, as well as marketing expenses such as brand marketing, travel expenses, trade shows and marketing materials, professional services, and amortization expense associated with client relationships and backlog from the Company's business acquisitions and, to a lesser extent, facilities-related costs and depreciation and amortization. The Company's sales organization focuses on increasing the adoption of the Company's solution by existing and new buyers and sellers. The Company amortizes acquired intangibles associated with client relationships and backlog from its business acquisitions over their estimated useful lives.

*Technology and Development.* The Company's technology and development expenses consist primarily of personnel costs, including salaries, bonuses, and stock-based compensation, and professional services associated with the ongoing development and maintenance of the Company's solution, depreciation and amortization, and, to a lesser extent, facilities-related costs. These expenses include costs incurred in the development, implementation and maintenance of internal use software, including platform and related infrastructure. Technology and development costs are expensed as incurred, except to the extent that such costs are associated with internal use software development that qualifies for capitalization, which are then recorded as internal use software development costs, net on the Company's consolidated balance sheets. The Company amortizes internal use software development costs that relate to its revenue-producing activities on the Company's platform to cost of revenue and amortizes other internal use software development costs to technology and development costs or general and administrative expenses, depending on the nature of the related project. The Company amortizes acquired intangibles associated with technology and development functions from its business acquisitions over their estimated useful lives.

*General and Administrative.* The Company's general and administrative expenses consist primarily of personnel costs, including salaries, bonuses, and stock-based compensation, associated with the Company's executive, finance, legal, human resources, compliance, and other administrative personnel, as well as accounting and legal professional services fees, facilities-related costs and depreciation and amortization, and other corporate-related expenses. General and administrative expenses also include amortization of internal use software development costs and acquired intangible assets from the Company's business acquisitions over their estimated useful lives that relate to general and administrative functions.

*Merger and Restructuring Costs.* The Company's merger and restructuring costs consist primarily of professional service fees associated with Merger and acquisition activities, and of cash-based employee termination costs and stock-based compensation charges associated with Merger or restructuring activities, and of other restructuring activities, including facility closures and relocation costs.

***Stock-Based Compensation***

Compensation expense related to employee stock-based awards is measured and recognized in the consolidated financial statements based on the fair value of the awards granted. The Company granted awards to employees that vest based solely on continued service, or service conditions, awards that vest based on the achievement of performance targets, or performance conditions, and awards that vest based on our stock price exceeding a peer index, or market conditions. The fair value of each option award containing service and/or performance conditions is estimated on the grant date using the Black-Scholes option-pricing model. The fair value of awards containing market conditions is estimated using a Monte-Carlo lattice model. For service condition awards, stock-based compensation expense is recognized on a straight-line basis over the requisite service periods of the awards, which is generally four years. For performance condition and market condition awards, stock-based compensation expense is recognized using a graded vesting model over the requisite service period of the awards. For market condition awards, expense recognized is not subsequently reversed if the market conditions are not achieved.

Stock-based awards issued to non-employees are accounted for at fair value determined by using the Black-Scholes option-pricing model. We believe that the fair value of the stock options is more reliably measured than the fair value of the services received. The fair value of each non-employee stock-based compensation award is re-measured each period until a commitment date is reached, which is generally the vesting date.

The assumptions and estimates used in the Black-Scholes pricing model are as follows:

*Fair Value of Common Stock.* The fair value of common stock is based on the closing price of the Company's common stock as reported on the NYSE on the grant date.

*Risk-Free Interest Rate.* The Company bases the risk-free interest rate used in the Black-Scholes option-pricing model on the yields of U.S. Treasury securities with maturities appropriate for the term of stock option awards.

*Expected Term.* For employee options that contain service conditions, the Company applies the simplified approach, in which the expected term of an award is presumed to be the mid-point between the vesting date and the expiration date of the award. The expected term of employee stock options that contain performance conditions represents the weighted-average period that the stock options are estimated to remain outstanding.

*Volatility.* For grants issued in periods in which the Company did not have significant trading history for the Company's common stock, the Company determined the price volatility based on the historical volatilities of a publicly traded peer group based on daily price observations over a period equivalent to the expected term of the stock option grants. For those grants issued in periods in which the Company has sufficient history, the computation of the expected volatility assumption is based on the historical volatility of the Company's common stock.

*Dividend Yield.* The dividend yield assumption is based on the Company's history and current expectations of dividend payouts. The Company has never declared or paid any cash dividends on its common stock and does not anticipate paying any cash dividends in the foreseeable future, so the Company used an expected dividend yield of zero.

Determining the fair value of stock-based awards using a pricing model requires judgment. The Company's use of the Black-Scholes option-pricing model requires the input of subjective assumptions such as the expected term of the award, the expected volatility of the price of the Company's common stock, risk-free interest rates, and the expected dividend yield of the Company's common stock. The assumptions used in the Company's valuation model represent management's best estimates. These estimates involve inherent uncertainties and the application of management's judgment. If factors change and different assumptions are used, the Company's stock-based compensation expense could be materially different in the future.

Due to the full valuation allowance provided on its net deferred tax assets, the Company has not recorded any tax benefit attributable to stock-based awards for the years ended December 31, 2020, 2019, and 2018.

***Income Taxes***

Deferred income tax assets and liabilities are determined based upon the net tax effects of the differences between the Company's consolidated financial statement carrying amounts and the tax basis of assets and liabilities and are measured using the enacted tax rate expected to apply to taxable income in the years in which the differences are expected to be reversed.

A valuation allowance is used to reduce some or all of the deferred tax assets if, based upon the weight of available evidence, it is more likely than not that those deferred tax assets will not be realized. The Company has established a full valuation allowance to offset its domestic net deferred tax assets due to the uncertainty of realizing future tax benefits from the net operating loss carryforwards and other deferred tax assets.

The Company recognizes 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 consolidated financial statements from such positions are then measured based on the largest benefit that has a greater than 50% likelihood of being realized. The Company recognizes interest and penalties accrued related to its uncertain tax positions in its income tax provision (benefit) in the consolidated statements of operations.

***Capital Stock***

The Company has authorized capital stock of 500,000,000 shares of common stock and 10,000,000 shares of preferred stock. The Company has issued common stock, which is included in outstanding common stock on the Company's Consolidated Balance Sheets. The Company has not issued any shares of its preferred stock subsequent to the Company's IPO and does not have any preferred stock outstanding.

The Company is required to reserve and keep available out of its authorized but unissued shares of common stock such number of shares sufficient to affect the conversion of all shares granted and available for grant under the Company’s stock award plans. The number of shares of the Company's stock reserved for these purposes at December 31, 2020 was 27,882,222.

The board of directors is authorized to establish, from time to time, the number of shares to be included in each series of preferred stock, and to fix the designation, powers, privileges, preferences, and relative participating, optional or other rights, if any, of the shares of each series of preferred stock, and any of its qualifications, limitations or restrictions.

***Net Income (Loss) Per Share Attributable to Common Stockholders***

Basic net income (loss) per share of common stock is calculated by dividing the net income (loss) by the weighted-average number of shares of common stock outstanding. Diluted income (loss) per share attributable to common stockholders adjusts the basic weighted-average number of shares of common stock outstanding for the effect of potentially dilutive securities during the period. Potentially dilutive securities consist of stock options, restricted stock awards, restricted stock units, potential shares issued under the Company's Employee Stock Purchase Plan ("ESPP"), shares held in escrow and potential shares issuable as part of contingent consideration as a result of business combinations. For purposes of this calculation, potentially dilutive securities are excluded from the calculation of diluted net income (loss) per share if their effect is anti-dilutive.

***Comprehensive Income (Loss)***

Comprehensive income (loss) encompasses all changes in equity other than those arising from transactions with stockholders, and consists of net income (loss), unrealized gains (losses) on investments and foreign currency translation adjustments.

***Cash, Cash Equivalents, and Marketable Securities***

The Company invests excess cash primarily in money market funds, corporate debt securities, and highly liquid debt instruments of the U.S. government and its agencies. The Company classifies investments held in money market funds as cash equivalents because the money market funds have weighted-average maturities at the date of purchase of less than 90 days. Investments held in U.S. government and agency bonds and corporate debt securities with stated maturities of less than one year are classified as short-term investments included in marketable securities and prepaid expenses and other current assets. Investments held in U.S. government and agency bonds and corporate debt securities with stated maturities of over a year are classified as long-term investments included in other assets, non-current on the Company’s consolidated balance sheets, as the Company does not expect to redeem or sell these securities within one year from the balance sheet date.

The Company determines the appropriate classification of investments in marketable securities at the time of purchase and reevaluates such designation at each balance sheet date. The Company classifies and accounts for the Company’s marketable securities as available-for-sale, and as a result carries the securities at fair value and reports the unrealized gains and losses in the consolidated statements of comprehensive income (loss) and as a component of stockholders’ equity. The Company determines any realized gains or losses on the sale of marketable securities on a specific identification method, and the Company records such gains and losses as a component of other income, net on the Company’s consolidated statements of operations.

***Restricted Cash***

The Company classifies certain restricted cash balances within prepaid expenses and other current assets on the consolidated balance sheets based upon the term of the remaining restrictions. At December 31, 2020, the Company had restricted cash of $0.1 million, and at December 31, 2019, the Company had no restricted cash.

***Accounts Receivable Allowance for Doubtful Accounts***

Accounts receivable are recorded at the invoiced amount, are unsecured, and do not bear interest. The allowance for doubtful accounts is based on the best estimate of the amount of probable credit losses in existing accounts receivable. The allowance for doubtful accounts is determined based on historical collection experience and the review in each period of the status of the then-outstanding accounts receivable, while taking into consideration current client information, subsequent collection history and other relevant data. The Company reviews the allowance for doubtful accounts on a quarterly basis. Account balances are charged off against the allowance when the Company believes it is probable the receivable will not be recovered.

***Property and Equipment, Net***

Property and equipment are recorded at historical cost, less accumulated depreciation and amortization. Depreciation is computed using the straight-line method based upon the estimated useful lives of the assets. The estimated useful lives of the Company's property and equipment are as follows:

| | Years |
|---|---|
| Computer equipment and network hardware | 3 |
| Furniture, fixtures and office equipment | 5 to 7 |
| Leasehold improvements | Shorter of useful life or life of lease |
| Computer equipment under right-of-use finance arrangements | Shorter of useful life or life of lease |

Repair and maintenance costs are charged to expense as incurred, while renewals and improvements are capitalized. When assets are retired or otherwise disposed of, the cost and related accumulated depreciation are removed from the accounts and any resulting gain or loss is reflected in the Company's results of operations.

***Internal Use Software Development Costs***

The Company capitalizes certain internal use software development costs associated with creating and enhancing internally developed software related to the Company's technology infrastructure. These costs include personnel and related employee benefits expenses for employees who are directly associated with and who devote time to software projects, and external direct costs of materials and services consumed in developing or obtaining the software. Software development costs that do not meet the qualification for capitalization, as further discussed below, are expensed as incurred and recorded in technology and development expenses in the results of operations.

Software development activities generally consist of three stages, (i) the planning stage, (ii) the application and infrastructure development stage, and (iii) the post implementation stage. Costs incurred in the planning and post implementation stages of software development, including costs associated with the post-configuration training and repairs and maintenance of the developed technologies, are expensed as incurred. The Company capitalizes costs associated with software developed for internal use when the planning stage is completed, management has authorized further funding for the completion of the project, and it is probable that the project will be completed and perform as intended. Costs incurred in the application and infrastructure development stages, including significant enhancements and upgrades, are capitalized. Capitalization ends once a project is substantially complete and the software and technologies are ready for their intended purpose. Internal use software development costs are amortized using a straight-line method over the estimated useful life of three years, commencing when the software is ready for its intended use. The straight-line recognition method approximates the manner in which the expected benefit will be derived.

The Company does not transfer ownership of its software, or lease its software, to third parties.

***Capitalized Costs Incurred in Cloud Computing Arrangements***

Cloud computing arrangements, such as software as a service and other hosting arrangements, are evaluated for capitalized implementation costs in a similar manner as capitalized software development costs. If a cloud computing arrangement includes a software license, the software license element of the arrangement is accounted for in a manner consistent with the acquisition of other software licenses. If a cloud computing arrangement does not include a software license, the service element of the arrangement is accounted for as a service contract. The Company capitalized certain implementation costs for its cloud computing arrangements that are service contracts, which are included within prepaid expenses and other current assets and other assets, non-current within the consolidated balance sheet. The Company amortizes capitalized implementation costs in a cloud computing arrangement over the life of the service contract.

***Intangible Assets***

Intangible assets primarily consist of acquired developed technology, client relationships, and non-compete agreements resulting from business combinations, which are recorded at acquisition-date fair value, less accumulated amortization. The Company determines the appropriate useful life of its intangible assets by performing an analysis of expected cash flows of the acquired assets. Intangible assets are amortized over their estimated useful lives using a straight-line method, which approximates the pattern in which the economic benefits are consumed.

The Company's intangible assets are being amortized over their estimated useful lives as follows:

| | Years |
|---|---|
| Developed technology | 5 |
| In-process research and development | 3 to 5 |
| Customer relationships | 2 to 3 |
| Backlog | 0.75 |
| Non-compete agreements | 2 |
| Other intangible assets | 0.25 to 1.5 |

Intangible assets are reviewed for impairment indicators at least annually and whenever events or changes in circumstances indicate that the carrying amount of the assets might not be recoverable. Conditions that would necessitate an impairment assessment include a significant decline in the observable market value of an asset, a significant change in the extent or manner in which an asset is used, or any other significant adverse change that would indicate that the carrying amount of an asset or group of assets may not be recoverable. For intangible assets used in operations, impairment losses are only recorded if the asset's carrying amount is not recoverable through its undiscounted, probability-weighted future cash flows. The Company measures the impairment loss based on the difference between the carrying amount and estimated fair value.

***Impairment of Long-Lived Assets including Internal Use Capitalized Software Costs***

The Company assesses the recoverability of its long-lived assets when events or changes in circumstances indicate their carrying value may not be recoverable. Such events or changes in circumstances may include: a significant adverse change in the extent or manner in which a long-lived asset is being used, significant adverse change in legal factors or in the business climate that could affect the value of a long-lived asset, an accumulation of costs significantly in excess of the amount originally expected for the acquisition or development of a long-lived asset, current or future operating or cash flow losses that demonstrate continuing losses associated with the use of a long-lived asset, or a current expectation that, more likely than not, a long-lived asset will be sold or otherwise disposed of significantly before the end of its previously estimated useful life. The Company performs impairment testing at the asset group level that represents the lowest level for which identifiable cash flows are largely independent of the cash flows of other assets and liabilities. The Company assesses recoverability of a long-lived asset by determining whether the carrying value of the asset group can be recovered through projected undiscounted cash flows over their remaining lives. If the carrying value of the asset group exceeds the forecasted undiscounted cash flows, an impairment loss is recognized, measured as the amount by which the carrying amount exceeds estimated fair value. An impairment loss is charged to operations in the period in which management determines such impairment.

***Business Combinations***

The results of businesses acquired in a business combination are included in the Company's consolidated financial statements from the date of acquisition. The Company allocates the purchase price of a business combination, which is the sum of the consideration provided, which may consist of cash, equity or a combination of the two, to the identifiable assets and liabilities of the acquired business at their acquisition date fair values. The excess of the purchase price over the amount allocated to the identifiable assets and liabilities, if any, is recorded as goodwill. Determining the fair value of assets acquired and liabilities assumed requires management to use significant judgment and estimates including the selection of valuation methodologies, estimates of future revenues and cash flows, discount rates and selection of comparable companies.

When the Company issues stock-based or cash awards to an acquired company's stockholders, the Company evaluates whether the awards are contingent consideration or compensation for post-business combination services. The evaluation includes, among other things, whether the vesting of the awards is contingent on the continued employment of the selling stockholder beyond the acquisition date. If continued employment is required for vesting, the awards are treated as compensation for post-acquisition services and recognized as expense over the requisite service period.

The Company estimates the fair value of intangible assets acquired generally using a discounted cash flow approach, which includes an analysis of the future cash flows expected to be generated by the asset and the risk associated with achieving these cash flows. The key assumptions used in the discounted cash flow model include the discount rate that is applied to the forecasted future cash flows to calculate the present value of those cash flows and the estimate of future cash flows attributable to the acquired intangible asset, which include revenue, expenses and taxes. The carrying value of acquired working capital assets and liabilities approximates its fair value, given the short-term nature of these assets and liabilities.

Acquisition-related transaction costs are not included as a component of consideration transferred, but are accounted for as an expense in the period in which the costs are incurred.

***Goodwill***

Goodwill represents the excess of the aggregate fair value of the consideration transferred in a business combination over the fair value of the assets acquired, net of liabilities assumed. Goodwill is not amortized, but is subject to impairment testing conducted annually during the fourth quarter or more frequently if events or changes in circumstances indicate that goodwill may be impaired.

In accordance with guidance related to impairment testing, the Company has the option to first assess qualitative factors to determine whether or not it is necessary to perform the quantitative goodwill impairment test. If the qualitative assessment option is not elected, or if the qualitative assessment indicates that it is more likely than not that the fair value is less than its carrying amount, a quantitative analysis is then performed. The quantitative analysis, if performed, compares the estimated fair value of the Company with its respective carrying amount, including goodwill. If the estimated fair value of the Company exceeds its carrying amount, including goodwill, goodwill is considered not to be impaired and no additional steps are necessary. If the fair value is less than the carrying amount, including goodwill, then an impairment adjustment must be recorded up to the carrying amount of goodwill.

The Company operates as a single operating segment and has identified a single reporting unit.

***Operating and Finance Leases***

On January 1, 2019, the Company adopted ASU 2016-02—*Leases (Topic 842), (*"ASC 842"), which requires the recognition of the right-of-use assets, or ROU assets, and related lease liabilities on the balance sheet using a modified retrospective approach. The consolidated financial statements related to periods prior to January 1, 2019 were not restated, and continue to be reported under ASC Topic 840—*Leases* ("ASC 840"), which did not require the recognition of operating lease liabilities on the balance sheet. As a result, the consolidated financial statements related to periods prior to January 1, 2019 are not entirely comparative with current and future periods. As permitted under ASC 842, the Company elected several practical expedients that permit the Company to not reassess (1) whether existing contracts are or contain a lease, (2) the classification of existing leases, and (3) whether previously capitalized costs continue to qualify as initial indirect costs. In addition, the Company has elected not to recognize short-term leases on the balance sheet, nor separate lease and non-lease components for data center leases. In addition, the Company utilized the portfolio approach to group leases with similar characteristics and did not use hindsight to determine lease term. The finance lease classification under ASC 842 includes leases previously classified as capital leases under ASC 840.

In addition to the leases previously reported under ASC 840, the Company also reviewed its data center agreements to identify non-lease components that should not be included in the lease liability and lease expense under ASC 842. Certain fixed non-lease components of data center leases, primarily fixed minimum power commitments, have been included in the lease liability and ROU asset as the Company has elected the practical expedient for its data centers to not separate the lease and non-lease components; however, variable components have not been included. For identified leases, the Company used its incremental borrowing rate to discount the related future payment obligations as of January 1, 2019 to determine its lease liability as of adoption. As of the adoption date, the Company recognized a lease liability of $15.6 million and a corresponding ROU asset of $14.3 million; there was no equity impact from the adoption. The difference between the lease liability and the ROU asset primarily represents the existing deferred rent liabilities balances before adoption, resulting from historical straight-lining of operating leases, which was effectively reclassified upon adoption to reduce the measurement of the ROU asset.

The Company records rent expense for operating leases, including leases of office locations, data centers, and equipment, on a straight-line basis over the lease term. The straight-line calculation of rent expense includes rent escalations on certain leases, as well as lease incentives provided by the landlords, including payments for leasehold improvements and rent-free periods. The Company begins recognition of rent expense on the commencement date, which is generally the date that the asset is made available for use. The lease liability is included in lease liabilities, current and lease liabilities, non-current within the consolidated balance sheet, which are reduced as lease related payments are made. The ROU asset is amortized on a periodic basis over the expected term of the lease (see Note 16).

Prior to January 1, 2019, assets and liabilities under capital lease were recorded at the lesser of present value of aggregate future minimum lease payments, including estimated bargain purchase options, or the fair value of the asset under lease. Assets under capital lease were amortized using the straight-line method over the estimated useful lives of the assets.

***Fair Value of Financial Instruments***

The carrying amounts of the Company's cash equivalents, accounts receivable, accounts payable, accrued expenses, and seller payables approximate fair value due to the short-term nature of these instruments. Certain assets of the Company are recorded at their fair value, using the fair value hierarchy, on a recurring basis, and other assets and liabilities, including goodwill and intangible assets are subject to measurement at fair value on a non-recurring basis if they are deemed to be impaired as a result of an impairment review (see Note 5).

***Concentration of Risk***

Financial instruments that potentially subject the Company to concentration of credit risk consist principally of cash, cash equivalents, restricted cash and accounts receivable. Cash and cash equivalents maintained with financial institutions exceed applicable federally insured limits.

Accounts receivable include amounts due from buyers with principal operations primarily in the United States. The Company performs ongoing credit evaluations of its buyers.

At December 31, 2020, two buyers accounted for 33% and 12% respectively, of consolidated accounts receivable. At December 31, 2019, two buyers accounted for 23% and 17%, respectively, of accounts receivable.

The Company recognizes revenue from its contracts with sellers. No seller of advertising inventory accounted for 10% or more of revenue during the years ended December 31, 2020, 2019, and 2018.

At December 31, 2020 one seller of adverting inventory accounted for 18% of accounts payable, and at December 31, 2019, no seller of advertising inventory comprised 10.0% or more of accounts payable.

***Foreign Currency Transactions and Translation***

Transactions in foreign currencies are translated into the functional currency of the applicable entity at the rates of exchange in effect at the date of the transaction. Foreign exchange gains or losses were included in foreign exchange (gain) loss, net in the accompanying consolidated statements of operations. To the extent that the functional currency is different from the U.S. Dollar, the financial statements have then been translated into U.S. Dollars using period-end exchange rates for assets and liabilities and average exchange rates for the results of operations. Foreign currency translation gains and losses are included as a component of accumulated other comprehensive income (loss) on the consolidated balance sheet.

***Recently Adopted Accounting Standards***

In June 2016, the FASB issued ASU 2016-13—*Financial Instruments - Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments ("*ASU 2016-13"). This guidance requires entities to use a current expected credit loss methodology to measure impairments of certain financial assets and to recognize an allowance for its estimate of lifetime expected credit losses. The main objective of this update is to provide financial statement users with more decision-useful information about the expected credit losses on financial instruments and other commitments to extend credit held by a reporting entity at each reporting date. The guidance is effective for fiscal years beginning after December 15, 2019, including interim periods within those fiscal years. The Company adopted ASU 2016-13 as of January 1, 2020. The standard did not have a material impact on its consolidated financial statements.

In August 2018, the FASB issued ASU 2018-13—*Fair Value Measurement (Topic 820): Disclosure Framework—Changes to the Disclosure Requirements for Fair Value Measurement* ("ASU 2018-13"), to streamline the disclosure requirements of ASC Topic 820—Fair Value Measurement. ASU 2018 removes certain disclosure requirements, including the valuation process for Level 3 fair value measurements, and adds certain quantitative disclosures around Level 3 fair value measurements. This ASU is effective for annual reporting periods beginning after December 15, 2019, including interim periods within that reporting period, with early adoption permitted. The provisions of ASU 2018-13 are required to be adopted retrospectively, with the exception of disclosure of the range and weighted average of significant unobservable inputs used to develop Level 3 measurements, which can be adopted prospectively. The Company adopted ASU 2018-13 as of January 1, 2020. The standard did not have a material impact on its consolidated financial statements and related disclosures.

In August 2018, the FASB issued ASU 2018-15—*Intangibles—Goodwill and Other—Internal-Use Software (Subtopic 350-40): Customer's Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract* ("ASU 2018-15"). ASU 2018-15 was issued to clarify the requirements of ASC 350-40—*Intangibles—Goodwill and Other—Internal-Use Software* ("ASC 350-40"). The ASU clarifies that implementation, setup and other upfront costs related to cloud computing agreements ("CCA") should be accounted for under ASC 350-40. ASC 2018-15 will require companies to capitalize certain costs incurred when purchasing a CCA that is a service. Under the new guidance, companies will apply the same criteria for capitalizing implementation costs in a CCA service as they would for internal-use software. The capitalized implementation costs will generally be expensed over the term of the service arrangement and the related assets will be assessed for impairment using the same model applied to long-lived assets. This ASU is effective for annual reporting periods beginning after December 15, 2019, including interim periods within that reporting period, with early adoption permitted. ASU 2018-15 can be applied either retrospectively or prospectively to all implementation costs incurred after the date of adoption. The Company adopted ASU 2018-15 as of January 1, 2020 on a prospective basis. The standard did not have a material impact on its consolidated financial statements and related disclosures.

***Recent Accounting Pronouncements Not Yet Adopted***

In December 2019, the FASB issued ASU 2019-12—*Simplifying the Accounting for Income Taxes* ("ASU 2019-12") . ASU 2019-12 simplifies the accounting for income taxes by removing certain exceptions to general principles in Topic 740 and clarifies and amends existing guidance for clarity and consistent application. This guidance is effective for fiscal years and interim periods within those fiscal years, beginning after December 15, 2020 including interim reporting periods within those fiscal years. Early adoption is permitted. The Company is evaluating the impact of adopting this new accounting guidance on its consolidated financial statements and related disclosures but the impact is not expected to be material.

In January 2020, the FASB issued ASU 2020-01, *Investments—Equity Securities (Topic 321), Investments—Equity Method and Joint Ventures (Topic 323), and Derivatives and Hedging (Topic 815)* ("ASU 2020-01"), which clarifies the interaction of the accounting for equity securities under Topic 321, the accounting for equity method investments in Topic 323, and the accounting for certain forward contracts and purchased options in Topic 815. This guidance is effective for fiscal years beginning after December 15, 2020, including interim reporting periods within those fiscal years. Early adoption is permitted, including early adoption in an interim period, The Company does not expect the adoption of this guidance to have a material impact on the Company's consolidated financial statements.

In August 2020, the FASB issued ASU 2020-06, *Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging —Contracts in Entity's Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity's Own Equity* (ASU "2020-06"), which simplifies the accounting for convertible instruments by reducing the number of accounting models available for convertible debt instruments. This guidance also eliminates the treasury stock method to calculate diluted earnings per share for convertible instruments and requires the use of the if-converted method. This guidance is effective for fiscal years beginning after December 15, 2021, including interim reporting periods within those fiscal years. Early adoption is permitted, but no earlier than fiscal years beginning after December 15, 2020, including interim periods within those fiscal years. The Company does not expect the adoption of this guidance to have a material impact on the Company's consolidated financial statements.

Other recent accounting pronouncements issued by the FASB (including its Emerging Issues Task Force) and the SEC did not or are not expected to have a material impact on our present or future consolidated financial statements.

**Note 3—Net Income (Loss) Per Share**

The following table presents the basic and diluted net loss per share:

| | Year Ended | | |
|---|---|---|---|
| | **December 31, 2020** | **December 31, 2019** | **December 31, 2018** |
| Basic and Diluted EPS: | | | |
| Net loss | $ (53,432) | $ (25,478) | $ (61,822) |
| Weighted-average common shares outstanding | 96,700 | 52,634 | 50,602 |
| Weighted-average unvested restricted shares | — | (20) | (343) |
| Weighted-average common shares outstanding used to compute net loss per share | 96,700 | 52,614 | 50,259 |
| Basic and diluted net loss per share | $ (0.55) | $ (0.48) | $ (1.23) |

The following weighted-average shares have been excluded from the calculation of diluted net loss per share attributable to common stockholders for each period presented because they are anti-dilutive:

| | Year Ended | | |
|---|---|---|---|
| | **December 31, 2020** | **December 31, 2019** | **December 31, 2018** |
| | | (in thousands) | |
| Options to purchase common stock | 2,317 | 793 | 128 |
| Unvested restricted stock awards | — | 13 | 218 |
| Unvested restricted stock units | 4,713 | 4,211 | 2,029 |
| Unvested performance awards | 40 | — | — |
| ESPP | 50 | 34 | 55 |
| Total shares excluded from net loss per share | 7,120 | 5,051 | 2,430 |

**Note 4—Revenues**

For substantially all transactions on the Company's platform, the Company reports revenue on a net basis as it does not act as the principal in the purchase and sale of digital advertising inventory because it does not have control of the digital advertising inventory and does not set prices agreed upon within the auction marketplace. However, for certain transactions related to revenue streams acquired in connection with the Merger with Telaria, the Company reports revenue on a gross basis, based primarily on its determination that the Company acts as the primary obligor in the delivery of advertising campaigns for buyers with respect to such transactions. For the year ended December 31, 2020, revenue reported on a gross basis was less than 2% of total revenue.

The following table presents our revenue by channel for the years ended December 31, 2020 and 2019:

| | Year Ended | | | |  | |
|---|---|---|---|---|---|---|
| | December 31, 2020 | | December 31, 2019 | | December 31, 2018 | |
| Channel: | | | | | | |
| CTV | $ 34,319 | 15 % | $ — | — % | $ — | — % |
| Desktop | 78,956 | 36 | 68,302 | 44 | 59,039 | 47 |
| Mobile | 108,353 | 49 | 88,112 | 56 | 65,646 | 53 |
| Total | $ 221,628 | 100 % | $ 156,414 | 100 % | $ 124,685 | 100 % |

The following table presents the Company's revenue disaggregated by geographic location, based on the location of the Company's sellers:

| | Year Ended | | |
|---|---|---|---|
| | December 31, 2020 | December 31, 2019 | December 31, 2018 |
| | (in thousands) | | |
| United States | $ 161,570 | $ 108,385 | $ 83,020 |
| International | 60,058 | 48,029 | 41,665 |
| Total | $ 221,628 | $ 156,414 | $ 124,685 |

Payment terms are specified in agreements between the Company and the buyers and sellers on its exchange platform. The Company generally bills buyers at the end of each month for the full purchase price of impressions filled in that month. The Company recognizes volume discounts as a reduction of revenue as they are incurred. Specific payment terms may vary by agreement, but are generally seventy-five days or less. The Company's accounts receivable are recorded at the amount of gross billings to buyers, net of allowances for the amounts the Company is responsible to collect. The Company's accounts payable related to amounts due to sellers are recorded at the net amount payable to sellers (see Note 11). Accordingly, both accounts receivable and accounts payable appear large in relation to revenue reported on a net basis.

Accounts receivable are recorded at the invoiced amount, are unsecured, and do not bear interest. The allowance for doubtful accounts is reviewed quarterly, requires judgment, and is based on the best estimate of the amount of probable credit losses in existing accounts receivable. The Company reviews the status of the then-outstanding accounts receivable on a customer-by-customer basis, taking into consideration the aging schedule of receivables, its historical collection experience, current information regarding the client, subsequent collection history, and other relevant data, in establishing the allowance for doubtful accounts. Accounts receivable is presented net of an allowance for doubtful accounts of $2.4 million at December 31, 2020, and $3.4 million at December 31, 2019. Accounts receivable are written off against the allowance for doubtful accounts when the Company determines amounts are no longer collectible.

The Company reviews the associated payable to sellers for recovery of buyer receivable allowance and write-offs; in some cases, the Company can reduce the payable to sellers. The reduction of seller payables related to recovery of uncollected buyer receivables is netted against allowance expense. The contra seller payables related to recoveries were $1.5 million and $0.9 million as of December 31, 2020 and December 31, 2019, respectively.

The following is a summary of activity in the allowance for doubtful accounts for the years ended December 31, 2020, 2019 and 2018, respectively:

| | Year Ended | | |
|---|---|---|---|
| | December 31, 2020 | December 31, 2019 | December 31, 2018 |
| | (in thousands) | | |
| Allowance for doubtful accounts, Beginning Balance | $ 3,400 | $ 1,340 | $ 500 |
| Allowance for doubtful accounts, Merger-assumed | 1,033 | — | — |
| Write-offs | (3,054) | (3,282) | (815) |
| Increase (decrease) in provision for expected credit losses | 870 | 5,328 | 1,285 |
| Recoveries of previous write-offs | 111 | 14 | 370 |
| Allowance for doubtful accounts, December 31 | $ 2,360 | $ 3,400 | $ 1,340 |

During the year ended December 31, 2020, 2019 and 2018, the provision for expected credit losses associated with accounts receivable and the offset by increases of contra seller payables related to recoveries of uncollected buyer receivables resulted in a net amount of bad debt each year. During the year ended December 31, 2020, the provision for expected credit losses associated with accounts receivable of $0.9 million was offset by increases of contra seller payables related to recoveries of uncollected buyer receivables of $1.0 million, which resulted in $0.1 million of bad debt recoveries. During the year ended December 31, 2019, the provision for expected credit losses associated with accounts receivable of $5.3 million was offset by increases of contra seller payables related to recoveries of uncollected buyer receivables of $4.1 million, which resulted in bad debt expense of $1.2 million. During the year ended December 31, 2018, the provision for expected credit losses associated with accounts receivable of $1.3 million was offset by increases of contra seller payables related to recoveries of uncollected buyer receivables of $0.5 million, which resulted in bad debt expense of $0.8 million.

## Note 5—Fair Value Measurements

### Recurring Fair Value Measurements

Fair value represents the exchange price that would be received for an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. Valuation techniques used to measure fair value must maximize the use of observable inputs and minimize the use of unobservable inputs. Observable inputs are based on market data obtained from independent sources. The fair value hierarchy is based on the following three levels of inputs, of which the first two are considered observable and the last one is considered unobservable:

- Level 1 – Quoted prices (unadjusted) in active markets for identical assets or liabilities that the Company has the ability to access at the measurement date.
- Level 2 – Inputs other than quoted prices included within Level 1 that are observable for the asset or liability, either directly or indirectly.
- Level 3 – Unobservable inputs.

The table below sets forth a summary of financial instruments that are measured at fair value on a recurring basis at December 31, 2020:

| | Total | Quoted Prices in Active Markets for Identical Assets (Level 1) | Significant Other Observable Inputs (Level 2) | Significant Unobservable Inputs (Level 3) |
|---|---|---|---|---|
| | (in thousands) | | | |
| Cash equivalents | $ 7,868 | $ 7,868 | $ — | $ — |

The table below sets forth a summary of financial instruments that are measured at fair value on a recurring basis at December 31, 2019:

| | Total | Quoted Prices in Active Markets for Identical Assets (Level 1) | Significant Other Observable Inputs (Level 2) | Significant Unobservable Inputs (Level 3) |
|---|---|---|---|---|
| | (in thousands) | | | |
| Cash equivalents | $ 13,501 | $ 13,501 | $ — | $ — |

At December 31, 2020 and 2019, cash equivalents of $7.9 million and $13.5 million, respectively, consisted of money market funds and commercial paper, with original maturities of three months or less. The carrying amounts of cash equivalents are classified as Level 1 or Level 2 depending on whether or not their fair values are based on quoted market prices for identical securities that are traded in an active market. Corporate debt securities (which are included in marketable securities on the balance sheet) with fair values derived from similar securities rather than based on quoted market prices for identical securities, are classified as Level 2 as well. The fair values of the Company's U.S. treasury, government and agency debt securities are based on quoted market prices and classified as Level 1, and are included within marketable securities.

There were no transfers between Level 1 and Level 2 fair value measurements during the years ended December 31, 2020 and 2019.

**Note 6—Investments**

The Company had no investments in marketable securities at December 31, 2020 and December 31, 2019.

During the year ended December 31, 2019, $7.5 million of available-for-sale investments matured, on which the realized gains were de minimis and there were no unrealized holding gains (losses) reclassified out of accumulated other comprehensive loss into the consolidated statements of operations. The Company had no sales of available-for-sale investments in 2019.

During the year ended December 31, 2018, the Company sold $9.2 million of available-for-sale investments, on which the realized gains were de minimis and there were no unrealized holding gains (losses) reclassified out of accumulated other comprehensive loss into the consolidated statements of operations. In addition, during the year ended December 31, 2018, the Company had net maturities of investments in available-for-sale securities of $38.7 million.

**Note 7—Property and Equipment**

Major classes of property and equipment were as follows:

| | December 31, 2020 | December 31, 2019 |
|---|---|---|
| | (in thousands) | |
| Purchased software | $ 1,255 | $ 1,254 |
| Computer equipment and network hardware | 115,740 | 105,491 |
| Furniture, fixtures and office equipment | 2,289 | 1,896 |
| Leasehold improvements | 2,738 | 1,589 |
| Gross property and equipment | 122,022 | 110,230 |
| Accumulated depreciation | (98,341) | (86,563) |
| Net property and equipment | $ 23,681 | $ 23,667 |

Depreciation expense on property and equipment totaled $16.0 million, $21.3 million, and $25.0 million for the years ended December 31, 2020, 2019, and 2018, respectively. There were no impairment charges to property and equipment for the years ended December 31, 2020, 2019, and 2018.

At December 31, 2020 and 2019, the Company had $39.6 million and $21.5 million of ROU assets and no property and equipment under finance leases.

The Company's property and equipment, net by geographical region was as follows:

| | December 31, 2020 | December 31, 2019 |
|---|---|---|
| | (in thousands) | |
| United States | $ 13,504 | $ 14,546 |
| International | 10,177 | 9,121 |
| Total | $ 23,681 | $ 23,667 |

**Note 8—Internal Use Software Development Costs**

Internal use software development costs were as follows:

| | December 31, 2020 | | December 31, 2019 |
|---|---|---|---|
| | (in thousands) | | |
| Internal use software development costs, gross | 51,277 | $ | 45,156 |
| Accumulated amortization | (35,117) | | (29,103) |
| Internal use software development costs, net | $ 16,160 | $ | 16,053 |

During the years ended December 31, 2020, 2019, and 2018, the Company capitalized $9.2 million, $9.0 million, and $9.0 million, respectively, of internal use software development costs. Amortization expense was $8.3 million, $7.5 million, and $7.2 million for the years ended December 31, 2020, 2019, and 2018, respectively. In the years ended December 31, 2020, 2019, and 2018, amortization expense included the write-off of software development costs of $0.1 million, $0.5 million, and $0.5 million, in the respective periods, related to the abandonment of the associated projects. Based on the Company's internal use software development costs at December 31, 2020, excluding projects that are not yet complete and not yet ready for their intended use with a value of $0.4 million, estimated amortization expense of $7.8 million, $5.6 million, $2.2 million, and $0.1 million is expected to be recognized in 2021, 2022, 2023, and 2024 respectively.

There were no impairment charges to internal use software development costs for the year ended December 31, 2020, 2019 and 2018 with the exception of the write-offs mentioned above.

**Note 9—Goodwill, Intangible Assets, and Capitalized Costs Incurred in Cloud Computing Arrangements**

Details of the Company's goodwill were as follows:

| | | December 31, 2019 |
|---|---|---|
| | | (in thousands) |
| Beginning balance at December 31, 2018 | $ | — |
| Additions from the acquisition of RTKio (Note 10) | | 7,370 |
| Ending balance at December 31, 2019 | | 7,370 |
| Additions for Merger with Telaria (Note 10) | | 150,755 |
| Ending balance at December 31, 2020 | $ | 158,125 |

The Company's intangible assets as of December 31, 2020 and 2019 included the following:

| | | December 31, 2020 | | December 31, 2019 |
|---|---|---|---|---|
| | | (in thousands) | | |
| Amortizable intangible assets: | | | | |
| Developed technology | $ | 77,658 | $ | 19,658 |
| Customer relationships | | 37,950 | | 1,650 |
| In-process research and development | | 8,030 | | — |
| Non-compete agreements | | 70 | | 70 |
| Trademarks | | — | | 20 |
| Total identifiable intangible assets, gross | | 123,708 | | 21,398 |
| Accumulated amortization—intangible assets: | | | | |
| Developed technology | | (21,905) | | (9,823) |
| Customer relationships | | (11,877) | | (162) |
| Non-compete agreements | | (42) | | (7) |
| Trademarks | | — | | (20) |
| Total accumulated amortization—intangible assets | | (33,824) | | (10,012) |
| Total identifiable intangible assets, net | $ | 89,884 | $ | 11,386 |

Amortization of intangible assets for the years ended December 31, 2020, 2019, and 2018 was $24.9 million, $3.3 million, and $3.2 million, respectively. During the year ended December 31, 2020 and 2019, the Company wrote off fully amortized intangible assets with a historical cost of $1.1 million and $0.7 million, respectively. During the year ended December 31, 2018, the Company had no write-offs of fully amortized intangible assets.

The estimated remaining amortization expense associated with the Company's intangible assets was as follows as of December 31, 2020:

| Fiscal Year | Amount (in thousands) |
|---|---|
| 2021 | $ 31,048 |
| 2022 | 26,342 |
| 2023 | 13,941 |
| 2024 | 13,757 |
| 2025 | 4,238 |
| Thereafter | 558 |
| Total | $ 89,884 |

The Company adopted ASU 2018-15 as of January 1, 2020 on a prospective basis and as a result, the Company capitalized certain costs associated with cloud computing arrangements and will recognize the costs over the length of the service arrangements, which generally are three years. During the year ended December 31, 2020, the Company capitalized $0.9 million related to cloud computing arrangements. These costs are related to arrangements for infrastructure as a service, platform as a service, and software as a service. Capitalized costs associated with these arrangements as of December 31, 2020 are included within prepaid expenses and other current assets and other assets, non-current within the consolidated balance sheet in the amounts of $0.7 million and $0.2 million, respectively. The amortization of these agreements were insignificant for the year ended December 31, 2020.

The Company's qualitative assessment in the fourth quarter of 2020 did not indicate that it is more likely than not that the fair value of its goodwill, intangible assets, and other long-lived assets is less than the aggregate carrying amount.

**Note 10—Business Combinations**

**2019 Acquisition—RTK.io**

On October 21, 2019, the Company completed the acquisition of RTK.io for total purchase consideration of $11.4 million, which includes cash paid of $11.0 million, cash acquired of $0.6 million, and a working capital adjustment of $0.2 million. RTK.io is a leading provider of tools and services that bring simplicity and control to header bidding for sellers. RTK's solution is built on Prebid, the same open source framework as Demand Manager, the header bidding solution the Company launched in May 2019. The primary reason for the acquisition was to acquire technology, know-how, and personnel that will enable the Company to extend its Demand Manager product portfolio and client base. The financial results of RTK.io have been included in the Company's consolidated financial statements since the date of the acquisition.

The major classes of assets and liabilities to which the Company allocated the purchase price were as follows as of the acquisition date:

| | Amount (in thousands) |
|---|---|
| Cash and cash equivalents | $ 553 |
| Accounts receivable | 2,441 |
| Prepaid and other assets | 50 |
| Intangible assets | 4,520 |
| Goodwill | 7,370 |
| Total assets acquired | 14,934 |
| Accounts payable and accrued expenses | 2,450 |
| Deferred tax liability, net | 1,089 |
| Total liabilities assumed | 3,539 |
| Total net assets acquired | $ 11,395 |

The following table summarizes the components of the acquired intangible assets and estimated useful lives (in thousands, except for estimated useful life) as of the acquisition date:

| | | Amount | Estimated Useful Life |
|---|---|---|---|
| Developed technology | $ | 2,780 | 5 years |
| Customer relationships | | 1,650 | 2 years |
| Non-compete agreements | | 70 | 2 years |
| Trademark & trade name | | 20 | < 0.5 years |
| Total intangible assets acquired | $ | 4,520 | |

The intangible assets are amortized on a straight-line basis, which approximates the pattern in which the economic benefits are consumed, over their estimated useful lives. Amortization of developed technology is included in cost of revenue, amortization related to customer relationships is included in sales and marketing, amortization related to non-compete agreements is included in sales and marketing or technology and development, depending on the nature of the employee's job function, and amortization related to trademark and trade name is included in general and administrative.

Goodwill resulting from the acquisition was primarily attributable to acquired workforce, an increase in development capabilities, increased offerings to clients, and enhanced opportunities for growth and innovation. The acquired intangibles and goodwill resulting from the RTK.io acquisition are not amortizable for tax purposes. Pro forma results of operations were not significant to the consolidated results of operations.

The Company does not track RTK.io's expenses on a stand-alone basis, and as a result, the determination of RTK.io post-acquisition operating results on a stand-alone basis was impracticable. The post-acquisition revenue, expenses, and pro forma results of operations were not significant to the consolidated results of operations for the years ended December 31, 2020 and 2019.

**2020 Merger—Telaria**

On April 1, 2020, (the "Acquisition Date"), the Company completed the Merger with Telaria. Upon completion of the Merger, each share of Telaria common stock issued and outstanding was converted into 1.082 shares of Magnite common stock. As a result, the Company issued 52,098,945 shares of Magnite common stock. In connection with the Merger, Magnite also assumed Telaria’s 2013 Equity Incentive Plan, as amended; 2008 Stock Plan, as amended; and the ScanScout, Inc. 2009 Equity Incentive Plan, as amended.

As of the Acquisition Date, former holders of Telaria common stock owned approximately 48% and pre-merger holders of Magnite common stock owned approximately 52% of the common stock of the combined company on a fully diluted basis.

The Merger was accounted for using the acquisition method of accounting in accordance with Accounting Standards Codification, referred to as ASC 805, *Business Combinations*. Magnite management determined that Magnite was the acquiror for financial accounting purposes. In identifying Magnite as the accounting acquiror, management considered the structure of the transaction and other actions contemplated by the merger agreement, relative outstanding share ownership and market values, the composition of the combined company’s board of directors, the relative size of Magnite and Telaria, and the designation of certain senior management positions of the combined company.

In accordance with ASC 805, the Company recorded the acquisition based on the fair value of the consideration transferred and then allocated the purchase price to the identifiable assets acquired and liabilities assumed based on their respective fair values as of the Acquisition Date. The excess of the value of consideration transferred over the aggregate fair value of those net assets was recorded as goodwill. Any identified definite lived intangible assets will be amortized over their estimated useful lives and any identified intangible assets with indefinite useful lives and goodwill will not be amortized but will be tested for impairment at least annually or more frequently when certain indicators are present. Determining the fair value of assets acquired and liabilities assumed requires management to use significant judgment and estimates including the selection of valuation methodologies, estimates of future revenues and cash flows, discount rates, and selection of comparable companies.

Management's purchase price allocation is preliminary and subject to change pending finalization of tax attributes and tax related liabilities. Under the acquisition method of accounting for business combinations, if the Company identifies changes to acquired deferred tax asset ("DTA") valuation allowances or liabilities related to uncertain tax positions during the measurement period, and they are related to new information obtained about facts and circumstances that existed as of the acquisition date, those changes are considered a measurement-period adjustment, and the Company will record the offset to goodwill. The Company records all other changes to DTA valuation allowances and liabilities related to uncertain tax positions in current- period income tax expense.

During the three months ended December 31, 2020, the Company adjusted the preliminary purchase price allocation for Telaria based on updated fair values associated with the acquired intangibles. Changes in projected revenues and costs increased the technology and customer relationships intangible while lengthened timeline for software development reduced in process research and development projects value. Except for the valuation related changes in intangible assets and adjustments to acquisition related tax accruals and deferred tax liabilities, adjustments to the fair value of opening balance sheet acquired assets and assumed liabilities resulted in minimal changes and refinements by management as of, and for the year-ended, December 31, 2020.

For purposes of measuring the estimated fair value, where applicable, of the assets acquired and the liabilities assumed, the Company applied the guidance in ASC 820, Fair Value Measurement, which establishes a framework for measuring fair value. In accordance with ASC 820, fair value is an exit price and is defined as "the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date." Under ASC 805, acquisition-related transaction costs and acquisition-related restructuring charges are not included as components of consideration transferred but are accounted for as expenses in the period in which the costs are incurred.

As part of the Merger, existing outstanding restricted stock units of Telaria common stock and stock options to purchase common stock of Telaria were exchanged for 1.082 restricted stock units of the Company and options to purchase the Company's common stock, respectively. The fair value of stock options exchanged on the date of the Merger attributable to pre-acquisition services was recorded as purchase consideration. The fair value of the restricted stock units and stock options exchanged on the date of the Merger attributable to post-acquisition services will be recorded as additional stock-based compensation expense in the Company's consolidated statements of operations over their remaining requisite service (vesting) periods.

The following table summarizes the total purchase consideration (in thousands):

| | | |
|---|---|---|
| Shares of Magnite common stock | $ | 274,604 |
| Fair value of stock-based awards exchanged | | 11,646 |
| Acceleration of single trigger equity awards, converted | | 1,168 |
| Total purchase consideration | $ | 287,418 |

The purchase consideration for the acquisition included 52,008,316 shares of the Company's common stock with a fair value of approximately $274.6 million, based on the Company's stock price as reported on the NYSE on the Acquisition Date. The fair value of stock options and restricted stock units exchanged on the Acquisition Date attributable to pre-acquisition services of approximately $10.4 million and $1.2 million, respectively, have been recorded as purchase consideration. In addition, the Company recorded additional purchase consideration associated with acceleration of 90,629 shares of common stock issued associated with single-trigger equity awards in the amount of $1.2 million.

The fair value of stock options and restricted stock units exchanged on the Acquisition Date attributable to post-acquisition services of $4.7 million and $12.2 million, respectively, will be recorded as additional stock-based compensation expense on the Company's consolidated statement of operations over their remaining requisite service (vesting) periods.

The fair value of the purchase price was allocated to the identifiable assets acquired and liabilities assumed based upon their estimated fair values as of the date of the acquisition as set forth below:

| | | |
|---|---|---|
| Cash and cash equivalents | $ | 51,848 |
| Accounts receivable, net | | 150,924 |
| Prepaid expenses and other current assets | | 3,054 |
| Property and equipment, net | | 1,814 |
| Right-of-use lease asset | | 26,627 |
| Intangible assets | | 103,410 |
| Restricted cash | | 2,747 |
| Other assets, non-current | | 369 |
| Deferred tax assets, non-current | | 103 |
| Goodwill | | 150,755 |
| Total assets acquired | | 491,651 |
| Accounts payable and accrued expenses | | 172,751 |
| Lease liabilities - current portion | | 5,322 |
| Deferred revenue | | 11 |
| Other current liabilities | | 365 |
| Lease liabilities - non-current portion | | 23,323 |
| Other liabilities, non-current | | 194 |
| Deferred tax liability | | 2,267 |
| Total liabilities assumed | | 204,233 |
| Total purchase price | $ | 287,418 |

The Company believes the amount of goodwill resulting from the purchase price allocation is primarily attributable to expected synergies from assembled workforce, an increase in development capabilities, increased offerings to customers, and enhanced opportunities for growth and innovation. Goodwill will not be amortized but instead will be tested for impairment at least annually or more frequently if certain indicators of impairment are present. In the event that goodwill has become impaired, the Company will record an expense for the amount impaired during the quarter in which the determination is made. The acquired intangibles and goodwill resulting from the Merger are not amortizable for tax purposes.

The following table summarizes the components of the intangible assets and estimated useful lives as of the Acquisition Date (dollars in thousands):

| | | | Estimated Useful Life |
|---|---|---|---|
| Technology | $ | 58,000 | 5 years |
| In-process research and development | | 8,030 | 4.7 years* |
| Customer relationships | | 36,300 | 2.5 years |
| Backlog | | 880 | 0.75 years |
| Trademarks | | 200 | 0.25 years |
| Total intangible assets acquired | $ | 103,410 | |

* In-process research and development consists of two projects with a weighted-average useful life of 4.7 years. Amortization begins once associated projects are completed and it is determined the projects have alternative future use.

The fair value of the acquired technology and in-process research and development was valued using The Revenue Split Method. This methodology included allocating future revenue projections to the existing technologies and applying decay rates and appropriate discount rates that reflect the respective intangible asset's relative risk profile when compared to other intangible assets as well as considering the risk associated with the overall business.

At the Acquisition Date, Telaria had existing Customer Relationships. To the extent that future cash flows of the business would be negatively affected in the absence of these relationships, they would be deemed to have economic value. The Company used the Loss-of-Revenue and Income Method in its valuation of the existing Customer Relationships. This method attempts to quantify the scenario whereby the owner loses the right to the intangible asset and the resulting losses of revenue and income. Under this analysis, the value of the cash flows with the intangible asset is compared to the value of the cash flows without the intangible asset and the difference represents the value of the intangible asset. This methodology included applying a discount rate and the expected timing it would take to further enhance customer relationships.

The fair value of the backlog was based on the Excess Earnings Model, taking into consideration the existing contracts as of the Acquisition Date and the respective cost to complete the servicing of the existing agreements. The resulting stream of after tax earnings were discounted to present value by applying an appropriate discount rate for the asset. The discount rate was selected based on the intangible asset’s relative risk profile when compared to the other intangible assets as well as the discount rate for the overall business.

Intangible assets are generally amortized on a straight-line basis, which approximates the pattern in which the economic benefits are consumed, over their estimated useful lives. Amortization of developed technology is included in cost of revenues and the amortization of customer relationships, backlog, and trademarks is included in sales and marketing expenses in the consolidated statement of operations. Once the projects associated with acquired in-process research and development are completed, amortization will be included in cost of revenues in the consolidated statement of operations. The intangible assets generated in the Merger are not tax deductible.

As such, as part of the Merger, deferred tax liabilities of $24.0 million were established related to the acquired intangible assets, which were fully offset by the estimated income tax effect of the partial release of Telaria's valuation allowance. The deferred tax liability was calculated based on an estimated combined tax rate of 23.3%.

The Company recognized approximately $17.6 million of acquisition related costs during the year ended December 31, 2020 (see Note 14). In addition, as part of the Merger, the Company acquired Telaria's U.S. federal NOLs of approximately $126.1 million and state NOLs of approximately $87.6 million. Pursuant to Section 382 of the Internal Revenue Code, Telaria, Inc. underwent an ownership change for tax purposes. As a result, the use of the NOLs will be subject to annual Section 382 use limitations. The Company believes the ownership change will not impact the Company's ability to utilize substantially all of the NOLs to the extent it generates taxable income that can be offset by such losses.

***Unaudited Pro Forma Information***

The following table provides unaudited pro forma information as if Telaria had been merged with the Company as of January 1, 2019. The unaudited pro forma information reflects adjustments for additional amortization resulting from the fair value adjustments to assets acquired and liabilities assumed, adjustments for alignment of accounting policies, and transaction expenses as if the Merger occurred on January 1, 2019. The pro forma results do not include any anticipated cost synergies or other effects of the integration merged companies. Accordingly, pro forma amounts are not necessarily indicative of the results that actually would have occurred had the acquisition been completed on the dates indicated, nor is it indicative of the future operating results of the combined company.

| | Year Ended | |
|---|---|---|
| | December 31, 2020 | December 31, 2019 |
| Pro Forma Revenue | $ 236,666 | $ 224,452 |
| Pro Forma Net Loss | $ (64,030) | $ (78,585) |

During the year ended December 31, 2020, post-Merger revenue on a stand-alone basis for Telaria was $60.1 million. During the year ended December 31, 2020, due to the process of integrating the operations of Telaria into the operations of the Company, the determination of Telaria's post-Merger operating results on a standalone basis was impracticable.

**Note 11—Accounts Payable and Accrued Expenses**

Accounts payable and accrued expenses included the following:

| | December 31, 2020 | December 31, 2019 |
|---|---|---|
| | (in thousands) | |
| Accounts payable—seller | $ 492,605 | $ 247,891 |
| Accounts payable—trade | 4,268 | 4,822 |
| Accrued employee-related payables | 12,442 | 6,726 |
| Total | $ 509,315 | $ 259,439 |

**Note 12—Accumulated Other Comprehensive Income (Loss)**

The components of accumulated other comprehensive income (loss) were as follows (in thousands):

| | Unrealized Gain (Loss) on Investments, net of tax | Foreign Currency Translation | Accumulated Other Comprehensive Income (Loss) |
|---|---|---|---|
| Balance at December 31, 2017 | $ (29) | $ 70 | $ 41 |
| Other comprehensive income (loss) | 27 | (327) | (300) |
| Balance at December 31, 2018 | (2) | (257) | (259) |
| Other comprehensive income | 2 | 212 | 214 |
| Balance at December 31, 2019 | — | (45) | (45) |
| Other comprehensive loss | — | (912) | (912) |
| Balance at December 31, 2020 | $ — | $ (957) | $ (957) |

**Note 13—Stock-Based Compensation**

In connection with its IPO, the Company implemented its 2014 Equity Incentive Plan, which governs equity awards made to employees and directors of the Company since the IPO. Prior to the IPO, the Company granted equity awards under its 2007 Stock Incentive Plan, which governs equity awards made to employees and contractors prior to the IPO. In November 2014, the Company approved the 2014 Inducement Grant Equity Incentive Plan (the "Inducement Plan"), which governs certain equity awards made to certain employees in connection with commencement of employment. In connection with the Company's acquisitions of Chango Inc. ("Chango"), iSocket, Inc. ("iSocket"), and nToggle, Inc. ("nToggle") it assumed the existing employee equity award plans, the 2009 Chango Stock Option Plan (the "Chango Plan"), the iSocket 2009 Equity Incentive Plan (the "iSocket Plan"), and the nToggle 2014 Equity Incentive Plan (the "nToggle Plan"). In connection with the Merger with Telaria, the Company assumed Telaria's 2013 Equity Incentive Plan, as amended (the "Telaria Plan"); 2008 Stock Plan, as amended (the "2008 Stock Plan"); and the ScanScout, Inc. 2009 Equity Incentive Plan, as amended (the "ScanScout Plan"). All compensatory equity awards outstanding at December 31, 2020 were issued pursuant to the 2014 Equity Incentive Plan, the iSocket Plan, the Chango Plan, the nToggle Plan, the Telaria Plan, the 2008 Stock Plan, the ScanScout Plan, the Inducement Plan, or the Company's 2007 Stock Incentive Plan.

The Company’s equity incentive plans provide for the grant of equity awards, including non-statutory or incentive stock options, restricted stock awards, and restricted stock units, to the Company's employees, officers, directors, and consultants. The Company's board of directors administers the plans. Options outstanding vest based upon continued service at varying rates, but generally over four years from issuance with 25% vesting after one year of service and the remainder vesting monthly thereafter. Restricted stock awards and restricted stock units vest at varying rates, typically approximately 25% vesting after approximately one year of service and the remainder vesting annually, semi-annually, or quarterly thereafter. The restricted stock units granted in 2020, 2019, and 2018, included 0.7 million, 1.8 million, and 2.8 million, respectively, restricted stock units that vest 50% on each of the first and second anniversaries of the grant date. Options, restricted stock awards, and restricted stock units granted under the plans accelerate under certain circumstances for certain participants upon a change in control, as defined in the governing plan. No further awards were made under the iSocket Plan, the Chango Plan, or the nToggle Plan from the date of acquisition and no further awards were made under the 2007 Stock Incentive Plan since the IPO. Available shares under the iSocket Plan, the Chango Plan, and the nToggle Plan were rolled into the available share pool under the 2014 Equity Incentive Plan at the time of acquisition of each company, and available shares under the 2007 Stock Incentive Plan were rolled into the available share pool under the 2014 Equity Incentive Plan at the time of the IPO. An aggregate of 9,705,530 shares remained available for future issuance at December 31, 2020 under the plans. The 2014 Equity Incentive Plan has an evergreen provision pursuant to which the share reserve will automatically increase on January 1st of each year in an amount equal to 5% of the total number of shares of capital stock outstanding on December 31st of the preceding calendar year, although the Company’s board of directors may provide for a lesser increase, or no increase, in any year. The 2014 Inducement Grant Equity Incentive Plan has a provision pursuant to which the share reserve may be increased at the discretion of the Company's board of directors.

***Stock Options***

A summary of stock option activity for the year ended December 31, 2020 is as follows:

| | Shares Under Option | Weighted-Average Exercise Price | Weighted- Average Contractual Life | Aggregate Intrinsic Value |
|---|---|---|---|---|
| | (in thousands) | | | (in thousands) |
| Outstanding at December 31, 2019 | 4,262 | $ 6.82 | | |
| Granted | 1,145 | $ 5.32 | | |
| Options assumed in Merger | 4,998 | $ 3.80 | | |
| Exercised | (3,359) | $ 4.03 | | |
| Expired | (150) | $ 13.22 | | |
| Forfeited | (201) | $ 5.09 | | |
| Outstanding at December 31, 2020 | 6,695 | $ 5.61 | 6.4 years | $ 168,025 |
| Exercisable at December 31, 2020 | 4,044 | $ 6.03 | 5.1 years | $ 99,803 |

The total intrinsic value of options exercised during the year ended December 31, 2020 was $21.5 million. At December 31, 2020, the Company had unrecognized employee stock-based compensation expense relating to nonvested stock options of approximately $7.0 million, which is expected to be recognized over a weighted-average period of 2.4 years. The grant date fair value of options granted and assumed during the year ended December 31, 2020 was $3.17 per share. The weighted-average grant date fair value per share of stock options granted during the year ended December 31, 2020 was $3.22 per share and the fair value of options assumed in the Merger was $3.16 per share. Total fair value of options vested during the year ended December 31, 2020 was $4.7 million.

The Company estimates the fair value of stock options that contain service and/or performance conditions using the Black-Scholes option pricing model. The weighted-average input assumptions used by the Company were as follows:

| | Year Ended | | |
|---|---|---|---|
| | December 31, 2020 | December 31, 2019 | December 31, 2018 |
| Expected term (in years) | 6.3 | 6.1 | 6.0 |
| Risk-free interest rate | 0.45 % | 2.55 % | 2.67 % |
| Expected volatility | 67 % | 60 % | 57 % |
| Dividend yield | — % | — % | — % |

***Restricted Stock Units***

A summary of restricted stock unit activity for the year ended December 31, 2020 is as follows:

| | Number of Shares | Weighted-Average Grant Date Fair Value |
|---|---|---|
| | (in thousands) | |
| Nonvested restricted stock units outstanding at December 31, 2019 | 8,077 | $ 4.46 |
| Granted | 4,954 | $ 5.52 |
| Restricted stock units assumed in Merger | 2,416 | $ 5.40 |
| Canceled | (1,035) | $ 5.17 |
| Vested | (5,126) | $ 4.26 |
| Nonvested restricted stock units outstanding at December 31, 2020 | 9,286 | $ 5.30 |

The weighted-average grant date fair value per share of restricted stock units granted during the year ended December 31, 2020 was $5.52. The aggregate fair value of restricted stock units that vested during the year ended December 31, 2020 was $43.6 million. At December 31, 2020, the intrinsic value of nonvested restricted stock units was $285.2 million. At December 31, 2020, the Company had unrecognized stock-based compensation expense relating to nonvested restricted stock units of approximately $36.9 million, which is expected to be recognized over a weighted-average period of 2.3 years.

***Performance Stock Units***

In April 2020, the Company granted the Company's CEO 146,341 restricted stock units that vest based on certain stock price performance metrics with a fair value of $0.9 million. The grant date fair value per share of restricted stock was $6.15, which was estimated using a Monte-Carlo lattice model. During the year ended December 31, 2020, the Company recognized $0.2 million of stock-based compensation related to these performance stock units based on a performance measurement of 150%. At December 31, 2020, the Company had unrecognized employee stock-based compensation expense of approximately $0.7 million, which is expected to be recognized over the remaining 2.25 years. Between 0% and 150% of the performance stock units will vest on the third anniversary of its grant date. The compensation expense will not be reversed if the performance metrics are not met.

***Employee Stock Purchase Plan***

In November 2013, the Company adopted the Company's 2014 Employee Stock Purchase Plan ("ESPP"). The ESPP is designed to enable eligible employees to periodically purchase shares of the Company's common stock at a discount through payroll deductions of up to 10% of their eligible compensation, subject to any plan limitations. At the end of each six-month offering period, employees are able to purchase shares at a price per share equal to 85% of the lower of the fair market value of the Company's common stock on the first trading day of the offering period or on the last trading day of the offering period. Offering periods generally commence and end in May and November of each year.

As of December 31, 2020, the Company has reserved 2,049,164 shares of its common stock for issuance under the ESPP. The ESPP has an evergreen provision pursuant to which the share reserve will automatically increase on January 1st of each year in an amount equal to 1% of the total number of shares of capital stock outstanding on December 31st of the preceding calendar year, although the Company’s board of directors may provide for a lesser increase, or no increase, in any year.

***Stock-Based Compensation Expense***

Total stock-based compensation expense recorded in the consolidated statements of operations was as follows:

| | Year Ended | | |
|---|---|---|---|
| | December 31, 2020 | December 31, 2019 | December 31, 2018 |
| | | (in thousands) | |
| Cost of revenue | $ 525 | $ 421 | $ 321 |
| Sales and marketing | 8,229 | 5,638 | 4,557 |
| Technology and development | 7,451 | 4,757 | 2,867 |
| General and administrative | 10,416 | 8,009 | 8,139 |
| Merger and restructuring costs | 1,870 | — | 398 |
| Total stock-based compensation expense | $ 28,491 | $ 18,825 | $ 16,282 |

**Note 14—Merger and Restructuring, Costs**

Merger and restructuring costs consist primarily of professional services fees and employee termination costs, including stock-based compensation charges, associated with the Merger and restructuring activities. For the year ended December 31, 2018, Merger and restructuring costs also included relocation costs.

The following table summarizes Merger and restructuring cost activity (in thousands):

| | Year Ended | | |
|---|---|---|---|
| | December 31, 2020 | December 31, 2019 | December 31, 2018 |
| | | (in thousands) | |
| Professional Service (investment banking advisory, legal and other professional services) | $ 9,935 | $ 2,041 | $ — |
| Personnel related (severance and one-time termination benefit costs) | 5,747 | $ — | $ 3,042 |
| Non-cash stock-based compensation (double-trigger acceleration and severance) | 1,870 | $ — | $ 398 |
| Total merger and restructuring costs | $ 17,552 | $ 2,041 | $ 3,440 |

During the years ended December 31, 2020 and December 31, 2019, the Company incurred costs of $17.6 million and $2.0 million, respectively, primarily related to the Merger with Telaria. All of the expenses incurred in the year ended December 31, 2019 were incurred during the fourth quarter (refer to "reclassification" note within Note 2).

In the first quarter of 2018, the Company announced its restructuring plan to reduce headcount to bring the Company's general and administrative operations into better alignment with the current size of the business and de-layer certain functions, and to reduce its investment in unprofitable projects (the "2018 Restructuring Events"). During the year ended December 31, 2018, the Company incurred restructuring costs of $3.4 million for severance and one-time termination benefits.

Accrued restructuring costs related to the Merger were $2.9 million at December 31, 2020. Accrued restructuring costs associated with personnel costs are included within accounts payable and accrued expenses and accruals related to Merger assumed loss contracts are included within other current liabilities and other liabilities, non-current on the Company's consolidated balance sheet.

| | Year Ended (in thousands) | | |
|---|---|---|---|
| | December 31, 2020 | December 31, 2019 | December 31, 2018 |
| Accrued Merger and restructuring costs at beginning of period | $ — | $ 67 | $ — |
| Restructuring costs (personnel related and non-cash stock-based compensation) | 7,617 | — | 3,440 |
| Restructuring costs (Merger assumed loss contracts) | 3,543 | — | — |
| Cash paid for restructuring costs | (6,355) | (67) | (2,975) |
| Non-cash stock-based compensation | (1,870) | — | (398) |
| Accrued Merger and restructuring costs at end of period | $ 2,935 | $ — | $ 67 |

The accrued balance as of December 31, 2020 does not include an additional $0.1 million of personnel related expenses expected to be incurred in 2021 associated with the 2020 restructuring activities as a result of the Merger.

**Note 15—Income Taxes**

The following are the domestic and foreign components of the Company’s income (loss) before income taxes for the years ended December 31, 2020, 2019, and 2018:

| | Year Ended | | |
|---|---|---|---|
| | December 31, 2020 | December 31, 2019 | December 31, 2018 |
| | | (in thousands) | |
| Domestic | $ (57,253) | $ (28,063) | $ (62,292) |
| International | 4,514 | 1,073 | 827 |
| Loss before income taxes | $ (52,739) | $ (26,990) | $ (61,465) |

The following are the components of the provision (benefit) for income taxes for the years ended December 31, 2020, 2019, and 2018:

| | Year Ended | | |
|---|---|---|---|
| | December 31, 2020 | December 31, 2019 | December 31, 2018 |
| | | (in thousands) | |
| **Current:** | | | |
| Federal | $ (144) | $ (153) | $ (23) |
| State | 15 | 28 | 41 |
| Foreign | 1,117 | 281 | 388 |
| Total current provision | 988 | 156 | 406 |
| **Deferred:** | | | |
| Federal | 9 | (762) | — |
| State | (12) | (174) | 2 |
| Foreign | (292) | (732) | (51) |
| Total deferred benefit | (295) | (1,668) | (49) |
| Total provision (benefit) for income taxes | $ 693 | $ (1,512) | $ 357 |

The Company recorded an income tax expense of $0.7 million for the year ended December 31, 2020 compared to an income tax benefit of $1.5 million and income tax expense of $0.4 million for the years ended December 31, 2019 and 2018, respectively. The tax expense for the years ended December 31, 2020 and December 31, 2018 was primarily the result of the domestic valuation allowance and the tax liability associated with the foreign subsidiaries. The tax benefit for the year ended December 31, 2019 was the result of a deferred tax liability associated with the RTKio acquisition, the release of a foreign valuation allowance resulting from a change to a cost-plus arrangement for a foreign subsidiary, the domestic valuation allowance, and the tax liability associated with foreign subsidiaries.

Set forth below is a reconciliation of the components that caused the Company’s provision (benefit) for income taxes to differ from amounts computed by applying the U.S. Federal statutory rate of 21% for the years ended December 31, 2020, 2019, and 2018:

| | Year Ended | | |
|---|---|---|---|
| | December 31, 2020 | December 31, 2019 | December 31, 2018 |
| U.S. federal statutory income tax rate | 21.0 % | 21.0 % | 21.0 % |
| State income taxes, net of federal benefit | (0.2)% | (0.1)% | (0.1)% |
| Foreign income (loss) at other than U.S. rates | (0.5)% | (4.3)% | — % |
| Stock-based compensation expense | 11.4 % | 3.5 % | (5.3)% |
| Meals and entertainment | (0.1)% | (0.9)% | (0.4)% |
| Debt cancellation | — % | — % | (1.2)% |
| Other permanent items | (1.1)% | (1.2)% | (0.5)% |
| Change in valuation allowance | (19.5)% | (7.5)% | (14.1)% |
| Sec 162(m) officers compensation | (12.7)% | (6.3)% | — % |
| Provision to return adjustments | 0.4 % | 1.4 % | — % |
| Effective income tax rate | (1.3)% | 5.6 % | (0.6)% |

Set forth below are the tax effects of temporary differences that give rise to a significant portion of the deferred tax assets and deferred tax liabilities as of December 31, 2020 and 2019:

| | December 31, 2020 | December 31, 2019 |
|---|---|---|
| | (in thousands) | |
| **Deferred Tax Assets:** | | |
| Accrued liabilities | $ 1,568 | $ 1,396 |
| Lease liabilities | 8,943 | — |
| Stock-based compensation | 3,559 | 3,666 |
| Net operating loss carryovers | 117,707 | 75,853 |
| Tax credit carryovers | 4,882 | 13,055 |
| Other | 1,263 | 1,537 |
| Total deferred tax assets | 137,922 | 95,507 |
| Less valuation allowance | (109,992) | (93,611) |
| Deferred tax assets, net of valuation allowance | 27,930 | 1,896 |
| **Deferred Tax Liabilities:** | | |
| Fixed assets | (824) | (570) |
| Intangible assets | (18,584) | (298) |
| Right of use lease asset | (8,283) | — |
| Total deferred tax liabilities | (27,691) | (868) |
| Net deferred tax assets (liability) | $ 239 | $ 1,028 |

The change in valuation allowance for the years ended December 31, 2020, 2019, and 2018 was $16.4 million, $2.7 million, and $9.2 million, respectively.

At December 31, 2020, the Company had U.S. federal net operating loss carryforwards, or NOLs, of approximately $453.2 million, which will begin to expire in 2027. At December 31, 2020, the Company had state NOLs of approximately $280.0 million, which will begin to expire in 2027. At December 31, 2020, the Company had foreign NOLs of approximately $25.0 million, which will begin to expire in 2026. At December 31, 2020, the Company had state research and development tax credits of approximately $8.0 million, which carry forward indefinitely. No amounts for any federal or state research and development tax credits for the year ended December 31, 2019 or December 31, 2020 are included herein.

On March 27, 2020, President Trump signed into law the Coronavirus Aid, Relief, and Economic Security Act ("CARES Act"), in response to the COVID-19 pandemic. The CARES Act is meant to infuse negatively affected companies with various tax cash benefits to ease the impact of the COVID-19 pandemic. The CARES Act, among other things, includes provisions relating to refundable payroll tax credits, deferment of employer-side social security payments, and net operating loss carryback periods. The Company has determined the tax implications of the CARES Act will not be material. To date, the Company has not taken advantage of any relief under the Cares Act. On December 27, 2020, President Trump signed into law the Consolidated Appropriations Act, 2021 ("CAA"). The CAA is meant to provide additional relief and support to those impacted by the COVID-19 pandemic. The CAA includes provisions relating to payroll tax deferrals, family leave, and a five-year extension of a myriad of tax provisions that were set to expire. The company is evaluating the potential tax implications of the CAA on the Company for 2021. In addition, various foreign jurisdictions where the Company has activity have enacted or are considering enacting a variety of measures. The Company has not received any relief that will impact its tax liabilities. The Company is monitoring new legislation and evaluating the potential tax implications of these measures globally.

Pursuant to Section 382 of the Internal Revenue Code, the Company and Telaria, Inc. both underwent ownership changes for tax purposes (i.e. a more than 50% change in stock ownership in aggregated 5% shareholders) on April 1, 2020 due to the Merger. As a result, the use of the Company’s total domestic NOL carryforwards and tax credits generated prior to the ownership change will be subject to annual use limitations under Section 382 and 383 of the Code and comparable state income tax laws. The Company believes that the ownership change will not impact its ability to utilize substantially all of its NOLs and state research and development carryforward tax credits to the extent it will generate taxable income that can be offset by such losses. The Company reasonably expects its federal research and development carryforward tax credits will not be recovered prior to expiration.

Additionally, for tax years beginning after December 31, 2017, the Tax Cuts and Jobs Act limits the NOL deduction to 80% of taxable income, repeals carryback of all NOLs arising in a tax year ending after 2017, and permits indefinite carryforward for all such NOLs. NOL’s arising in a tax year ending in or before 2017 can offset 100% of taxable income, are available for carryback, and expire 20 years after they arise.

At December 31, 2020, unremitted earnings of the subsidiaries outside of the United States were approximately $22.1 million, on which the Company previously recorded a transition tax of $3.3 million. The Company's intention is to indefinitely reinvest these earnings outside the United States. Upon distribution of those earnings in the form of a dividend or otherwise, the Company would be subject to withholding taxes payable to various foreign countries and, potentially, various state taxes. The amounts of such tax liabilities that might be payable upon actual repatriation of foreign earnings, after consideration of corresponding foreign tax credits, are not material.

The following table summarizes the activity related to the unrecognized tax benefits (in thousands):

| | Amount (in thousands) |
|---|---|
| Balance as of December 31, 2018 | $ 4,717 |
| Increases related to current year tax positions | — |
| Decreases related to current year tax positions | — |
| Increases related to prior year tax positions | 3 |
| Balance as of December 31, 2019 | 4,720 |
| Decreases related to prior year tax positions | (2,294) |
| Increases related to prior year tax positions | 788 |
| Balance as of December 31, 2020 | $ 3,214 |

Interest and penalties related to the Company's unrecognized tax benefits accrued at December 31, 2020, 2019, and 2018 were not material.

Due to the net operating loss carryforwards, the Company's United States federal and a majority of its state returns are open to examination by the Internal Revenue Service and state jurisdictions for all years since inception. For Canada, Japan, the Netherlands, and the United Kingdom, all tax years remain open for examination by the local country tax authorities, for France only 2017 forward are open for examination, for Singapore 2016 and forward are open for examination, and for Australia, Brazil, and Germany, tax years 2015 and forward are open for examination.

The Company does not expect its uncertain income tax positions to have a material impact on its consolidated financial statements within the next twelve months.

**Note 16—Leases**

The Company adopted ASC 842 as of January 1, 2019. As part of the implementation, the Company recognized its lease liabilities, including the current and non-current portions, within its consolidated balance sheet as of the adoption date, which represents the present value of the Company's obligation related to the estimated future lease payments. The Company also recognized a right-of-use asset, or ROU asset, which represents the right to use the leased asset over the period of the lease. The ROU asset was calculated as the lease liability less any asset or liability balances that existed at the time of adoption.

The lease term is generally specified in the lease agreement, however certain agreements provide for lease term extensions or early termination options. To determine the period for the estimated future lease payments, the Company evaluates whether it is reasonably certain that it will exercise the option at the commencement date and periodically thereafter. Certain data center lease agreements include one year extension options or month-to-month extension options, and one or more of these extensions have been assumed for each lease that the Company believes to be an integral part of the business in the near term. The lease terms of the Company's operating leases generally range from 1.0 year to 10.0 years, and the weighted average remaining lease term of leases included in the lease liability is 6.2 years as of December 31, 2020.

To determine the estimated future lease payments, the Company reviews each of its lease agreements to identify the various payment components. For real estate and equipment leases, the Company includes only the actual lease components in its determination of future lease payments, and for its data center leases, includes both the fixed lease and non-lease components in the estimated future lease payments. This typically includes a fixed minimum power commitment that is included in the data center agreements, but it does not include any variable or usage-based additional charges. Once the estimated future lease payments are determined, the Company uses a discount rate to calculate the present value of the future lease payments. Because most of the Company's leases do not provide an implicit rate of return, the Company uses the incremental borrowing rate it would be subject to on borrowings from its available revolving debt agreement based on the information available at the lease commencement date in determining the present value of lease payments. As of December 31, 2020, a weighted average discount rate of 5.00% has been applied to the remaining lease payments to calculate the lease liabilities included within the consolidated balance sheet.

For the year ended December 31, 2020, the Company recognized $13.4 million of lease expense under ASC 842, which included operating lease expenses associated with leases included in the lease liability and ROU asset on the consolidated balance sheet. In addition, for the year ended December 31, 2020, the Company recognized expenses of $20.4 million of cloud-based services related to data centers and $1.0 million of lease expense related to short-term leases that are not included in the ROU asset or lease liability balances.

For the year ended December 31, 2019, the Company recognized $7.8 million of lease expense under ASC 842, which included operating lease expenses associated with leases included in the lease liability and ROU asset on the consolidated balance sheet. In addition, for the year ended December 31, 2019, the Company recognized expenses of $10.0 million of cloud-based services related to data centers and $1.2 million of lease expense related to short-term leases that are not included in the ROU asset or lease liability balances.

For the year ended December 31, 2018, the Company recognized rental expenses of $19.7 million under ASC 840, which included expenses related to short-term leases, and also included certain non-lease components including variable capacity related expenses for cloud-based services related to data centers of $7.1 million.

The maturity of the Company's lease liabilities associated with leases included in the lease liability and ROU asset were as follows as of December 31, 2020 (in thousands):

| **Fiscal Year** | | |
|---|---|---|
| 2021 | $ | 11,653 |
| 2022 | | 8,392 |
| 2023 | | 7,428 |
| 2024 | | 6,740 |
| 2025 | | 3,551 |
| Thereafter | | 11,403 |
| Total lease payments (undiscounted) | | 49,167 |
| Less: imputed interest | | (7,076) |
| Lease liabilities—total (discounted) | $ | 42,091 |

The Company also received rental income of $3.7 million, $0.3 million, and $0.8 million for real estate leases for which it subleases the property to a third party during the year ended December 31, 2020, 2019, and 2018, respectively. Rental income is included in other income in the consolidated statement of operations.

In addition to the lease liabilities included in these consolidated financial statements at December 31, 2020, during the three months ended December 31, 2020, the Company entered into agreements for an office lease for its corporate headquarters in Los Angeles and a data center in Singapore which have not commenced as of December 31, 2020, therefore, not included in the lease liability on the balance sheet. The Company has future commitments totaling $23.2 million over the course of 10 years for the office lease and $5.6 million over the course of four years for the data center in Singapore.

## Note 17—Commitments and Contingencies

***Commitments***

The Company has commitments under non-cancelable operating leases for facilities, certain equipment, and its managed data center facilities (Note 16).

In addition, during the year ended December 31, 2020, the Company entered into an agreement for third-party cloud-managed services. As part of the agreement, the Company has a minimum commitment to pay $20.0 million over the course of five years, with no annual minimum commitment. As of December 31, 2020, the Company's commitment is $18.0 million.

As of December 31, 2020 and 2019, the Company had $6.3 million and $2.5 million, respectively, of letters of credit associated with office leases available for borrowing, on which there were no outstanding borrowings as of either date.

***Guarantees and Indemnification***

The Company’s agreements with sellers, buyers, and other third parties typically obligate the Company to provide indemnity and defense for losses resulting from claims of intellectual property infringement, damages to property or persons, business losses, or other liabilities. Generally, these indemnity and defense obligations relate to the Company’s own business operations, obligations, and acts or omissions. However, under some circumstances, the Company agrees to indemnify and defend contract counterparties against losses resulting from their own business operations, obligations, and acts or omissions, or the business operations, obligations, and acts or omissions of third parties. For example, because the Company's business interposes the Company between buyers and sellers in various ways, buyers often require the Company to indemnify them against acts and omissions of sellers, and sellers often require the Company to indemnify them against acts and omissions of buyers. In addition, the Company's agreements with sellers, buyers, and other third parties typically include provisions limiting the Company's liability to the counterparty, and the counterparty's liability to the Company. These limits sometimes do not apply to certain liabilities, including indemnity obligations. These indemnity and limitation of liability provisions generally survive termination or expiration of the agreements in which they appear. The Company has also entered into indemnification agreements with its directors, executive officers and certain other officers that will require the Company, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors, officers or employees. No material demands have been made upon the Company to provide indemnification under such agreements and there are no claims that the Company is aware of that could have a material effect on the Company's consolidated financial statements.

***Litigation***

The Company and its subsidiaries may from time to time be parties to legal or regulatory proceedings, lawsuits and other claims incident to their business activities and to the Company's status as a public company. Such matters may include, among other things, assertions of contract breach or intellectual property infringement, claims for indemnity arising in the course of the Company's business, regulatory investigations or enforcement proceedings, and claims by persons whose employment has been terminated. Such matters are subject to many uncertainties, and outcomes are not predictable with assurance. Consequently, management is unable to ascertain the ultimate aggregate amount of monetary liability, amounts which may be covered by insurance or recoverable from third parties, or the financial impact with respect to such matters as of December 31, 2020. However, based on management's knowledge as of December 31, 2020, management believes that the final resolution of these matters known at such date, individually and in the aggregate, will not have a material adverse effect upon the Company's consolidated financial position, results of operations or cash flows.

***Employment Contracts***

The Company has entered into severance agreements with certain employees and officers. The Company may be required to pay severance and accelerate the vesting of certain equity awards in the event of involuntary terminations.

**Note 18—Debt**

On September 25, 2020, the Company amended and restated its loan and security agreement with Silicon Valley Bank ("SVB") (the "Loan Agreement"), which was scheduled to expire on September 26, 2020. The Loan Agreement provides a senior secured revolving credit facility of up to the lesser of $60.0 million and 85% of eligible accounts receivable, with a maturity date of September 25, 2022. The Loan Agreement includes a letter of credit, foreign exchange and cash management facility with a sublimit up to $10.0 million, of which $6.3 million was utilized for letters of credit related to leases as of December 31, 2020 (see Note 17). As of December 31, 2020, the amount available for borrowing is $53.7 million. The Company incurred $0.1 million of debt issuance fees that were capitalized and are being amortized over the term of the Loan Agreement.

An unused revolver fee in the amount of 0.15% per annum of the average unused portion of the revolver line is charged and is payable monthly in arrears. The Company may elect for advances to bear interest calculated by reference to prime or LIBOR. If the Company elects LIBOR, amounts outstanding under the amended credit facility bear interest at a rate per annum equal to LIBOR plus 2.25%, with LIBOR having a floor of 3.5%. If the Company elects prime, advances bear interest at a rate of prime plus 0.25%, with prime having a floor of 3.5%.

The Loan Agreement is collateralized by security interests in substantially all of the Company's assets. Subject to certain exceptions, the Loan Agreement restricts the Company's ability to, among other things, pay dividends, sell assets, make changes to the nature of the business, engage in mergers or acquisitions, incur, assume or permit to exist, additional indebtedness and guarantees, create or permit to exist, liens, make distributions or redeem or repurchase capital stock, or make other investments, engage in transactions with affiliates, make payments with respect to subordinated debt, and enter into certain transactions without the consent of the financial institution. The Company is required to maintain a lockbox arrangement where clients payments received in the lockbox will be deposited daily into the Company's operating bank accounts.

The Loan Agreement requires the Company to comply with financial covenants, measured quarterly, with respect to a minimum liquidity ratio and maximum quarterly cash burn. The Company is required to maintain a minimum liquidity ratio of at least 1.25 on the last day of each quarter and not exceed, on an absolute basis, a maximum quarterly cash burn for specific periods, as defined in the Loan Agreement. The Liquidity Ratio is defined as Cash and Cash Equivalents, plus Accounts Receivable, less Accounts Payable - Seller, divided by all obligations the Company has to pay to SVB, including all debt balances, interest, service fees, and unused credit line fees, net of outstanding letters of credit as of the balance sheet date. Cash Burn is defined as Adjusted EBITDA less Capital Expenditures during the trailing periods as outlined in the Loan Agreement. The Loan Agreement defines Capital Expenditures as the current period unfinanced cash expenditures that are capitalized and amortized, including but not limited to property and equipment and capitalized labor costs as they relate to internal use software development costs. As of December 31, 2020, the Company was in compliance with its financial covenants.

The Loan Agreement also includes customary representations and warranties, affirmative covenants, and events of default, including events of default upon a change of control and material adverse change (as defined in the Loan Agreement). Following an event of default, SVB would be entitled to, among other things, accelerate payment of amounts due under the credit facility and exercise all rights of a secured creditor.

As of December 31, 2020, there were no amounts outstanding under the Loan Agreement (other than with respect to the letters of credit). Future availability under the credit facility is dependent on several factors including the available borrowing base and compliance with future covenant requirements.

## Note 19—Related Party Transactions

During the years ended December 31, 2020, 2019, and 2018, the Company did not enter into any transactions with its related parties or affiliates of its related parties requiring disclosure pursuant to the applicable rules of the Financial Accounting Standards Boards or the U.S. Securities and Exchange Commission.

## Note 20—Quarterly Financial Data (Unaudited)

The following tables set forth the Company's quarterly consolidated statements of operations data for each of the eight quarters in the two-year period ended December 31, 2020. The Company has prepared the quarterly unaudited consolidated statements of operations data on a basis consistent with the audited consolidated financial statements included elsewhere in this Annual Report on Form 10-K. In the opinion of management, the financial information in these tables reflects all adjustments, consisting only of normal recurring adjustments, which management considers necessary for a fair statement of this data. This information should be read in conjunction with the audited consolidated financial statements and related notes included elsewhere in this Annual Report on Form 10-K. The results of historical periods are not necessarily indicative of the results for any future period.

| | Three Months Ended | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | **Mar. 31, 2019** | **June 30, 2019** | **Sept. 30, 2019** | **Dec. 31, 2019** | **Mar. 31, 2020** | **June 30, 2020** | **Sept. 30, 2020** | **Dec. 31, 2020** |
| | **(in thousands, except per share amounts)** | | | | | | | |
| Revenue | $ 32,416 | $ 37,870 | $ 37,642 | $ 48,486 | $ 36,295 | $ 42,348 | $ 60,982 | $ 82,003 |
| Expenses: | | | | | | | | |
| Cost of revenue | 15,116 | 15,085 | 13,869 | 13,321 | 14,003 | 21,545 | $ 21,031 | 21,168 |
| Sales and marketing | 10,592 | 11,519 | 11,040 | 11,414 | 11,269 | 20,029 | $ 21,761 | 22,971 |
| Technology and development | 9,716 | 9,839 | 10,293 | 10,402 | 10,693 | 13,063 | $ 13,562 | 14,228 |
| General and administrative | 10,280 | 10,027 | 9,121 | 10,322 | 9,127 | 15,780 | $ 13,314 | 14,766 |
| Merger and restructuring costs | — | — | — | 2,041 | 1,930 | 12,493 | $ 2,254 | 875 |
| Total expenses | 45,704 | 46,470 | 44,323 | 47,500 | 47,022 | 82,910 | $ 71,922 | 74,008 |
| Income (loss) from operations | (13,288) | (8,600) | (6,681) | 986 | (10,727) | (40,562) | $ (10,940) | 7,995 |
| Other (income) expense, net | (34) | (403) | (562) | 406 | (851) | (1,722) | $ (871) | 1,949 |
| Income (loss) before income taxes | (13,254) | (8,197) | (6,119) | 580 | (9,876) | (38,840) | $ (10,069) | 6,046 |
| Provision (benefit) for income taxes | (708) | 84 | 55 | (943) | (201) | 288 | $ 446 | 160 |
| Net income (loss) | $ (12,546) | $ (8,281) | $ (6,174) | $ 1,523 | $ (9,675) | $ (39,128) | $ (10,515) | $ 5,886 |
| Net income (loss) per share: | | | | | | | | |
| Basic | $ (0.24) | $ (0.16) | $ (0.12) | $ 0.03 | $ (0.18) | $ (0.36) | $ (0.10) | $ 0.05 |
| Diluted | $ (0.24) | $ (0.16) | $ (0.12) | $ 0.03 | $ (0.18) | $ (0.36) | $ (0.10) | $ 0.05 |
| Weighted-average shares used to compute net income (loss) per share: | | | | | | | | |
| Basic | 51,577 | 52,358 | 53,023 | 53,473 | 54,866 | 108,530 | 110,416 | 112,746 |
| Diluted | 51,577 | 52,358 | 53,023 | 59,595 | 54,866 | 108,530 | 110,416 | 124,376 |

**Note 21—Subsequent Events**

On February 4, 2021, the Company entered into a Stock Purchase Agreement (the "Purchase Agreement") with RTL to purchase all of the issued and outstanding shares of capital stock of SpotX, Inc., (SpotX"), a Delaware corporation and wholly owned subsidiary of RTL, for a purchase price equal to $560 million in cash ("Cash Consideration") and 14 million shares of the Company's common stock. The Cash Consideration is subject to customary working capital and other adjustments. The board of directors of the Company has approved the transactions contemplated by the Purchase Agreement. The transactions are not subject to approval by the stockholders of the Company.

The Purchase Agreement includes customary representations, warranties and covenants of the parties, including covenants with respect to actions taken prior to the closing and cooperation with respect to seeking regulatory approvals.

The Company intends to finance the Cash Consideration in part from cash on its balance sheet and in part through borrowings under certain proposed new credit facilities. In connection with entering into the Purchase Agreement, the Company entered into the Commitment letter, dated as of February 4, 2021, with Goldman Sachs Bank USA (the "Commitment Party"), pursuant to which, subject to the terms and conditions set forth therein, the Commitment Party has committed to provide a senior secured term loan facility in an aggregate principal amount of up to $560 million. The funding of the Term Loan Facility provided for in the Commitment Letter is contingent on the satisfaction of customary conditions, including the execution and delivery of definitive documentation with respect to credit facilities in accordance with the terms set forth in the Commitment Letter and the consummation of the SpotX acquisition in accordance with the Purchase Agreement.

## Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure

None.

## Item 9A. Controls and Procedures

***Evaluation of Disclosure Controls and Procedures***

Our management, with the participation of our Chief Executive Officer and Chief Financial Officer, evaluated the effectiveness of our disclosure controls and procedures as defined in Rule 13a-15(e) under the Exchange Act. Our disclosure controls and procedures are designed to provide reasonable assurance of achieving their objectives of ensuring that information we are required to disclose in the reports we file or submit under the Exchange Act is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosures, and is recorded, processed, summarized, and reported within the time periods specified in the SEC’s rules and forms. There is no assurance that our disclosure controls and procedures will operate effectively under all circumstances. Based upon the evaluation described above, our Chief Executive Officer and Chief Financial Officer concluded that, as of December 31, 2020, our disclosure controls and procedures were effective at the reasonable assurance level.

***Changes in Internal Control over Financial Reporting***

There have been no changes in our internal control over financial reporting that occurred during the three months ended December 31, 2020 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting, except as noted below.

On April 1, 2020, we completed the Merger with Telaria. See Note 10 of "Notes to Consolidated Financial Statements" for more information. We are currently integrating Telaria into our operations and internal control processes. As we complete this integration, we are analyzing, evaluating, and where necessary, making changes in control and procedures related to the Telaria business, which we expect to complete within one year after the date of acquisition. Pursuant to the SEC’s guidance that an assessment of a recently acquired business may be omitted from the scope of an assessment in the year of acquisition, the scope of our assessment of the effectiveness of our internal controls over financial reporting at December 31, 2020 excludes Telaria to the extent that they are not yet integrated into our internal controls environment.

***Management's Report on Internal Control Over Financial Reporting***

Our management is responsible for establishing and maintaining adequate internal control over financial reporting (as defined in Rule 13a-15(f) of the Exchange Act).

Our management conducted an evaluation of the effectiveness of our internal control over financial reporting based on the framework in "Internal Control - Integrated Framework" (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission.

As permitted by the Securities and Exchange Commission, companies are allowed to exclude acquisitions from their assessment of internal control over financial reporting during the first year of an acquisition. During the quarter ended June 30, 2020, the Company acquired Telaria, Inc.. Pursuant to applicable rules, because the Company has not yet fully incorporated the internal controls and procedures of the acquired entity into the Company's internal control over financial reporting, management excluded certain elements related to the acquired business from its assessment of the effectiveness of internal control over financial reporting as of December 31, 2020. The excluded elements of the Telaria business represented 25% of the Company's revenue and 25% of the Company’s total assets as of and for the year ended December 31, 2020.

Based on this evaluation, management concluded that the Company's internal control over financial reporting was effective as of December 31, 2020. Deloitte & Touche LLP has independently assessed the effectiveness of our internal control over financial reporting and its report is included under "Item 8. Financial Statements and Supplementary Data."

***Inherent Limitations on Effectiveness of Controls***

Management recognizes that a control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints and that management is required to apply its judgment in evaluating the benefits of possible controls and procedures relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues and instances of fraud or error, if any, have been detected. These inherent limitations include the realities that judgments in decision making can be faulty, and that breakdowns can occur because of a simple error or mistake. Additionally, controls can be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the controls. The design of any system of controls also is based in part upon certain assumptions about the likelihood of future events, and there can be no assurance that any design will succeed in achieving its stated goals under all potential future conditions; over time, controls may become inadequate because of changes in conditions, or the degree of compliance with policies or procedures may deteriorate. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and not be detected.

## Item 9B. Other Information

None.

# PART III

## Item 10. Directors, Executive Officers and Corporate Governance

The information required by Item 10 will be included in our Proxy Statement for the 2021 Annual Meeting of Stockholders to be filed with the SEC within 120 days of the fiscal year ended December 31, 2020, or the 2021 Proxy Statement, under the headings "Proposal 1—Election of Directors," "Delinquent Section 16(a) Reports," (if applicable) and "Corporate Governance" and is incorporated herein by reference.

**Item 11. Executive Compensation**

The information required by Item 11 will be included in the 2021 Proxy Statement under the headings "Executive Officers" and "Executive Compensation" and is incorporated herein by reference.

**Item 12. Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters**

The information required by Item 12 will be included in the 2021 Proxy Statement under the heading "Common Stock Ownership of Certain Beneficial Owners and Management" and is incorporated herein by reference.

**Item 13. Certain Relationships and Related Transactions, and Director Independence**

The information required by Item 13 will be included in the 2021 Proxy Statement under the headings "Certain Relationships and Related Person Transactions" and "Director Independence" and is incorporated herein by reference.

**Item 14. Principal Accountant Fees and Services**

The information required by Item 14 will be included in the 2021 Proxy Statement under the heading "Proposal 2—Ratification of the Selection of Deloitte & Touche LLP as Independent Registered Public Accounting Firm" and is incorporated herein by reference.

## PART IV

### Item 15. Exhibits, Financial Statement Schedules

(a) We have filed the following documents as part of this Annual Report on Form 10-K:

1. Consolidated Financial Statements



2. Financial Statement Schedules

No financial statement schedules are provided because the information called for is not required or is shown in the financial statements of the notes thereto.

3. Exhibits

**EXHIBIT INDEX**

| Number | Description |
|---|---|
| 2.1 | Agreement and Plan of Merger, dated as of December 19, 2019, by and among The Rubicon Project, Inc., Madison Merger Corp., and Telaria, Inc. (incorporated by reference to Exhibit 2.1 to the Registrant's Current Report on Form 8-K filed with the Commission on December 20, 2019).† |
| 2.2 | Stock Purchase Agreement, dated as of February 4, 2021, by and between Magnite, Inc., RTL US Holdings, Inc., and solely for certain sections therein, RTL Group S.A.. (incorporated by reference to Exhibit 2.1 to the Registrant's Current Report on Form 8-K filed with the Commission on February 5, 2021).† |
| 3.1 | Sixth Amended and Restated Certificate of Incorporation of the Registrant (incorporated by reference to Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on May 15, 2014). |
| 3.2 | Certificate of Amendment to the Sixth Amended and Restated Certificate of Incorporation of Magnite, Inc., dated June 30, 2020 (incorporated by reference to Exhibit 3.1 to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on August 10, 2020). |
| 3.3 | Fourth Amended and Restated Bylaws of Magnite, Inc., dated June 30, 2020 (incorporated by reference to Exhibit 3.4 to the Registrant’s Quarterly Report on Form 10-Q filed with the Commission on August 10, 2020). |
| 4.1* | Description of Securities |
| 10.1+ | The Rubicon Project, Inc. 2007 Stock Incentive Plan and forms of agreements for employees thereunder (incorporated by reference to Exhibit 10.1 to the Registrant's Registration Statement on Form S-1/A filed with the Commission on March 20, 2014). |
| 10.2+ | The Rubicon Project, Inc. 2014 Equity Incentive Plan, as amended and restated (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Commission on April 8, 2016). |
| 10.3+ | Form of Stock Option Grant Notice and Award Agreement for Employees under The Rubicon Project, Inc. 2014 Equity Incentive Plan (incorporated by reference to Exhibit 10.2(B) to the Registrant's Annual Report on Form 10-K filed with the Commission on March 6, 2015). |
| 10.4+ | Form of Restricted Stock Unit Grant Notice and Award Agreement for Employees under The Rubicon Project, Inc. 2014 Equity Incentive Plan (incorporated by reference to Exhibit 10.2(C) to the Registrant's Annual Report on Form 10-K filed with the Commission on March 6, 2015). |

| | |
|---|---|
| 10.5+ | Form of Stock Option Grant Notice and Award Agreement for Non-Employee Directors under The Rubicon Project, Inc. 2014 Equity Incentive Plan (incorporated by reference to Exhibit 10.2(D) to the Registrant's Annual Report on Form 10-K filed with the Commission on March 6, 2015). |
| 10.6+ | Form of Restricted Stock Unit Grant Notice and Award Agreement for Non-Employee Directors under The Rubicon Project, Inc. 2014 Equity Incentive Plan (incorporated by reference to Exhibit 10.2(E) to the Registrant's Annual Report on Form 10-K filed with the Commission on March 6, 2015). |
| 10.7+ | The Rubicon Project, Inc. 2014 Employee Stock Purchase Plan, as amended and restated on July 26, 2018 (incorporated by reference to Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 7, 2018). |
| 10.8+ | The Rubicon Project, Inc. 2014 Inducement Grant Equity Incentive Plan, as amended and restated (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the Commission on April 8, 2016). |
| 10.09+ | Telaria, Inc. 2013 Equity Incentive Plan, as amended (incorporated by reference to Exhibit 99.2 to the Registrants' Registration Statement on Form S-8, dated April 9, 2020) |
| 10.10 | Second Amended and Restated Loan and Security Agreement, dated as of September 25, 2020, between Silicon Valley Bank, Magnite, Inc., Magnite Hopper, Inc., Magnite Bell, Inc. and Magnite CTV, Inc. (incorporated by reference to Exhibit 10.1 to the Registrant's Quarterly Report on Form 10-Q, dated November 9, 2020). |
| 10.11+ | Form of Indemnification Agreement between the Registrant and each of its directors and executive officers (incorporated by reference to Exhibit 10.17 to the Registrant's Registration Statement on Form S-1/A filed with the Commission on March 20, 2014). |
| 10.12+ | Form of Executive Severance and Vesting Acceleration Agreement by and between the Registrant and certain of its executive officers (incorporated by reference to Exhibit 10.23 to the Registrants Form 10-K filed with the Commission on February 27, 2020). |
| 10.13+ | Executive Employment Agreement between the Registrant and Michael Barrett, dated March 16, 2017 (incorporated by reference to Exhibit 10.1 to the Registrant's Current Report on Form 8-K filed with the Commission on March 22, 2017). |
| 10.14+ | Executive Severance and Vesting Acceleration Agreement between the Registrant and Michael Barrett, dated March 16, 2017 (incorporated by reference to Exhibit 10.2 to the Registrant's Current Report on Form 8-K filed with the Commission on March 22, 2017). |
| 10.15+ | Executive Severance and Vesting Acceleration Agreement between the Registrant and Aaron Saltz, dated April 1, 2020 (incorporated by reference to Exhibit 10.3 to the Registrant's Quarterly Report on Form 10-Q filed with the Commission on August 10, 2020). |
| 10.16* | Office Lease between BRE HH Property Owner LLC and Magnite, Inc., dated November 20, 2020 |
| 21.1 | List of Subsidiaries (incorporated by reference to Exhibit 21.1 of the Registrant's Quarterly Report on Form 10-Q filed with the Commission on November 9, 2020) |
| 23.1* | Consent Consent of Deloitte & Touche LLP. Deloitte & Touche LLP. |
| 31.1* | Certification of Certification of Principal Executive Officer Pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. Executive Officer Pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 31.2* | Certification Certification of Principal Financial Officer Pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. Principal Financial Officer Pursuant to Exchange Act Rules 13a-14(a) and 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002. |
| 32*(1) | Certification of the Principal Executive Officer and Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. of the Principal Executive Officer and Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002. |
| 101.ins * | XBRL Instance Document- the instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document. |
| 101.sch * | XBRL Taxonomy Schema Linkbase Document |
| 101.cal * | XBRL Taxonomy Calculation Linkbase Document |
| 101.def * | XBRL Taxonomy Definition Linkbase Document |
| 101.lab * | XBRL Taxonomy Label Linkbase Document |
| 101.pre * | XBRL Taxonomy Presentation Linkbase Document |
| 104 | Cover Page Interactive Data File - (formatted as Inline XBRL and contained in Exhibit 101) |

* Filed herewith
\+ Indicates a management contract or compensatory plan or arrangement
† Certain schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K.

(1) The information in this exhibit is furnished and deemed not filed with the Securities and Exchange Commission for purposes of Section 18 of the Exchange Act of 1934, as amended (the "Exchange Act"), and is not to be incorporated by reference into any filing of Magnite, Inc. under the Securities Act of 1933, as amended (the "Securities Act"), or the Exchange Act, whether made before or after the date hereof, regardless of any general incorporation language in such filing.

**Item 16. Form 10-K Summary**

None.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this Annual Report on Form 10-K to be signed on its behalf by the undersigned, thereunto duly authorized.

MAGNITE, INC.
(Registrant)

/s/ David Day
David Day
Chief Financial Officer
(Principal Financial Officer)

Date February 24, 2021

Pursuant to the requirements of the Securities Exchange Act of 1934, this report has been signed below by the following persons on behalf of the registrant and in the capacities and on the dates indicated:

| Name | Title | Date |
|---|---|---|
| /s/ Michael Barrett<br>Michael Barrett | President, Chief Executive Officer and Director<br>(Principal Executive Officer) | February 24, 2021 |
| /s/ David Day<br>David Day | Chief Financial Officer<br>(Principal Financial Officer) | February 24, 2021 |
| /s/ Shawna Hughes<br>Shawna Hughes | Chief Accounting Officer<br>(Principal Accounting Officer) | February 24, 2021 |
| /s/ Paul Caine<br>Paul Caine | Director | February 24, 2021 |
| /s/ Robert J. Frankenberg<br>Robert J. Frankenberg | Director | February 24, 2021 |
| /s/ Sarah P. Harden<br>Sarah P. Harden | Director | February 24, 2021 |
| /s/ Doug Knopper<br>Doug Knopper | Director | February 24, 2021 |
| /s/ Rachel Lam<br>Rachel Lam | Director | February 24, 2021 |
| /s/ James Rossman<br>James Rossman | Director | February 24, 2021 |
| /s/ Robert F. Spillane<br>Robert F. Spillane | Director | February 24, 2021 |
| /s/ Lisa L. Troe<br>Lisa L. Troe | Director | February 24, 2021 |

**Exhibit 4.1**

**DESCRIPTION OF THE REGISTRANT'S SECURITIES
REGISTERED PURSUANT TO SECTION 12 OF THE
SECURITIES EXCHANGE ACT OF 1934**

Magnite, Inc. ("Magnite," the "Company," "we," "us" or "our") has one class of securities registered under Section 12 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"): our common stock, par value $0.00001 per share (the "common stock").

**DESCRIPTION OF COMMON STOCK**

**General**

Our authorized capital stock consists of 500,000,000 shares of common stock, $0.00001 par value per share, and 10,000,000 shares of undesignated preferred stock, $0.00001 par value per share.

The following description of the terms of our common stock is not complete and is qualified in its entirety by reference to our Sixth Amended and Restated Certificate of Incorporation, as amended ("Certificate of Incorporation"), and our Fourth Amended and Restated Bylaws ("Bylaws"), each of which is incorporated by reference as an exhibit to the Annual Report on Form 10-K of which this exhibit is a part.

**Voting Rights**

Holders of our common stock are entitled to one vote on all matters submitted to a vote of stockholders; provided, however, that, except as otherwise required by law, holders of our common stock, as such, shall not be entitled to vote on any amendment to our Certificate of Incorporation that relates solely to the terms of one or more outstanding series of preferred stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to our Certificate of Incorporation.

**Dividend and Liquidation Rights**

Subject to the rights, if any, of the holders of any outstanding series of preferred stock, holders of our common stock shall be entitled to receive dividends out of any of our funds legally available when, as and if declared by the Company's board of directors (the "Board"). Upon the dissolution, liquidation or winding up of the Company, subject to the rights, if any, of the holders of our preferred stock, the holders of shares of our common stock shall be entitled to receive the assets of the Company available for distribution to its stockholders ratably in proportion to the number of shares held by them.

**Other Rights**

Holders of our common stock do not have preemptive or conversion rights or other subscription rights. There are no redemption or sinking fund provisions applicable to our common stock. All outstanding shares of common stock are fully paid and nonassessable.

**Preferred Stock**

The Board is authorized to issue not more than an aggregate of 10,000,000 shares of preferred stock in one or more series, without stockholder approval and is authorized to establish, from time to time, the number of shares to be included in each series of preferred stock, and to fix the designation, powers, privileges, preferences, and relative participating, optional or other rights, if any, of the shares of each series of preferred stock, and any of its qualifications, limitations or restrictions. The Board is also able to increase or decrease the number of shares of any series of preferred stock without any vote or action by stockholders.

**Anti-Takeover Effects of Delaware Law, Our Certificate of Incorporation and Bylaws**

Certain provisions of Delaware law (the "DGCL") and our Certificate of Incorporation and Bylaws have the effect of making the acquisition of the Company more difficult. These provisions of the DGCL and Certificate of Incorporation and Bylaws could prohibit or delay mergers or other takeover or change in control attempts and, accordingly, may discourage attempts to acquire us. These provisions, summarized below, are expected to discourage certain types of takeover practices and takeover bids that the Board might consider to be coercive or inadequate, and are designed to encourage persons seeking to acquire control of us to negotiate with our Board.

***Delaware Anti-Takeover Law.*** We are subject to Section 203 of the DGCL, an anti-takeover law. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years following the date the person became an interested stockholder, unless the "business combination" or the transaction in which the person became an interested stockholder is approved by the Board in a prescribed manner. Generally, a "business combination" includes a merger, asset or stock sale, or other transaction resulting in a financial benefit to the interested stockholder. Generally, an "interested stockholder" is a person who, together with affiliates and associates, owns or, within three years prior to the determination of interested stockholder status, did own, 15% or more of a corporation's voting stock. The applicability of this provision may have an anti-takeover effect with respect to transactions not approved in advance by the Board, including discouraging attempts that might result in a premium over the market price for the shares of common stock held by stockholders.

***Requirements for Advance Notification of Stockholder Nominations and Proposals.*** Our Bylaws include advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as directors and specify certain requirements regarding the form and content of a stockholder's notice. These provisions preclude our stockholders from bringing matters before our annual meeting of stockholders or from making nominations for directors at our annual meeting of stockholders if the proper procedures are not followed. We expect that these provisions might also discourage or deter a potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to obtain control of our company.

***Elimination of Stockholder Action by Written Consent or Ability to Call a Special Meeting.*** Our Certificate of Incorporation eliminates the right of stockholders to act by written consent without a meeting. As a result, a holder controlling a majority of our capital stock would not be able to amend our Bylaws or remove directors without holding a meeting of our stockholders called in accordance with our Bylaws. This provision will make it more difficult for stockholders to take action opposed by the Board. Our Bylaws further provide that special meetings of our stockholders may be called only by the Board, thus prohibiting a stockholder from calling a special meeting. These provisions might delay the ability of our stockholders to force consideration of a proposal, or stockholders controlling a majority of our capital stock to take any action, including the removal of directors.

***Election and Removal of Directors.*** Our Board is divided into three classes, each serving staggered three-year terms. As a result, only a portion of our Board is elected each year. The Board has the exclusive right to increase or decrease the size of the Board and to fill vacancies on the Board. This system of electing directors may discourage a third party from making a tender offer or otherwise attempting to obtain control of the Company, because it generally makes it more difficult for stockholders to replace a majority of the directors. Additionally, directors may be removed only for cause and only with the approval of the holders of 66 2/3% of our outstanding common stock. Pursuant to our Certificate of Incorporation, at any meeting of stockholders at which directors are to be elected, each nominee for election in an uncontested election is elected if the number of votes cast for the nominee's election exceeds the number of votes cast against the nominee's election. In all director elections other than uncontested elections, directors are elected by a plurality of the votes cast. Holders of our common stock are not entitled to cumulative voting in the election of directors.

***Undesignated Preferred Stock.*** The authorization of undesignated preferred stock will make it possible for our Board, without stockholder approval, to issue preferred stock with voting or other rights or preferences that could impede the success of any attempt to obtain control of the company. These and other provisions may have the effect of deferring hostile takeovers or delaying changes in control or management of the company.

***Amendment of Provisions in the Certificate of Incorporation.*** Our Certificate of Incorporation requires the affirmative vote of the holders of at least 66 2/3% of our outstanding voting stock in order to amend any provision of our Certificate of Incorporation concerning:

- the required vote to amend or repeal the section of the Certificate of Incorporation providing for the right to amend or repeal provisions of the Certificate of Incorporation;
- number of directors and structure of the Board;
- absence of the authority of stockholders to act by written consent;
- authority to call a special meeting of stockholders; and
- the required vote to amend or repeal provisions of the Bylaws.

***Amendment of Provisions in the Bylaws.*** In addition to the limitation on amending our Bylaws as provided in our Certificate of Incorporation, our Bylaws require the affirmative vote of the holders of at least 66 2/3% of our outstanding voting stock in order to amend any provision of our Bylaws.

***Forum Selection Provision.*** Our Certificate of Incorporation provides that unless we otherwise consent in writing to the selection of an alternative forum, the sole and exclusive forum for any stockholder (including any beneficial owner) to bring: (a) any derivative action or proceeding brought on behalf of the Company, (b) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or employee of the Company to the Company or the Company's stockholders, (c) any action asserting a claim arising pursuant to any provision of the DGCL or the Certificate of Incorporation or Bylaws, or (d) any action asserting a claim governed by the internal affairs doctrine shall be a state court located within the State of Delaware (or, if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware); in all cases subject to the court's having personal jurisdiction over the indispensable parties named as defendants. This exclusive forum provision is intended to apply to claims arising under Delaware state law and would not apply to claims brought pursuant to the Exchange Act or Securities Act, or any other claim for which the federal courts have exclusive jurisdiction.

**Exchange Listing**

Our common stock is currently listed on the Nasdaq Global Select Market under the ticker “MGNI.”

**Transfer Agent and Registrar**

The transfer agent and registrar for our common stock is American Stock Transfer & Trust Company.

**Exhibit 10.16**

**OFFICE LEASE**

This Office Lease (this "**Lease**"), dated November 20, 2020, by and between **BRE HH PROPERTY OWNER LLC, a Delaware limited liability company** ("**Landlord**"), and **MAGNITE, INC., a Delaware corporation** ("**Tenant**"). The following exhibits are incorporated herein and made a part hereof: **Exhibit A** (Outline of Premises); **Exhibit B** (Expenses and Taxes); **Exhibit C** (Work Letter); **Exhibit C-1** (Pricing Plan); **Exhibit D** (Form of Confirmation Letter); **Exhibit E** (Rules and Regulations); **Exhibit F** (Additional Provisions); **Exhibit F-1** (Form of Pet Agreement); **Exhibit G** (Judicial Reference); **Exhibit H** (Form of Letter of Credit); and **Exhibit I** (Janitorial Cleaning Specifications).

• **BASIC LEASE INFORMATION.**

a. **Premises**.

i."**Building**": 6080 Center Drive, Los Angeles, California 90045, commonly known as Playa District.

ii."**Premises**": **38,754** rentable square feet of space consisting of (i) 27,081 rentable square feet known as Suite 400 on the 4th floor of the Building, the outline and location of which is set forth in **Exhibit A**, and (ii) 11,673 rentable square feet known as Suite 500 on the 5th floor of the Building, the outline and location of which is set forth in **Exhibit A** (the space described in this clause (ii) shall be referred to herein as "**Suite 500**"). If the Premises include any floor in its entirety, all corridors and restroom facilities located on such floor shall be considered part of the Premises. For the avoidance of doubt, so long as the Premises include the entirety of the fourth floor of the Building, all cooridors and restroom facilities located on such fourth floor shall be considered part of the Premises and not part of the Common Areas (defined in Section 2.2).

iii."**Property**": The Building, the parcel(s) of land upon which it is located, and, at Landlord's discretion, any parking facilities and other improvements serving the Building and the parcel(s) of land upon which such parking facilities and other improvements are located.

iv."**Project**": The Property or, at Landlord's discretion, any project containing the Property and any other land, buildings or other improvements.

b. **Term**.

i.The term of this Lease (the "**Term**") shall begin on the Commencement Date and expire on the Expiration Date (or any earlier date on which this Lease is terminated as provided herein).

ii."**Commencement Date**" means the later of (i) the Inside Commencement Date (defined below), or (ii) the date occurring the Applicable Number (defined below) of days after the Delivery Date (defined below). During the Beneficial Occupancy Period (defined below), all provisions of this Lease shall apply as if the Commencement Date had occurred; provided, however, that during such period Tenant shall not be required to pay Monthly Rent (defined in Section 3). For purposes of this Section 1.2.2, the following terms shall have the following meanings:

(i) "**Inside Commencement Date**" means November 1, 2021, as such date may be extended pursuant to the last paragraph of this Section 1.2.2.

(ii) "**Applicable Number**" means 180; provided, however, that the Applicable Number shall be increased by the lesser of (a) the number of days, if any, during the Beneficial Occupancy Period on which (1) Tenant is prohibited from using the Premises by a Shelter-in-Place Order (defined below) other than for business or activities defined in such Shelter-in-Place Order as "essential," and (2) Tenant does not use the Premises for the conduct of business, other than to receive and distribute mail and other deliveries, repair and maintain Tenant's computer and telecommunications equipment, pick up supplies for remote work, or accomplish any similar immaterial purpose, or (b) 240.

(iii) "**Beneficial Occupancy Period**" means the period beginning on the Delivery Date and ending on the date immediately preceding the Commencement Date.

(iv) "**Shelter-in-Place Order**" means a Law (defined in Section 4.1) which prohibits any use of office space in the Building for the Permitted Use (except for any business or activity that is defined by such Law as "essential").

(v) “**Delivery Date**” means the date on which Landlord tenders possession of the Premises to Tenant with the Tenant Improvement Work (defined in **Exhibit C**) is Substantially Complete (defined in **Exhibit C**).

Tenant may enter the Premises (i) after installation of the ceiling grid in the Premises (if any) and before the Delivery Date (but not before the date that Landlord reasonably estimates will occur 30 days before the Delivery Date), solely for the purpose of installing telecommunications and data cabling in the Premises, and (ii) after installation of the carpeting or other flooring in the Premises and before the Delivery Date (but not before the date that Landlord reasonably estimates will occur 30 days before the Delivery Date), solely for the purpose of installing equipment, furnishings and other personal property in the Premises. Other than the obligation to pay Monthly Rent (and any parking charges for Tenant’s contractors, agents and other invitees involved in performing such installations by Tenant), all of Tenant’s obligations hereunder shall apply during any period of such early entry. Notwithstanding the foregoing, Landlord may limit, suspend or terminate Tenant’s rights to enter the Premises before the Delivery Date pursuant to this paragraph if Landlord reasonably determines that such entry is endangering individuals working in the Premises or is delaying completion of the Tenant Improvement Work.

Notwithstanding any contrary provision hereof, if the Delivery Date does not occur on or before the Outside Delivery Date for Abatement (defined below), Tenant, as its sole remedy (except as provided in the next succeeding paragraph), shall be entitled to an abatement of Base Rent, beginning on the date that Base Rent otherwise first becomes payable hereunder, in the amount of $6,006.87 for each day in the period beginning on the Outside Delivery Date for Abatement and ending on the date immediately preceding the Delivery Date. As used herein, “**Outside Delivery Date for Abatement**” means January 31, 2022; provided, however, that the Outside Delivery Date for Abatement shall be postponed by one (1) day for each day, if any, by which the Substantial Completion of the Tenant Improvement Work is delayed by any event of Force Majeure (defined in Section 23.2), including any failure of any permitting authority to issue any Permit (defined in Section 3.2 of **Exhibit C**) within the customary period of time.

Notwithstanding any contrary provision hereof (but subject to the next succeeding sentence), if the Delivery Date does not occur on or before the Outside Delivery Date for Termination (defined below), Tenant, as its sole remedy (except as provided in the immediately preceding paragraph), may terminate this Lease by notifying Landlord not later than the date immediately preceding the Delivery Date. As used herein, “**Outside Delivery Date for Termination**” means the Outside Delivery Date for Abatement; provided, however, that if Landlord determines in good faith that it will be unable to cause the Delivery Date to occur by the Outside Delivery Date for Termination, Landlord may immediately cease its performance of the Tenant Improvement Work and provide Tenant with notice (the “**Outside Delivery Date for Termination Extension Notice**”) of such inability, which notice shall set forth the date on which Landlord reasonably estimates that the Delivery Date will occur. Upon receiving the Outside Delivery Date for Termination Extension Notice, Tenant may terminate this Lease by notifying Landlord within 10 business days after such receipt. If Tenant does not terminate this Lease pursuant to the immediately preceding sentence, then (a) the Outside Delivery Date for Termination shall automatically be amended to be the date set forth in the Outside Delivery Date for Termination Extension Notice, and (b) the Inside Commencement Date shall automatically be extended by the number of days by which the Outside Delivery Date for Termination is extended pursuant to the preceding clause (a).

iii.“**Expiration Date**”: The last day of the 120th full calendar month beginning on or after the Commencement Date.

c. “**Base Rent**”

| Period of Term | Monthly Base Rent | Annual Base Rent Rate/RSF |
|---|---|---|
| Commencement Date – Last day of the 12th full calendar month of the Term | $180,206.10 | $55.80 |
| First day of the 13th full calendar month of the Term – Last day of the 24th full calendar month of the Term | $186,513.31 | $57.75 |
| First day of the 25th full calendar month of the Term – Last day of the 36th full calendar month of the Term | $193,041.28 | $59.77 |
| First day of the 37th full calendar month of the Term – Last day of the 48th full calendar month of the Term | $199,797.72 | $61.87 |
| First day of the 49th full calendar month of the Term – Last day of the 60th full calendar month of the Term | $206,790.65 | $64.03 |
| First day of the 61st full calendar month of the Term – Last day of the 72nd full calendar month of the Term | $214,028.32 | $66.27 |
| First day of the 73rd full calendar month of the Term – Last day of the 84th full calendar month of the Term | $221,519.31 | $68.59 |
| First day of the 85th full calendar month of the Term – Last day of the 96th full calendar month of the Term | $229,272.48 | $70.99 |
| First day of the 97th full calendar month of the Term – Last day of the 108th full calendar month of the Term | $237,297.02 | $73.48 |
| First day of the 109th full calendar month of the Term – Last day of the 120th full calendar month of the Term | $245,602.42 | $76.05 |

Notwithstanding the foregoing, Base Rent shall be abated in the amount of (i) $180,206.10 per month for the second ($2^{nd}$) through the sixth ($6^{th}$) full calendar months of the Term, and (ii) $214,028.32 per month for the $61^{st}$ through the $65^{th}$ full calendar months of the Term; provided, however, that (a) if a Default (defined in Section 18.1) exists when any such abatement would otherwise apply, such abatement shall be deferred until the date, if any, on which such Default is cured; and (b) Landlord, at its option, may cancel all or any portion of any such abatement that has not yet been applied, by notifying Tenant of such cancellation, in which event the (a) Landlord shall pay Tenant, within five (5) business days after such notice, the then discounted present value of such unapplied abatement, as determined using a discount rate of 6.0%, and (b) the parties, at Landlord's option, shall execute a commercially reasonable amendment to this Lease prepared by Landlord memorializing such cancellation.

d. "**Base Year**" for Expenses (defined in **Exhibit B**): calendar year 2022; "**Base Year**" for Taxes (defined in **Exhibit B**): calendar year 2022.

e. "**Tenant's Share**" means 12.5314% (based upon a total of 309,254 rentable square feet in the Building).

f. "**Permitted Use**" means general office use consistent with a first-class office building, together with any other use that (a) is legally permitted; (b) is not a retail use; (c) does not generate (i) foot traffic exceeding that normally associated with general office use, (ii) any noise, vibration or odor detectable outside the Premises that is not normally associated with general office use, (iii) any burden on any Building system exceeding that normally associated with general office use, or (iv) any risk to the Building or to the safety or health of its occupants that is not normally associated with general office use; (d) does not adversely affect Landlord's or Tenant's insurance coverage; (e) does not include a wet lab; (f) does not involve the introduction, use, storage or disposal of any type or quantity of hazardous material not customarily associated with general office use; and (g) in all other respects is consistent with a first-class office building.

g. As of the date of this Lease, there is no Security Deposit. The amount of the Prepaid Base Rent (defined in Section 3) is $180,206.10.

h. **Parking**.

i.The Unreserved Number (defined below) of unreserved parking spaces, at the rate of (i) $0.00 per space per month during the first three (3) years of the initial Term, and (ii) the Applicable Rate (defined below) during the balance of the Term. It is acknowledged that as of the date hereof, Landlord's prevailing rate for unreserved parking spaces is $125.00 per space per month.

ii.The Reserved Number (defined below) of reserved parking spaces, at the rate of (i) $0.00 per space per month during the first three (3) years of the initial Term, and (ii) the Applicable Rate during the balance of the Term. It is acknowledged that as of the date hereof, Landlord's prevailing rate for reserved parking spaces is $210.00 per space per month.

iii.As used in this Section 1.8, "**Unreserved Number**" means the Maximum Number (defined below) minus ten (10), and "**Reserved Number**" means ten (10); provided, however, that Tenant, upon 30 days' notice to Landlord from time to time, may (a) change the Unreserved Number to any whole number from zero (0) to the largest whole number not exceeding the number obtained by multiplying the rentable square footage of the Premises by ratio of 5 to 1,000 rentable square feet (the "**Maximum Number**"), and/or (b) change the Reserved Number to any whole number from zero (0) to ten (10); provided further, however, that the sum of the Unreserved Number plus the Reserved Number shall not exceed the Maximum Number.

iv.As used in this Section 1.8, "**Applicable Rate**" means (a) for the fourth ($4^{th}$) year of the initial Term, Landlord's prevailing rate, and (b) for each subsequent year of the Term, the lesser of (i) Landlord's prevailing rate, or (ii) 103% of the rate in effect for Tenant during the immediately preceding year of the Term.

v.During the initial Term only, provided that no Default exists, and subject to such reasonable rules and procedures as Landlord may establish from time to time, Landlord shall make available to Tenant, for use by Tenant's visitors during the initial Term only, parking validations at a rate equal to 50% of Landlord's prevailing rate for visitor parking.

i. **Address of Tenant**. Before the Commencement Date, notices shall be sent to Tenant at: 12181 Bluff Creek Drive, West Building, $4^{th}$ Floor, Playa Vista, CA 90094, Attention: Nick Kormeluk. On and after the Commencement Date, notices shall be sent to Tenant at the Premises. Any such notice delivered pursuant to the first sentence of Section 17 shall be directed to the attention of Laila Corcino and Nick Kormeluk.

j. **Address of Landlord.** Notices shall be sent to Landlord at BRE HH Property Owner LLC, c/o EQ Office, 6080 Center Drive, Suite 120, Los Angeles, CA 90045, Attention: Regional Finance Group - MLA, with copies to BRE HH Property Owner LLC, c/o EQ Office, 3100 Bristol Street, Suite 200, Costa Mesa, CA 92626, Attention: Senior Corporate Counsel, and BRE HH Property Owner LLC, c/o EQ Office, 233 South Wacker Drive, Suite 4700, Chicago, IL 60606 – 6374, Attention: Lease Administration.

k. **Brokers**. Cresa Partners of Los Angeles, Inc., a California corporation ("**Tenant's Broker**"), representing Tenant, and Jones Lang LaSalle Brokerage Inc., a Texas corporation ("**Landlord's Broker**"), representing Landlord.

l. **Guarantor.** As of the date hereof, there is no Guarantor.

m. **Letter of Credit**. **$736,807.26**, as more fully described in Section 4 of **Exhibit F**.

- **PREMISES AND COMMON AREAS.**

n. **The Premises**.

i.Subject to the terms hereof, Landlord hereby leases the Premises to Tenant and Tenant hereby leases the Premises from Landlord. Landlord and Tenant acknowledge and agree that (a) the rentable area of the Premises is as set forth in Section 1.1.2 and the rentable area of the Building is as set forth in Section 1.5, and each such rentable area has been determined in accordance with the Standard Method for measuring Floor Area in Office Buildings ANSI Z65.1 (the "**BOMA Standard**"), (b) the rentable areas described in the preceding clause (a) shall not be re-measured during the Term, and (c) the rentable area of any "Excluded Space" identified pursuant to Section 5.6.1(a) or 7.7.1(a) of **Exhibit F**, the rentable area of the balance of the Premises, and the rentable area of any Offering Space (defined in Section 6.6.1 of **Exhibit F**) shall be determined in accordance with the BOMA Standard and shall not therafter be re-measured during the Term. At any time, Landlord may deliver to Tenant a notice substantially in the form of **Exhibit D**, as a confirmation of the information set forth therein. Tenant shall execute and return (or, by notice to Landlord, reasonably object to) such notice within 10 business days after receiving it.

ii.Except as expressly provided herein (including in **Exhibit C**), the Premises are accepted by Tenant in their "as is", "where is" configuration and condition existing on the date hereof, without any obligation of Landlord to perform or pay for any alterations to the Premises, and without any representation or warranty regarding the configuration or condition of the Premises, the Building or the Project or their suitability for Tenant's business. Landlord shall deliver the Premises to Tenant broom-clean and free of debris and movable personal property.

iii.This Lease is solely a lease of space in the Building and does not constitute a lease of any land.

o. **Common Areas.** Tenant may use, in common with Landlord and other parties and subject to the Rules and Regulations (defined in **Exhibit E**), any portions of the Property that are designated from time to time by Landlord for such use (the "**Common Areas**").

- **RENT.**

p. **General.** Tenant shall pay all Base Rent and Additional Rent (defined below) (collectively, "**Rent**") to Landlord or Landlord's agent, without prior notice or demand (except to the extent expressly provided herein) or any setoff or deduction, at the place Landlord may designate from time to time, in money of the United States of America that, at the time of payment, is legal tender for the payment of all obligations. "**Additional Rent**" means all amounts, other than Base Rent, that Tenant is required to pay Landlord hereunder. Monthly payments of Base Rent and monthly payments of Additional Rent for Expenses (defined in **Exhibit B**), Taxes (defined in **Exhibit B**) and parking (collectively, "**Monthly Rent**") shall be paid in advance on or before the first day of each calendar month during the Term; provided, however, that the installment of Base Rent for the first full calendar month for which Base Rent is payable hereunder ("**Prepaid Base Rent**") shall be paid within two (2) business days after the mutual execution and delivery hereof. Except as otherwise provided herein, all other items of Additional Rent shall be paid within 30 days after Landlord's request for payment. Rent for any partial calendar month shall be prorated based on the actual number of days in such month. Without limiting Landlord's other rights or remedies, (a) if any payment of Rent is not received by Landlord or its designee within 5 business days after its due date, Tenant shall pay Landlord a late charge equal to 5% of the overdue amount (provided, however, that such late charge shall not apply to any such delinquency unless either (i) such delinquency is not cured within five (5) business days after notice from Landlord, or (ii) Tenant previously received notice from Landlord of a delinquency that occurred earlier in the same calendar year); and (b) any Rent that is not paid within 10 days after its due date shall bear interest, from its due date until paid, at the lesser of 10% per annum or the highest rate permitted by Law (defined in Section 4). Tenant's covenant to pay Rent is independent of every other covenant herein.

q. **Expenses and Taxes.** Tenant shall pay Tenant's Share of Expenses and Taxes in accordance with **Exhibit B**.

- **USE; COMPLIANCE WITH LAWS.**

r. Tenant shall not (a) use the Premises for any purpose other than the Permitted Use, or (b) do anything in or about the Premises that violates any of the Rules and Regulations, unreasonably interferes with, injures or annoys other occupants of the Project, or constitutes a nuisance. Subject to **Exhibit C**, Tenant, at its expense, shall comply with all Laws relating to (i) the operation of its business at the Project, (ii) the use, condition, configuration or occupancy of the Premises, (iii) any Supplemental Systems (defined below) serving the Premises, whether located inside or outside of the Premises, or (iv) the portions of Base Building Systems (defined below) located in or exclusively serving the Premises; provided, however, that nothing in this sentence shall be deemed to require Tenant to make any change to any Common Area or the Base Building (other than portions of Base Building Systems located in the Premises). If, in order to comply with any such Law, Tenant must obtain or deliver any permit, certificate or other document evidencing such compliance, Tenant shall provide a copy of such document to Landlord promptly after obtaining or delivering it. Tenant shall promptly provide Landlord with a copy of any notice it receives regarding any alleged violation of Law with respect to the Premises or Tenant's use or occupancy thereof. Subject to **Exhibit C**, if a change to the Common Areas or the Base Building (defined below) (other than any portion of a Base Building System located in or exclusively serving the Premises, which shall be governed by the second sentence of this Section 4.1) becomes required under Law (or if any such requirement is enforced) as a result of any Tenant-Insured Improvement (defined in Section 9.2.2) (other than a Tenant Improvement that is customary for general office use and does not become subject to such Law by reason of a Tenant Delay (defined in Section 5.2 of **Exhibit C**)), the installation of any trade fixture (other than a trade fixture that is customary for general office use and is installed within 90 days after the Delivery Date), any particular use of the Premises (as distinguished from general office use), any "assembly occupancy" of the Premises or any breach of Tenant's obligations under this Lease, then Tenant, upon demand, shall (x) at Landlord's option, either make such change at Tenant's cost or pay Landlord the cost of making such change, and (y) pay Landlord a coordination fee equal to 5% of the cost of such change. "**Law**" means any existing or future law, ordinance, regulation or requirement of any governmental authority having jurisdiction over the Project or the parties. "**Supplemental System**" means any Unit (defined in Section 23.5), supplemental fire-suppression system, kitchen (including any hot water heater, dishwasher, garbage disposal, insta-hot dispenser, or plumbing), shower or similar facility, or any other system that would not customarily be considered part of the base building of a first-class multi-tenant office building. "**Base Building System**" means any mechanical (including HVAC), electrical, plumbing or fire/life-safety system serving the Building, other than a Supplemental System. "**Base Building**" means the structural portions of the Building, together with the Base Building Systems.

s. Landlord, at its expense (subject to **Exhibit C**), shall cause the Base Building (other than portions of Base Building Systems located in or exclusively serving the Premises, which shall be governed by the second sentence of Section 4.1 and **Exhibit C**) and the Common Areas to comply with all Laws (including the Americans with Disabilities Act) to the extent that such compliance is necessary for Tenant to use the Premises for general office use in a normal and customary manner and for Tenant's employees and visitors to have reasonably safe access to and from the Premises; provided, however, that Landlord shall not be required to cause or pay for such compliance to the extent that Tenant is required to cause or pay for such compliance under Section 4.1 or 6.3 or any other provision hereof. Notwithstanding the foregoing, Landlord may contest any alleged violation in good faith, including by applying for and obtaining a waiver or deferment of compliance, asserting any defense allowed by Law, and appealing any order or judgment to the extent permitted by Law; provided, however, that after exhausting any rights to contest or appeal, Landlord shall perform any work necessary to comply with any final order or judgment.

- **SERVICES.**

t. **Standard Services.** Landlord shall provide the following services on all days (unless otherwise stated below): (a) subject to limitations imposed by Law, Building-standard heating, ventilation and air conditioning ("**HVAC**") in season during Building HVAC Hours (defined below), stubbed to the Premises; (b) electricity supplied by the applicable public utility, stubbed to the Premises (it being understood that the distribution of such electricity within the Premises shall be governed by Sections 2.1.2 and 6.2 and **Exhibit C**), with (i) a capacity of not less than 4.0 watts per rentable square foot of connected load for Tenant's incidental use equipment (excluding Base Building lighting and Base Building HVAC), and (ii) a capacity of not less than 2.0 watts per rentable square foot of connected load for Base Building lighting; (c) water supplied by the applicable public utility (i) for use in lavatories and any drinking facilities located in Common Areas within the Building, and (ii) stubbed to the Building core for use in any plumbing fixtures located in the Premises; (d) janitorial services to the Premises, except on weekends and Holidays (defined below), including those services listed on **Exhibit I** attached hereto, in a manner customarily performed within the janitorial industry in office buildings of similar age, size, class and composition as the Building in the Playa Vista market, or such other reasonably comparable janitorial services designated by Landlord from time to time; (e) elevator service (subject to scheduling by Landlord for any freight service); and (f) access to the Building for Tenant and its employees, 24 hours per day/7 days per week, subject to the terms hereof and such security or monitoring systems as Landlord may reasonably impose, including sign-in procedures and/or presentation of identification cards. "**Building HVAC Hours**" means 8:00 a.m. to 6:00 p.m., Monday through Friday, and 9:00 a.m. to 1:00 p.m. Saturday, excluding the day of observation of New Year's Day, Presidents Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and, at Landlord's discretion, any other locally or nationally recognized holiday that is observed by other Comparable Buildings (defined in Section 23.9) (collectively, "**Holidays**").

u. **Above-Standard Use.** Landlord shall provide Building-standard HVAC service outside of Building HVAC Hours if Tenant gives Landlord reasonable prior notice thereof and pays Landlord's standard charge therefor. The parties acknowledge that, as of the date hereof, Landlord's charge for HVAC service outside Building HVAC Hours is $55.00 per hour per zone, subject to change from time to time to reflect any increase in Landlord's actual cost of providing such excess service, excluding any profit or overhead but including any increased cost of wear and tear on Landlord's equipment. If any other tenant requests HVAC Service outside Building HVAC Service Hours during the same time period and for the same zone as Tenant, Landlord's charge therefor shall be allocated equitably between Tenant and such other tenant based upon the rentable areas in such zone leased by Tenant and such other tenant. The connected electrical load of Tenant's incidental-use equipment shall not exceed the Building-standard electrical design load or be distributed within the Premises in a manner that violates applicable Law. If Tenant's consumption of electricity or water exceeds the rate Landlord reasonably deems to be standard for the Building, Tenant shall pay Landlord, upon billing, the cost of such excess consumption, including any costs of installing, operating and maintaining any equipment that is installed in order to supply or measure such excess electricity or water. Tenant shall reimburse Landlord for any additional or above-standard cleaning costs incurred by Landlord (whether in the Premises or elsewhere in and around the Building) which are performed at the request of Tenant.

v. **Interruption.** Subject to Section 10, any failure to furnish, delay in furnishing, or diminution in the quality or quantity of any service resulting from any application of Law, failure of equipment, performance of maintenance, repairs, improvements or alterations, utility interruption, or event of Force Majeure (each, a "**Service Interruption**") shall not render Landlord liable to Tenant, constitute a constructive eviction, or excuse Tenant from any obligation hereunder. Notwithstanding the foregoing, if all or a material portion of the Premises is made untenantable or inaccessible for more than five (5) consecutive business days after notice from Tenant to Landlord as a result of a Service Interruption that can be corrected through Landlord's reasonable efforts and does not result from a Casualty (defined in Section 10), a Taking (defined in Section 12) or an Act of Tenant (defined in Section 9.1), then, as Tenant's sole remedy, Monthly Rent shall abate for the period beginning on the day immediately following such 5-business-day period and ending on the day such Service Interruption ends, but only in proportion to the percentage of the rentable square footage of the Premises made untenantable or inaccessible and not occupied by Tenant for the conduct of business.

- **REPAIRS AND ALTERATIONS.**

w. **Repairs.** Subject to Section 10, Tenant, at its expense, shall perform all maintenance and repairs (including replacements) to the Premises that are not Landlord's express responsibility hereunder, and shall keep the Premises in as good condition and repair as when Tenant took possession and as thereafter improved, except for reasonable wear and tear and repairs that are Landlord's express responsibility hereunder. Tenant's maintenance and repair obligations shall include (a) all leasehold improvements in the Premises, including any Tenant Improvements (defined in **Exhibit C**, if any), any Alterations (defined in Section 6.2), and any leasehold improvements installed pursuant to any prior lease (the "**Leasehold Improvements**"), but excluding the Base Building; (b) any Supplemental Systems serving the Premises, whether located inside or outside of the Premises; and (c) all Lines (defined in Section 22) and trade fixtures. Notwithstanding the foregoing, if a Default (defined in Section 18.1) or an emergency exists, Landlord may, at its option, perform such maintenance and repairs on Tenant's behalf, in which case Tenant shall pay Landlord, upon demand, the cost of such work plus a coordination fee equal to 7.5% of the first $10,000.00 of such cost plus 5% of any remaining portion of such cost. Landlord shall perform all maintenance and repairs to (i) the roof and exterior walls and windows of the Building, (ii) the Base Building, and (iii) the Common Areas.

x. **Alterations.** Tenant may not make any improvement, alteration, addition or change to the Premises or to any mechanical, plumbing or HVAC facility or other system (an "**Alteration**") without Landlord's prior consent, which consent shall not be unreasonably withheld by Landlord. Notwithstanding the foregoing, Landlord's prior consent shall not be required for any Alteration that is decorative only (*e.g.*, carpet installation or painting), is not visible from outside the Premises, and does not affect the Base Building or require a governmental permit (a "**Cosmetic Alteration**"). For any Alteration other than a Cosmetic Alteration, (a) Tenant, before beginning work, shall deliver to Landlord, and obtain Landlord's approval of, plans and specifications; (b) Tenant shall deliver to Landlord "as built" drawings (in CAD format, if requested by Landlord), completion affidavits, and governmental approvals; and (c) Tenant shall pay Landlord upon demand (i) Landlord's reasonable out-of-pocket expenses incurred in reviewing the work, and (ii) a coordination fee equal to 3% of the cost of the work; provided, however, that this clause (c) shall not apply to any Tenant Improvements. For any Alteration, Tenant shall deliver to Landlord full and final lien waivers.

y. **Tenant Work.** Before beginning any repair or Alteration or any work affecting Lines (collectively, "**Tenant Work**"), Tenant shall deliver to Landlord, and obtain Landlord's approval of, (a) names of contractors, subcontractors, mechanics, laborers and materialmen; (b) evidence of contractors' and subcontractors' insurance; and (c) any required governmental permits. Such approval shall not be unreasonably withheld provided that Landlord may designate specific contractors for work relating to mechanical, electrical, plumbing, HVAC, fire/life-safety and sprinkler systems and for vertical Lines. Tenant shall perform all Tenant Work (i) in a good and workmanlike manner using materials of a quality reasonably approved by Landlord; (ii) in compliance with any approved plans and specifications and any approved modifications thereto, all Laws, the National Electric Code, and Landlord's reasonable construction rules and regulations; and (iii) in a manner that does not impair the Base Building. Tenant shall notify Landlord at least 10 business days before commencing any work in the Premises. If, as a result of any Tenant Work, Landlord becomes required under Law to perform any inspection, give any notice, or cause such Tenant Work to be performed in any particular manner, Tenant shall comply with such requirement and promptly provide Landlord with reasonable documentation of such compliance.

Landlord's approval of Tenant's plans and specifications shall not relieve Tenant from any obligation under this Section 6.3. In performing any Tenant Work, Tenant shall not use contractors, services, labor, materials or equipment that, in Landlord's reasonable judgment, would cause labor disharmony with any workforce or trades engaged in performing other work or services at the Project, and Tenant shall take all actions necessary to resolve any such labor disharmony, including, immediately upon Landlord's request, termination of any work in the Premises giving rise to such labor disharmony.

• **LANDLORD'S PROPERTY. All Leasehold Improvements shall become Landlord's property upon installation and without compensation to Tenant. Notwithstanding the foregoing, if any Tenant-Insured Improvements (other than any Unit, which shall be governed by Section 23.5) are not, in Landlord's reasonable judgment, Building-standard, then before the expiration or earlier termination hereof, Tenant shall, at Landlord's election, either (a) at Tenant's expense, and except as otherwise notified by Landlord, remove such Tenant-Insured Improvements, repair any resulting damage to the Premises or Building, and restore the affected portion of the Premises to its configuration and condition existing before the installation of such Tenant-Insured Improvements (or, at Landlord's election, to a Building-standard tenant-improved configuration and condition as determined by Landlord), or (b) pay Landlord an amount equal to the estimated cost of such work, as reasonably determined by Landlord. If Tenant fails to timely perform any work required under clause (a) of the preceding sentence, Landlord may perform such work at Tenant's expense. For purposes of this Section 7, the Tenant Improvements shown or described in the Approved Space Plan (defined in Section 2.2 of Exhibit C) or the Approved Additional Information (defined in Section 2.3 of Exhibit C) shall be deemed Building-standard. Notwithstanding the foregoing, not later than when consenting to (or approving pursuant to Section 2.7 of Exhibit C) any Tenant Improvements or Alterations (or, in the case of any Tenant Improvements or Alterations that do not require Landlord's consent, not later than 10 business days after receiving from Tenant a reasonably specific description of such Tenant Improvements or Alterations together with Tenant's specific request for such identification), Landlord shall identify any such Tenant Improvements or Alterations that, in Landlord's judgment, are not Building-standard, and such identification shall be binding upon Landlord for purposes of the second sentence of this Section 7.**

• **LIENS. Tenant shall keep the Project free from any lien arising out of any work performed, material furnished or obligation incurred by or on behalf of Tenant or its subtenants or transferees. Tenant shall remove any such lien within 10 business days after written notice from Landlord, and if Tenant fails to do so, Tenant shall be deemed in Default under this Lease, and in addition, Landlord, without limiting its remedies, may bond, insure over or otherwise pay the amount necessary to cause such removal, whether or not such lien is valid. The amount so paid, together with reasonable attorneys' fees and expenses, shall be reimbursed by Tenant upon demand.**

• **INDEMNIFICATION; INSURANCE.**

z. **Waiver and Indemnification.** Tenant waives all claims against Landlord, its Security Holders (defined in Section 16), Landlord's managing agent(s), their (direct or indirect) owners, and the beneficiaries, trustees, managers, members, principals, partners, officers, directors, employees and agents of each of the foregoing (including Landlord, the "**Landlord Parties**") for (i) any damage to person or property (or resulting from the loss of use thereof), except (subject to Section 9.4) to the extent such damage is caused by any negligence, willful misconduct or breach of this Lease of or by any Landlord Party, or (ii) any failure to prevent or control any criminal or otherwise wrongful conduct by any third party or to apprehend any third party who has engaged in such conduct. Tenant shall indemnify, defend, protect, and hold the Landlord Parties harmless from and against any obligation, loss, claim, action, liability, penalty, damage, cost, charge or expense (including reasonable attorneys' and consultants' fees and expenses) (each, a "**Claim**") that is imposed or asserted by any third party and arises from (a) any cause occurring in, on or about the Premises, or (b) any negligence, willful misconduct or breach of this Lease of or by Tenant, any party claiming by, through or under Tenant, their (direct or indirect) owners, or any of their respective beneficiaries, trustees, managers, members, principals, partners, officers, directors, employees, agents, contractors, licensees or invitees (each, an "**Act of Tenant**"), except to the extent such Claim arises from any negligence, willful misconduct or breach of this Lease of or by any Landlord Party.

aa. **Tenant's Insurance.** Tenant shall maintain the following coverages in the following amounts:

i.Commercial General Liability Insurance covering claims of bodily injury, personal injury and property damage arising out of Tenant's operations and contractual liabilities, including coverage formerly known as broad form, on an occurrence basis, with combined primary and excess/umbrella limits of at least $3,000,000 each occurrence and $4,000,000 annual aggregate.

ii.Property Insurance covering (i) all office furniture, trade fixtures, office equipment, free-standing cabinet work, movable partitions, merchandise and all other items of Tenant's property in the Premises installed by, for, or at the expense of Tenant, and (ii) any Leasehold Improvements installed by or for the benefit of Tenant, whether pursuant to this Lease or pursuant to any prior lease or other agreement to which Tenant was a party ("**Tenant-Insured Improvements**"). Such insurance shall be written on a special cause of loss or all risk form for physical loss or damage, for the full replacement cost value (subject to reasonable deductible amounts) new without deduction for depreciation of the covered items and in amounts that meet any co-insurance clauses of the policies of insurance, and shall include coverage for damage or other loss caused by fire or other peril, including vandalism and malicious mischief, theft, water damage of any type, including sprinkler leakage, bursting or stoppage of pipes, and explosion, and providing business interruption coverage for a period of one year.

iii.Workers' Compensation with limits required by statute and Employers' Liability limits of $1,000,000.

ab. **Form of Policies.** The minimum limits of insurance required to be carried by Tenant shall not limit Tenant's liability. Such insurance shall be issued by an insurance company that has an A.M. Best rating of not less than A-VIII. Tenant's Commercial General Liability Insurance shall (a) name the Landlord Parties and any other party reasonably designated by Landlord ("**Additional Insured Parties**") as additional insureds; and (b) be primary insurance as to all claims thereunder and provide that any insurance carried by Landlord is excess and non-contributing with Tenant's insurance. Landlord shall be designated as a loss payee with respect to Tenant's Property Insurance on any Tenant-Insured Improvements. Tenant shall deliver to Landlord, on or before the Commencement Date and at least 15 days before the expiration dates thereof, certificates from Tenant's insurance company on the forms currently designated "ACORD 25" (Certificate of Liability Insurance) and "ACORD 28" (Evidence of Commercial Property Insurance) or the equivalent. Attached to the ACORD 25 (or equivalent) there shall be an endorsement (or an excerpt from the policy) naming the Additional Insured Parties as additional insureds, and attached to the ACORD 28 (or equivalent) there shall be an endorsement (or an excerpt from the policy) designating Landlord as a loss payee with respect to Tenant's Property Insurance on any Tenant-Insured Improvements, and each such endorsement (or policy excerpt) shall be binding on Tenant's insurance company.

ac. **Subrogation.** Subject to Section 10, each party waives, and shall cause its insurance carrier to waive, any right of recovery against the other party, any of its (direct or indirect) owners, or any of their respective beneficiaries, trustees, managers, members, principals, partners, officers, directors, employees or agents for any loss of or damage to property which loss or damage is (or, if the insurance required hereunder had been carried, would have been) covered by the waiving party's property insurance. For purposes of this Section 9.4 only, (a) any deductible with respect to a party's insurance shall be deemed covered by, and recoverable by such party under, valid and collectable policies of insurance, and (b) any contractor retained by Landlord to install, maintain or monitor a fire or security alarm for the Building shall be deemed an agent of Landlord.

- **CASUALTY DAMAGE. With reasonable promptness after discovering any damage to the Premises (other than trade fixtures), or to any Common Area or portion of the Base Building necessary for access to or tenantability of the Premises, resulting from any fire or other casualty (a "Casualty"), Landlord shall notify Tenant of Landlord's reasonable estimate of the time required to substantially complete repair of such damage (the "Landlord Repairs"). If, according to such estimate, the Landlord Repairs cannot be substantially completed within 180 days after the date of occurrence of the Casualty, either party may terminate this Lease upon 60 days' notice to the other party delivered within 10 days after Landlord's delivery of such estimate. Within 90 days after discovering any damage to the Project resulting from any Casualty, Landlord may, whether or not the Premises are affected, terminate this Lease by notifying Tenant if (i) any Security Holder terminates any ground lease or requires that any insurance proceeds be used to pay any mortgage debt; (ii) any damage to Landlord's property is not fully covered by Landlord's insurance policies plus any applicable deductibles (other than any earthquake insurance deductible that Landlord does not elect to fund in order to perform the Landlord Repairs); (iii) Landlord decides to rebuild the Building or Common Areas so that it or they will be substantially different structurally or architecturally; or (iv) the damage occurs during the last 12 months of the Term. If this Lease is not terminated pursuant to this Section 10, Landlord shall promptly and diligently perform the Landlord Repairs, subject to reasonable delays for insurance adjustment and other events of Force Majeure. The Landlord Repairs shall restore the Premises (other than trade fixtures) and any Common Area or portion of the Base Building necessary for access to or tenantability of the Premises to substantially the same condition that existed when the Casualty occurred, except for (a) any modifications required by Law or any Security Holder, and (b) any modifications to the Common Areas that are deemed desirable by Landlord, are consistent with the character of the Project, and do not materially impair access to or tenantability of the Premises. Notwithstanding**

**Section 9.4, Tenant shall assign to Landlord (or its designee) all insurance proceeds payable to Tenant under Tenant's insurance required under Section 9.2 with respect to any Tenant-Insured Improvements (the "Assigned Tenant Proceeds"), and if the estimated or actual cost of restoring any Tenant-Insured Improvements exceeds the Assigned Tenant Proceeds received by Landlord, Tenant shall pay such excess to Landlord (the "Tenant Excess") within 15 days after Landlord's demand. In no event shall Landlord be required to spend more for the restoration of any Tenant-Insured Improvements than the applicable Assigned Tenant Proceeds and Tenant Excess (if any) actually received by Landlord. No Casualty and no restoration performed as required hereunder shall render Landlord liable to Tenant, constitute a constructive eviction, or excuse Tenant from any obligation hereunder; provided, however, that if the Premises or a portion thereof (other than trade fixtures) or any Common Area or portion of the Base Building necessary for access to or tenantability of the Premises is damaged by a Casualty, then, during any time that, as a result of such damage, any portion of the Premises is inaccessible or untenantable and is not occupied by Tenant, Monthly Rent shall be abated in proportion to the rentable area of such portion of the Premises.**

- **NONWAIVER. No provision hereof shall be deemed waived by either party unless it is waived by such party expressly and in writing, and no waiver of any breach of any provision hereof shall be deemed a waiver of any subsequent breach of such provision or any other provision hereof. Landlord's acceptance of Rent shall not be deemed a waiver of any preceding breach of any provision hereof, other than Tenant's failure to pay the particular Rent so accepted, regardless of Landlord's knowledge of such preceding breach at the time of such acceptance. Any acceptance by Landlord of payment of less than the full amount of Rent due hereunder shall not be deemed a waiver of Landlord's right to receive the full amount of Rent due and shall be applied first to the oldest Rent obligation then due and next to any current Rent obligation then due, in each case notwithstanding any statement to the contrary contained on or accompanying such payment from Tenant. No receipt of monies by Landlord from Tenant after the giving of any notice, the commencement of any suit, the issuance of any final judgment, or the termination hereof shall affect such notice, suit or judgment, or reinstate or extend the Term or Tenant's right of possession hereunder.**

- **CONDEMNATION. If any material part of the Premises, Building or Project is to be taken for any public or quasi-public use by power of eminent domain or by private purchase in lieu thereof (a "Taking") for more than 180 consecutive days, Landlord may terminate this Lease; provided, however, that Landlord may not terminate this Lease pursuant to this sentence unless more than 25% of the rentable area of the Premises has been Taken or Landlord also exercises all rights it may have acquired as a result of the Taking to terminate any other similarly situated leases of space in the Building. If more than 25% of the rentable area of the Premises, or if any Common Area or portion of the Base Building necessary for access to or tenantability of the Premises, is to be Taken for more than 180 consecutive days, Tenant may terminate this Lease. Any such termination shall be effective as of the date possession must be surrendered to the authority, and the terminating party shall provide termination notice to the other party within 45 days after receiving written notice of such surrender date. Except as provided above in this Section 12, neither party may terminate this Lease as a result of a Taking. Tenant shall not assert, and hereby assigns to Landlord, any claim it may have for compensation because of any Taking; provided, however, that Tenant may file a separate claim for any Taking of Tenant's personal property or any trade fixtures that Tenant is entitled to remove upon the expiration hereof, and for moving expenses, so long as such claim does not diminish the award available to Landlord or any Security Holder and is payable separately to Tenant. If this Lease is terminated pursuant to this Section 12, all Rent shall be apportioned as of the date of such termination. If a Taking occurs and this Lease is not so terminated, Monthly Rent shall be abated for the period of such Taking in proportion to the percentage of the rentable area of the Premises, if any, that is subject to, or rendered inaccessible or untenantable by, such Taking and not occupied by Tenant.**

- **ASSIGNMENT AND SUBLETTING.**

ad. **Transfers.** Tenant shall not, without Landlord's prior consent (subject to Sections 13.2 and 13.8), assign, mortgage, pledge, hypothecate, encumber, permit any lien to attach to, or otherwise transfer this Lease or any interest hereunder, permit any assignment or other transfer hereof or any interest hereunder by operation of law, enter into any sublease or license agreement, otherwise permit the occupancy or use of any part of the Premises by any persons other than Tenant and its employees and contractors, or permit a Change of Control (defined in Section 13.6) to occur (each, a "**Transfer**"). If Tenant desires Landlord's consent to any Transfer, Tenant shall provide Landlord with (i) notice of the terms of the proposed Transfer, including its proposed effective date (the "**Contemplated Effective Date**"), a description of the portion of the Premises to be transferred (the "**Contemplated Transfer Space**"), a calculation of the Transfer Premium (defined in Section 13.3), and a copy of all existing executed and/or proposed documentation effecting the proposed Transfer, and (ii) current financial statements of the proposed transferee (or, in the case of a Change of Control, of the proposed new controlling party(ies)) certified by an officer or owner thereof and any other information reasonably required by Landlord in order to evaluate the proposed Transfer (collectively, the "**Transfer Notice**"). Within 15 business days after receiving the Transfer Notice, Landlord shall notify Tenant of (a) its consent to the proposed Transfer, or (b) its refusal to consent to the proposed Transfer. Any Transfer made without Landlord's prior consent shall, at Landlord's option, be void and shall, at Landlord's option, constitute a Default. Tenant shall pay Landlord a fee of $1,500.00 for Landlord's review of any proposed Transfer, whether or not Landlord consents to it. No review fee shall be payable in connection with a Permitted Transfer (defined in Section 13.8 below), provided Landlord is not required to modify this Lease or execute any documents in connection with such Permitted Transfer.

ae. **Landlord's Consent.** Subject to Section 13.4, Landlord shall not unreasonably withhold its consent to any proposed Transfer. Without limitation, it shall be deemed reasonable for Landlord to withhold its consent to a proposed Transfer if (i) the proposed transferee is a governmental entity or a nonprofit organization, or is engaged in a business that is not consistent with the quality of the Building; or (ii) the proposed transferee or any of its Affiliates, on the date the Transfer Notice is received, leases or occupies (or, at any time during the 2-month period ending on the date the Transfer Notice is received, has provided Landlord with a written proposal or counterproposal to lease) space in the portion of the Project consting of the Building and the buildings located at 6060 and 6100 Center Drive, and Landlord has (or believes in good faith, based on the scheduled expiration dates of existing leases and/or its rights to relocate existing tenants, that it will have) space available that, in its good faith judgment, will meet the proposed transferee's leasing needs. Notwithstanding any contrary provision hereof, (a) if Landlord consents to any Transfer pursuant to this Section 13.2 but Tenant does not enter into such Transfer within 6 months thereafter, such consent shall no longer apply and such Transfer shall not be permitted unless Tenant again obtains Landlord's consent thereto pursuant and subject to the terms of this Section 13; and (b) if Landlord withholds its consent in breach of this Section 13.2, Tenant's sole remedies shall be contract damages (subject to Section 19) or specific performance, and Tenant waives all other remedies, including any right to terminate this Lease.

af. **Transfer Premium.** If Landlord consents to a Transfer (other than a Change of Control), Tenant shall pay Landlord an amount equal to 50% of any Transfer Premium (defined below). "**Transfer Premium**" means (a) in the case of an assignment, any consideration (including payment for Leasehold Improvements) paid by the assignee for such assignment, less any reasonable and customary expenses directly incurred by Tenant on account of such assignment, including brokerage fees, legal fees, and Landlord's review fee, and (b) in the case of a sublease, license or other occupancy agreement, for each month of the term of such agreement, the amount by which all rent and other consideration paid by the transferee to Tenant pursuant to such agreement (less all reasonable and customary expenses directly incurred by Tenant on account of such agreement, including brokerage fees, legal fees, construction costs and Landlord's review fee, as amortized on a monthly, straight-line basis over the term of such agreement) exceeds the Monthly Rent payable by Tenant hereunder with respect to the Contemplated Transfer Space. Payment of Landlord's share of the Transfer Premium shall be made (x) in the case of an assignment, within 10 business days after Tenant receives the consideration described above, and (y) in the case of a sublease, license or other occupancy agreement, for each month of the term of such agreement, within 10 business days after Tenant receives the rent and other consideration described above. For the avoidance of doubt, Tenant shall not be requird to pay a Transfer Premium with respect to a Change of Control or a Permitted Transfer (defined in Section 13.8).

ag. Intentionally Omitted.

ah. **Effect of Consent.** If Landlord consents to a Transfer, (i) such consent shall not be deemed a consent to any further Transfer, (ii) Tenant shall deliver to Landlord, promptly after execution, an executed copy of all documentation effecting the Transfer in form reasonably acceptable to Landlord, and (iii) Tenant shall deliver to Landlord, upon Landlord's request, a complete statement, certified by an independent CPA or Tenant's chief financial officer, setting forth in detail the computation of any Transfer Premium. In the case of an assignment, the assignee shall assume in writing, for Landlord's benefit, all of Tenant's obligations hereunder. No Transfer, with or without Landlord's consent, shall relieve Tenant or any guarantor hereof from any liability hereunder. Notwithstanding any contrary provision hereof, Tenant, with or without Landlord's consent, shall not enter into, or permit any party claiming by, through or under Tenant to enter into, any sublease, license or other occupancy agreement that provides for payment based in whole or in part on the net income or profit of the subtenant, licensee or other occupant thereunder.

ai. **Change of Control.** "**Change of Control**" means (a) if Tenant is a closely held professional service firm, the withdrawal or change (whether voluntary, involuntary or by operation of law) of more than 50% of its equity owners within a 12-month period; and (b) in all other cases, any transaction(s) resulting in the acquisition of a Controlling Interest (defined below) in Tenant by one or more parties that neither owned, nor are Affiliates (defined below) of one or more parties that owned, a Controlling Interest in Tenant immediately before such transaction(s). "**Controlling Interest**" means Control (defined below) over an entity, other than Control arising from the ownership of voting securities listed on a recognized securities exchange. "**Control**" means the direct or indirect power to direct the ordinary management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise. "**Affiliate**" means, with respect to any party, a person or entity that controls, is under common control with, or is controlled by such party.

aj. **Effect of Default.** If Tenant is in Default, Landlord is irrevocably authorized by Tenant to direct any transferee under any sublease, license or other occupancy agreement to make all payments under such agreement directly to Landlord (which Landlord shall apply towards Tenant's obligations hereunder) until such Default is cured. However, by accepting such payments directly from the subtenant, Landlord does not waive any claims or release Tenant from any obligations hereunder, nor recognize the subtenant as the tenant hereunder. Such transferee shall rely upon any representation by Landlord that Tenant is in Default, whether or not confirmed by Tenant.

ak. **Permitted Transfers.** Tenant may (i) assign this Lease to a successor to Tenant by merger, consolidation, or the purchase of all or substantially all of Tenant's assets, or (ii) assign this Lease or sublet all or a portion of the Premises to an Affiliate, in each case without Landlord's consent, provided that all of the following conditions are satisfied (a "**Permitted Transfer**"): (a) Tenant must not be in Default; (b) Tenant must give Landlord written notice at least 10 business days before such Transfer; (c) if such Transfer will result from a merger or consolidation of Tenant with another entity, or the purchase of all or substantially all of Tenant's assets by another entity, then the Credit Requirement (defined below) must be satisfied; (d) in the case of an assignment of this Lease other than pursuant to a merger or consolidation, the assignee must execute and deliver to Landlord, at least 10 business days before the assignment, a commercially reasonable instrument pursuant to which the assignee assumes, for Landlord's benefit, all of Tenant's obligations hereunder; and (e) in the case of a sublease to an Affiliate, the subtenant must execute and deliver to Landlord, at least 10 business days before taking occupancy, an agreement reasonably acceptable to Landlord which requires the subtenant to (i) assume all of Tenant's release, waiver, indemnity and insurance obligations hereunder with respect to the Contemplated Transfer Space, (ii) be bound by each provision hereof that limits the liability of any Landlord Party, and (iii) agree that if, for any reason (including any voluntary surrender by Tenant), this Lease or Tenant's right to possession hereunder terminates with respect to all or any portion of the sublet Premises, then all rights of the subtenant in the sublet Premises (or such portion thereof) shall terminate on the date of such termination. Tenant's notice to Landlord shall include information and documentation evidencing the Permitted Transfer and showing that each of the above conditions has been satisfied. The "**Credit Requirement**" shall be deemed satisfied if, as of the date immediately succeeding the date of the Permitted Transfer, the financial strength of either (a) the entity with which Tenant is to merge or consolidate in the event of a merger or consolidation, or (b) the entity which is purchasing all or substantially all of Tenant's assets in the event of a sale of all or substantially all of Tenant's assets, is not less than that of Tenant as of the date immediately preceding the Transfer as determined (x) based on credit ratings of such entity and Tenant by both Moody's and Standard & Poor's (or by either such agency alone, if applicable ratings by the other agency do not exist), or (y) if such credit ratings do not exist, then in accordance with Moody's KMV RiskCalc (i.e., the on-line software tool offered by Moody's for analyzing credit risk) based on CFO-certified financial statements for such entity and Tenant covering their last two fiscal years ending before the Transfer.

al. **Approved Users**. Notwithstanding anything in this Section 13, Tenant shall be permitted from time to time to permit its clients, contractors or Affiliates ("**Approved Users**") to occupy space within the Premises, provided that (a) Tenant does not separately demise such space and the Approved Users utilize, in common with Tenant, one common entryway to the Premises as well as certain shared central services, such as reception, photocopying and the like; (b) the Approved Users occupy space in the Premises for the Permitted Use and for no other purpose; and (c) Tenant notifies Landlord, in writing, of the identity of any such Approved Users prior to occupancy of any portion of the Premises by such Approved Users. No further act, documentation or consent shall be required with respect to such usage by any or all of the Approved Users nor shall any transfer, premium, recapture or excess rent provisions described in this Section 13 apply. If any Approved Users occupy any portion of the Premises as described herein, it is agreed that (i) the Approved Users must comply with all provisions of this Lease, and a default by any Approved Users shall be deemed a default by Tenant under this Lease; (ii) all notices required of Landlord under this Lease shall be forwarded only to Tenant in accordance with the terms of this Lease and in no event shall Landlord be required to send any notices to any Approved Users; (iii) in no event shall any use or occupancy of any portion of the Premises by any Approved User release or relieve Tenant from any of its obligations under this Lease; (iv) the Approved User and its employees, contractors and invitees visiting or occupying space in the Premises shall be deemed employees of Tenant for purposes of Tenant's indemnification obligations in Section 9; and (v) in no event shall the occupancy of any portion of the Premises by Approved Users be deemed to create a landlord/tenant relationship between Landlord and such Approved Users, and, in all instances, Tenant shall be considered the sole tenant under this Lease notwithstanding the occupancy of any portion of the Premises by the Approved Users.

- **SURRENDER. Upon the expiration or earlier termination hereof, and subject to Section 7 and this Section 14, Tenant shall surrender possession of the Premises to Landlord broom clean in as good condition and repair as when Tenant took possession and as thereafter improved, except for reasonable wear and tear and repairs that are Landlord's express responsibility hereunder. Before such expiration or termination, Tenant, without expense to Landlord, shall (a) remove from the Premises all debris and rubbish and all furniture, equipment, trade fixtures, Lines, free-standing cabinet work, movable partitions and other articles of personal property that are owned or placed in the Premises by Tenant or any party claiming by, through or under Tenant (except for any Lines not required to be removed under Section 22), and (b) repair all damage to the Premises and Building resulting from such removal. If Tenant fails to timely perform such removal and repair, Landlord may do so at Tenant's expense (including storage costs). If Tenant fails to remove such property from the Premises, or from storage, within 30 days after notice from Landlord, any part of such property shall be deemed, at Landlord's option, either (x) conveyed to Landlord without compensation, or (y) abandoned.**

- **HOLDOVER. If Tenant fails to surrender the Premises upon the expiration or earlier termination hereof, Tenant's tenancy shall be subject to the terms and conditions hereof; provided, however, that such tenancy shall be a tenancy at sufferance only, for the entire Premises, and Tenant shall pay Monthly Rent (on a per-diem basis) at a rate equal to the Applicable Percentage (defined below) of the Monthly Rent applicable during the last calendar month of the Term. For purposes of this Section 15, "Applicable Percentage" means, with respect to any holdover, (a) 125% with respect to the first two (2) months of such holdover, and (b) 150% with respect to the balance of such holdover. Nothing in this Section 15 shall be deemed a consent to any holdover or limit Landlord's rights or remedies. If Landlord is unable to deliver possession of the Premises to, or perform improvements for, a new tenant as a result of Tenant's holdover, Tenant shall be liable for all resulting damages, including lost profits, incurred by Landlord.**

- **SUBORDINATION; ESTOPPEL CERTIFICATES.**

am. This Lease shall be subject and subordinate to all existing and future ground or underlying leases, mortgages, trust deeds and other encumbrances against the Building or Project, all renewals, extensions, modifications, refinancings, consolidations and replacements thereof (each, a "**Security Agreement**"), and all advances made upon the security of such mortgages or trust deeds, unless in each case the holder of such Security Agreement (each, a "**Security Holder**") requires in writing that this Lease be superior thereto. Upon any termination or foreclosure (or any delivery of a deed in lieu of foreclosure) of any Security Agreement, Tenant, upon request, shall attorn, without deduction or set-off, to the Security Holder or purchaser or any successor thereto and shall recognize such party as the lessor hereunder provided that such party agrees not to disturb Tenant's occupancy so long as Tenant timely pays the Rent and otherwise performs its obligations hereunder. Within 10 business days after Landlord's request, Tenant shall execute such further instruments as Landlord or any Security Holder may reasonably deem necessary to evidence the subordination or superiority of this Lease to any Security Agreement. Tenant waives any right it may have under Law to terminate or otherwise adversely affect this Lease or Tenant's obligations hereunder upon a foreclosure.

an. Landlord shall use good faith efforts to deliver to Tenant, not later than the date occurring five (5) business days after the mutual execution and delivery hereof, a Subordination, Nondisturbance and Attornment Agreement by and among Tenant, Landlord and Landlord's existing Security Holder, in form and substance satisfactory to Tenant in its reasonable discretion. If for any reason Landlord fails to so deliver to Tenant any such agreement within five (5) business days after the mutual execution and delivery hereof, Tenant, as its sole remedy for such failure, may terminate this Lease by notifying Landlord not later than the date occurring 10 business days after the mutual execution and delivery hereof. Notwithstanding any contrary provision hereof, until the earlier of (a) the date occurring 11 business days after the mutual execution and delivery hereof, or (b) the date immediately following the date, if any, on which Tenant, by notifying Landlord, waives any right it may have to terminate this Lease pursuant to this Section 16.2, Landlord shall not be required to perform any Landlord Work.

ao. Notwithstanding Section 16.1, Tenant's agreement to subordinate this Lease to a future Security Agreement shall not be effective unless Landlord has provided Tenant with a commercially reasonable non-disturbance agreement from the Security Holder.

ap. Within 10 business days after request by the other party, each party shall execute and deliver to the requesting party a commercially reasonable estoppel certificate in favor of such unaffiliated third party as the requesting party may reasonably designate, including a prospective purchaser of the requesting party's interest in this Lease (or, if Landlord is the requesting party, a current or prospective Security Holder). The party delivering such estoppel certificate shall be estopped, as against the third-party recipient, from asserting any fact or claim contrary to the matters set forth therein. However, such estoppel certificate shall not affect the rights or obligations of Landlord or Tenant as between each other.

- **ENTRY BY LANDLORD. At all reasonable times and upon reasonable notice to Tenant, or in an emergency, Landlord may enter the Premises to (i) inspect the Premises; (ii) show the Premises to prospective purchasers, current or prospective Security Holders or insurers, or, during the last 9 months of the Term (or while an uncured Default exists), prospective tenants; (iii) post notices of non-responsibility; or (iv) perform maintenance, repairs or alterations. At any time and without notice to Tenant, Landlord may enter the Premises to perform janitorial or other required services. If reasonably necessary, Landlord may temporarily close any portion of the Premises to perform maintenance, repairs or alterations. In an emergency, Landlord may use any means it deems proper to open doors to and in the Premises. Except in an emergency, Landlord shall use reasonable efforts (except Landlord shall not be obligated to pay overtime rates for which Tenant does not agree to reimburse Landlord) to minimize interference with Tenant's use of the Premises. No entry into or closure of any portion of the Premises pursuant to this Section 17 shall render Landlord liable to Tenant, constitute a constructive eviction, or excuse Tenant from any obligation hereunder.**

- **DEFAULTS; REMEDIES.**

aq. **Events of Default.** The occurrence of any of the following shall constitute a "**Default**":

i. Any failure by Tenant to pay any Rent (or deliver any security deposit, letter of credit, or similar credit enhancement required hereunder) when due unless such failure is cured within 3 business days after written notice; or

ii. Except where a specific time period is otherwise set forth for Tenant's cure herein (in which event Tenant's failure to cure within such time period shall be a Default), and except as otherwise provided in this Section 18.1, any breach by Tenant of any other provision hereof where such breach continues for 30 days after notice from Landlord; provided that if such breach cannot reasonably be cured within such 30-day period, Tenant shall not be in Default as a result of such breach if Tenant diligently commences such cure within such period, thereafter diligently pursues such cure, and completes such cure within 90 days after Landlord's notice; or

iii. Any breach by Tenant of Section 16 or 17 where such breach continues for more than 2 business days after written notice from Landlord; or

iv. Tenant becomes in breach of Section 23.3(c) or (d).

If Tenant, by repeating substantially the same act or omission, breaches a particular provision hereof (other than a provision requiring payment of Rent), and Landlord notifies Tenant of such breach, on 3 separate occasions during any 12-month period, and if such breaches are collectively material, then Tenant's subsequent breach of such provision by commission of substantially the same act or omission shall be, at Landlord's option, an incurable Default. To the extent the notice periods provided herein satisfy any notice periods provided by Law, Landlord shall not be required to give any additional notice in order to be entitled to commence an unlawful detainer proceeding.

ar. **Remedies Upon Default.** Upon any Default, Landlord shall have, in addition to any other remedies available to Landlord at law or in equity (which shall be cumulative and nonexclusive), the option to pursue any one or more of the following remedies (which shall be cumulative and nonexclusive) without any notice or demand:

i. Landlord may terminate this Lease, in which case Tenant shall immediately surrender the Premises to Landlord, and if Tenant fails to do so, Landlord may, without prejudice to any other remedy it may have for possession or arrearages in Rent, enter upon and take possession of the Premises and expel or remove Tenant and any other person who may be occupying the Premises or any part thereof, without being liable for prosecution or any claim of damages therefor; and Landlord may recover from Tenant the following:

a. The worth at the time of award of the unpaid Rent which had been earned at the time of such termination; plus

b. The worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Tenant proves could have been reasonably avoided; plus

c. The worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such Rent loss that Tenant proves could be reasonably avoided; plus

d. Any other amount necessary to compensate Landlord for all the detriment proximately caused by Tenant's failure to perform its obligations hereunder or which in the ordinary course of things would be likely to result therefrom, including brokerage commissions, advertising expenses, expenses of remodeling any portion of the Premises for a new tenant (whether for the same or a different use), and any special concessions made to obtain a new tenant; plus

e. At Landlord's option, such other amounts in addition to or in lieu of the foregoing as may be permitted from time to time by Law.

f. As used in Sections 18.2.1(a) and 18.2.1(b), the "**worth at the time of award**" shall be computed by allowing interest at a rate per annum equal to the lesser of (i) the annual "**Bank Prime Loan**" rate cited in the Federal Reserve Statistical Release Publication G.13(415), published on the first Tuesday of each calendar month (or such other comparable index as Landlord shall reasonably designate if such rate ceases to be published) plus two (2) percentage points, or (ii) the highest rate permitted by Law. As used in Section 18.2.1(c), the "**worth at the time of award**" shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus 1%.

ii.Landlord shall have the remedy described in California Civil Code § 1951.4 (lessor may continue lease in effect after lessee's breach and abandonment and recover Rent as it becomes due, if lessee has the right to sublet or assign, subject only to reasonable limitations). Accordingly, if Landlord does not elect to terminate this Lease on account of any default by Tenant, Landlord may, from time to time, without terminating this Lease, enforce all of its rights and remedies hereunder, including the right to recover all Rent as it becomes due.

iii.Landlord shall at all times have the rights and remedies (which shall be cumulative with each other and cumulative and in addition to those rights and remedies available under Sections 18.2.1 and 18.2.2, or any Law or other provision hereof), without prior demand or notice except as required by Law, to seek any declaratory, injunctive or other equitable relief, and specifically enforce this Lease, or restrain or enjoin a violation or breach of any provision hereof.

iv.If Tenant is in Default of any of its non-monetary obligations under this Lease, Landlord shall have the right to perform such obligations. Tenant shall reimburse Landlord for the cost of such performance upon demand together with an administrative charge equal to 10% of the cost of the work performed by Landlord. The repossession or re-entering of all or any part of the Premises shall not relieve Tenant of its liabilities and obligations under this Lease. No right or remedy of Landlord shall be exclusive of any other right or remedy. Each right and remedy shall be cumulative and in addition to any other right and remedy now or subsequently available to Landlord at Law or in equity.

as. **Efforts to Relet.** Unless Landlord provides Tenant with express notice to the contrary, no re-entry, repossession, repair, maintenance, change, alteration, addition, reletting, appointment of a receiver or other action or omission by Landlord shall (a) be construed as an election by Landlord to terminate this Lease or Tenant's right to possession, or to accept a surrender of the Premises, or (b) operate to release Tenant from any of its obligations hereunder. Tenant waives, for Tenant and for all those claiming by, through or under Tenant, California Civil Code § 3275, California Code of Civil Procedure §§ 1174(c) and 1179, and any existing or future rights to redeem or reinstate, by order or judgment of any court or by any legal process or writ, this Lease or Tenant's right of occupancy of the Premises after any termination hereof.

• **LANDLORD EXCULPATION. Notwithstanding any contrary provision hereof, (a) Tenant shall look solely to Landlord's interest in the Building for the recovery of any judgment or award against any Landlord Party; (b) no Landlord Party shall have any personal liability for any judgment or deficiency, and Tenant waives and releases such personal liability on behalf of itself and all parties claiming by, through or under Tenant; and (c) no Landlord Party shall be liable for any loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, or for any form of special, indirect or consequential damages.**

**• SECURITY DEPOSIT. Concurrently with its execution and delivery hereof, Tenant shall deposit with Landlord the Security Deposit, if any, as security for Tenant's performance of its obligations hereunder. If Tenant breaches any provision hereof, Landlord may, at its option, without limiting its remedies and without notice to Tenant, apply all or part of the Security Deposit to cure such breach and compensate Landlord for any loss or damage caused by such breach, including any damage for which recovery may be made under California Civil Code § 1951.2. If Landlord so applies any portion of the Security Deposit, Tenant, within 3 days after demand therefor, shall restore the Security Deposit to its original amount. The Security Deposit is not an advance payment of Rent or measure of damages. Any unapplied portion of the Security Deposit shall be returned to Tenant within 60 days after the latest to occur of (a) the expiration of the Term, (b) Tenant's surrender of the Premises as required hereunder, or (c) determination of the final Rent due from Tenant. Landlord shall not be required to keep the Security Deposit separate from its other accounts or pay interest on the Security Deposit.**

**• INTENTIONALLY OMITTED.**

**• COMMUNICATIONS AND COMPUTER LINES. As used herein, "Lines" means all communications or computer wires and cables serving the Premises installed by or on behalf of Tenant after the mutual execution and delivery of this Lease. All Lines shall be (a) installed in accordance with <u>Section 6</u> and (b) clearly marked with adhesive plastic labels (or plastic tags attached to such Lines with wire) to show Tenant's name, suite number, and the purpose of such Lines (i) every 6 feet outside the Premises (including the electrical room risers and any Common Areas), and (ii) at their termination points. Sufficient spare cables and space for additional cables shall be maintained for other occupants, as reasonably determined by Landlord. Unless otherwise notified by Landlord at least 60 days before the expiration or earlier termination hereof (provided, however, that if this Lease is terminated by Landlord based upon a Default, then such notification may be given at any time not later than ten (10) business days after the notice of termination), Tenant, at its expense and not later than the expiration or earlier termination hereof, shall remove all Lines and repair any resulting damage; provided, however, that Tenant shall not be required to remove the Lines in connection with a termination of this Lease that occurs by reason of a Casualty or a Taking. Without limiting <u>Section 2.2</u>, and subject to the Rules and Regulations and <u>Sections 6.2</u>, <u>6.3</u> and this <u>22</u>, Tenant, without charge by Landlord of any access or entry fee to Tenant or its telecom provider, may use, in common with other occupants of the Building, and for the installation, maintenance, replacement, use and removal of Lines, such raceways and risers located in the Common Areas of the Building as Landlord reasonably designates for the placement of Lines linking the Premises to any point of entry to the Building that is used, with Landlord's prior reasonable consent, by the telecommunications provider retained by Tenant to provide telecommunications to the Premises.**

**• MISCELLANEOUS.**

at. **<u>Notices</u>.** No notice, demand, statement, designation, request, consent, approval, election or other communication given hereunder ("**Notice**") shall be binding upon either party unless (a) it is in writing; (b) it is (i) sent by certified or registered mail, postage prepaid, return receipt requested, (ii) delivered by a nationally recognized courier service, or (iii) delivered personally; and (c) it is sent or delivered to the address set forth in <u>Section 1.9</u> or <u>1.10</u>, as applicable, or to such other place (other than a P.O. box) as the recipient may from time to time designate in a Notice to the other party. Any Notice shall be deemed received on the earlier of the date of actual delivery or the date on which delivery is refused, or, if Tenant is the recipient and has vacated its notice address without providing a new notice address, 3 days after the date the Notice is deposited in the U.S. mail or with a courier service as described above. No provision of this Lease requiring a particular Notice to be in writing shall limit the generality of clause (a) of the first sentence of this <u>Section 23.1</u>. In addition, if the Building is closed, then notices sent during such closure may be sent via e-mail or in any other practical manner reasonably designed to ensure receipt by the intended recipient.

au. **<u>Force Majeure</u>.** If either party is prevented from performing any obligation hereunder by any strike, act of God, war, terrorist act, shortage of labor or materials, governmental action or orders, civil commotion, epidemic, pandemic, public health emergency or other cause beyond such party's reasonable control ("**Force Majeure**"), such obligation shall be excused during (and any time period for the performance of such obligation shall be extended by) the period of such prevention; provided, however, that this <u>Section 23.2</u> shall not (a) permit Tenant to hold over in the Premises after the expiration or earlier termination hereof, or (b) excuse (or extend any time period for the performance of) (i) any obligation to remit money or deliver credit enhancement, (ii) any obligation under <u>Section 9</u> or <u>23.3</u>, or (iii) any of Tenant's obligations whose breach would interfere with another occupant's use, occupancy or enjoyment of its premises or the Project.

av. **<u>Representations and Covenants</u>.** Each party ("**Representing Party**") represents, warrants and covenants to the other party that (a) Representing Party is, and at all times during the Term will remain, duly organized, validly existing and in good standing under the Laws of the state of its formation and qualified to do business in the state or commonwealth in which the Building is located; (b) neither Representing Party's execution of nor its performance under this Lease will cause Representing Party to be in violation of any agreement or Law; (c) Representing Party (and if Representing Party is Tenant, any guarantor hereof) has not, and at no time during the Term will have, (i) made a general assignment for the benefit of creditors, (ii) filed a voluntary petition in bankruptcy or otherwise sought relief with respect to its debts under any Law relating to bankruptcy or insolvency, (iii) suffered or sought the appointment of a receiver or other similar official to take possession of all or substantially all of its assets, (iv) suffered (A) the filing by creditors of an involuntary petition in bankruptcy that is not dismissed within 30 days, or (B) the attachment or other judicial seizure of all or substantially all of its assets, (v) admitted in writing its inability to pay its debts as they come due, or (vi) made an offer of settlement, extension or composition to its creditors generally; and (d) no party that (other than through the passive ownership of interests traded on a recognized securities exchange) constitutes, owns, controls, or is owned or controlled by Representing Party (or if Representing Party is Tenant, by any guarantor hereof or any subtenant of Tenant) is, or at any time during the Term will be, (i) in violation of any Laws relating to terrorism or money laundering, or (ii) among the parties identified on any list compiled pursuant to Executive Order 13224 for the purpose of identifying suspected terrorists or on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx or any replacement website or other replacement official publication of such list.

aw. **<u>Signs</u>.** Landlord shall include Tenant's name in any tenant directory located in the lobby on the first floor of the Building. If any part of the Premises is located on a multi-tenant floor, Landlord, at Tenant's cost, shall provide identifying elevator lobby signage and suite signage for Tenant comparable to that provided by Landlord on similar floors in the Building. Tenant may not install (a) any signs outside the Premises (except as provided in <u>Sections 8</u> of **<u>Exhibit F</u>**), or (b) without Landlord's prior consent in its sole and absolute discretion, any signs, window coverings, blinds or similar items that are visible from outside the Premises; provided, however, that the preceding clause (b) shall not prohibit Tenant from installing, pursuant to <u>Sections 6.2</u> and <u>6.3</u> and subject to <u>Section 7</u>, a sign bearing Tenant's Name (defined in <u>Section 8.1</u> of **<u>Exhibit F</u>**) in the elevator lobby of any full-floor portion of the Premises on the wall facing the elevator doors, provided that the size, color, materials and all other aspects of the such signage, including its exact location and any provisions for illumination, shall be subject to Landlord's approval (which shall not be unreasonably withheld, except that Landlord's approval as to aesthetic matters may be withheld in Landlord's sole and absolute (but good faith) discretion).

ax. **<u>Supplemental HVAC</u>.** If the Premises are served by any supplemental HVAC unit (a "**Unit**"), then (a) Tenant shall pay the costs of all electricity consumed in the Unit's operation, together with the cost of installing a meter to measure such consumption; (b) Tenant, at its expense, shall (i) operate and maintain the Unit in compliance with all applicable Laws and such reasonable rules and procedures as Landlord may impose; and (ii) keep the Unit in as good working order and condition as existed upon installation (or, if later, when Tenant took possession of the Premises), subject to normal wear and tear and damage resulting from Casualty; (c) the Unit shall become Landlord's property upon installation and without compensation to Tenant; provided, however, that if the Unit is installed after the Commencement Date, then unless otherwise notified by Landlord at least 60 days before the expiration or earlier termination hereof (provided, however, that if this Lease is terminated by Landlord based upon a Default or by either party based upon a Casualty or a Taking, then such notification may be given at any time not later than ten (10) business days after the notice of termination), Tenant, at its expense, shall remove the Unit and repair any resulting damage (and if Tenant fails to timely perform such work, Landlord may do so at Tenant's expense); (d) the Unit shall be deemed (i) a Leasehold Improvement (except for purposes of <u>Section 7</u>), and (ii) for purposes of <u>Section 10</u>, part of the Premises; (e) if the Unit exists on the date of mutual execution and delivery hereof, Tenant accepts the Unit in its "as is" condition, without representation or warranty as to quality, condition, fitness for use or any other matter; (f) if the Unit connects to the Building's condenser water loop (if any), then Tenant shall pay to Landlord, as Additional Rent, Landlord's standard one-time fee for such connection and Landlord's standard monthly per-ton usage fee; and (g) if any portion of the Unit is located on the roof, then (i) Tenant's access to the roof shall be subject to such reasonable rules and procedures as Landlord may impose; (ii) Tenant shall maintain the affected portion of the roof in a clean and orderly condition and shall not interfere with use of the roof by Landlord or any other tenants or licensees; and (iii) Landlord may relocate the Unit and/or temporarily interrupt its operation, without liability to Tenant, as reasonably necessary to maintain and repair the roof or otherwise operate the Building.

ay. **<u>Attorneys' Fees</u>.** In any action or proceeding between the parties, including any appellate or alternative dispute resolution proceeding, the prevailing party may recover from the other party all of its costs and expenses in connection therewith, including reasonable attorneys' fees and costs. Tenant shall pay all reasonable attorneys' fees and other fees and costs that Landlord incurs in protecting its rights hereunder in any bankruptcy case, assignment for the benefit of creditors, or other insolvency, liquidation or reorganization proceeding involving Tenant or this Lease.

az. **Brokers.** Tenant represents to Landlord that it has dealt only with Tenant's Broker as its broker, agent or finder in connection with this Lease. Tenant shall indemnify, defend, and hold the Landlord Parties harmless from all claims of any brokers, agents or finders other than Tenant's Broker, claiming to have represented Tenant in connection with this Lease. Landlord shall indemnify, defend and hold Tenant harmless from all claims of any brokers, agents or finders, including Landlord's Broker, claiming to have represented Landlord in connection with this Lease. Tenant acknowledges that any Affiliate of Landlord that is involved in the negotiation of this Lease is representing only Landlord, and that any assistance rendered by any agent or employee of such Affiliate in connection with this Lease or any subsequent amendment or other document related hereto has been or will be rendered as an accommodation to Tenant solely in furtherance of consummating the transaction on behalf of Landlord, and not as agent for Tenant.

ba. **Governing Law; WAIVER OF TRIAL BY JURY.** This Lease shall be construed and enforced in accordance with the Laws of the state or commonwealth in which the Building is located and Landlord and Tenant hereby irrevocably consent to the jurisdiction and proper venue of such state or commonwealth. THE PARTIES WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATING TO THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM FOR INJURY OR DAMAGE OR ANY EMERGENCY OR STATUTORY REMEDY.

bb. **Interpretation.** The capitalized term "**Section**" refers to a section hereof unless otherwise specifically provided herein. As used in this Lease, the terms "herein," "hereof," "hereto" and "hereunder" refer to this Lease and the term "include" and its derivatives are not limiting. Any reference herein to "any part" or "any portion" of the Premises, the Property or any other property shall be construed to refer to all or any part of such property. In connection with insurance, the term "deductible" includes self-insured retention. Wherever this Lease requires Landlord to act in a reasonable manner (whether in incurring an expense, establishing a rule or regulation, providing an approval or consent, or performing any other act), the reasonableness of such act shall be determined by reference to the practices of owners of buildings ("**Comparable Buildings**") that (i) are comparable to the Building in size, age, class, quality and location within the Playa Vista market, and (ii) at Landlord's option, have been, or are being prepared to be, certified under the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) rating system or a similar rating system. Wherever this Lease prohibits either party from engaging in any particular conduct, this Lease shall be deemed also to require such party to cause each of its employees and agents (and, in the case of Tenant, each of its licensees, invitees and subtenants, and any other party claiming by, through or under Tenant) to refrain from engaging in such conduct. Tenant waives the benefit of any rule that a written agreement shall be construed against the drafting party.

bc. **Entire Agreement.** This Lease sets forth the entire agreement between the parties relating to the subject matter hereof and supersedes any previous agreements (none of which shall be used to interpret this Lease). Tenant acknowledges that in entering into this Lease it has not relied upon any representation, warranty or statement, whether oral or written, not expressly set forth herein. This Lease can be modified only by a written agreement signed by both parties.

bd. **Unrelated Business Income.** If Landlord is advised by its counsel at any time that any part of the payments by Tenant to Landlord under this Lease may be characterized as unrelated business income under the United States Internal Revenue Code and its regulations, then Tenant shall enter into any amendment proposed by Landlord to avoid such income, so long as the amendment does not require Tenant to make more payments or accept fewer services from Landlord, than this Lease provides.

be. **Financial Statements.** At Landlord's request from time to time in connection with any potential sale or financing of the Building, Tenant shall provide to Landlord (or direct Landlord to a publicly accessible source for) the then current financial statements of Tenant and any guarantor hereof.

bf. **Other.** If any provision hereof is void or unenforceable, no other provision shall be affected. Submission of this instrument for examination or signature by Tenant does not constitute an option or offer to lease. If Tenant is comprised of two or more persons or entities, then (a) their obligations shall be joint and several, (b) any request or demand from any one such person or entity shall be deemed to have been made by all such persons or entities; and (c) any notice given to any one such person or entity shall be deemed to have been given to all such persons or entities. Time is of the essence with respect to the payment of Rent and Tenant's exercise of any expansion, renewal or extension rights granted to Tenant. So long as Tenant performs its obligations hereunder, Tenant shall have peaceful and quiet possession of the Premises against any party claiming by, through or under Landlord, subject to the terms hereof. This covenant shall be binding upon Landlord and its successors only during its or their respective periods of ownership of the Building. Landlord may transfer its interest herein, in which event (a) to the extent the transferee assumes in writing Landlord's obligations arising hereunder after the date of such transfer (including the return of any Security Deposit), Landlord shall be released from, and Tenant shall look solely to the transferee for the performance of, such obligations; and (b) Tenant shall attorn to the transferee. Landlord reserves all rights not expressly granted to Tenant hereunder, including the right to make alterations to the Project. No rights to any view or to light or air over any property are granted to Tenant hereunder. The expiration or earlier termination hereof shall not relieve either party of any obligation that accrued before, or continues to accrue after, such expiration or termination. To the extent permitted by applicable Law, this Lease may be executed in counterparts and/or executed and/or transmitted by electronic means.

bg. **Waiver of Statutory Provisions.** Each party waives California Civil Code §§ 1932(2), 1933(4) and 1945. Tenant waives (a) any rights under (i) California Civil Code §§ 1932(1), 1941, 1942, 1950.7 or any similar Law, or (ii) California Code of Civil Procedure §§ 1263.260 or 1265.130; and (b) any right to terminate this Lease under California Civil Code § 1995 310.

bh. **Tax Waiver.** Tenant waives all rights pursuant to all Laws to contest any taxes or other levies or protest appraised values or receive notice of reappraisal regarding the Property (including Landlord's personalty), irrespective of whether Landlord contests same.

bi. **Underlying Documents.** Tenant agrees that (i) Tenant's rights under this Lease are subject to the Underlying Documents (defined below), (ii) Tenant shall not cause Landlord to be in breach of the Underlying Documents, and (iii) to the extent applicable to Tenant's use and occupancy of the Premises and/or Tenant's use of the Building and the Common Areas, Tenant shall comply with the terms of the Underlying Documents at its sole cost and expense. As used herein, "**Underlying Documents**" means the CC&Rs (defined below) and any other covenants, conditions restrictions and other documents of record applicable to the Project (except for any Security Agreement, which agreements are addressed elsewhere in this Lease). As used herein, "**CC&Rs**" means that certain Agreement and Declaration of Covenants, Conditions and Restrictions for Howard Hughes Center, dated March 17, 1993, which was recorded in the Official Records of Los Angeles County, California on June 24, 1993, as Instrument No. 93 1210312 (the "**Declaration**"), as amended. As used herein, "**Governing Documents**" means shall mean and refer to the Declaration and, all as more particularly defined in the Declaration, the Articles, the Bylaws, the Rules, the Design Guidelines, the Improvements Maintenance Standards and any other documents governing the operation of the Association, the use of the Lots or the Common Area, or the maintenance and repair of the Lots and Improvements, as from time to time amended, modified or supplemented. Without limiting the foregoing, (a) this Lease is subject in all respects to the Governing Documents, (b) any failure of Tenant to comply with each of the provisions of the Governing Documents shall constitute a failure of Tenant comply with a covenant under this Lease; (c) Tenant acknowledges that each Building within the Project must employ a person to act as a transportation coordinator under the Transportation Demand Management Program ("**TDM**"), as defined in the CC&Rs), and that the cost of such employee shall be included in Expenses; (d) Tenant must develop an active recycling program to reduce solid waste, and must participate in any such program developed by Declarant, the Association, the Owners (each as defined in the CC&Rs), or any local municipalities or governmental agencies; (e) Tenant agrees that it will use its best efforts to cooperate in programs which may be undertaken by Landlord independently, or in cooperation with local municipalities or governmental agencies or other property owners in the vicinity of Playa District (formerly known as Howard Hughes Center), to reduce peak levels of commuter traffic. Such programs may include, but shall not be 1imited to, carpools, vanpools and other ride sharing programs, public and private transit, and flexible work hours. In addition, Tenant shall not permit any use of the Premises to cause or produce a nuisance or disturbance to any individual, partnership, corporation, trust, estate or other legal entity and activities on other portions of the Project and the public streets, including, but not limited to, vibration, sound, odor, electro-mechanical disturbance and radiation, electromagnetic disturbance and radiation, air or water pollution, dust and emission of odorous, toxic or non-toxic matter.

**[SIGNATURES ARE ON THE FOLLOWING PAGE]**

**IN WITNESS WHEREOF**, Landlord and Tenant have caused this Lease to be executed the day and date first above written.

LANDLORD:

**BRE HH PROPERTY OWNER LLC, a Delaware limited liability company**

By: _________/s/Spencer Rose__________________
Name: __________Spencer Rose____________
Title: ___________Managing Director____________

TENANT:

**MAGNITE, INC., a Delaware corporation**

By: ________/s/ David Day_____________
Name: _______David Day________________
Title: _______Chief Financial Officer _________

By: ________/s/ Aaron Saltz_____________
Name: _______Aaron Saltz
Title: _______General Counsel _________

**EXHIBIT A**

**PLAYA DISTRICT, 6080 CENTER DRIVE**

**OUTLINE OF PREMISES**

# EXHIBIT B

# PLAYA DISTRICT, 6080 CENTER DRIVE

# EXPENSES AND TAXES

• **General Terms**. In addition to Base Rent, Tenant shall pay, in accordance with Section 1.4 of this Lease and Section 4 below, for each Expense Year (defined in Section 2.1 below), an amount equal to the sum of (a) Tenant's Share of any amount (the "**Expense Excess**") by which Expenses for such Expense Year exceed Expenses for the Base Year, plus (b) Tenant's Share of any amount (the "**Tax Excess**") by which Taxes for such Expense Year exceed Taxes for the Base Year. No decrease in Expenses or Taxes for any Expense Year below the corresponding amount for the Base Year shall entitle Tenant to any decrease in Base Rent or any credit against amounts due hereunder. Tenant's Share of the Expense Excess and Tenant's Share of the Tax Excess for any partial Expense Year shall be prorated based on the number of days in such Expense Year.

• **Definitions**.

a. "**Expense Year**" means each calendar year (other than the Base Year and any preceding calendar year) in which any portion of the Term occurs.

b. "**Expenses**" means all expenses, costs and amounts that Landlord pays or accrues during the Base Year or any Expense Year because of or in connection with the management, maintenance, security, repair, replacement, restoration or operation of the Property. Landlord shall act in a reasonable manner in incurring Expenses. Expenses shall include (i) the cost of supplying all utilities (and taxes and surcharges thereon), the cost of operating, repairing, maintaining and renovating the utility, telephone, mechanical, sanitary, storm-drainage, and elevator systems, and the cost of maintenance and service contracts in connection therewith; (ii) the cost of licenses, certificates, permits and inspections, the cost of contesting any Laws that may affect Expenses, and the costs of complying with any business improvement district, governmentally-mandated transportation-management or similar program; (iii) the cost of all insurance premiums and deductibles; (iv) the cost of landscaping and relamping and the cost of painting and/or decorating all areas of the Building not demised to tenants; (v) the cost of parking-area operation, repair, restoration, and maintenance; (vi) a management fee in the amount (which is hereby acknowledged to be reasonable) of 3% of gross annual receipts from the Building (excluding the management fee), together with other fees and costs, including consulting fees, legal fees and accounting fees, of all contractors and consultants in connection with the management, operation, maintenance and repair of the Property; (vii) the fair rental value of any management office space and the cost of equipping, staffing and operating an on-site and/or off-site management office for the Building; (viii) wages, salaries and other compensation, expenses and benefits, including taxes levied thereon, of all persons engaged in the operation, maintenance and security of the Property, and costs of training and uniforms for such persons; (ix) the costs of operation, repair, maintenance and replacement of all systems and equipment (and components thereof) of the Property; (x) the cost of janitorial, alarm, security and other services, replacement of wall and floor coverings, ceiling tiles and fixtures in Common Areas, maintenance and replacement of curbs and walkways, repair to roofs and re-roofing; (xi) the cost of services generally provided to or made available to all tenants at the Building; (xii) rental or acquisition costs (including taxes thereon) of supplies, tools, equipment, materials and personal property used in the maintenance, operation and repair of the Property; (xiii) any capital expenditure that is (A) intended to reduce current or future Expenses (an "**Expense Savings Capital Expenditure**"), or (B) required under any Law (except to the extent that such Law was in effect and required such capital expenditure before the date hereof) (a "**Legally Required Capital Expenditure**"); and (xiv) payments under any existing or future reciprocal easement agreement, transportation management agreement, cost-sharing agreement or other covenant, condition, restriction or similar instrument affecting the Property.

Notwithstanding the foregoing, Expenses shall not include:

i. capital expenditures not described in clauses (xii) or (xiii) above (in addition, any capital expenditure described in clauses (xii) or (xiii) above shall be included in Expenses only if paid or accrued after the Base Year and shall be amortized including actual or imputed interest on the amortized cost over the lesser of (i) the useful life of the item purchased through such capital expenditure, as reasonably determined by Landlord, or (ii) the period of time that Landlord reasonably estimates will be required for any Expense savings resulting from such capital expenditure to equal such capital expenditure; provided, however, that any capital expenditure that is included in Expenses solely on the grounds that it is intended to reduce current or future Expenses shall be so amortized over the period of time described in the preceding clause (ii));

ii.depreciation;

iii.payments of mortgage or other non-operating debts of Landlord;

iv.costs of repairs to the extent Landlord is reimbursed by insurance or condemnation proceeds;

v.costs of leasing space in the Building, including marketing costs, legal fees, space planners' fees, advertising and promotional expenses, brokerage commissions, lease concessions, rental abatements, construction allowances granted to specific tenants, permit, license and inspection costs, incurred with respect to the installation of tenant improvements in the Project or incurred in renovating or otherwise improving, decorating, painting or redecorating vacant space for tenants or other occupants of the Project;

vi.costs of selling, financing or refinancing the Building;

vii.fines, penalties or interest resulting from late payment of Taxes or Expenses;

viii.organizational expenses of creating or operating the entity that constitutes Landlord;

ix.damages paid to Tenant hereunder or to other tenants of the Building under their respective leases;

x.costs of curing defects in design or original construction of the Property;

xi.wages, salaries, fees or fringe benefits ("**Labor Costs**") paid to Landlord's personnel above the level of general manager or property manager (provided, however, that if such individuals provide services directly related to the operation, maintenance or ownership of the Property that, if provided directly by a general manager or property manager or his or her general support staff, would normally be chargeable as an operating expense of a comparable office building, then the Labor Costs of such individuals may be included in Expenses to the extent of the percentage of their time that is spent providing such services to the Property);

xii.amounts paid as any ground rental for the Project or any portion thereof;

xiii.expenses of operating any commercial concession at the Project, including any restaurant, luncheon club, theatre or cafeteria, but excluding the Parking Facility and any fitness center or conference room center that is made available for use by tenants of the Building;

xiv.Parking Expenses (defined below), except to the extent Parking Expenses exceed parking revenues, if any, on an annual basis (as used herein, "**Parking Expenses**" means costs of operating, maintaining and repairing the Parking Facility, including costs of parking equipment, tickets, supplies, signs, cleaning, resurfacing, restriping, Parking Facility management fees, and the wages, salaries, employee benefits and taxes for any individuals working exclusively in the Parking Facility; provided, however, that Parking Expenses shall exclude (i) capital expenditures of any type, and (ii) costs of electricity, janitorial service, elevator maintenance and insurance);

xv.Fitness Center Expenses (defined below), except to the extent Fitness Center Expenses exceed fitness center revenues, if any, on an annual basis (as used herein, "**Fitness Center Expenses**" means costs of operating, maintaining and repairing any fitness center that is made available to tenants of the Building, including costs of equipment, supplies, cleaning, and the wages, salaries, employee benefits and taxes for any individuals working exclusively in such fitness center; provided, however, that Fitness Center Expenses shall exclude (i) capital expenditures of any type, and (ii) costs of electricity, janitorial service, elevator maintenance and insurance);

xvi.Conference Room Center Expenses (defined below), except to the extent Conference Room Center Expenses exceed conference room center revenues, if any, on an annual basis (as used herein, "**Conference Room Center Expenses**" means costs of operating, maintaining and repairing any conference room center that is made available to tenants of the Building, including costs of furniture, equipment, supplies, cleaning, and the wages, salaries, employee benefits and taxes for any individuals working exclusively in such conference room center; provided, however, that Conference Room Center Expenses shall exclude (i) capital expenditures of any type, and (ii) costs of electricity, janitorial service, elevator maintenance and insurance);

xvii.costs of purchasing or leasing major sculptures, paintings or other artwork (as opposed to holiday decorations purchased or leased by Landlord for display in the Common Areas of the Building);

xviii.any management fee exceeding the amount described in clause (vi) above (it being agreed that, as used herein, "management fee" does not include any costs – such as salaries, hourly labor costs, and telephone bills – that would customarily be reimbursed to the manager under a third-party management agreement);

xix.rent for any office space occupied by Project management personnel to the extent the size or rental rate of such office space exceeds the size or fair market rental value of office space occupied by management personnel of Comparable Buildings in the Playa Vista market, with adjustment where appropriate for the size of the applicable project;

xx.costs (other than insurance deductibles under property insurance policies) arising from the adjudicated or admitted negligence or willful misconduct of Landlord or its agents, employees, vendors, contractors, or providers of materials or services;

xxi.costs of curing defects in design or original construction of the Property;

xxii.costs of cleaning up Hazardous Materials (defined in Section 9 of **Exhibit F**), except for immaterial costs of routine cleanup performed as part of the ordinary operation and maintenance of the Property;

xxiii.Landlord's charitable and political contributions;

xxiv.attorney's fees and other expenses incurred in connection with any negotiation or dispute with (i) any existing or prospective tenant or other occupant of the Building (whether relating to a violation of its lease or occupancy agreement, or otherwise), or (ii) any holder of an interest in the Property superior to this Lease, including the securing or defense of Landlord's title to the Building or other portions of the Project

xxv.any cost of repairing damage resulting from a Casualty, other than (i) any insurance deductible (subject to clause (26) below), and (ii) if such damage is not covered by Landlord's insurance (as determined without regard to any deductible), any portion of such cost that does not exceed the amount that would have been the maximum amount of the insurance deductible permitted to be included in Expenses for such damage pursuant to clause (26) below if such damage had been covered by Landlord's insurance;

xxvi.insurance deductibles other than (i) earthquake insurance deductibles up to the amount (the "**Annual Limit**") of 0.5% of the total insurable value of the Property per occurrence (provided, however, that, notwithstanding any contrary provision hereof, if, for any occurrence, the earthquake insurance deductible exceeds the Annual Limit, then, after such deductible is included (up to the Annual Limit) in Expenses for the applicable Expense Year, such excess may be included (up to the Annual Limit) in Expenses for the immediately succeeding Expense Year, and any portion of such excess that is not so included in Expenses for such immediately succeeding Expense Year may be included (up to the Annual Limit) in Expenses for the next succeeding Expense Year, and so on with respect to each Expense Year; provided further, however, that in no event shall the portions of such deductible that are included in Expenses for any one or more Expense Years exceed, in the aggregate, 5.0% of the total insurable value of the Property), and (ii) any other insurance deductibles up to $50,000.00 per occurrence;

xxvii.reserves of any kind; or

xxviii.the cost of electric power for which any tenant of the Building directly contracts with the local public utility company or for which any tenant of the Building pays Landlord on a separately measured basis and not through payment of operating costs or expenses (subject to the next succeeding paragraph).

If, during any portion of the Base Year or any Expense Year, the Building is not 100% occupied (or a service provided by Landlord to Tenant is not provided by Landlord to a tenant that provides such service itself, or any tenant of the Building is entitled to free rent, rent abatement or the like), Expenses for such year that vary based upon occupancy (or upon whether a service provided by Landlord to Tenant is not provided by Landlord to a tenant that provides such service itself, or upon whether any tenant of the Building is entitled to free rent, rent abatement or the like) shall be determined as if the Building had been 100% occupied (and all services provided by Landlord to Tenant had been provided by Landlord to all tenants, and no tenant of the Building had been entitled to free rent, rent abatement or the like) throughout such year. If a tenant of the Building reimburses Landlord on a separately measured basis, and not through payment of operating costs or expenses, for a service that is provided by Landlord to Tenant without reimbursement outside of Expenses, then for purposes of the preceding sentence, such service shall be deemed to be provided to such tenant by such tenant itself and not by Landlord. Notwithstanding any contrary provision hereof, Expenses for the Base Year shall exclude (a) any market-wide cost increases resulting from extraordinary circumstances, including Force Majeure, boycotts, strikes, conservation surcharges, embargoes or shortages, and (b) at Landlord's option, the cost of any repair or replacement that Landlord reasonably expects will not recur on an annual or more frequent basis; provided, however, that if (i) any amounts of a given type (as determined in good faith by Landlord) that would otherwise be included in Expenses for the Base Year are excluded from such Expenses pursuant to the preceding clause (a) or (b) (collectively, an "**Excluded Base Year Amount**"), and (ii) any amounts of the same type (as determined in good faith by Landlord) are incurred in, and would otherwise be included in Expenses for, any Expense Year, then such amounts incurred in such Expense Year shall be included in Expenses for such Expense Year only to the extent, if any, that they collectively exceed such Excluded Base Year Amount.

Notwithstanding the foregoing, for purposes of computing Tenant's Share of Expenses, the Controllable Expenses (hereinafter defined) shall not increase by more than 5% per Expense Year on a compounding and cumulative basis over the course of the Term. In other words, Controllable Expenses for the first Expense Year after the Base Year shall not exceed 105% of the Controllable Expenses for the Base Year. Controllable Expenses for the second Expense Year after the Base Year shall not exceed 105% of the limit on Controllable Expenses for the first Expense Year after the Base Year, etc. By way of illustration, if Controllable Expenses were $10.00 per rentable square foot for the Base Year, then Controllable Expenses for the first Expense Year following the Base Year shall not exceed $10.50 per rentable square foot, and Controllable Expenses for the second Expense Year following the Base Year shall not exceed $11.03 per rentable square foot. Any Controllable Expenses that are not included as part of Expenses during any Expense Year due to the application of this cap may be included as part of Controllable Expenses in any subsequent Expense Year subject to the cap applicable to the calculation of Controllable Expenses for such subsequent Expense Year. "**Controllable Expenses**" shall mean all Expenses other than (i) costs of utilities, (ii) insurance premiums and deductibles, (iii) any capital expenditure that is (a) an Expense Savings Capital Expenditure intended to reduce current or future Expenses other than Controllable Expenses, or (b) a Legally Required Capital Expenditure, (iv) any market-wide cost increases resulting from extraordinary circumstances, including Force Majeure, boycotts, strikes, conservation surcharges, embargoes or shortages, (v) the cost of any repair or replacement that Landlord reasonably expects will not recur on an annual or more frequent basis, (vi) costs of union labor (including labor that is unionized after the date hereof), and (vii) any non-capital expenditure that is incurred to comply with Law. For purposes of determining Controllable Expenses, any management fee shall be calculated without regard to any free rent, abated rent, or the like, or any increase in gross annual receipts from the Building.

c. "**Taxes**" means all federal, state, county or local governmental or municipal taxes, fees, charges, assessments, levies, licenses or other impositions, whether general, special, ordinary or extraordinary, that are paid or accrued during the Base Year or any Expense Year (without regard to any different fiscal year used by such governmental or municipal authority) because of or in connection with the ownership, leasing or operation of the Property. Taxes shall include (a) real estate taxes; (b) general and special assessments; (c) transit taxes; (d) leasehold taxes; (e) personal property taxes imposed upon the fixtures, machinery, equipment, apparatus, systems, appurtenances, furniture and other personal property used in connection with the Property; (f) any tax on the rent, right to rent or other income from any portion of the Property or as against the business of leasing any portion of the Property; (g) any assessment, tax, fee, levy or charge imposed by any governmental agency, or by any non-governmental entity pursuant to any private cost-sharing agreement, in order to fund the provision or enhancement of any fire-protection, street-, sidewalk- or road-maintenance, refuse-removal or other service that is (or, before the enactment of Proposition 13, was) normally provided by governmental agencies to property owners or occupants without charge (other than through real property taxes); and (h) payments in lieu of taxes under any tax increment financing agreement, abatement agreement, agreement to construct improvements, or other agreement with any governmental body or agency or taxing authority. Any costs and expenses (including reasonable attorneys' and consultants' fees) incurred in attempting to protest, reduce or minimize Taxes shall be included in Taxes for the year in which they are incurred. Notwithstanding any contrary provision hereof, Taxes shall be determined without regard to any "**green building**" credit and shall exclude (i) all excess profits taxes, franchise taxes, gift taxes, capital stock taxes, inheritance and succession taxes, transfer taxes, estate taxes, federal and state income taxes, and other taxes to the extent (x) applicable to Landlord's general or net income (as opposed to rents, receipts or income attributable to operations at the Property), or (y) measured solely by the square footage, rent, fees, services, tenant allowances or similar amounts, rights or obligations described or provided in or under any particular lease, license or similar agreement or transaction at the Building; (ii) any Expenses;

(iii) any items required to be paid or reimbursed by Tenant under Section 5 below; and (iv) fines, penalties or interest resulting from late payment of Taxes. Notwithstanding any contrary provision hereof, Taxes shall be calculated without taking into account any reduction achieved under California Revenue and Taxation Code § 51.

d. **Property Tax Protection.**

**2.4.1 Protection. Notwithstanding any contrary provision hereof, Taxes for each period of the Term shown below (each, a "Protection Period") shall exclude the corresponding percentage shown below of any Tax increase caused solely by one or more Protected Events (defined below) occurring during such Protected Period or any preceding Protected Period. As used herein, "Protected Event" means each of (a) any Eligible Change in Ownership (defined in Section 2.4.2 below), or (b) the First Alternative Reassessment (defined in Section 2.4.3 below).**

| **Protection Period** | **Percentage of Tax Increase Excluded** |
|---|---|
| First (1st) and Second (2nd)<br><br>Full Calendar Years of Initial Term<br>(together with any partial calendar month occurring at the beginning of the initial Term) | 100% |
| Third (3rd) and Fourth (4th)<br><br>Full Calendar Years of Initial Term | 80% |
| Fifth (5th) and Sixth (6th)<br><br>Full Calendar Years of Initial Term | 60% |
| Seventh (7th) and Eighth (8th)<br><br>Full Calendar Years of Initial Term | 40% |
| Ninth (9th) and Tenth (10th)<br><br>Full Calendar Years of Initial Term | 20% |

**2.4.2 Eligible Change in Ownership. As used herein, "Eligible Change in Ownership" means each of the first two (2) changes in ownership (within the meaning of Sections 60 and 61, Division 1, Chapter 2 of the California Revenue and Taxation Code ("Proposition 13")) of all or any portion of the Property, if any, that occur after the Commencement Date, excluding, however, any such change in ownership in favor of a Security Holder or a purchaser at a foreclosure sale resulting from a foreclosure or a deed-in-lieu of foreclosure of a Security Agreement. For the avoidance of doubt, any Tax increase that would have occurred in the absence of an Eligible Change in Ownership, whether as a result of a statutory annual inflationary increase in Taxes or otherwise, shall not be deemed to be caused by such Eligible Change in Ownership.**

**2.4.3 First Alternative Reassessment. As used herein, "First Alternative Reassessment" means the first reassessment of the Property for real property tax purposes that occurs pursuant to a New Real Estate Tax Law (defined below) and before the Property would have been reassessed for real property tax purposes in the absence of such New Real Estate Tax Law. As used herein, "New Real Estate Tax Law" means any Law enacted after the date hereof which provides for a reassessment of the Property for real property tax purposes before the Property would have been reassessed for real property tax purposes after the date hereof in the absence of such Law. For the avoidance of doubt, no First Alternative Reassement shall be deemed to occur unless and until both (a) a New Real Estate Tax Law has been enacted, and (b) the Property is reassessed for real property tax purposes pursuant to such New Real Estate Tax Law before the Property would have been reassessed for real property tax purposes after the date hereof in the absence of such New Real Estate Tax Law.**

**2.4.4 Landlord's Right to Purchase Protection. If a Protected Event is reasonably foreseeable by Landlord, and (ii) the amount of any portion of any Tax Excess that Tenant (a) but for Section 2.4.1 above, would be required to pay on account of such Protected Event, but (b) by reason of Section 2.4.1, is not required to pay (a "Protected Tax Excess"), can be reasonably estimated by Landlord, then Landlord, upon notice to Tenant, may purchase such Protected Tax Excess by paying to Tenant the discounted present value (the "Discounted Value") of such estimated amount of such Protected Tax Excess, as determined on the date of payment (a) assuming that the entire benefit of such Protected Tax Excess would have accrued to Tenant at the end of the**

**applicable Expense Year, and (b) using a discount rate equal to the Prime Rate posted by The Wall Street Journal five (5) days before the date of payment, in which event Section 2.4.1 above shall no longer apply to such Protected Tax Excess. Upon the occurrence of (i) a Protected Event with respect to which Landlord has purchased a Protected Tax Excess pursuant to the preceding sentence, and (ii) reassessment of the Property based upon such Protected Event by the appropriate governmental authority pursuant to Proposition 13 or a New Real Estate Tax Law, as applicable, (x) Landlord shall deliver to Tenant notice of such Protected Event, such reassessment, and the actual amount of such Protected Tax Excess as determined based upon such reassessment, together with copies of tax bills evidencing the same, and (y) if, as determined based upon such reassessment, the amount paid by Landlord for such Protected Tax Excess is less or more than its actual Discounted Value, then Tenant shall receive a credit in the amount of such underpayment, or pay Landlord the amount of such overpayment, against or with the Monthly Rent next coming due hereunder after Landlord's delivery of such materials to Tenant; provided, however, that if this Lease has expired or terminated and Tenant has vacated the Premises, then Landlord shall pay Tenant the amount of such underpayment (less any Rent due), or Tenant shall pay Landlord the amount of such overpayment, within 30 days after such delivery.**

- **Allocation**. Landlord, in its reasonable discretion, may equitably allocate Expenses among office, retail or other portions or occupants of the Property. If Landlord incurs Expenses or Taxes for the Property together with another property, Landlord, in its reasonable discretion, shall equitably allocate such shared amounts between the Property and such other property.

- **Calculation and Payment of Expense Excess and Tax Excess**.

e. **Statement of Actual Expenses and Taxes; Payment by Tenant.** Landlord shall give to Tenant, after the end of each Expense Year, a statement (the "**Statement**") setting forth the actual Expenses, Taxes, Expense Excess and Tax Excess for such Expense Year. If the amount paid by Tenant for such Expense Year pursuant to Section 4.2 is less or more than the sum of Tenant's Share of the actual Expense Excess plus Tenant's Share of the actual Tax Excess (as such amounts are set forth in such Statement), Tenant shall pay Landlord the amount of such underpayment, or receive a credit in the amount of such overpayment, with or against the Rent next coming due hereunder; provided, however, that if this Lease has expired or terminated and Tenant has vacated the Premises, Tenant shall pay Landlord the amount of such underpayment, or Landlord shall pay Tenant the amount of such overpayment (less any Rent due), within 30 days after delivery of such Statement. Any failure of Landlord to timely deliver the Statement for any Expense Year shall not diminish either party's rights under this Exhibit.

f. **Statement of Estimated Expenses and Taxes**. Landlord shall give to Tenant, for each Expense Year, a statement (the "**Estimate Statement**") setting forth Landlord's reasonable estimates of the Expenses, Taxes, Expense Excess (the "**Estimated Expense Excess**") and Tax Excess (the "**Estimated Tax Excess**") for such Expense Year. Upon receiving an Estimate Statement, Tenant shall pay, with its next installment of Base Rent, an amount equal to the excess of (a) the amount obtained by multiplying (i) the sum of Tenant's Share of the Estimated Expense Excess plus Tenant's Share of the Estimated Tax Excess (as such amounts are set forth in such Estimate Statement), by (ii) a fraction, the numerator of which is the number of months that have elapsed in the applicable Expense Year (including the month of such payment) and the denominator of which is 12, over (b) any amount previously paid by Tenant for such Expense Year pursuant to this Section 4.2. Until Landlord delivers a new Estimate Statement (which Landlord may do at any time), Tenant shall pay monthly, with the monthly Base Rent installments, an amount equal to one-twelfth (1/12) of the sum of Tenant's Share of the Estimated Expense Excess plus Tenant's Share of the Estimated Tax Excess, as such amounts are set forth in the previous Estimate Statement. Any failure of Landlord to timely deliver any Estimate Statement shall not diminish Landlord's rights to receive payments and revise any previous Estimate Statement under this Exhibit.

g. **Retroactive Adjustment of Taxes**. Notwithstanding any contrary provision hereof, but subject to the last sentence of Section 2.3 above, if, after Landlord's delivery of any Statement, an increase or decrease in Taxes occurs for the applicable Expense Year or for the Base Year (whether by reason of reassessment, error, or otherwise), Taxes for such Expense Year or the Base Year, as the case may be, and the Tax Excess for such Expense Year shall be retroactively adjusted. If, as a result of such adjustment, it is determined that Tenant has under- or overpaid Tenant's Share of such Tax Excess, Tenant shall pay Landlord the amount of such underpayment, or receive a credit in the amount of such overpayment, with or against the Rent next coming due hereunder; provided, however, that if this Lease has expired or terminated and Tenant has vacated the Premises, Tenant shall pay Landlord the amount of such underpayment, or Landlord shall pay Tenant the amount of such overpayment (less any Rent due), within 30 days after such adjustment is made.

• **Charges for Which Tenant Is Directly Responsible**. Notwithstanding any contrary provision hereof, Tenant, promptly upon demand, shall pay (or if paid by Landlord, reimburse Landlord for) each of the following to the extent levied against Landlord or Landlord's property: (a) any tax based upon or measured by (i) the cost or value of Tenant's trade fixtures, equipment, furniture or other personal property, or (ii) the cost or value of the Leasehold Improvements (defined in Section 6.1 of this Lease) to the extent such cost or value exceeds that of a Building-standard build-out, as determined by Landlord (it being acknowledged and agreed that the Leasehold Improvements described in the Approved Space Plan will not exceed a Building-standard build-out in cost or value); (b) any rent tax, sales tax, service tax, transfer tax, value added tax, or other tax, assessment, fee, levy or charge (including any gross receipts tax) respecting the Rent or services described herein or otherwise respecting this Lease, the transaction described herein, or the possession, leasing, operation, management, maintenance, alteration, repair, use or occupancy by Tenant of any portion of the Property pursuant to this Lease.

• **Books and Records**. Within 180 days after receiving any Statement (the "**Review Notice Period**"), Tenant may give Landlord notice ("**Review Notice**") stating that Tenant elects to review Landlord's calculation of the Expense Excess for the Expense Year to which such Statement applies and identifying with reasonable specificity the records of Landlord reasonably relating to such matters that Tenant desires to review. Within a reasonable time after receiving a timely Review Notice (and, at Landlord's option, an executed confidentiality agreement as described below), Landlord shall deliver to Tenant, or make available for inspection at a location reasonably designated by Landlord, copies of such records. Within 90 days after such records are made available to Tenant (the "**Objection Period**"), Tenant may deliver to Landlord notice (an "**Objection Notice**") stating with reasonable specificity any objections to the Statement, in which event Landlord and Tenant shall work together in good faith to resolve Tenant's objections. Tenant may not deliver more than one Review Notice or more than one Objection Notice with respect to any Statement. If Tenant fails to give Landlord a Review Notice before the expiration of the Review Notice Period or fails to give Landlord an Objection Notice before the expiration of the Objection Period, Tenant shall be deemed to have approved the Statement. Notwithstanding any contrary provision hereof, Landlord shall not be required to deliver or make available to Tenant records relating to the Base Year, and Tenant may not object to Expenses or Taxes for the Base Year, in each case other than in connection with and concurrently with the first review for an Expense Year performed by Tenant pursuant to this Section 6 on the terms and conditions set forth herein. If Tenant retains an agent to review Landlord's records, the agent must be with a CPA firm licensed to do business in the state or commonwealth in which the Building is located and its fees shall not be contingent, in whole or in part, upon the outcome of the review. Tenant shall be responsible for all costs of such review; provided, however, that if Landlord and Tenant determine that the sum of Expenses and Taxes for the Expense Year in question was overstated by more than five percent (5%), Landlord, within 30 days after receiving paid invoices therefor from Tenant, shall reimburse Tenant for the reasonable amounts paid by Tenant to third parties in connection with such review (not to exceed $5,000.00). The records and any related information obtained from Landlord shall be treated as confidential, and as applicable only to the Premises, by Tenant, its auditors, consultants, and any other parties reviewing the same on behalf of Tenant (collectively, "**Tenant's Auditors**"). Before making any records available for review, Landlord may require Tenant and Tenant's Auditors to execute a reasonable confidentiality agreement, in which event Tenant shall cause the same to be executed and delivered to Landlord within 30 days after receiving it from Landlord, and if Tenant fails to do so, the Objection Period shall be reduced by one day for each day by which such execution and delivery follows the expiration of such 30-day period. Notwithstanding any contrary provision hereof, Tenant may not examine Landlord's records or dispute any Statement if any Rent remains unpaid past its due date. If, for any Expense Year, Landlord and Tenant determine that the sum of Tenant's Share of the actual Expense Excess is less or more than the amount reported, Tenant shall receive a credit in the amount of its overpayment, or pay Landlord the amount of its underpayment, against or with the Rent next due hereunder; provided, however, that if this Lease has expired or terminated and Tenant has vacated the Premises, Landlord shall pay Tenant the amount of its overpayment (less any Rent due), or Tenant shall pay Landlord the amount of its underpayment, within 30 days after such determination.

**EXHIBIT C**

**PLAYA DISTRICT, 6080 CENTER DRIVE**

**WORK LETTER**

As used in this **Exhibit C** (this "**Work Letter**"), the following terms shall have the following meanings: (i) "**Tenant Improvements**" means all improvements to be constructed in the Premises pursuant to this Work Letter; and (ii) "**Tenant Improvement Work**" means the construction of the Tenant Improvements, together with any related work (including demolition) that is necessary to construct the Tenant Improvements. All capitalized terms not otherwise defined herein shall have the meaning set forth in this Lease.

- **COST OF TENANT IMPROVEMENT WORK.**

a. **General.** Except as provided in Section 2.7 below, the Tenant Improvement Work shall be performed at Landlord's expense.

b. **Space Planning Allowance.** In addition, Tenant acknowledges that it has received a one-time allowance in the amount of **$5,813.10** (i.e. **$0.15** per rentable square foot of the Premises) to reimburse Tenant's reasonable costs of preparing the Approved Space Plan (defined below).

- **ARCHITECTURAL PLANS.**

c. **Selection of Architect**. Landlord shall retain Wolcott & Associates or another architect/space planner selected by Landlord and reasonably approved by Tenant (the "**Architect**") to prepare the Architectural Drawings (defined in Section 2.4 below).

d. **Approved Space Plan.** Landlord and Tenant acknowledge that they have approved the scope of work described in the Construction Pricing Plans, Reflected Ceiling Pricing Plans, Demolition Pricing Plans, and AV Summary for Pricing for the Premises containing seven (7) sheets and issued on September 28, 2020 (and last revised on November 11, 2020) by Wolcott Architecture, excluding any provision thereof that is inconsistent with any provision of this Work Letter (the "**Approved Space Plan**"). All materials, finishes, and mechanical, electrical and plumbing requirements contemplated by the Approved Space Plan shall be deemed to be Building-standard unless otherwise expressly provided therein.

e. **Additional Information.** Landlord and Tenant acknowledge that they have approved the Pricing Notes attached to this Lease as **Exhibit C-1**, which contain all information (including all interior and special finishes) that, when combined with the Approved Space Plan, will be sufficient to complete the Architectural Drawings, together with all information (including all electrical requirements, telephone requirements, special HVAC requirements, and plumbing requirements) that, when combined with the Approved Space Plan, will be sufficient to complete the Engineering Drawings (defined in Section 2.6 below) (collectively, the "**Approved Additional Information**").

f. **Architectural Drawings.** Landlord shall cause the Architect to prepare and deliver to Tenant the final architectural (and, if applicable, structural) working drawings for the Tenant Improvement Work that are in a form that (a) when combined with any programming information that is contained in the Approved Space Plan or the Approved Additional Information but not expressly incorporated into such working drawings, will be sufficient to enable the Contractor (defined in Section 3.1 below) and its subcontractors to bid on the Tenant Improvement Work, and (b) when combined with any Approved Engineering Drawings (defined in Section 2.6 below), will be sufficient to obtain the Permits (defined in Section 3.2 below) (the "**Architectural Drawings**"). The Architectural Drawings shall conform to the Approved Space Plan and the Approved Additional Information. The Architect's preparation and delivery of the Architectural Drawings shall occur within 15 business days after the mutual execution and delivery of this Lease. Tenant shall approve or disapprove the Architectural Drawings, by notice to Landlord, within 5 business days after receiving the same. If Tenant disapproves the Architectural Drawings, Tenant's notice of disapproval shall specify any revisions Tenant desires in the Architectural Drawings. After receiving such notice of disapproval, Landlord shall cause the Architect to revise the Architectural Drawings and resubmit them to Tenant, taking into account the reasons for Tenant's disapproval; provided, however, that Landlord shall not be required to cause the Architect to make any revision to the Architectural Drawings that (a) conflicts with Landlord's requirements for avoiding aesthetic, engineering or other conflicts with the design and function of the balance of the Building (collectively, the "**Landlord Requirements**"), (b) conflicts with the Approved Space Plan or would increase the cost of the Tenant Improvement Work (as reasonably estimated by Landlord) over the cost of the work described in the Approved Space Plan (as reasonably estimated by Landlord), or (c) is otherwise reasonably disapproved by Landlord. Such revision and resubmission shall occur within five (5) business days after the later of Landlord's receipt of Tenant's notice of disapproval or the mutual execution and delivery of this Lease if such revision is not material, and within such longer period of time as may be reasonably necessary (but not more than 15 business days after the later of such receipt or such mutual execution and delivery) if such revision is material. Such procedure shall be repeated as necessary until Tenant has approved the Architectural Drawings. Such approved Architectural Drawings shall be referred to herein as the "**Approved Architectural Drawings**."

g. **Tenant's Approval Deadline.** Tenant shall approve the Architectural Drawings pursuant to Section 2.4 above on or before Tenant's Approval Deadline (defined below). As used in this Work Letter, "**Tenant's Approval Deadline**" means the date occurring 30 business days after the mutual execution and delivery of this Lease; provided, however, that Tenant's Approval Deadline shall be extended by one (1) day for each day, if any, by which Tenant's approval of the Architectural Drawings pursuant to Section 2.4 above is delayed by any failure of Landlord to perform its obligations under this Section 2

h. **Engineering Drawings.** Landlord shall cause the engineering working drawings for the mechanical, electrical, plumbing, fire-alarm and fire sprinkler work in the Premises (the "**Engineering Drawings**") to (a) be prepared by one or more of the Architect, the Contractor, subcontractors and/or engineers or other consultants selected and/or retained by the Architect, the Contractor or Landlord, and (b) conform to the Approved Space Plan, the Approved Additional Information, and any then-existing Approved Architectural Drawings (collectively, the "**Engineering Requirements**"). Engineering Drawings that conform to the Engineering Requirements shall be referred to herein as "**Approved Engineering Drawings**". The Approved Architectural Drawings and the Approved Engineering Drawings are collectively referred to herein as the "**Approved Construction Drawings**."

i. **Revisions.** If Tenant requests any revision to the Approved Space Plan, the Approved Additional Information, the Approved Architectural Drawings, or the Approved Engineering Drawings (collectively, the "**Approved Plans**"), Landlord shall provide Tenant with notice approving or reasonably disapproving such revision, and, if Landlord approves such revision, Landlord shall deliver to Tenant notice of any resulting change in the estimated total cost associated with the Tenant Improvement Work (together with a copy of the revision itself, except in the case of the Approved Additional Information), whereupon Tenant, within 5 business days, shall notify Landlord whether it desires to proceed with such revision. If Landlord has begun performing the Tenant Improvement Work, then, in the absence of such authorization, Landlord shall have the option to continue such performance disregarding such revision. Without limitation, it shall be deemed reasonable for Landlord to disapprove any such proposed revision that conflicts with the Landlord Requirements. For purposes hereof, any change order affecting the Approved Plans shall be deemed a revision thereto. Tenant shall reimburse Landlord, within ten (10) business days following written demand, for any increase in the estimated total cost associated with the Tenant Improvement Work that results from any revision to the Approved Plans requested or made by Tenant, including any cost of preparing or reviewing such revision, and any applicable state sales or use tax thereon; provided, however, that Tenant shall not be responsible for any such increase that results from a change to the Common Areas or the Base Building (other than a portion of a Base Building System located in or exclusively serving the Premises) that (a) is not requested by Tenant, and (b) is required under Law as a result of a Tenant Improvement that (i) is requested by Tenant, (ii) is customary for general office use, and (iii) does not become subject to such Law by reason of a Tenant Delay (defined in Section 5.2 below). The amounts payable by Tenant hereunder constitute Rent payable pursuant to this Lease.

• **CONSTRUCTION.**

j. **Contractor**. Landlord shall retain a contractor of its choice (the "**Contractor**") to perform the Tenant Improvement Work. In addition, Landlord may select and/or approve of any subcontractors, mechanics and materialmen used in connection with the performance of the Tenant Improvement Work.

k. **Permits.** Landlord shall cause the Architect, the Contractor and/or other consultants of Landlord to submit the Approved Construction Drawings to the appropriate municipal authorities and otherwise apply for and obtain from such authorities all permits necessary for the Contractor to complete the Tenant Improvement Work (the "**Permits**").

l. **Construction**.

i. **Performance of Tenant Improvement Work**. Landlord shall cause the Contractor to perform the Tenant Improvement Work in accordance with the Approved Construction Drawings. Tenant and Landlord agree that Landlord is not responsible for and is not performing any alterations, repairs or improvements in the Premises with respect to any Lines, Unit, audio visual system, or security system, if any.

ii. **Contractor's Warranties**. Tenant waives all claims against Landlord relating to any defects in the Tenant Improvements; provided, however, that if, within 90 days after substantial completion of the Tenant Improvement Work, Tenant provides notice to Landlord of any non-latent defect in the Tenant Improvements, or if, within 345 days after substantial completion of the Tenant Improvement Work, Tenant provides notice to Landlord of any latent defect in the Tenant Improvements, then Landlord shall promptly cause such defect to be corrected.

• **SUITABILITY FOR TENANT'S USE.** Landlord shall (a) cause the Architectural Drawings and the Engineering Drawings, other than any Tenant Revision (defined below), to comply with Law, and (b) cause the Architect or the Contractor, as applicable, to use the Required Level of Care (defined below) to cause any Tenant Revision to comply with law; provided, however, that Landlord shall not be responsible for any violation of Law resulting from any particular use of the Premises (as distinguished from general office use) or any "assembly occupancy" of the Premises. As used herein, "**Tenant Revision**" means any revision to the Approved Plans made or requested by Tenant. As used herein, "**Required Level of Care**" means the level of care that reputable architects and engineers customarily use to cause architectural and engineering plans, drawings and specifications to comply with law where such plans, drawings and specifications are prepared for spaces in buildings comparable in quality to the Building. Except as provided above in this Section 4, Tenant shall be responsible for ensuring that the Approved Plans are suitable for Tenant's use of the Premises and comply with Law, and neither the preparation of any of the Approved Plans by the Architect or the Contractor nor Landlord's approval of the Approved Plans shall relieve Tenant from such responsibility. To the extent that either party (the "**Responsible Party**") is responsible under this Section 4 for causing the Approved Plans to comply with Law, the Responsible Party may contest any alleged violation of Law in good faith, including by seeking a waiver or deferment of compliance, asserting any defense allowed by law, and exercising any right of appeal (provided that the other party incurs no liability as a result of such contest and that, after completing such contest, the Responsible Party makes any modification to the Approved Plans or any alteration to the Premises that is necessary to comply with any final order or judgment).

• **COMPLETION.**

m. **Substantial Completion.** Subject to Section 5.2 below, the Tenant Improvement Work shall be deemed to be "**Substantially Complete**" on the later of (a) the date of completion of the Tenant Improvement Work in the Premises pursuant to the Approved Construction Drawings, with the exception of any details of construction, mechanical adjustment or any other similar matter the non-completion of which does not materially interfere with Tenant's use of the Premises ("**Punchlist Items**"), or (b) the date on which Landlord receives from the appropriate governmental authorities, with respect to the Tenant Improvement Work, all approvals necessary for the occupancy of the Premises. Following the Substantial Completion of the Tenant Improvement Work (as determined without giving effect to Section 5.2 below), Landlord and Tenant shall conduct a joint walkthrough of the Premises to identify Punchlist Items, and Landlord shall use commercially reasonable efforts to complete all Punchlist Items within 30 days after such Substantial Completion.

n. **Tenant Cooperation; Tenant Delay.** Tenant shall use reasonable efforts to cooperate with Landlord, the Architect, the Contractor, and Landlord's other consultants to complete all phases of the plans and specifications for the Tenant Improvement Work, obtain the Permits and complete the Tenant Improvement Work as soon as possible, and Tenant shall meet with Landlord, in accordance with a schedule determined by Landlord, to discuss the parties' progress. Without limiting the foregoing, if (i) the Tenant Improvements include the installation of electrical connections for furniture stations to be installed by Tenant, and/or (ii) any electrical or other portions of such furniture stations must be installed in order for Landlord to obtain any governmental approval required for occupancy of the Premises (collectively, the "**Furniture Stations Work**"), then (x) Tenant, upon 5 business days' notice from Landlord, shall promptly perform such Furniture Stations Work in accordance with Sections 6.2 and 6.3 of this Lease, and (y) during the period of Tenant's entry into the Premises for the purpose of performing such installation, all of Tenant's obligations under this Lease relating to the Premises shall apply, except for the obligation to pay Base Rent. In addition, without limiting the foregoing, if the Substantial Completion of the Tenant Improvement Work is actually delayed (a "**Tenant Delay**") as a result of (a) any failure of Tenant to approve the Architectural Drawings pursuant to Section 2.4 above on or before Tenant's Approval Deadline; (b) any failure of Tenant to timely approve any other matter requiring Tenant's approval; (c) any breach by Tenant of this Work Letter or this Lease; (d) any written request by Tenant for any revision to, or for Landlord's approval of any revision to, any portion of the Approved Plans (except to the extent such delay results from any failure of Landlord to perform its obligations hereunder); (e) Tenant's requirement for materials, components, finishes or improvements that are not available in a commercially reasonable time given the anticipated date of Substantial

Completion of the Tenant Improvement Work as set forth in this Work Letter; or (f) any other act or omission of Tenant or any of its agents, employees or representatives, then, notwithstanding any contrary provision of this Work Letter, except (other than in the case of the preceding clauses (a) and (b)) to the extent that Landlord fails to provide Tenant with notice (which notice, notwithstanding Section 23.1 of this Lease, may be given orally, by e-mail, or by any other method) of such Tenant Delay within three (3) business days after discovering it, and regardless of when the Tenant Improvement Work is actually Substantially Completed, the Tenant Improvement Work shall be deemed to be Substantially Completed on the date on which the Tenant Improvement Work would have been Substantially Completed if no such Tenant Delay had occurred. Notwithstanding the foregoing, Landlord shall not be required to tender possession of the Premises to Tenant before the Tenant Improvement Work has been Substantially Completed, as determined without giving effect to the preceding sentence.

- **MISCELLANEOUS.** Notwithstanding any contrary provision of this Work Letter, if a Default occurs before the Tenant Improvement Work is completed, Landlord's obligations under this Work Letter shall be excused until such Default is cured and Tenant shall be responsible for any resulting delay in the completion of the Tenant Improvement Work. This Work Letter shall not apply to any space other than the Premises.

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**EXHIBIT C-1**

**PLAYA DISTRICT, 6080 CENTER DRIVE**

**PRICING NOTES**

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**EXHIBIT D**

**PLAYA DISTRICT, 6080 CENTER DRIVE**

**CONFIRMATION LETTER**

_____________________, 20__

To: ________________
_______________________
_______________________
_______________________

Re: Office Lease (the "**Lease**") dated ______________, 20____, between BRE HH PROPERTY OWNER LLC, a Delaware limited liability company ("**Landlord**"), and MAGNITE, INC., a Delaware corporation ("**Tenant**"), concerning Suite 400 on the 4th floor, and Suite 500 on the 5 floor, of the building located at 6080 Center Drive, Los Angeles, California 90045

Lease ID: _____________________________
Business Unit Number: __________________

Dear _________________:

In accordance with the Lease, Tenant accepts possession of the Premises and confirms that the Delivery Date is _________________, the Commencement Date is _____________, and the Expiration Date is _______________.

Please acknowledge the foregoing by signing all 3 counterparts of this letter in the space provided below and returning 2 fully executed counterparts to my attention. Please note that, pursuant to Section 2.1 of the Lease, Tenant is required to execute and return (or, by notice to Landlord, reasonably object to) this letter within 10 business days after receiving it.

"Landlord":

BRE HH PROPERTY OWNER LLC, a Delaware limited liability company

By: ________________________________
Name: __________________________
Title: ___________________________

Agreed and Accepted as of ____________, 20__.

"Tenant":

Magnite, inc., a Delaware corporation

By:_________________________
Name: _____________________
Title: _____________________

**EXHIBIT E**

**PLAYA DISTRICT, 6080 CENTER DRIVE**

**RULES AND REGULATIONS**

Tenant shall comply with the following rules and regulations (as modified or supplemented from time to time, the "**Rules and Regulations**"). Landlord shall not be responsible to Tenant for the nonperformance of any of the Rules and Regulations by any other tenants or occupants of the Project. In the event of any conflict between the Rules and Regulations and the other provisions of this Lease, the latter shall control.

1. Tenant shall not alter any lock or install any new or additional locks or bolts on any doors or windows of the Premises or the Building without obtaining Landlord's prior consent. Landlord shall have the right at all times to retain and use keys or other access codes or devices to all locks within and into the Premises. Tenant shall bear the cost of any lock changes or repairs required by Tenant. Two keys will be furnished by Landlord for the Premises, and any additional keys required by Tenant must be obtained from Landlord at a reasonable cost to be established by Landlord. Upon the termination of this Lease, Tenant shall restore to Landlord all keys of stores, offices and toilet rooms furnished to or otherwise procured by Tenant, and if any such keys are lost, Tenant shall pay Landlord the cost of replacing them or of changing the applicable locks if Landlord deems such changes necessary.

2. All doors opening to public corridors shall be kept closed at all times except for normal ingress and egress to the Premises.

3. Landlord may close and keep locked all entrance and exit doors of the Building during such hours as are customary for Comparable Buildings. Tenant shall cause its employees, agents, contractors, invitees and licensees who use Building and corridor doors during such hours to securely close and lock them after such use. Any person entering or leaving the Building during such hours, or when the Building doors are otherwise locked, may be required to sign the Building register, and access to the Building may be refused unless such person has proper identification or has a previously arranged access pass. Landlord will furnish passes to persons for whom Tenant requests them. Tenant shall be responsible for all persons for whom Tenant requests passes and shall be liable to Landlord for all acts of such persons. Landlord and its agents shall not be liable for damages for any error with regard to the admission or exclusion of any person to or from the Building. In case of invasion, mob, riot, public excitement or other commotion, Landlord may prevent access to the Building or the Project during the continuance thereof by any means it deems appropriate for the safety and protection of life and property.

4. No furniture, freight or equipment shall be brought into the Building without prior notice to Landlord. All moving activity into or out of the Building shall be scheduled with Landlord and done only at such time and in such manner as Landlord designates. Landlord may prescribe the weight, size and position of all safes and other heavy property brought into the Building and also the times and manner of moving the same in and out of the Building. Safes and other heavy objects shall, if considered necessary by Landlord, stand on supports of such thickness as is necessary to properly distribute the weight. Landlord will not be responsible for loss of or damage to any such safe or property. Any damage to the Building, its contents, occupants or invitees resulting from Tenant's moving or maintaining any such safe or other heavy property shall be the sole responsibility and expense of Tenant (notwithstanding Sections 6 and 9.4 of this Lease).

5. No furniture, packages, supplies, equipment or merchandise will be received in the Building or carried up or down in the elevators, except between such hours, in such specific elevator and by such personnel as shall be designated by Landlord.

6. No sign, advertisement, notice or handbill shall be exhibited, distributed, painted or affixed by Tenant on any part of the Premises or the Building without Landlord's prior consent. Tenant shall not disturb, solicit, peddle or canvass any occupant of the Project.

7. The toilet rooms, urinals, wash bowls and other apparatus, plumbing, fixtures and appliances shall not be used for any purpose other than that for which they were constructed, and no foreign substance shall be thrown or placed therein. Notwithstanding Sections 6 and 9.4 of this Lease, Tenant shall bear the expense of any breakage, stoppage or damage resulting from any violation of this rule by Tenant or any of its employees, agents, contractors, invitees or licensees.

8. Tenant shall not overload the floor of the Premises, or mark, drive nails or screws or drill into the partitions, woodwork or (other than by reasonable methods in order to hang customary lightweight office decorations such as pictures and whiteboards) drywall of the Premises, or otherwise

deface the Premises, without Landlord's prior consent. Tenant shall not purchase bottled water, ice, towel, linen, maintenance or other like services from any person not approved by Landlord.

9. Except for vending machines intended for the sole use of Tenant's employees and invitees, no vending machine or machines other than fractional horsepower office machines shall be installed, maintained or operated in the Premises without Landlord's prior consent.

10. Tenant shall not, without Landlord's prior consent, use, store, install, disturb, spill, remove, release or dispose of, within or about the Premises or any other portion of the Project, any asbestos-containing materials, any solid, liquid or gaseous material now or subsequently considered toxic or hazardous under the provisions of 42 U.S.C. Section 9601 et seq. or any other applicable environmental Law, or any inflammable, explosive or dangerous fluid or substance; provided, however, that Tenant may use, store and dispose of such substances in such amounts as are typically found in similar premises used for general office purposes provided that such use, storage and disposal does not damage any part of the Premises, Building or Project and is performed in a safe manner and in accordance with all Laws. Tenant shall comply with all Laws pertaining to and governing the use of such materials by Tenant and shall remain solely liable for the costs of abatement and removal. No burning candle or other open flame shall be ignited or kept by Tenant in or about the Premises, Building or Project.

11. Tenant shall not, without Landlord's prior consent, use any method of heating or air conditioning other than that supplied by Landlord.

12. Tenant shall not use or keep any foul or noxious gas or substance in or on the Premises, or occupy or use the Premises in a manner offensive or objectionable to Landlord or other occupants of the Project by reason of noise, odors or vibrations, or interfere with other occupants or those having business therein, whether by the use of any musical instrument, loudspeaker or otherwise. Tenant shall not throw anything out of doors, windows or skylights or down passageways.

13. Except as permitted under <u>Section 12</u> of **<u>Exhibit F</u>** and any Pet Agreement entered into pursuant to Section 12.2(l) of **<u>Exhibit F</u>**, Tenant shall not bring into or keep within the Project, the Building or the Premises any animals (other than service animals), birds, aquariums, or, except in areas designated by Landlord, bicycles or other vehicles.

14. No cooking shall be done in the Premises, nor shall the Premises be used for lodging, for living quarters or sleeping apartments, or for any improper, objectionable, illegal or immoral purposes. Notwithstanding the foregoing, Underwriters' laboratory-approved equipment and microwave ovens may be used in the Premises for heating food and brewing coffee, tea, hot chocolate and similar beverages for employees and invitees, provided that such use complies with all Laws.

15. The Premises shall not be used for manufacturing or for the storage of merchandise except to the extent such storage may be incidental to the Permitted Use. Tenant shall not occupy the Premises as an office for a messenger-type operation or dispatch office, public stenographer or typist, or for the manufacture or sale of liquor, narcotics or tobacco, or as a medical office, a barber or manicure shop, an employment bureau, or a business that is materially involved in the cannabis industry without Landlord's prior consent.

16. Landlord may exclude from the Project any person who, in Landlord's judgment, is intoxicated or under the influence of liquor or drugs, or who violates any of these Rules and Regulations.

17. Tenant shall not loiter in or on the entrances, corridors, sidewalks, lobbies, courts, halls, stairways, elevators, vestibules or any Common Areas for the purpose of smoking tobacco products or for any other purpose, nor in any way obstruct such areas, and shall use them only as a means of ingress and egress for the Premises. Tenant shall not permit smoke from the Premises to emanate into the Common Areas or any other part of the Building. Landlord shall have the right to designate the Building (including the Premises) as a non-smoking Building. Tenant must comply with any applicable state or local "**No Smoking**" ordinance.

18. Tenant shall not waste electricity, water or air conditioning, shall cooperate with Landlord to ensure the most effective operation of the Building's heating and air conditioning system, and shall not attempt to adjust any controls. Tenant shall install and use in the Premises only ENERGY STAR rated equipment, where available. Tenant shall use recycled paper in the Premises to the extent consistent with its business requirements. Tenant shall not use more than its proportionate share of telephone lines and other telecommunication facilities available to service the Building.

19. Tenant shall store all its trash and garbage inside the Premises. No material shall be placed in the trash or garbage receptacles if, under Law, it may not be disposed of in the ordinary and

customary manner of disposing of trash and garbage in the vicinity of the Building. All trash, garbage and refuse disposal shall be made only through entryways and elevators provided for such purposes at such times as Landlord shall designate. Tenant shall comply with Landlord's recycling program, if any.

20. Tenant shall comply with all safety, security, fire protection and evacuation procedures, programs and regulations established or required by Landlord, any governmental agency or Law.

21. The work of cleaning personnel shall not be hindered by Tenant after 5:30 p.m., and cleaning work may be done at any time when the offices are vacant. Windows, doors and fixtures may be cleaned at any time. Tenant shall provide adequate waste and rubbish receptacles to prevent unreasonable hardship to the cleaning service. Any persons employed by Tenant to do janitorial work (a) shall be subject to Landlord's prior consent; (b) shall not, in Landlord's reasonable judgment, disturb labor harmony with any workforce or trades engaged in performing other work or services at the Project; and (c) while in the Building and outside of the Premises, shall be subject to the control and direction of the Building manager (but not as an agent or employee of such manager or Landlord), and Tenant shall be responsible for all acts of such persons.

22. No awning or other projection shall be attached to the outside walls of the Building without Landlord's prior consent. Other than Landlord's Building-standard window coverings, no curtains, blinds, shades or screens shall be attached to or hung in, or used in connection with, any window or door of the Premises. All electrical ceiling fixtures hung in the Premises or spaces along the perimeter of the Building must be fluorescent and/or of a quality, type, design and a warm white bulb color approved in advance by Landlord. Neither the interior nor exterior of any windows shall be coated or otherwise sunscreened without Landlord's prior consent. Tenant shall abide by Landlord's regulations concerning the opening and closing of window coverings.

23. Tenant shall not obstruct any sashes, sash doors, skylights, windows or doors that reflect or admit light or air into the halls, passageways or other public places in the Building, nor shall Tenant place any bottles, parcels or other articles on the windowsills.

24. Tenant must comply with requests by Landlord concerning the informing of their employees of items of importance to the Landlord.

25. All office equipment of an electrical or mechanical nature shall be placed by Tenant in the Premises in settings approved by Landlord, to absorb or prevent any vibration, noise or annoyance.

26. Tenant shall not use any hand trucks except those equipped with rubber tires and rubber side guards.

27. No auction, liquidation, fire sale, going-out-of-business or bankruptcy sale shall be conducted in the Premises without Landlord's prior consent.

28. Tenant shall not (a) use any name of the Building or Project for any purpose other than to identify the address of the business to be conducted by Tenant in the Premises, (b) use any image of the Building or Project in any advertising or other publicity without Landlord's prior consent, or (c) use any name or image of the Building or Project in any manner that would infringe any trade name, trade mark, copyright or similar right of Landlord or any third party in or to any name or image of the Building or Project. Without limiting the foregoing, Tenant shall not, in any signage displayed at the Building or Project, on its website, or in any other advertising or promotional material, identify, describe, or refer to itself or its business as "[Tenant's name or trade name] [name of Building or Project]" or [Tenant's name or trade name] At [name of Building or Project]".

29. Landlord has no obligation to allow any particular telecommunication service provider to have access to the Building or to the Premises. If Landlord permits access, Landlord may condition the access upon the payment to Landlord by the service provider of fees assessed by Landlord in Landlord's sole discretion.

Landlord may from time to time modify or supplement these Rules and Regulations in a manner that, in Landlord's reasonable judgment, is appropriate for the management, safety, care and cleanliness of the Premises, the Building, the Common Areas and the Project, for the preservation of good order therein, and for the health or convenience of other occupants and tenants thereof (including through the adoption of rules based upon applicable guidelines and recommendations of the United States Centers for Disease Control and Prevention), provided that no such modification or supplement shall materially reduce Tenant's rights or materially increase Tenant's obligations hereunder unless such changes are made to comply with government or public health recommendations to promote the health and safety of tenants, employees and visitors to the Building. Landlord may waive any of these Rules and Regulations for the benefit of any tenant, but no such waiver shall be construed as a waiver of such Rule and Regulation in favor of any other tenant nor prevent Landlord from thereafter enforcing such Rule and Regulation against any tenant. Notwithstanding the foregoing, no rule that is added to the initial Rules and Regulations shall be enforced against Tenant in a manner that unreasonably discriminates in favor of any other similarly situated tenant.

## EXHIBIT F

## PLAYA DISTRICT, 6080 CENTER DRIVE

## ADDITIONAL PROVISIONS

- **PARKING**. Tenant may park in the Building's parking facilities (the "**Parking Facility**"), in common with other tenants of the Building, upon the following terms and conditions. Tenant shall not use more than the number of unreserved and/or reserved parking spaces set forth in Section 1.8 of this Lease. Tenant shall pay Landlord, in accordance with Section 3 of this Lease, any fees for the parking spaces described in Section 1.8 of this Lease. Tenant shall comply with all rules and regulations reasonably established by Landlord from time to time for the orderly operation and use of the Parking Facility, including any sticker or other identification system and the prohibition of vehicle repair and maintenance activities in the Parking Facility. Landlord may, in its discretion, allocate and assign parking passes among Tenant and the other tenants in the Building provided that the number of parking spaces available for use by Tenant as described in Section 1.8 of this Lease is not diminished. Tenant's use of the Parking Facility shall be at Tenant's sole risk, and Landlord shall have no liability for any personal injury or damage to or theft of any vehicles or other property occurring in the Parking Facility or otherwise in connection with any use of the Parking Facility by Tenant or its employees or invitees, except to the extent resulting from any negligence or willful misconduct of Landlord or its agents. Landlord may alter the size, configuration, design, layout or any other aspect of the Parking Facility, and, in connection therewith, temporarily deny or restrict access to the Parking Facility, without abatement of Rent or liability to Tenant. Landlord may delegate its responsibilities hereunder to a parking operator, in which case (i) such parking operator shall have all the rights of control reserved herein by Landlord, (ii) Tenant shall enter into a parking agreement with such parking operator, (iii) Tenant shall pay such parking operator, rather than Landlord, any charge described in Section 1.8 of this Lease for the parking spaces, and (iv) Landlord shall have no liability for claims arising through acts or omissions of such parking operator except to the extent caused by Landlord's negligence or willful misconduct. Tenant's parking rights under this Section 1 are solely for the benefit of Tenant's employees and invitees and such rights may not be transferred without Landlord's prior consent, except pursuant to a Transfer permitted under Section 13 of this Lease. For the avoidance of doubt, and except as provided in Section 1.8.5 of this Lease, nothing herein shall be deemed to limit Landlord's right to charge visitors a fee to use any parking spaces other than those described in Sections 1.8.1, 1.8.2 and 1.8.3 of this Lease.

- **CALIFORNIA CIVIL CODE SECTION 1938**. Pursuant to California Civil Code § 1938(a), Landlord hereby states that the Premises have not undergone inspection by a Certified Access Specialist (CASp) (defined in California Civil Code §55.52). Accordingly, pursuant to California Civil Code § 1938(e), Landlord hereby further states as follows:

  > A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

  In accordance with the foregoing, Landlord and Tenant agree that if Tenant obtains a CASp inspection of the Premises, then Tenant shall pay (i) the fee for such inspection, and (ii) responsibility for making any repairs necessary to correct violations of construction-related accessibility standards within the Premises shall be allocated as provided in this Lease.

- **PROHIBITED USES**. The uses prohibited under this Lease shall include, without limitation, use of the Premises or a portion thereof for (i) offices of any agency or bureau of the United States or any state or political subdivision thereof; (ii) offices or agencies of any foreign governmental or political subdivision thereof; (iii) offices of any health care professionals or service organization that treat patients on site; (iv) schools or other training facilities which are not ancillary to corporate, executive or professional office use; (v) retail or restaurant uses; (vi) communications firms that broadcast from the Premises, such as radio and/or television stations, or (vii) an executive suites or co-working subleasing or licensing business or operation.

- **LETTER OF CREDIT**.

a. **General Provisions**. Not later than two (2) business days after the mutual execution and delivery of this Lease, Tenant shall deliver to Landlord, as collateral for Tenant's performance of its obligations under this Lease, a standby, unconditional, irrevocable, transferable letter of credit (the "**Letter of Credit**") that (a) is substantially in the form of **Exhibit H** (or another form approved by Landlord in its sole and absolute discretion), (b) is in the amount of **$736,807.26** (as the same may be reduced pursuant to the terms of Section 4.6 below) (the "**Letter of Credit Amount**"), (c) names Landlord as beneficiary, and (d) is issued (or confirmed) by a financial institution that meets the Minimum Financial Requirement (defined below) and is otherwise acceptable to Landlord in its reasonable discretion. For purposes hereof, a financial institution shall be deemed to meet the "**Minimum Financial Requirement**" at a particular time only if such financial institution then (i) has not been placed into receivership by the FDIC, and (ii) has a financial strength that, in Landlord's good faith judgment, is not less than that which is then generally required by Landlord and its Affiliates as a condition to accepting letters of credit in support of new leases. Landlord hereby approves of Silicon Valley Bank as the issuer of the initial Letter of Credit. Tenant shall cause the Letter of Credit to be continuously maintained in effect (whether through replacement, renewal or extension) in the Letter of Credit Amount through the date (the "**Final LC Expiration Date**") occurring 45 days after the scheduled expiration date of the Term, as it may be extended from time to time.

b. **Replacement of Letter of Credit**.

i. If the Letter of Credit held by Landlord expires or terminates before the Final LC Expiration Date (whether by reason of a stated expiration date or a notice of termination or non-renewal given by the issuing bank), Tenant shall deliver to Landlord, not later than 45 days before such expiration or termination, a new Letter of Credit, or a certificate of renewal or extension of the Letter of Credit held by Landlord, in an amount not less than the Letter of Credit Amount (less the amount of any unapplied Proceeds (defined in Section 4.5 below) then held by Landlord) and otherwise satisfying all of the requirements set forth in the first sentence of Section 4.1 above (the "**LC Requirements**").

ii. If, at any time before the Final LC Expiration Date, the financial institution that issued (or confirmed) the Letter of Credit held by Landlord does not meet the Minimum Financial Requirement, then Tenant, within fifteen (15) business days after Landlord's demand, shall deliver to Landlord, in replacement of such Letter of Credit, a new Letter of Credit that (i) is issued (or confirmed) by a financial institution that meets the Minimum Financial Requirement and is otherwise acceptable to Landlord in its reasonable discretion, and (ii) is in an amount not less than the Letter of Credit Amount (less the amount of any unapplied Proceeds then held by Landlord) and otherwise satisfies all of the LC Requirements, whereupon Landlord shall return to Tenant the Letter of Credit that is being replaced.

iii. If, at any time before the Final LC Expiration Date, the amount of the Letter of Credit held by Landlord is less than the Letter of Credit Amount (less the amount of any unapplied Proceeds then held by Landlord), then Tenant, within five (5) business days after Landlord's demand, shall either (i) deliver to Landlord an additional Letter of Credit that is in an amount not less than the amount of such shortfall and otherwise satisfies all of the LC Requirements, or (ii) deliver to Landlord, in replacement of the Letter of Credit held by Landlord, a new Letter of Credit that is in an amount not less than the Letter of Credit Amount (less the amount of any unapplied Proceeds then held by Landlord) and otherwise satisfies all of the LC Requirements (whereupon, in the case of this clause (ii), Landlord shall return to Tenant the Letter of Credit that is being replaced).

c. **Drawings Under Letter of Credit; Use of Proceeds**. If Tenant breaches any provision of this Lease (including any provision of Section 4.2 above), Landlord, without limiting its remedies and without notice to Tenant, may draw upon the Letter of Credit and either (a) use all or part of the proceeds of the Letter of Credit ("**Proceeds**") to cure such breach and compensate Landlord for any loss or damage caused by such breach, including any damage for which recovery may be made under California Civil Code § 1951.2, or (b) hold the Proceeds, without segregation, until they are applied as provided in the preceding clause (a) or paid to Tenant pursuant to Section 4.4 below.

d. **Payment of Unapplied Proceeds to Tenant**. Upon receiving any new or additional Letter of Credit (or any certificate of renewal or extension of a Letter of Credit) satisfying the applicable requirements of Section 4.2 above, Landlord shall pay to Tenant any unapplied Proceeds then held by Landlord, except to the extent, if any, that the amount of the Letter of Credit then held by Landlord is less than the Letter of Credit Amount. In addition, any unapplied Proceeds shall be paid to Tenant within 30 days after the latest to occur of (a) the expiration of the Term, or (b) Tenant's surrender of the Premises as required under this Lease.

e. **Nature of Letter of Credit and Proceeds**. Landlord and Tenant acknowledge and agree that, subject to the terms of this Section 4, neither the Letter of Credit nor any Proceeds are (i) the property of Tenant or its bankruptcy estate, or (ii) intended to serve as, or in lieu of, a security deposit.

f. **Reduction in Letter of Credit Amount**. Provided that no monetary Default or material non-monetary Default has occurred during the 12 month period immediately preceding the effective date of any reduction of the Letter of Credit (the "**LC Reduction Condition**"), Tenant may reduce the Letter of Credit Amount so that the reduced Letter of Credit Amounts will be as follows: (a) **$491,204.84** effective as of the 3rd anniversary of the Commencement Date, and (b) **$245,602.42** effective as of the 4th anniversary of the Commencement Date. If Tenant is not entitled to reduce the Letter of Credit Amount as of a particular reduction effective date due to Tenant's failure to satisfy the LC Reduction Condition described above, then any subsequent reduction to which Tenant is entitled hereunder shall be reduced by the amount of the reduction Tenant would have been entitled to had Tenant satisfied the LC Reduction Condition necessary for such earlier reduction. Any reduction in the Letter of Credit Amount shall be accomplished by Tenant providing Landlord with a substitute letter of credit in the reduced amount or an amendment to the existing Letter of Credit reflecting the reduced amount.

- **EXTENSION OPTION**.

5.1. **Grant of Option; Conditions.** Tenant shall have the right (the "**Extension Option**") to extend the Term, with respect to the entire Premises only (subject to Sections 5.6 and 6.2.1 below), for one (1) additional period of five (5) years beginning on the day immediately following the Expiration Date and ending on the 5th anniversary of the Expiration Date (the "**Extension Term**"), if:

(a) not less than 10 and not more than 20 full calendar months before the Expiration Date, Tenant delivers written notice to Landlord (the "**Extension Notice**") electing to exercise the Extension Option;

(b) no Default exists when Tenant delivers the Extension Notice;

(c) not more than 33% of the Premises (other than any Excluded Space (defined in Section 5.6.1 below)) is sublet (other than pursuant to Permitted Transer) when Tenant delivers the Extension Notice; and

(d) this Lease has not been assigned (other than pursuant to a Permitted Transfer) before Tenant delivers the Extension Notice.

5.2. **Terms Applicable to Extension Term.**

A. During the Extension Term, (a) the Base Rent rate per rentable square foot shall be equal to the Prevailing Market (defined in Section 5.5 below) rate per rentable square foot; (b) Base Rent shall increase, if at all, in accordance with the increases assumed in the determination of Prevailing Market rate; and (c) Base Rent shall be payable in monthly installments in accordance with the terms and conditions of this Lease.

B. During the Extension Term Tenant shall pay Tenant's Share of Expenses and Taxes for the Premises in accordance with this Lease.

5.3. **Procedure for Determining Prevailing Market.**

A. Initial Procedure. Within 30 days after receiving the Extension Notice, Landlord shall give Tenant written notice ("**Landlord's Notice**") stating Landlord's estimate of the Prevailing Market rate for the Extension Term. Tenant, within 15 days thereafter, shall give Landlord either (i) written notice ("**Tenant's Binding Notice**") accepting Landlord's estimate of the Prevailing Market rate for the Extension Term stated in Landlord's Notice, or (ii) written notice ("**Tenant's Rejection Notice**") rejecting such estimate. If Tenant gives Landlord a Tenant's Rejection Notice, Landlord and Tenant shall work together in good faith to agree in writing upon the Prevailing Market rate for the Extension Term. If, within 30 days after delivery of a Tenant's Rejection Notice, the parties fail to agree in writing upon the Prevailing Market rate, the provisions of Section 5.3.B below shall apply.

B. Dispute Resolution Procedure.

1. If, within 30 days after delivery of a Tenant's Rejection Notice, the parties fail to agree in writing upon the Prevailing Market rate, Landlord and Tenant, within five (5) days thereafter, shall each simultaneously submit to the other, in a sealed envelope, its good faith estimate of the Prevailing Market rate for the Extension Term (collectively, the "**Estimates**"). Within seven (7) days after the exchange of Estimates, Landlord and Tenant shall each select a broker or agent (an "**Agent**") to determine which of the two Estimates most closely reflects the Prevailing Market rate for the Extension Term. Each Agent so selected shall be licensed as a real estate broker or agent and in good standing with the California Department of Real Estate, and shall have had at least five (5) years' experience within the previous 10 years as a commercial real estate broker or agent working in the Playa Vista market, with working knowledge of current rental rates and leasing practices relating to buildings similar to the Building.

2. If each party selects an Agent in accordance with Section 5.3.B.1 above, the parties shall cause their respective Agents to work together in good faith to agree upon which of the two Estimates most closely reflects the Prevailing Market rate for the Extension Term. The Estimate, if any, so agreed upon by such Agents shall be final and binding on both parties as the Prevailing Market rate for the Extension Term and may be entered in a court of competent jurisdiction. If the Agents fail to reach such agreement within 20 days after their selection, then, within 10 days after the expiration of such 20-day period, the parties shall instruct the Agents to select a third Agent meeting the above criteria (and if the Agents fail to agree upon such third Agent within 10 days after being so instructed, either party may cause a court of competent jurisdiction to select such third Agent). Promptly upon selection of such third Agent, the parties shall instruct such Agent (or, if only one of the parties has selected an Agent within the 7-day period described above, then promptly after the expiration of such 7-day period the parties shall instruct such Agent) to determine, as soon as practicable but in any case within 14 days after his selection, which of the two Estimates most closely reflects the Prevailing Market rate. Such determination by such Agent (the "**Referee**") shall be final and binding on both parties as the Prevailing Market rate for the Extension Term and may be entered in a court of competent jurisdiction. For the avoidance of doubt, the Referee shall not substitute any calculation of the Prevailing Market rate for the two Estimates, but install shall instead determine which of the two Estimates most closely reflects the Prevailing Market rate. If the Referee believes that expert advice would materially assist him, he may retain one or more qualified persons to provide such expert advice. The parties shall share equally in the costs of the Referee and of any experts retained by the Referee. Any fees of any other broker, agent, counsel or expert engaged by Landlord or Tenant shall be borne by the party retaining such broker, agent, counsel or expert.

C. Adjustment. If the Prevailing Market rate has not been determined by the commencement date of the Extension Term, Tenant shall pay Base Rent for the Extension Term upon the terms and conditions in effect during the last month ending on or before the Expiration Date until such time as the Prevailing Market rate has been determined. Upon such determination, the Base Rent for the Extension Term shall be retroactively adjusted. If such adjustment results in an under- or overpayment of Base Rent by Tenant, Tenant shall pay Landlord the amount of such underpayment, or receive a credit in the amount of such overpayment, with or against the next Base Rent due under this Lease.

5.4. **Extension Amendment.** If Tenant is entitled to and properly exercises its Extension Option, and if the Prevailing Market rate for the Extension Term is determined in accordance with Section 5.3 above, Landlord, within a reasonable time thereafter, shall prepare and deliver to Tenant an amendment (the "**Extension Amendment**") reflecting changes in the Base Rent, the term of this Lease, the expiration date of this Lease, and other appropriate terms in accordance with this Section 5, and Tenant shall execute and return (or provide Landlord with reasonable objections to) the Extension Amendment within 15 days after receiving it. Notwithstanding the foregoing, upon determination of the Prevailing Market rate for the Extension Term in accordance with Section 5.3 above, an otherwise valid exercise of the Extension Option shall be fully effective whether or not the Extension Amendment is executed.

5.5. **Definition of Prevailing Market.** For purposes of this Extension Option, "**Prevailing Market**" shall mean the arms-length, fair-market, annual rental rate per rentable square foot under leases and amendments entered into on or about the date on which the Prevailing Market is being determined hereunder for space comparable to the Premises in the Project. The determination of Prevailing Market shall take into account (i) any material economic differences between the terms of this Lease and any comparison lease or amendment, such as rent abatements, construction costs and other concessions, and the manner, if any, in which the landlord under any such lease is reimbursed for operating expenses and taxes; (ii) any material differences in configuration or condition between the Premises and any comparison space, including any cost that would have to be incurred in order to make the configuration or condition of the comparison space similar to that of the Premises; and (iii) any reasonably anticipated changes in the Prevailing Market rate from the time such Prevailing Market rate is being determined and the time such Prevailing Market rate will become effective under this Lease.

5.6. **Partial Extension.**

5.6.1 Notwithstanding any contrary provision of this Section 5, Tenant may exclude any portion of the Premises from Tenant's exercise of the Extension Option (an "**Exclusion**"), but only if:

i. the Exension Notice describes such Exclusion, including by reasonably describing, by reference to size, location and outline, the portion of the Premises that Tenant proposes to so exclude (the "**Excluded Space**");

ii. the balance of the Premises either (i) contains Suite 500, or (ii) otherwise contains at least 11,673 rentable square feet (as determined in accordance with the BOMA Standard); and

iii. the Excluded Space, in Landlord's good faith judgment, can be separated from the balance of the Premises by means of reasonable alterations without causing any portion of the Excluded Space or the balance of the Premises to (i) lack reasonable access to multi-tenant corridors or the elevator lobby, (ii) violate any Laws, or (iii) be unmarketable in any other material respect.

5.6.2 If Tenant validly exercises the Extension Option and an Exclusion occurs in accordance with Section 5.6.1 above, then:

i. for the avoidance of doubt, the provisions of Sections 5.2, 5.3 and 5.5 above shall not apply to the Excluded Space;

ii. for the avoidance of doubt, the Term shall expire in accordance with the terms of the Lease, with respect to the Excluded Space only, on the Expiration Date as if Tenant had not exercised the Extension Option;

iii. from and after the date Tenant delivers the Extension Notice to Landlord, (i) any unexercised right or option of Tenant to expand the Premises (whether in the form of an expansion option, right of first offer or refusal, or any other similar right), and any outstanding tenant improvement allowance or other allowance that relates to the Excluded Space and has not been claimed and properly used by Tenant in accordance with this Lease as of such date, shall immediately be deemed terminated and no longer available or of any further force or effect, and (ii) Tenant shall not sublease all or any portion of the Excluded Space for any period following the Expiration Date;

iv. if Landlord, using Building-standard materials and finishes, performs any alterations to the Premises or the Building (including, without limitation, the installation of any new utility meters, demising walls, multi-tenant corridors or entry doors) that, in Landlord's good faith judgment, are necessary to separate the Excluded Space Space from the balance of the Premises or to prevent such separation or the Exclusion from causing any portion of the Excluded Space or the Premises to (i) lack reasonable access to multi-tenant corridors or the elevator lobby, (ii) violate any Law, or (ii) be unmarketable in any other respect, then Tenant shall reimburse Landlord for the entire cost thereof (plus a construction management fee in the amount of 3% of such cost) within 10 days after receiving written demand; and

v. for the avoidance of doubt, the Extension Amendment shall reflect changes in the rentable square footage, Base Rent, Tenant's Share and other appropriate terms resulting from the Exclusion (provided, however, that in no event shall the Letter of Credit Amount be modified as a result of the Exclusion).

- **RIGHT OF FIRST OFFER**.

g. **Grant of Option; Conditions**.

i. Subject to the terms of this Section 6, Tenant shall have a right of first offer ("**Right of First Offer**") with respect to each portion of the third ($3^{rd}$), fifth ($5^{th}$) and sixth ($6^{th}$) floors of the Building that is not leased by Tenant (each, a "**Potential Offering Space**"). Tenant's Right of First Offer shall be exercised as follows: At any time after Landlord has determined that a Potential Offering Space has become Available (defined below), but before leasing such Potential Offering Space to a third party, Landlord, subject to the terms of this Section 6, shall provide Tenant with a written notice (for purposes of this Section 6, an "**Advice**") advising Tenant of the material terms on which Landlord is prepared to lease such Potential Offering Space (sometimes referred to herein as an "**Offering Space**") to Tenant, which terms shall be consistent with Section 6.2 below. For purposes hereof, a Potential Offering Space shall be deemed to become "**Available**" as follows: (i) if such Potential Offering Space is not leased to a third party as of the date of mutual execution and delivery of this Lease, such Potential Offering Space shall be deemed to become Available when Landlord has located a prospective tenant that may be interested in leasing such Potential Offering Space; and (ii) if such Potential Offering Space is leased to a third party tenant as of the date of mutual execution and delivery of this Lease, such Potential Offering Space shall be deemed to become Available when Landlord has determined that such third-party tenant, and any occupant of such Potential Offering Space claiming under such third-party tenant, will not extend or renew the term of its lease, or enter into a new lease, for such Potential Offering Space. Upon receiving an Advice, Tenant may lease the Offering Space, in its entirety only, on the terms set forth in the Advice, by delivering to Landlord a written notice (for purposes of this Section 6, a "**Notice of Exercise**") within five (5) business days after receiving the Advice.

ii. If Tenant receives an Advice but does not deliver a Notice of Exercise within the period of time required under Section 6.1.1 above, Landlord may lease the Offering Space to any party on the terms set forth in the Advice or on any other terms that are not substantially more favorable to the tenant than those set forth in the Advice; provided, however, that if Landlord, without first leasing the Offering Space as permitted under Section 6.1.3 below, proposes to lease the Offering Space to a prospective tenant on material terms that are substantially more favorable to the tenant than those set forth in the Advice, then Section 6.1.1 above shall apply again as if Landlord had not provided the Advice to Tenant. For purposes hereof, the material terms offered to another party (the "**Proposed Terms**") shall not be deemed to be substantially more favorable than those set forth in an Advice unless the annualized net present value of the rent for the Offering Space as provided under the Proposed Terms is less than 92.5% of the annualized net present value of the rent for the Offering Space as provided under the Advice, as determined in good faith by Landlord using a discount rate selected in good faith by Landlord and taking into account all proposed material terms relating to the Offering Space, including the length of the term, the net rent, any base year, any tax or expense escalation or other financial escalation, and any allowances or other financial concessions, but excluding any right to extend the term or any right to expand the leased premises (whether in the form of an expansion option, a right of first offer or refusal, or any similar right).

6.1.3 Notwithstanding any contrary provision hereof, (i) Landlord shall not be required to provide Tenant with an Advice if any of the following conditions exists when Landlord would otherwise deliver the Advice; and (ii) if Tenant receives an Advice from Landlord, Tenant shall not be entitled to lease the Offering Space based on such Advice if any of the following conditions exists:

a. a Default exists;

b. more than 33% of the Premises is sublet (other than pursuant to a Permitted Transfer);

c. this Lease has been assigned (other than pursuant to a Permitted Transfer);

d. Tenant is not occupying the Premises; or

e. an Exclusion (defined in Section 5.6.1 above) or an Acceleration (defined in Section 7.1 below) has occurred.

If, by operation of the preceding sentence, Landlord is not required to provide Tenant with an Advice, or Tenant, after receiving an Advice, is not entitled to lease the Offering Space based on such Advice, then Landlord may lease the Offering Space to any party on any terms determined by Landlord in its sole and absolute discretion.

h. **Terms for Offering Space**.

i. The term for the Offering Space shall be the greater of (i) coterminous with the term for the balance of the Premises, or (ii) 24 full calendar months, together with any partial calendar month occurring at the beginning of such term. If the term for the Offering Space is not coterminous with the term for the balance of the Premises, then (a) Section 5 above shall apply independently to the balance of the Premises and to the Offering Space, and (b) notwithstanding Section 1.2.3 of this Lease, and for purposes of Section 5 above as it applies to the Offering Space, the term "Expiration Date" shall mean the last day of the term for the Offering Space.

ii. The term for the Offering Space shall commence on the commencement date stated in the Advice and thereupon the Offering Space shall be considered a part of the Premises subject to the provisions of this Lease; provided, however, that the provisions of the Advice (including the provision of the Advice establishing the expiration date for the Offering Space) shall prevail to the extent they conflict with the provisions of this Lease.

iii. Tenant shall pay Monthly Rent and Additional Rent for the Offering Space in accordance with the provisions of the Advice, which shall reflect the Prevailing Market (defined in Section 6.5 below) rate for the Offering Space as determined in Landlord's reasonable judgment.

iv. Except as may be otherwise provided in the Advice, (i) the Offering Space shall be accepted by Tenant in its configuration and condition existing when Landlord tenders possession of the Offering Space to Tenant, without any obligation on the part of Landlord to perform or pay for any alterations or improvements thereto; and (ii) if Landlord is delayed in delivering possession of the Offering Space by any holdover or unlawful possession of the Offering Space by any party, Landlord shall use reasonable efforts to obtain possession of the Offering Space and any obligation of Landlord to tender possession of, permit entry to, or perform alterations to the Offering Space shall be deferred until after Landlord has obtained possession of the Offering Space.

i. **Termination of Right of First Offer; Ongoing Right**.

i. Notwithstanding any contrary provision hereof, Landlord shall not be required to provide Tenant with an Advice, and Tenant shall not be entitled to exercise its Right of First Offer, after the date occurring nine (9) months before the scheduled expiration date of this Lease (as determined taking into account any valid exercise by Tenant of its Extension Option).

ii. If Landlord leases a Potential Offering Space to a third party as permitted under Section 6.1 above and subsequently determines that such Potential Offering Space has again become Available, then the provisions of this Section 6 shall apply again to such Potential Offering Space.

j. **Offering Amendment**. If Tenant validly exercises its Right of First Offer, Landlord, within a reasonable period of time thereafter, shall prepare and deliver to Tenant an amendment (the "**Offering Amendment**") adding the Offering Space to the Premises on the terms set forth in the Advice and reflecting the changes in the Base Rent, the rentable square footage of the Premises, Tenant's Share, and other appropriate terms in accordance with this Section 6. Tenant shall execute and return (or provide Landlord with reasonable written objections to) the Offering Amendment within 15 days after receiving it, but an otherwise valid exercise of the Right of First Offer shall be fully effective whether or not the Offering Amendment is executed.

k. **Definition of Prevailing Market**. For purposes of this Section 6, "**Prevailing Market**" means the arms-length, fair-market, annual rental rate per rentable square foot, under renewal and expansion leases and amendments entered into on or about the date on which the Prevailing Market is being determined hereunder, for space comparable to the Offering Space in the Project. The determination of Prevailing Market shall take into account (i) any material economic differences between the terms of this Lease and any comparison lease or amendment, such as rent abatements, construction costs and other concessions, and the manner, if any, in which the landlord under any such lease is reimbursed for operating expenses and taxes; and (ii) any material differences in configuration or condition between the Offering Space and any comparison space.

l. **Subordination**. Notwithstanding any contrary provision hereof, Tenant's Right of First Offer shall be subject and subordinate to the expansion rights (whether such rights are designated as a right of first offer, right of first refusal, expansion option or otherwise) of any tenant of the Project existing on the date hereof.

- **ACCELERATION OPTION**.

7.1 Tenant shall have the right (the "**Acceleration Option**") to accelerate the expiration date of this Lease, with respect to entire Premises only (subject to Section 7.7 below), from the scheduled Expiration Date to the fifth ($5^{th}$) anniversary of the Commencement Date (the "**Accelerated Expiration Date**") (the "**Acceleration**"), if:

i. Tenant delivers to Landlord, at least nine (9) months before the Accelerated Expiration Date, a written notice (the "**Acceleration Notice**") exercising the Acceleration Option;

ii. no monetary or material non-monetary Default exists when Tenant delivers the Acceleration Notice to Landlord;

iii. no part of the Premises (other than any Excluded Space (defined in Section 7.7.1 below)) is sublet past the Accelerated Expiration Date when Tenant delivers the Acceleration Notice to Landlord (unless Tenant has the right to terminate the sublease effective not later than the Accelerated Expiration Date); and

iv. this Lease has not been assigned (other than pursuant to a Permitted Transfer) before Tenant delivers the Acceleration Notice to Landlord.

7.2 If Tenant validly exercises the Acceleration Option, then (i) notwithstanding any contrary provision of this Lease, but subject to the terms of this Section 7, the Term shall expire on the Accelerated Expiration Date with the same force and effect as if the Term were, by the provisions of this Lease, fixed to expire on the Accelerated Expiration Date; and (ii) without limiting the foregoing:

a. Tenant shall surrender the Premises to Landlord in accordance with the terms of this Lease on or before the Accelerated Expiration Date;

b. Tenant shall remain liable for all Rent and other amounts payable under this Lease for the period up to and to and including the Accelerated Expiration Date, even though billings for such amounts may occur after the Accelerated Expiration Date;

c. Tenant's restoration obligations shall be as set forth in this Lease;

d. if Tenant fails to surrender any portion of the Premises on or before the Accelerated Expiration Date, Tenant's tenancy shall be subject to Section 15 of this Lease; and

e. any other rights or obligations of Landlord or Tenant under this Lease that, in the absence of the Acceleration, would have survived the Expiration Date shall survive the Accelerated Expiration Date.

7.3 If Tenant exercises the Acceleration Option, then Tenant shall pay to Landlord, as a fee in connection with the Acceleration and not as a penalty, an amount (the "**Acceleration Fee**") equal to the sum of the portion of each of the following amounts (other than any such amount that applies or is allocable only to any Excluded Space) that remains unamortized (as determined on a straight-line basis without interest) as of the Accelerated Expiration Date: any free or abated rent, internal or external commission, tenant improvement allowance, tenant improvement cost, moving allowance, rent credit allowance, or other allowance or concession incurred by Landlord or paid or credited to Tenant, excluding, however, (i) any free or abated rent that may be imputed to the Beneficial Occupancy Period described in Section 1.2.2 of this Lease, and (ii) the abated rent described in Section 1.3 of this Lease. At any time after Landlord receives the Acceleration Notice, Landlord may deliver to Tenant an invoice specifying the amount of the Acceleration Fee, whereupon Tenant shall pay to Landlord (x) 50% of the Acceleration Fee within 15 days after receiving such invoice, and (y) the balance of the Acceleration Fee not later than the later of the Accelerated Expiration Date or 15 days after receiving such invoice.

7.4 If, after Tenant delivers an Acceleration Notice to Landlord, a Default occurs (including, without limitation, by reason of Tenant's failure to pay when due a portion of the Acceleration Fee), Landlord, at its option, may (i) declare Tenant's exercise of the Acceleration Option to be null and void (in which event Landlord shall return to Tenant any portion of the Acceleration Fee received from Tenant, but only after applying it against any past due Rent), or (ii) continue to honor Tenant's exercise of its Acceleration Option in accordance with the terms hereof.

7.5 If Tenant validly exercises the Acceleration Option, Landlord shall prepare an amendment (the "**Acceleration Amendment**") reflecting the same. Landlord shall deliver the Acceleration Amendment to Tenant within a reasonable time after receiving the Acceleration Notice, and Tenant shall execute and return (or provide Landlord with reasonable written objections to) the Acceleration Amendment within 15 days after receiving it. An otherwise valid exercise of the Acceleration Option shall be fully effective whether or not the Acceleration Amendment is executed.

7.6 Notwithstanding any contrary provision of this Lease, from and after the date Tenant delivers an Acceleration Notice to Landlord, (a) any unexercised right or option of Tenant to renew or extend the Term or to expand the Premises (whether in the form of an expansion option, right of first offer or refusal, or any other similar right), and any outstanding tenant improvement allowance or other allowance not claimed and properly used by Tenant in accordance with this Lease as of such date, shall immediately be deemed terminated and no longer available or of any further force or effect, and (b) Tenant shall not sublease all or any portion of the Premises (other than any Excluded Space) for any period following the Accelerated Expiration Date.

7.7. **Partial Acceleration.**

7.7.1 Notwithstanding any contrary provision of this Section 7, Tenant may exclude any portion of the Premises from Tenant's exercise of the Acceleration Option (for purposes of this Section 7, an "**Exclusion**"), but only if:

i. the Acceleration Notice describes such Exclusion, including by reasonably describing, by reference to size, location and outline, the portion of the Premises that Tenant proposes to so exclude (the "**Excluded Space**");

ii. the balance of the Premises either (i) contains Suite 500, or (ii) otherwise contains at least 11,673 rentable square feet (as determined in accordance with the BOMA Standard); and

iii. the Excluded Space, in Landlord's good faith judgment, can be separated from the balance of the Premises by means of reasonable alterations without causing any portion of the Excluded Space or the balance of the Premises to (i) lack reasonable access to multi-tenant corridors or the elevator lobby, (ii) violate any Laws, or (iii) be unmarketable in any other respect.

7.7.2 If Tenant validly exercises the Acceleration Option and an Exclusion occurs in accordance with Section 7.7.1 above, then:

i. for the avoidance of doubt, the provisions of Sections 7.2, 7.3 and 7.4 above shall not apply to the Excluded Space;

ii. for the avoidance of doubt, (i) the Term, with respect to the Excluded Space, shall not expire on the Acclerated Expiration Date but shall continue in effect as if Tenant had not exercised the Extension Option, and from and after the date immediately following the Accelerated Expiration Date, the Premises shall consist solely of the Excluded Space;

iii. if Landlord, using Building-standard materials and finishes, performs any alterations to the Premises or the Building (including, without limitation, the installation of any new utility meters, demising walls, multi-tenant corridors or entry doors) that, in Landlord's good faith judgment, are necessary to separate the Excluded Space from the balance of the Premises or to prevent such separation or the Exclusion from causing any portion of the Excluded Space or the balance of the Premises to (i) lack reasonable access to multi-tenant corridors or the elevator lobby, (ii) violate any Law, or (ii) be unmarketable in any other respect, then Tenant shall reimburse Landlord for the entire cost thereof (plus a construction management fee in the amount of 3% of such cost) within 10 days after receiving written demand; and

iv. for the avoidance of doubt, the Acceleration Amendment shall reflect changes in the rentable square footage, Base Rent, Tenant's Share and other appropriate terms resulting from the Exclusion (provided, however, that in no event shall the Letter of Credit Amount be modified as a result of the Exclusion).

8. **MONUMENT SIGNAGE.**

8.1. **Tenant's Right to Monument Signage.** Subject to the terms of this Section 8, during the Term Tenant shall have the right to have signage ("**Tenant's Monument Signage**") bearing Tenant's Name (defined below) installed on the Designated Panel (defined below) of the monument sign serving the Building (the "**Monument Sign**"). As used herein, "**Tenant's Name**" means, at any time, Tenant's name, provided that such name (i) is being used lawfully by Tenant and does not infringe any trade name, trade mark, copyright or similar right of Landlord or any other party, and (ii) is, in Landlord's reasonable judgment, consistent with a first-class office building (Landlord hereby acknowledging that the name of Tenant set forth in the first paragraph of this Lease is compatible with a first-class office building). As used, here, "**Designated Panel**" means the top right panel on the Monument Sign; provided, however, that if at any time the Premises do not include at least one (1) full floor of the Building, then Landlord may, at any time thereafter and at Tenant's expense, relocate the Designated Panel to any other panel on the Monument Sign, even if the Premises are later expanded to include at least one (1) full floor of the Building. Notwithstanding any contrary provision hereof, (i) Tenant's rights under this Section 8 shall be personal to the party named as Tenant in the first paragraph of this Lease ("**Original Tenant**") and to any successor to Original Tenant's interest in this Lease that acquires its interest in this Lease solely by means of one or more **Permitted Transfers** originating with Original Tenant, and may not be transferred to any other party; and (ii) if at any time the Minimum Occupancy Requirement (defined below) is not satisfied, then, at Landlord's option (which shall not be deemed waived by the passage of time), Tenant shall no longer have any further rights under this Section 8, even if the Minimum Occupancy Requirement later becomes satisfied, as applicable. For purposes hereof, the "**Minimum Occupancy Requirement**" shall be deemed satisfied if and only if the Premises include (a) at least 11,673 rentable square feet (as determined in accordance with the BOMA Standard), and (b) this Lease has not been assigned more than once, and the Premises have not been subleased to more than one (1) other party, in each case other than pursuant to a Permitted Transfer.

8.2. **Landlord's Approval.** Any proposed Tenant's Monument Signage shall comply with all applicable Laws and shall be subject to Landlord's prior written consent. Without limitation, Landlord may withhold consent to any Tenant's Monument Signage that, in Landlord's sole judgment, is not harmonious with the design standards of the Building and Monument Sign, and Landlord may require that Tenant's Monument Signage be of the same size and style as the other signage on the Monument Sign. To obtain Landlord's consent, Tenant shall submit design drawings to Landlord showing the type and sizes of all lettering; the colors, finishes and types of materials used in Tenant's Monument Signage; and (if applicable and Landlord consents thereto) any arrangements for illumination. Without limitation, Landlord may condition its consent to Tenant's Monument Signage upon the obtaining of any permits or approvals necessary therefor, including any such permits or approvals required from any governmental agency or any applicable owners' association or design review committee.

8.3. **Fabrication; Installation; Maintenance; Removal; Costs.** Landlord shall (a) fabricate (substantially in accordance with Tenant's design approved by Landlord), install and, at the expiration or earlier termination of Tenant's rights under this Section 8, remove Tenant's Monument Signage; and (b) maintain, repair, and (if applicable) illuminate the Monument Sign. Tenant shall reimburse Landlord, promptly upon demand, for (x) all costs incurred by Landlord in fabricating, installing or removing Tenant's Monument Signage, and (y) Tenant's pro rata share (as determined taking into account any other parties using the Monument Sign) of all costs incurred by Landlord in maintaining, repairing and (if applicable) illuminating the Monument Sign.

9. **HAZARDOUS MATERIALS.** Landlord represents, to its actual knowledge (without any duty of inquiry other than review of the Phase I Environmental Site Assessment Report dated July 10, 2018 prepared by Partner Engineering and Science, Inc.), that the Building does not contain any asbestos-containing building materials or other Hazardous Materials (defined below) in amounts or conditions that violate applicable environmental laws**.** As used herein, "**Hazardous Material**" means any material or substance that is now or hereafter defined or regulated by any statute, regulation, ordinance, or governmental authority thereunder, as radioactive, toxic, hazardous, or waste, or a chemical known to the State of California to cause cancer or reproductive toxicity, including (i) petroleum and any of its constituents or byproducts, (ii) radioactive materials, (iii) asbestos in any form or condition, and (iv) substances or materials regulated by any of the

following, as amended from time to time, and any rules promulgated thereunder: the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. §§9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§6901, et seq.; the Toxic Substances Control Act, 15 U.S.C. §§2601, et seq.; the Clean Water Act, 33 U.S.C. §§1251 et seq; the Clean Air Act, 42 U.S.C. §§7401 et seq.; The California Health and Safety Code; The California Water Code; The California Labor Code; The California Public Resources Code; The California Fish and Game Code.

10. **ROOFTOP SPACE.**

10.1. Subject to the terms of this Section 10, during the Term Tenant may use the Roof Space (defined below) for the purpose of installing, operating, maintaining and removing a 36- inch Dish/Antenna or other communication device approved by Landlord (the "**Dish/Antenna**"). As used herein, "**Roof Space**" means space on the roof of the Building, not exceeding 25 square feet in size, and otherwise reasonably designated by Landlord. Landlord may relocate the Roof Space from time to time as reasonably necessary during the Term.

10.2. Tenant's design and installation of the Dish/Antenna shall be subject to Sections 6.2 and 6.3 of this Lease as if the Dish/Antenna were being installed in the Premises. Without limiting the foregoing, (a) Landlord shall have the right to approve Tenant's plans and specifications for the Dish/Antenna, the manner in which the Dish/Antenna is attached to the roof of the Building, and the manner in which any cables are run to and from the Dish/Antenna, and (b) in any event the height of the Dish/Antenna shall not exceed 14 feet above the roof deck. Tenant shall be responsible for obtaining all necessary governmental and regulatory approvals and for the cost of installing, operating, maintaining and removing the Dish/Antenna. The Dish/Antenna shall be tagged with weatherproof labels showing manufacturer, model, frequency range, and Tenant's name. All cable connected to the Dish/Antenna (the "**Dish/Antenna Cable**") shall be tagged in the telecom closet on each floor with a label showing Tenant's name, phone number and suite number. Tenant shall notify Landlord upon completion of the installation of the Dish/Antenna. If Landlord determines that the Dish/Antenna equipment does not comply with the approved plans and specifications, that the installation was defective, or that the Building has been damaged during installation of the Dish/Antenna, Tenant shall cure such defective condition promptly upon Landlord's request. If Tenant fails to promptly perform such cure, Landlord may do so, in which event Tenant shall pay Landlord, upon demand, the reasonable cost of such cure. If at any time Landlord, in its sole discretion, deems it necessary, Tenant, at its expense, shall provide and install appropriate aesthetic screening, reasonably satisfactory to Landlord, for the Dish/Antenna (the "**Aesthetic Screening**").

10.3. Tenant, after reasonable notice to Landlord, may access the roof of the Building and the Roof Space for the purpose of installing, maintaining, repairing and removing the Dish/Antenna, Dish/Antenna Cable, the appurtenances and the Aesthetic Screening, if any (collectively, the "**Dish/Antenna Items**"). Notwithstanding the foregoing, only authorized engineers, employees or properly authorized contractors of Tenant, FCC inspectors, or persons under their direct supervision shall have access to the roof of the Building and the Roof Space. Tenant shall use diligent efforts to minimize the number of people having access to the roof of the Building and the Roof Space and the frequency of their visits.

10.4. Tenant shall ensure that the installation, maintenance, operation and removal of the Dish/Antenna Items does not damage, or unreasonably interfere with Landlord's or any other occupant's use of, the Building or its roof. Notwithstanding Sections 6 and 9.4 of this Lease, Tenant shall be responsible for any damage caused to the roof or any other part of the Building that may be caused by Tenant or any of its agents or representatives in exercising Tenant's rights or performing Tenant's obligations under this Section 10. For purposes of Sections 4, 6 and 9 of this Lease, the Roof Space shall be deemed part of the Premises.

10.5. Tenant shall install only equipment of types and frequencies that will not unreasonably interfere with Landlord or existing tenants of the Building. If Tenant's equipment causes such interference, Tenant shall change the frequency on which it transmits and/or receives and take any other steps necessary to eliminate the interference. If, in Landlord's reasonable judgment, such interference cannot be eliminated within a reasonable period of time, Tenant shall remove the Dish/Antenna from the Roof Space and remove such other Dish/Antenna Items as Landlord may request.

10.6. Tenant, at its expense, shall install, operate and maintain the Dish/Antenna Items in a good and workmanlike manner, and in compliance with all Building, electric, communication, and safety codes, ordinances, standards, regulations and requirements, now in effect or hereafter promulgated, of the Federal Government, including the Federal Communications Commission (the "**FCC**"), the Federal Aviation Administration ("**FAA**") or any successor agency of either the FCC or FAA having jurisdiction over radio or telecommunications, and of the state, city and county in which the Building is located. No Landlord Party shall be responsible for any licensing, operation or maintenance of Tenant's equipment. Tenant shall be responsible for performing any obligations under its FCC license. The Dish/Antenna shall be connected to Landlord's power supply in strict compliance with all applicable Building, electrical, fire and safety codes. No Landlord Party shall be liable for any stoppage or shortage of electrical power furnished to the Dish/Antenna or the Roof Space because of (i) any act, omission or requirement of the public utility serving the Building, (ii) any act or omission of any other tenant, invitee or licensee or their respective agents, employees or contractors, or (iii) any other cause beyond Landlord's reasonable control, and Tenant shall not be entitled to any rental abatement for any such stoppage or shortage of electrical power. No Landlord Party shall have any liability for the conduct or safety of any of Tenant's representatives, repair, maintenance and engineering personnel while in or on any part of the Building or the Roof Space.

10.7. The Dish/Antenna Items shall remain the personal property of Tenant, and shall be removed by Tenant at its own expense at the expiration or earlier termination of this Lease or Tenant's right to possession hereunder. Tenant shall repair any damage caused by such removal, including by patching any holes to match, as closely as possible, the color surrounding the area where the equipment and appurtenances were attached. Tenant shall maintain the Dish/Antenna Items in a safe and aesthetically satisfactory condition, as reasonably determined by Landlord, and in good operating condition. Tenant shall keep the roof of the Building and the Roof Space free of all trash or waste materials produced by Tenant or Tenant's agents, employees or contractors.

10.8. Before commencing any installation, operation, repair or removal of the Dish/Antenna Items, Tenant shall (a) obtain Landlord's reasonable approval of the service provider retained to perform such work for Tenant, and (b) notify Landlord of such work and coordinate such work with Landlord in order to avoid impairing any warranties relating to the roof. For the performance of any such work affecting the roof, Tenant, upon Landlord's request, shall, at Tenant's expense, retain (or cause its contractor to retain) any contractor having a then existing warranty in effect relating to the roof. Except in an emergency, Landlord shall notify Tenant 30 days before commencing any roof repairs that could interrupt Tenant's telecommunication service or otherwise adversely affect Tenant's Dish/Antenna.

10.9. Tenant shall not allow any provider of telecommunication, video, data or related services ("**Communication Services**") to locate any equipment on the roof of the Building or in the Roof Space for any purpose, nor may Tenant use the Roof Space and/or Dish/Antenna to provide Communication Services to an unaffiliated tenant, occupant or licensee of another building, or to facilitate the provision of Communication Services on behalf of another Communication Services provider to an unaffiliated tenant, occupant or licensee of the Building or any other building.

10.10. If a Default occurs as a result of any failure by Tenant to perform any obligation under this Section 10, Landlord, without limiting any other rights or remedies, may remove all or any of the Dish/Antenna Items and restore the Building and the Roof Space to the conditions existing before the Dish/Antenna Items were installed, in which event Tenant shall reimburse Landlord, upon demand, for all reasonable expenses of such removal and restoration.

10.11. Tenant's rights under this Section 10 may not be transferred to any other party except in connection with a Transfer permitted under this Lease. If Landlord establishes a standard license agreement with respect to the use of roof space by tenants of the Building, Tenant, upon Landlord's request, shall enter into such license agreement with Landlord provided that such license agreement does not materially reduce Tenant's rights or increase Tenant's obligations under this Section 10.

11. **STORAGE SPACE.**

11.1. Landlord shall lease to Tenant, and Tenant shall lease from Landlord, storage the space containing between 200 and 300 square feet located in or beneath the Building selected by Landlord (the "**Storage Space**"), during the period (the "**Storage Term**") commencing on the Storage Commencement Date and ending on the earlier of the date of expiration of this Lease or the earlier date, if any, identified by Tenant, at least 30 days in advance, in a notice to Landlord terminating the Storage Term (the "**Storage Expiration Date**"). As used herein, "**Storage Commencement Date**" means the date, if any, identified by Tenant, at least 30 days in advance, in a notice to Landlord commencing the Storage Term. Notwithstanding any contrary provision hereof, (a) if Tenant fails to identify a Storage Commencement Date in accordance with the immediately preceding sentence within one (1) year after the Commencement Date, Tenant's rights under this Section 11 shall terminate and this Section 11 shall have no further force or effect; and (b) if the Lease or Tenant's right to possession of the Premises thereunder expires or terminates before the Storage Expiration Date, as same may be extended herein, then the Storage Expiration Date shall be such earlier expiration or termination date.

11.2. The Storage Space shall be used by Tenant for the storage of equipment, inventory or other non-perishable items normally used in Tenant's business, and for no other purpose whatsoever. Tenant agrees to keep the Storage Space in a neat and orderly fashion and to keep all stored items in cartons, file cabinets or other suitable containers. Landlord shall have the right to designate the location within the Storage Space of any items to be placed therein. All items stored in the Storage Space shall be at least 18 inches below the bottom of all sprinklers located in the ceiling of the Storage Space, if any. Tenant shall not store anything in the Storage Space which is unsafe or which otherwise may create a hazardous condition, or which may increase Landlord's insurance rates, or cause a cancellation or modification of Landlord's insurance coverage. Without limitation, Tenant shall not store any flammable, combustible or explosive fluid, chemical or substance nor any perishable food or beverage products, except with Landlord's prior written approval. Landlord reserves the right to adopt and enforce reasonable rules and regulations governing the use of the Storage Space from time to time. Upon expiration or earlier termination of Tenant's rights to the Storage Space, Tenant shall completely vacate and surrender the Storage Space to Landlord in the condition in which it was delivered to Tenant, ordinary wear and tear excepted, broom-clean and empty of all personalty and other items placed therein by or on behalf of Tenant.

11.3. Tenant shall pay rent for the Storage Space ("**Storage Base Rent**") in the amount of **$1.75** per square foot of Storage Space per month, payable in advance on or before the first day of each month of the Term. Any partial month shall be appropriately prorated. All Storage Base Rent shall be payable in the same manner that Base Rent is payable under this Lease.

11.4. All terms and provisions (including Section 9) of this Lease shall apply to the Storage Space; provided, however, that notwithstanding any contrary provision hereof, (a) the Storage Space shall not be included in the determination of Tenant's Share, (b) Landlord shall not be required to provide air-cooling, heat, water, janitorial service, cleaning or window washing to the Storage Space, (c) Tenant shall not be entitled to receive any work allowances or rent credits with respect to the Storage Space, and (d) Landlord may withhold or condition its consent to any alteration or improvement to the Storage Space in its reasonable discretion.

11.5. Tenant agrees to accept the Storage Space in its condition and "as-built" configuration existing on the date hereof.

11.6. At any time and from time to time, Landlord shall have the right to relocate the Storage Space to a new location which shall be no smaller than the square footage of the Storage Space. Landlord shall pay the direct, out-of-pocket, reasonable expenses of such relocation.

11.7. Tenant's rights under this Section 11 may not be transferred to any other party except in connection with a Transfer permitted under this Lease.

12. **PETS.**

12.1. **General.** Notwithstanding any contrary provision of this Lease, Landlord, at its option and in its sole and absolute discretion (subject to Section 12.2 below), may permit tenants of the Project to bring dogs and other pets into the Project, subject to such rules, regulations, policies and procedures as Landlord may establish in good faith from time to time governing the presence of pets in the Project consistent with a contemporary, first-class office project (collectively, the "**Pet Rules**"). Tenant acknowledges and agrees that the presence of dogs and other pets in the Project in conformity with the Pet Rules will not be incompatible with a first-class office project and will not breach any covenant of quiet enjoyment or other obligation of Landlord under or relating to this Lease. Tenant shall comply with the Pet Rules established by Landlord from time to time. For the avoidance of doubt, Tenant shall not bring into the Project or the Premises any dog or other pet (other than a service animal) unless and except as provided in Section 12.2 below and to the extent, if any, that such activity is permitted under the Pet Rules.

12.2. **Dogs.** Tenant may permit its employees to bring trained and obedient dogs into the Building and the Premises, subject to the terms of this Lease and the following conditions:

v. Tenant shall keep on file and provide a copy to Landlord or its property manager a list and current (i.e., not more than 1-year old) photos of such permitted dogs.

vi. Each dog must be six (6) months of age or older and must weigh no more than 75 pounds at full growth.

vii. Each dog must be spayed or neutered and shall be licensed and vaccinated in accordance with local laws.

viii. Each dog must not be, in any material part, Akita, Pit Family, Bloodhound, Great Dane, Saint Bernard, Doberman, Presia, Canario, Bull Dog, Rottweiler, Elkhound, Mastiff, Wolf, Wolf hybrid, or any combination thereof.

ix. No dog shall (i) be permitted in the Project when it is ill or behaving abnormally, (ii) be left unattended at the Premises, (iii) be kenneled or otherwise remain in the Premises for periods longer than 12 hours in any 24-hour period, (iv) create noise or unreasonably annoy other occupants, (v) be bathed or groomed within the Premises. No pet food or water shall be left outside of the Premises.

x. No dog shall be walked or held in Common Areas, except on a leash. Each dog must remain on leash when not within the Premises. Each dog must be taken to a location designated by Landlord at the exterior of the Project, and shall not use any portion of the Building or any sidewalk of the Project, for its toilet purposes. In no event shall any toilet box, "pee-pee pad" or waste of any kind exist in the Premises. All waste shall be removed immediately, sealed in plastic bags, and disposed into an exterior dumpster or trash can.

xi. Tenant shall be responsible for any extra maintenance, janitorial or similar requirement in connection with the dogs within the Premises or the Project, including carpet cleaning, excrement removal, painting, wall repair, floor care, and landscape repair/replacement. Tenant's surrender obligations shall include fully remediating and correcting any damage or increased wear and tear caused by the dogs.

xii. Tenant shall abide by any additional reasonable rules and regulations established by Landlord which may include the requirement that the dogs may not be transported in elevators (or, at Landlord's option, but at no additional cost to Tenant, must be transported in a freight elevator) and must enter and exit the Project using doors designated by Landlord (such as the building entrance between the 1st and 2nd floors, currently known as Level 3).

xiii. During any period in which any such dog is brought into the Premises or the Project, the minimum amount of Commercial General Liability Insurance required to be maintained by Tenant under Section 9.2.1 of this Lease shall be $5,000,000.00 per occurrence and in the annual aggregate.

xiv. Any such bringing of such a dog into the Premises and/or the Project shall constitute an "Act of Tenant" within the meaning of Section 9.1 of this Lease.

xv. Landlord may terminate Tenant's rights under this Section 12 with respect to any such dog (i) immediately upon notice following any significant injury or death to any person resulting from such dog, (ii) if any of the foregoing conditions are breached with respect to such dog, or (iii) if Landlord determines, in its good faith discretion, that such dog is unreasonably bothersome or are a nuisance to other occupants.

xvi. Landlord may require Tenant and the owner of any such dog to execute a Pet Agreement in the form attached as **Exhibit F-1** (as such form may be modified by Landlord to incorporate some or all of the provisions contained in this Section 12). The obligations of Tenant under each such Pet Agreement shall be deemed to be incorporated into this Lease and made a part thereof.

**EXHIBIT F-1**

**PLAYA DISTRICT, 6080 CENTER DRIVE**

**FORM OF PET AGREEMENT**

**Pet Agreement**

This Pet Agreement (this "**Agreement**") is entered into as of _______________, 20__ by **______________________, a ___________________________** ("**Tenant**"), and **________________________, an individual and an employee of Tenant** ("**Pet Owner**"), in favor of **_______________________, a __________________________** ("**Landlord**"), pursuant to Section 12 of Exhibit F to that certain Office Lease dated as of _______________, 2018 (the "**Lease**") between Landlord, as landlord, and Tenant, as tenant, for space in the building located at 6080 Center Drive, Los Angeles, California 90045. Capitalized terms used but not defined herein shall have the meanings given in the Lease.

In consideration of, and as a condition to, Landlord's granting to Tenant and Pet Owner, pursuant to Section 2.2 of Exhibit F to the Lease, of permission for Pet Owner to bring the dog identified below (the "**Pet**") into the Premises and the Project ("**Landlord's Permission**"), and in consideration of other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Tenant and Pet Owner hereby agree as follows:

1. Tenant and Pet Owner agree, on a joint and several basis, to:
   - (a) keep the Pet under control at all times;
   - (b) keep the Pet on a leash or in a kennel and in the direct control of the Pet Owner at all times while the Pet is in common areas (hallways, elevators, stairways, exterior pet relief area, etc.);
   - (c) not leave the Pet unattended for any unreasonable period;
   - (d) dispose of the Pet's waste properly and quickly;
   - (e) keep the Pet from causing discomfort or annoyance to others and will immediately remedy any complaints made through Landlord;
   - (f) pay immediately for any damages, loss, or expense caused by the Pet;
   - (g) provide proof of vaccination (for cats - FVRCP; for dogs - rabies & DHOPP; or as modified by local law), both before executing this Agreement and annually thereafter; and
   - (h) ensure that (a) the Pet (i) is six (6) month of age or older, and (ii) weighs no more than 75 pounds at full growth; (b) if the Pet is a dog or cat, then it is spayed or neutered and licensed and vaccinated in accordance with all applicable laws; and (c) if the Pet is a dog, then it is not, in any material part, Akita, Pit Family, Bloodhound, Great Dane, Saint Bernard, Doberman, Presia, Canario, Bull Dog, Rottweiler, Elkhound, Mastiff, Wolf, Wolf hybrid, or any combination thereof.

2. Tenant and Pet Owner agree that, without limitation, Landlord, by notice to Tenant, may withdraw Landlord's Permission (a) following any injury or damage to person or property caused by the Pet, (b) if any condition set forth in <u>Section 1</u> above, in Section 12 of Exhibit F to the Lease, or any rule or regulation established by Landlord relating to pets at the Project, is breached, or (c) if Landlord determines, in its good faith discretion, that the Pet is unreasonably bothersome or is a nuisance to other occupants.

Pet Owner Name: _____________________ Pet Owner Contact: _________________________
Pet Type (Breed): _____________________ Age: _________ M / F (Please circle one)

**IN WITNESS WHEREOF**, Tenant and Pet Owner have executed this Agreement as of the date set forth above.

**TENANT:**

**______________________, a ___________________________**

By: ______________________________
Name: ______________________________
Title: ______________________________

**PET OWNER:**

_____________________________________
Name: ______________________________

Exhibit F - 1

**EXHIBIT G**

**PLAYA DISTRICT, 6080 CENTER DRIVE**

**JUDICIAL REFERENCE**

IF THE JURY-WAIVER PROVISIONS OF SECTION 23.8 OF THIS LEASE ARE NOT ENFORCEABLE UNDER CALIFORNIA LAW, THE PROVISIONS SET FORTH BELOW SHALL APPLY.

It is the desire and intention of the parties to agree upon a mechanism and procedure under which controversies and disputes arising out of this Lease or related to the Premises will be resolved in a prompt and expeditious manner. Accordingly, except with respect to actions for unlawful or forcible detainer or with respect to the prejudgment remedy of attachment, any action, proceeding or counterclaim brought by either party hereto against the other (and/or against its officers, directors, employees, agents or subsidiaries or affiliated entities) on any matters arising out of or in any way connected with this Lease, Tenant's use or occupancy of the Premises and/or any claim of injury or damage, whether sounding in contract, tort, or otherwise, shall be heard and resolved by a referee under the provisions of the California Code of Civil Procedure, Sections 638 — 645.1, inclusive (as same may be amended, or any successor statute(s) thereto) (the "**Referee Sections**"). Any fee to initiate the judicial reference proceedings and all fees charged and costs incurred by the referee shall be paid by the party initiating such procedure (except that if a reporter is requested by either party, then a reporter shall be present at all proceedings where requested and the fees of such reporter – except for copies ordered by the other parties – shall be borne by the party requesting the reporter); provided however, that allocation of the costs and fees, including any initiation fee, of such proceeding shall be ultimately determined in accordance with Section 23.6 of this Lease. The venue of the proceedings shall be in the county in which the Premises are located. Within 10 days of receipt by any party of a request to resolve any dispute or controversy pursuant to this **Exhibit G**, the parties shall agree upon a single referee who shall try all issues, whether of fact or law, and report a finding and judgment on such issues as required by the Referee Sections. If the parties are unable to agree upon a referee within such 10-day period, then any party may thereafter file a lawsuit in the county in which the Premises are located for the purpose of appointment of a referee under the Referee Sections. If the referee is appointed by the court, the referee shall be a neutral and impartial retired judge with substantial experience in the relevant matters to be determined, from Jams/Endispute, Inc., ADR Services, Inc. or a similar mediation/arbitration entity approved by each party in its sole and absolute discretion. The proposed referee may be challenged by any party for any of the grounds listed in the Referee Sections. The referee shall have the power to decide all issues of fact and law and report his or her decision on such issues, and to issue all recognized remedies available at law or in equity for any cause of action that is before the referee, including an award of attorneys' fees and costs in accordance with this Lease. The referee shall not, however, have the power to award punitive damages, nor any other damages that are not permitted by the express provisions of this Lease, and the parties waive any right to recover any such damages. The parties may conduct all discovery as provided in the California Code of Civil Procedure, and the referee shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge, with rights to regulate discovery and to issue and enforce subpoenas, protective orders and other limitations on discovery available under California Law. The reference proceeding shall be conducted in accordance with California Law (including the rules of evidence), and in all regards, the referee shall follow California Law applicable at the time of the reference proceeding. The parties shall promptly and diligently cooperate with one another and the referee, and shall perform such acts as may be necessary to obtain a prompt and expeditious resolution of the dispute or controversy in accordance with the terms of this **Exhibit G**. In this regard, the parties agree that the parties and the referee shall use best efforts to ensure that (a) discovery be conducted for a period no longer than six (6) months from the date the referee is appointed, excluding motions regarding discovery, and (b) a trial date be set within nine (9) months of the date the referee is appointed. In accordance with Section 644 of the California Code of Civil Procedure, the decision of the referee upon the whole issue must stand as the decision of the court, and upon the filing of the statement of decision with the clerk of the court, or with the judge if there is no clerk, judgment may be entered thereon in the same manner as if the action had been tried by the court. Any decision of the referee and/or judgment or other order entered thereon shall be appealable to the same extent and in the same manner that such decision, judgment, or order would be appealable if rendered by a judge of the superior court in which venue is proper hereunder. The referee shall in his/her statement of decision set forth his/her findings of fact and conclusions of law. The parties intend this general reference agreement to be specifically enforceable in accordance with the Code of Civil Procedure. Nothing in this **Exhibit G** shall prejudice the right of any party to obtain provisional relief or other equitable remedies from a court of competent jurisdiction as shall otherwise be available under the Code of Civil Procedure and/or applicable court rules.

**EXHIBIT H**

**PLAYA DISTRICT, 6080 CENTER DRIVE**

**FORM OF LETTER OF CREDIT**

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER _____________

ISSUE DATE: ______________

ISSUING BANK:
SILICON VALLEY BANK
3003 TASMAN DRIVE
2ND FLOOR, MAIL SORT HF210
SANTA CLARA, CALIFORNIA 95054

BENEFICIARY:
BRE HH PROPERTY OWNER LLC
C/O EQ OFFICE
233 S. WACKER DRIVE, SUITE 4700
CHICAGO, ILLINOIS 60606
ATTENTION: TREASURY DEPARTMENT

APPLICANT:
MAGNITE, INC.
12181 BLUFF CREEK, 4TH FLOOR
PLAYA VISTA, CA 90094

AMOUNT: US$736,807.26 (SEVEN HUNDRED THIRTY SIX THOUSAND EIGHT HUNDRED SEVEN AND 26/100 U.S. DOLLARS)

EXPIRATION DATE: ONE YEAR FROM ISSUANCE

PLACE OF EXPIRATION: SANTA CLARA, CALIFORNIA

DEAR SIR/MADAM:

WE HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. SVBSF________ IN YOUR FAVOR AVAILABLE BY YOUR DRAFT DRAWN ON US AT SIGHT IN THE FORM OF EXHIBIT "A" ATTACHED AND ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

1. THE ORIGINAL OF THIS LETTER OF CREDIT AND ALL AMENDMENT(S), IF ANY.

2.BENEFICIARY’S SIGNED AND DATED STATEMENT STATING AS FOLLOWS:

“This draw in the amount of _____________ U.S. Dollars ($__________) under SILCON VALLEY BANK Irrevocable Standby Letter of Credit No. ____________________ represents funds due and owing to us pursuant to the terms of that certain lease by and between BRE HH PROPERTY OWNER LLC, as landlord, and MAGNITE, INC., as tenant, and/or any amendment to the lease or any other agreement between such parties related to the lease.”

PARTIAL AND MULTIPLE DRAWINGS ARE ALLOWED. THIS LETTER OF CREDIT MUST ACCOMPANY ANY DRAWINGS HEREUNDER FOR ENDORSEMENT OF THE DRAWING AMOUNT AND WILL BE RETURNED TO BENEFICIARY UNLESS IT IS FULLY UTILIZED.

It is a condition of this Irrevocable Standby Letter of Credit that it will be considered automatically EXTENDED, WITHOUT AMENDMENT for a one year period upon the expiration date set forth above and upon each anniversary of such date, unless at least 60 days prior to such expiration date or applicable anniversary thereof, we notify you in writing, by certified mail return receipt requested or by overnight courier service, that we elect not to EXTEND this Irrevocable Standby Letter of Credit BEYOND THE CURRENT EXPIRATION DATE. IN NO EVENT SHALL THIS LETTER OF CREDIT BE AUTOMATICALLY EXTENDED BEYOND decembER 15, 2031. IN THE EVENT WE SEND SUCH NOTICE OF NON-EXTENSION, YOU MAY DRAW HEREUNDER BY YOUR PRESENTATION TO US OF YOUR SIGNED AND DATED STATEMENT STATING THAT YOU HAVE RECEIVED A NON-EXTENSION NOTICE FROM SILICON VALLEY BANK IN RESPECT OF LETTER OF CREDIT NO. SVBSF _____________, YOU ARE DRAWING ON SUCH LETTER OF CREDIT FOR US$________________, AND YOU HAVE NOT RECEIVED A REPLACEMENT LETTER OF CREDIT ACCEPTABLE TO YOU.

ALL DEMANDS FOR PAYMENT SHALL BE MADE BY PRESENTATION OF THE REQUIRED DOCUMENTS ON A BUSINESS DAY AT OUR OFFICE (THE “BANK’S OFFICE”) AT: SILICON VALLEY BANK, 3003 TASMAN DRIVE, MAIL SORT HF 210, SANTA CLARA, CA 95054, ATTENTION: GLOBAL TRADE FINANCE. AS USED IN THIS LETTER OF CREDIT, "BUSINESS DAY" SHALL MEAN ANY DAY OTHER THAN A SATURDAY, SUNDAY OR A DAY ON

WHICH BANKING INSTITUTIONS IN THE STATE OF CALIFORNIA ARE AUTHORIZED OR REQUIRED BY LAW TO CLOSE.

THIS LETTER OF CREDIT IS TRANSFERABLE IN WHOLE BUT NOT IN PART ONE OR MORE TIMES, BUT IN EACH INSTANCE ONLY TO A SINGLE BENEFICIARY AS TRANSFEREE AND for THE THEN AVAILABLE AMOUNT, ASSUMING SUCH TRANSFER TO SUCH TRANSFEREE WOULD BE IN COMPLIANCE WITH THEN APPLICABLE LAW AND REGULATION, INCLUDING BUT NOT LIMITED TO THE REGULATIONS OF THE U.S. DEPARTMENT OF TREASURY AND U.S. DEPARTMENT OF COMMERCE. AT THE TIME OF TRANSFER, THE ORIGINAL LETTER OF CREDIT AND ORIGINALS OR COPIES OF ALL AMENDMENTS, IF ANY, TO THIS LETTER OF CREDIT MUST BE SURRENDERED TO US AT OUR ADDRESS INDICATED IN THIS LETTER OF CREDIT TOGETHER WITH OUR TRANSFER FORM ATTACHED HERETO AS EXHIBIT B DULY EXECUTED. APPLICANT SHALL PAY OUR TRANSFER FEE OF ¼ OF 1% OF THE TRANSFER AMOUNT (MINIMUM US$250.00) UNDER THIS LETTER OF CREDIT, but payment of such transfer fee shall not be a condition to the transfer. EACH TRANSFER SHALL BE EVIDENCED BY EITHER (1) OUR ENDORSEMENT ON THE REVERSE OF THE LETTER OF CREDIT AND WE SHALL FORWARD THE ORIGINAL OF THE LETTER OF CREDIT SO ENDORSED TO THE TRANSFEREE OR (2) OUR ISSUING A REPLACEMENT LETTER OF CREDIT TO THE TRANSFEREE ON SUBSTANTIALLY THE SAME TERMS AND CONDITIONS AS THE TRANSFERRED LETTER OF CREDIT (IN WHICH EVENT THE TRANSFERRED LETTER OF CREDIT SHALL HAVE NO FURTHER EFFECT).

WE AGREE THAT WE SHALL HAVE NO DUTY OR RIGHT TO INQUIRE AS TO THE BASIS UPON WHICH BENEFICIARY HAS DETERMINED THAT THE AMOUNT IS DUE AND OWING OR HAS DETERMINED TO PRESENT TO US ANY DRAFT UNDER THIS LETTER OF CREDIT, AND THE PRESENTATION OF SUCH DRAFT IN STRICT COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT SHALL AUTOMATICALLY RESULT IN PAYMENT TO THE BENEFICIARY.

WE HEREBY AGREE WITH THE BENEFICIARY THAT THE DRAFTS DRAWN UNDER AND IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT SHALL BE DULY HONORED UPON PRESENTATION TO THE DRAWEE, IF NEGOTIATED ON OR BEFORE THE EXPIRATION DATE OF THIS CREDIT.

IF ANY INSTRUCTIONS ACCOMPANYING A DRAWING UNDER THIS LETTER OF CREDIT REQUEST THAT PAYMENT IS TO BE MADE BY TRANSFER TO YOUR ACCOUNT WITH ANOTHER BANK, WE WILL ONLY EFFECT SUCH PAYMENT BY FED WIRE TO A U.S. REGULATED BANK, AND WE AND/OR SUCH OTHER BANK MAY RELY ON AN ACCOUNT NUMBER SPECIFIED IN SUCH INSTRUCTIONS EVEN IF THE NUMBER IDENTIFIES A PERSON OR ENTITY DIFFERENT FROM THE INTENDED PAYEE.

THIS IRREVOCABLE STANDBY LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES (ISP98), ICC PUBLICATION NO. 590.

IF YOU HAVE ANY QUESTIONS REGARDING THIS TRANSACTION, PLEASE CONTACT FAUSTO OMNE AT TEL NO. 408-450-5073, ALWAYS QUOTING OUR LETTER OF CREDIT NO. SVBSF_____________.

SILICON VALLEY BANK

___________________________
AUTHORIZED SIGNATURE

**EXHIBIT "A"**

DATE: _______________ REF. NO. ___________________

**A**T SIGHT OF THIS DRAFT

**P**AY TO THE ORDER OF ________US$_________________

USDOLLARS ______________________________________________________________________

___________________________________________________________________________________

DRAWN UNDER SILICON VALLEY BANK, SANTA CLARA, CALIFORNIA, STANDBY
LETTER OF CREDIT NUMBER NO. _______________________ DATED ___________________

**T**O: SILICON VALLEY BANK
3003 TASMAN DRIVE ________________________________
SANTA CLARA, CA 95054 (BENEFICIARY'S NAME)

..............................................................
**Authorized Signature**

**GUIDELINES TO PREPARE THE DRAFT**

1. DATE: ISSUANCE DATE OF DRAFT.
2. REF. NO.: BENEFICIARY'S REFERENCE NUMBER, IF ANY.
3. PAY TO THE ORDER OF: NAME OF BENEFICIARY AS INDICATED IN THE L/C (MAKE SURE BENEFICIARY ENDORSES IT ON THE REVERSE SIDE).
4. US$: AMOUNT OF DRAWING IN FIGURES.
5. USDOLLARS: AMOUNT OF DRAWING IN WORDS.
6. LETTER OF CREDIT NUMBER: SILICON VALLEY BANK'S STANDBY L/C NUMBER THAT PERTAINS TO THE DRAWING.
7. DATED: ISSUANCE DATE OF THE STANDBY L/C.
8. BENEFICIARY'S NAME: NAME OF BENEFICIARY AS INDICATED IN THE L/C.
9. AUTHORIZED SIGNATURE: SIGNED BY AN AUTHORIZED SIGNER OF BENEFICIARY.

IF YOU NEED FURTHER ASSISTANCE IN COMPLETING THIS DRAFT, PLEASE CALL OUR L/C PAYMENT SECTION AT 408-654-6274 OR 408-654-7716

**EXHIBIT B**

**TRANSFER FORM**

DATE: ____________________

TO: SILICON VALLEY BANK
3003 TASMAN DRIVE RE: IRREVOCABLE STANDBY LETTER OF CREDIT
SANTA CLARA, CA 95054 NO. _____________ ISSUED BY
ATTN: GLOBAL TRADE FINANCE SILICON VALLEY BANK, SANTA CLARA
STANDBY LETTERS OF CREDIT L/C AMOUNT: ___________________

GENTLEMEN:

FOR VALUE RECEIVED, THE UNDERSIGNED BENEFICIARY HEREBY IRREVOCABLY TRANSFERS TO:

_______________________________________________________________________________

(NAME OF TRANSFEREE)

_______________________________________________________________________________

(ADDRESS)

ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY TO DRAW UNDER THE ABOVE LETTER OF CREDIT UP TO ITS AVAILABLE AMOUNT AS SHOWN ABOVE AS OF THE DATE OF THIS TRANSFER.

BY THIS TRANSFER, ALL RIGHTS OF THE UNDERSIGNED BENEFICIARY IN SUCH LETTER OF CREDIT ARE TRANSFERRED TO THE TRANSFEREE. TRANSFEREE SHALL HAVE THE SOLE RIGHTS AS BENEFICIARY THEREOF, INCLUDING SOLE RIGHTS RELATING TO ANY AMENDMENTS, WHETHER INCREASES OR EXTENSIONS OR OTHER AMENDMENTS, AND WHETHER NOW EXISTING OR HEREAFTER MADE. ALL AMENDMENTS ARE TO BE ADVISED DIRECTLY TO THE TRANSFEREE WITHOUT NECESSITY OF ANY CONSENT OF OR NOTICE TO THE UNDERSIGNED BENEFICIARY.

THE ORIGINAL OF SUCH LETTER OF CREDIT IS RETURNED HEREWITH, AND WE ASK YOU TO EITHER (1) ENDORSE THE TRANSFER ON THE REVERSE THEREOF, AND FORWARD IT DIRECTLY TO THE TRANSFEREE WITH YOUR CUSTOMARY NOTICE OF TRANSFER, OR (2) ISSUE A REPLACEMENT LETTER OF CREDIT TO THE TRANSFEREE ON SUBSTANTIALLY THE SAME TERMS AND CONDITIONS AS THE TRANSFERRED LETTER OF CREDIT (IN WHICH EVENT THE TRANSFERRED LETTER OF CREDIT SHALL HAVE NO FURTHER EFFECT).
SIGNATURE AUTHENTICATED

The name(s), title(s), and signature(s) conform to that/those on file with us for the company and the signature(s) is/are authorized to execute this instrument.

_____________________________________________

(Name of Bank)

_____________________________________________

(Address of Bank)

_____________________________________________

(City, State, ZIP Code)

_____________________________________________

(Authorized Name and Title)

_____________________________________________

(Authorized Signature)

_____________________________________________

(Telephone number)

SINCERELY,

__________________________

(BENEFICIARY’S NAME)

__________________________

(SIGNATURE OF BENEFICIARY)

__________________________

(NAME AND TITLE)

**EXHIBIT I**

**PLAYA DISTRICT, 6080 CENTER DRIVE**

**JANITORIAL CLEANING SPECIFICATIONS**

**OFFICE AREAS (All Floors)**

Empty all waste receptacles. Clean, and reline when needed. Remove material to designated areas.
Vacuum all carpeted main traffic and use areas, including conference rooms, reception areas, interior stairwells, hallways and corridors with the exception of individual offices. Spot vacuum/clean all others areas as needed.
Wash and sanitize all drinking fountains.
Damp mop spillage in uncarpeted office areas.
Spot clean carpets to remove light spillage. Report large spills and stains to supervisor.
Assure all designated locked doors are closed after area has been cleaned.
Arrange chairs at desk and conference room tables and turn off lights upon exiting.
Clean conference room tables and remove any remaining food items.
Clean and sweep all lunchroom/eating areas. Wash and wipe tables and counter tops and clean sinks.
Remove scuff marks on floor as needed.
Vacuum all carpeted areas completely, private offices and cubicle interiors, desk knee area spaces and under waste containers.
Dust and wipe clean with damp or treated cloth all office furniture, files, and cubicle partition tops (DO NOT MOVE PAPERS).
Remove all finger marks and smudges from all vertical surfaces, including doors, door frames, around light switches, private entrance glass, and partitions.
Damp wipe and polish all glass furniture tops.
Damp mop hard surfaced floors and/or uncarpeted surface floors.
Sweep uncarpeted floors employing dust control techniques with exception of lunchroom
Dust and wipe clean chair bases and arms, telephones, cubicle shelves, window sills, relite ledges and all other horizontal surfaces as needed to maintain clean appearance.
Edge vacuum all carpeted areas, as needed.

**COMMON AREA RESTROOMS**

Clean and sanitize all mirrors, brightwork, countertops and enameled surfaces.
Wash and disinfect all basins, urinals, bowls (cleaning underside of rim) and fixtures using scouring powder to remove stains.
Wash both sides of all toilet seats with soap and/or disinfectant.
Clean flushometers, piping, toilet seat hinges, and other metal.
Empty, clean, and damp wipe all waste receptacles.
Sweep, wet mop, and sanitize entire floor, including around toilet seats and under urinals.
Damp wipe all walls, partitions, doors, and outside surfaces of all dispensers, as needed.
Fill toilet paper, soap, towels, and sanitary napkin dispensers (if applicable).
Wash and disinfect all showers including shower walls, floors, brightwork and doors (if applicable).
Replace trash liner.
Flush water through P-trap to ensure elimination of odor.
Machine scrub floors.

**COMMON AREA LOBBY, ELEVATOR, CORRIDOR, INTERIOR STAIRWAYS (EXCLUDING EMERGENCY EXIT STAIRWAYS) AND ENTRANCE AREAS**

Sweep and spot mop all stone, vinyl or composition lobby floors.
Vacuum and spot clean all carpeted floor and mats.
Dust and polish all brightwork, including mirrors and elevator call buttons.
Dust and polish all metal surfaces in elevators, including tracks, and elevator doors.
Vacuum and spot clean all carpet in elevators.
Clean and polish all trash receptacles
Dust all fire extinguisher cabinets and/or units.
Spot clean all doors.
All furniture should be cleaned as necessary (including directories)
Wash, disinfect and dry polish water coolers (if applicable).
Clean glass entrance doors, adjacent glass panels and tracks (i.e. relites) (if applicable).
Spot sweep and/or spot vacuum all interior stairways (excluding emergency exit stairways) and landings (if applicable).

Maintain lobby floor as recommended by manufacturer.
Wet mop all stone, vinyl or composition lobby floors
Sweep and/or vacuum all interior stairways (excluding emergency exit stairways) and landings (if applicable).

**<u>JANITORIAL ITEMS/AREAS RELATING TO BUILDING GENERALLY</u>**

Keep janitorial rooms in a clean, neat and orderly condition.
Maintain all janitorial carts and equipment in safe and clean condition.

**<u>GENERAL BUILDING FITNESS CENTER (If applicable)</u>**

Vacuum all exposed carpeted floors.
Spot clean all mirrors and walls.
Spray and disinfect fitness center equipment nightly.
Edge vacuum all carpeted areas, as needed.
Dust all ledges, as needed
Clean mirrors completely.
Stock supplies and towels.

**<u>GENERAL BUILDING LOCKER ROOMS (If applicable)</u>**

Perform building restroom cleaning specifications to restroom and locker room areas.
Clean and disinfect showers completely, including walls, doors, floors, and floor drains.

**<u>LOADING DOCK, VAN PARKING AREAS, GENERAL BUILDING TRASH AREAS</u>**

Empty and reline all waste receptacles.
Sweep ramps, loading bays and parking areas for trash and cigarette butts.

**<u>GENERAL BUILDING COMMON AREA SERVICES</u>**

Spot clean and restock, as needed, all janitorial service closets.
Vacuum all garage lobbies and elevator carpets.

**EXHIBIT 23.1**

# CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement Nos. 333-195972, 333-201174, 333-204012, 333-219563, and 333-237613 on Form S-8 of our report dated February 24, 2021, relating to the consolidated financial statements of Magnite, Inc. and subsidiaries and the effectiveness of Magnite, Inc.'s internal controls over financial reporting appearing in this Annual Report on Form 10-K for the year ended December 31, 2020.

/s/ Deloitte & Touche LLP

Los Angeles, California
February 24, 2021

**Exhibit 31.1**

**Certification of Principal Executive Officer**
**pursuant to**
**Exchange Act Rules 13a-14(a) and 15d-14(a),**
**as adopted pursuant to**
**Section 302 of the Sarbanes-Oxley Act of 2002**

I, Michael Barrett, certify that:

1. I have reviewed this Annual Report on Form 10-K of Magnite, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Signature: /s/ Michael Barrett

Michael Barrett
President and Chief Executive Officer
(Principal Executive Officer)

Date February 24, 2021

**Exhibit 31.2**

**Certification of Principal Financial Officer**
**pursuant to**
**Exchange Act Rules 13a-14(a) and 15d-14(a),**
**as adopted pursuant to**
**Section 302 of the Sarbanes-Oxley Act of 2002**

I, David Day, certify that:

1. I have reviewed this Annual Report on Form 10-K of Magnite, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Signature: /s/ David Day

David Day
Chief Financial Officer
(Principal Financial Officer)

Date February 24, 2021

**Exhibit 32**

**CERTIFICATIONS OF PRINCIPAL EXECUTIVE OFFICER AND PRINCIPAL FINANCIAL OFFICER PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. 1350), Michael Barrett, President and Chief Executive Officer (Principal Executive Officer) of Magnite, Inc. (the "Company"), and David Day, Chief Financial Officer (Principal Financial Officer) of the Company, each hereby certifies that, to the best of his knowledge:

1. Our Annual Report on Form 10-K for the quarter ended December 31, 2020, to which this certification is attached as Exhibit 32 (the "Report"), fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date February 24, 2021

/s/ Michael Barrett

Michael Barrett
President and Chief Executive Officer
(Principal Executive Officer)

/s/ David Day

David Day
Chief Financial Officer
(Principal Financial Officer)

The foregoing certifications are being furnished pursuant to 13 U.S.C. Section 1350. They are not being filed for purposes of Section 18 of the Securities Exchange Act of 1934, as amended, and are not to be incorporated by reference into any filing of the Company, regardless of any general incorporation language in such filing.