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

FORM 20-F

(Mark One)

- REGISTRATION STATEMENT PURSUANT TO SECTION 12(b) OR 12(g) OF THE SECURITIES EXCHANGE ACT OF 1934**
- OR**
- ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the fiscal year ended December 31, 2019.
- OR**
- TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
For the transition period from to .
- OR**
- SHELL COMPANY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**

Date of event requiring this shell company report:
Commission file number: 001-38638

NIO Inc.

(Exact Name of Registrant as Specified in Its Charter)

N/A

(Translation of Registrant's Name Into English)

Cayman Islands

(Jurisdiction of Incorporation or Organization)

**Building 20, No. 56 AnTuo Road, Anting Town, Jiading District
Shanghai 201804, People's Republic of China**
(Address of Principal Executive Offices)

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(Name, Telephone, Email and/or Facsimile number and Address of Company Contact Person)
Securities registered or to be registered pursuant to Section 12(b) of the Act:

Title of Each Class	Trading Symbol	Name of Each Exchange On Which Registered
American depository shares (each representing one Class A ordinary share, par value US\$0.00025 per share) Class A ordinary shares, par value US\$0.00025 per share*	NIO	New York Stock Exchange

*Not for trading, but only in connection with the listing on the New York Stock Exchange of American depository shares.

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

(Title of Class)
Securities for which there is a reporting obligation pursuant to Section 15(d) of the Act:
None
(Title of Class)

Indicate the number of outstanding shares of each of the issuer's classes of capital or common stock as of the close of the period covered by the annual report:

As of December 31, 2019, there were (i) 831,927,977 Class A ordinary shares outstanding, par value US\$0.00025 per share, (ii) 132,030,222 Class B ordinary shares outstanding, par value US\$0.00025 per share and (iii) 148,500,000 Class C ordinary shares outstanding, par value US\$0.00025 per share.

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

If this report is an annual or transition report, indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934. 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, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

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

If an emerging growth company that prepares its financial statements in accordance with U.S. GAAP, 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.

†The term "new or revised financial accounting standard" refers to any update issued by the Financial Accounting Standards Board to its Accounting Standards Codification after April 5, 2012.

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 Act (15 U.S.C. 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

Indicate by check mark which basis of accounting the registrant has used to prepare the financial statements included in this filing:

<input checked="" type="checkbox"/> U.S. GAAP	<input type="checkbox"/> International Financial Reporting Standards as issued by the International Accounting Standards Board	<input type="checkbox"/> Other
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If "Other" has been checked in response to the previous question, indicate by check mark which financial statement item the registrant has elected to follow. Item 17 Item 18

If this is an annual report, indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes No

(APPLICABLE ONLY TO ISSUERS INVOLVED IN BANKRUPTCY PROCEEDINGS DURING THE PAST FIVE YEARS)

Indicate by check mark whether the registrant has filed all documents and reports required to be filed by Sections 12, 13 or 15(d) of the Securities Exchange Act of 1934 subsequent to the distribution of securities under a plan confirmed by a court. Yes No

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INTRODUCTION

In this annual report on Form 20-F, or this annual report, except where the context otherwise requires and for purposes of this annual report only:

- “ADAS” refers to advanced driver assistance system;
- “ADRs” refer to the American depositary receipts that evidence the ADSs;
- “ADSs” refer to our American depositary shares, each of which represents one Class A ordinary share;
- “AI” refers to artificial intelligence;
- “BEVs” refer to battery electric passenger vehicles;
- “China” or the “PRC” refers to the People’s Republic of China, excluding, for the purpose of this annual report only, Hong Kong, Macau and Taiwan;
- “Class A ordinary shares” refer to our Class A ordinary shares, par value US\$0.00025 per share;
- “Class B ordinary shares” refer to our Class B ordinary shares, par value US\$0.00025 per share;
- “Class C ordinary shares” refer to our Class C ordinary shares, par value US\$0.00025 per share;
- “EVs” refer to electric passenger vehicles;
- “FOTA” refers to firmware over-the-air;
- “ICE” refers to internal combustion engine;
- “NEVs” refer to new energy passenger vehicles;
- “NIO,” “we,” “us,” “our company,” and “our” refer to NIO Inc., our Cayman Islands holding company and its subsidiaries, its consolidated variable interest entities and the subsidiaries of the consolidated variable interest entities;
- “Ordinary shares” refer to our Class A ordinary shares, Class B ordinary shares and Class C ordinary shares, each of par value US\$0.00025 per share;
- “RMB” or “Renminbi” refers to the legal currency of China; and
- “US\$,” “dollars” or “U.S. dollars” refer to the legal currency of the United States.

Unless otherwise noted, all translations from Renminbi to U.S. dollars and from U.S. dollars to Renminbi in this annual report are made at a rate of RMB6.9618 to US\$1.00, the exchange rate in effect as of December 31, 2019 as set forth in the H.10 statistical release of the Board of Governors of the Federal Reserve System. We make no representation that any Renminbi or U.S. dollar amounts could have been, or could be, converted into U.S. dollars or Renminbi, as the case may be, at any particular rate, or at all.

FORWARD-LOOKING INFORMATION

This annual report contains forward-looking statements that reflect our current expectations and views of future events. These forward looking statements are made under the “safe-harbor” provisions of the U.S. Private Securities Litigation Reform Act of 1995. Known and unknown risks, uncertainties and other factors, including those listed under “Item 3. Key Information—D. Risk Factors,” may cause our actual results, performance or achievements to be materially different from those expressed or implied by the forward-looking statements. These statements involve known and unknown risks, uncertainties and other factors that may cause our actual results, performance or achievements to be materially different from those expressed or implied by the forward-looking statements.

You can identify these forward-looking statements by words or phrases such as “may,” “will,” “expect,” “anticipate,” “aim,” “estimate,” “intend,” “plan,” “believe,” “likely to,” “potential,” “continue” or other similar expressions. We have based these forward-looking statements largely on our current expectations and projections about future events and financial trends that we believe may affect our financial condition, results of operations, business strategy and financial needs. These forward-looking statements include, but are not limited to, statements about:

- our goals and growth strategies;
- the outbreak of COVID-19.
- our future business development, financial condition and results of operations;
- the expected growth of the electric vehicles industry in China;
- our expectations regarding demand for and market acceptance of our products and services;
- our expectations regarding our relationships with customers, contract manufacturers, component suppliers, third-party service providers, strategic partners and other stakeholders;
- competition in our industry;
- relevant government policies and regulations relating to our industry; and
- assumptions underlying or related to any of the foregoing.

These forward-looking statements involve various risks and uncertainties. Although we believe that our expectations expressed in these forward-looking statements are reasonable, our expectations may later be found to be incorrect. Our actual results could be materially different from our expectations. Other sections of this annual report include additional factors that could adversely impact our business and financial performance. Moreover, we operate in an evolving environment. New risk factors and uncertainties emerge from time to time and it is not possible for our management to predict all risk factors and uncertainties, nor can we assess the impact of all factors on our business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements. You should read thoroughly this annual report and the documents that we refer to with the understanding that our actual future results may be materially different from, or worse than, what we expect. We qualify all of our forward-looking statements by these cautionary statements.

This annual report contains certain data and information that we obtained from various government and private publications. Statistical data in these publications also include projections based on a number of assumptions. The electric vehicles industry may not grow at the rate projected by market data, or at all. Failure of this market to grow at the projected rate may have a material adverse effect on our business and the market price of our ADSs. In addition, the rapidly evolving nature of the electric vehicles industry results in significant uncertainties for any projections or estimates relating to the growth prospects or future condition of our market. Furthermore, if any one or more of the assumptions underlying the market data are later found to be incorrect, actual results may differ from the projections based on these assumptions. You should not place undue reliance on these forward-looking statements.

The forward-looking statements made in this annual report relate only to events or information as of the date on which the statements are made in this annual report. Except as required by law, we undertake no obligation to update or revise publicly any forward-looking statements, whether as a result of new information, future events or otherwise, after the date on which the statements are made or to reflect the occurrence of unanticipated events. You should read this annual report and the documents that we refer to in this annual report and exhibits to this annual report completely and with the understanding that our actual future results may be materially different from what we expect.

PART I.

ITEM 1. IDENTITY OF DIRECTORS, SENIOR MANAGEMENT AND ADVISERS

Not applicable.

ITEM 2. OFFER STATISTICS AND EXPECTED TIMETABLE

Not applicable.

ITEM 3. KEY INFORMATION

A. Selected Financial Data

Selected Consolidated Financial Data

The following selected consolidated statements of comprehensive loss data for the years ended December 31, 2017, 2018 and 2019, selected consolidated balance sheet data as of December 31, 2018 and 2019 and selected consolidated cash flow data for the years ended December 31, 2017, 2018 and 2019 have been derived from our audited consolidated financial statements included elsewhere in this annual report. The following selected consolidated statements of comprehensive loss data for the year ended December 31, 2016, the selected consolidated balance sheet data as of December 31, 2016 and 2017, and the selected consolidated cash flow data for the year ended December 31, 2016 have been derived from our audited consolidated financial statements that are not included in this annual report. Our historical results do not necessarily indicate results expected for any future periods. The selected consolidated financial data should be read in conjunction with, and are qualified in their entirety by reference to, our audited consolidated financial statements and related notes and “Item 5. Operating and Financial Review and Prospects” below. Our consolidated financial statements are prepared and presented in accordance with accounting principles generally accepted in the United States of America, or U.S. GAAP.

	For the Year Ended December 31,				
	2016	2017	2018	2019	
	RMB	RMB	RMB	RMB	US\$
(in thousands, except for per share data)					
Selected Consolidated Statements of Comprehensive Loss:					
Revenues⁽¹⁾					
Vehicle sales	—	—	4,852,470	7,367,113	1,058,220
Other sales	—	—	98,701	457,791	65,758
Total revenues	—	—	4,951,171	7,824,904	1,123,978
Cost of sales:⁽²⁾					
Vehicle sales	—	—	(4,930,135)	(8,096,035)	(1,162,923)
Other sales	—	—	(276,912)	(927,691)	(133,254)
Total cost of sales	—	—	(5,207,047)	(9,023,726)	(1,296,177)
Gross loss	—	—	(255,876)	(1,198,822)	(172,199)
Operating expenses:					
Research and development ⁽²⁾	(1,465,353)	(2,602,889)	(3,997,942)	(4,428,580)	(636,126)
Selling, general and administrative ⁽²⁾	(1,137,187)	(2,350,707)	(5,341,790)	(5,451,787)	(783,100)
Total operating expenses	(2,602,540)	(4,953,596)	(9,339,732)	(9,880,367)	(1,419,226)
Loss from operations	(2,602,540)	(4,953,596)	(9,595,608)	(11,079,189)	(1,591,425)
Interest income	27,556	18,970	133,384	160,279	23,023
Interest expenses	(55)	(18,084)	(123,643)	(370,536)	(53,224)
Shares of losses of equity investee	—	(5,375)	(9,722)	(64,478)	(9,262)
Investment income	2,670	3,498	—	—	—
Other income/(loss), net	3,429	(58,681)	(21,346)	66,160	9,503
Loss before income tax expenses	(2,568,940)	(5,013,268)	(9,616,935)	(11,287,764)	(1,621,385)
Income tax expenses	(4,314)	(7,906)	(22,044)	(7,888)	(1,133)
Net loss	(2,573,254)	(5,021,174)	(9,638,979)	(11,295,652)	(1,622,518)
Accretion on convertible redeemable preferred value	(981,233)	(2,576,935)	(13,667,291)	—	—
Accretion on redeemable non-controlling interests to redemption value	—	—	(63,297)	(126,590)	(18,184)
Net loss attributable to non-controlling interests	36,938	36,440	41,705	9,141	1,313
Net loss attributable to ordinary shareholders of NIO Inc.	(3,517,549)	(7,561,669)	(23,327,862)	(11,413,101)	(1,639,389)
Net loss	(2,573,254)	(5,021,174)	(9,638,979)	(11,295,652)	(1,622,518)
Other comprehensive income/ (loss)					
Foreign currency translation adjustments, net of nil tax	55,493	(124,374)	(20,786)	(168,340)	(24,181)
Total other comprehensive income/ (loss)	55,493	(124,374)	(20,786)	(168,340)	(24,181)
Total comprehensive loss	(2,517,761)	(5,145,548)	(9,659,765)	(11,463,922)	(1,646,699)
Accretion on convertible redeemable preferred shares to redemption value	(981,233)	(2,576,935)	(13,667,291)	—	—
Accretion on redeemable non-controlling interests to redemption value	—	—	(63,297)	(126,590)	(18,184)
Net loss attributable to non-controlling interests	36,938	36,440	41,705	9,141	1,313
Comprehensive loss attributable to ordinary shareholders of NIO Inc.	(3,462,056)	(7,686,043)	(23,348,648)	(11,581,441)	(1,663,570)
Weighted average number of ordinary shares used in computing net loss per share					
Basic and diluted	16,697,527	21,801,525	332,153,211	1,029,931,705	1,029,931,705
Net loss per share attributable to ordinary shareholders					
Basic and diluted	(210.66)	(346.84)	(70.23)	(11.08)	(1.59)

Notes:

- (1) We began generating revenues in June 2018, when we began making deliveries and sales of the ES8. We currently generate revenues from vehicle sales and other sales.
- (2) Share-based compensation expenses were allocated in cost of sales and operating expenses as follows:

	For the Year Ended December 31,				
	2016	2017	2018	2019	
	RMB	RMB	RMB	RMB	US\$
	(in thousands)				
Cost of Sales	—	—	9,289	9,763	1,402
Research and development expenses	14,484	23,210	109,124	82,680	11,876
Selling, general and administrative expenses	62,200	67,086	561,055	241,052	34,625
Total	76,684	90,296	679,468	333,495	47,903

The following table presents our selected consolidated balance sheet data as of the dates indicated.

	As of December 31,				
	2016	2017	2018	2019	
	RMB	RMB	RMB	RMB	US\$
	(in thousands, except for share data)				
Selected Consolidated Balance Sheet Data:					
Cash and cash equivalents	581,296	7,505,954	3,133,847	862,839	123,939
Restricted cash	—	10,606	57,012	82,507	11,851
Long-term restricted cash	15,335	14,293	33,528	44,523	6,395
Property, plant and equipment, net	833,004	1,911,013	4,853,157	5,533,064	794,775
Total assets	1,770,478	10,468,034	18,842,552	14,582,029	2,094,577
Total liabilities	825,264	2,402,028	10,692,210	19,403,841	2,787,187
Total mezzanine equity	4,861,574	19,657,786	1,329,197	1,455,787	209,111
Ordinary shares	52	60	1,809	1,827	262
Total shareholders' (deficit)/equity	(3,916,360)	(11,591,780)	6,821,145	(6,277,599)	(901,721)
Total shares outstanding	17,773,459	23,850,343	1,050,799,032	1,064,472,660	1,064,472,660

The following table presents our selected consolidated cash flow data for the years indicated.

	For the Year Ended December 31,				
	2016	2017	2018	2019	
	RMB	RMB	RMB	RMB	US\$
	(in thousands)				
Selected Consolidated Cash Flow Data:					
Net cash used in operating activities	(2,201,564)	(4,574,719)	(7,911,768)	(8,721,706)	(1,252,795)
Net cash provided by/(used in) investing activities	117,843	(1,190,273)	(7,940,843)	3,382,069	485,804
Net cash provided by financing activities	2,292,704	12,867,334	11,603,092	3,094,953	444,562
Effects of exchange rate changes on cash, cash equivalents and restricted cash	40,539	(168,120)	(56,947)	10,166	1,460
Net increase/(decrease) in cash, cash equivalents and restricted cash	249,522	6,934,222	(4,306,466)	(2,234,518)	(320,969)
Cash and cash equivalents and restricted cash at the beginning of year	347,109	596,631	7,530,853	3,224,387	463,154
Cash and cash equivalents and restricted cash at the end of year	596,631	7,530,853	3,224,387	989,869	142,185

B. Capitalization and Indebtedness

Not applicable.

C. Reasons for the Offer and Use of Proceeds

Not applicable.

D. Risk Factors

Risks Related to Our Business and Industry

Our ability to develop and manufacture a car of sufficient quality and appeal to customers on schedule and on a large scale is still evolving.

Our future business depends in large part on our ability to execute on our plans to develop, manufacture, market and sell our electric vehicles. We plan to manufacture our vehicles in higher volumes than our present production capabilities in strategic collaboration with a Chinese manufacturer.

Our continued development and manufacturing of our manufactured vehicles, the ES8, the ES6 and the EC6, and our future vehicles are and will be subject to risks, including with respect to:

- our ability to secure necessary funding;
- the equipment we use being able to accurately manufacture the vehicle within specified design tolerances;
- compliance with environmental, workplace safety and similar regulations;
- securing necessary components on acceptable terms and in a timely manner;
- delays in delivery of final component designs to our suppliers;
- our ability to attract, recruit, hire and train skilled employees;
- quality controls;
- delays or disruptions in our supply chain;
- our ability to maintain solid partnership with our manufacturing partners and suppliers; and
- other delays, backlog in manufacturing and research and development of new models, and cost overruns.

We began making deliveries of the seven-seater ES8 in June 2018, the six-seater ES8 in March 2019 and the ES6 in June 2019. In December 2019, we launched our third volume manufactured electric vehicle, the EC6, and the all-new ES8 with more than 180 product improvements. We began making deliveries of the all-new ES8 in April 2020. We do not expect to deliver the EC6 until September 2020. Our vehicles may not meet customer expectations and our future models may not be commercially viable.

Historically, automobile customers have expected car manufacturers to periodically introduce new and improved vehicle models. In order to meet these expectations, we may be required to introduce new vehicle models and enhanced versions of existing vehicle models. To date we have limited experience designing, testing, manufacturing, marketing and selling our electric vehicles and therefore cannot assure you that we will be able to meet customer expectations.

Any of the foregoing could have a material adverse effect on our results of operations and growth prospects.

We have negative cash flows from operation, have only recently started to generate revenues and have not been profitable, all of which may continue in the future.

We have only recently started to generate revenues and have not been profitable since our inception. We incurred net losses of RMB5,021.2 million, RMB9,639.0 million and RMB11,295.7 million (US\$1,622.5 million) in 2017, 2018 and 2019, respectively. In addition, we had negative cash flows from operating activities of RMB4,574.7 million, RMB7,911.8 million and RMB8,721.7 million (US\$1,252.8 million) in 2017, 2018 and 2019, respectively. We have made significant up-front investments in research and development, service network, and sales and marketing to rapidly develop and expand our business. We expect to continue to invest significantly in research and development and sales and marketing, to establish and expand our business, and these investments may not result in an increase in revenue or positive cash flow on a timely basis, or at all.

We may not generate sufficient revenues or we may incur substantial losses for a number of reasons, including lack of demand for our vehicles and services, increasing competition, challenging macro-economic environment due to the COVID-19 outbreak, as well as other risks discussed herein, and we may incur unforeseen expenses, or encounter difficulties, complications and delays in generating revenue or achieving profitability. If we are unable to achieve profitability, we may have to reduce the scale of our operations, which may impact our business growth and adversely affect our financial condition and results of operations. In addition, our continuous operation depends on our capability to obtain sufficient external equity or debt financing. If we do not succeed in doing so, we may need to curtail our operations, which could adversely affect our business, results of operations, financial position and cash flows.

We face risks related to natural disasters, health epidemics and other outbreaks, which could significantly disrupt our operations.

Our business could be adversely affected by the effects of epidemics. In recent years, there have been outbreaks of epidemics in China and globally. Our financial condition and results of operations for fiscal 2020 are expected to be adversely affected surfaced. Subsequently, COVID-19 spread throughout China and worldwide. In late January 2020, in response to intensifying efforts to contain the spread of the coronavirus, the Chinese government took a number of actions, which included extending the Chinese New Year holiday, quarantining and otherwise treating individuals in China who had the coronavirus, asking China residents to remain at home and to avoid gathering in public, and other actions. The novel strain of coronavirus has also resulted in temporary closure of many corporate offices, retail stores, and manufacturing facilities and factories across China. While the events related to the outbreak of and response to the coronavirus are expected to be temporary, our business has been and could continue to be adversely impacted by the effects of the Coronavirus or other epidemics. We have a service center and vehicle delivery center in Wuhan and other major cities in China. Consequently, we are susceptible to factors adversely affecting one or more of these locations. Our results of operations has been and could continue to be adversely affected to the extent that Coronavirus or any other epidemic harms the Chinese economy in general. We have experienced and may continue to experience impacts to certain of our customers and/or suppliers as a result of a health epidemic or other outbreak occurring in one or more of these locations, which have materially and adversely affected our business, financial condition, results of operations and cash flows. In addition, our operations have experienced and may continue to experience disruptions, such as temporary closure of our offices and/or those of our customers or suppliers and suspension of services, resulting in a reduced of vehicles manufactured and in turn fewer vehicles delivered, which have materially and adversely affected our business, financial condition, results of operations and cash flow. Further, to the extent the COVID-19 pandemic adversely affects our business and financial results, it has and may continue to have the effect of heightening many of the other risks described in this annual report, such as those relating to our level of indebtedness, our need to generate sufficient cash flows to service our indebtedness and our ability to comply with the covenants contained in the agreements that govern our indebtedness.

We are also vulnerable to natural disasters and other calamities. Although we have servers that are hosted in an offsite location, our backup system does not capture data on a real-time basis and we may be unable to recover certain data in the event of a server failure. We cannot assure you that any backup systems will be adequate to protect us from the effects of fire, floods, typhoons, earthquakes, power loss, telecommunications failures, break-ins, war, riots, terrorist attacks or similar events. Any of the foregoing events may give rise to interruptions, breakdowns, system failures, technology platform failures or internet failures, which could cause the loss or corruption of data or malfunctions of software or hardware as well as adversely affect our ability to provide services on our platform.

We have a limited operating history and face significant challenges as a new entrant into our industry.

We were formed in 2014 and began making deliveries to the public of our first volume manufactured vehicle, the seven-seater ES8, in June 2018. We began making deliveries of our second volume manufactured electric vehicle, the ES6, in June 2019. In December 2019, we launched our third volume manufactured electric vehicle, the EC6, and the all-new ES8 with more than 180 product improvements. We began making deliveries of the all-new ES8 in April 2020, and plan to begin making deliveries the EC6 in September 2020.

You should consider our business and prospects in light of the risks and challenges we face as a new entrant into our industry, including, among other things, with respect to our ability to:

- design and produce safe, reliable and quality vehicles on an ongoing basis;
- build a well-recognized and respected brand;
- establish and expand our customer base;
- successfully market not just our vehicles but also our other services, including our service package, energy package and other services we provide;
- properly price our services, including our charging solutions and service package and successfully anticipate the take-rate and usage of such services by users;
- improve and maintain our operational efficiency;
- maintain a reliable, secure, high-performance and scalable technology infrastructure;
- attract, retain and motivate talented employees;
- anticipate and adapt to changing market conditions, including technological developments and changes in competitive landscape; and
- navigate an evolving and complex regulatory environment.

If we fail to address any or all of these risks and challenges, our business may be materially and adversely affected.

We have limited experience to date in high volume manufacturing of our electric vehicles. We cannot assure you that we will be able to develop efficient, automated, cost-efficient manufacturing capability and processes, and reliable sources of component supply that will enable us to meet the quality, price, engineering, design and production standards, as well as the production volumes required to successfully mass market the ES8, the ES6, the EC6 and future vehicles.

Furthermore, our vehicles are highly technical products that will require maintenance and support. If we were to cease or cut back operations, even years from now, buyers of our vehicles from years earlier might encounter difficulties in maintaining their vehicles and obtaining satisfactory support. We also believe that our service offerings, including user confidence in our ability to provide our charging solutions and honor our obligations under our service package will be key factors in marketing our vehicles. As a result, consumers will be less likely to purchase our vehicles now if they are not convinced that our business will succeed or that our operations will continue for many years. Similarly, suppliers and other third parties will be less likely to invest time and resources in developing business relationships with us if they are not convinced that our business will succeed.

Manufacturing in collaboration with partners is subject to risks.

We have entered into an arrangement with Jianghuai Automobile Group Co., Ltd., or JAC, for manufacturing the ES8 for five years. In April 2019 and March 2020, we entered manufacturing cooperation agreements with JAC for the manufacture of the ES6 and the EC6, respectively. The ES8 and ES6 are manufactured in partnership with JAC at its Hefei manufacturing plant. JAC is a major state-owned automobile manufacturer in China and it constructed such Hefei manufacturing plant for the production of the ES8 (with a modified production line for the ES6) and potentially other future vehicles with us. Pursuant to our arrangement with JAC with respect to the ES8, ES6 and EC6, we pay JAC for each vehicle produced on a per-vehicle basis monthly for the first three years. Collaboration with third parties for the manufacturing of vehicles is subject to risks with respect to operations that are outside our control. We could experience delays to the extent our partners do not meet agreed upon timelines or experience capacity constraints. There is risk of potential disputes with partners, and we could be affected by adverse publicity related to our partners whether or not such publicity is related to their collaboration with us. Our ability to successfully build a premium brand could also be adversely affected by perceptions about the quality of our partners' vehicles. In addition, although we are involved in each step of the supply chain and manufacturing process, given that we also rely on our partners to meet our quality standards, there can be no assurance that we will successfully maintain quality standards.

In addition, for the first 36 months after the start of production, which commenced on April 10, 2018, to the extent the Hefei manufacturing plant incurs any operating losses, we have agreed to compensate JAC for such operating losses. Cooperation after the first 36 months will be subject to further negotiation between the parties. As of December 31, 2019, we had paid JAC a total of RMB604.4 million, including RMB333.1 million as compensation for losses incurred in 2018 and 2019 and RMB271.3 million for manufacturing and processing fees. If we are obligated to compensate JAC for any losses, our results of operations and financial condition may be materially and adversely affected, particularly if such losses are incurred as a result of lower than anticipated sales volume.

We may be unable to enter into new agreements or extend existing agreements with third-party manufacturing partners on terms and conditions acceptable to us and therefore may need to contract with other third parties or significantly add to our own production capacity. There can be no assurance that in such event we would be able to partner with other third parties or establish or expand our own production capacity to meet our needs on acceptable terms or at all. The expense and time required to complete any transition, and to assure that vehicles manufactured at facilities of new third-party partners comply with our quality standards and regulatory requirements, may be greater than anticipated. Any of the foregoing could adversely affect our business, results of operations, financial condition and prospects.

The unavailability, reduction or elimination of government and economic incentives or government policies which are favorable for electric vehicles and domestically produced vehicles could have a material adverse effect on our business, financial condition, operating results and prospects.

Our growth depends significantly on the availability and amounts of government subsidies, economic incentives and government policies that support the growth of new energy vehicles generally and electric vehicles specifically. For example, each qualified purchaser of the ES8 and the ES6 is entitled to receive subsidies from China's central government. In addition, in certain cities, quotas that limit the number of internal combustion engine, or ICE, vehicles do not apply to electric vehicles, making it easier for customers to purchase electric vehicles.

On April 10, 2018, President Xi Jinping vowed to open China's economy further and lower import tariffs on products, including cars, in a speech during the Boao Forum. Beginning July 1, 2018, the tariff on imported passenger vehicles (other than those originating in the United States of America) was reduced to 15%. As a result, our pricing advantage could be diminished. On June 28, 2018, the National Development and Reform Commission, or NDRC, and the Ministry of Commerce, or the MOFCOM, promulgated the *Special Administrative Measures for Market Access of Foreign Investment (2018 Version)*, or the 2018 Negative List, which came into effect on July 28, 2018. Pursuant to the 2018 Negative List, the limits on foreign ownership of auto manufacturers were lifted in 2018 for NEVs and will be lifted by 2022 for ICE vehicles. The same changes were subsequently adopted in the *Special Administrative Measures for Market Access of Foreign Investment (2019 Version)*, or the 2019 Negative List. As a result, foreign EV competitors could build wholly-owned facilities in China without the need for a domestic joint venture partner. For example, Tesla has started constructing a factory in Shanghai without a joint venture partner. These changes could increase our competition and reduce our pricing advantage.

China's central government provides subsidies for purchasers of certain NEVs until 2022 and reviews and further adjusts the subsidy standard on an annual basis. The 2019 subsidy standard, effective from March 26, 2019, reduced the amount of national subsidies and canceled local subsidies, resulting in a significant reduction in the total subsidy amount applicable to the ES8 and ES6 as compared to 2018. We believe that our sales performance of ES8 and ES6 in 2019 was negatively affected by the reduction in the subsidy standard. The current 2020 subsidy standard, effective from April 23, 2020, (i) reduces the base subsidy amount in general by 10% for each NEV, (ii) sets subsidies for 2 million vehicles as the upper limit of annual subsidy scale; and (iii) provides that national subsidy shall only apply to an NEV with the sale price under RMB300,000 or equipped with battery swapping module. Further, the 2021 and the 2022 subsidy standard are expected to be reduced by 20% and 30% respectively as compared to the standard of the immediate preceding year.

We cannot guarantee that such negative influence and our undermined sales performance resulted therefrom will not continue. Furthermore, China's central government provides certain local governments with funds and subsidies to support the roll-out of a charging infrastructure. See "Item 4. Information on the Company—B. Business Overview—Regulation—Favorable Government Policies Relating to New Energy Vehicles in the PRC." These policies are subject to change and beyond our control. We cannot assure you that any changes would be favorable to our business. Furthermore, any reduction, elimination or discriminatory application of government subsidies and economic incentives because of policy changes, the reduced need for such subsidies and incentives due to the perceived success of electric vehicles, fiscal tightening or other factors may result in the diminished competitiveness of the alternative fuel vehicle industry generally or our electric vehicles in particular. Any of the foregoing could materially and adversely affect our business, results of operations, financial condition and prospects.

Our vehicles may not perform in line with customer expectations.

Our vehicles, including the ES8, ES6 and EC6, may not perform in line with customers' expectations. For example, our vehicles may not have the durability or longevity of other vehicles in the market, and may not be as easy and convenient to repair as other vehicles on the market. Any product defects or any other failure of our vehicles to perform as expected could harm our reputation and result in adverse publicity, lost revenue, delivery delays, product recalls, product liability claims, harm to our brand and reputation, and significant warranty and other expenses, and could have a material adverse impact on our business, financial condition, operating results and prospects.

In addition, the range of our vehicles on a single charge declines principally as a function of usage, time and charging patterns as well as other factors. For example, a customer's use of his or her electric vehicle as well as the frequency with which he or she charges the battery can result in additional deterioration of the battery's ability to hold a charge.

Furthermore, our vehicles may contain defects in design and manufacture that may cause them not to perform as expected or that may require repair. We have delivered our vehicles with certain features of our NIO Pilot ADAS system initially disabled, and subsequently turned on some of these features. We activated most of the announced functions of the NIO pilot in 2019, and plan to continue to explore more features of the NIO pilot system in 2020. We cannot assure you that our NIO Pilot system will ultimately perform in line with expectations. Our vehicles use a substantial amount of software code to operate and software products are inherently complex and often contain defects and errors when first introduced. While we have performed extensive internal testing on our vehicles' software and hardware systems, we have a limited frame of reference by which to evaluate the long-term performance of our systems and vehicles. There can be no assurance that we will be able to detect and fix any defects in the vehicles prior to their sale to consumers. If any of our vehicles fail to perform as expected, we may need to delay deliveries, initiate product recalls and provide servicing or updates under warranty at our expense, which could adversely affect our brand in our target markets and could adversely affect our business, prospects and results of operations.

Any delays in the manufacturing and launch of the commercial production vehicles in our pipeline could have a material adverse effect on our business.

We launched our third volume manufactured electric vehicle, the EC6, to the public at our NIO Day event on December 28, 2019. EC6 is a smart premium electric coupe SUV. Its performance version is equipped with a 160-kW permanent magnet motor and a 240-kW induction motor, and is capable of accelerating from zero to 100 kph within 4.7 seconds. With the 100-kilowatt-hour battery pack to be delivered in the fourth quarter of 2020, the EC6 performance version boasts an NEDC range of up to 615 km. Users can pre-order the EC6 through the NIO App and we expect to begin making deliveries of the EC6 in September 2020. In March 2020, we entered into a manufacturing cooperation agreements with JAC for the manufacture of the EC6. The EC6 must enter into an Announcement of Vehicle Manufacturers and Products and obtain the China Compulsory Certification, or the CCC certification, prior to mass production. If we encounter delays in any of these matters, we may consequently delay our deliveries of the EC6.

We generally target to launch a new model every year in the near future as we ramp up our business. Automobile manufacturers often experience delays in the design, manufacture and commercial release of new vehicle models. We are planning to target a broader market with our future vehicles, and to the extent we need to delay the launch of our vehicles, our growth prospects could be adversely affected as we may fail to grow our market share. We also plan to periodically perform facelifts or refresh existing models, which could also be subject to delays. Furthermore, we rely on third party suppliers for the provision and development of many of the key components and materials used in our vehicles. To the extent our suppliers experience any delays in providing us with or developing necessary components, we could experience delays in delivering on our timelines. Any delay in the manufacture or launch of the ES8, the ES6, the EC6 or future models, including in the build out of the manufacturing facilities in China for these models or due to any other factors, or in refreshing or performing facelifts to existing models, could subject us to customer complaints and materially and adversely affect our reputation, demand for our vehicles, results of operations and growth prospects.

In addition, to the extent the Hefei manufacturing plant incurs any operating losses, we have agreed to compensate JAC for such operating losses. As of December 31, 2019, we had paid JAC a total of RMB604.4 million, including RMB333.1 million as compensation for losses incurred in 2018 and 2019 and RMB271.3 million for manufacturing and processing fees. If we are obligated to compensate JAC for any losses, our results of operations and financial condition may be materially and adversely affected, particularly if such losses are incurred as a result of lower than anticipated sales volume. We expect that our sales volume and the ability of the Hefei manufacturing plant to achieve profitability will be significantly affected by our ability to timely bring new vehicles to market.

We may face challenges providing our charging solutions.

We have marketed our ability to provide our users with comprehensive charging solutions conveniently accessible using our mobile application. We install home chargers for users where practicable, and provide other solutions including battery swapping, charging through publicly accessible charging infrastructure and charging using our fast charging trucks. Our users are able to use our NIO Power one-click valet charging service where their vehicles are picked up, charged and then returned. We have very limited experience in the actual provision of our charging solutions to users and providing these services is subject to challenges, which include the logistics of rolling out our network and teams in appropriate areas, inadequate capacity or over capacity in certain areas, security risks or risk of damage to vehicles during Power Express valet services and the potential for lack of user acceptance of our services. In addition, although the Chinese government has supported the roll-out of a public charging network, the current number of charging infrastructures is generally considered to be insufficient. We face significant challenges as we roll out our charging solutions, including access to sufficient charging infrastructure, obtaining any required permits, land use rights and filings, and, to a certain extent, such roll-out is subject to the risk that government support may discontinue.

In addition, given our limited experience in providing charging solutions, there could be unanticipated challenges which may hinder our ability to provide our solutions or make the provision of our solutions costlier than anticipated. To the extent we are unable to meet user expectations or experience difficulties in providing our charging solutions, our reputation and business may be materially and adversely affected.

Our services may not be generally accepted by our users. If we are unable to provide good customer service, our business and reputation may be materially and adversely affected.

We aim to provide users with a good customer service experience, including by providing our users with access to a full suite of services conveniently through our mobile application and vehicle applications. In addition, we seek to engage with our users on an ongoing basis using online and offline channels, in ways which are non-traditional for automakers. We cannot assure you that our services, including our energy package and service package, or our efforts to engage with our users using both our online and offline channels, will be successful, which could impact our revenues as well as our customer satisfaction and marketing.

Our servicing will primarily be carried out through third parties certified by us. Although such servicing partners may have experience in servicing other vehicles, we and such partners have very limited experience in servicing our vehicles. Servicing electric vehicles is different from servicing ICE vehicles and requires specialized skills, including high voltage training and servicing techniques. There can be no assurance that our service arrangements will adequately address the service requirements of our users to their satisfaction, or that we and our partners will have sufficient resources to meet these service requirements in a timely manner as the volume of vehicles we deliver increases.

In addition, if we are unable to roll out and establish a widespread service network, user satisfaction could be adversely affected, which in turn could materially and adversely affect our sales, results of operations and prospects.

We have received only a limited number of reservations for the ES8, the ES6 and the EC6, all of which are subject to cancellation.

Intention orders and reservations for our vehicles are subject to cancellation by the customer until delivery of the vehicle. We have experienced cancellations in the past. Notwithstanding the non-refundable deposits we charge for the reservations, our users may still cancel their reservations for many reasons outside of our control, in certain cases even after they have paid deposits with such reservations. The potentially long wait from the time a reservation is made until the time the vehicle is delivered could also impact user decisions on whether to ultimately make a purchase, due to potential changes in preferences, competitive developments and other factors. If we encounter delays in the introduction of the ES8, ES6, EC6 or future vehicles, we believe that a significant number of reservations may be cancelled. As a result, no assurance can be made that reservations will not be cancelled and will ultimately result in the final purchase, delivery, and sale of the vehicle. Such cancellations could harm our financial condition, business, prospects and operating results.

The automotive market is highly competitive, and we may not be successful in competing in this industry.

The China automotive market is highly competitive. We have strategically entered into this market in the premium EV segment and we expect this segment will become more competitive in the future as additional players enter into this segment. We compete with international competitors, including Tesla. Our vehicles also compete with ICE vehicles in the premium segment. Many of our current and potential competitors, particularly international competitors, have significantly greater financial, technical, manufacturing, marketing and other resources than we do and may be able to devote greater resources to the design, development, manufacturing, distribution, promotion, sale and support of their products. We expect competition in our industry to intensify in the future in light of increased demand and regulatory push for alternative fuel vehicles, continuing globalization and consolidation in the worldwide automotive industry. Factors affecting competition include, among others, product quality and features, innovation and development time, pricing, reliability, safety, fuel economy, customer service and financing terms. Increased competition may lead to lower vehicle unit sales and increased inventory, which may result in downward price pressure and adversely affect our business, financial condition, operating results and prospects. Our ability to successfully compete in our industry will be fundamental to our future success in existing and new markets and our market share. There can be no assurance that we will be able to compete successfully in our markets. If our competitors introduce new cars or services that successfully compete with or surpass the quality or performance of our cars or services at more competitive prices, we may be unable to satisfy existing customers or attract new customers at the prices and levels that would allow us to generate attractive rates of return on our investment.

Furthermore, our competitive advantage as the company with the first-to-market and leading premium EV volume-manufactured domestically in China will be severely compromised if our competitors begin making deliveries earlier than expected, or offer more favorable price than we do.

We may also be affected by the growth of the overall China automotive market. While sales of electric vehicles in China increased in 2019, overall automobile sales in China declined 9.3% during the year. If demand for automobiles in China continues to decrease, our business, results of operations and financial condition could be materially adversely affected.

Our industry and its technology are rapidly evolving and may be subject to unforeseen changes. Developments in alternative technologies or improvements in the internal combustion engine may materially and adversely affect the demand for our electric vehicles.

We operate in China's electric vehicle market, which is rapidly evolving and may not develop as we anticipate. The regulatory framework governing the industry is currently uncertain and may remain uncertain for the foreseeable future. As our industry and our business develop, we may need to modify our business model or change our services and solutions. These changes may not achieve expected results, which could have a material adverse effect on our results of operations and prospects.

Furthermore, we may be unable to keep up with changes in electric vehicle technology and, as a result, our competitiveness may suffer. Our research and development efforts may not be sufficient to adapt to changes in electric vehicle technology. As technologies change, we plan to upgrade or adapt our vehicles and introduce new models in order to provide vehicles with the latest technology, in particular battery cell technology, which could involve substantial costs and lower our return on investment for existing vehicles. There can be no assurance that we will be able to compete effectively with alternative vehicles or source and integrate the latest technology into our vehicles, against the backdrop of our rapidly evolving industry. Even if we are able to keep pace with changes in technology and develop new models, our prior models could become obsolete more quickly than expected, potentially reducing our return on investment.

Developments in alternative technologies, such as advanced diesel, ethanol, fuel cells or compressed natural gas, or improvements in the fuel economy of the internal combustion engine, may materially and adversely affect our business and prospects in ways we do not currently anticipate. For example, fuel which is abundant and relatively inexpensive in China, such as compressed natural gas, may emerge as consumers' preferred alternative to petroleum based propulsion. Any failure by us to successfully react to changes in existing technologies could materially harm our competitive position and growth prospects.

We may be unable to adequately control the costs associated with our operations.

We have required significant capital to develop and grow our business, including developing the ES8, the ES6 and the EC6, as well as building our brand. We expect to incur significant costs which will impact our profitability, including research and development expenses as we roll out new models and improve existing models, raw material procurement costs and selling and distribution expenses as we build our brand and market our vehicles. In addition, we may incur significant costs in connection with our services, including providing charging solutions and honoring our commitments under our service package. Our ability to become profitable in the future will not only depend on our ability to successfully market our vehicles and other products and services but also to control our costs. If we are unable to cost efficiently design, manufacture, market, sell and distribute and service our vehicles and services, our margins, profitability and prospects will be materially and adversely affected.

We could experience cost increases or disruptions in supply of raw materials or other components used in our vehicles.

We incur significant costs related to procuring raw materials required to manufacture and assemble our vehicles. We use various raw materials in our vehicles including aluminum, steel, carbon fiber, non-ferrous metals such as copper, lithium, nickel as well as cobalt. The prices for these raw materials fluctuate depending on factors beyond our control, including market conditions and global demand for these materials, and could adversely affect our business and operating results. Our business also depends on the continued supply of battery cells for our vehicles. Battery cell manufacturers may refuse to supply electric vehicle manufacturers to the extent they determine that the vehicles are not sufficiently safe. We are exposed to multiple risks relating to availability and pricing of quality lithium-ion battery cells. These risks include:

- the inability or unwillingness of current battery cell manufacturers to build or operate battery cell manufacturing plants to supply the numbers of lithium-ion cells required to support the growth of the electric or plug-in hybrid vehicle industry as demand for such cells increases;
- disruption in the supply of cells due to quality issues or recalls by the battery cell manufacturers; and
- an increase in the cost of raw materials, such as lithium, nickel and cobalt, used in lithium-ion cells.

Furthermore, currency fluctuations, tariffs or shortages in petroleum and other economic or political conditions may result in significant increases in freight charges and raw material costs. Substantial increases in the prices for our raw materials or components would increase our operating costs, and could reduce our margins. In addition, a growth in popularity of electric vehicles without a significant expansion in battery cell production capacity could result in shortages which would result in increased costs in raw materials to us or impact of prospects.

We are dependent on our suppliers, many of whom are our single source suppliers for the components they supply.

The ES8, ES6 and EC6 each uses over 1,500 purchased parts which we source from over 190 suppliers, many of whom are currently our single source suppliers for these components, and we expect that this will be similar for any future vehicle we may produce. The supply chain exposes us to multiple potential sources of delivery failure or component shortages. While we obtain components from multiple sources whenever possible, similar to other automobile manufacturers, many of the components used in our vehicles are purchased by us from a single source. To date, we have not qualified alternative sources for most of the single sourced components used in our vehicles and we generally do not maintain long-term agreements with our single source suppliers. For example, while several sources of the battery cell we have selected for the ES8 are available, we have fully qualified only one supplier for these cells.

Furthermore, qualifying alternative suppliers or developing our own replacements for certain highly customized components of the ES8, the ES6 and the EC6, such as the air suspension system and the steering system, may be time-consuming and costly. Any disruption in the supply of components, whether or not from a single source supplier, could temporarily disrupt production of our vehicles until an alternative supplier is fully qualified by us or is otherwise able to supply us the required material. There can be no assurance that we would be able to successfully retain alternative suppliers or supplies on a timely basis, on acceptable terms or at all. Changes in business conditions, force majeure, governmental changes and other factors beyond our control or which we do not presently anticipate, could also affect our suppliers' ability to deliver components to us on a timely basis. Any of the foregoing could materially and adversely affect our results of operations, financial condition and prospects.

Our business and prospects depend significantly on our ability to build our NIO brand. We may not succeed in continuing to establish, maintain and strengthen the NIO brand, and our brand and reputation could be harmed by negative publicity regarding our company or products.

Our business and prospects are heavily dependent on our ability to develop, maintain and strengthen the "NIO" brand. If we do not continue to establish, maintain and strengthen our brand, we may lose the opportunity to build a critical mass of customers. Promoting and positioning our brand will likely depend significantly on our ability to provide high quality vehicles and services and engage with our customers as intended and we have limited experience in these areas. In addition, we expect that our ability to develop, maintain and strengthen the NIO brand will depend heavily on the success of our user development and branding efforts. Such efforts mainly include building a community of online and offline users engaged with us through our mobile application, NIO Houses, NIO Spaces as well as other branding initiatives such as our annual NIO Day, NIO Formula E Team, or Formula E team, and other automotive shows and events. Such efforts may be non-traditional and may not achieve the desired results. To promote our brand, we may be required to change our user development and branding practices, which could result in substantially increased expenses, including the need to use traditional media such as television, radio and print. If we do not develop and maintain a strong brand, our business, prospects, financial condition and operating results will be materially and adversely impacted.

In addition, if incidents occur or are perceived to have occurred, whether or not such incidents are our fault, we could be subject to adverse publicity. In particular, given the popularity of social media, including WeChat/Weixin in China, any negative publicity, whether true or not, could quickly proliferate and harm consumer perceptions and confidence in our brand. Furthermore, there is the risk of potential adverse publicity related to our manufacturing or other partners, whether or not such publicity related to their collaboration with us. Our ability to successfully position our brand could also be adversely affected by perceptions about the quality of our partners' vehicles.

In addition, from time to time, our vehicles are evaluated and reviewed by third parties. Any negative reviews or reviews which compare us unfavorably to competitors could adversely affect consumer perception about our vehicles.

Our business depends substantially on the continuing efforts of our executive officers, key employees and qualified personnel, and our operations may be severely disrupted if we lose their services.

Our success depends substantially on the continued efforts of our executive officers and key employees. If one or more of our executive officers or key employees were unable or unwilling to continue their services with us, we might not be able to replace them easily, in a timely manner, or at all. As we build our brand and become more well-known, the risk that competitors or other companies may poach our talent increases. Our industry is characterized by high demand and intense competition for talent and therefore we cannot assure you that we will be able to attract or retain qualified staff or other highly skilled employees. In addition, because our electric vehicles are based on a different technology platform than traditional ICE vehicles, individuals with sufficient training in electric vehicles may not be available to hire, and we will need to expend significant time and expense training the employees we hire. We also require sufficient talent in areas such as software development. Furthermore, as our company is relatively young, our ability to train and integrate new employees into our operations may not meet the growing demands of our business, which may materially and adversely affect our ability to grow our business and our results of operations.

If any of our executive officers and key employees terminates his or her services with us, our business may be severely disrupted, our financial condition and results of operations may be materially and adversely affected and we may incur additional expenses to recruit, train and retain qualified personnel. We have not obtained any “key person” insurance on our key personnel. If any of our executive officers or key employees joins a competitor or forms a competing company, we may lose customers, know-how and key professionals and staff members. To the extent permitted by laws, each of our executive officers and key employees has entered into an employment agreement and a non-compete agreement with us. However, if any dispute arises between our executive officers or key employees and us, the non-competition provisions contained in their non-compete agreements may not be enforceable, especially in China, where these executive officers reside, on the ground that we have not provided adequate compensation to them for their non-competition obligations, which is required under relevant PRC laws.

Our future growth is dependent on the demand for, and upon consumers’ willingness to adopt, electric vehicles.

Demand for automobile sales depends to a large extent on general, economic, political and social conditions in a given market and the introduction of new vehicles and technologies. As our business grows, economic conditions and trends will impact our business, prospects and operating results as well.

Demand for our electric vehicles may also be affected by factors directly impacting automobile prices or the cost of purchasing and operating automobiles, such as sales and financing incentives, prices of raw materials and parts and components, cost of fuel and governmental regulations, including tariffs, import regulation and other taxes. Volatility in demand may lead to lower vehicle unit sales, which may result in further downward price pressure and adversely affect our business, prospects, financial condition and operating results.

In addition, the demand for our vehicles and services will highly depend upon the adoption by consumers of new energy vehicles in general and electric vehicles in particular. The market for new energy vehicles is still rapidly evolving, characterized by rapidly changing technologies, competitive pricing and competitive factors, evolving government regulation and industry standards and changing consumer demands and behaviors.

Other factors that may influence the adoption of alternative fuel vehicles, and specifically electric vehicles, include:

- perceptions about electric vehicle quality, safety, design, performance and cost, especially if adverse events or accidents occur that are linked to the quality or safety of electric vehicles, whether or not such vehicles are produced by us or other manufacturers;
- perceptions about vehicle safety in general, in particular safety issues that may be attributed to the use of advanced technology, including electric vehicle and regenerative braking systems;
- the limited range over which electric vehicles may be driven on a single battery charge and the speed at which batteries can be recharged;
- the decline of an electric vehicle’s range resulting from deterioration over time in the battery’s ability to hold a charge;
- concerns about electric grid capacity and reliability;
- the availability of new energy vehicles, including plug-in hybrid electric vehicles;
- improvements in the fuel economy of the internal combustion engine;
- the availability of service for electric vehicles;
- the environmental consciousness of consumers;
- access to charging stations, standardization of electric vehicle charging systems and consumers’ perceptions about convenience and cost to charge an electric vehicle;

- the availability of tax and other governmental incentives to purchase and operate electric vehicles or future regulation requiring increased use of nonpolluting vehicles;
- perceptions about and the actual cost of alternative fuel; and
- macroeconomic factors.

Any of the factors described above may cause current or potential customers not to purchase our electric vehicles and use our services. If the market for electric vehicles does not develop as we expect or develops more slowly than we expect, our business, prospects, financial condition and operating results will be affected.

We depend on revenue generated from a limited number of models and in the foreseeable future will be significantly dependent on a limited number of models.

Our business currently depends substantially on the sales and success of a limited number of models that we have launched. Historically, automobile customers have come to expect a variety of vehicle models offered in a manufacturer's fleet and new and improved vehicle models to be introduced frequently. In order to meet these expectations, we plan in the future to introduce on a regular basis new vehicle models as well as enhance versions of existing vehicle models. To the extent our product variety and cycles do not meet consumer expectations, or cannot be produced on our projected timelines and cost and volume targets, our future sales may be adversely affected. Given that for the foreseeable future our business will depend on a single or limited number of models, to the extent a particular model is not well-received by the market, our sales volume could be materially and adversely affected. This could have a material adverse effect on our business, prospects, financial condition and operating results.

We are subject to risks related to customer credit.

We currently provide our users with the option of a battery payment arrangement, where users can make battery payments in installments. For the ES8 ordered before January 15, 2019, there is an RMB100,000 reduction in the purchase price and users adopting this arrangement pay RMB1,280 per month, payable over 78 months. For the ES8 and ES6 ordered after January 16, 2019, there is an RMB100,000 reduction in the purchase price and users adopting this arrangement pay RMB1,660 per month, payable over 60 months. We are exposed to the creditworthiness of our users since we expect them to make monthly payments for vehicle batteries under the battery payment arrangement. To the extent our users fail to make payments on-time, our results of operations may be adversely affected.

We may become subject to product liability claims, which could harm our financial condition and liquidity if we are not able to successfully defend or insure against such claims.

We may become subject to product liability claims, which could harm our business, prospects, operating results and financial condition. The automotive industry experiences significant product liability claims and we face inherent risk of exposure to claims in the event our vehicles do not perform as expected or malfunction resulting in property damage, personal injury or death. Our risks in this area are particularly pronounced given we have limited field experience of our vehicles. A successful product liability claim against us could require us to pay a substantial monetary award. Moreover, a product liability claim could generate substantial negative publicity about our vehicles and business and inhibit or prevent commercialization of our future vehicle candidates which would have a material adverse effect on our brand, business, prospects and operating results. Any insurance coverage might not be sufficient to cover all potential product liability claims. Any lawsuit seeking significant monetary damages may have a material adverse effect on our reputation, business and financial condition.

Our vehicles are subject to motor vehicle standards and the failure to satisfy such mandated safety standards would have a material adverse effect on our business and operating results.

All vehicles sold must comply with various standards of the market where the vehicles were sold. In China vehicles must meet or exceed all mandated safety standards. Rigorous testing and the use of approved materials and equipment are among the requirements for achieving such standards. Vehicles must pass various tests and undergo a certification process and be affixed with the CCC certification, before receiving delivery from the factory, being sold, or being used in any commercial activity, and such certification is also subject to periodic renewal. The seven-seater ES8 and the six-seater ES8 received the CCC certification in December 2017 and January 2019, separately. The ES6 received the CCC certification in April 2019. The new ES8 received the CCC certification in December 2019. The EC6 has not yet undergone the CCC certification but must be certified in the future prior to mass production. The process of obtaining the CCC certification typically requires four to five months. We plan to complete this process and obtain the CCC certification for the EC6 by September 2020. Furthermore, the government carries out the supervision and scheduled and unscheduled inspection of certified vehicles on a regular basis. In the event that our certification fails to be renewed upon expiry, a certified vehicle has a defect resulting in quality or safety accidents, or consistent failure of certified vehicles to comply with certification requirements is discovered during follow-up inspections, the CCC may be suspended or even revoked. With effect from the date of revocation or during suspension of the CCC, any vehicle that fails to satisfy the requirements for certification may not continue to be delivered, sold, imported or used in any commercial activity. Failure by us to have the ES8, the ES6, the EC6 or any future model electric vehicle satisfy motor vehicle standards would have a material adverse effect on our business and operating results.

We may be subject to risks associated with autonomous driving technology.

Through NIO Pilot, we provide enhanced Level 2 autonomous driving functionalities, and through our research and development, we continuously update and improve our autonomous driving technology. Autonomous driving technologies are subject to risks and from time to time there have been accidents associated with such technologies. The safety of such technologies depends in part on user interaction and users may not be accustomed to using such technologies. To the extent accidents associated with our autonomous driving systems occur, we could be subject to liability, government scrutiny and further regulation. Any of the foregoing could materially and adversely affect our results of operations, financial condition and growth prospects.

We may be compelled to undertake product recalls or take other actions, which could adversely affect our brand image and financial performance.

Recalls of our vehicles can cause adverse publicity, damage to our brand and liability for costs. In June 2019, we identified problems with certain battery packs on ES8 vehicles following safety incidents occurred in Shanghai and other locations in China. We then voluntarily recalled 4,803 ES8s, and replaced the batteries in the NIO battery swap network equipped with the malfunctioned modules. We undertook to compensate all users who had incurred property losses as a result of incidents caused by battery quality issues. In the future, we may at various times, voluntarily or involuntarily, initiate a recall if any of our vehicles, including any systems or parts sourced from our suppliers, prove to be defective or non-compliant with applicable laws and regulations. Such recalls, whether voluntary or involuntary or caused by systems or components engineered or manufactured by us or our suppliers, could involve significant expense and could adversely affect our brand image in our target markets, as well as our business, prospects, financial condition and results of operations.

Our distribution model is different from the predominant current distribution model for automobile manufacturers, which makes evaluating our business, operating results and future prospects difficult.

Our distribution model is not common in the automotive industry today, particularly in China. We plan to conduct vehicle sales directly to users rather than through dealerships, primarily through our mobile application, NIO Houses and NIO Spaces. Furthermore, generally all vehicles are made to order. This model of vehicle distribution is relatively new and unproven, especially in China, and subjects us to substantial risk as it requires, in the aggregate, significant expenditures and provides for slower expansion of our distribution and sales systems than may be possible by utilizing the traditional dealer franchise system. For example, we will not be able to utilize long established sales channels developed through a franchise system to increase our sales volume. Moreover, we will be competing with companies with well established distribution channels. Our success will depend in large part on our ability to effectively develop our own sales channels and marketing strategies. Implementing our business model is subject to numerous significant challenges, including obtaining permits and approvals from government authorities, and we may not be successful in addressing these challenges.

The lead time in fulfilling our orders could lead to cancelled orders. Our aim for the fulfilling speed is 21 to 28 days from the order placement date to delivery to users. If we are unable to achieve this target, our customer satisfaction could be adversely affected, harming our business and reputation.

Our financial results may vary significantly from period-to-period due to the seasonality of our business and fluctuations in our operating costs.

Our operating results may vary significantly from period-to-period due to many factors, including seasonal factors that may have an effect on the demand for our electric vehicles. Demand for new cars in the automotive industry in general typically declines over the summer season, while sales are generally higher in the fourth quarter and spring time, especially from October to December and from March to April each year. Our limited operating history makes it difficult for us to judge the exact nature or extent of the seasonality of our business. Also, any unusually severe weather conditions in some markets may impact demand for our vehicles. Our operating results could also suffer if we do not achieve revenue consistent with our expectations for this seasonal demand because many of our expenses are based on anticipated levels of annual revenue.

We also expect our period-to-period operating results to vary based on our operating costs which we anticipate will increase significantly in future periods as we, among other things, design, develop and manufacture our electric vehicles and electric powertrain components, build and equip new manufacturing facilities to produce such components, open new NIO Houses and NIO Spaces, increase our sales and marketing activities, and increase our general and administrative functions to support our growing operations.

As a result of these factors, we believe that period-to-period comparisons of our operating results are not necessarily meaningful and that these comparisons cannot be relied upon as indicators of future performance. Moreover, our operating results may not meet expectations of equity research analysts or investors. If this occurs, the trading price of our ADSs could fall substantially either suddenly or over time.

If our vehicle owners customize our vehicles or change the charging infrastructure with aftermarket products, the vehicle may not operate properly, which may create negative publicity and could harm our business.

Automobile enthusiasts may seek to “hack” our vehicles to modify their performance which could compromise vehicle safety systems. Also, customers may customize their vehicles with after-market parts that can compromise driver safety. We do not test, nor do we endorse, such changes or products. In addition, the use of improper external cabling or unsafe charging outlets can expose our customers to injury from high voltage electricity. Such unauthorized modifications could reduce the safety of our vehicles and any injuries resulting from such modifications could result in adverse publicity which would negatively affect our brand and harm our business, prospects, financial condition and operating results.

We are subject to risks related to the investment in NIO China.

On April 29, 2020, we entered into definitive agreements for investments with a group of investors, which we refer to as the Hefei Strategic Investors in this annual report. The Hefei Strategic Investors will invest an aggregate of RMB7 billion in cash into NIO (Anhui) Holding Co., Ltd., or NIO Anhui, the legal entity of NIO China wholly owned by us pre-investment. We will inject our core businesses and assets in China, including vehicle research and development, supply chain, sales and services and NIO Power, or together as the Asset Consideration, valued at RMB17.77 billion in total, into NIO China, and invest RMB4.26 billion in cash into NIO China.

Pursuant to the definitive agreements, NIO China will establish its headquarters in the Hefei Economic and Technological Development Area, or the HETA, where our main manufacturing hub is located, for its business operation, research and development, sales and services, supply chain and manufacturing functions. We will collaborate with the Hefei Strategic Investors and HETA to develop NIO China’s business and to support the accelerated development of the smart electric vehicle sectors in Hefei in the future. Our collaboration with the Hefei Strategic Investors and HETA and our investment in NIO China are subject to a number of risks, many of which are beyond our control. If any of the risks materialize, the business of NIO China will be adversely affected, and will in turn affect our business, results of operations and financial condition.

In connection with this investment, NIO Anhui granted certain minority shareholders' rights to the Hefei Strategic Investors, including, among others, the right of first refusal, co-sale right, preemptive right, anti-dilution right, redemption right, liquidation preference and conditional drag-along right. See "Item 4—Information on the Company—B. Business Overview—Certain Other Cooperation Arrangements—Hefei Strategic Investors." In particular, the Hefei Strategic Investors may require us to redeem the shares of NIO Anhui they hold under various circumstances, including, among others, (i) NIO Anhui fails to complete a qualified initial public offering within sixty (60) months after NIO Anhui receives all initial investment from the Hefei Strategic Investors; (ii) NIO Anhui fails to submit an application for a qualified initial public offering within forty-eight (48) months after NIO Anhui receives all initial investment from the Hefei Strategic Investors; (iii) shareholders of our company require us or our controlling person to redeem shares of our company and result in a change of control of our company or NIO Anhui; (iv) we fail to inject the Asset Consideration into NIO Anhui within one year after the closing of this investment, due to willful misconduct or negligence, or inject capital into NIO Anhui before March 31, 2021; and (v) vehicles sales of NIO Anhui fall below 20,000 units for two consecutive years after NIO Anhui obtains all initial investment from the Hefei Strategic Investors. If any of the triggering events of redemption occur, we will need substantial capital to repurchase the shares of NIO Anhui held by the Hefei Strategic Investors. If we do not have adequate cash available or cannot obtain additional financing, or our use of cash is restricted by applicable law, regulations or agreements governing our current or future indebtedness, we may not be able to redeem shares of NIO Anhui when required under the Shareholders' Agreement, which would constitute an event of default under the Shareholders' Agreement and subject us to liabilities. In addition, if the Hefei Strategic Investors exercise their conditional drag-along rights and require us to sell our shares in NIO Anhui together with them to a third-party purchaser, we may lose control in NIO Anhui, which will materially and adversely affect our operations in China. Furthermore, the Hefei Strategic Investors have voting rights with respect to various significant corporate matters of NIO Anhui and its controlled entities, such as change in NIO Anhui's corporate structure, change of its core business and amendment to its articles of association, which may significantly limit our ability to make certain major corporate decisions with regard to NIO Anhui.

Our business plans require a significant amount of capital. In addition, our future capital needs may require us to sell additional equity or debt securities that may dilute our shareholders or introduce covenants that may restrict our operations or our ability to pay dividends.

We will need significant capital to, among other things, conduct research and development and expand our production capacity as well as roll out our charging and servicing network and our NIO Houses and NIO Spaces. As we ramp up our production capacity and operations we may also require significant capital to maintain our property, plant and equipment and such costs may be greater than anticipated. We expect our capital expenditures to continue to be significant in the foreseeable future as we expand our business, and that our level of capital expenditures will be significantly affected by user demand for our products and services. The fact that we have a limited operating history means we have limited historical data on the demand for our products and services. As a result, our future capital requirements may be uncertain and actual capital requirements may be different from those we currently anticipate. We plan to seek equity or debt financing to finance a portion of our capital expenditures. Such financing might not be available to us in a timely manner or on terms that are acceptable, or at all.

Our ability to obtain the necessary financing to carry out our business plan is subject to a number of factors, including general market conditions and investor acceptance of our business plan. These factors may make the timing, amount, terms and conditions of such financing unattractive or unavailable to us. If we are unable to raise sufficient funds, we will have to significantly reduce our spending, delay or cancel our planned activities or substantially change our corporate structure. We might not be able to obtain any funding, and we might not have sufficient resources to conduct our business as projected, both of which could mean that we would be forced to curtail or discontinue our operations.

In addition, our future capital needs and other business reasons could require us to sell additional equity or debt securities or obtain a credit facility. The sale of additional equity or equity-linked securities could dilute our shareholders. The incurrence of indebtedness would result in increased debt service obligations and could result in operating and financing covenants that would restrict our operations or our ability to pay dividends to our shareholders.

We retain certain information about our users and may be subject to various privacy and consumer protection laws.

We use our vehicles' electronic systems to log information about each vehicle's use, such as charge time, battery usage, mileage and driving behavior, in order to aid us in vehicle diagnostics, repair and maintenance, as well as to help us customize and optimize the driving and riding experience. Our users may object to the use of this data, which may harm our business. Possession and use of our user's driving behavior and data in conducting our business may subject us to legislative and regulatory burdens in China and other jurisdictions that could require notification of any data breach, restrict our use of such information and hinder our ability to acquire new customers or market to existing customers. If users allege that we have improperly released or disclosed their personal information, we could face legal claims and reputational damage. We may incur significant expenses to comply with privacy, consumer protection and security standards and protocols imposed by laws, regulations, industry standards or contractual obligations. If third parties improperly obtain and use the personal information of our users, we may be required to expend significant resources to resolve these problems.

Failure of information security and privacy concerns could subject us to penalties, damage our reputation and brand, and harm our business and results of operations.

We face significant challenges with respect to information security and privacy, including the storage, transmission and sharing of confidential information. We transmit and store confidential and private information of our car buyers, such as personal information, including names, accounts, user IDs and passwords, and payment or transaction related information.

We are required by PRC law to ensure the confidentiality, integrity, availability and authenticity of the information of our users, customers and distributors, which is also essential to maintaining their confidence in our vehicles and services. We have adopted strict information security policies and deployed advanced measures to implement the policies, including, among others, advanced encryption technologies. However, advances in technology, an increased level of sophistication and diversity of our products and services, an increased level of expertise of hackers, new discoveries in the field of cryptography or others can still result in a compromise or breach of the measures that we use. If we are unable to protect our systems, and hence the information stored in our systems, from unauthorized access, use, disclosure, disruption, modification or destruction, such problems or security breaches could cause a loss, give rise to our liabilities to the owners of confidential information or even subject us to fines and penalties. In addition, complying with various laws and regulations could cause us to incur substantial costs or require us to change our business practices, including our data practices, in a manner adverse to our business.

In addition, we may need to comply with increasingly complex and rigorous regulatory standards enacted to protect business and personal data in the U.S., Europe and elsewhere. For example, the European Union adopted the General Data Protection Regulation, or the GDPR, which became effective on May 25, 2018. The GDPR imposes additional obligations on companies regarding the handling of personal data and provides certain individual privacy rights to persons whose data is stored. Compliance with existing, proposed and recently enacted laws (including implementation of the privacy and process enhancements called for under GDPR) and regulations can be costly; any failure to comply with these regulatory standards could subject us to legal and reputational risks.

We generally comply with industry standards and are subject to the terms of our own privacy policies. Compliance with any additional laws could be expensive, and may place restrictions on the conduct of our business and the manner in which we interact with our customers. Any failure to comply with applicable regulations could also result in regulatory enforcement actions against us, and misuse of or failure to secure personal information could also result in violation of data privacy laws and regulations, proceedings against us by governmental entities or others, damage to our reputation and credibility and could have a negative impact on revenues and profits.

Significant capital and other resources may be required to protect against information security breaches or to alleviate problems caused by such breaches or to comply with our privacy policies or privacy-related legal obligations. The resources required may increase over time as the methods used by hackers and others engaged in online criminal activities are increasingly sophisticated and constantly evolving. Any failure or perceived failure by us to prevent information security breaches or to comply with privacy policies or privacy-related legal obligations, or any compromise of security that results in the unauthorized release or transfer of personally identifiable information or other customer data, could cause our customers to lose trust in us and could expose us to legal claims. Any perception by the public that online transactions or the privacy of user information are becoming increasingly unsafe or vulnerable to attacks could inhibit the growth of online retail and other online services generally, which may reduce the number of orders we receive.

Our warranty reserves may be insufficient to cover future warranty claims which could adversely affect our financial performance.

For the initial owner of the ES8 and the ES6, we provide an extended warranty, subject to certain conditions. As required under the relevant PRC law, we also provide (i) a bumper to bumper three-year or 120,000 kilometer warranty, (ii) for critical EV components (battery pack, electrical motors, power electrical unit and vehicle control unit) an eight-year or 120,000 kilometer warranty, and (iii) a two-year or 50,000 kilometer warranty covering vehicle repair, replacement and refund. Our warranty program is similar to other vehicle manufacturer's warranty programs intended to cover all parts and labor to repair defects in material or workmanship in the body, chassis, suspension, interior, electric systems, battery, powertrain and brake system. We plan to record and adjust warranty reserves based on changes in estimated costs and actual warranty costs. However, because we did not start making deliveries of the ES8 until June 2018 and of the ES6 until June 2019, we have little experience with warranty claims regarding our vehicles or with estimating warranty reserves. As of December 31, 2019, we had warranty reserves in respect of our vehicles of RMB412 million (US\$59.2 million). We cannot assure you that such reserves will be sufficient to cover future claims. We could, in the future, become subject to a significant and unexpected warranty claims, resulting in significant expenses, which would in turn materially and adversely affect our results of operations, financial condition and prospects.

We may need to defend ourselves against patent or trademark infringement claims, which may be time-consuming and would cause us to incur substantial costs.

Companies, organizations or individuals, including our competitors, may hold or obtain patents, trademarks or other proprietary rights that would prevent, limit or interfere with our ability to make, use, develop, sell or market our vehicles or components, which could make it more difficult for us to operate our business. From time to time, we may receive communications from holders of patents or trademarks regarding their proprietary rights. Companies holding patents or other intellectual property rights may bring suits alleging infringement of such rights or otherwise assert their rights and urge us to take licenses. Our applications and uses of trademarks relating to our design, software or artificial intelligence technologies could be found to infringe upon existing trademark ownership and rights. In addition, if we are determined to have infringed upon a third party's intellectual property rights, we may be required to do one or more of the following:

- cease selling, incorporating certain components into, or using vehicles or offering goods or services that incorporate or use the challenged intellectual property;
- pay substantial damages;
- seek a license from the holder of the infringed intellectual property right, which license may not be available on reasonable terms or at all;
- redesign our vehicles or other goods or services; or
- establish and maintain alternative branding for our products and services.

In the event of a successful claim of infringement against us and our failure or inability to obtain a license to the infringed technology or other intellectual property right, our business, prospects, operating results and financial condition could be materially and adversely affected. In addition, any litigation or claims, whether or not valid, could result in substantial costs, negative publicity and diversion of resources and management attention.

We may not be able to prevent others from unauthorized use of our intellectual property, which could harm our business and competitive position.

We regard our trademarks, service marks, patents, domain names, trade secrets, proprietary technologies and similar intellectual property as critical to our success. We rely on trademark and patent law, trade secret protection and confidentiality and license agreements with our employees and others to protect our proprietary rights.

We have invested significant resources to develop our own intellectual property. Failure to maintain or protect these rights could harm our business. In addition, any unauthorized use of our intellectual property by third parties may adversely affect our current and future revenues and our reputation.

Implementation and enforcement of PRC intellectual property-related laws have historically been deficient and ineffective. Accordingly, protection of intellectual property rights in China may not be as effective as in the United States or other countries with more developed intellectual property laws. Furthermore, policing unauthorized use of proprietary technology is difficult and expensive. We rely on a combination of patent, copyright, trademark and trade secret laws and restrictions on disclosure to protect our intellectual property rights. Despite our efforts to protect our proprietary rights, third parties may attempt to copy or otherwise obtain and use our intellectual property or seek court declarations that they do not infringe upon our intellectual property rights. Monitoring unauthorized use of our intellectual property is difficult and costly, and we cannot assure you that the steps we have taken or will take will prevent misappropriation of our intellectual property. From time to time, we may have to resort to litigation to enforce our intellectual property rights, which could result in substantial costs and diversion of our resources.

As our patents may expire and may not be extended, our patent applications may not be granted and our patent rights may be contested, circumvented, invalidated or limited in scope, our patent rights may not protect us effectively. In particular, we may not be able to prevent others from developing or exploiting competing technologies, which could have a material and adverse effect on our business operations, financial condition and results of operations.

As of December 31, 2019, we had 2,304 issued patents and 1,955 patent applications pending. For our pending application, we cannot assure you that we will be granted patents pursuant to our pending applications. Even if our patent applications succeed and we are issued patents in accordance with them, it is still uncertain whether these patents will be contested, circumvented or invalidated in the future. In addition, the rights granted under any issued patents may not provide us with meaningful protection or competitive advantages. The claims under any patents that issue from our patent applications may not be broad enough to prevent others from developing technologies that are similar or that achieve results similar to ours. The intellectual property rights of others could also bar us from licensing and exploiting any patents that issue from our pending applications. Numerous patents and pending patent applications owned by others exist in the fields in which we have developed and are developing our technology. These patents and patent applications might have priority over our patent applications and could subject our patent applications to invalidation. Finally, in addition to those who may claim priority, any of our existing or pending patents may also be challenged by others on the basis that they are otherwise invalid or unenforceable.

We have limited insurance coverage, which could expose us to significant costs and business disruption.

We have limited liability insurance coverage for our products and business operations. A successful liability claim against us due to injuries suffered by our users could materially and adversely affect our financial condition, results of operations and reputation. In addition, we do not have any business disruption insurance. Any business disruption event could result in substantial cost to us and diversion of our resources.

We have a significant amount of debt, including our convertible senior notes, that are senior in capital structure and cash flow, respectively, to our shareholders. Satisfying the obligations relating to our debt could adversely affect the amount or timing of distributions to our shareholders or result in dilution.

As of December 31, 2019, we had approximately US\$1,027.7 million in total long-term borrowings outstanding, consisting primarily of (i) our 4.50% convertible senior notes due 2024, or the 2024 Notes; (ii) our convertible senior notes issued in September 2019 to an affiliate of Tencent Holdings Limited and Mr. Bin Li, our chairman of the board of directors and chief executive officer, or the Affiliate Notes; and (iii) our long-term bank debt. In February and March 2020, we issued and sold convertible notes in an aggregate principal amount of US\$435 million due 2021, or the 2021 Notes, to several unaffiliated Asia based investment funds. See “Item 4. Information on the Company—A. History and Development of the Company.”

The 2024 Notes are unsecured debt and are not redeemable by us prior to the maturity date except for certain changes in tax law. In accordance with the indenture governing the 2024 Notes, or the 2024 Notes Indenture, holders of the 2024 Notes may require us to purchase all or any portion of their notes on February 1, 2022 at a repurchase price equal to 100% of the principal amount of the 2024 Notes to be repurchased, plus accrued and unpaid interest. Holders of the 2024 Notes may also require us, upon a fundamental change (as defined in the 2024 Notes Indenture), to repurchase for cash all or part of their 2024 Notes at a fundamental change repurchase price equal to 100% of the principal amount of the 2024 Notes to be repurchased, plus accrued and unpaid interest.

Each of an affiliate of Tencent Holdings Limited and Mr. Bin Li, our chairman of the board of directors and chief executive officer, subscribed for US\$100 million principal amount of the Affiliate Notes, each in two equally split tranches. The Affiliate Notes issued in the first tranche will mature in 360 days, bear no interest, and require us to pay a premium at 2% of the principal amount at maturity. The Affiliate Notes issued in the second tranche will mature in three years, bear no interest, and require us to pay a premium at 6% of the principal amount at maturity. The 360-day Affiliate Notes will be convertible into our Class A ordinary shares (or ADSs) at a conversion price of US\$2.98 per ADS at the holder's option from the 15th day immediately prior to maturity, and the three-year convertible notes will be convertible into our Class A ordinary shares (or ADSs) at a conversion price of US\$3.12 per ADS at the holder's option from the first anniversary of the issuance date. The holders of the three-year Affiliate Notes will have the right to require us to repurchase for cash all of the convertible notes or any portion thereof on February 1, 2022.

The 2021 Notes bear zero interest and will mature in the first quarter of 2021. Prior to maturity, the holders of the 2021 Notes have the right to convert either all or part of the principal amount of the 2021 Notes into Class A ordinary shares (or ADSs) of our company pursuant to conversion price and conditions as set forth in the respective convertible notes purchase agreements. In accordance with the indenture governing the 2021 Notes, or the 2021 Notes Indenture, holders of the 2021 Notes may require us, upon a fundamental change (as defined in the 2021 Notes Indenture), to repurchase for cash all or part of their 2021 Notes at a fundamental change repurchase price equal to 100% of the principal amount of the 2021 Notes to be repurchased.

Satisfying the obligations of all these long-term liabilities could adversely affect the amount or timing of any distributions to our shareholders. We may choose to satisfy, repurchase, or refinance any of these long-term liabilities through public or private equity or debt financings if we deem such financings available on favorable terms. If we do not have adequate cash available or cannot obtain additional financing, or our use of cash is restricted by applicable law, regulations or agreements governing our current or future indebtedness, we may not be able to repurchase any of these notes when required under the respective transaction documents, which would constitute an event of default under the respective transaction documents. An event of default could also lead to a default under other agreements governing our current and future indebtedness, and if the repayment of such other indebtedness were accelerated, we may not have sufficient funds to repay the indebtedness and repurchase any of these notes or make cash payments upon conversion of any of these notes. In addition, the holders of any of these notes may convert their notes to a number of our ADSs in accordance with the respective transaction documents. Any conversion will result in immediate dilution to the ownership interests of existing shareholders and such dilution could be material.

We may seek to obtain future financing through the issuance of debt or equity, which may have an adverse effect on our shareholders or may otherwise adversely affect our business.

If we raise funds through the issuance of additional equity or debt, including convertible debt or debt secured by some or all of our assets, holders of any debt securities or preferred shares issued will have rights, preferences and privileges senior to those of holders of our ordinary shares in the event of liquidation. The terms of the convertible notes we issued do not restrict our ability to issue additional debt. If additional debt is issued, there is a possibility that once all senior claims are settled, there may be no assets remaining to pay out to the holders of ordinary shares. In addition, if we raise funds through the issuance of additional equity, whether through private placements or public offerings, such an issuance would dilute ownership of our current shareholders that do not participate in the issuance. If we are unable to obtain any needed additional funding, we may be required to reduce the scope of, delay, or eliminate some or all of, our planned research, development, manufacturing and marketing activities, any of which could materially harm our business.

Furthermore, the terms of any additional debt securities we may issue in the future may impose restrictions on our operations, which may include limiting our ability to incur additional indebtedness, pay dividends on or repurchase our share capital, or make certain acquisitions or investments. In addition, we may be subject to covenants requiring us to satisfy certain financial tests and ratios, and our ability to satisfy such covenants may be affected by events outside of our control.

The terms of the convertible notes we issued could delay or prevent an attempt to take over our company.

The terms of the 2024 Notes, Affiliate Notes and 2021 Notes require us to repurchase the respective Notes in the event of a fundamental change. A takeover of our company would constitute a fundamental change. This could have the effect of delaying or preventing a takeover of our company that may otherwise be beneficial to our shareholders.

We are or may be subject to risks associated with strategic alliances or acquisitions.

We have entered into and may in the future enter into strategic alliances, including joint ventures or minority equity investments, with various third parties to further our business purpose from time to time. These alliances could subject us to a number of risks, including risks associated with sharing proprietary information, non-performance by the third party and increased expenses in establishing new strategic alliances, any of which may materially and adversely affect our business. We may have limited ability to monitor or control the actions of these third parties and, to the extent any of these strategic third parties suffers negative publicity or harm to their reputation from events relating to their business, we may also suffer negative publicity or harm to our reputation by virtue of our association with any such third party.

In addition, although we have no current acquisition plans, if appropriate opportunities arise, we may acquire additional assets, products, technologies or businesses that are complementary to our existing business. In addition to possible shareholder approval, we may have to obtain approvals and licenses from relevant government authorities for the acquisitions and to comply with any applicable PRC laws and regulations, which could result in increased delay and costs, and may derail our business strategy if we fail to do so. Furthermore, past and future acquisitions and the subsequent integration of new assets and businesses into our own require significant attention from our management and could result in a diversion of resources from our existing business, which in turn could have an adverse effect on our operations. Acquired assets or businesses may not generate the financial results we expect. Acquisitions could result in the use of substantial amounts of cash, potentially dilutive issuances of equity securities, the occurrence of significant goodwill impairment charges, amortization expenses for other intangible assets and exposure to potential unknown liabilities of the acquired business. Moreover, the costs of identifying and consummating acquisitions may be significant.

If we fail to manage our growth effectively, we may not be able to market and sell our vehicles successfully.

We have expanded our operations, and as we ramp up our production, further significant expansion will be required, especially in connection with potential increased sales, providing our users with high-quality servicing, providing charging solutions, expansion of our NIO House and NIO Space network and managing different models of vehicles. Our future operating results depend to a large extent on our ability to manage this expansion and growth successfully. Risks that we face in undertaking this expansion include, among others:

- managing a larger organization with a greater number of employees in different divisions;
- controlling expenses and investments in anticipation of expanded operations;
- establishing or expanding design, manufacturing, sales and service facilities;
- implementing and enhancing administrative infrastructure, systems and processes; and
- addressing new markets and potentially unforeseen challenges as they arise.

Any failure to manage our growth effectively could materially and adversely affect our business, prospects, results of operations and financial condition.

We have granted, and may continue to grant options and other types of awards under our share incentive plan, which may result in increased share-based compensation expenses.

We adopted share incentive plans in 2015, 2016, 2017 and 2018, which we refer to as the 2015 Plan, the 2016 Plan, the 2017 Plan and the 2018 Plan, respectively, in this annual report, for the purpose of granting share-based compensation awards to employees, directors and consultants to incentivize their performance and align their interests with ours. The 2018 Plan became effective as of January 1, 2019. We recognize expenses in our consolidated statement of income in accordance with U.S. GAAP. Under our share incentive plans, we are authorized to grant options and other types of awards. Under the 2015 Plan, the 2016 Plan and the 2017 Plan, the maximum numbers of Class A ordinary shares which may be issued pursuant to all awards are 46,264,378, 18,000,000 and 33,000,000, respectively. Under the 2018 Plan, a maximum number of 23,000,000 Class A ordinary shares may be issued pursuant to all awards. This amount should automatically increase each year by the number of shares representing 1.5% of the then total issued and outstanding share capital of our company as of the end of each preceding year. As of December 31, 2019, awards to purchase an aggregate amount of 88,843,972 Class A ordinary shares under the 2015 Plan, the 2016 Plan, the 2017 Plan and the 2018 Plan had been granted and were outstanding, excluding awards that were forfeited or cancelled after the relevant grant dates. As of December 31, 2019, our unrecognized share-based compensation expenses amounted to RMB359.3 million (US\$51.6 million).

We believe the granting of share-based awards is of significant importance to our ability to attract and retain key personnel and employees, and we will continue to grant share-based compensation to employees in the future. As a result, our expenses associated with share-based compensation may increase, which may have an adverse effect on our results of operations.

Furthermore, perspective candidates and existing employees often consider the value of the equity awards they receive in connection with their employment. Thus, our ability to attract or retain highly skilled employees may be adversely affected by declines in the perceived value of our equity or equity awards. Furthermore, there are no assurances that the number of shares reserved for issuance under our share incentive plans will be sufficient to grant equity awards adequate to recruit new employees and to compensate existing employees.

If we do not appropriately maintain effective internal control over financial reporting in accordance with Section 404 of the Sarbanes-Oxley Act of 2002, we may be unable to accurately report our financial results and the market price of our ADSs may be adversely affected.

We are subject to reporting obligations under the U.S. securities laws. The SEC, as required under Section 404 of the Sarbanes-Oxley Act of 2002, adopted rules requiring every public company to include a management report on such company's internal control over financial reporting in its annual report, which contains management's assessment of the effectiveness of the company's internal control over financial reporting. We were subject to such requirement starting from fiscal year 2019. In addition, an independent registered public accounting firm must attest to and report on the effectiveness of the company's internal control over financial reporting.

Our internal controls relating to financial reporting have not kept pace with the expansion of our business. Our financial reporting function and system of internal controls are less developed in certain respects than those of similar companies that operate in fewer or more developed markets and may not provide our management with as much or as accurate or timely information. The U.S. Public Company Accounting Oversight Board, or the PCAOB, has defined a material weakness as "a deficiency, or a combination of deficiencies in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the annual or interim statements will not be prevented or detected on a timely basis."

In connection with the preparation and external audit of our consolidated financial statements as of and for the year ended December 31, 2019, we and our independent registered public accounting firm identified one material weakness in our internal control over financial reporting and concluded that our internal control over financial reporting was ineffective as of December 31, 2019. The material weakness identified was that we do not have sufficient competent financial reporting and accounting personnel with an appropriate understanding of U.S. GAAP to (i) design and implement formal period-end financial reporting policies and procedures to address complex U.S. GAAP technical accounting issues and (ii) prepare and review our consolidated financial statements and related disclosures in accordance with U.S. GAAP and the financial reporting requirements set forth by the Securities and Exchange Commission, or the SEC.

As a result of the identification of this material weakness, we have been taking measures to remedy this control deficiency. However, we can give no assurance that the implementation of these measures will be sufficient to eliminate such material weakness or that material weaknesses or significant deficiencies in our internal control over financial reporting will not be identified in the future. Our failure to implement and maintain effective internal controls over financial reporting could result in errors in our financial statements that could result in a restatement of our financial statements, cause us to fail to meet our reporting obligations and cause investors to lose confidence in our reported financial information, which may result in volatility in and a decline in the market price of the ADSs.

If our suppliers fail to use ethical business practices and comply with applicable laws and regulations, our brand image could be harmed due to negative publicity.

Our core values, which include developing high quality electric vehicles while operating with integrity, are an important component of our brand image, which makes our reputation sensitive to allegations of unethical business practices. We do not control our independent suppliers or their business practices. Accordingly, we cannot guarantee their compliance with ethical business practices, such as environmental responsibilities, fair wage practices, and compliance with child labor laws, among others. A lack of demonstrated compliance could lead us to seek alternative suppliers, which could increase our costs and result in delayed delivery of our products, product shortages or other disruptions of our operations.

Violation of labor or other laws by our suppliers or the divergence of an independent supplier's labor or other practices from those generally accepted as ethical in the markets in which we do business could also attract negative publicity for us and our brand. This could diminish the value of our brand image and reduce demand for our electric vehicles if, as a result of such violation, we were to attract negative publicity. If we, or other manufacturers in our industry, encounter similar problems in the future, it could harm our brand image, business, prospects, results of operations and financial condition.

If we update our manufacturing equipment more quickly than expected, we may have to shorten the useful lives of any equipment to be retired as a result of any such update, and the resulting acceleration in our depreciation could negatively affect our financial results.

We and JAC have invested and expect to continue to invest significantly in what we believe is state of the art tooling, machinery and other manufacturing equipment for the product lines where the vehicles are manufactured, and we depreciate the cost of such equipment over their expected useful lives. However, manufacturing technology may evolve rapidly, and we or JAC may decide to update our manufacturing process with cutting-edge equipment more quickly than expected. Moreover, as our engineering and manufacturing expertise and efficiency increase, we or JAC may be able to manufacture our products using less of our installed equipment. The useful life of any equipment that would be retired early as a result would be shortened, causing the depreciation on such equipment to be accelerated, and to the extent we own such equipment, our results of operations could be negatively impacted.

The construction and operation of our manufacturing facilities are subject to regulatory approvals or filings and may be subject to changes, delays, cost overruns or may not produce expected benefits.

In 2017, we signed a framework agreement with the Shanghai Jiading government and its authorized investment entity to build and develop our own manufacturing facility in Jiading, Shanghai. In 2019, we agreed with the related contractual parties to cease construction of this planned manufacturing facility and terminate this development project, due to government policies that allow collaborative manufacturing between traditional automotive manufacturers and companies with a focus on research, development and design of new energy vehicles.

In February 2020, we entered into a collaboration framework agreement with the municipal government of Hefei, Anhui province, where our main manufacturing hub is located. On April 29, 2020, we entered into definitive agreements for investments in NIO China with the Hefei Strategic Investors. Pursuant to the definitive agreements, we will collaborate with the Hefei Strategic Investors and HETA to develop NIO China's business and to support the accelerated development of the smart electric vehicle sectors in Hefei in the future.

Under PRC law, construction projects are subject to broad and strict government supervision and approval procedures, including but not limited to project approvals and filings, construction land and project planning approvals, environment protection approvals, pollution discharge permits, work safety approvals, fire protection approvals, and the completion of inspection and acceptance by relevant authorities. Some of the construction projects being carried out by us are undergoing necessary approval procedures as required by law. As a result, the relevant entities operating such construction projects may be subject to administrative uncertainty, and construction projects in question may be subject to fines or the suspension of use of such projects. Failure to complete the construction projects on schedule and within budget, and failure to obtain necessary approvals or any incompliance with relevant government supervision could have a material adverse impact on our operations, and we may not be able to find commercially reasonable alternatives.

Our vehicles make use of lithium-ion battery cells, which have been observed to catch fire or vent smoke and flame.

The battery packs that we produce make use of lithium-ion cells. On rare occasions, lithium-ion cells can rapidly release the energy they contain by venting smoke and flames in a manner that can ignite nearby materials as well as other lithium-ion cells. In June 2019, certain safety incidents resulting from the battery packs on ES8 vehicles occurred in Shanghai and other locations in China. We then voluntarily recalled 4,803 ES8s, and replaced the batteries in the NIO battery swap network equipped with the malfunctioned modules. While we have designed the battery pack to passively contain any single cell's release of energy without spreading to neighboring cells, and have taken measures to enhance the safety of our battery designs, a field or testing failure of our vehicles or other battery packs that we produce could occur in the future, which could subject us to lawsuits, product recalls, or redesign efforts, all of which would be time-consuming and expensive. Also, negative public perceptions regarding the suitability of lithium-ion cells for automotive applications or any future incident involving lithium-ion cells such as a vehicle or other fire, even if such incident does not involve our vehicles, could seriously harm our business.

In addition, we store a significant number of lithium-ion cells at our facilities. Any mishandling of battery cells may cause disruption to the operation of our facilities. While we have implemented safety procedures related to the handling of the cells, a safety issue or fire related to the cells could disrupt our operations. Such damage or injury could lead to adverse publicity and potentially a safety recall. Moreover, any failure of a competitor's electric vehicle or energy storage product may cause indirect adverse publicity for us and our products. Such adverse publicity could negatively affect our brand and harm our business, prospects, financial condition and operating results.

Interruption or failure of our information technology and communications systems could impact our ability to effectively provide our services.

We aim to provide our users with an innovative suite of services through our mobile application. In addition, our in-car services depend, to a certain extent, on connectivity. The availability and effectiveness of our services depend on the continued operation of our information technology and communications systems. Our systems are vulnerable to damage or interruption from, among other adverse effects, fire, terrorist attacks, natural disasters, power loss, telecommunications failures, computer viruses, computer denial of service attacks or other attempts to harm our systems. Our data centers are also subject to break-ins, sabotage, and intentional acts of vandalism, and to potential disruptions. Some of our systems are not fully redundant, and our disaster recovery planning cannot account for all eventualities. Any problems at our data centers could result in lengthy interruptions in our service. In addition, our products and services are highly technical and complex and may contain errors or vulnerabilities, which could result in interruptions in our services or the failure of our systems.

We are subject to anti-corruption, anti-bribery, anti-money laundering, financial and economic sanctions and similar laws, and non-compliance with such laws can subject us to administrative, civil and criminal fines and penalties, collateral consequences, remedial measures and legal expenses, all of which could adversely affect our business, results of operations, financial condition and reputation.

We are subject to anti-corruption, anti-bribery, anti-money laundering, financial and economic sanctions and similar laws and regulations in various jurisdictions in which we conduct activities, including the U.S. Foreign Corrupt Practices Act, or FCPA, the U.K. Bribery Act 2010, and other anti-corruption laws and regulations. The FCPA and the U.K. Bribery Act 2010 prohibit us and our officers, directors, employees and business partners acting on our behalf, including agents, from corruptly offering, promising, authorizing or providing anything of value to a “foreign official” for the purposes of influencing official decisions or obtaining or retaining business or otherwise obtaining favorable treatment. The FCPA also requires companies to make and keep books, records and accounts that accurately reflect transactions and dispositions of assets and to maintain a system of adequate internal accounting controls. The U.K. Bribery Act also prohibits non-governmental “commercial” bribery and soliciting or accepting bribes. A violation of these laws or regulations could adversely affect our business, results of operations, financial condition and reputation.

We have direct or indirect interactions with officials and employees of government agencies and state-owned affiliated entities in the ordinary course of business. We have also entered into joint ventures and/or other business partnerships with government agencies and state-owned or affiliated entities. These interactions subject us to an increased level of compliance-related concerns. We are in the process of implementing policies and procedures designed to ensure compliance by us and our directors, officers, employees, representatives, consultants, agents and business partners with applicable anti-corruption, anti-bribery, anti-money laundering, financial and economic sanctions and similar laws and regulations. However, our policies and procedures may not be sufficient and our directors, officers, employees, representatives, consultants, agents, and business partners could engage in improper conduct for which we may be held responsible.

Non-compliance with anti-corruption, anti-bribery, anti-money laundering or financial and economic sanctions laws could subject us to whistleblower complaints, adverse media coverage, investigations, and severe administrative, civil and criminal sanctions, collateral consequences, remedial measures and legal expenses, all of which could materially and adversely affect our business, results of operations, financial condition and reputation. In addition, changes in economic sanctions laws in the future could adversely impact our business and investments in our shares.

Any unauthorized control or manipulation of our vehicles’ systems could result in loss of confidence in us and our vehicles and harm our business.

Our vehicles contain complex information technology systems. For example, our vehicles are designed with built-in data connectivity to accept and install periodic remote updates from us to improve or update the functionality of our vehicles. We have designed, implemented and tested security measures intended to prevent unauthorized access to our information technology networks, our vehicles and their systems. However, hackers may attempt in the future, to gain unauthorized access to modify, alter and use such networks, vehicles and systems to gain control of, or to change, our vehicles’ functionality, user interface and performance characteristics, or to gain access to data stored in or generated by the vehicle. Vulnerabilities could be identified in the future and our remediation efforts may not be successful. Any unauthorized access to or control of our vehicles or their systems or any loss of data could result in legal claims or proceedings. In addition, regardless of their veracity, reports of unauthorized access to our vehicles, their systems or data, as well as other factors that may result in the perception that our vehicles, their systems or data are capable of being “hacked”, could negatively affect our brand and harm our business, prospects, financial condition and operating results.

Our revenues and financial results may be adversely affected by any economic slowdown in China as well as globally.

The success of our business ultimately depends on consumer spending. We derive substantially all of our revenues from China. As a result, our revenues and financial results are impacted to a significant extent by economic conditions in China and globally. The global macroeconomic environment is facing numerous challenges. The growth rate of the Chinese economy has gradually slowed since 2010 and the trend may continue. Any slowdown could significantly reduce domestic commerce in China, including through the internet generally and through us. In addition, there is considerable uncertainty over the long-term effects of the expansionary monetary and fiscal policies adopted by the central banks and financial authorities of some of the world's leading economies, including the United States and China. Unrest, terrorist threats and the potential for war in the Middle East and elsewhere may increase market volatility across the globe. There have also been concerns about the relationship between China and other countries, including the surrounding Asian countries, which may potentially have economic effects. In particular, there is significant uncertainty about the future relationship between the United States and China with respect to trade policies, treaties, government regulations and tariffs. In addition, the COVID-19 pandemic has negatively impacted the economies of China, the United States and numerous other countries around the world, and is expected to result in a severe global recession. Economic conditions in China are sensitive to global economic conditions, as well as changes in domestic economic and political policies and the expected or perceived overall economic growth rate in China. Any severe or prolonged slowdown in the global or Chinese economy may materially and adversely affect our business, results of operations and financial condition.

Sales of high-end and luxury consumer products, such as our performance electric vehicles, depend in part on discretionary consumer spending and are even more exposed to adverse changes in general economic conditions. In response to their perceived uncertainty in economic conditions, consumers might delay, reduce or cancel purchases of our electric vehicles and our results of operations may be materially and adversely affected.

Shutdowns of the U.S. federal government could materially impair our business and financial condition.

Development of our product candidates and/or regulatory approval may be delayed for reasons beyond our control. For example, over the last several years the U.S. government has shut down several times and certain regulatory agencies, such as the SEC, have had to furlough critical SEC and other government employees and stop critical activities. In our operations as a public company, future government shutdowns could impact our ability to access the public markets, such as through delaying the declaration of effectiveness of registration statements, and obtain necessary capital in order to properly capitalize and continue our operations.

Changes in U.S. and international trade policies, particularly with regard to China, may adversely impact our business and operating results.

The U.S. government has made statements and taken certain actions that may lead to potential changes to U.S. and international trade policies towards China. In January 2020, the "Phase One" agreement was signed between the United States and China on trade matters. However, it remains unclear what additional actions, if any, will be taken by the U.S. or other governments with respect to international trade agreements, the imposition of tariffs on goods imported into the U.S., tax policy related to international commerce, or other trade matters. While we intend to sell our vehicles only in China in the near future, tariffs could potentially impact our raw material prices. If any new tariffs, legislation and/or regulations are implemented, or if existing trade agreements are renegotiated or, in particular, if the U.S. government takes retaliatory trade actions due to the recent U.S.-China trade tension, such changes could have an adverse effect on our business, financial condition and results of operations.

Recent disruptions in the financial markets and economic conditions could affect our ability to raise capital.

In recent years, the United States and global economies suffered dramatic downturns as the result of a deterioration in the credit markets and related financial crisis as well as a variety of other factors including, among other things, extreme volatility in security prices, severely diminished liquidity and credit availability, ratings downgrades of certain investments and declining valuations of others. The United States and certain foreign governments have taken unprecedented actions in an attempt to address and rectify these extreme market and economic conditions by providing liquidity and stability to the financial markets. If the actions taken by these governments are not successful, the return of adverse economic conditions may cause a significant impact on our ability to raise capital, if needed, on a timely basis and on acceptable terms or at all.

There are uncertainties relating to our users trust arrangement involving a portion of our chairman's shareholding in our company.

Mr. Bin Li, our chairman and chief executive officer, has transferred 189,253 Class A ordinary shares and 49,810,747 Class C ordinary shares to a trust after the completion of the initial public offering of our ADSs on the New York Stock Exchange in September 2018. After such share transfer, he continues to retain the voting rights of these shares, but plans to let NIO users discuss and propose how to use the economic interests of these shares at certain points in the future, through certain mechanisms still to be implemented. Mr. Li hopes this trust arrangement will help deepen our relationship with users. However, we are still exploring the appropriate mechanisms for letting NIO users discuss the use of the economic interests of the shares. There is no assurance that such mechanisms will be adopted to our users' satisfaction, or at all. Furthermore, depending on the proposed use of the economic interests of the shares in the future, there could be accounting implications to us, which implications we cannot presently ascertain.

We and certain of our directors and officers have been named as defendants in several shareholder class action lawsuits, which could have a material adverse impact on our business, financial condition, results of operation, cash flows and reputation.

Several putative shareholder class action lawsuits have been filed against us and certain of our directors and officers. See "Item 8. Financial Information—A. Consolidated Statements and Other Financial Information—Legal Proceedings" for more details. Additional complaints related to these claims may be filed in the coming months. We are currently unable to estimate the potential loss, if any, associated with the resolution of such lawsuits, if they proceed. We anticipate that we will continue to be a target for lawsuits in the future, including putative class action lawsuits brought by shareholders. There can be no assurance that we will be able to prevail in our defense or reverse any unfavorable judgment on appeal, and we may decide to settle lawsuits on unfavorable terms. Any adverse outcome of these cases, including any plaintiffs' appeal of the judgment in these cases, could result in payments of substantial monetary damages or fines, or changes to our business practices, and thus have a material adverse effect on our business, financial condition, results of operation, cash flows and reputation. In addition, there can be no assurance that our insurance carriers will cover all or part of the defense costs, or any liabilities that may arise from these matters. The litigation process may utilize a significant portion of our cash resources and divert management's attention from the day-to-day operations of our company, all of which could harm our business. We also may be subject to claims for indemnification related to these matters, and we cannot predict the impact that indemnification claims may have on our business or financial results.

Risks Related to Our Corporate Structure

If the PRC government deems that our contractual arrangements with our variable interest entities do not comply with PRC regulatory restrictions on foreign investment in the relevant industries, or if these regulations or the interpretation of existing regulations change in the future, we could be subject to severe penalties or be forced to relinquish our interests in those operations.

According to the Guidance Catalogue of Industries for Foreign Investment promulgated in 2017, or the Catalogue, promulgated by the MOFCOM and the NDRC, foreign ownership of certain areas of businesses is subject to restrictions under current PRC laws and regulations. For example, under the Catalogue, foreign investors are not allowed to own more than 50% of the equity interests in a value-added telecommunication service provider (except e-commerce) or in a vehicle manufacturer which manufactures the whole vehicle. The Catalogue was amended by the 2018 Negative List, which came into effect on July 28, 2018, and was further replaced by the 2019 Negative List, which came into effect on July 30, 2019 and contains the same lifting of restrictions on foreign investment in NEVs manufacturers as the 2018 Negative List.

We are a Cayman Islands company and our PRC subsidiaries are considered foreign-invested enterprises. To comply with the Catalogue before it is amended by the 2018 Negative List, we had planned to conduct certain operations that were then subject to restrictions on foreign investment under the Catalogue in China through Shanghai NIO Energy Automobile Co., Ltd., or NIO New Energy. NIO Co., Ltd. Owns 50% equity interests in NIO New Energy. Our founders Bin Li and Lihong Qin, through holding equity interests in Shanghai Anbin Technology Co., Ltd. Indirectly own 40% and 10%, respectively, of the equity interests in NIO New Energy. With respect to the 50% equity interests of NIO New Energy indirectly held by the founders, we have entered into a series of contractual arrangements with Shanghai Anbin Technology Co., Ltd., or Shanghai Anbin, and its shareholders, which enable us to (i) ultimately exercise effective control over such 50% equity interests of NIO New Energy, (ii) receive 50% of substantially all of the economic benefits and bear the obligation to absorb 50% of substantially all of the losses of NIO New Energy, and (iii) have an exclusive option to purchase all or part of the equity interests in Shanghai Anbin when and to the extent permitted by PRC laws, as a result of which we will indirectly own all or part of such 50% equity interests in NIO New Energy. Because of the ownership of 50% equity interests of NIO New Energy and these contractual arrangements, we are the primary beneficiary of NIO New Energy and hence consolidate its

financial results as our variable interest entity under U.S. GAAP. In addition, to comply with the Catalogue (as amended by the 2018 Negative List), we have also entered into a series of contractual arrangements with Beijing NIO Network Technology Co., Ltd., or Beijing NIO, and its shareholders that enable us to hold all the required Internet content provision service, or the ICP, and related licenses in China. For a detailed description of these contractual arrangements, see “Item 4. Information on the Company—C. Organizational Structure—Contractual Agreements with the VIEs and their respective shareholders.”

In the opinion of Han Kun Law Offices, our PRC legal counsel, (i) the ownership structures of NIO Co., Ltd. And our variable interest entities in China do not result in any violation of PRC laws and regulations currently in effect; and (ii) the contractual arrangements between our wholly-owned subsidiary NIO Co., Ltd., our variable interest entities and their respective shareholders governed by PRC laws will not result in any violation of PRC laws or regulations currently in effect. However, we have been advised by our PRC legal counsel that there are substantial uncertainties regarding the interpretation and application of current and future PRC laws, regulations and rules, and there can be no assurance that the PRC regulatory authorities will take a view that is consistent with the opinion of our PRC legal counsel. See “Item 4. Information on the Company—B. Business Overview—Regulation—PRC Regulations—Foreign Investment Law” and “—Regulation—Regulations on Foreign Investment in China” and “Item 3. Key Information—D. Risk Factors—Risks Related to Doing Business in China—Our business may be significantly affected by the Foreign Investment Law.” It is uncertain whether any new PRC laws or regulations relating to variable interest entity structures will be adopted or if adopted, what they would provide.

If the ownership structure, contractual arrangements and businesses of our PRC subsidiaries or our variable interest entities are found to be in violation of any existing or future PRC laws or regulations, or our PRC subsidiaries or our variable interest entities fail to obtain or maintain any of the required permits or approvals, the relevant PRC regulatory authorities would have broad discretion to take action in dealing with such violations or failures, including:

- revoking the business licenses and/or operating licenses of such entities;
- shutting down our servers or blocking our website, or discontinuing or placing restrictions or onerous conditions on our operation through any transactions between our PRC subsidiaries and variable interest entities;
- imposing fines, confiscating the income from our PRC subsidiaries or our variable interest entities, or imposing other requirements with which we or our variable interest entities may not be able to comply;
- requiring us to restructure our ownership structure or operations, including terminating the contractual arrangements with our variable interest entities and deregistering the equity pledge of our variable interest entities, which in turn would affect our ability to consolidate, derive economic interests from, or exert effective control over our variable interest entities; or
- restricting or prohibiting our use of the proceeds of any financing outside China to finance our business and operations in China, and taking other regulatory or enforcement actions that could be harmful to our business.

Any of these actions could cause significant disruption to our business operations and severely damage our reputation, which would in turn materially and adversely affect our business, financial condition and results of operations. If any of these occurrences results in our inability to direct the activities of our variable interest entities that most significantly impact their economic performance, and/or our failure to receive the economic benefits from our variable interest entities, we may not be able to consolidate the entities in our consolidated financial statements in accordance with U.S. GAAP.

We rely on contractual arrangements with our variable interest entities and their shareholders to exercise control over our business, which may not be as effective as direct ownership in providing operational control.

We have relied and expect to continue to rely on contractual arrangements with Shanghai Anbin and Beijing NIO and their respective shareholders to conduct a portion of our operations in China. For a description of these contractual arrangements, see “Item 4. Information on the Company—C. Organizational Structure—Contractual Agreements with the VIEs and their respective shareholders.” The respective shareholders of Shanghai Anbin and Beijing NIO may not act in the best interests of our company or may not perform their obligations under these contracts. If we had direct ownership of our variable interest entities, or VIEs, we would be able to exercise our rights as a shareholder to control our VIEs to exercise rights of shareholders to effect changes in the board of directors of our VIEs, which in turn could implement changes, subject to any applicable fiduciary obligations, at the management and operational level. However, under the contractual arrangements, we would rely on legal remedies under PRC law for breach of contract in the event that

Shanghai Anbin and Beijing NIO and their respective shareholders did not perform their obligations under the contracts. These legal remedies may not be as effective as direct ownership in providing us with control over Shanghai Anbin and Beijing NIO.

If Shanghai Anbin or Beijing NIO or their respective shareholders fail to perform their obligations under the contractual arrangements, we may have to incur substantial costs and expend additional resources to enforce such arrangements, and rely on legal remedies under PRC laws, including contractual remedies, which may not be sufficient or effective. All of the agreements under our contractual arrangements are governed by and interpreted in accordance with PRC laws, and disputes arising from these contractual arrangements will be resolved through arbitration in China. However, the legal framework and system in China, in particularly those relating to arbitration proceedings, are not as developed as in some other jurisdictions, such as the United States. As a result, uncertainties in the PRC legal system could limit our ability to enforce these contractual arrangements. Meanwhile, there are very few precedents and little formal guidance as to how contractual arrangements in the context of a variable interest entity should be interpreted or enforced under PRC law. There remain significant uncertainties regarding the ultimate outcome of such arbitration should legal action become necessary. In addition, under PRC laws, rulings by arbitrators are final, parties cannot appeal the arbitration results in courts, and if the losing parties fail to carry out the arbitration awards within a prescribed time limit, the prevailing parties may only enforce the arbitration awards in the PRC courts through arbitration award recognition proceedings, which would require additional expenses and delay. If we are unable to enforce these contractual arrangements, or if we suffer significant delay or face other obstacles in the process of enforcing these contractual arrangements, we may not be able to exert effective control over our variable interest entities, and our ability to conduct our business may be negatively affected. See “Item 3. Key Information—D. Risk Factors—Risks Related to Doing Business in China—Uncertainties in the interpretation and enforcement of PRC laws and regulations could limit the legal protections available to you and us.”

Our ability to enforce the equity pledge agreements between us and our PRC variable interest entities’ shareholders may be subject to limitations based on PRC laws and regulations.

Pursuant to the equity interest pledge agreements between Shanghai Anbin and Beijing NIO, our variable interest entities, and NIO Co., Ltd., our wholly-owned PRC subsidiary, and the respective shareholders of Shanghai Anbin and Beijing NIO, each shareholder of Shanghai Anbin and Beijing NIO agrees to pledge its equity interests in Shanghai Anbin and Beijing NIO to our subsidiary to secure Shanghai Anbin and Beijing NIO’s performance of its obligations under the relevant contractual arrangements. The equity interest pledges of shareholders of each of Beijing NIO and Shanghai Anbin under its equity interests pledge agreement have been registered with the relevant local branch of State Administration for Market Regulation, or the SAMR. In addition, in the registration forms of the local branch of the SAMR for the pledges over the equity interests under the equity interest pledge agreements, the aggregate amount of registered equity interests pledged to NIO Co., Ltd. Represents 100% of the registered capital of Shanghai Anbin and Beijing NIO. The equity interest pledge agreements with our variable interest entities’ shareholders provide that the pledged equity interests shall constitute continuing security for any and all of the indebtedness, obligations and liabilities under all of the principal service agreements and the scope of pledge shall not be limited by the amount of the registered capital of that variable interest entity. However, a PRC court may take the position that the amount listed on the equity pledge registration forms represents the full amount of the collateral that has been registered and perfected. If this is the case, the obligations that are supposed to be secured in the equity interest pledge agreements in excess of the amount listed on the equity pledge registration forms could be determined by the PRC court as unsecured debt, which typically takes last priority among creditors.

The shareholders of our variable interest entities may have potential conflicts of interest with us, which may materially and adversely affect our business and financial condition.

Our founders, Bin Li and Lihong Qin, own 80% and 20%, respectively, of the equity interests in our variable interest entities, Shanghai Anbin and Beijing NIO. As shareholders of Shanghai Anbin and Beijing NIO, they may have potential conflicts of interest with us. These shareholders may breach, or cause our variable interest entities to breach, or refuse to renew, the existing contractual arrangements we have with them and our variable interest entities, which would have a material and adverse effect on our ability to effectively control our variable interest entities and receive economic benefits from them. For example, the shareholders may be able to cause our agreements with Shanghai Anbin and Beijing NIO to be performed in a manner adverse to us by, among other things, failing to remit payments due under the contractual arrangements to us on a timely basis. We cannot assure you that when conflicts of interest arise, any or all of these shareholders will act in the best interests of our company or such conflicts will be resolved in our favor.

Currently, we do not have any arrangements to address potential conflicts of interest between these shareholders and our company. Each of Bin Li and Lihong Qin is also a director and executive officer of our company. We rely on Bin Li and Lihong Qin to abide by the laws of the Cayman Islands and China, which provide that directors owe a fiduciary duty to the company that requires them to act in good faith and in what they believe to be the best interests of the company and not to use their position for personal gain. There is currently no specific and clear guidance under PRC laws that addresses any conflict between PRC laws and the laws of Cayman Islands in respect of any conflict relating to corporate governance. If we cannot resolve any conflict of interest or dispute between us and the shareholders of Shanghai Anbin and Beijing NIO, we would have to rely on legal proceedings, which could result in disruption of our business and subject us to substantial uncertainty as to the outcome of any such legal proceedings.

Our contractual arrangements with our variable interest entities may be subject to scrutiny by the PRC tax authorities and they may determine that we or our variable interest entities owe additional taxes, which could negatively affect our financial condition.

Under applicable PRC laws and regulations, arrangements and transactions among related parties may be subject to audit or challenge by the PRC tax authorities within ten years after the taxable year when the transactions are conducted. The PRC Enterprise Income Tax Law requires every enterprise in China to submit its annual enterprise income tax return together with a report on transactions with its related parties to the relevant tax authorities. The tax authorities may impose reasonable adjustments on taxation if they have identified any related party transactions that are inconsistent with arm's length principles. We may face material and adverse tax consequences if the PRC tax authorities determine that the contractual arrangements between NIO Co., Ltd., our wholly-owned subsidiary in China, Shanghai Anbin and Beijing NIO, our variable interest entities in China, and Shanghai Anbin and Beijing NIO's shareholders were not entered into on an arm's length basis in such a way as to result in an impermissible reduction in taxes under applicable PRC laws, rules and regulations, and adjust Shanghai Anbin and Beijing NIO's income in the form of a transfer pricing adjustment. A transfer pricing adjustment could, among other things, result in a reduction of expense deductions recorded by Shanghai Anbin and Beijing NIO for PRC tax purposes, which could in turn increase their tax liabilities without reducing NIO Co., Ltd.'s tax expenses. In addition, if NIO Co., Ltd. Requests the shareholders of Shanghai Anbin and Beijing NIO to transfer their equity interests in NIO Co., Ltd. At nominal or no value pursuant to the contractual agreements, such transfer could be viewed as a gift and subject NIO Co., Ltd. To PRC income tax. Furthermore, the PRC tax authorities may impose late payment fees and other penalties on Shanghai Anbin and Beijing NIO for the adjusted but unpaid taxes according to the applicable regulations. Our financial position could be materially and adversely affected if either of our variable interest entities' tax liabilities increase or if either is required to pay late payment fees and other penalties.

We may lose the ability to use and benefit from assets held by our variable interest entities that are material to the operation of our business if either of our variable interest entities goes bankrupt or becomes subject to dissolution or liquidation proceedings.

As part of our contractual arrangements with our variable interest entities, these entities may in the future hold certain assets that are material to the operation of our business. If either of our variable interest entities goes bankrupt and all or part of their assets become subject to liens or rights of third-party creditors, we may be unable to continue some or all of our business activities, which could materially and adversely affect our business, financial condition and results of operations. Under the contractual arrangements, our variable interest entities may not, in any manner, sell, transfer, mortgage or dispose of their assets or legal or beneficial interests in the business without our prior consent. If either of our variable interest entities undergoes voluntary or involuntary liquidation proceedings, unrelated third-party creditors may claim rights to some or all of these assets, thereby hindering our ability to operate our business, which could materially and adversely affect our business, financial condition and results of operations.

Risks Related to Doing Business in China

Changes in China’s political or social conditions or government policies could have a material and adverse effect on our business and results of operations.

Substantially all of our revenues are expected to be derived in China in the near future and most of our operations, including all of our manufacturing, is conducted in China. Accordingly, our results of operations, financial condition and prospects are influenced by economic, political and legal developments in China. China’s economy differs from the economies of most developed countries in many respects, including with respect to the amount of government involvement, level of development, growth rate, control of foreign exchange and allocation of resources. The PRC government exercises significant control over China’s economic growth through strategically allocating resources, controlling the payment of foreign currency-denominated obligations, setting monetary policy and providing preferential treatment to particular industries or companies. While the PRC economy has experienced significant growth over the past decades, that growth has been uneven across different regions and between economic sectors and may not continue, as evidenced by the slowing of the growth of the Chinese economy since 2012. Any adverse changes in economic conditions in China, in the policies of the Chinese government or in the laws and regulations in China could have a material adverse effect on the overall economic growth of China. Such developments could adversely affect our business and operating results, leading to reduction in demand for our services and solutions and adversely affect our competitive position.

Uncertainties in the interpretation and enforcement of PRC laws and regulations could limit the legal protections available to you and us.

The PRC legal system is a civil law system based on written statutes. Unlike the common law system, prior court decisions may be cited for reference but have limited precedential value.

Our PRC subsidiaries are foreign-invested enterprises and are subject to laws and regulations applicable to foreign-invested enterprises as well as various Chinese laws and regulations generally applicable to companies incorporated in China. However, since these laws and regulations are relatively new and the PRC legal system continues to rapidly evolve, the interpretations of many laws, regulations and rules are not always uniform and enforcement of these laws, regulations and rules involves uncertainties.

From time to time, we may have to resort to administrative and court proceedings to enforce our legal rights. However, since PRC administrative and court authorities have significant discretion in interpreting and implementing statutory and contractual terms, it may be more difficult to evaluate the outcome of administrative and court proceedings and the level of protection we enjoy than in more developed legal systems. Furthermore, the PRC legal system is based in part on government policies and internal rules, some of which are not published on a timely basis or at all, and which may have a retroactive effect. As a result, we may not be aware of our violation of any of these policies and rules until sometime after the violation. Such uncertainties, including uncertainty over the scope and effect of our contractual, property (including intellectual property) and procedural rights, and any failure to respond to changes in the regulatory environment in China could materially and adversely affect our business and impede our ability to continue our operations.

Our business may be significantly affected by the newly enacted Foreign Investment Law.

On March 15, 2019, the National People’s Congress promulgated the Foreign Investment Law, which has become effective on January 1, 2020 and replaced the trio of existing laws regulating foreign investment in China, namely, the PRC Equity Joint Venture Law, the PRC Cooperative Joint Venture Law and the Wholly Foreign-owned Enterprise Law, together with their implementation rules and ancillary regulations. Since the Foreign Investment Law is newly enacted, uncertainties still exist in relation to its interpretation and implementation. The Foreign Investment Law does not explicitly classify whether variable interest entities that are controlled via contractual arrangements would be deemed as foreign invested enterprises if they are ultimately “controlled” by foreign investors. However, it has a catch-all provision under definition of “foreign investment” to include investments made by foreign investors in China through means stipulated by laws or administrative regulations or other methods prescribed by the State Council. Therefore, it still leaves leeway for future laws, administrative regulations or provisions to provide for contractual arrangements as a form of foreign investment. There can be no assurance that our contractual arrangements will not be deemed to be in violation of the market access requirements for foreign investment under the PRC laws and regulations.

The Foreign Investment Law grants national treatment to foreign invested entities, except for those foreign invested entities that operate in industries deemed to be either “restricted” or “prohibited” in the “negative list” to be published. Because the “negative list” has yet been published, it is unclear as to whether it will differ from the 2019 Negative List currently in effect. The Foreign Investment Law provides that only foreign invested entities operating in foreign restricted or prohibited industries will require entry

clearance and other approvals that are not required by PRC domestic entities or foreign invested entities operating in other industries. In the event that our variable interest entities through which we operate our business are not treated as domestic investment and our operations carried out through such variable interest entities are classified in the “restricted” or “prohibited” industry in the “negative list” under the Foreign Investment Law, such contractual arrangements may be deemed as invalid and illegal, and we may be required to unwind such contractual arrangements and/or dispose of such business.

Furthermore, if future laws, administrative regulations or provisions mandate further actions to be taken by companies with respect to existing contractual arrangements, we may face substantial uncertainties as to whether we can complete such actions in a timely manner, or at all. In addition, the Foreign Investment Law provides that existing foreign invested enterprises established according to the existing laws regulating foreign investment may maintain their structure and corporate governance within five years after the implementation of the Foreign Investment Law, which means that we may be required to adjust the structure and corporate governance of certain of our PRC entities then. Failure to take timely and appropriate measures to cope with any of these or similar regulatory compliance challenges could materially and adversely affect our current corporate structure, corporate governance and business operations.

We may be adversely affected by the complexity, uncertainties and changes in PRC regulations on internet-related business, automotive businesses and other business carried out by our PRC subsidiaries.

We operate in the automotive and internet industry, both of which are extensively regulated by the PRC government. For example, the PRC government imposes foreign ownership restrictions and licensing and permit requirements for companies in the internet industry. See “Item 4. Information on the Company—B. Business Overview—Regulation—Regulations on Foreign Investment in China” and “Item 4. Information on the Company—B. Business Overview—Regulation—Regulations on Value-added Telecommunications Services.” The MOFCOM and the NDRC promulgated the 2018 Negative List and the 2019 Negative List, both of which lift restrictions on foreign investment on the production of new energy vehicles, effective on July 28, 2018 and July 30, 2019, respectively; and the NDRC promulgated the Provisions on Administration of Investment in Automobile Industry, which became effective on January 10, 2019, to set certain requisite criteria for newly-established pure electric vehicle automakers. See “Item 4. Information on the Company—B. Business Overview—Regulation—Regulations and Approvals Covering the Manufacturing of Pure Electric Passenger Vehicles.” These laws and regulations are relatively new and evolving, and their interpretation and enforcement involve significant uncertainties. As a result, in certain circumstances it may be difficult to determine what actions or omissions may be deemed to be in violation of applicable laws and regulations and furthermore, we cannot assure you that we have complied or will be able to comply with all applicable laws at all times. Consequently, we could face the risks of being subject to governmental investigations, orders by the competent authorities for rectification, administrative penalties or other legal proceedings.

Currently we rely on the contractual arrangements with Beijing NIO, one of our variable interest entities, to hold an ICP license, and separately own the relevant domain names and trademarks in connection with our internet services and operate our website and mobile application through NIO Co., Ltd. Our internet services may be treated as a value-added telecommunications business. If so, we may be required to transfer the domain names, trademark and the operations of the internet services from NIO Co., Ltd. To Beijing NIO, and we may also be subject to administrative penalties. Further, any challenge to the validity of these arrangements may significantly disrupt our business, subject us to sanctions, compromise enforceability of our contractual arrangements, or have other harmful effects on us. It is uncertain if Beijing NIO or NIO Co., Ltd. Will be required to obtain a separate operating license for certain services carried out by us through our mobile application in addition to the valued-added telecommunications business operating licenses for internet content provision services, and if Beijing NIO will be required to supplement our current ICP license in the future.

In addition, our mobile applications are also regulated by the *Administrative Provisions on Mobile Internet Applications Information Services*, or the APP Provisions, promulgated by the Cyberspace Administration of China, or the CAC, on June 28, 2016 and effective on August 1, 2016. According to the APP Provisions, the providers of mobile applications shall not create, copy, publish or distribute information and content that is prohibited by laws and regulations. However, we cannot assure that all the information or content displayed on, retrieved from or linked to our mobile applications complies with the requirements of the APP Provisions at all times. If our mobile applications were found to be violating the APP Provisions, we may be subject to administrative penalties, including warning, service suspension or removal of our mobile applications from the relevant mobile application store, which may materially and adversely affect our business and operating results.

The interpretation and application of existing PRC laws, regulations and policies and possible new laws, regulations or policies relating to the internet industry, particularly the policies relating to value-added telecommunications services, have created substantial uncertainties regarding the legality of existing and future foreign investments in the businesses and activities of internet businesses in China, including our business.

Several PRC regulatory authorities, such as the SAMR, the NDRC, the Ministry of Industry and Information Technology, or the MIIT, and the MOFCOM, oversee different aspects of our operations, and we are required to obtain a wide range of government approvals, licenses, permits and registrations in connection with our operations. For example, certain filings must be made by automobile dealers through the information system for the national automobile circulation operated by the relevant commerce department within 90 days after the receipt of a business license. Furthermore, the NEV industry is relatively new in China, and the PRC government has not adopted a clear regulatory framework to regulate the industry. As some of the laws, rules and regulations that we may be subject to were primarily enacted with a view toward application to ICE vehicles, or are relatively new, there is significant uncertainty regarding their interpretation and application with respect to our business. For example, it remains unclear under PRC laws whether our charging trucks need to be registered with related local traffic management authorities or obtain transportation operation licenses for their services, and whether we would be required to obtain any particular permit or license to be qualified to provide our charging services in cooperation with third party charging stations. In addition, the PRC government may enact new laws and regulations that require additional licenses, permits, approvals and/or registrations for the operation of any of our existing or future business. As a result, we cannot assure you that we have all the permits, licenses, registrations, approvals and/or business license covering the sufficient scope of business required for our business or that we will be able to obtain, maintain or renew permits, licenses, registrations, approvals and/or business license covering sufficient scope of business in a timely manner or at all.

We may rely on dividends and other distributions on equity paid by our PRC subsidiaries to fund any cash and financing requirements we may have, and any limitation on the ability of our PRC subsidiaries to make payments to us could have a material and adverse effect on our ability to conduct our business.

We are a holding company, and we may rely on dividends and other distributions on equity paid by our PRC subsidiaries for our cash and financing requirements, including the funds necessary to pay dividends and other cash distributions to our shareholders and service any debt we may incur. Current PRC regulations permit our PRC subsidiaries to pay dividends to us only out of their accumulated after-tax profits upon satisfaction of relevant statutory conditions and procedures, if any, determined in accordance with Chinese accounting standards and regulations. In addition, each of our PRC subsidiaries is required to set aside at least 10% of its after-tax profits each year, if any, to fund certain reserve funds until the total amount set aside reaches 50% of its registered capital. As of December 31, 2019, our variable interest entities had not made appropriations to statutory reserves as our PRC subsidiaries and our variable interest entities reported accumulated loss. For a detailed discussion of applicable PRC regulations governing distribution of dividends, see “Item 4. Information on the Company—B. Business Overview—Regulation—Regulations on Dividend Distribution.” Additionally, if our PRC subsidiaries incur debt on their own behalf in the future, the instruments governing their debt may restrict their ability to pay dividends or make other distributions to us. Furthermore, the PRC tax authorities may require our subsidiaries to adjust their taxable income under the contractual arrangements they currently have in place with our variable interest entities in a manner that would materially and adversely affect their ability to pay dividends and other distributions to us. See “—Risks Related to Our Corporate Structure—Our contractual arrangements with our variable interest entities may be subject to scrutiny by the PRC tax authorities and they may determine that we or our variable interest entities owe additional taxes, which could negatively affect our financial condition.” In addition, the incurrence of indebtedness by our PRC subsidiaries could result in operating and financing covenants and undertakings to creditors that would restrict the ability of our PRC subsidiaries to pay dividends to us.

Any limitation on the ability of our PRC subsidiaries to pay dividends or make other distributions to us could materially and adversely limit our ability to grow, make investments or acquisitions that could be beneficial to our business, pay dividends, or otherwise fund and conduct our business. See “—If we are classified as a PRC resident enterprise for PRC income tax purposes, such classification could result in unfavorable tax consequences to us and our non-PRC shareholders or ADS holders.”

Increases in labor costs and enforcement of stricter labor laws and regulations in the PRC may adversely affect our business and our profitability.

China’s overall economy and the average wage in China have increased in recent years and are expected to grow. The average wage level for our employees has also increased in recent years. We expect that our labor costs, including wages and employee benefits, will increase. Unless we are able to pass on these increased labor costs to those who pay for our services, our profitability and results of operations may be materially and adversely affected.

In addition, we have been subject to stricter regulatory requirements in terms of entering into labor contracts with our employees, limitation with respect to utilization of labor dispatching, applying for foreigner work permits, labor protection and labor condition and paying various statutory employee benefits, including pensions, housing fund, medical insurance, work-related injury insurance, unemployment insurance and maternity insurance to designated government agencies for the benefit of our employees. Pursuant to the PRC Labor Contract Law and its implementation rules, employers are subject to stricter requirements in terms of signing labor contracts, minimum wages, paying remuneration, determining the term of employee's probation and unilaterally terminating labor contracts. In the event that we decide to terminate some of our employees or otherwise change our employment or labor practices, the PRC Labor Contract Law and its implementation rules may limit our ability to effect those changes in a desirable or cost-effective manner, which could adversely affect our business and results of operations.

In October 2010, the Standing Committee of the National People's Congress promulgated the PRC Social Insurance Law, which came into effect on July 1, 2011. On April 3, 1999, the State Council promulgated the Regulations on the Administration of Housing Funds, which was amended on March 24, 2002. Companies registered and operating in China are required under the Social Insurance Law and the Regulations on the Administration of Housing Funds to, apply for social insurance registration and housing fund deposit registration within 30 days of their establishment, and to pay for their employees different social insurance including pension insurance, medical insurance, work-related injury insurance, unemployment insurance and maternity insurance to the extent required by law. However, certain of our PRC subsidiaries and VIEs that do not hire any employees and are not a party to any employment agreement, have not applied for and obtained such registration, and instead of paying the social insurance payment on their own for their employees, certain of our PRC subsidiaries and VIEs use third-party agencies to pay in the name of such agency. We could be subject to orders by the competent labor authorities for rectification and failure to comply with the orders may further subject us to administrative fines.

As the interpretation and implementation of labor-related laws and regulations are still evolving, our employment practices may violate labor-related laws and regulations in China, which may subject us to labor disputes or government investigations. We cannot assure you that we have complied or will be able to comply with all labor-related law and regulations including those relating to obligations to make social insurance payments and contribute to the housing provident funds. If we are deemed to have violated relevant labor laws and regulations, we could be required to provide additional compensation to our employees and our business, financial condition and results of operations will be adversely affected.

Furthermore, in order to control labor cost, we conducted a series of organizational restructuring to cut headcounts in 2019, which we believe has negatively affected our reputation, brand image and our ability to retain the remaining qualified staff and skilled employees. We cannot guarantee that there will not be such organizational restructuring again in the future, the occurrence of which will pose negative implications on our competitive position, cost us qualified employees and subject us to potential employment lawsuits. Any of the above would negatively affect our business, financial condition and results of operations.

Fluctuations in exchange rates could have a material and adverse effect on our results of operations.

The conversion of RMB into foreign currencies, including U.S. dollars, is based on rates set by the People's Bank of China. The RMB has fluctuated against the U.S. dollar, at times significantly and unpredictably. The value of RMB against the U.S. dollar and other currencies is affected by changes in China's political and economic conditions and by China's foreign exchange policies, among other things. We cannot assure you that RMB will not appreciate or depreciate significantly in value against the U.S. dollar in the future. It is difficult to predict how market forces or PRC or U.S. government policy may impact the exchange rate between RMB and the U.S. dollar in the future.

Any significant appreciation or depreciation of RMB may materially and adversely affect our revenues, earnings and financial position, and the value of, and any dividends payable on, our ADSs in U.S. dollars. For example, to the extent that we need to convert U.S. dollars we receive into RMB to pay our operating expenses, appreciation of RMB against the U.S. dollar would have an adverse effect on the RMB amount we would receive from the conversion. Conversely, a significant depreciation of RMB against the U.S. dollar may significantly reduce the U.S. dollar equivalent of our earnings, which in turn could adversely affect the price of our ADSs.

Very limited hedging options are available in China to reduce our exposure to exchange rate fluctuations. To date, we have not entered into any hedging transactions in an effort to reduce our exposure to foreign currency exchange risk. While we may decide to enter into hedging transactions in the future, the availability and effectiveness of these hedges may be limited and we may not be able to adequately hedge our exposure or at all. In addition, our currency exchange losses may be magnified by PRC exchange control regulations that restrict our ability to convert RMB into foreign currency. As a result, fluctuations in exchange rates may have a material adverse effect on your investment.

PRC regulation of loans to and direct investment in PRC entities by offshore holding companies and governmental control of currency conversion may delay or prevent us from using the proceeds of our offshore equity offerings to make loans to or make additional capital contributions to our PRC subsidiaries, which could materially and adversely affect our liquidity and our ability to fund and expand our business.

Under PRC laws and regulations, we are permitted to utilize the proceeds of any financing outside China to fund our PRC subsidiaries by making loans to or additional capital contributions to our PRC subsidiaries, subject to applicable government registration, statutory limitations on amount and approval requirements. For more details, see “Item 4. Information on the Company—B. Business Overview—Regulation—Regulations on Foreign Exchange.” These PRC laws and regulations may significantly limit our ability to use Renminbi converted from the net proceeds of any financing outside China to fund the establishment of new entities in China by our PRC subsidiaries, to invest in or acquire any other PRC companies through our PRC subsidiaries, or to establish new variable interest entities in China. Moreover, we cannot assure you that we will be able to complete the necessary registrations or obtain the necessary government approvals on a timely basis, if at all, with respect to future loans to our PRC subsidiaries or future capital contributions by us to our PRC subsidiaries. If we fail to complete such registrations or obtain such approvals, our ability to use the proceeds we received or expect to receive from our offshore offerings and to capitalize or otherwise fund our PRC operations may be negatively affected, which could materially and adversely affect our liquidity and our ability to fund and expand our business.

On December 26, 2017, the NDRC issued the *Management Rules for Overseas Investment by Enterprises*, or Order 11. On February 11, 2018, the *Catalog on Overseas Investment in Sensitive Industries (2018 Edition)*, or the Sensitive Industries List was promulgated. Overseas investment governed by Order 11 refers to the investment activities conducted by an enterprise located in the territory of China either directly or via an overseas enterprise under its control through making investment with assets and equities or providing financing or guarantees in order to obtain overseas ownership, control, management rights and other related interests, and overseas investment by a PRC individual through overseas enterprises under his/her control is also subject to Order 11. According to Order 11, before being conducted, any overseas investment in a sensitive industry or any direct investment by a Chinese enterprise in a non-sensitive industry but with an investment amount over US\$300 million requires approval from, or filing with, the NDRC, and for those non-sensitive investments indirectly by Chinese investors (including PRC individuals) with investment amounts over US\$300 million need to be reported. However uncertainties remain with respect to the interpretation and application of Order 11, we are not sure whether our using of proceeds will be subject to Order 11. If we fail to obtain the approval, complete the filing or report our overseas investment with our proceeds (as the case may be) in a timely manner provided that Order 11 is applicable, we may be forced to suspend or cease our investment, or be subject to penalties or other liabilities, which could materially and adversely affect our business, financial condition and prospects.

Governmental control of currency conversion may limit our ability to utilize our revenues effectively.

The PRC government imposes controls on the convertibility of Renminbi into foreign currencies and, in certain cases, the remittance of currency out of China. Under existing PRC foreign exchange regulations, payments of current account items, such as profit distributions and trade and service-related foreign exchange transactions, can be made in foreign currencies without prior approval from the State Administration of Foreign Exchange, or SAFE, by complying with certain procedural requirements. However, approval from or registration with appropriate governmental authorities is required where Renminbi is to be converted into a foreign currency and remitted out of China to pay capital expenses, such as the repayment of loans denominated in foreign currencies. See “Item 4. Information on the Company—B. Business Overview—Regulation—Regulations on Foreign Exchange.”

Since 2016, the PRC government has tightened its foreign exchange policies again and stepped up scrutiny of major outbound capital movement. More restrictions and a substantial vetting process have been put in place by SAFE to regulate cross-border transactions falling under the capital account. The PRC government may also restrict access in the future to foreign currencies for current account transactions, at its discretion. We receive substantially all of our revenues in RMB. If the foreign exchange control system prevents us from obtaining sufficient foreign currencies to satisfy our foreign currency demands, we may not be able to pay dividends in foreign currencies to our shareholders, including holders of our ADSs.

PRC regulations relating to offshore investment activities by PRC residents may limit our PRC subsidiaries' ability to increase their registered capital or distribute profits to us or otherwise expose us or our PRC resident beneficial owners to liability and penalties under PRC law.

SAFE requires PRC residents or entities to register with SAFE or its local branch in connection with their establishment or control of an offshore entity established for the purpose of overseas investment or financing. In addition, such PRC residents or entities must update their SAFE registrations when the offshore special purpose vehicle undergoes certain material events. See “Item 4. Information on the Company—B. Business Overview—Regulation—Regulations on Foreign Exchange—Offshore Investment.”

If our shareholders who are PRC residents or entities do not complete their registration with the local SAFE branches, our PRC subsidiaries may be prohibited from distributing their profits and any proceeds from any reduction in capital, share transfer or liquidation to us, and we may be restricted in our ability to contribute additional capital to our PRC subsidiaries. Moreover, failure to comply with SAFE registration requirements could result in liability under PRC laws for evasion of applicable foreign exchange restrictions.

However, we may not be informed of the identities of all the PRC residents or entities holding direct or indirect interests in our company, nor can we compel our beneficial owners to comply with SAFE registration requirements. As a result, we cannot assure you that all of our shareholders or beneficial owners who are PRC residents or entities have complied with, and will in the future make or obtain any applicable registrations or approvals required by, SAFE regulations. Failure by such shareholders or beneficial owners to comply with SAFE regulations, or failure by us to amend the foreign exchange registrations of our PRC subsidiaries, could subject us to fines or legal sanctions, restrict our overseas or cross-border investment activities, limit our PRC subsidiaries' ability to make distributions or pay dividends to us or affect our ownership structure, which could adversely affect our business and prospects.

China's M&A Rules and certain other PRC regulations establish complex procedures for certain acquisitions of PRC companies by foreign investors, which could make it more difficult for us to pursue growth through acquisitions in China.

A number of PRC laws and regulations have established procedures and requirements that could make merger and acquisition activities in China by foreign investors more time-consuming and complex. In addition to the Anti-Monopoly Law itself, these include the Rules on Acquisition of Domestic Enterprises by Foreign Investors, or the M&A Rules, adopted by six PRC governmental and regulatory agencies in 2006, and the Rules of the Ministry of Commerce on Implementation of Security Review System of Mergers and Acquisitions of Domestic Enterprises by Foreign Investors, or the Security Review Rules, promulgated in 2011. These laws and regulations impose requirements in some instances that the MOFCOM be notified in advance of any change-of-control transaction in which a foreign investor takes control of a PRC domestic enterprise. In addition, the Anti-Monopoly Law requires that the MOFCOM be notified in advance of any concentration of undertaking if certain thresholds are triggered. Moreover, the Security Review Rules specify that mergers and acquisitions by foreign investors that raise “national defense and security” concerns and mergers and acquisitions through which foreign investors may acquire de facto control over domestic enterprises that raise “national security” concerns are subject to strict review by the MOFCOM, and prohibit any attempt to bypass a security review, including by structuring the transaction through a proxy or contractual control arrangement. In the future, we may grow our business by acquiring complementary businesses. Complying with the requirements of the relevant regulations to complete such transactions could be time-consuming, and any required approval processes, including approval from the MOFCOM, may delay or inhibit our ability to complete such transactions, which could affect our ability to expand our business or maintain our market share.

Any failure to comply with PRC regulations regarding the registration requirements for employee stock incentive plans may subject the PRC plan participants or us to fines and other legal or administrative sanctions.

Under SAFE regulations, PRC residents who participate in a stock incentive plan in an overseas publicly listed company are required to register with SAFE or its local branches and complete certain other procedures. See “Item 4. Information on the Company—B. Business Overview—Regulation—Regulations on Employment and Social Welfare—Employee Stock Incentive Plan.” We and our PRC resident employees who participate in our share incentive plans are subject to these regulations since we became a public company listed in the United States. If we or any of these PRC resident employees fail to comply with these regulations, we or such employees may be subject to fines and other legal or administrative sanctions. We also face regulatory uncertainties that could restrict our ability to adopt additional incentive plans for our directors, executive officers and employees under PRC law.

Discontinuation of any of the preferential tax treatments and government subsidies or imposition of any additional taxes and surcharges could adversely affect our financial condition and results of operations.

Our PRC subsidiaries currently benefit from a number of preferential tax treatments. For example, our subsidiary, NIO Co., Ltd., is entitled to enjoy, after completing certain application formalities, a 15% preferential enterprise income tax from 2018 as it has been qualified as a “High New Technology Enterprise” under the PRC Enterprise Income Tax Law and related regulations. The discontinuation of any of the preferential income tax treatment that we currently enjoy could have a material and adverse effect on our result of operations and financial condition. We cannot assure you that we will be able to maintain or lower our current effective tax rate in the future.

In addition, our PRC subsidiaries have received various financial subsidies from PRC local government authorities. The financial subsidies result from discretionary incentives and policies adopted by PRC local government authorities. For example, our subsidiary, XPT (Nanjing) E-Powertrain Technology Co., Ltd., has received subsidies of an aggregate of RMB33.1 million for the phase I construction of the Nanjing Advanced Manufacturing Engineering Center as of December 31, 2019. Local governments may decide to change or discontinue such financial subsidies at any time. The discontinuation of such financial subsidies or imposition of any additional taxes could adversely affect our financial condition and results of operations.

If we are classified as a PRC resident enterprise for PRC income tax purposes, such classification could result in unfavorable tax consequences to us and our non-PRC shareholders or ADS holders.

Under the PRC Enterprise Income Tax Law and its implementation rules, an enterprise established outside of the PRC with a “de facto management body” within the PRC is considered a PRC resident enterprise. The implementation rules define the term “de facto management body” as the body that exercises full and substantial control over and overall management of the business, productions, personnel, accounts and properties of an enterprise. In 2009, the State Administration of Taxation issued a circular, known as Circular 82, which provides certain specific criteria for determining whether the “de facto management body” of a PRC-controlled enterprise that is incorporated offshore is located in China. Although Circular 82 only applies to offshore enterprises controlled by PRC enterprises or PRC enterprise groups, not those controlled by PRC individuals or foreigners like us, the criteria set forth in the circular may reflect the State Administration of Taxation’s general position on how the “de facto management body” test should be applied in determining the tax resident status of all offshore enterprises. According to Circular 82, an offshore incorporated enterprise controlled by a PRC enterprise or a PRC enterprise group will be regarded as a PRC tax resident by virtue of having its “de facto management body” in China and will be subject to PRC enterprise income tax on its global income only if all of the following conditions are met: (i) the primary location of the day-to-day operational management is in the PRC; (ii) decisions relating to the enterprise’s financial and human resource matters are made or are subject to approval by organizations or personnel in the PRC; (iii) the enterprise’s primary assets, accounting books and records, company seals, and board and shareholder resolutions, are located or maintained in the PRC; and (iv) at least 50% of voting board members or senior executives habitually reside in the PRC.

We believe that none of our entities outside of China is a PRC resident enterprise for PRC tax purposes. However, the tax resident status of an enterprise is subject to determination by the PRC tax authorities and uncertainties remain with respect to the interpretation of the term “de facto management body.” If the PRC tax authorities determine that we are a PRC resident enterprise for enterprise income tax purposes, we will be subject to the enterprise income tax on our global income at the rate of 25% and we will be required to comply with PRC enterprise income tax reporting obligations. In addition, we may be required to withhold a 10% withholding tax from interest or dividends we pay to our shareholders that are non-resident enterprises, including the holders of our ADSs. In addition, non-resident enterprise shareholders (including our ADS holders) may be subject to PRC tax at a rate of 10% on gains realized on the sale or other disposition of our ADSs or ordinary shares, if such income is treated as sourced from within the PRC. Furthermore, if PRC tax authorities determine that we are a PRC resident enterprise for enterprise income tax purposes, interest or dividends paid to our non-PRC individual shareholders (including our ADS holders) and any gain realized on the transfer of the ADSs or ordinary shares by such holders may be subject to PRC tax at a rate of 20% (which, in the case of interest or dividends, may be withheld at source by us), if such gains are deemed to be from PRC sources. These rates may be reduced by an applicable tax treaty, but it is unclear whether our non-PRC shareholders would be able to claim the benefits of any tax treaties between their country of tax residence and the PRC in the event that we are treated as a PRC resident enterprise.

We may not be able to obtain certain benefits under relevant tax treaty on dividends paid by our PRC subsidiaries to us through our Hong Kong subsidiary.

We are a holding company incorporated under the laws of the Cayman Islands and as such rely on dividends and other distributions on equity from our PRC subsidiaries to satisfy part of our liquidity requirements. Pursuant to the PRC Enterprise Income Tax Law, a withholding tax rate of 10% currently applies to dividends paid by a PRC “resident enterprise” to a foreign enterprise investor, unless any such foreign investor’s jurisdiction of incorporation has a tax treaty with China that provides for preferential tax treatment. Pursuant to the *Arrangement between Mainland China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and Tax Evasion on Income*, such withholding tax rate may be lowered to 5% if a Hong Kong resident enterprise owns no less than 25% of a PRC enterprise. Furthermore, the Administrative Measures for Non-Resident Enterprises to Enjoy Treatments under Tax Treaties, which became effective in August 2015, require non-resident enterprises to determine whether they are qualified to enjoy the preferential tax treatment under the tax treaties and file relevant report and materials with the tax authorities. There are also other conditions for enjoying the reduced withholding tax rate according to other relevant tax rules and regulations. See “Item 10. Additional Information—E. Taxation—People’s Republic of China Taxation.” As of December 31, 2019, our subsidiaries and variable interest entities located in the PRC reported accumulated loss and therefore they had no retained earnings for offshore distribution. In the future, we intend to re-invest all earnings, if any, generated from our PRC subsidiaries for the operation and expansion of our business in China. Should our tax policy change to allow for offshore distribution of our earnings, we would be subject to a significant withholding tax. Our determination regarding our qualification to enjoy the preferential tax treatment could be challenged by the relevant tax authority and we may not be able to complete the necessary filings with the relevant tax authority and enjoy the preferential withholding tax rate of 5% under the arrangement with respect to dividends to be paid by our PRC subsidiaries to our Hong Kong subsidiary.

We face uncertainty with respect to indirect transfers of equity interests in PRC resident enterprises by their non-PRC holding companies.

In February 2015, the State Administration of Taxation, or the SAT, issued the *Circular on Issues of Enterprise Income Tax on Indirect Transfers of Assets by Non-PRC Resident Enterprises*, or Circular 7. Circular 7 extends its tax jurisdiction to not only indirect transfers but also transactions involving transfer of other taxable assets, through the offshore transfer of a foreign intermediate holding company. In addition, Circular 7 provides certain criteria on how to assess reasonable commercial purposes and has introduced safe harbors for internal group restructurings and the purchase and sale of equity through a public securities market. Circular 7 also brings challenges to both the foreign transferor and transferee (or other person who is obligated to pay for the transfer) of the taxable assets. Where a non-resident enterprise conducts an “indirect transfer” by transferring the taxable assets indirectly by disposing of the equity interests of an overseas holding company, the non-resident enterprise being the transferor, or the transferee, or the PRC entity which directly owned the taxable assets may report to the relevant tax authority such indirect transfer. Using a “substance over form” principle, the PRC tax authority may disregard the existence of the overseas holding company if it lacks a reasonable commercial purpose and was established for the purpose of reducing, avoiding or deferring PRC tax. As a result, gains derived from such indirect transfer may be subject to PRC enterprise income tax, and the transferee or other person who is obligated to pay for the transfer is obligated to withhold the applicable taxes, currently at a rate of 10% for the transfer of equity interests in a PRC resident enterprise. On October 17, 2017, the SAT issued *Circular on Issues of Tax Withholding regarding Non-PRC Resident Enterprise Income Tax*, or Circular 37, which came into effect on December 1, 2017. Circular 37 further clarifies the practice and procedure of the withholding of nonresident enterprise income tax.

We face uncertainties on the reporting and consequences of future private equity financing transactions, share exchanges or other transactions involving the transfer of shares in our company by investors that are non-PRC resident enterprises. The PRC tax authorities may pursue such non-resident enterprises with respect to a filing or the transferees with respect to withholding obligations, and request our PRC subsidiaries to assist in the filing. As a result, we and non-resident enterprises in such transactions may become at risk of being subject to filing obligations or being taxed under Circular 7 and Circular 37, and may be required to expend valuable resources to comply with them or to establish that we and our non-resident enterprises should not be taxed under these regulations, which may have a material adverse effect on our financial condition and results of operations.

If the custodians or authorized users of controlling non-tangible assets of our company, including our corporate chops and seals, fail to fulfill their responsibilities, or misappropriate or misuse these assets, our business and operations could be materially and adversely affected.

Under PRC law, legal documents for corporate transactions are executed using the chops or seal of the signing entity or with the signature of a legal representative whose designation is registered and filed with the relevant branch of the SAMR.

Although we usually utilize chops to enter into contracts, the designated legal representatives of each of our PRC subsidiaries, variable interest entities and their subsidiaries have the apparent authority to enter into contracts on behalf of such entities without chops and bind such entities. All designated legal representatives of our PRC subsidiaries, variable interest entities and their subsidiaries are members of our senior management team who have signed employment agreements with us or our PRC subsidiaries, variable interest entities and their subsidiaries under which they agree to abide by various duties they owe to us. In order to maintain the physical security of our chops and chops of our PRC entities, we generally store these items in secured locations accessible only by the authorized personnel in the legal or finance department of each of our subsidiaries, variable interest entities and their subsidiaries. Although we monitor such authorized personnel, there is no assurance such procedures will prevent all instances of abuse or negligence. Accordingly, if any of our authorized personnel misuse or misappropriate our corporate chops or seals, we could encounter difficulties in maintaining control over the relevant entities and experience significant disruption to our operations. If a designated legal representative obtains control of the chops in an effort to obtain control over any of our PRC subsidiaries, variable interest entities or their subsidiaries, we or our PRC subsidiaries, variable interest entities and their subsidiaries would need to pass a new shareholders or board resolution to designate a new legal representative and we would need to take legal action to seek the return of the chops, apply for new chops with the relevant authorities, or otherwise seek legal redress for the violation of the representative's fiduciary duties to us, which could involve significant time and resources and divert management attention away from our regular business. In addition, the affected entity may not be able to recover corporate assets that are sold or transferred out of our control in the event of such a misappropriation if a transferee relies on the apparent authority of the representative and acts in good faith.

Our leased property interest or entitlement to other facilities or assets may be defective or subject to lien and our right to lease, own or use the properties affected by such defects or lien challenged, which could cause significant disruption to our business.

Under PRC laws, all lease agreements are required to be registered with the local housing authorities. We presently lease several premises in China, some of which have not completed the registration of the ownership rights or the registration of our leases with the relevant authorities. Failure to complete these required registrations may expose our landlords, lessors and us to potential monetary fines. If these registrations are not obtained in a timely manner or at all, we may be subject to monetary fines or may have to relocate our offices and incur the associated losses.

Some of the ownership certificates or other similar proof of certain leased properties have not been provided to us by the relevant lessors. Therefore, we cannot assure you that such lessors are entitled to lease the relevant real properties to us. If the lessors are not entitled to lease the real properties to us and the owners of such real properties decline to ratify the lease agreements between us and the respective lessors, we may not be able to enforce our rights to lease such properties under the respective lease agreements against the owners. If our lease agreements are claimed as null and void by third parties who are the real owners of such leased real properties, we could be required to vacate the properties, in the event of which we could only initiate the claim against the lessors under relevant lease agreements for indemnities for their breach of the relevant leasing agreements. We cannot assure you that suitable alternative locations are readily available on commercially reasonable terms, or at all, and if we are unable to relocate our operations in a timely manner, our operations may be adversely affected.

Some of our PRC subsidiaries have incurred or will incur indebtedness and may, in connection therewith, create mortgage, pledge or other lien over substantive operating assets, facilities or equity interests of certain PRC subsidiaries as guarantee to their repayment of indebtedness or as counter guarantee to third-party guarantors which provide guarantee to our PRC subsidiaries' repayment of indebtedness. In the event that the relevant PRC subsidiaries fail to perform their repayment obligations or such guarantors perform their guarantee obligations, claims may be raised to our substantive operating assets, facilities or equity interests of the PRC subsidiaries in question. If we cannot continue to own or use such assets, facilities or equity interests, our operation may be adversely affected.

The audit report included in this annual report is prepared by an auditor who is not inspected by the Public Company Accounting Oversight Board and, as such, our investors are deprived of the benefits of such inspection.

Our independent registered public accounting firm that issues the audit report included in this annual report, as auditors of companies that are traded publicly in the United States and a firm registered with the PCAOB, is subject to laws in the United States to pursuant to which the PCAOB conducts regular inspections to assess its compliance with professional standards. Because our auditors are located in China, a jurisdiction where the PCAOB is currently unable to conduct inspections without the approval of the PRC authorities, our auditors are not currently inspected by the PCAOB.

Inspections of other firms that the PCAOB has conducted outside China have identified deficiencies in those firms' audit procedures and quality control procedures, which may be addressed as part of the inspection process to improve future audit quality. This lack of PCAOB inspections in China prevents the PCAOB from regularly evaluating our auditor's audits and its quality control procedures. As a result, investors may be deprived of the benefits of PCAOB inspections. On December 7, 2018, the SEC and the PCAOB issued a joint statement highlighting continued challenges faced by the U.S. regulators in their oversight of financial statement audits of U.S.-listed companies with significant operations in China. On April 21, 2020, the SEC and the PCAOB issued another joint statement reiterating the greater risk that disclosures will be insufficient in many emerging markets, including China, compared to those made by U.S. domestic companies. In discussing the specific issues related to the greater risk, the statement again highlights the PCAOB's inability to inspect audit work paper and practices of accounting firms in China, with respect to their audit work of U.S. reporting companies. However, it remains unclear what further actions the SEC and the PCAOB will take to address the problem.

The inability of the PCAOB to conduct inspections of auditors in China makes it more difficult to evaluate the effectiveness of our auditor's audit procedures or quality control procedures as compared to auditors outside of China that are subject to PCAOB inspections. Investors may lose confidence in our reported financial information and procedures and the quality of our financial statements.

Proceedings instituted by the SEC against the "big four" PRC-based accounting firms, including our independent registered public accounting firm, could result in financial statements being determined to not be in compliance with the requirements of the Exchange Act.

In late 2012, the SEC commenced administrative proceedings under Rule 102(e) of its Rules of Practice and also under the Sarbanes-Oxley Act against the Chinese affiliates of the "big four" accounting firms (including our auditors). The Rule 102(e) proceedings initiated by the SEC relate to these firms' inability to produce documents, including audit work papers, in response to the request of the SEC pursuant to Section 106 of the Sarbanes-Oxley Act, as the auditors located in the PRC are not in a position lawfully to produce documents directly to the SEC because of restrictions under PRC law and specific directives issued by the China Securities Regulatory Commission, or the CSRC. The issues raised by the proceedings are not specific to our auditors or to us, but affect equally all audit firms based in China and all China-based businesses with securities listed in the United States.

In January 2014, the administrative judge reached an initial decision, or the Initial Decision, that the Chinese affiliates of "big four" accounting firms should be barred from practicing before the SEC for six months. Thereafter, the accounting firms filed a petition for review of the Initial Decision, prompting the SEC commissioners to review the Initial Decision, determine whether there had been any violation and, if so, determine the appropriate remedy to be placed on these audit firms.

In February 2015, the Chinese affiliates of the “big four” accounting firms (including our auditors) each agreed to censure and pay a fine to the SEC to settle the dispute and avoid suspension of their ability to practice before the SEC and audit U.S. listed companies. The settlement requires the firms to follow detailed procedures and to seek to provide the SEC with access to the Chinese firms’ audit documents via the CSRC. If they failed to meet the specified criteria during a period of four years starting from the settlement date, the SEC retained authority to impose a variety of additional remedial measures on the firms depending on the nature of the failure. Under the terms of the settlement, the underlying proceeding against the four China-based accounting firms was deemed dismissed with prejudice four years after entry of the settlement. The four-year mark occurred on February 6, 2019. While we cannot predict if the SEC will further challenge the four China-based accounting firms’ compliance with U.S. law in connection with U.S. regulatory requests for audit work papers or if the results of such a challenge would result in the SEC imposing penalties such as suspensions. If additional remedial measures are imposed on the Chinese affiliates of the “big four” accounting firms, we could be unable to timely file future financial statements in compliance with the requirements of the Exchange Act.

In the event the Chinese affiliates of the “big four” become subject to additional legal challenges by the SEC or PCAOB, depending upon the final outcome, listed companies in the United States with major PRC operations may find it difficult or impossible to retain auditors in respect of their operations in the PRC, which could result in financial statements being determined to not be in compliance with the requirements of the Securities Exchange Act of 1934, as amended, or the Securities Exchange Act, and could result in delisting. Moreover, any negative news about the proceedings against these audit firms may cause investor uncertainty regarding China-based, United States-listed companies and the market price of our shares may be adversely affected. If our independent registered public accounting firm was denied, temporarily, the ability to practice before the SEC and we were unable to timely find another registered public accounting firm to audit and issue an opinion on our financial statements, our financial statements could be determined to not be in compliance with the requirements of the Exchange Act.

Risks Related to Our ADSs and Trading Market

The trading prices of our ADSs have fluctuated and may be volatile, which could result in substantial losses to investors.

The trading price of our ADSs has been volatile and has ranged from a low of US\$1.32 to a high of US\$10.16 in 2019. The market price for our ADSs may continue to be volatile and subject to wide fluctuations in response to factors including, but not limited to, the following:

- actual or anticipated fluctuations in our quarterly results of operations;
- changes in financial estimates by securities research analysts;
- conditions in automotive markets;
- changes in the operating performance or market valuations of other automotive companies;
- announcements by us or our competitors of new products, acquisitions, strategic partnerships, joint ventures or capital commitments;
- addition or departure of key personnel;
- fluctuations of exchange rates between RMB and the U.S. dollar;
- litigation, government investigation or other legal or regulatory proceeding;
- release of lock-up and other transfer restrictions on our ADSs or any ordinary shares or sales of additional ADSs;
- any actual or alleged illegal acts of our shareholders or management;
- any share repurchase program; and
- general economic or political conditions in China or elsewhere in the world.

Any of these factors may result in large and sudden changes in the volume and price at which our ADSs will trade.

In addition, the stock market in general, and the market prices for companies with operations in China in particular, have experienced volatility that often has been unrelated to the operating performance of such companies. The securities of some China-based companies that have listed their securities in the United States have experienced significant volatility since their initial public offerings in recent years, including, in some cases, substantial declines in the trading prices of their securities. The trading performances of these companies' securities after their offerings may affect the attitudes of investors towards Chinese companies listed in the United States in general, which consequently may impact the trading performance of our ADSs, regardless of our actual operating performance. In addition, any negative news or perceptions about inadequate corporate governance practices or fraudulent accounting, corporate structure or other matters of other Chinese companies may also negatively affect the attitudes of investors towards Chinese companies in general, including us, regardless of whether we have engaged in any inappropriate activities. In particular, the global financial crisis and the ensuing economic recessions in many countries have contributed and may continue to contribute to extreme volatility in the global stock markets. These broad market and industry fluctuations may adversely affect the market price of our ADSs. Volatility or a lack of positive performance in our ADS price may also adversely affect our ability to retain key employees, most of whom have been granted options or other equity incentives.

If securities or industry analysts do not publish research or reports about our business, or if they adversely change their recommendations regarding our ADSs, the market price for our ADSs and trading volume could decline.

The trading market for our ADSs will be influenced by research or reports that industry or securities analysts publish about our business. If one or more analysts who cover us downgrade our ADSs, the market price for our ADSs would likely decline. If one or more of these analysts cease to cover us or fail to regularly publish reports on us, we could lose visibility in the financial markets, which in turn could cause the market price or trading volume for our ADSs to decline.

Our triple-class voting structure will limit the holders of our Class A ordinary shares and ADSs to influence corporate matters, provide certain shareholders of ours with substantial influence and could discourage others from pursuing any change of control transactions that holders of our Class A ordinary shares and ADSs may view as beneficial.

We have adopted a triple-class voting structure such that our ordinary shares consist of Class A ordinary shares, Class B ordinary shares and Class C ordinary shares. Holders of Class A ordinary shares, Class B ordinary shares and Class C ordinary shares have the same rights other than voting and conversion rights. Each holder of our Class A ordinary shares is entitled to one vote per share, each holder of our Class B ordinary shares is entitled to four votes per share and each holder of our Class C ordinary shares is entitled to eight votes per share on all matters submitted to them for a vote. Our Class A ordinary shares, Class B ordinary shares and Class C ordinary shares vote together as a single class on all matters submitted to a vote of our shareholders, except as may otherwise be required by law. Each Class B ordinary share or Class C ordinary share is convertible into one Class A ordinary share, whereas Class A ordinary shares are not convertible into Class B ordinary shares or Class C ordinary shares under any circumstances. Upon any transfer of Class B ordinary shares or Class C ordinary shares by a holder thereof to any person or entity which is not an affiliate of such holder, such Class B ordinary shares or Class C ordinary shares are automatically and immediately converted into the equal number of Class A ordinary shares.

As of the date of this annual report, Mr. Bin Li, our chairman and chief executive officer, together with his affiliates, beneficially own all of our issued Class C ordinary shares. The Tencent entities beneficially owned all of our issued Class B ordinary shares. Due to the disparate voting powers associated with our triple classes of ordinary shares, Mr. Li has considerable influence over important corporate matters. As of March 31, 2020, Mr. Li beneficially owns 47.0% of the aggregate voting power of our company through mobike Global Ltd. and Originalwish Limited, companies wholly owned by Mr. Li, and through NIO Users Limited, a holding company ultimately controlled by Mr. Li, whereas Tencent entities beneficially own 21.1% of the aggregate voting power of our company through Mount Putuo Investment Limited, Image Frame Investment (HK) Limited and TPP Follow-on I Holding D Limited. Mr. Li has considerable influence over matters requiring shareholder approval, including electing directors and approving material mergers, acquisitions or other business combination transactions. This concentrated control will limit the ability of the holders of our Class A ordinary shares and ADSs to influence corporate matters and could also discourage others from pursuing any potential merger, takeover or other change of control transaction, which could have the effect of depriving the holders of our Class A ordinary shares and our ADSs of the opportunity to sell their shares at a premium over the prevailing market price. Moreover, Mr. Li may increase the concentration of his voting power and/or share ownership in the future, which may, among other consequences, decrease the liquidity in our ADSs.

The sale or availability for sale of substantial amounts of our ADSs could adversely affect their market price.

Sales of substantial amounts of our ADSs in the public market, or the perception that these sales could occur, could adversely affect the market price of our ADSs and could materially impair our ability to raise capital through equity offerings in the future. We cannot predict what effect, if any, market sales of securities held by our significant shareholders or any other shareholder or the availability of these securities for future sale will have on the market price of our ADSs. In addition, certain holders of our existing shareholders are entitled to certain registration rights, including demand registration rights, piggyback registration rights, and Form F-3 or Form S-3 registration rights. Registration of these shares under the Securities Act of 1933, or the Securities Act, would result in these shares becoming freely tradable without restriction under the Securities Act immediately upon the effectiveness of the registration. Sales of these registered shares in the public market, or the perception that such sales could occur, could cause the price of our ADSs to decline.

Because we do not expect to pay dividends in the foreseeable future, the holders of our ADSs must rely on price appreciation of our ADSs for return on their investment.

We currently intend to retain most, if not all, of our available funds and any future earnings to fund the development and growth of our business. As a result, we do not expect to pay any cash dividends in the foreseeable future. Therefore, you should not rely on an investment in our ADSs as a source for any future dividend income.

Our board of directors has complete discretion as to whether to distribute dividends. Even if our board of directors decides to declare and pay dividends, the timing, amount and form of future dividends, if any, will depend on our future results of operations and cash flow, our capital requirements and surplus, the amount of distributions, if any, received by us from our subsidiaries, our financial condition, contractual restrictions and other factors deemed relevant by our board of directors. Accordingly, the return to ADS holders will likely depend entirely upon any future price appreciation of our ADSs. There is no guarantee that our ADSs will appreciate in value or even maintain the price at which ADS holders purchased the ADSs. Our ADS holders may not realize a return on their investment in our ADSs and they may even lose their entire investment in our ADSs.

There can be no assurance that we will not be classified as a passive foreign investment company, or PFIC, for U.S. federal income tax purposes for any taxable year, which could result in adverse U.S. federal income tax consequences to U.S. holders of our ADSs or Class A ordinary shares.

A non-U.S. corporation will be classified as a passive foreign investment company, or PFIC, for any taxable year if either (1) 75% or more of its gross income for such year consists of certain types of “passive” income; or (2) 50% or more of the value of its assets (generally determined on the basis of a quarterly average) during such year is attributable to assets that produce passive income or are held for the production of passive income (the “asset test”). Based on our current and expected income and assets (taking into account our current market capitalization), we do not believe that we were a PFIC for our taxable year ended December 31, 2019 and we do not expect to be a PFIC for the current taxable year or the foreseeable future. However, no assurance can be given in this regard because the determination of whether we are or will become a PFIC is a fact-intensive inquiry made on an annual basis that depends, in part, upon the nature and composition of our income and assets. Fluctuations in the market price of our ADSs may cause us to become a PFIC for the current or subsequent taxable years because the value of our assets for the purpose of the asset test may be determined by reference to the market price of our ADSs, which may be volatile. The nature and composition of our income and assets may also be affected by how, and how quickly, we use our liquid assets.

Although the law in this regard is not entirely clear, we treat our consolidated VIEs as being owned by us for U.S. federal income tax purposes because we control their management decisions and are entitled to substantially all of the economic benefits associated with these entities. As a result, we consolidated their results of operations in our consolidated U.S. GAAP financial statements. If it were determined, however, that we are not the owner of the consolidated VIEs for U.S. federal income tax purposes, we may be treated as a PFIC for the current taxable year and any subsequent taxable year.

If we were to be or become a PFIC for any taxable year during which a U.S. Holder (as defined in “Item 10—Additional Information—E. Taxation—United States Federal Income Taxation”) holds our ADSs or Class A ordinary shares, certain adverse U.S. federal income tax consequences could apply to such U.S. Holder. See “Item 10—Additional Information—E. Taxation—United States Federal Income Taxation.”

Our memorandum and articles of association contain anti-takeover provisions that could have a material adverse effect on the rights of holders of our Class A ordinary shares and ADSs.

Our eleventh amended and restated memorandum and articles of association contain provisions that have the potential to limit the ability of others to acquire control of our company or cause us to engage in change-of-control transactions. These provisions could have the effect of depriving our shareholders of an opportunity to sell their shares at a premium over prevailing market prices by discouraging third parties from seeking to obtain control of our company in a tender offer or similar transaction. Our board of directors has the authority, without further action by our shareholders, to issue preferred shares in one or more series and to fix their designations, powers, preferences, privileges, and relative participating, optional or special rights and the qualifications, limitations or restrictions, including dividend rights, conversion rights, voting rights, rights and terms of redemption and liquidation preferences, any or all of which may be greater than the rights associated with our ordinary shares, in the form of ADS or otherwise. Preferred shares could be issued quickly with terms calculated to delay or prevent a change in control of our company or make removal of management more difficult. If our board of directors decides to issue preferred shares, the price of our ADSs may fall and the voting and other rights of the holders of our Class A ordinary shares and ADSs may be materially and adversely affected.

The capped call and zero-strike call transactions may affect the value of our ADSs.

On January 30, 2019, in connection with the pricing of the 2024 Notes, we entered into capped call transactions with one or more of the initial purchasers and/or their respective affiliates and/or other financial institutions, or the Capped Call Option Counterparties. We entered into additional capped call transactions with the Capped Call Option Counterparties on February 15, 2019 and February 26, 2019, respectively. We used a portion of the net proceeds of the 2024 Notes to pay the cost of such transactions. The cap price of these capped call transactions is initially US\$14.92 per ADS, representing a premium of approximately 100% to the closing price on the New York Stock Exchange, or NYSE, of our ADSs on January 30, 2019, which was US\$7.46 per ADS, and is subject to adjustment under the terms of the capped call transactions. As part of establishing their initial hedges of the capped call transactions, the Capped Call Option Counterparties or their respective affiliates expect to trade the ADSs and/or enter into various derivative transactions with respect to our ADSs concurrently with, or shortly after, the pricing of the 2024 Notes. This activity could increase (or reduce the size of any decrease in) the market price of the ADSs or the 2024 Notes at that time. However, if any such capped call transactions fail to become effective, the Capped Call Option Counterparties may unwind their hedge positions with respect to the ADSs, which could adversely affect the market price of the ADSs. In addition, the Capped Call Option Counterparties or their respective affiliates may modify their hedge positions by entering into or unwinding various derivative transactions with respect to the ADSs, the 2024 Notes or our other securities and/or by purchasing or selling the ADSs, the 2024 Notes or our other securities in secondary market transactions following the pricing of the 2024 Notes and prior to the maturity of the 2024 Notes (and are likely to do so following any conversion of the 2024 Notes, if we exercise the relevant election under the capped call transactions, or repurchase of the 2024 Notes by us). This activity could also cause or avoid an increase or a decrease in the market price of our ADSs.

On January 30, 2019, in connection with the pricing of the 2024 Notes, NIO also entered into privately negotiated zero-strike call option transactions with one or more of the initial purchasers or their respective affiliates, or the Zero-Strike Call Option Counterparties, and used a portion of the net proceeds of the 2024 Notes to pay the aggregate premium under such transactions. Pursuant to the zero-strike call option transactions, we purchased, in the aggregate, approximately 26.8 million ADSs, with delivery thereof (subject to adjustment) by the respective Zero-Strike Call Option Counterparties at settlement shortly after the scheduled maturity date of the 2024 Notes, subject to the ability of each Zero-Strike Call Option Counterparty to elect to settle all or a portion of the respective zero-strike option transaction early. Facilitating investors' hedge positions by entering into the zero-strike call option transactions, particularly if investors purchase the ADSs on or around the day of the pricing of the 2024 Notes, could increase (or reduce the size of any decrease in) the market price of the ADSs. However, if any zero-strike call option transactions fail to become effective, the respective Zero-Strike Call Option Counterparties may unwind their hedge positions with respect to the ADSs, which could adversely affect the market price of the ADSs. In addition, the Zero-Strike Call Option Counterparties or their respective affiliates may modify their respective hedge positions by entering into or unwinding one or more derivative transactions with respect to the ADSs, the 2024 Notes or our other securities and/or by purchasing or selling the ADSs, the 2024 Notes or our other securities in secondary market transactions at any time, including following the pricing of the 2024 Notes and prior to the maturity of the 2024 Notes. This activity could also cause or avoid an increase or a decrease in the market price of the ADSs.

Our shareholders may face difficulties in protecting their interests, and ability to protect their rights through U.S. courts may be limited, because we are incorporated under Cayman Islands law.

We are an exempted company incorporated under the laws of the Cayman Islands. Our corporate affairs are governed by our eleventh amended and restated memorandum and articles of association, the Companies Law (2020 Revision) of the Cayman Islands and the common law of the Cayman Islands. The rights of shareholders to take action against the directors, actions by minority shareholders and the fiduciary responsibilities of our directors to us under Cayman Islands law are to a large extent governed by the common law of the Cayman Islands. The common law of the Cayman Islands is derived in part from comparatively limited judicial precedent in the Cayman Islands as well as from the common law of England, the decisions of whose courts are of persuasive authority, but are not binding, on a court in the Cayman Islands. The rights of our shareholders and the fiduciary responsibilities of our directors under Cayman Islands law are not as clearly established as they would be under statutes or judicial precedent in some jurisdictions in the United States. In particular, the Cayman Islands has a less developed body of securities laws than the United States. Some U.S. states, such as Delaware, have more fully developed and judicially interpreted bodies of corporate law than the Cayman Islands. In addition, Cayman Islands companies may not have standing to initiate a shareholder derivative action in a federal court of the United States.

Shareholders of Cayman Islands exempted companies like us have no general rights under Cayman Islands law to inspect corporate records or to obtain copies of lists of shareholders of these companies. Our directors have discretion under our articles of association to determine whether or not, and under what conditions, our corporate records may be inspected by our shareholders, but are not obliged to make them available to our shareholders. This may make it more difficult for our shareholders to obtain the information needed to establish any facts necessary for a shareholder motion or to solicit proxies from other shareholders in connection with a proxy contest.

As a Cayman Islands company listed on the New York Stock Exchange, we are subject to the NYSE corporate governance listing standards. However, the NYSE corporate governance listing standards permit a foreign private issuer like us to follow the corporate governance practices of its home country. Certain corporate governance practices in the Cayman Islands, which is our home country, may differ significantly from the NYSE corporate governance listing standards.

Pursuant to Sections 303A.01, 303A.04, 303A.05 and 303A.07 of the New York Stock Exchange Listed Company Manual, a company listed on the New York Stock Exchange must have a majority of independent directors, a nominating and corporate governance committee composed entirely of independent directors, a compensation committee composed entirely of independent directors and an audit committee with a minimum of three members. We currently follow our home country practice in lieu of these requirements. We may also continue to rely on these and other exemptions available to foreign private issuers in the future, and to the extent that we choose to do so in the future, our shareholders may be afforded less protection than they otherwise would under the NYSE corporate governance listing standards applicable to U.S. domestic issuers. As a result, you may not be afforded the same protections or information, which would be made available to you, were you investing in a United States domestic issuer.

ADS holders may not be entitled to a jury trial with respect to claims arising under the deposit agreements, which could result in less favorable outcomes to the plaintiff(s) in any such action.

The deposit agreement and the deposit agreement for restricted securities governing the ADSs representing our Class A ordinary shares provide that, subject to the depository's right to require a claim to be submitted to arbitration, the federal or state courts in the City of New York have exclusive jurisdiction to hear and determine claims arising under the deposit agreements and in that regard, to the fullest extent permitted by law, ADS holders waive the right to a jury trial of any claim they may have against us or the depository arising out of or relating to our Class A ordinary shares, the ADSs or the deposit agreements, including any claim under the U.S. federal securities laws.

If we or the depository opposed a jury trial demand based on the waiver, the court would determine whether the waiver was enforceable based on the facts and circumstances of that case in accordance with the applicable state and federal law. To our knowledge, the enforceability of a contractual pre-dispute jury trial waiver in connection with claims arising under the federal securities laws has not been finally adjudicated by the United States Supreme Court. However, we believe that a contractual pre-dispute jury trial waiver provision is generally enforceable, including under the laws of the State of New York, which govern the deposit agreements. In determining whether to enforce a contractual pre-dispute jury trial waiver provision, courts will generally consider whether a party knowingly, intelligently and voluntarily waived the right to a jury trial. We believe that this is the case with respect to the deposit agreements and the ADSs. It is advisable that you consult legal counsel regarding the jury waiver provision before investing in the ADSs.

If any of the holders or beneficial owners of ADSs bring a claim against us or the depository in connection with matters arising under the deposit agreements or the ADSs, including claims under federal securities laws, such holder or beneficial owner may not be entitled to a jury trial with respect to such claims, which may have the effect of limiting and discouraging lawsuits against us and/or the depository. If a lawsuit is brought against us and/or the depository under the deposit agreements, it may be heard only by a judge or justice of the applicable trial court, which would be conducted according to different civil procedures and may result in different outcomes than a trial by jury would have had, including results that could be less favorable to the plaintiff(s) in any such action.

Nevertheless, if this jury trial waiver provision is not enforced, to the extent a court action proceeds, it would proceed under the terms of the deposit agreements with a jury trial. No condition, stipulation or provision of the deposit agreements or ADSs serves as a waiver by any holder or beneficial owner of ADSs or by us or the depository of compliance with any substantive provision of the U.S. federal securities laws and the rules and regulations promulgated thereunder.

Certain judgments obtained against us by our shareholders may not be enforceable.

We are a Cayman Islands company and the majority of our assets are located outside of the United States. The most significant portion of our operations are conducted in China. In addition, a majority of our current directors and officers are nationals and residents of countries other than the United States. Substantially all of the assets of these persons may be located outside the United States. As a result, it may be difficult or impossible for our shareholders to bring an action against us or against these individuals in the United States in the event that such shareholders believe that their rights have been infringed under the U.S. federal securities laws or otherwise. Even if such shareholders are successful in bringing an action of this kind, the laws of the Cayman Islands and of China may render them unable to enforce a judgment against our assets or the assets of our directors and officers.

We are a foreign private issuer within the meaning of the rules under the Exchange Act, and as such we are exempt from certain provisions applicable to United States domestic public companies.

Because we are a foreign private issuer under the Exchange Act, we are exempt from certain provisions of the securities rules and regulations in the United States that are applicable to U.S. domestic issuers, including:

- the rules under the Exchange Act requiring the filing of quarterly reports on Form 10-Q or current reports on Form 8-K with the SEC;
- the sections of the Exchange Act regulating the solicitation of proxies, consents, or authorizations in respect of a security registered under the Exchange Act;
- the sections of the Exchange Act requiring insiders to file public reports of their stock ownership and trading activities and liability for insiders who profit from trades made in a short period of time; and
- the selective disclosure rules by issuers of material nonpublic information under Regulation FD.

We are required to file an annual report on Form 20-F within four months of the end of each fiscal year. In addition, we intend to publish our results on a quarterly basis through press releases, distributed pursuant to the rules and regulations of the New York Stock Exchange. Press releases relating to financial results and material events will also be furnished to the SEC on Form 6-K. However, the information we are required to file with or furnish to the SEC will be less extensive and less timely than that required to be filed with the SEC by U.S. domestic issuers. As a result, you may not be afforded the same protections or information that would be made available to you were you investing in a U.S. domestic issuer.

The voting rights of holders of ADSs are limited by the terms of the deposit agreement, and they may not be able to exercise their right to vote their Class A ordinary shares.

Holders of our ADSs will only be able to exercise the voting rights with respect to the underlying Class A ordinary shares in accordance with the provisions of the deposit agreements. Under the deposit agreement, ADS holders must vote by giving voting instructions to the depositary. If we ask for instructions of ADS holders, then upon receipt of such voting instructions, the depositary will try to vote the underlying Class A ordinary shares in accordance with these instructions. If we do not instruct the depositary to ask for instructions of ADS holders, the depositary may still vote in accordance with instructions given by holders of ADSs, but it is not required to do so. ADS holders will not be able to directly exercise their right to vote with respect to the underlying shares unless they withdraw the shares. When a general meeting is convened, an ADS holder may not receive sufficient advance notice to withdraw the shares underlying his or her ADSs to allow such holder to vote with respect to any specific matter. If we ask for instructions of holders of ADSs, the depositary will notify ADS holders of the upcoming vote and will arrange to deliver our voting materials to ADS holders. We have agreed to give the depositary at least 30 days' prior notice of shareholders' meetings. Nevertheless, we cannot assure you that ADS holders will receive the voting materials in time to ensure that ADS holders can instruct the depositary to vote their shares. In addition, the depositary and its agents are not responsible for failing to carry out voting instructions or for their manner of carrying out ADS holders' voting instructions. This means that an ADS holder may not be able to exercise the right to vote and may have no legal remedy if the shares underlying his or her ADSs are not voted as such holder requested.

The depositary for our ADSs will give us a discretionary proxy to vote our Class A ordinary shares underlying the ADSs if the holders of such ADSs do not vote at shareholders' meetings, except in limited circumstances, which could adversely affect the interests of our ADS holders.

Under the deposit agreements for the ADSs, if any holder of the ADSs does not vote, the depositary will give us a discretionary proxy to vote our Class A ordinary shares underlying such ADSs at shareholders' meetings unless:

- we have failed to timely provide the depositary with notice of meeting and related voting materials;
- we have instructed the depositary that we do not wish a discretionary proxy to be given;
- we have informed the depositary that there is substantial opposition as to a matter to be voted on at the meeting;
- a matter to be voted on at the meeting would have a material adverse impact on shareholders; or
- the voting at the meeting is to be made on a show of hands.

The effect of this discretionary proxy is that if any such holder of the ADSs does not vote at shareholders' meetings, such holder cannot prevent our Class A ordinary shares underlying such ADSs from being voted, except under the circumstances described above. This may make it more difficult for shareholders to influence the management of our company. Holders of our Class A ordinary shares are not subject to this discretionary proxy.

An ADS holder's right to pursue claims against the depositary are limited by the terms of the deposit agreements.

Under the deposit agreements, any action or proceeding against or involving the depositary, arising out of or based upon the deposit agreements or the transactions contemplated thereby or by virtue of owning the ADSs may only be instituted in a state or federal court in New York, New York, and a holder of our ADSs, will have irrevocably waived any objection which such holder may have to the laying of venue of any such proceeding, and irrevocably submitted to the exclusive jurisdiction of such courts in any such action or proceeding.

The depositary may, in its sole discretion, require that any dispute or difference arising from the relationship created by the deposit agreements be referred to and finally settled by an arbitration conducted under the terms described in the deposit agreements, although the arbitration provisions do not preclude a ADS holder from pursuing claims under federal securities laws in federal courts. Furthermore, if a ADS holder is unsuccessful in such arbitration, such holder may be responsible for the fees of the arbitrator and other costs incurred by the parties in connection with such arbitration pursuant to the deposit agreements. Also, we may amend or terminate the deposit agreements without the consent of any ADS holder. If a ADS holder continues to hold its ADSs after an amendment to the deposit agreements, such holder agrees to be bound by the deposit agreements as amended.

Our ADS holders may not receive dividends or other distributions on our Class A ordinary shares and the ADS holders may not receive any value for them, if it is illegal or impractical to make them available to the ADS holders.

The depositary of our ADSs has agreed to pay the ADS holders the cash dividends or other distributions it or the custodian receives on Class A ordinary shares or other deposited securities underlying our ADSs, after deducting its fees and expenses. Our ADS holders will receive these distributions in proportion to the number of Class A ordinary shares the underlying ADSs represent. However, the depositary is not responsible if it decides that it is unlawful or impractical to make a distribution available to any holders of ADSs. For example, it would be unlawful to make a distribution to a holder of ADSs if it consists of securities that require registration under the Securities Act but that are not properly registered or distributed under an applicable exemption from registration. The depositary may also determine that it is not feasible to distribute certain property through the mail. Additionally, the value of certain distributions may be less than the cost of mailing them. In these cases, the depositary may determine not to distribute such property. We have no obligation to register under U.S. securities laws any ADSs, Class A ordinary shares, rights or other securities received through such distributions. We also have no obligation to take any other action to permit the distribution of ADSs, Class A ordinary shares, rights or anything else to holders of ADSs. This means that our ADS holders may not receive distributions we make on our Class A ordinary shares or any value for them if it is illegal or impractical for us to make them available to the ADS holders. These restrictions may cause a material decline in the value of our ADSs.

Our ADS holders may experience dilution of their holdings due to inability to participate in rights offerings.

We may, from time to time, distribute rights to our shareholders, including rights to acquire securities. Under the deposit agreements, the depositary will not distribute rights to holders of ADSs unless the distribution and sale of rights and the securities to which these rights relate are either exempt from registration under the Securities Act with respect to all holders of ADSs or are registered under the provisions of the Securities Act. The depositary may, but is not required to, attempt to sell these undistributed rights to third parties, and may allow the rights to lapse. We may be unable to establish an exemption from registration under the Securities Act, and we are under no obligation to file a registration statement with respect to these rights or underlying securities or to endeavor to have a registration statement declared effective. Accordingly, holders of ADSs may be unable to participate in our rights offerings and may experience dilution of their holdings as a result.

We may need additional capital, and the sale of additional ADSs or other equity securities could result in additional dilution to our shareholders, and the incurrence of additional indebtedness could increase our debt service obligations.

We may require additional cash resources due to changed business conditions, strategic acquisitions or other future developments. If these resources are insufficient to satisfy our cash requirements, we may seek to sell additional equity or debt securities or obtain additional credit facilities. The sale of additional equity and equity-linked securities could result in additional dilution to our shareholders. The sale of substantial amounts of our ADSs (including upon conversion of the notes) could dilute the interests of our shareholders and ADS holders and adversely impact the market price of our ADSs. The incurrence of indebtedness would result in increased debt service obligations and could result in operating and financing covenants that would restrict our operations. We cannot assure you that financing will be available in amounts or on terms acceptable to us, if at all.

Future sales or issuances, or perceived future sales or issuances, of substantial amounts of our ordinary shares or ADSs could adversely affect the price of our ADS.

If our existing shareholders sell, or are perceived as intending to sell, substantial amounts of our ordinary shares or ADSs, including those issued upon the exercise of our outstanding stock options, the market price of our ADSs could fall. Such sales, or perceived potential sales, by our existing shareholders might make it more difficult for us to issue new equity or equity-related securities in the future at a time and place we deem appropriate. Shares held by our existing shareholders may be sold in the public market in the future subject to the restrictions contained in Rule 144 and Rule 701 under the Securities Act and the applicable lock-up agreements. If any existing shareholder or shareholders sell a substantial amount of ordinary shares after the expiration of the applicable lock-up periods, the prevailing market price for our ADSs could be adversely affected.

In addition, certain of our shareholders or their transferees and assignees will have the right to cause us to register the sale of their shares under the Securities Act upon the occurrence of certain circumstances. Registration of these shares under the Securities Act would result in these shares becoming freely tradable without restriction under the Securities Act immediately upon the effectiveness of the registration.

Our ADS holders may be subject to limitations on transfer of their ADSs.

Our ADSs are transferable on the books of the depository. However, the depository may close its books at any time or from time to time when it deems expedient in connection with the performance of its duties. The depository may close its books from time to time for a number of reasons, including in connection with corporate events such as a rights offering, during which time the depository needs to maintain an exact number of ADS holders on its books for a specified period. The depository may also close its books in emergencies, and on weekends and public holidays. The depository may refuse to deliver, transfer or register transfers of our ADSs generally when our share register or the books of the depository are closed, or at any time if we or the depository thinks it is advisable to do so because of any requirement of law or of any government or governmental body, or under any provision of the deposit agreements, or for any other reason.

We incur increased costs as a result of being a public company.

As a public company, we incur significant accounting, legal and other expenses that we did not incur as a private company. The Sarbanes-Oxley Act, as well as rules subsequently implemented by the SEC and the New York Stock Exchange, have detailed requirements concerning corporate governance practices of public companies, including Section 404 of the Sarbanes-Oxley Act relating to internal controls over financial reporting. We expect these rules and regulations applicable to public companies to increase our accounting, legal and financial compliance costs and to make certain corporate activities more time-consuming and costly. Our management will be required to devote substantial time and attention to our public company reporting obligations and other compliance matters. We are currently evaluating and monitoring developments with respect to these rules and regulations, and we cannot predict or estimate the amount of additional costs we may incur or the timing of such costs. Our reporting and other compliance obligations as a public company may place a strain on our management, operational and financial resources and systems for the foreseeable future.

In the past, shareholders of a public company often brought securities class action suits against the company following periods of instability in the market price of that company's securities. If we were involved in a class action suit, it could divert a significant amount of our management's attention and other resources from our business and operations, which could harm our results of operations and require us to incur significant expenses to defend the suit. Any such class action suit, whether or not successful, could harm our reputation and restrict our ability to raise capital in the future. In addition, if a claim is successfully made against us, we may be required to pay significant damages, which could have a material and adverse effect on our financial condition and results of operations.

ITEM 4. INFORMATION ON THE COMPANY

A. History and Development of the Company

We were founded in November 2014, as Nextev Inc., which was changed to our current name NIO Inc. in July 2017. Significant milestones in our development in 2019 and 2020 include the following:

2019

- In February 2019, we issued \$750 million aggregate principal amount of 4.50% convertible senior notes due 2024, or the 2024 Notes. The 2024 Notes are unsecured debt and are not redeemable by us prior to the maturity date except for certain changes in tax law. The holders of the 2024 Notes may convert their notes to a number of our ADSs at their option at any time prior to the close of business on the second business day immediately preceding the maturity date pursuant to the 2024 Notes indenture, at a conversion rate of 105.1359 ADSs per US\$1,000 principal amount of the 2024 Notes. The 2024 Notes that are converted in connection with a make-whole fundamental change (as defined in the 2024 Notes Indenture) may be entitled to an increase in the conversion rate for such 2024 Notes. In connection with the issuance of the 2024 Notes, we entered into capped call transactions and zero-strike call option transactions.
- In March 2019, we agreed with the related contractual parties to cease construction of our planned manufacturing facility in Jiading, Shanghai and terminate this development project.
- In April 2019, we entered into a manufacturing cooperation agreement with JAC, for the manufacture of the ES6, which is a supplement to the agreement that Company entered into with JAC in May 2016. Pursuant to these agreements, we pay JAC manufacturing fees on a per-vehicle basis monthly and compensates JAC for its operating losses for the initial three-year period after the start of production of the ES8 from April 10, 2018. We may fund additional investments in equipment in the Hefei manufacturing plant of JAC for the production of the ES6.

- In July 2019, NIO Nextev Limited entered into a share purchase agreement with a buyer incorporated in Hong Kong, pursuant to which the buyer, subject to certain closing conditions, agreed to purchase the entire issued share capital of NIO Nextev (UK) Limited at a consideration of US\$15,000,000. In fulfilling the share purchase agreement, we established NIO Performance Engineering Limited to acquire the business and assets operated by NIO Nextev (UK) Limited other than the Formula E related business, including computer aided engineering and advanced concept engineering, the operation of a performance program in relation to the EP9 Electric Vehicles and any performance related initiatives of EP9, and all headquarters operations, central management functions, administrative, accounting, finance, tax and legal operations of NIO Nextev (UK) Limited as of the date of the share purchase agreement. Upon the consummation of the transaction, NIO Nextev Limited no longer holds any equity interest in NIO Nextev (UK) Limited. We became a primary sponsor of Formula E team.
- In September 2019, we issued and sold convertible notes in an aggregate principal amount of US\$200 million to an affiliate of Tencent Holdings Limited and Mr. Bin Li, our chairman of the board of directors and chief executive officers. The affiliate of Tencent Holdings and Mr. Bin Li each subscribed for US\$100 million principal amount of the convertible notes, each in two equally split tranches. The convertible notes issued in the first tranche will mature in 360 days, bear no interest, and require us to pay a premium at 2% of the principal amount at maturity. The convertible notes issued in the second tranche will mature in three years, bear no interest, and require us to pay a premium at 6% of the principal amount at maturity. The 360-day convertible notes will be convertible into our Class A ordinary shares (or ADSs) at a conversion price of US\$2.98 per ADS at the holder's option from the 15th day immediately prior to maturity, and the three-year convertible notes will be convertible into our Class A ordinary shares (or ADSs) at a conversion price of US\$3.12 per ADS at the holder's option from the first anniversary of the issuance date. The holders of the three-year convertible notes will have the right to require us to repurchase for cash all of the convertible notes or any portion thereof on February 1, 2022.
- In August 2019, we opened our first NIO Space in Shanghai, a showroom for our brand, vehicles and services that is smaller in scale and more delicate and sales-focused compared with NIO Houses.

2020

- In February and March 2020, we issued and sold convertible notes in an aggregate principal amount of US\$435 million due 2021, or the 2021 Notes, to several unaffiliated Asia based investment funds. The 2021 Notes bear zero interest. The holders of the 2021 Notes issued in February 2020 have the right to convert either all or part of the principal amount of the 2021 Notes into Class A ordinary shares (or ADSs) of our company, prior to maturity, (a) from the date that is six months after the issuance date, at a conversion price of US\$3.07 per ADS, or (b) upon the completion of a bona fide issuance of equity securities of our company for fundraising purposes, at the conversion price derived from such equity financing. The holders of the 2021 Notes issued in March 2020 have the right to convert either all or part of the principal amount of the 2021 Notes into Class A ordinary shares (or ADSs) of our company, prior to maturity and from September 5, 2020, at a conversion price of US\$3.50 per ADS, subject to certain adjustments. We may not redeem the 2021 Notes prior to maturity.
- In February 2020, we entered into a collaboration framework agreement with the municipal government of Hefei, Anhui province, where our main manufacturing hub is located. On April 29, 2020, we entered into definitive agreements for investments with a group of investors led by Hefei City Construction and Investment Holding (Group) Co., Ltd., CMG-SDIC Capital Co., Ltd., and Anhui Provincial Emerging Industry Investment Co., Ltd., or together as the Hefei Strategic Investors. Under the definitive agreements, the Hefei Strategic Investors will invest an aggregate of RMB7 billion in cash into NIO Anhui, the legal entity of NIO China wholly owned by us pre-investment. We will inject our core businesses and assets in China, including vehicle research and development, supply chain, sales and services and NIO Power, valued at RMB17.77 billion in total, into NIO China. Further, we will invest RMB4.26 billion in cash into NIO China. We will collaborate with the Hefei Strategic Investors and HETA to develop NIO China's business and to support the accelerated development of the smart electric vehicle sectors in Hefei in the future. Upon the completion of the investments, we will hold 75.9% of controlling equity interests in NIO China, and the Hefei Strategic Investors will collectively hold the remaining 24.1%.

- In March 2020, we entered into a manufacturing cooperating agreement with JAC for the manufacture of EC6. Pursuant to the agreement, we pay JAC manufacturing fees on a per-vehicle basis monthly. The Company is responsible for investment in new technical equipment and ancillary facilities necessary for satisfactory production of the EC6 in the new energy automobile manufacturing plant established by JAC. If such manufacturing plant incurs any loss, we will make up such loss to JAC on a monthly basis.

Our principal executive offices are located at Building 20, No. 56 Antuo Road, Jiading District, Shanghai 201804, PRC. Our telephone number at this address is +86-21-6908-2018. Our registered office in the Cayman Islands is located at the offices of Maples Corporate Services Limited, PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. Our agent for service of process in the United States is Puglisi & Associates, located at 850 Library Avenue, Suite 204, Newark, Delaware 19711.

B. Business Overview

We are a pioneer in China's premium electric vehicle market. We design, jointly manufacture, and sell smart and connected premium electric vehicles, driving innovations in next generation technologies in connectivity, autonomous driving and artificial intelligence. Redefining user experience, we aim to provide users with comprehensive, convenient and innovative charging solutions and other user-centric service offerings. Our Chinese name, Weilai (蔚来), which means Blue Sky Coming, reflects our commitment to a more environmentally friendly future.

The first model we developed was the EP9 supercar, introduced in 2016. The EP9 set a world record as the then fastest all-electric car on the track at the Nürburgring Nordschleife "Green Hell" track in Germany in May 2017, finishing a lap in 6 minutes and 45.90 seconds. Combined with an attractive design and strong driving performance, the EP9 delivers extraordinary acceleration and best-in-class electric powertrain technology, helping position us as a premium brand.

We launched our first volume manufactured electric vehicle, the seven-seater ES8, to the public at our NIO Day event on December 16, 2017 and began making deliveries to users on June 28, 2018. In December 2018, we launched its variant, the six-seater ES8, with delivery beginning in March 2019. The ES8 is an all-aluminum alloy body, premium electric SUV that offers exceptional performance, functionality and mobility lifestyle. It is equipped with our proprietary e-propulsion system, which is capable of accelerating from zero to 100 kilometers (km) per hour (kph) in 4.4 seconds and delivering a New European Driving Cycle, or NEDC, driving range of up to 355 km and a maximum range of up to 500 kilometers and equipped with a 70-kilowatt-hour battery pack. On December 28, 2019, during the third NIO Day held in Shenzhen, China, we released the all-new ES8, the flagship smart premium electric SUV. The all-new ES8 boasts more than 180 product improvements and comes with better performance, longer driving range and a more sophisticated and high-tech design. With the 100-kilowatt-hour battery pack newly released during the third NIO Day and to be delivered in the fourth quarter of 2020, the all-new ES8 has an NEDC range of up to 580 km, a major improvement in its range performance. We began making deliveries of the all-new ES8 in April 2020. In July 2019, NIO ranked the highest in quality among all electric vehicle brands, and the ES8 ranked the highest in quality among all mid-large electric vehicles, in the JD Power's 2019 New Energy Vehicle Experience Index Study. As of December 31, 2019, we had delivered 20,480 ES8s to customers in more than 270 cities.

We launched our second volume manufactured electric vehicle, the ES6, to the public at our NIO Day event on December 15, 2018 and began making deliveries to users in June 2019. The ES6 is a five-seater high-performance long-range premium electric SUV. The ES6 is smaller but more affordable than the ES8, allowing us to target a broader market in the premium SUV segment. Its performance version is equipped with a 160-kW permanent magnet motor and a 240-kW induction motor, and is capable of accelerating from zero to 100 kph within 4.7 seconds. With the 100-kilowatt-hour battery pack to be delivered in the fourth quarter of 2020, the ES6 performance version boasts an NEDC range of up to 610 km. As of December 31, 2019, we had delivered 11,433 ES6s to customers in more than 250 cities.

We launched our third volume manufactured electric vehicle, the EC6, to the public at our NIO Day event on December 28, 2019. EC6 is a smart premium electric coupe SUV. EC6 has an agile coupe design with drag coefficient at only 0.27Cd. It is dynamically shaped and equipped with a 2.1 square meter vault glass roof. With the 100-kilowatt-hour battery pack to be delivered in the fourth quarter of 2020, the EC6 boasts an NEDC range of up to 615 km. Users can pre-order the EC6 through the NIO App and we expect to begin making deliveries of the EC6 in September 2020.

We aim to create the most worry-free experience for our users, online or offline, at home or on-the-go. In response to common concerns over the accessibility and convenience of EV charging, we offer a comprehensive, convenient and innovative suite of charging solutions. These solutions, which we call our NIO Power solutions, include Power Home, our home charging solution; Power Swap, our innovative battery swapping service; Power Mobile, our mobile charging service through charging trucks; Public Charger, our public fast charging solution; and Power Express, our 24-hour on-demand pick-up and drop-off charging service. In addition, our vehicles are compatible with China’s national charging standards and have access to a nationwide publicly accessible charging network of approximately 258,000 charging piles. Beyond charging solutions, we offer comprehensive value-added services to our users, such as statutory and third-party liability insurance and vehicle damage insurance through third-party insurers, repair and routine maintenance services, courtesy car during lengthy repairs and maintenance, nationwide roadside assistance, as well as an enhanced data package. We believe these solutions and services, together, will create a holistic user experience throughout the vehicle lifecycle.

The electric powertrain technologies we developed for the EP9 set the technological foundation for the development of our vehicles, from the ES8 to the ES6 and the EC6 and to other future models. Our e-propulsion system consists of three key sub-systems: an electric drive system, or EDS, an energy storage system, or ESS, and a vehicle intelligence control system, or VIS. Our electric powertrain reflects our cutting-edge proprietary technologies and visionary engineering in our EV design.

We are a pioneer in automotive smart connectivity and enhanced Level 2 autonomous driving. NOMI, which we believe is one of the most advanced in-car AI assistants developed by a Chinese company, is a voice activated AI digital companion that personalizes the user’s driving experience. NIO Pilot, our proprietary enhanced Level 2 advanced driver assistance system, or ADAS, is enabled by 23 sensors and equipped with the Mobileye EyeQ®4 ADAS processor, which is eight times more powerful than its predecessor.

We have significant in-house capabilities in the design and engineering of electric vehicles, electric vehicle components and software systems. We have strategically located our teams in locations where we believe we have access to the best talent. Our strong design, engineering and research and development capabilities enable us to launch smart and connected premium electric vehicles that are customized for, and thus appealing to, Chinese consumers. In addition, our research and development efforts also have resulted in an extensive intellectual property portfolio that we believe differentiates us from our competitors.

We adopt an innovative sales model compared to incumbent automobile manufacturers. We sell our vehicles through our own sales network, including NIO Houses, NIO Spaces and our mobile application. NIO Spaces are showrooms for our brand, vehicles and services. NIO Houses not only function as showrooms, but also clubhouses for our users with multiple social functions. Prospective users can place orders using our mobile application and more importantly, our mobile application fosters a dynamic and interactive online platform. We believe our online and offline integrated community which is developing from our NIO Houses, NIO Spaces and mobile application will retain user engagement and cultivate loyalty to our brand, along with other successful branding activities, such as our annual NIO Day and our Drivers’ Championship winning Formula E team.

Reservations, Production and Delivery

We began making deliveries to users of our first volume manufactured vehicle, the seven-seater ES8, on June 28, 2018, and its variant, the six-seater ES8 in March 2019. The table below sets forth certain operating data relating to the ES8 (for both types) in 2019.

	January 2019	February 2019	March 2019	April 2019	May 2019	June 2019	July 2019	August 2019	September 2019	October 2019	November 2019	December 2019
ES8s produced for the period	1,791	654	1,356	1,508	935	434	436	460	288	139	78	63
ES8s delivered for the period	1,805	811	1,373	1,124	1,089	927	164	146	293	306	461	633
Cumulative ES8s delivered	13,153	13,964	15,337	16,461	17,550	18,477	18,641	18,787	19,080	19,386	19,847	20,480

We began making deliveries of our second volume manufactured vehicle, the five-seater ES6, to users on June 18, 2019. The table below sets forth certain operating data relating to the ES6 up to December 31, 2019.

	June 2019	July 2019	August 2019	September 2019	October 2019	November 2019	December 2019
ES6s produced for the period	658	1,066	2,336	2,190	1,880	1,407	2,292
ES6s delivered for the period	413	673	1,797	1,726	2,220	2,067	2,537
Cumulative ES6s delivered	413	1,086	2,883	4,609	6,829	8,896	11,433

In December 2019, we launched (i) the all-new ES8 with more than 180 product improvements, with delivery beginning in April 2020, and (ii) our third volume manufactured electric vehicle, the EC6, with delivery expected to begin in September 2020.

Our Vehicles

We design, jointly manufacture and sell our vehicles in China's premium electric vehicle segment. We began making deliveries to the public of our first volume manufactured car, the seven-seater ES8 on June 28, 2018. In December 2018, we launched its variant, the six-seater ES6, with delivery beginning in March 2019. In addition, we launched our second volume manufactured electric vehicle, the ES6, to the public at our NIO Day event on December 15, 2018. The ES6 is a five-seater high-performance long-range premium electric SUV. The ES6 is smaller but more affordable than the ES8, allowing us to target a broader market in the premium SUV segment. The ES6 currently offers the Standard, Performance and Premier versions with pre-subsidy starting prices of RMB358,000, RMB398,000 and RMB498,000, respectively. We began making deliveries of the ES6 to users on in June 2019. In December 2019, we launched the all-new ES8 with more than 180 product improvements. The all-new ES8 comes with better performance, longer driving range and a more sophisticated and high-tech design, with delivery beginning in April 2020. In addition, in December 2019, we launched our third volume manufactured electric vehicle, the EC6. EC6 is a smart premium electric coupe SUV with a dynamic shape design. Users can pre-order the EC6 through the NIO App and we expect to begin making deliveries of the EC6 in September 2020. In addition, we launched the 100-kilowatt-hour battery pack, which boasts the driving range of the all-new ES8, ES6 and EC6's to up to 580km, 610km and 615km, respectively. We plan to leverage the platform technologies from the ES8, the ES6 and EC6 to build our future models.

Our goal is to launch a new vehicle model each year for the near future as we plan to offer our users more choices to suit their preferences and target different segments within the premium electric vehicle market in China. We plan to mainly sell our vehicles in China for the near future.

ES8

The ES8, our first volume manufactured vehicle, is a spacious six or seven-seater high-performance premium electric SUV. The ES8 was officially launched at our NIO Day event on December 16, 2017, following which we began taking reservations. We started making deliveries to the public of the seven-seater ES8 on June 28, 2018 and have ramped up deliveries since launch. In December 2018, we launched its variant, the six-seater ES6, with delivery beginning in March 2019.

With both front and rear motors (240 kilowatt (kW) each), the ES8 delivers 480 kW of power and 840 units or Newton meters (Nm) of torque to all four wheels. The ES8's e-propulsion system enables the ES8 to accelerate from zero to 100 kph in just 4.4 seconds. The ES8 is initially equipped with a 70-kilowatt-hour liquid-cooled battery pack comprised of cutting-edge square cell batteries, and we began delivering the ES8 with an 84-kilowatt-hour battery pack, extending its NEDC driving range to 430 kilometers, in September 2019. The battery pack features an energy density of 135 watt hours per kilogram (wh/kg) and provides an approximately 1,200-charge-discharge lifecycle with an 87% capacity retention. The ES8 achieves a NEDC driving range of 355 kilometers.

With 21 active safety features, the ES8 is designed to meet five-star Chinese New Car Assessment Program safety standards developed by the China Automotive Technology Research Center. In addition to standard safety features for a vehicle in its class, ES8 also features or will feature, driver drowsiness detection, lane departure warning, lane change assistance, automatic emergency braking, side door opening warning, and 360-degree high definition surround vision, among other advanced safety measures. The ES8 is also designed to include safety features, such as electric stability program, electric traction control, cornering brake control, hill descent control, hill start assist, rear view camera, front and rear parking sensors, side distance indication system, direct-tire pressure monitoring system, blind spot detection, dynamic wheel torque by brake and roll stability control. In addition, the braking distance of the ES8 from 100 kph to a complete stop is 33.8 meters.

The ES8 is the first car in China to have an all-aluminum alloy body and chassis featuring aerospace grade 7003 series aluminum alloy, enabling torsional stiffness of 44,140 Nm/Deg, and also features the highest amount of aluminum for any mass production car yet. The active air suspension on the ES8 creates, we believe, a comfortable riding experience. The ES8 has a 3,010 millimeter long wheelbase, to create a truly mobile living space. The three-row, seven-seat layout makes full use of the interior space. The innovative "lounge seat" and "child-care mode", together with the nappa leather wrap, create, we believe, a comfortable atmosphere, redefining the riding experience. The smart air quality system includes an activated carbon and high-efficiency particulate air, or HEPA, filter and negative ion generator.

Together with the launch of the ES8 in 2017, we launched our NIO Pilot system. We have activated most of the features on our NIO Pilot system by December 2019. Our NIO Pilot ADAS, with comprehensive enhanced Level 2 autonomous driving features, is enabled by 23 sensors, including a trifocal front-facing camera, four surround exterior cameras, five millimeter-wave radars, 12 ultrasonic sensors and a driver monitor camera. The ES8 comes equipped with the Mobileye EyeQ®4 ADAS chip which has a computation capacity eight-times more powerful than its predecessor, the Mobileye EyeQ®3.

In addition, the ES8's sophisticated 4G support and software and hardware suite enables subscribers to enjoy upgraded services through FOTA updates. Each vehicle comes standard with eight gigabytes per month of data. Our remote updates are driven by our centralized connected vehicle gateway which controls all electric control units, or ECUs. The ES8 provides high-speed parallel over-the-air updates, allowing the ES8 to acquire new features from time to time while minimizing downtime.

Together with the launch of the ES8, we launched our NOMI system, an optional feature, which we believe is one of the most advanced in-car AI assistants developed by a Chinese company. Our goal is to provide users with a more natural interaction with the in-car AI system and enhanced safety by further removing the need for users to keep looking at the screen while driving. NOMI combines the ES8's intelligence and car connectivity functionalities to turn the ES8 into an intuitive companion that can listen to, talk with, and help drivers and passengers along the way. Through NOMI, users are able to use shortcuts and voice control to make phone calls, play music and control systems, including navigation, air-conditioning, opening and closing windows, climate control, controlling the seat massage function, operating in-car media and controlling the in-car camera (including taking pictures), among others. We intend to improve the system and add additional functions through FOTA upgrades.

In December 2019, we launched the all-new ES8 with more than 180 product improvements. With a combination of the permanent magnet motor of 160kW and the induction motor of 240 kW, the all-new ES8 with a 70-kilowatt battery pack reaches a driving range of up to 415 kilometers. It can accelerate from zero to 100 kph in just 4.9 seconds. The new ES8 with a 100-kilowatt battery pack reaches a drive range of up to 580 kilometers. The all-new ES8 features 3,010mm wheelbase, the longest in its class, boasting a spacious and flexible seating layout. The 9.8 inch instrument cluster with ultra-slim frame and 11.3 inch second-generation multi-touch center screen comes as standard. The optional NOMI Mate 2.0 is fitted with the world's first auto-grade AMOLED full-circular display. The design of the all-new ES8 is more streamlined and dynamic with its front face, side and tail all adorned with chrome accents. With the better performance, longer driving range and the more sophisticated and high-tech design, the all-new ES8 redefines our smart electric flagship SUV.

The seven-seater ES8 and the six-seater ES8 have pre-subsidy starting prices of RMB468,000 and RMB476,000, respectively. Purchasers can purchase additional options that come with the ES8, including nappa luxury interior package (consisting of nappa leather perforated seats, a nappa leather interior wrap and front massage seats), all-season comfort package (heated steering wheel, second row heated seats, and front row ventilated seat), a premium audio system, an enhanced head unit display and additional NIO Pilot functions, different wheel styles, certain exterior colors, NIO Pilot and NOMI, among others. The ES8 also comes equipped with a wireless charging board. We currently provide our users with the option of a battery payment arrangement, where users can make battery payments in installments. For the ES8 ordered before January 15, 2019, there is an RMB100,000 reduction in the purchase price and users adopting this arrangement pay RMB1,280 per month, payable over 78 months. For the ES8 and ES6 ordered after January 16, 2019, there is an RMB100,000 reduction in the purchase price and users adopting this arrangement pay RMB1,660 per month, payable over 60 months. To purchase an ES8, a customer is first required to pay a refundable deposit reserving the car, which for the ES8 is RMB2,000, and prior to the user's ES8 entering into production, a non-refundable deposit of RMB20,000 must be made (which can include the initial RMB2,000 reservation deposit) and is applied towards the purchase price of the vehicle.

ES6

The ES6 is a five-seater high-performance electric premium SUV launched in December 2018. We started making deliveries to the public of the ES6 in June 2019 and have ramped up deliveries since launch. The ES6 is smaller but more affordable than the ES8, allowing us to target a broader market in the premium SUV segment. The ES6 currently offers the Sporty, Performance and Premier versions with pre-subsidy starting prices of RMB358,000, RMB398,000, and RMB498,000, respectively. Users can pre-order the ES6 through the NIO App.

The ES6 is the world's first SUV equipped with a combination of the permanent magnet motor (160 kW) and the induction motor (240 kW). The ES6 delivers 400 kW of power and 725 Newton meters of torque to all four wheels with an energy conversion rate of 97%. The ES6 can accelerate from zero to 100 kph in 4.7 seconds. The braking distance of the ES6 from 100 kph to a complete stop is 33.9 meters. The ES6 is initially equipped with a 70-kilowatt-hour liquid-cooled battery pack, and we began delivering the ES6 with an 84-kilowatt-hour battery pack, extending its NEDC driving range to 510 kilometers, in September 2019. With the 100-kilowatt-hour battery pack to be delivered in the fourth quarter of 2020, the ES6 boasts an NEDC range of up to 610 km. The ES6 is the first car in China with a hybrid structure of aluminum alloy (91%) and carbon fiber (9%), featuring aircraft grade 7 series aluminum alloy, enabling torsional stiffness of 44,930 Nm/Deg, the highest among any mass production SUV globally. The use of high-strength carbon fiber makes the ES6 lighter but more solid. It features the independent suspension, Continuous Damping Control (CDC) and the intelligent electric all-wheel-drive system. Users have the option of installing the active air suspension and switching between driving modes, creating a more comfortable riding experience.

The ES6 is equipped with Lion, a high-performance intelligent gateway enabling data exchange and remote upgrading via FOTA. Additionally, the ES6's Dragon security architecture offers a matrix-like firewall to enhance data security and protect user privacy. In addition, the speech-based interactive NOMI system with a voice-based interactive feature is built into the ES6. The ES6 also has an upgraded head-up display, a digital instrument cluster and an 11.3 inch second-generation multi-touch screen. Moreover, the ES6 has a pre-installed NIO Pilot system with a Mobileye EyeQ®4 and 23 sensors.

EC6

The EC6 is a smart premium electric coupe SUV launched in December 2019. EC6 has an agile coupe design with drag coefficient at only 0.27Cd. It's dynamically shaped and equipped with a 2.1 square meter vault glass roof. The EC6 is equipped with a 160-kW permanent magnet motor and a 240-kW induction motor and is capable of accelerating from zero to 100 kph in just 4.7 seconds. With the 100-kilowatt-hour battery pack to be delivered in the fourth quarter of 2020, the EC6 boasts an NEDC range of up to 615 km. Users can pre-order the EC6 through the NIO App. We expect to begin making deliveries of the EC6 in September 2020.

Our Power Solutions

Through our NIO Power solutions, we offer a comprehensive and innovative suite of power solutions to address the battery charging needs of our users. We aim to provide power services in most major cities in China, with our solutions being easily accessible through our mobile application. We also offer our users our valet service where we pick up, charge and then return the vehicle. Our goal is to provide the most convenient power solutions to our users. Using our mobile application, our users will be able to monitor battery levels and charging status. The charging status of batteries and the charging solutions available to users are all connected through our cloud, enabling us to assist users in finding the most convenient charging solution available in a given area.

Home Charging (NIO Power Home)

Through NIO Power Home, we install chargers at our customers' homes after the purchase of a new vehicle based on customer request where installation at the customer's home is feasible. Given the convenience of having a home charger installed, we aim to install a home charger for our users whenever practicable. Our home charger is expected to be the first to have an auto-identification function which enables a vehicle to automatically pair with its exclusively compatible home charger. Charging takes place by simply inserting the charging gun into the vehicle's charging port. The first NIO Power Home device and basic installation are initially included in the price of the vehicle though there may be charges in certain circumstances. Any user has the option of postponing such installation if installation is not feasible at his or her residence at the time of purchase. Any subsequent installation is subject to charge on a case-by-case basis. Installation is performed by professional third-party contractors engaged by us. Our charging pile design won the "best of best" reddot award in 2018. Under normal temperatures and battery conditions, the 84-kilowatt-hour battery of the ES8 and the ES6 would be charged from approximately 20% to 90% power level in seven to eight hours using our home charger.

Power Express and Other Power Solutions

We have tailored our charging solutions to serve the needs of Chinese users. We anticipate that many of our users are likely to live in condominiums or apartment buildings where they are unable to install a home charger. We aim to provide such users with a level of convenience and service with our other power solutions so that they can enjoy a similar level of convenience as our users with home chargers installed. We are also committed to ensuring the high standard of quality and performance of our charging solutions.

To that end, we offer our users our Power Express valet service and other charging solutions, including access to public charging, access to our Power Mobile, charging trucks, battery swapping and Power Charges.

Using our mobile application, a user is able to arrange to have our team pick up his or her vehicle at the user's designated parking location. The vehicle is driven to a nearby battery charging station or battery swap station or a charging truck is driven to the parking location. The vehicle is returned to the user once battery charging or swapping is completed. Users are able to select "immediate service" which provides the fastest charging option to meet a more urgent charging demand or "reservation service" for scheduled charging services. We also plan to provide "idle charging" which allows users to set an anticipated start time and end time when their vehicle is expected to remain idle, such as overnight, and the threshold of the vehicle's cruising range when the service will be triggered, as well as a specific location where the vehicle is parked during specific periods. Our one-click charging service will be automatically triggered when the vehicle is idle and parked at the specified location during the specified period. Users are able to monitor their vehicle charging status in real time using our mobile application. We aim to provide users with the fastest charging experience, optimizing convenience to users by identifying the most appropriate charging solution based on the user's travel habits through cloud-based smart scheduling.

We offer our users our energy package, which provides them with access to our Power Express services and charging solutions, including public charging, access to our Power Mobile charging trucks, and battery swapping for a fixed monthly fee, which is initially set at RMB980 per month if paid monthly, or RMB10,800 annually, for up to 15 charges per month. We currently anticipate that our energy package and Power Express services will primarily be utilized by users without home chargers installed. However, users who do not purchase our energy package are able to access our Power Express services and charging solutions on a pay-per-use basis. The initial price for such services is set at RMB180 per charge for NIO users and RMB280 per charge for others. The price for our mobile charging service to non-NIO users is RMB380 per charge for charging using NIO Power Mobile trucks.

Access to Public Charging

Our users have access to a network of public chargers, which as of December 31, 2019 consisted of approximately 258,000 publicly accessible charging piles. These chargers have been installed by both public and private sectors, including state-owned electricity companies and automotive original equipment manufacturers, or OEMs. Data from over 179,000 public chargers as of December 31, 2019, installed by the third parties, including the State Grid, are synchronized to our cloud so that users can access real-time information on the availability and location of these chargers. These chargers are provided by 29 operators, 11 of which we have achieved real-time connections with. We plan to increase the number of chargers with data synchronized to our cloud. The Chinese government has also set a target of more than 4.8 million charging piles in 2020. Access to these chargers is included in our energy package or can be provided on a pay-per-use basis. Under normal temperatures and battery conditions, the 84-kilowatt-hour battery of the ES8 and the ES6 would be charged from approximately 20% to 90% power (or battery) level in seven to eight hours using a normal charger or in approximately 70 minutes using a supercharger.

In addition, we have entered into a framework agreement with the State Grid Corporation of China with the aim of expanding the network of publicly accessible charging piles through technology and business model innovations in a collaborative way. Pursuant to the framework agreement, the parties have agreed to cooperate in the following areas: (i) building systematic solutions for electric cars, charging piles and grid network by leveraging each party's own resources and standardizing electric vehicle charging and battery swap technology; (ii) application of smart vehicle connectivity technology to practice; (iii) innovation in electric vehicle charging and battery swap technology; (iv) the construction and operation of electric vehicle charging and battery swap infrastructure, and (v) the sales, leasing and insurance of or for electric vehicles. While this framework agreement sets forth certain long-term strategic cooperation principles for cooperation between the State Grid Corporation of China and us, the actual implementation of such principles would likely require the parties to enter into supplemental agreements covering specific areas of cooperation.

Fast Charging Trucks (Power Mobile)

Through NIO Power Mobile, we provide charging through charging trucks. We plan to use these charging trucks to supplement our charging network. Users are able to book NIO Power Mobile services in advance conveniently through our mobile application. We own fast charging trucks, which are equipped with our proprietary fast-charging technology.

As of December 31, 2019, we had approximately 386 NIO Power Mobile trucks in operation. We have deployed these trucks in major cities, including Beijing, Shanghai, Guangzhou, Shenzhen, Chengdu, Hangzhou, Nanjing and Suzhou, among others. We plan to enhance the efficiency of these NIO Power Mobile trucks to cater to user demand.

Battery Swapping (Power Swap)

Through Power Swap, we offer our users the ability to arrange for a battery swap for the ES8, ES6 and EC6. Our swap stations are compact stations located in parking lots and other locations. The typical size of a swap station is approximately three parking spaces, or 45 square meters. Swap stations are designed to be fully automated, but for the first and second years of operation we plan to have one staff member at each location to ensure reliability for the initial roll-out. Once a vehicle is parked in the swap station and the driver activates the swap function, battery swapping will take place automatically. Charging of the batteries at swap stations takes place while the batteries are stored at the swap station and their charging status information is sent to our cloud. Our battery swap stations were developed in-house and use chassis replacement technology and apply more than 300 patented technologies to provide precise positioning, rapid disassembly, compact integration, and flexible deployment, allowing battery replacement within minutes.

As of December 31, 2019, we had battery swap stations in 51 cities, including Beijing, Shanghai, Guangzhou, Shenzhen, Hefei, Chengdu, Nanjing, Suzhou and Hangzhou. We had 36 battery swap stations in total along the three major highways and four other highways in China. The three major highways are G2 highway that connects Beijing and Shenzhen, G4 highway that connects Beijing and Shanghai, and G15 highway that connects Shanghai and Guangzhou. We believe the battery swap service we provide effectively addresses consumers' concern on charging convenience of electric vehicles, and has become an unduplicated competitive advantage of ours. We plan to further enhance the efficiency of the battery swap stations and to strategically deploy more swap stations in selected geographical areas as the number of our vehicles sold grows to ensure continuous optimal battery swap experience for our users.

Fast Charging Piles (Power Charger)

Through NIO Power Charger, we provide our users a fast and reliable charging solution using our fast charging piles. We plan to expand these charging piles as a supplement to our charging network. Users are able to locate, use and pay for the charging through our mobile application. Our Power Chargers are of a slim design and are located in parking lots and other locations easily accessed by our users, with maximum output power of 105 kilowatt and 250 ampere.

As of December 31, 2019, we had approximately 184 NIO Power Charger piles in operation, covering major cities including Beijing, among others, Shanghai, Guangzhou, Shenzhen, Chengdu, Hangzhou, Suzhou and Xi'an. We plan to enhance the efficiency of these NIO Power Charger piles to cater to user demand.

Our Other Value-Added Service Offerings

Through one click using our mobile application, our users can access a full suite of innovative services, as part of our strategy of redefining the user experience. In addition to our NIO Power solutions described above, we offer our users our NIO Service, comprised of other value-added services provided primarily through our service package, which can be ordered conveniently through our mobile application.

Service Package

We offer our users a service package, which, at a price initially set at RMB12,800 to RMB14,800 per year, provides statutory and third-party liability and vehicle damage insurance through third-party insurers, repair and routine maintenance services, courtesy car during repair and maintenance lasting more than 24 hours, roadside assistance and an enhanced data package, among other services. As of December 31, 2019, approximately 89% of our individual users had a subscription for our service package.

Through our service package, we aim to provide users with a "worry free" vehicle ownership experience. Using our mobile application, users are able to arrange for vehicle service with a few clicks. At a user's request, we pick up the car, arrange for maintenance and repair services, and then return the car to users once the services are done. As long as the maintenance and repair is covered under our service package, no additional fee will be invoiced to the service package subscriber. If the user has a car accident, we will also assist the user in engaging with the insurance company and providing necessary repairs.

We provide users who subscribe to this service package with an enhanced Internet data package with an additional 7GB of data per month. We also have agreements with China Taiping Insurance and People's Insurance Company of China Group, pursuant to which we will procure basic mandatory automobile insurance and vehicle damage insurance for our users as part of the service package. Users are also able to supplement this basic insurance coverage with China Taiping Insurance and People's Insurance Company of China Group at an additional cost, which will be paid to the insurance provider.

In addition to the regular service package, we started to offer an extra insurance worry-free package on March 1, 2020 at RMB1,680 per year. The extra insurance worry-free package provides competitive maintenance and paint-repair services, curtesy vehicles during repair and maintenance lasting for over 24 hours, roadside assistance, an enhanced data package and other additional services.

Battery Payment Arrangement

We currently provide our users with the option of a battery payment arrangement, where users can make battery payments in installments. For the ES8 ordered before January 15, 2019, there is an RMB100,000 reduction in the purchase price and users adopting this arrangement pay RMB1,280 per month, payable over 78 months. For the ES8 and ES6 ordered after January 16, 2019, there is an RMB100,000 reduction in the purchase price and users adopting this arrangement pay RMB1,660 per month, payable over 60 months.

Vehicle Financing and License Plate Registration

We currently have agreements with Bank of China, China Merchants Bank, Ping An Bank, China Industrial Bank and Great China Finance Leasing Co., Ltd. pursuant to which we assist users across China in procuring financing when they purchase our vehicles we assist our users in their application for financing, making the buying process easier. We also cooperate with China Construction Bank and Agricultural Bank of China to assist users from certain geographical scope in their application for financing. Through our arrangements with our partner banks, we believe we are able to assist our users in procuring financing on attractive terms. We also apply for license plate registration on behalf of our users at the time of purchase.

Vehicle Engineering and Design

We have significant in-house vehicle engineering capabilities, which cover all major areas of vehicle engineering starting from concept to completion. Our vehicle engineering group consists of: (i) four design groups, namely, body and exterior; chassis; interior, heating and cooling; and electrical and electronics; (ii) two integration groups, namely, mechanical and electrical, which are together responsible for integrating components and systems into a complete vehicle and work with the design groups; and (iii) two advanced engineering groups, namely, vehicle concepts and system concepts, which focus on future products and longer term innovation. We aim to implement industry best practices throughout the engineering and design process.

We have strategically located our vehicle engineering teams based on where we believe the right talent is located. As of December 31, 2019, our vehicle engineering group had 619 employees worldwide, with 559 located in Shanghai and 60 located in Hefei and Nanjing of China, Oxford of the United Kingdom and San Jose of the United States. We have significant engineering capabilities at our Shanghai headquarters, which was selected due to its status as a global automotive hub, providing us with a significant talent pool. Our international offices provide us with deeper capabilities in certain areas. Our San Jose and Oxford teams focus on advanced development work with our Oxford team also working on complex computer-aided engineering, and our Munich team focuses on lightweight material development and vehicle design. In addition, our engineering teams in Munich focus on lightweight and e-powertrain engineering and work on the challenges of energy and resource efficiency and design our vehicles, including the interior and exterior.

Our Technology

We believe one of our core technology competencies is our proprietary e-propulsion system. It also has a modular design, allowing future models to incorporate a significant portion of this technology. Our technologies, including battery management system, electric driving system, vehicle control system, and autonomous driving, among others, are cutting-edge and differentiates us from our competitors. The ES8, the ES6 and the EC6 integrate many of these industry-leading technology modules, including our proprietary e-propulsion system, digital cockpit, enhanced level 2 ADAS system, smart data router, security architecture and cloud data platform, to create a comprehensive interactive system for the optimal user experience.

Electric Powertrain (E-propulsion System)

We have developed our own e-propulsion system. The e-propulsion system consists primarily of an electric drive system, or EDS, an energy storage system, or ESS, and a vehicle intelligence control system, or VIS.

We have developed two integrated EDS systems—the 240kW induction motor, or the 240kW IM EDS, and the 160kW permanent magnet motor, or the 160kW PM EDS. The 240kW IM EDS has a copper rotor induction motor, a motor controller with a unique topology design, and a high-torque gearbox. The combination of high-power and high-torque is expected to provide users with powerful driving force. We possess dual technologies for induction motors and permanent magnet motors. Our 160kW IM EDS was developed in-house. It has higher power density and higher efficiency due to permanent magnet motor applied, providing both longer driving range and strong acceleration boost when paired with the 240kW PM EDS. Our first volume manufactured vehicle, the ES8, is equipped with the 240kW IM EDS, delivering 480 kW of power. Our second volume manufactured vehicle, the ES6, is the world's first SUV equipped with a combination of the 240kW IM EDS and the 160kW PM EDS, delivering 400 kW of power.

Our lightweight ESS uses high-energy density battery cells and high-strength housing. The ES8 is initially equipped with our proprietary 70-kilowatt-hour liquid-cooled battery pack developed and packaged in-house, bringing a high energy density of 135wh/kg. In October 2019, we began delivering the ES8 and the ES6 with an 84-kilowatt-hour battery pack, extending their NEDC driving range to 430 and 510 kilometers, respectively. We are currently developing a new 100-kilowatt-hour battery pack with advanced technology and a 24-hour safety monitoring device to ensure battery safety, and plan to deliver it in the fourth quarter of 2020. The 100-kilowatt-hour battery pack will extend the NEDC range of the new ES8, ES6 and EC6 to 580, 610 and 610 kilometers, respectively. Our ESS is high-capacity and has industry-leading thermal management technology and a safety structure design. In addition, our ESS is equipped with a state-of-the-art battery management system, a high-efficiency liquid-cooled design and swapping technology to achieve long-lasting, stable and new energy solutions. In particular, our battery management system provides real-time monitoring of the vehicle insulation status, a comprehensive fault diagnosis mechanism to ensure the safety and reliability of battery pack use. We are able to upgrade the software of our battery management units and cell supervising circuits and switch-boxes through FOTA updates. We conduct extensive testing to ensure safety, performance, durability and reliability. We also possess the module capability of prismatic, pouch and cylindrical cells, with a planned annual production capacity of over seven gigawatts per hour.

Our advanced VIS includes a vehicle control unit, or VCU, electric vehicle controller and ADAS system. A VCU is an intelligent controller, which can control the torque output according to different driver behavior and control region torque according to best energy recovery. It provides optimal torque split between front and rear EDS based on motor efficiency, driver mode selection and vehicle dynamics, and offers the best vehicle drivability with the active damping function to compensate the driveline vibration. The vehicle control system's network architecture also takes into account functional safety and network security. The intelligent high- and low-voltage energy management system can monitor and adjust the optimized pure electric cruising range in real time and the adaptive cruise control system, or ACC, automatic parking and other functions can meet the requirements of automatic assisted driving. The intelligent thermal management system regulates water coolant system to maintain optimal operating temperature of HV components. The intelligent AC charging controller provides remote charging function safely and conveniently. Our VCUs and ADAS have passed software testing and vehicle calibration and verification, thus bringing a new experience of smart and safe driving.

Immersive Experiences Powered by Artificial Intelligence

Our digital cockpit is an AI driven, scalable and flexible architecture that presents the user with an intelligent and immersive interface which provides, we believe, an industry leading integrated user experience. Each of the ES8, ES6 and EC6 uses NVIDIA DRIVETM for its in-car digital cockpit. It adopts a single highly advanced proprietary controller, supporting a flexible multiple-operating system environment running Android, QNX, and Linux. This in-cabin technology enables a unified user experience across all four interior displays and advanced user interaction through our AI connected assistant, NOMI.

NOMI is designed to be one of the most advanced AI systems in a production vehicle and through NOMI we aim to revolutionize the relationship between users and their vehicles. NOMI learns users' habits and interests through deep learning algorithms in order to meet their individual needs under different circumstances. We have built flexibility into our system which will allow for new functions and applications to be added through future software updates.

Vehicle Control and Connectivity

Our vehicles are equipped with our proprietary software and hardware, enabling us to control the vehicles' ECU and BCU modules, including core electric powertrain control software, which allows for an integrated and optimized control over vehicle performance.

We are one of the first automobile manufacturers in China that have both the FOTA and the software over-the-air capabilities. Our FOTA firmware management technology will allow the operating firmware of ECUs in vehicles to be wirelessly updated and upgraded. The vehicle will be connected to our information cloud at all times, and when there is a firmware or software update available, our cloud will push an update message to the vehicle which triggers an update. Upgrades will be wirelessly downloaded to the vehicle, installed, and launched, including updates for firmware, software, operating systems and applications. FOTA updates will enable us to upgrade the operating firmware down to the individual programmable ECU level across the vehicle's core systems, such as powertrain and ADAS. Since we began to make deliveries of the seven-seater ES8 in June 2018, we have completed 14 FOTA updates, delivering more than 70 new features and optimizing more than 200 features.

We expect this technology will allow us to fix bugs and remotely install new features and services after a vehicle has already been delivered to customers. As a result, we expect to be able to reduce the cost and time of marketing new feature roll-outs.

Our proprietary software leverages Linux, QNX and Android systems and control systems such as the central digital cockpit, connected gateway, ADAS and cyber security systems. We believe our highly-integrated design allows us to reduce the development time and cost of new technologies and creates an upgradable and flexible system for our next generation of products. The ES8, ES6 and the EC6's smart data router, or SDR, has, we believe, industry leading connectivity and remote service capabilities with a comprehensive end-to-end security framework. The SDR enables a superior driver experience by tracking vehicle settings, user preferences and offering instant remote vehicle diagnostics with respect to faults, alerts and logs to our service and maintenance team. The SDR also offers a completely integrated vehicle security system enabled by a firewall, an intrusion detection system and machine learning for continuous improvement.

Autonomous Driving

The ES8, ES6 and EC6's ADAS system is built for advanced processing and learning capabilities.

Our ES8, ES6 and EC6 are equipped with NIO Pilot, a comprehensive enhanced Level 2 ADAS system that will update with new features over time through high-speed FOTA updates. The ES8 is the world's first vehicle to come equipped with the Mobileye's EyeQ@4 ADAS processor. The NIO Pilot hardware consists of 23 sensors, including a front-facing trifocal camera, four exterior surround cameras, five millimeter-wave radars, 12 ultrasonic sensors, and an interior driver monitor camera. Our multi-sensor ADAS solution has a reaction time that is many times faster than the average human reaction time.

NIO Pilot also has a built-in algorithm that we expect to source driving data across the entire vehicle fleet of the ES8s, ES6s and EC6s. This allows us to accelerate the enhancement of autonomous driving solutions, without materially impacting driver safety or vehicle operation, before activating these features for users. Our autonomous and assisted driving algorithm development is accelerated by our smart data management system which flags and uploads unusual events (false positives and negative events as well as corner cases) for in-house analysis. We anticipate that as we increase the scale of business and more of our vehicles are on the road, this functionality will enable us to validate algorithms against millions of miles of empirical data in a short period of time.

We rolled out various ADAS features through FOTA updates after undergoing a rigorous and thorough testing of the features. In 2019, we successfully realized and applied various features for NIO Pilot, including front collision warning and automatic emergency braking, park assist, automatic high-beam control, lane changing assistance, lane departure warning, blind spot detection, rear cross-traffic alert, door opening warning. In addition, we rolled out the following new NIO Pilot features through FOTA updates in 2019: (i) active ADAS features, such as adaptive cruise control, traffic jam pilot, and highway autopilot for lateral and longitudinal support in certain conditions; (ii) driving support, including automatic lane keeping assistance, automatic lane change, automatic park assistance, and traffic sign recognition; and (iii) alerts and warnings, including front cross-traffic alerts and side distance indication. We plan to roll out functions of the navigation on NIO Pilot in 2020.

We have established autonomous driving research and development centers in Shanghai and San Jose. As of December 31, 2019, we had 270 full-time specialized engineers carrying out smart driving system technology projects, such as custom production hardware and sensors, environment awareness, data fusion, route planning, vehicle control, deep learning and car networking, with the aim of developing an intelligent driving system for electric vehicles.

In July 2016, our self-driving car completed a start-function test at the National Autonomous Vehicle Testing Center in Shanghai. The test was intended to improve reliability, detection accuracy, and application scenarios through the deployment of a sensor configuration scheme suitable for mass production, multi-sensor data fusion and target detection tracking technology.

In December 2016, we established a cross-functional team for ADAS system management with core members from project management, autonomous driving development, supply chain, product quality, product planning, manufacturing, logistics and finance. Our ADAS system management team is committed to deploying technology to products tailored for the Chinese market. It collaborates closely with vehicle integration, electric architecture and other engineering teams to ensure successful product rollout.

In February 2017, we set a world record by completing the fastest autonomous lap at the Circuit of the Americas Race Track in Austin, Texas. The NIO EP9 drove autonomously without any interventions, recording a time of two minutes 40.33 seconds at a top speed of 160 mph.

In March 2018, we were in the first batch of companies to obtain a Shanghai Intelligent Connected Vehicle Test Permit to test seventeen items including, among others, obstacles identification and response and automatic emergency braking on the testing roads, traffic sign recognition and lane keeping systems in the testing roads. In April 2018, we were in the first batch of companies to obtain a Beijing Autonomous Driving Test License, to test various items including, among others, perception and compliance with traffic regulations, emergency reaction and manual intervention and integrated driving ability on testing roads.

Cloud Data Platform and Integrated Vehicle Security Solution

Our cloud data platform stores vehicle, sensor and user data in a single data lake to minimize data duplication and cost. We can easily access fleet level data and analytics for diagnostic purposes and autonomous driving development. The NIO cloud data platform is designed to enable rapid development and deployment of new applications across fleet and users.

While other OEMs must use multiple vendors to build their security solutions, we have one comprehensive end-to-end security framework. Our integrated security framework protects vehicle data from end-of-assembly to end-of-life. All external and critical internal communications are protected by on-the-fly encryption. Our cloud-based developer suite for maintenance and analytics enables us to continue improving our security and stay ahead of future threats.

Worldwide Research and Development Footprint

We have strategically located our teams in locations where we believe we will have access to the best talent. Our global engineering office is located at our Shanghai, China headquarters. Our vehicle design headquarters is in Munich, Germany and our software and autonomous driving technology is designed and developed at our North American headquarters in San Jose in the United States.

Shanghai

Our engineering research and development headquarters is in Shanghai, where we had a team of 2,176 research and development personnel as of December 31, 2019. Our team in Shanghai coordinates between each of our other research and development teams globally while also focusing on vehicle integration, electrical engineering and integration, body and interior engineering, chassis engineering and engineering quality and support. In Shanghai we have an advanced research and development center, which provides comprehensive testing and research and development services related to electric and smart vehicles, including vehicle integration, electric engineering and integration, battery, motor, and electrical control, power management and charging devices, customer service and spare parts management. More than half of the patents obtained globally by us originated from our team in Shanghai.

Beijing

We had 180 research and development personnel in Beijing as of December 31, 2019. Our team in Beijing coordinates with other research and development teams globally to deliver world-class in-vehicle AI product, NOMI and award-winning IVI systems in NIO products. The focus of our Beijing research and development team is on full stack AI technologies to power NOMI and design and engineering effort to enable continuous upgrade of digital experience through FOTA. The team is also responsible for the Internet of Vehicles including design, implementation, maintenance and support of the system.

Silicon Valley

Our San Jose office, located in the heart of Silicon Valley, is our North American headquarters and global advanced technology center. As of December 31, 2019, the San Jose team consisted of 377 employees. Our teams in San Jose focus on innovation in the areas of autonomous driving, digital cockpit, and digital systems and architecture, including digital security.

Munich

Our Munich office is primarily responsible for our product and brand design. As of December 31, 2019, in Munich we had a team with approximately 128 employees, focusing on vehicle interior and exterior design, user interface design, and brand design.

United Kingdom

Our computer-aided engineering and advanced concept engineering teams are based in Oxford, U.K. We had 38 employees focused on vehicle engineering in the U.K. as of December 31, 2019.

Vehicle Servicing and Warranty Terms

Service, Service Centers and Service Vans

We currently provide servicing both through authorized third party service centers and NIO service centers, both of which provide repair, maintenance and bodywork services. For our NIO service centers, we hire qualified employees to provide customer services of high quality. We conduct professional training and tests to our employees. We typically lease the premises used for our NIO service centers. As of December 31, 2019, we had 23 NIO service centers across 20 cities, including Beijing, Shanghai, Guangzhou, Shenzhen, Nanjing, Suzhou, Chengdu, Xi'an, Shijiazhuang, Tianjin, Wuhan, Qingdao, Ningbo, Hangzhou, Zhengzhou, Xiamen, Chongqing, Changsha, Foshan and Hefei.

For authorized third party service centers, we have a network management team to carefully select and bring authorized service centers into our network. Our team selects service centers based on the following criteria: (i) capability of repairing the aluminum alloy body of our vehicles; (ii) experience with servicing high-end branded vehicles, as these typically have more complex features requiring more technical training which would also be useful in servicing our vehicles; and (iii) service-related operational capabilities as determined by our field team during on-site inspections. We enter into agreements with the service centers, pursuant to which a service center first becomes a candidate. Following the purchase of certain required equipment by the candidate service center, including diagnostic equipment and tools and training by our staff, we conduct a review and provided that the review is successful, we certify the service center as an authorized center which will be available to our users through our mobile application. As of December 31, 2019, we had 146 authorized service centers across 114 cities, including Beijing, Shanghai, Shenzhen, Chengdu, Hefei, Hangzhou, Wuhan, Nanjing, Suzhou and Guangzhou.

In addition to our service centers, by December 31, 2019, we have deployed 218 service vans covering 84 cities which we selected based on user demand. We may selectively expand our service vans coverage in the future. Through our NIO service centers, third party authorized service centers and service vans, we have built a complete chain of process of parts warehousing and logistics. We believe our service capability is among the core competitiveness we possess.

New Vehicle Limited Warranty Policy

For the initial owner of the ES8 and ES6, we are providing an extended warranty subject to certain conditions, including, among others, that the extended warranty only applies for the original owner of the vehicle and not for any subsequent buyers of the vehicle; the user must service the vehicle only with us or one of our authorized service centers; and the vehicle must not have experienced any major accident. As required under relevant PRC law, we also provide (i) a bumper to bumper three-year or 120,000-km warranty, (ii) for critical EV components (battery pack, electrical motors, power electrical unit and vehicle control unit), an eight-year or 120,000-km warranty, and (iii) a two-year or 50,000-km warranty covering vehicle repair, replacement and refund. See “Item 3. Key Information—D. Risk Factors—Risks Related to Our Business and Industry—Our warranty reserves may be insufficient to cover future warranty claims which could adversely affect our financial performance.”

User Development and Branding

User Development

We aim to engage with users and create an environment conducive for user interaction both online and offline. Our mobile application had approximately 1.2 million registered users as of December 31, 2019 and over 168,000 daily active users on peak days in 2019.

Mobile Application

Our mobile application, the NIO App, is designed to be a portal not only for selling cars where users can make reservations for the ES8, ES6, EC6 and, in the future, our other vehicles, but also for accessing our other services, including those under our energy package and service package.

The layout of products offered on our mobile application is designed to be intuitive and easy to use. Our mobile application allows customers to order an ES8, ES6 or EC6 and easily check the latest status of an order. Users can also use our mobile application to find charging stations or arrange for charging or battery swap services through NIO Power. Users are also able to monitor battery and charging status using our mobile application.

In order to foster community building, our mobile application allows our users to engage with other users through moment sharing and users can shop for our merchandise and earn NIO Credits (as described below). We also notify users of our events through our mobile application.

Our mobile application also has our product information and information on locations of NIO Houses. Customers can also shop in our online shop for items, such as NIO apparel, accessories, games and children's items. Using the friend function, our customers can connect with other NIO customers. Our mobile application also keeps our users updated on our latest announcements and activities.

NIO House and NIO Space

We aim to provide our users with experiences that go beyond the car with our NIO Houses and NIO Spaces. NIO Spaces are showrooms for our brand, vehicles and services. NIO Houses not only have showroom functions, but also serve as a living space for our customers and their friends. Potential users can browse our cars and products and go for test drives and interact with our team of user development specialists at NIO Houses and NIO Spaces. If a new user decides to purchase a car, our team walks them through the process and assists the user in completing his or her order through our mobile application.

In November 2017, we opened our first NIO House in Beijing, and as of December 31, 2019, we had 22 NIO Houses in total, three in Shanghai, two in Beijing, and one in each of Nanjing, Guangzhou, Shenzhen, Hangzhou, Suzhou, Chengdu, Xi'an, Hefei, Dongguan, Nantong, Wuxi, Wenzhou, Wuhan, Zhengzhou, Tianjin, Shijiazhuang and Chongqing. The first NIO House, which occupies over 32,000 square feet, has two floors and seven main areas and is Beijing's largest brand experience center. The features and design of each NIO House may vary based on what we believe to be user preferences in the relevant city or area and we may include larger flagship NIO Houses as well as NIO House in smaller cities. Each NIO House features a gallery showcasing our brand and products, and may also feature a lounge for our users to relax and socialize, forums which consist of a theater and which we intend to be a place for gatherings, meetings or presentations, "labs" which are bookable meeting rooms and workspaces, a library, an open kitchen and a kids joy camp. Although we charge (through cash or NIO Credits) small amounts for the use of certain services at NIO Houses or for certain items, we mainly intend to use NIO Houses to support our vehicle sales and user development activities.

Compared with NIO Houses, NIO Spaces are generally smaller in scale, more delicate and more sales-focused. We opened our first NIO Space in Shanghai in August 2019. We also converted some of the former pop-up NIO Houses to NIO Spaces in 2019. As of December 31, 2019, we had 48 NIO Spaces in 41 cities. Through NIO Spaces, we are able to cost-effectively and meaningfully reach potential users in a wider geographical scope, which in turn helps drive new orders. The introduction of NIO Spaces in 2019 allows more potential users to see, touch, and feel our vehicles, and truly enjoy the superior driving experience our products offer.

Branding

We focus on promoting awareness of our brand generally and in particular as a premium brand with high-quality vehicles and services in China. We aim to engage in cost-effective branding activities taking advantage of social media and to build an online and offline ecosystem of users that will promote awareness of our brand. To a lesser extent, we engage in limited mass-marketing, such as through billboard advertising in airports. Our branding efforts include the following:

NIO Day

We held our first “NIO Day” in December 2017 at the Beijing Wukesong Arena, where we introduced the seven-seater ES8. We launched our second volume manufactured electric vehicle, the ES6, to the public on our second “NIO Day” in December 2018. Our first two NIO Days consisted of presentations by our Chief Executive Officer, Bin Li, who introduced our ES8 and ES6, respectively. The second NIO Day had 150 million views and produced a significant increase in our social media followers, as well as over 5,500 Chinese media reports. The third NIO Day was held in December 2019 in Shenzhen, where we launched our third volume manufactured electric vehicle, the EC6, and the new ES8 to the public. Our users played main roles during the event and we believe the user enterprise concept was well perceived. We plan to hold NIO Day each year on which we introduce our new vehicles and products to users. We believe that NIO Day gives us an opportunity to interact with our current and prospective users while providing us with more publicity and brand awareness.

Formula E

We had in the past operated the Formula E team, which is a racing team that competes in the Fédération Internationale de l'Automobile, or FIA, Formula E championship electric racing series. In 2019, we sold the business related to Formula E team to Brilliant In Excellence Co., Ltd., a Hong Kong based buyer, and became a sponsor of the team. In September 2019, 333 Racing, a British motorsport racing team, partnered with Formula E team. The Formula E team was renamed as NIO 333 Formula E team thereafter. NIO 333 Formula E team is currently managed and operated by professional motorsport management personnel in China, and will compete in the 2019/2020 racing season with our company as its primary sponsor.

EP9

Our development of the EP9 was part of our brand-building efforts. Through its achievements it brings attention to our capabilities and to our brand. The EP9 is an electric two-seat sports car developed by us. The EP9 has four high-performance inboard motors and four individual gearboxes, the EP9 delivers 1 megawatt of power, equivalent to 1,360PS. The EP9 accelerates from zero to 200 kph in 7.1 seconds and has a top speed of 313 kph. With an interchangeable battery system, the EP9 is designed to be charged in 45 minutes. The EP9 achieved a new lap record at the Nürburgring Nordschleife where on October 12, 2016, the EP9 lapped the 20.8 km ‘Green Hell’ track in 7 minutes and 5.12 seconds, beating the previous electric vehicle lap record held, marking it out as one of the fastest electric cars in the world. On May 12, 2017, the EP9 lapped the 20.8 km ‘Green Hell’ track in 6 minutes and 45.90 seconds, breaking its own record. Previously, in November 2016, it had set a new electric vehicle record at Circuit Paul Ricard in France, recording a time of 1 minute 52.78 seconds, surpassing the previous record of 2 minutes and 40 seconds. We believe these achievements, along with the media attention we have received, have boosted our reputation and awareness of our brand.

Other Branding Activities

We also participate in events, including displaying our cars and technology at automotive shows, such as Shanghai’s 17th International Automobile Industry Exhibition, where we unveiled the ES8 and showcased the EP9 as well as our vision concept car, the NIO EVE. We also showcased the NIO EVE at the South by Southwest festival in Austin, Texas. We also conduct many other smaller events at our NIO Houses and NIO Spaces. In April 2019, we participated in the 18th Shanghai International Automobile Industry Exhibition, demonstrated our swap station on the booth for the first time, and attracted over 285,000 viewers. In November 2019, we participated in the 17th Guangzhou International Automobile Exhibition.

We also have NIO Life, which includes an online store where users, accessing our mobile application, can purchase NIO merchandise, including NIO sweaters, miniature cars, phone cases, tote bags and calendars, among others. Since we launched our online store in December, 2016, over 1,720,000 pieces of merchandise have been sold or awarded to our users online and offline. We also provide users with NIO Credits to encourage user engagement and for certain positive behavior, including a clean safety record for the year. NIO Credits are earned, among other things, through frequent sign-ins to our mobile application, sharing articles from our mobile application on users’ own social media, through a welcome package upon the purchase of a vehicle, and referrals of test drives and new vehicle purchasers. NIO Credits can be used both at our online store and at our NIO Houses and some of the NIO Spaces to purchase merchandise.

Manufacturing, Supply Chain and Quality Control

We view the manufacturers and suppliers we work with as key partners in our vehicle development process. We aim to leverage our partners’ industry expertise to ensure that each vehicle we produce meets our strict quality standards.

Manufacturing

Nanjing Advanced Manufacturing Engineering Center

Our Nanjing Advanced Manufacturing Technology and Engineering Center, or Nanjing AMTEC, houses our trial production, or pilot line, which is mainly used to test engineering prototypes and is also used by our research and development department to develop and verify new processes, materials and products. We believe that our use of this line advances production time by six months to eight months. All of our new models are first tested at the Nanjing AMTEC. Nanjing AMTEC pilot line covers the three processes of bodywork, painting and general assembly.

We also use Nanjing AMTEC to train employees for the JAC-NIO manufacturing base.

Partnership with JAC

We entered into an arrangement with Jianghuai Automobile Group Co., Ltd., or JAC, a major state-owned automobile manufacturer in China, for manufacturing the ES8 for five years starting from May 2016, which may be renewed as agreed by JAC and us. In April 2019, we entered into a manufacturing cooperating agreement with JAC for the manufacture of ES6, which is a supplement to the arrangement we entered into with JAC in May 2016. In March 2020, we entered into a manufacturing cooperating agreement with JAC for the manufacture of EC6.

JAC has a 50-year history of automotive manufacturing and annual sales of nearly 420,000 vehicles, including passenger and commercial vehicles. JAC has in-house development, manufacturing, and testing systems for new energy vehicles, and is an established player in China's new energy vehicle market. In addition, JAC has a joint venture partnership with Volkswagen for the manufacturing of electric cars. We also expect our partnership with JAC will allow us to bring our vehicles to the market at an accelerated pace by taking advantage of JAC's capacity and through its capital investment and support. JAC has invested more than RMB2.2 billion to the construction of a brand-new world-class factory for the production of the ES8, ES6 and EC6, and potentially other future vehicles with us. This factory has the capability of conducting stamping, body in white assembly, painting and general assembly, and is equipped with testing tracks, a quality inspection center and a utility power and sewage treatment center. Given its advances in new energy vehicle manufacturing, JAC has contributed to our ability to bring the ES8 and ES6 to the market more quickly and helps us to meet our production requirements.

We exercise significant control in the manufacturing partnership with JAC to ensure high quality standards. We conduct product development, provide supply chain systems, set production technique standards, and put in place quality management systems. We developed a manufacturing process development platform for digital process lifecycle to reduce defect in process development to the extent possible. We apply NIO lean manufacturing system in JAC-NIO plant to improve execution efficiency and quality. We take a number of steps throughout the entire manufacturing process to ensure that our vehicles are manufactured in accordance with our standards. These steps include: (x) at the procurement stage, our being responsible for procuring all third-party components for our vehicles and applying our quality assurance procedures with respect to suppliers; and (y) at the manufacturing stage, our taking additional measures, including: (i) processing and owning the key tooling equipment, including stamping dye, body jointing equipment, body connection equipment and inspection tools at the factory; and (ii) our training certain key supervisory personnel at Nanjing AMTEC. We have implemented operational policies and guidelines as well as quality inspection measures, conducting inspections of both parts and completed vehicles.

Pursuant to our agreements with JAC, we pay JAC on a per-vehicle basis monthly for the first three years, which allows us greater cost flexibility as we ramp up our operations. The factory covers an area of 138 acres. The factory has a high-speed, fully automated and five-sequence pressing machine line. It uses fully automated assembly, real-time monitoring and alarm connection parameters to ensure reliable connection quality, while a total body online vision system is also equipped on the line to monitor the dimensional accuracy of the vehicle body. The factory has state-of-the-art production facilities and techniques, and also applies environmentally friendly techniques and uses renewable energy. Photovoltaic panels on top of the factory are expected to be installed to make use of solar energy and ground-source heat pumps have been used in the assembly area to provide a temperate working environment. In addition, we and JAC have put together a high-quality workforce, consisting of experienced management and supervisors from us and JAC and thousands of front-line employees selected from JAC. Our employees at the factory take on key management and supervisory roles in production, quality control and training. We believe that the manpower is sufficient for an annual production capacity of 120,000 vehicles based on running three shifts per day.

Powertrain and Battery Pack

We manufacture our powertrain, or e-propulsion system, our battery pack and electric drive system. We established AMTEC, in Nanjing for pilot production, motors, e-propulsion system and energy storage systems, and in Changshu for energy storage systems.

Nanjing AMTEC is located in the Nanjing Economic and Technological Development Zone. Nanjing AMTEC Phase I was completed in August 2016, and Phase II was completed in 2019. The plant and ancillary facilities of Nanjing AMTEC Phase I have a building area of 64,000 square meters and mainly produce motor and electric driving products with a planned capacity to make up to 300,000 motors annually. It is equipped with an intelligent information management system which is able to trace real-time performance of labor, equipment and materials, and technique parameters, quality and final products. Nanjing AMTEC has advanced equipment sourced from reputable international suppliers, including ABB, DMG, and TRUMF. The Nanjing AMTEC Phase II has a building area of 42,800 square meters and production facilities for both electric drive system and energy storage system. Its production lines are highly automated and highly flexible with advanced MES systems and AGVs, and were put into operation in June 2019. The joint venture we established with Nanjing Punch Powertrain Automatic Transmission Co., Ltd. has started production of the gearbox of our 160kW electric drive system.

Meanwhile, Nanjing AMTEC has passed the ISO 16949 audit, which audit is used to certify as to technical specification aimed at the development of a quality management system prepared by the International Automotive Task Force and the “Technical Committee” of the International Organization for Standardization.

In Changshu, we have a joint venture with Zhengli Investment Co., Ltd. for the production of pure electric automobile energy storage systems for the ES8 and ES6.

Our Suppliers

We have a “global brand, locally build” strategy where, to the extent practicable, we seek to partner with reputable international brands which have operations in China. The ES8, ES6 and EC6 each uses over 1,500 purchased parts which we source from over 190 suppliers. The majority of our supply base is located in China (including a significant portion of our suppliers which are global suppliers with a Chinese footprint), which we believe is beneficial as it enables us to acquire supplies more quickly and reduces risk of delays related to shipping and importing. We expect that as our scale increases we will be able to better take advantage of economies of scale with respect to pricing.

We have developed close relationships with several key suppliers. These include: Mobileye B.V., which provides its Mobileye EyeQ@4 ADAS processor used in the ES8, ES6 and EC6; CATL, which provides battery cells used in the battery pack of the ES8, ES6 and EC6; Continental, which provides its air suspension system; Bosch, which provides its iBooster (vacuum-independent electromechanical brake booster, a key component for electromobility and driver assistance systems) and ADAS hardware (sensors and radars) used in the ES8, ES6 and EC6; Brembo, which provides four-piston all-aluminum brake calipers used in the ES8, ES6 and EC6; and Novelis, which provides aluminum coils used in the aluminum body panel of the ES8, ES6 and EC6. Our electric driving systems and energy storage systems are developed in-house. We believe we have strong relationships with our suppliers. Despite our limited operating history, many of our suppliers have been willing to support our business. For example, we believe we are one of the first brands using the Bosch iBooster braking system in China.

We obtain systems, components, raw materials, parts, manufacturing equipment and other supplies and services from suppliers which we believe to be reputable and reliable. Similar to other global major automobile manufacturers, we follow our internal process to source suppliers taking into account quality, cost and timing. We have a parts quality management team which is responsible for managing and ensuring that supplies meet quality standards. Our quality standards are guided by industry standards, including AIAG (Automotive Industry Action Group) APQP (Advanced Product Quality Planning) and PPAP (Production Part Approval Process) procedures, which were developed by the U.S. automotive industry.

Our method for sourcing suppliers depends on the nature of the supplies needed. For general parts which are widely available, we seek proposals from multiple suppliers and choose based on quality and price competitiveness, among other factors. For parts requiring special designs, we solicit design proposals and choose largely based on design-related factors. However, in certain cases we have limited choices given our scale, such as for aluminum and battery cell packages, so in such circumstances we typically partner with suppliers that we believe to be well-positioned to meet our needs.

We enter into strategic framework agreements with key suppliers. These agreements typically cover the life cycle of a particular model of vehicle. We use various raw materials in our business, including aluminum, steel, carbon fiber, other non-ferrous metals such as copper, as well as cobalt. The prices for these raw materials fluctuate depending on market conditions and global demand for these materials. For certain raw materials, such as aluminum, our pricing is set within pricing bands which shift with respect to market prices.

While we obtain components from multiple sources whenever possible, similar to other automobile manufacturers, many of the components used in our vehicles are purchased by us from a single source. Eventually we plan to implement a multi-source volume purchasing strategy in order to reduce our reliance on sole source suppliers. We believe that will also help us to increase our ability to obtain quality components with better cost competitiveness.

Quality Assurance

We aim to deliver high-quality products and services to our users in line with our core values and commitments. We believe that our quality assurance systems are the key to ensuring the delivery of high-quality products and services, and to minimize waste and to maximize efficiency. We strongly emphasize quality management across all business functions, including product development, manufacturing, supplier quality management, procurement, charging solutions, user experience, servicing and logistics. Our quality management groups are responsible for our overall quality strategy, quality systems and processes, quality culture, and general quality management implementation.

During product development, many phases of testing vehicles are built to verify our design and production processes. For example, we built more than 250 ES8 and 210 ES6 testing vehicles in order to conduct a wide range of function and durability tests. The durability test runs for more than an aggregate of three million kilometers for each ES8 and ES6 model.

The ES8 and ES6 are manufactured at a new plant which is operated jointly by JAC and us with quality standards implemented by our team. All lines including stamping, body, painting, and general assembly are developed in accordance with industry standards with a high degree of automation. The manufacturing process failure mode effect analysis, control plans, and standard operation sheet are developed and audited carefully by us. We apply advanced product quality planning (APQP), which is a framework of procedures and techniques utilized in the global automotive industry, across all phases of product development and supplier quality management. Through our factory automated system, we monitor manufacturing process parameters and parts information for process control and traceability.

Other Partnerships

We have partnered with other strategic partners including Baidu for its iQIYI online video streaming and map data and technology; Tencent for its Tencent Cloud and QQ music; and Keen Lab for NOMI text to speech function.

Certain Other Cooperation Arrangements

We have entered into arrangements with Guangzhou Automobile Group Co., Ltd, or GAC, and Chongqing Changan Automobile Co Ltd, or Changan in order to take advantage of market opportunities in the entry and mid-range segments of the Chinese EV market, reduce supply chain costs through potential joint procurement and jointly conduct research and development activities. Any vehicles developed and sold under these arrangements will be marketed and sold using GAC's, Changan's, or other jointly developed brands.

GAC

In April 2018, (i) we, (ii) an entity associated with our founder Bin Li, Hubei Changjiang Weilai New Energy Industry Development Fund Partnership (Limited Partnership), or NIO Capital, (iii) Guangqi New Energy Automobile Co., Ltd., and (iv) GAC, jointly established a joint venture company, GAC-NIO New Energy Vehicle Technology Co., Ltd., or GAC JV, to mainly engage in electric vehicle and parts development, sales and services. On May 20, 2019, GAC JV announced its new brand, Hycan He Chuang. GAC is a Chinese state-owned automaker headquartered in Guangzhou, Guangdong and listed on the Hong Kong Stock Exchange and the Shanghai Stock Exchange. Pursuant to the joint venture agreement entered into on December 28, 2017, we have agreed to invest 22.5% of the registered capital of the joint venture and unless otherwise unanimously approved by the board of directors of GAC JV, no dividend distribution will be made among shareholders prior to a qualified initial public offering of GAC JV. The joint venture agreement is valid for 20 years and can be renewed as agreed by the joint venture parties. The total registered capital of the joint venture is RMB500 million. With respect to governance rights, the parties have agreed that the board of directors will have five directors, with one appointed by each party and the remaining director appointed by all the parties together. On December 27, 2019, GAC JV released HYCAN 007, a pure electric SUV expected to be officially launch and delivered in 2020.

Changan

In January 2018, we and Changan entered into a joint venture agreement and a supplemental agreement agreeing to set up a joint venture, Changan NIO Renewable Automobile Co., Ltd., with a total registered capital of RMB98 million of which RMB49 million will be contributed by us. Pursuant to the joint venture agreement, it is valid for 20 years and can be renewed as agreed by Changan and us. In July 2018, Changan NIO Renewable Automobile Co., Ltd. was established. We expect to receive distribution of profits, if any, after deducting required reserves under PRC law, in proportion to the respective actual capital contributions to be made by Changan and us. Changan is a state-owned Chinese automaker headquartered in Chongqing, China and listed on the Shenzhen Stock Exchange. The joint venture may provide services, such as design or development of vehicle or components, sales and after-sale service, sales of automotive parts and EV-related technology services. Pursuant to the joint venture agreement, any vehicles produced by the joint venture may use a Changan trademark and the joint venture will enter into a separate trademark license agreement with Changan. With respect to governance rights, we and Changan have agreed that the board of directors will have five directors, with two appointed by each party and the remaining director appointed by us and Changan together.

Mobileye

In November 2019, we entered into a strategic collaboration with Mobileye on the development of highly automated and autonomous vehicles (AV) for consumer markets in China and other major territories. Pursuant to the collaboration arrangement, we would engineer and manufacture a self-driving system designed by Mobileye, building on Mobileye's level-4 (L4) AV kit. This self-driving system will likely be the first of its kind, targeting consumer autonomy, engineered for automotive qualification standards, quality, cost and scale. We would mass-produce the system for Mobileye and also integrate the technology into its electric vehicle lines for consumer markets and for Mobileye's driverless ride-hailing services in China and global markets.

Hefei Strategic Investors

On April 29, 2020, we entered into definitive agreements for investments with a group of investors led by Hefei City Construction and Investment Holding (Group) Co., Ltd., CMG-SDIC Capital Co., Ltd., and Anhui Provincial Emerging Industry Investment Co., Ltd., or together as the Hefei Strategic Investors.

Under the definitive agreements, the Hefei Strategic Investors will invest an aggregate of RMB7 billion in cash into NIO (Anhui) Holding Co., Ltd., the legal entity of NIO China wholly owned by us pre-investment. NIO will inject its core businesses and assets in China, including vehicle research and development, supply chain, sales and services and NIO Power, or together as the Asset Consideration, into NIO China. The Asset Consideration is valued at RMB17.77 billion, as calculated based on 85% of the market value of our company (calculated based on our average ADS trading price over the thirty public trading days preceding April 21, 2020). Further, we will invest RMB4.26 billion in cash into NIO China. Upon the completion of the investments, we will hold 75.9% of controlling equity interests in NIO China, and the Hefei Strategic Investors will collectively hold the remaining 24.1%.

We expect the closing of the investments to take place in the second quarter of 2020, subject to the satisfaction of customary closing conditions. The Hefei Strategic Investors and we will each inject cash into NIO China in five installments, namely (i) RMB3.5 billion and RMB1.278 billion respectively within five business days of the satisfaction of closing conditions, (ii) RMB1.5 billion and RMB1.278 billion respectively on or prior to June 30, 2020, (iii) RMB1 billion and RMB0.852 billion respectively on or prior to September 30, 2020, (iv) RMB0.5 billion and RMB0.426 billion respectively on or prior to December 31, 2020, and (v) RMB0.5 billion and RMB0.426 billion respectively on or prior to March 31, 2021. Moreover, the Asset Consideration will be injected into NIO China in several phases, with the last phase to be injected within one year of closing, subject to certain post-closing price adjustment mechanism.

NIO China will establish its headquarters in the Hefei Economic and Technological Development Area, or the HETA, where our main manufacturing hub is located, for its business operation, research and development, sales and services, supply chain and manufacturing functions. We will collaborate with the Hefei Strategic Investors and HETA to develop NIO China's business and to support the accelerated development of the smart electric vehicle sectors in Hefei in the future. In addition, NIO Anhui could enjoy a series of subsidies and support from HETA, including rent subsidies, financial support and preferential tax treatment, when NIO Anhui meets certain performance criteria, such as targets for manufacturing capacity, procurement amount and vehicle sales.

Pursuant to the Shareholders' Agreement we entered into with the Hefei Strategic Investors, shareholders of NIO Anhui have certain shareholder rights, including, among others, the right of first refusal, co-sale right, preemptive right, anti-dilution right, redemption right, liquidation preference and conditional drag-along right. For more details of such provisions, please see exhibit 4.36 of this annual report on Form 20-F. In particular, the following rights, among others, directly relate to obligations of Nio Inc.:

Redemption right. The Hefei Strategic Investors may require us or our Hong Kong holding vehicles to redeem all or a portion of the shares of NIO Anhui held by the Hefei Strategic Investors at a redemption price of the total amount of the investment price of the Hefei Strategic Investors plus an investment income calculated at a compound rate of 8.5% per annum if, among others: (i) NIO Anhui fails to complete a qualified initial public offering within sixty (60) months after NIO Anhui receives all initial investment from the Hefei Strategic Investors; (ii) NIO Anhui fails to submit an application for a qualified initial public offering within forty-eight (48) months after NIO Anhui receives all initial investment from the Hefei Strategic Investors; (iii) shareholders of our company require us or our controlling person to redeem shares of our company and result in a change of control of our company or NIO Anhui; (iv) we fail to inject the Asset Consideration into NIO Anhui within one year after the closing of this investment, due to willful misconduct or negligence or inject capital into NIO Anhui before March 31, 2021; and (v) vehicle sales of NIO Anhui fall below 20,000 units for two consecutive years after NIO Anhui obtains all initial investment from the Hefei Strategic Investors.

In addition, before the reorganization of NIO Anhui prior to its potential qualified initial public offering, we and/or our designated third party have the right to redeem half of the shares Hefei Construction Investment Holdings (Group) Co., Ltd. acquired through this investment, at a mutually agreed redemption price. A qualified initial public offering refers to an initial public offering approved, registered or filed with the China Securities Regulatory Commission, Shanghai Stock Exchange, Shenzhen Stock Exchange or other overseas securities issuance review agencies jointly approved by all shareholders of NIO Anhui, and NIO Anhui's shares are issued and listed on the stock exchange market recognized by all shareholders of NIO Anhui. Furthermore, from the execution date of the Shareholders' Agreement to December 31, 2021, we or our designated affiliate have the right to subscribe for newly issued shares of NIO Anhui at the price of this investment for an aggregate of no more than US\$600 million, while the Hefei Strategic Investors unconditionally and irrevocably waive their respective preemptive right with regard to investment in such newly issued shares.

Share transfer restriction. Before NIO Anhui completes its potential qualified initial public offering, without the prior written consent of the Hefei Strategic Investors, we may not directly or indirectly transfer, pledge or otherwise dispose of NIO Anhui's shares to a third party that may result in our shareholding in NIO Anhui fall below 60%. Without the prior written consent of the Hefei Strategic Investors, we have the right to directly or indirectly transfer, pledge or otherwise dispose of no more than 15% of NIO Anhui's shares.

Sales and Delivery of Vehicles

We directly sell our vehicles to users, which we believe allows us to provide a more consistent, differentiated and compelling user experience, compared to the traditional franchised distribution model used by our competitors in China. Vehicle purchases are placed through our mobile application, which provides an easy to follow and interactive vehicle shopping experience to our users. This also provides us with real-time information on demand for our vehicles, allowing us to plan our production more efficiently and reducing inventory needs. At our NIO Houses and NIO Spaces, users are able to purchase vehicles using our mobile application, assisted by our sales representatives. Users purchasing outside of our NIO Houses and NIO Spaces typically purchase through our mobile application and use our hotline for assistance with the purchase. We believe that our online and offline direct sales model is more cost-efficient by cutting out franchised distribution costs as well as lowering the number of physical locations required and also allows us to expand our sales network effectively and efficiently in China.

We have set up a vehicle delivery center in cities including Shanghai, Beijing, Guangzhou, Shenzhen, Chengdu, Nanjing, Suzhou, Wuhan, Xi'an, Shijiazhuang, Tianjin, Qingdao, Zhengzhou, Hefei, Hangzhou, Ningbo, Chongqing, Changsha, Foshan and Xiamen. Vehicles will be delivered to users at such centers.

Competition

Competition in the automotive industry is intense and evolving. We believe the impact of new regulatory requirements for occupant safety and vehicle emissions, technological advances in powertrain and consumer electronic components, and shifting customer needs and expectations are causing the industry to evolve in the direction of electric-based vehicles. We believe the primary competitive factors in our markets are:

- pricing;
- technological innovation;
- vehicle performance, quality and safety;
- service and charging options;
- user experience;
- design and styling; and
- manufacturing efficiency.

The China automotive market is generally competitive. We have strategically entered into this market in the premium EV segment in which there is limited competition relative to other segments. However, we expect this segment will become more competitive in the future. We also expect that we will compete with international competitors, including Tesla. Our vehicles also compete with ICE vehicles in the premium segment. Given the quality and performance of the ES8, the ES6 and the EC6, and their attractive pricing, we believe that we are strategically positioned in China's premium electric vehicle market.

Intellectual Property

We have significant capabilities in the areas of vehicle engineering, development and design. As a result, we have developed a number of proprietary systems and technologies. As a result, our success depends, at least in part, on our ability to protect our core technology and intellectual property. To accomplish this, we rely on a combination of patents, patent applications and trade secrets, including employee and third-party nondisclosure agreements, copyright laws, trademarks, intellectual property licenses and other contractual rights to establish and protect our proprietary rights in our technology. As of December 31, 2019, we had 2,304 issued patents and 1,955 pending patent applications, 2,886 registered trademarks and 1,105 pending trademark applications in the United States, China, Europe and other jurisdictions. As of December 31, 2019, we also held or otherwise had the legal right to use 77 registered copyrights for software or works of art and 414 registered domain names, including www.nio.io. We intend to continue to file additional patent applications with respect to our technology.

Regulation

This section sets forth a summary of the most significant rules and regulations that affect our business activities in China.

Regulations and Approvals Covering the Manufacturing of Pure Electric Passenger Vehicles

The NDRC promulgated the *Provisions on Administration of Investment in Automobile Industry, or the Investment Provisions*, which became effective on January 10, 2019. According to the Investment Provisions, enterprises are encouraged to, through equity investment and cooperation in production capacity, enter into strategic cooperation relationship, carry out joint research and development of products, organize manufacturing activities jointly and increase industrial concentration. The advantageous resources in production, high learning, research, application and other areas shall be integrated and core enterprises in automobile industry shall be propelled to form industrial alliance and industrial consortium.

According to the *Regulations on the Administration of Newly Established Pure Electric Passenger Vehicle Enterprises*, or the New Electric Passenger Vehicle Enterprise Regulations, which became effective on July 10, 2015, before our vehicles (including our current vehicles manufactured in cooperation with JAC) can be added to the *Announcement of Vehicle Manufacturers and Products*, or the Manufacturers and Products Announcement, issued by the MIIT, a procedure that is required in order for our vehicles to be approved for manufacture and sale in China, our vehicles must meet the applicable requirements set forth in relevant laws and regulations. Such relevant laws and regulations include, among others, the *Administrative Rules on the Admission of New Energy Vehicle Manufacturers and Products*, or the MIIT Admission Rules, which became effective on July 1, 2017, and the *Administrative Rules on the Admission of Passenger Vehicles Manufacturer and Products*, which became effective on January 1, 2012, and pass the review by the MIIT. Pure electric passenger vehicles that have entered into the Manufacturers and Products Announcement are required to undergo regular inspection every three years by the MIIT so that the MIIT may determine whether the vehicles remain qualified to stay in the Manufacturers and Products Announcement.

According to the MIIT Admission Rules, in order for our vehicles to enter into the Manufacturers and Products Announcement, our vehicles must satisfy certain conditions, including, among others, meeting certain standards set out therein, meeting other safety and technical requirements specified by the MIIT, and passing inspections conducted by a state-recognized testing institution. Once such conditions for vehicles are met and the application has been approved by the MIIT, the qualified vehicles are published in the Manufacturers and Products Announcement by the MIIT. Where any new energy vehicle manufacturer manufactures or sells any model of a new energy vehicle without the prior approval of the competent authorities, including being published in the Manufacturers and Products Announcement by the MIIT, it may be subject to penalties, including fines, forfeiture of any illegally manufactured and sold vehicles and spare parts and revocation of its business licenses.

Regulations on Compulsory Product Certification

Under the *Administrative Regulations on Compulsory Product Certification* which was promulgated by the General Administration of Quality Supervision, Inspection and Quarantine, or the QSIQ, on July 3, 2009 and became effective on September 1, 2009 and the *List of the First Batch of Products Subject to Compulsory Product Certification* which was promulgated by the QSIQ in association with the State Certification and Accreditation Administration Committee on December 3, 2001 and became effective on May 1, 2002, the QSIQ is responsible for the regulation and quality certification of automobiles. Automobiles and parts and components must not be sold, exported or used in operating activities until they are certified by designated certification authorities of the PRC as qualified products and granted certification marks.

Regulations on Electric Vehicle Charging Infrastructure

Pursuant to the *Guidance Opinions of the General Office of the State Council on Accelerating the Promotion and Application of the New Energy Vehicles*, which became effective on July 14, 2014, the *Guidance Opinions of the General Office of the State Council on Accelerating the Development of Charging Infrastructures of the Electric Vehicle*, which became effective on September 29, 2015 and the *Guidance on the Development of Electric Vehicle Charging Infrastructure (2015-2020)*, which became effective on October 9, 2015, the PRC government encourages the construction and development of charging infrastructure for electric vehicles, such as charging stations and battery swap stations, and only centralized charging and battery replacement power stations are required to obtain approvals for construction, permits from the relevant authorities. The *Circular on Accelerating the Development of Electrical Vehicle Charging Infrastructures in Residential Areas* promulgated on July 25, 2016 further provides that the operators of electrical vehicle charging and battery swap infrastructure are required to be covered under liability insurance policies to protect the purchasers of electric vehicles, covering the safety of electric vehicle charging.

Regulations on Automobile Sales

Pursuant to the *Administrative Measures on Automobile Sales* promulgated by the MOFCOM, April 5, 2017, which became effective on July 1, 2017, automobile suppliers and dealers are required to file with relevant authorities through the information system for the national automobile circulation operated by the competent commerce department within 90 days after the receipt of a business license. Where there is any change to the information concerned, automobile suppliers and dealers must update such information within 30 days after such change.

Regulations on the Recall of Defective Automobiles

On October 22, 2012, the State Council promulgated the *Administrative Provisions on Defective Automotive Product Recalls*, which became effective on January 1, 2013 and were amended on March 3, 2019. The product quality supervision department of the State Council is responsible for the supervision and administration of recalls of defective automotive products nationwide. Pursuant to the administrative provisions, manufacturers of automobile products are required to take measures to eliminate defects in products they sell. A manufacturer must recall all defective automobile products. Failure to recall such products may result in an order to recall the defective products from the quality supervisory authority of the State Council. If any operator conducting sales, leasing, or repair of vehicles discovers any defect in automobile products, it must cease to sell, lease or use the defective products and must assist manufacturers in the recall of those products. Manufacturers must recall their products through publicly available channels and publicly announce the defects. Manufacturers must take measures to eliminate or cure defects, including rectification, identification, modification, replacement or return of the products. Manufacturers that attempt to conceal defects or do not recall defective automobile products in accordance with relevant regulations will be subject to penalties, including fines, forfeiture of any income earned in violation of law and revocation of licenses.

Pursuant to the *Implementation Rules on the Administrative Provisions on Defective Automotive Product Recalls*, which was promulgated by the QSIQ on November 27, 2015 and became effective on January 1, 2016, if a manufacturer is aware of any potential defect in its automobiles, it must investigate in a timely manner and report the results of such investigation to the QSIQ. Where any defect is found during the investigations, the manufacturer must cease to manufacture, sell, or import the relevant automobile products and recall such products in accordance with applicable laws and regulations.

Regulations on Product Liability

Pursuant to the Product Quality Law of the PRC, promulgated on February 22, 1993 and amended on July 8, 2000, August 27, 2009 and December 29, 2018, a manufacturer is prohibited from producing or selling products that do not meet applicable standards and requirements for safeguarding human health and ensuring human and property safety. Products must be free from unreasonable dangers threatening human and property safety. Where a defective product causes physical injury to a person or property damage, the aggrieved party may make a claim for compensation from the producer or the seller of the product. Producers and sellers of non-compliant products may be ordered to cease the production or sale of the products and could be subject to confiscation of the products and/or fines. Earnings from sales in contravention of such standards or requirements may also be confiscated, and in severe cases, an offender's business license may be revoked.

Favorable Government Policies Relating to New Energy Vehicles in the PRC

Government Subsidies for Purchasers of New Energy Vehicles

On April 22, 2015, the Ministry of Finance, or the MOF, the Ministry of Science and Technology, or the MOST, the MIIT and the NDRC jointly issued the *Circular on the Financial Support Policies on the Promotion and Application of New Energy Vehicles in 2016-2020*, or the Financial Support Circular, which took effect on the same day. The Financial Support Circular provides that those who purchase new energy vehicles specified in the *Catalogue of Recommended New Energy Vehicle Models for Promotion and Application* by the MIIT, or the Recommended NEV Catalogue, may obtain subsidies from the PRC national government. Pursuant to the Financial Support Circular, a purchaser may purchase a new energy vehicle from a seller by paying the original price minus the subsidy amount, and the seller may obtain the subsidy amount from the government after such new energy vehicle is sold to the purchaser. The ES8 is eligible for such subsidies, and the ES6 will be eligible for such subsidies after being added into the Recommended NEV Catalogue. The Financial Support Circular also provided a preliminary phase-out schedule for the provision of subsidies.

On December 29, 2016, the MOF, the MOST, the MIIT and the NDRC jointly issued the *Circular on Adjusting the Subsidy Policy for the Promotion and Application of New Energy Vehicles*, or the Circular on Adjusting the Subsidy Policy, which took effect on January 1, 2017, to adjust the existing subsidy standard for purchasers of new energy vehicles. The Circular on Adjusting the Subsidy Policy capped the local subsidies at 50% of the national subsidy amount, and further specified that national subsidies for purchasers purchasing certain new energy vehicles (except for fuel cell vehicles) from 2019 to 2020 will be reduced by 20% as compared to 2017 subsidy standards.

The subsidy standard is reviewed and updated on an annual basis. The 2019 subsidy standard as provided in the Circular on Further Improving the Subsidy Policies for the Promotion and Application of New Energy Vehicles, which was jointly promulgated by the MOF, the MOST, the MIIT and the NDRC on March 26, 2019, reduced the amount of national subsidies and canceled local subsidies, resulting in a significant reduction in the total subsidy amount applicable to the ES8 and the ES6 as compared to 2018.

The current 2020 subsidy standard, effective from April 23, 2020, was provided in the Circular on Improving the Subsidy Policies for the Promotion and Application of New Energy Vehicles jointly promulgated by the MOF, the MOST, the MIIT and the NDRC on the same day. The current 2020 subsidy standard (i) reduces the base subsidy amount by 10% for each NEV, (ii) sets subsidies for 2 million vehicles as the upper limit of annual subsidy scale; and (iii) provides that national subsidy shall only apply to an NEV with the sale price under RMB300,000 or equipped with battery swapping module. Further, the 2021 and the 2022 subsidy standard are expected to be reduced by 20% and 30% respectively as compared to the standard of the immediate preceding year.

Exemption of Vehicle Purchase Tax

On December 26, 2017, the MOF, the SAT, the MIIT and the MOST jointly issued the *Announcement on Exemption of Vehicle Purchase Tax for New Energy Vehicle*, or the Announcement on Exemption of Vehicle Purchase Tax. On June 28, 2019, the MOF and the SAT jointly issued the *Renewal of Preferential Policies on Vehicle Purchase Tax*, or the Renewal Announcement. Pursuant to the two announcements, from January 1, 2018 to December 31, 2020, the vehicle purchase tax which is applicable for ICE vehicles is not imposed on purchases of qualified new energy vehicles listed in the *Catalogue of New Energy Vehicle Models Exempt from Vehicle Purchase Tax*, or the NEV Catalogue, issued by the MIIT. Such announcement provides that the policy on exemption of vehicle purchase tax is also applicable to new energy vehicles added to the Catalogue prior to December 31, 2017. The ES8 was added into the NEV Catalogue (15th batch) on December 19, 2017, and the ES6 was added into the NEV Catalogue (26th batch) on December 9, 2019. Therefore, purchasers of ES8 and ES6 may enjoy such tax exemption. On April 16, 2020, the MOF, the SAT and the MIIT jointly issued the *Announcement on Exemption of Vehicle Purchase Tax for New Energy Vehicle*, with effect from January 1, 2021, which extends the vehicle purchase tax exemption period provided under the above two announcements till December 31, 2022.

Non-imposition of Vehicle and Vessel Tax

The *Preferential Vehicle and Vessel Tax Policies for Energy-saving and New Energy Vehicles and Vessels*, which was jointly promulgated by the MOF, the Ministry of Transport, the SAT and the MIIT on July 10, 2018, clarifies that pure electric passenger vehicles are not subject to vehicle and vessel tax.

New Energy Vehicle License Plate

In recent years, in order to control the number of motor vehicles on the road, certain local governments have issued restrictions on the issuance of vehicle license plates. These restrictions generally do not apply to the issuance of license plates for new energy vehicles, which makes it easier for purchasers of new energy vehicles to obtain automobile license plates. For example, pursuant to the *Implementation Measures on Encouraging Purchase and Use of New Energy Vehicles in Shanghai*, local authorities will issue new automobile license plates to qualified purchasers of new energy vehicles without requiring such qualified purchasers to go through certain license-plate bidding processes and to pay license-plate purchase fees as compared with purchasers of ICE vehicles.

Policies Relating to Incentives for Electric Vehicle Charging Infrastructure

On January 11, 2016, the MOF, the MOST, the MIIT, the NDRC and the National Energy Administration, or the NEA, jointly promulgated the *Circular on Incentive Policies on the Charging Infrastructures of New Energy Vehicles and Strengthening the Promotion and Application of New Energy Vehicles during the 13th Five-year Plan Period*, which became effective on January 1, 2016. Pursuant to such circular, the central finance department is expected to provide certain local governments with funds and subsidies for the construction and operation of charging facilities and other relevant charging infrastructure.

Certain local governments have also implemented incentive policies for the construction and operation of charging infrastructure. For example, pursuant to the *Supporting Measures on Encouraging the Development of Charging Infrastructures of the Electric Vehicles in Shanghai*, which took effect on May 5, 2016, builders of certain non-self-use charging infrastructure may be eligible for subsidies for up to 30% of their investment cost, and the operator of certain non-self-use charging infrastructure may be eligible for subsidies calculated based on electricity output.

All the above incentives are expected to facilitate acceleration of development of public charging infrastructure, which will consequently offer more accessible and convenient EV charging solutions to purchasers of electric vehicles.

Incentives in Certain Major Cities

Government incentives to purchase electric vehicles exist at both the national and local level in China. As an example, the table below sets forth a summary of preferential policies in eight cities.

	Beijing ✓	Shanghai ✓	Guangzhou ✓	Shenzhen ✓	Chengdu	Nanjing	Hangzhou ✓	Wuhan
Restrictions on ICE vehicles purchases								
Quantity of NEV car plates	60,000 ⁽¹⁾	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited	Unlimited
Subsidies and Preferential Policies to NEVs	All NEVs have specific pool of license plates and have no traffic restrictions	Subsidies and preferential electricity rate for public charging facilities	Subsidies for construction cost and preferential electricity rate for public charging facilities in 2019 and 2020	Subsidies for construction cost of qualified operators of public charging facilities	Subsidies and preferential electricity rate for public and self-use charging facilities	Subsidies for construction cost of qualified operators of public charging facilities and preferential electricity rate for public charging facilities	Subsidies for public charging facilities at 30% of total investment from June 26, 2019 to December 31, 2020 and subsidies for public and self-use charging facilities	Preferential electricity rate for NEV charging facilities, peak time rates and off-peak time rates are applied
Favorable Policies on driving restrictions to NEVs	No restriction on BEVs. ICE vehicles, PHEVs and HEVs are restricted by the last digit of the car plate on workdays	No restriction on NEVs. Non-local ICE vehicles are not allowed to pass through main viaducts ⁽²⁾ from 7am to 10am, and from 3pm to 8pm on workdays	No restriction on NEVs. Non-local ICE vehicles are not permitted to drive in the city center for over four consecutive days, and shall wait four days before entering the city center again	Non-local ICE trucks are not allowed to enter the city from 7am to 10am and from 3pm to 8pm on workdays. No restriction on non-local NEV trucks	No restriction on NEVs. ICE vehicles are not permitted to drive in the city center from 7:30am to 8pm on workdays by the last digit of the car plate	No restriction on NEVs. Non-local ICE light vehicles are not allowed to pass through the tunnel of Yangtze River	No restriction on NEVs. ICE vehicles are restricted by the last digit of the car plate from 7am to 9am and from 4:30pm to 6:30pm on workdays	No restriction on NEVs. ICE vehicles are restricted on designated bridges and tunnels from 7am to 10pm everyday by odd / even number of the car license plate

* References in this table to (i) HEVs are to hybrid electric vehicles and (ii) PHEVs are to plug-in hybrid electric vehicles.

(1) The number of NEV licenses issued by the Beijing local government for 2019 is 60,000 while total new car licenses in Beijing for 2019 is 100,000. The number of NEV licenses issued by the Beijing local government for 2020 is 60,000 while total new car licenses in Beijing for 2020 is 100,000.

(2) Including nine viaducts, two bridges and one tunnel.

Regulations on Value-added Telecommunications Services

In 2000, the State Council promulgated the *Telecommunications Regulations of the PRC*, or the Telecommunications Regulations, which was most recently amended in February 2016 and provides a regulatory framework for telecommunications services providers in the PRC. The Telecommunications Regulations categorize all telecommunications businesses in China as either basic or value-added. Value-added telecommunications services are defined as telecommunications and information services provided through public network infrastructure. Pursuant to the *Classified Catalogue of Telecommunications Services*, an attachment to the Telecommunications Regulations, which was most recently updated in December 2015 by the MIIT, internet information services, or ICP services, are classified as value-added telecommunications services. Under the Telecommunications Regulations and relevant administrative measures, commercial operators of value-added telecommunications services must first obtain a license for conducting Internet content provision services, or an ICP license, from the MIIT or its provincial level counterparts. Otherwise, such operator might be subject to sanctions, including corrective orders and warnings, imposition of fines and confiscation of illegal gains and, in the case of significant infringement, orders to close the website.

Pursuant to the *Administrative Measures on Internet Information Services*, promulgated by the State Council in 2000 and amended in 2011, “internet information services” refer to the provision of information through the internet to online users, and are divided into “commercial internet information services” and “non-commercial internet information services.” A commercial ICP service operator must obtain an ICP license before engaging in any commercial ICP service within China, while the ICP license is not required if the operator will only provide internet information on a non-commercial basis.

In addition to the regulations and measures above, the provision of commercial internet information services on mobile internet applications are regulated by the *Administrative Provisions on Information Services of Mobile Internet Applications*, promulgated by the State Internet Information Office in June 2016. Information services providers of mobile internet applications are subject to these provisions, including acquiring relevant qualifications and being responsible for management of information security.

Regulations on Consumer Rights Protection

Our business is subject to a variety of consumer protection laws, including the *PRC Consumer Rights and Interests Protection Law*, as amended in 2013 and became effective on March 15, 2014, which imposes stringent requirements and obligations on business operators. Failure to comply with these consumer protection laws could subject us to administrative sanctions, such as the issuance of a warning, confiscation of illegal income, imposition of fines, an order to cease business operations, revocation of business licenses, as well as potential civil or criminal liabilities.

Regulations on Internet Information Security and Privacy Protection

In November 2016, the Standing Committee of the National People’s Congress, or the SCNPC, promulgated the *Cyber Security Law of the PRC*, or the Cyber Security Law, which became effective on June 1, 2017. The Cyber Security Law requires that a network operator, which includes, among others, internet information services providers, take technical measures and other necessary measures in accordance with applicable laws and regulations and the compulsory requirements of the national and industrial standards to safeguard the safe and stable operation of its networks. We are subject to such requirements as we are operating a website and mobile application and providing certain internet services mainly through our mobile application. The Cyber Security Law further requires internet information services providers to formulate contingency plans for network security incidents, report to the competent departments immediately upon the occurrence of any incident endangering cyber security and take corresponding remedial measures.

Internet information services providers are also required to maintain the integrity, confidentiality and availability of network data. The Cyber Security Law reaffirms the basic principles and requirements specified in other existing laws and regulations on personal data protection, such as the requirements on the collection, use, processing, storage and disclosure of personal data, and internet information services providers being required to take technical and other necessary measures to ensure the security of the personal information they have collected and prevent the personal information from being divulged, damaged or lost. Any violation of the Cyber Security Law may subject the internet information services provider to warnings, fines, confiscation of illegal gains, revocation of licenses, cancellation of filings, shutdown of websites or criminal liabilities.

Regulations on E-commerce

On August 31, 2018, the SCNPC promulgated the *E-Commerce Law of the People's Republic of China*, or the E-Commerce Law, which became effective as of January 1, 2019. The E-Commerce Law establishes the regulatory framework for the e-commerce sector in the PRC for the first time by laying out certain requirements on e-commerce platform operators. According to the E-Commerce Law, the e-commerce platform operators shall prepare a contingency plan for cybersecurity events and take technological measures and other measures to prevent online illegal and criminal activities. The E-Commerce Law also expressly requires e-commerce platform operators to take necessary actions to ensure fair dealing on their platforms to safeguard the legitimate rights and interests of consumers, including to prepare platform service agreements and transaction information record-keeping and transaction rules, to prominently display such documents on the platform's website, and to keep such information for no less than three years following the completion of a transaction. Where the e-commerce platform operators conduct self-operated business on their platforms, they shall distinguish and mark their self-operated business from the businesses of the business operators using the platform in a prominent manner, and shall not mislead consumers. The e-commerce platform operators shall bear civil liability of a commodity seller or service provider for the business marked as self-operated, pursuant to the law.

Regulations on Land and the Development of Construction Projects

Regulations on Land Grants

Under the *Interim Regulations on Assignment and Transfer of the Rights to the Use of the State-owned Urban Land*, promulgated by the State Council on May 19, 1990, a system of assignment and transfer of the right to use state-owned land was adopted. A land user must pay land premiums to the state as consideration for the assignment of the right to use a land site within a certain term, and the land user who obtained the right to use the land may transfer, lease out, mortgage or otherwise commercially exploit the land within the term of use. Under the *Interim Regulations on Assignment and Transfer of the Rights to the Use of the State-owned Urban Land and the Law of the PRC on Urban Real Estate Administration*, the local land administration authority may enter into an assignment contract with the land user for the assignment of land use rights. The land user is required to pay the land premium as provided in the assignment contract. After the full payment of the land premium, the land user must register with the land administration authority and obtain a land use rights certificate which evidences the acquisition of land use rights.

Regulations on Planning of a Construction Project

Pursuant to the *Regulations on Planning Administration regarding Assignment and Transfer of the Rights to Use of the State-owned Land in Urban Area* promulgated by the Ministry of Construction in December 1992 and amended in January 2011, a construction land planning permit shall be obtained from the municipal planning authority with respect to the planning and use of land. According to the *Urban and Rural Planning Law of the PRC* promulgated by the SCNPC on October 28, 2007 and amended on April 24, 2015, a construction work planning permit must be obtained from the competent urban and rural planning government authority for the construction of any structure, fixture, road, pipeline or other engineering project within an urban or rural planning area.

After obtaining a construction work planning permit, subject to certain exceptions, a construction enterprise must apply for a construction work commencement permit from the construction authority under the local people's government at the county level or above in accordance with the *Administrative Provisions on Construction Permit of Construction Projects* promulgated by the Ministry of Housing and Urban-Rural Development, or the MOHURD, on June 25, 2014 and implemented on October 25, 2014 and amended on September 19, 2018.

Pursuant to the *Administrative Measures for Reporting Details Regarding Acceptance Examination upon Completion of Buildings and Municipal Infrastructure* promulgated by the Ministry of Construction on April 4, 2000 and amended on October 19, 2009 and the *Provisions on Acceptance Examination upon Completion of Buildings and Municipal Infrastructure* promulgated and implemented by the MOHURD on December 2, 2013, upon the completion of a construction project, the construction enterprise must submit an application to the competent department in the people's government at or above county level where the project is located, for examination upon completion of building and for filing purpose; and to obtain the filing form for acceptance and examination upon completion of construction project.

Regulations on Environmental Protection and Work Safety

Regulations on Environmental Protection

Pursuant to the *Environmental Protection Law of the PRC* promulgated by the SCNPC, on December 26, 1989, amended on April 24, 2014 and effective on January 1, 2015, any entity which discharges or will discharge pollutants during the course of operations or other activities must implement effective environmental protection safeguards and procedures to control and properly treat waste gas, waste water, waste residue, dust, malodorous gases, radioactive substances, noise vibrations, electromagnetic radiation and other hazards produced during such activities.

Environmental protection authorities impose various administrative penalties on persons or enterprises in violation of the *Environmental Protection Law*. Such penalties include warnings, fines, orders to rectify within the prescribed period, orders to cease construction, orders to restrict or suspend production, orders to make recovery, orders to disclose relevant information or make an announcement, imposition of administrative action against relevant responsible persons, and orders to shut down enterprises. Any person or entity that pollutes the environment resulting in damage could also be held liable under the *Tort Law of the PRC*. In addition, environmental organizations may also bring lawsuits against any entity that discharges pollutants detrimental to the public welfare.

Regulations on Work Safety

Under relevant construction safety laws and regulations, including the *Work Safety Law of the PRC* which was promulgated by the SCNPC on June 29, 2002, amended on August 27, 2009, August 31, 2014, and effective as of December 1, 2014, production and operating business entities must establish objectives and measures for work safety and improve the working environment and conditions for workers in a planned and systematic way. A work safety protection scheme must also be set up to implement the work safety job responsibility system. In addition, production and operating business entities must arrange work safety training and provide the employees with protective equipment that meets the national standards or industrial standards. Automobile and components manufacturers are subject to the above-mentioned environment protection and work safety requirements.

Regulations on Fire Control

Pursuant to the *Fire Safety Law of the PRC* promulgated by the SCNPC on April 29, 1998, amended on October 28, 2008 and which became effective on May 1, 2009 and the *Provisions on Supervision and Administration of Fire Protection of Construction Projects* promulgated by the Ministry of Public Security of the PRC on April 30, 2009, implemented on May 1, 2009 and later amended on July 17, 2012, which became effective on November 1, 2012, the construction entity of a large-scale crowded venue (including the construction of a manufacturing factory that is over 2,500 square meters) and other special construction projects must apply for fire prevention design review with fire control authorities, and complete fire assessment inspection and acceptance procedures after the construction project is completed. The construction entity of other construction projects must complete the filing for fire prevention design and the fire safety completion inspection and acceptance procedures within seven business days after obtaining the construction work permit and passing the construction completion inspection and acceptance. If the construction entity fails to pass the fire safety inspection before such venue is put into use, or fails to conform to the fire safety requirements after such inspection, it shall be subject to (i) orders to suspend the construction of projects, use of such projects or operation of relevant business; and (ii) a fine ranging between RMB30,000 and RMB300,000.

Regulations on Intellectual Property Rights

Patent Law

According to the *Patent Law of the PRC* (Revised in 2008), the State Intellectual Property Office is responsible for administering patent law in the PRC. The patent administration departments of provincial, autonomous region or municipal governments are responsible for administering patent law within their respective jurisdictions. The Chinese patent system adopts a first-to-file principle, which means that when more than one person files different patent applications for the same invention, only the person who files the application first is entitled to obtain a patent of the invention. To be patentable, an invention or a utility model must meet three criteria: novelty, inventiveness and practicability. A patent is valid for twenty years in the case of an invention and ten years in the case of utility models and designs.

Regulations on Copyright

The *Copyright Law of the PRC*, or the Copyright Law, which took effect on June 1, 1991 and was amended in 2001 and in 2010, provides that Chinese citizens, legal persons, or other organizations shall, whether published or not, own copyright in their copyrightable works, which include, among others, works of literature, art, natural science, social science, engineering technology and computer software. Copyright owners enjoy certain legal rights, including right of publication, right of authorship and right of reproduction. The Copyright Law as revised in 2010 extends copyright protection to Internet activities, products disseminated over the Internet and software products. In addition, the Copyright Law provides for a voluntary registration system administered by the China Copyright Protection Center, or the CPCC. According to the Copyright Law, an infringer of the copyrights shall be subject to various civil liabilities, which include ceasing infringement activities, apologizing to the copyright owners and compensating the loss of the copyright owner. Infringers of a copyright may also be subject to fines and/or administrative or criminal liabilities in severe situations.

Pursuant to the *Computer Software Copyright Protection Regulations* promulgated by the State Council on December 20, 2001 and amended on January 30, 2013, the software copyright owner may go through the registration formalities with a software registration authority recognized by the State Council's copyright administrative department. The software copyright owner may authorize others to exercise that copyright, and is entitled to receive remuneration.

Trademark Law

Trademarks are protected by the *Trademark Law of the PRC* which was adopted on August 23, 1982 and subsequently amended in 1993, 2001 and 2013, respectively, as well as by the *Implementation Regulations of the PRC Trademark Law* adopted by the State Council in 2002 and as most recently amended on April 29, 2014. The Trademark Office under the State Administration for Industry and Commerce, handles trademark registrations. The Trademark Office grants a ten-year term to registered trademarks and the term may be renewed for another ten-year period upon request by the trademark owner. A trademark registrant may license its registered trademarks to another party by entering into trademark license agreements, which must be filed with the Trademark Office for its record. As with patents, the Trademark Law has adopted a first-to-file principle with respect to trademark registration. If a trademark applied for is identical or similar to another trademark which has already been registered or subject to a preliminary examination and approval for use on the same or similar kinds of products or services, such trademark application may be rejected. Any person applying for the registration of a trademark may not injure existing trademark rights first obtained by others, nor may any person register in advance a trademark that has already been used by another party and has already gained a "sufficient degree of reputation" through such party's use.

Regulations on Domain Names

The MIIT promulgated the *Measures on Administration of Internet Domain Names*, or the Domain Name Measures, on August 24, 2017, which took effect on November 1, 2017 and replaced the *Administrative Measures on China Internet Domain Name* promulgated by the MIIT on November 5, 2004. According to the Domain Name Measures, the MIIT is in charge of the administration of PRC internet domain names. The domain name registration follows a first-to-file principle. Applicants for registration of domain names must provide the true, accurate and complete information of their identities to domain name registration service institutions. The applicants will become the holder of such domain names upon the completion of the registration procedure.

Regulations on Foreign Investment in China

Guidance Catalogue of Industries for Foreign Investment

Investments in the PRC by foreign investors and foreign-invested enterprises were regulated by the Guidance Catalogue of Industries for Foreign Investment, or the Foreign Investment Catalogue, jointly promulgated by the MOFCOM and NDRC on June 28, 1995 and amended from time to time. The Foreign Investment Catalogue was last repealed by the Special Management Measures (Negative List) for the Access of Foreign Investment (2019 Version), or the 2019 Negative List, and the Catalogue of Industries for Encouraging Foreign Investment (2019 Version), or the 2019 Encouraging Catalogue, both of which were jointly promulgated by the MOFCOM and the NDRC on June 30, 2019 and became effective on July 30, 2019. The 2019 Encouraging Catalogue and the 2019 Negative List set out the industries and economic activities in which foreign investment in the PRC is encouraged, restricted or prohibited. Pursuant to the 2019 Encouraging Catalogue and the 2019 Negative List, the manufacture of the NEVs fall within the permitted catalogue, and the manufacture and the development of key parts and components of NEVs fall within the encouraged catalogue. However, the 2019 Negative List also provides that foreign investors shall hold no more than 50% of the equity interest in a service provider operating certain value-added telecommunications services (other than for e-commerce).

The establishment, operation and management of corporate entities in the PRC is governed by the *PRC Company Law*, which was initially promulgated by the SCNPC on December 29, 1993 and came into effect on July 1, 1994, and was subsequently amended on December 25, 1999, August 28, 2004, October 27, 2005, December 28, 2013 and October 26, 2018. The latest amended *PRC Company Law* became effective on October 26, 2018. The *PRC Company Law* generally governs two types of companies—limited liability companies and joint stock limited companies. The *PRC Company Law* shall also apply to foreign-invested companies. Where laws on foreign investment have other stipulations, such stipulations shall prevail. The establishment procedures, approval or record-filing procedures, registered capital requirements, foreign exchange matters, accounting practices, taxation and labor matters of a wholly foreign-owned enterprise are regulated by the Foreign Investment Law, which became effective on January 1, 2020 and replaced three existing laws on foreign investments in China, namely, the PRC Equity Joint Venture Law, the PRC Cooperative Joint Venture Law and the Wholly Foreign-owned Enterprise Law, together with their implementation rules and ancillary regulations.

Foreign Investment Law

On March 15, 2019, the National People’s Congress promulgated the Foreign Investment Law, which has become effective on January 1, 2020 and replaced three existing laws on foreign investments in China, namely, the PRC Equity Joint Venture Law, the PRC Cooperative Joint Venture Law and the Wholly Foreign-owned Enterprise Law, together with their implementation rules and ancillary regulations. The Foreign Investment Law embodies an expected PRC regulatory trend to rationalize its foreign investment regulatory regime in line with prevailing international practice and the legislative efforts to unify the corporate legal requirements for both foreign and domestic invested enterprises in China. The Foreign Investment Law establishes the basic framework for the access to, and the promotion, protection and administration of foreign investments in view of investment protection and fair competition.

According to the Foreign Investment Law, “foreign investment” refers to investment activities directly or indirectly conducted by one or more natural persons, business entities, or otherwise organizations of a foreign country (collectively referred to as “foreign investor”) within China, and the investment activities include the following situations: (i) a foreign investor, individually or collectively with other investors, establishes a foreign-invested enterprise within China; (ii) a foreign investor acquires stock shares, equity shares, shares in assets, or other similar rights and interests of an enterprise within China; (iii) a foreign investor, individually or collectively with other investors, invests in a new project within China; and (iv) investments in other means as provided by laws, administrative regulations, or the State Council.

According to the Foreign Investment Law, the State Council will publish or approve to publish a catalogue for special administrative measures, or the “negative list.” The Foreign Investment Law grants national treatment to foreign invested entities, except for those foreign invested entities that operate in industries deemed to be either “restricted” or “prohibited” in the “negative list.” Because the “negative list” has yet been published, it is unclear whether it will differ from the current 2019 Negative List. The Foreign Investment Law provides that foreign invested entities operating in foreign restricted or prohibited industries will require market entry clearance and other approvals from relevant PRC governmental authorities.

Furthermore, the Foreign Investment Law provides that foreign invested enterprises established according to the existing laws regulating foreign investment may maintain their structure and corporate governance within five years after the implementation of the Foreign Investment Law.

In addition, the Foreign Investment Law also provides several protective rules and principles for foreign investors and their investments in the PRC, including, among others, that local governments shall abide by their commitments to the foreign investors; foreign-invested enterprises are allowed to issue stocks and corporate bonds; except for special circumstances, in which case statutory procedures shall be followed and fair and reasonable compensation shall be made in a timely manner, expropriation or requisition of the investment of foreign investors is prohibited; mandatory technology transfer is prohibited; and the capital contributions, profits, capital gains, proceeds out of asset disposal, licensing fees of intellectual property rights, indemnity or compensation legally obtained, or proceeds received upon settlement by foreign investors within China, may be freely remitted inward and outward in RMB or a foreign currency. Also, foreign investors or the foreign investment enterprise should be imposed legal liabilities for failing to report investment information in accordance with the requirements.

On December 26, 2019, the State Council promulgated the Implementation Regulations on the Foreign Investment Law, effective on January 1, 2020, which further requires that foreign-invested enterprises and domestic enterprises shall be treated equally with respect to policy making and implementation. Pursuant to the Implementation Regulations on the Foreign Investment Law, if the existing foreign-invested enterprises fail to change their original forms as of January 1, 2025, the relevant market regulation departments will not process other registration matters for the enterprises, and may disclose their relevant information to the public.

On December 30, 2019, the MOFCOM and the SAMR jointly issued the Measures for Reporting of Foreign Investment Information, or the Foreign Investment Information Measures, which became effective on January 1, 2020 and replaced the Interim Administrative Measures for the Record-filing of the Establishment and Modification of Foreign-invested Enterprises. Since January 1, 2020, for foreign investors carrying out investment activities directly or indirectly in the PRC, foreign investors or foreign-invested enterprises shall submit investment information through the Enterprise Registration System and the National Enterprise Credit Information Publicity System operated by the State Administration for Market Regulation. Foreign investors or foreign-invested enterprises shall disclose their investment information by submitting reports for their establishments, modifications and cancellations and their annual reports in accordance with the Foreign Investment Information Measures. If a foreign-invested enterprise investing in the PRC has finished submitting its reports for its establishment, modifications and cancellation and its annual reports, the relevant information will be shared by the competent market regulation department to the competent commercial department, and such foreign-invested enterprise is not required to submit the reports to the two departments separately.

Regulations on Foreign Exchange

General Administration of Foreign Exchange

Under the *PRC Foreign Currency Administration Rules* promulgated on January 29, 1996 and most recently amended on August 5, 2008 and various regulations issued by the State Administration of Foreign Exchange of the PRC, or the SAFE, and other relevant PRC government authorities, Renminbi is convertible into other currencies for current account items, such as trade-related receipts and payments and payment of interest and dividends. The conversion of Renminbi into other currencies and remittance of the converted foreign currency outside the PRC of capital account items, such as direct equity investments, loans and repatriation of investment, requires the prior approval from the SAFE or its local office.

Payments for transactions that take place within the PRC must be made in Renminbi. Unless otherwise approved, PRC companies may not repatriate foreign currency payments received from abroad or retain the same abroad. Foreign-invested enterprises may retain foreign exchange in accounts with designated foreign exchange banks under the current account items subject to a cap set by the SAFE or its local branch. Foreign exchange proceeds under the current accounts may be either retained or sold to a financial institution engaged in settlement and sale of foreign exchange pursuant to relevant SAFE rules and regulations. For foreign exchange proceeds under the capital accounts, approval from the SAFE is generally required for the retention or sale of such proceeds to a financial institution engaged in settlement and sale of foreign exchange.

Pursuant to the *Circular of the SAFE on Further Improving and Adjusting Foreign Exchange Administration Policies for Direct Investment*, or the SAFE Circular No. 59, promulgated by SAFE on November 19, 2012, which became effective on December 17, 2012 and was further amended on May 4, 2015 and October 10, 2018, approval of SAFE is not required for opening a foreign exchange account and depositing foreign exchange into the accounts relating to the direct investments. The SAFE Circular No. 59 also simplified foreign exchange-related registration required for the foreign investors to acquire the equity interests of Chinese companies and further improve the administration on foreign exchange settlement for foreign-invested enterprises.

The *Circular on Further Simplifying and Improving the Foreign Currency Management Policy on Direct Investment*, or SAFE Circular No. 13, effective from June 1, 2015, cancels the administrative approvals of foreign exchange registration of direct domestic investment and direct overseas investment and simplifies the procedure of foreign exchange-related registration. Pursuant to SAFE Circular No. 13, the investors shall register with banks for direct domestic investment and direct overseas investment.

The *Circular on Reforming the Management Approach regarding the Settlement of Foreign Capital of Foreign-invested Enterprise*, or SAFE Circular No. 19, which was promulgated by the SAFE on March 30, 2015 and became effective on June 1, 2015, provides that a foreign-invested enterprise may, according to its actual business needs, settle with a bank the portion of the foreign exchange capital in its capital account for which the relevant foreign exchange administration has confirmed monetary capital contribution rights and interests (or for which the bank has registered the injection of the monetary capital contribution into the account). Pursuant to SAFE Circular No. 19, for the time being, foreign-invested enterprises are allowed to settle 100% of their foreign exchange capital on a discretionary basis; a foreign-invested enterprise shall truthfully use its capital for its own operational purposes within the scope of business; where an ordinary foreign-invested enterprise makes domestic equity investment with the amount of foreign exchanges settled, the foreign-invested enterprise must first go through domestic re-investment registration and open a corresponding account for foreign exchange settlement pending payment with the foreign exchange administration or the bank at the place where it is registered.

The *Circular on Reforming and Regulating Policies on the Control over Foreign Exchange Settlement of Capital Accounts*, or SAFE Circular No. 16, which was promulgated by the SAFE and became effective on June 9, 2016, provides that enterprises registered in the PRC may also convert their foreign debts from foreign currency into Renminbi on a self-discretionary basis. SAFE Circular No. 16 also provides an integrated standard for conversion of foreign exchange under capital account items (including, but not limited to, foreign currency capital and foreign debts) on a self-discretionary basis, which applies to all enterprises registered in the PRC.

According to the *Administrative Rules on the Company Registration*, which were promulgated by the State Council on June 24, 1994, became effective on July 1, 1994 and were amended on February 6, 2016, and other laws and regulations governing the foreign-invested enterprises and company registrations, the establishment of a foreign-invested enterprise and any capital increase and other major changes in a foreign-invested enterprise shall be registered with the SAMR or its local counterparts, and shall be filed via the foreign investment comprehensive administrative system, or the FICMIS, if such foreign-invested enterprise does not involve special access administrative measures prescribed by the PRC government.

Pursuant to SAFE Circular No. 13 and other laws and regulations relating to foreign exchange, when setting up a new foreign-invested enterprise, the foreign-invested enterprise shall register with the bank located at its registered place after obtaining the business license, and if there is any change in capital or other changes relating to the basic information of the foreign-invested enterprise, including, without limitation, any increase in its registered capital or total investment, the foreign-invested enterprise must register such changes with the bank located at its registered place after obtaining approval from or completing the filing with competent authorities. Pursuant to the relevant foreign exchange laws and regulations, the above-mentioned foreign exchange registration with the banks will typically take less than four weeks upon the acceptance of the registration application.

Based on the foregoing, if we intend to provide funding to our wholly foreign-owned subsidiaries through capital injection at or after their establishment, we must register the establishment of and any follow-on capital increase in our wholly foreign-owned subsidiaries with the SAMR or its local counterparts, file such via the FICMIS and register such with the local banks for the foreign exchange related matters.

Loans by the Foreign Companies to their PRC Subsidiaries

A loan made by foreign investors as shareholders in a foreign-invested enterprise is considered to be foreign debt in China and is regulated by various laws and regulations, including the *Regulation of the People's Republic of China on Foreign Exchange Administration*, the *Interim Provisions on the Management of Foreign Debts*, the *Statistical Monitoring of Foreign Debts Tentative Provisions*, the *Detailed Rules for the Implementation of Provisional Regulations on Statistics and Supervision of External Debt*, and the *Administrative Measures for Registration of Foreign Debts*. Under these rules and regulations, a shareholder loan in the form of foreign debt made to a PRC entity does not require the prior approval of the SAFE. However, such foreign debt must be registered with and recorded by the SAFE or its local branches within fifteen (15) business days after entering into the foreign debt contract. Pursuant to these rules and regulations, the balance of the foreign debts of a foreign-invested enterprise shall not exceed the difference between the total investment and the registered capital of the foreign-invested enterprise, or Total Investment and Registered Capital Balance.

Pursuant to the *Interim Provisions of the State Administration for Industry and Commerce on the Ratio of the Registered Capital to the Total Investment of a Sino-Foreign Equity Joint Venture Enterprise*, promulgated by the SAMR and effective on February 17, 1987, with respect to a sino-foreign equity joint venture, the registered capital shall be (i) no less than 7/10 of its total investment, if the total investment is US\$3 million or under US\$3 million; (ii) no less than 1/2 of its total investment, if the total investment is ranging from US\$3 million to US\$10 million (including US\$10 million), provided that the registered capital shall not be less than US\$2.1 million if the total investment is less than US\$4.2 million; (iii) no less than 2/5 of its total investment, if the total investment is ranging from US\$10 million to US\$30 million (including US\$30 million), provided that the registered capital shall not be less than US\$5 million if the total investment is less than US\$12.5 million; and (iv) no less than 1/3 of its total investment, if the total investment exceeds US\$30 million, provided that the registered capital shall not be less than US\$12 million if the total investment is less than US\$36 million.

On January 12, 2017, the People's Bank of China, or the PBOC, promulgated the *Notice of the People's Bank of China on Matters concerning the Macro-Prudential Management of Full-Covered Cross-Border Financing*, or PBOC Notice No. 9. Pursuant to PBOC Notice No. 9, within a transition period of one year from January 12, 2017, the foreign-invested enterprises may adopt the currently valid foreign debt management mechanism, or Current Foreign Debt Mechanism, or the mechanism as provided in PBOC Notice No. 9, or Notice No. 9 Foreign Debt Mechanism, at their own discretions. PBOC Notice No. 9 provides that enterprises may conduct independent cross-border financing in RMB or foreign currencies as required. Pursuant to PBOC Notice No. 9, the outstanding cross-border financing of an enterprise (the outstanding balance drawn, here and below) shall be calculated using a risk-weighted approach, or Risk-Weighted Approach, and shall not exceed certain specified upper limits. PBOC Notice No. 9 further provides that the upper limit of risk-weighted outstanding cross-border financing for enterprises shall be 200% of its net assets, or Net Asset Limits. Enterprises shall file with the SAFE in its capital item information system after entering into the relevant cross-border financing contracts and prior to three business days before drawing any money from the foreign debts.

Based on the foregoing, if we provide funding to our wholly foreign-owned subsidiaries through shareholder loans, the balance of such loans shall not exceed the Total Investment and Registered Capital Balance and we will need to register such loans with the SAFE or its local branches in the event that the Current Foreign Debt Mechanism applies, or the balance of such loans shall be subject to the Risk-Weighted Approach and the Net Asset Limits and we will need to file the loans with the SAFE in its information system in the event that the Notice No. 9 Foreign Debt Mechanism applies. According to PBOC Notice No. 9, after a transition period of one year from January 11, 2017, the PBOC and the SAFE will determine the cross-border financing administration mechanism for the foreign-invested enterprises after evaluating the overall implementation of PBOC Notice No. 9. As of the date hereof, neither the PBOC nor the SAFE has promulgated and made public any further rules, regulations, notices or circulars in this regard. It is uncertain which mechanism will be adopted by the PBOC and the SAFE in the future and what statutory limits will be imposed on us when providing loans to our PRC subsidiaries.

Offshore Investment

Under the *Circular of the State Administration of Foreign Exchange on Issues Concerning the Foreign Exchange Administration over the Overseas Investment and Financing and Round-trip Investment by Domestic Residents via Special Purpose Vehicles*, or SAFE Circular 37, issued by the SAFE and effective on July 4, 2014, PRC residents are required to register with the local SAFE branch prior to the establishment or control of an offshore special purpose vehicle, or SPV, which is defined as an offshore enterprise directly established or indirectly controlled by PRC residents for investment and financing purposes, with the enterprise assets or interests PRC residents hold in China or overseas. The term "control" means to obtain the operation rights, right to proceeds or decision-making power of an SPV through acquisition, trust, holding shares on behalf of others, voting rights, repurchase, convertible bonds or other means. An amendment to registration or subsequent filing with the local SAFE branch by such PRC resident is also required if there is any change in basic information of the offshore company or any material change with respect to the capital of the offshore company. At the same time, the SAFE has issued the *Operation Guidance for the Issues Concerning Foreign Exchange Administration over Round-trip Investment* regarding the procedures for SAFE registration under SAFE Circular 37, which became effective on July 4, 2014 as an attachment of Circular 37.

Under the relevant rules, failure to comply with the registration procedures set forth in the SAFE Circular 37 may result in bans on the foreign exchange activities of the relevant onshore company, including the payment of dividends and other distributions to its offshore parent or affiliates, and may also subject relevant PRC residents to penalties under PRC foreign exchange administration regulations.

Regulations on Dividend Distribution

The principal laws and regulations regulating the distribution of dividends by foreign-invested enterprises in the PRC include the *Company Law of the PRC*, as amended in 2004, 2005, 2013 and 2018, the *Wholly Foreign-owned Enterprise Law* promulgated in 1986 and amended in 2000 and 2016 and its implementation regulations promulgated in 1990 and subsequently amended in 2001 and 2014, the *Equity Joint Venture Law of the PRC* promulgated in 1979 and subsequently amended in 1990, 2001 and 2016 and its implementation regulations promulgated in 1983 and subsequently amended in 1986, 1987, 2001, 2011 and 2014, and the *Cooperative Joint Venture Law of the PRC* promulgated in 1988 and amended in 2000 and 2017 and its implementation regulations promulgated in 1995 and amended in 2014 and 2017. Under the current regulatory regime in the PRC, foreign-invested enterprises in the PRC may pay dividends only out of their retained earnings, if any, determined in accordance with PRC accounting standards and regulations. A PRC company is required to set aside as statutory reserve funds at least 10% of its after-tax profit, until the cumulative amount of such reserve funds reaches 50% of its registered capital unless laws regarding foreign investment provide otherwise. A PRC company shall not distribute any profits until any losses from prior fiscal years have been offset. Profits retained from prior fiscal years may be distributed together with distributable profits from the current fiscal year.

Regulations on Taxation

Enterprise Income Tax

On March 16, 2007, the SCNPC promulgated the *PRC Enterprise Income Tax Law* which was amended on February 24, 2017 and December 29, 2018. On December 6, 2007, the State Council enacted the *Regulations for the Implementation of the Enterprise Income Tax Law*, or collectively, the EIT Law. The EIT Law came into effect on January 1, 2008. Under the EIT Law, both resident enterprises and non-resident enterprises are subject to tax in the PRC. Resident enterprises are defined as enterprises that are established in China in accordance with PRC laws, or that are established in accordance with the laws of foreign countries but are actually or in effect controlled from within the PRC. Non-resident enterprises are defined as enterprises that are organized under the laws of foreign countries and whose actual management is conducted outside the PRC, but have established institutions or premises in the PRC, or have no such established institutions or premises but have income generated from inside the PRC. Under the EIT Law and relevant implementing regulations, a uniform corporate income tax rate of 25% is applied. However, if non-resident enterprises have not formed permanent establishments or premises in the PRC, or if they have formed permanent establishment or premises in the PRC but there is no actual relationship between the relevant income derived in the PRC and the established institutions or premises set up by them, enterprise income tax is set at the rate of 10% with respect to their income sourced from inside the PRC.

Value-added Tax

The *Provisional Regulations of the PRC on Value-added Tax* were promulgated by the State Council on December 13, 1993, came into effect on January 1, 1994 and were subsequently amended from time to time; and the *Detailed Rules for the Implementation of the Provisional Regulations of the PRC on Value-added Tax* (Revised in 2011) was promulgated by the MOF on December 25, 1993 and subsequently amended on December 15, 2008 and October 28, 2011, or collectively, the VAT Law. On November 19, 2017, the State Council promulgated the *Decisions on Abolishing the Provisional Regulations of the PRC on Business Tax and Amending the Provisional Regulations of the PRC on Value-added Tax*, or the Order 691. On March 21, 2019, the MOF, the SAT and the General Administration of Customs jointly issued the *Announcement on Relevant Policies on Deepen the Reform of Value-added Tax*, or the Announcement 39. According to the VAT Law and the Order 691, all enterprises and individuals engaged in the sale of goods, the provision of processing, repair and replacement services, sales of services, intangible assets, real property and the importation of goods within the territory of the PRC are the taxpayers of value-added tax, or VAT. According to the Announcement 39, the VAT tax rates generally applicable are simplified as 13%, 9%, 6% and 0%, which will become effective on April 1, 2019, and the VAT tax rate applicable to the small-scale taxpayers is 3%.

Dividend Withholding Tax

The EIT Law provides that since January 1, 2008, an income tax rate of 10% will normally be applicable to dividends declared to non-PRC resident investors that do not have an establishment or place of business in the PRC, or that have such establishment or place of business but the relevant income is not effectively connected with the establishment or place of business, to the extent such dividends are derived from sources within the PRC.

Pursuant to the *Arrangement Between the Mainland of China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Capital*, or the Double Taxation Avoidance Arrangement, and other applicable PRC laws, if a Hong Kong resident enterprise is determined by the competent PRC tax authority to have satisfied the relevant conditions and requirements under such Double Taxation Avoidance Arrangement and other applicable laws, the 10% withholding tax on the dividends the Hong Kong resident enterprise receives from a PRC resident enterprise may be reduced to 5%. However, based on the *Circular on Certain Issues with Respect to the Enforcement of Dividend Provisions in Tax Treaties*, or SAT Circular 81, issued on February 20, 2009 by the SAT, if the relevant PRC tax authorities determine, in their discretions, that a company benefits from such reduced income tax rate due to a structure or arrangement that is primarily tax-driven, such PRC tax authorities may adjust the preferential tax treatment. According to the *Circular on Several Questions regarding the "Beneficial Owner" in Tax Treaties*, which was issued on February 3, 2018 by the SAT and took effect on April 1, 2018, when determining the applicant's status as the "beneficial owner" regarding tax treatments in connection with dividends, interests or royalties in the tax treaties, several factors, including, without limitation, whether the applicant is obligated to pay more than 50% of his or her income in twelve months to residents in third country or region, whether the business operated by the applicant constitutes the actual business activities, and whether the counterparty country or region to the tax treaties does not levy any tax or grant any tax exemption on relevant incomes or levy tax at an extremely low rate, will be taken into account, and such factors will be analyzed according to the actual circumstances of the specific cases. This circular further provides that an applicant who intends to prove his or her status as the "beneficial owner" shall submit the relevant documents to the relevant tax bureau according to the *Announcement on Issuing the Measures for the Administration of Non-Resident Taxpayers' Enjoyment of the Treatment under Tax Agreements*.

Tax on Indirect Transfer

On February 3, 2015, the SAT issued the *Circular on Issues of Enterprise Income Tax on Indirect Transfers of Assets by Non-PRC Resident Enterprises*, or Circular 7. Pursuant to Circular 7, an "indirect transfer" of assets, including equity interests in a PRC resident enterprise, by non-PRC resident enterprises, may be recharacterized and treated as a direct transfer of PRC taxable assets, if such arrangement does not have a reasonable commercial purpose and was established for the purpose of avoiding payment of PRC enterprise income tax. As a result, gains derived from such indirect transfer may be subject to PRC enterprise income tax. When determining whether there is a "reasonable commercial purpose" of the transaction arrangement, features to be taken into consideration include, inter alia, whether the main value of the equity interest of the relevant offshore enterprise derives directly or indirectly from PRC taxable assets; whether the assets of the relevant offshore enterprise mainly consists of direct or indirect investment in China or if its income is mainly derived from China; and whether the offshore enterprise and its subsidiaries directly or indirectly holding PRC taxable assets have a real commercial nature which is evidenced by their actual function and risk exposure. According to Circular 7, where the payer fails to withhold any or sufficient tax, the transferor shall declare and pay such tax to the tax authority by itself within the statutory time limit. Late payment of applicable tax will subject the transferor to default interest. Circular 7 does not apply to transactions of sale of shares by investors through a public stock exchange where such shares were acquired on a public stock exchange. On October 17, 2017, the SAT issued the *Circular on Issues of Tax Withholding regarding Non-PRC Resident Enterprise Income Tax*, or SAT Circular 37, which was amended by the *Announcement of the State Administration of Taxation on Revising Certain Taxation Normative Documents* issued on June 15, 2018 by the SAT. The SAT Circular 37 further elaborates the relevant implemental rules regarding the calculation, reporting and payment obligations of the withholding tax by the non-resident enterprises. Nonetheless, there remain uncertainties as to the interpretation and application of Circular 7. Circular 7 may be determined by the tax authorities to be applicable to our offshore transactions or sale of our shares or those of our offshore subsidiaries where non-resident enterprises, being the transferors, were involved.

Regulations on Employment and Social Welfare

Labor Contract Law

The *Labor Contract Law of the PRC*, or the Labor Contract Law, which was promulgated on January 1, 2008 and amended on December 28, 2012, is primarily aimed at regulating rights and obligations of employer and employee relationships, including the establishment, performance and termination of labor contracts. Pursuant to the Labor Contract Law, labor contracts shall be concluded in writing if labor relationships are to be or have been established between employers and employees. Employers are prohibited from forcing employees to work above certain time limits and employers shall pay employees for overtime work in accordance with national regulations. In addition, employee wages shall be no lower than local standards on minimum wages and must be paid to employees in a timely manner.

Interim Provisions on Labor Dispatch

Pursuant to the *Interim Provisions on Labor Dispatch* promulgated by the Ministry of Human Resources and Social Security on January 24, 2014, which became effective on March 1, 2014, dispatched workers are entitled to equal pay with full-time employees for equal work. Employers are allowed to use dispatched workers for temporary, auxiliary or substitutive positions, and the number of dispatched workers may not exceed 10% of the total number of employees.

Social Insurance and Housing Fund

As required under the *Regulation of Insurance for Labor Injury* implemented on January 1, 2004 and amended in 2010, the *Provisional Measures for Maternity Insurance of Employees of Corporations* implemented on January 1, 1995, the *Decisions on the Establishment of a Unified Program for Old-Aged Pension Insurance of the State Council* issued on July 16, 1997, the *Decisions on the Establishment of the Medical Insurance Program for Urban Workers of the State Council* promulgated on December 14, 1998, the *Unemployment Insurance Measures* promulgated on January 22, 1999 and the *Social Insurance Law of the PRC* implemented on July 1, 2011 and amended on December 29, 2018, employers are required to provide their employees in the PRC with welfare benefits covering pension insurance, unemployment insurance, maternity insurance, work-related injury insurance and medical insurance. These payments are made to local administrative authorities. Any employer that fails to make social insurance contributions may be order to rectify the non-compliance and pay the required contributions within a prescribed time limit and be subject to a late fee. If the employer still fails to rectify the failure to make the relevant contributions within the prescribed time, it may be subject to a fine ranging from one to three times the amount overdue.

In accordance with the *Regulations on the Administration of Housing Funds* which was promulgated by the State Council in 1999 and amended in 2002, employers must register at the designated administrative centers and open bank accounts for depositing employees' housing funds. Employer and employee are also required to pay and deposit housing funds, with an amount no less than 5% of the monthly average salary of the employee in the preceding year in full and on time. See "Item 3. Key Information—D. Risk Factors—Risks Related to Doing Business in China—Increases in labor costs and enforcement of stricter labor laws and regulations in the PRC may adversely affect our business and our profitability."

Employee Stock Incentive Plan

Pursuant to the *Notice of Issues Related to the Foreign Exchange Administration for Domestic Individuals Participating in Stock Incentive Plan of Overseas Listed Company*, which was issued by the SAFE on February 15, 2012, employees, directors, supervisors, and other senior management who participate in any stock incentive plan of a publicly-listed overseas company and who are PRC citizens or non-PRC citizens residing in China for a continuous period of no less than one year, subject to a few exceptions, are required to register with the SAFE through a qualified domestic agent, which may be a PRC subsidiary of such overseas listed company, and complete certain other procedures.

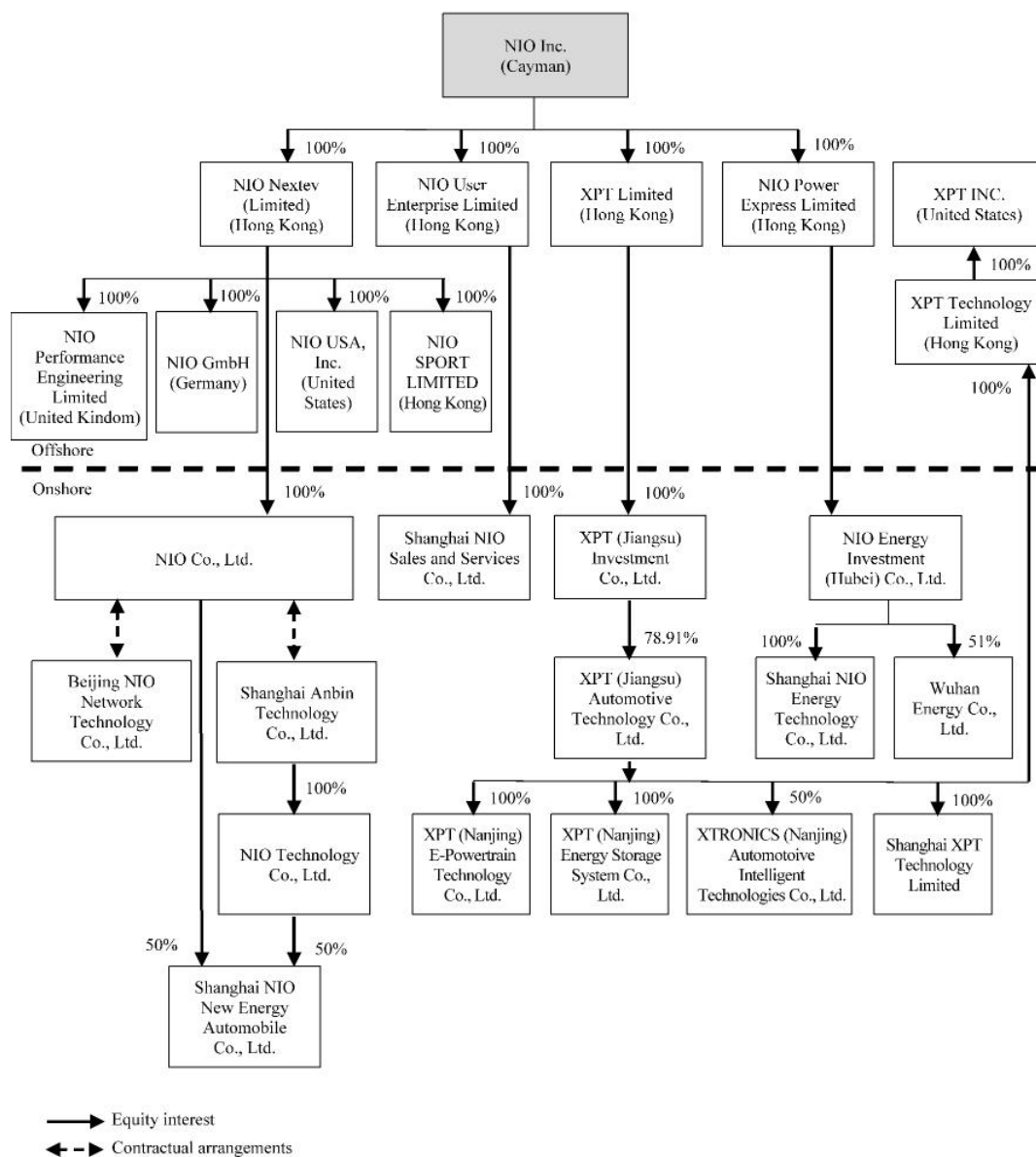
In addition, the SAT has issued certain circulars concerning employee stock options and restricted shares. Under these circulars, employees working in the PRC who exercise stock options or are granted restricted shares will be subject to PRC individual income tax. The PRC subsidiaries of an overseas listed company are required to file documents related to employee stock options and restricted shares with relevant tax authorities and to withhold individual income taxes of employees who exercise their stock options or purchase restricted shares. If the employees fail to pay or the PRC subsidiaries fail to withhold income tax in accordance with relevant laws and regulations, , the PRC subsidiaries may face sanctions imposed by the tax authorities or other PRC governmental authorities.

M&A Rules and Overseas Listing

On August 8, 2006, six PRC governmental and regulatory agencies, including the MOFCOM and the CSRC, promulgated the Rules on Acquisition of Domestic Enterprises by Foreign Investors, or the M&A Rules, governing the mergers and acquisitions of domestic enterprises by foreign investors that became effective on September 8, 2006 and was revised on June 22, 2009. The M&A Rules, among other things, require that if an overseas company established or controlled by PRC companies or individuals, or PRC Citizens, intends to acquire equity interests or assets of any other PRC domestic company affiliated with the PRC Citizens, such acquisition must be submitted to the MOFCOM for approval. The M&A Rules also require that an offshore special vehicle, or a special purpose vehicle formed for overseas listing purposes and controlled directly or indirectly by the PRC companies or individuals, shall obtain the approval of the CSRC prior to overseas listing and trading of such special purpose vehicle's securities on an overseas stock exchange.

C. Organizational Structure

The following diagram illustrates our current corporate structure, which includes our significant subsidiaries and consolidated affiliated entities as of the date of this annual report:



Contractual Agreements with the VIEs and Their Respective Shareholders

Shanghai Anbin Technology Co., Ltd.

The following is a summary of the contractual agreements with NIO Co., Ltd., or NIO WFOE, and Shanghai Anbin Technology Co., Ltd., or Shanghai Anbin.

Agreements that provide us with effective control over Shanghai Anbin

Power of Attorney. On April 19, 2018, each shareholder of Shanghai Anbin, Shanghai Anbin and NIO WFOE entered into powers of attorney. The terms contained in the respective powers of attorney are substantially similar. Pursuant to the powers of attorney, each shareholder of Shanghai Anbin irrevocably authorized NIO WFOE to act on the behalf of such shareholder with respect to all matters concerning the shareholding of the shares in Shanghai Anbin, including without limitation, attending shareholders' meetings of Shanghai Anbin, exercising all the shareholders' rights and shareholders' voting rights, and designating and appointing the legal representative, directors, supervisors, chief executive officer and other senior management members of Shanghai Anbin.

Loan Agreement. On April 19, 2018, each shareholder of Shanghai Anbin, Shanghai Anbin and NIO WFOE entered into loan agreements. The terms contained in the respective loan agreements are substantially similar. Pursuant to the loan agreements, NIO WFOE should provide the shareholders of Shanghai Anbin with a loan in the aggregate amount of RMB30 million for the purpose of contribution of the registered capital of Shanghai Anbin. The shareholders agree that the proceeds from the transfer of the equity interest of the shareholders in Shanghai Anbin or increase of the working capital of Shanghai Anbin, pursuant to the exercise of the right to acquire such equity interest by NIO WFOE under the exclusive option agreement, should be used by the shareholders to repay the loan to the extent permissible. The loan agreements should become effective upon execution by the parties, and should expire upon the date of full performance by the parties of their respective obligations under the loan agreements.

Equity Interest Pledge Agreement. On April 19, 2018, each shareholder of Shanghai Anbin, Shanghai Anbin, and NIO WFOE entered into equity interest pledge agreements. The terms contained in the respective equity interest pledge agreements are substantially similar. Pursuant to the equity interest pledge agreements, those shareholders should pledge 100% equity interest in Shanghai Anbin to NIO WFOE to guarantee the performance by Shanghai Anbin and its shareholders of their obligations under the loan agreement, the exclusive option agreement, the exclusive business cooperation agreement, and the power of attorney. If events of default defined therein occur, upon giving written notice to the shareholders, as pledgee, NIO WFOE to the extent permitted by PRC laws may exercise the right to enforce the pledge, unless the event of default has been successfully resolved to the satisfaction of NIO WFOE within twenty days after the delivery of the written notice. Those shareholders agree that, without NIO WFOE's prior written consent, during the term of the equity interest pledge agreement, they will not place or permit the existence of any security interest or other encumbrance on the equity interest in Shanghai Anbin or any portion thereof. We have completed registering the equity pledge with the relevant office of the SAMR in accordance with the PRC Property Rights Law.

Agreements that allow us to receive economic benefits from Shanghai Anbin

Exclusive Business Cooperation Agreement. On April 19, 2018, Shanghai Anbin and NIO WFOE entered into an exclusive business cooperation agreement. Pursuant to the exclusive business cooperation agreement, NIO WFOE has the exclusive right to provide Shanghai Anbin with comprehensive technical support, consulting services and other services. Without prior written consent of NIO WFOE, Shanghai Anbin should not directly or indirectly accept the same or any similar services provided by any third party regarding the matters contemplated by this agreement. During the term of this agreement where necessary, Shanghai Anbin may enter into further service agreements with NIO WFOE or any other party designated by NIO WFOE, which shall provide the specific contents, methods, personnel, and fees for specific services. Shanghai Anbin should pay NIO WFOE service fees, which should be determined by NIO WFOE after considering, among other things, the operation conditions of Shanghai Anbin, contents and value of the services provided by NIO WFOE. NIO WFOE will have exclusive and proprietary ownership, rights and interests in any and all intellectual property arising out of or developed during the performance of this agreement. Unless terminated in accordance with the provisions of this agreement or terminated in writing by NIO WFOE, the agreement shall remain effective.

Agreements that provide us with the option to purchase the equity interests in Shanghai Anbin

Exclusive Option Agreement. On April 19, 2018, each shareholder of Shanghai Anbin, Shanghai Anbin and NIO WFOE entered into exclusive option agreements. The terms contained in the respective exclusive option agreements are substantially similar. Pursuant to the exclusive option agreement, the shareholders of Shanghai Anbin irrevocably granted NIO WFOE an irrevocable and exclusive right to purchase, or designate one or more persons to purchase the equity interests in Shanghai Anbin held by the shareholders at a price equal to the amount of registered capital contributed by the shareholders in Shanghai Anbin or any portion thereof or at a price mutually agreed by NIO WFOE and the shareholders. Those shareholders further undertake that, without the prior written consent of NIO WFOE, Shanghai Anbin will not sell, transfer, mortgage or dispose of in any other manner any legal or beneficial interest in Shanghai Anbin held by its shareholders, or allow the encumbrance thereon, except for the interest placed in accordance with the equity interest pledge agreement, power of attorney and this agreement. Without the prior written consent of NIO WFOE, shareholders shall cause the shareholders' meeting or the directors (or the executive director) of Shanghai Anbin not to approve the merger or consolidation with any person, or acquisition of or investment in any person. This agreement will remain effective until all equity interests held by those shareholders in Shanghai Anbin have been transferred or assigned to NIO WFOE and/or any other person designated by NIO WFOE in accordance with this agreement.

Beijing NIO Network Technology Co., Ltd.

The following is a summary of the contractual agreements with NIO WFOE and Beijing NIO Network Technology Co., Ltd. or Beijing NIO.

Agreements that provide us with effective control over Beijing NIO

Power of Attorney. On April 19, 2018, each shareholder of Beijing NIO, Beijing NIO and NIO WFOE entered into powers of attorney. The terms contained in the respective powers of attorney are substantially similar. Pursuant to the powers of attorney, each shareholder of Beijing NIO irrevocably authorized NIO WFOE to act on the behalf of such shareholder with respect to all matters concerning the shareholding of the shares in Beijing NIO, including without limitation, attending shareholders' meetings of Beijing NIO, exercising all the shareholders' rights and shareholders' voting rights, and designating and appointing the legal representative, directors, supervisors, chief executive officer and other senior management members of Beijing NIO.

Loan Agreement. On April 19, 2018, each shareholder of Beijing NIO, Beijing NIO and NIO WFOE entered into loan agreements. The terms contained in the respective loan agreements are substantially similar. Pursuant to the loan agreement, NIO WFOE should provide the shareholders of Beijing NIO with a loan in aggregate amount of RMB10 million for the purpose of contribution of the registered capital of Beijing NIO or increase of the working capital of Beijing NIO. The shareholders agree that the proceeds from the transfer of the equity interest of the shareholders in Beijing NIO or for the working capital of Beijing NIO, pursuant to the exercise of the right to acquire such equity interest under the exclusive option agreement, should be used by the shareholders to repay the loan to the extent permissible. The loan agreements should become effective upon execution by the parties, and should expire upon the date of full performance by the parties of their respective obligations under the loan agreements.

Equity Interest Pledge Agreement. On April 19, 2018, each shareholder of Beijing NIO, Beijing NIO, and NIO WFOE entered into equity interest pledge agreements. The terms contained in the respective equity interest pledge agreements are substantially similar. Pursuant to the equity interest pledge agreements, those shareholders should pledge 100% equity interest in Beijing NIO to NIO WFOE to guarantee the performance by Beijing NIO and its shareholders of their obligations under the loan agreement, the exclusive option agreement, the exclusive business cooperation agreement and the power of attorney. If events of default defined therein occur, upon giving written notice to the shareholders, as pledgee, NIO WFOE to the extent permitted by PRC laws may exercise the right to enforce the pledge, unless the event of default has been successfully resolved to the satisfaction of NIO WFOE within twenty days after the delivery of the written notice. Those shareholders agree that, without NIO WFOE's prior written consent, during the term of the equity interest pledge agreement, they will not place or permit the existence of any security interest or other encumbrance on the equity interest in Beijing NIO or any portion thereof. We have completed registering the equity pledge with the relevant office of the SAMR in accordance with the PRC Property Rights Law.

Agreements that allow us to receive economic benefits from Beijing NIO

Exclusive Business Cooperation Agreement. On April 19, 2018, Beijing NIO and NIO WFOE entered into an exclusive business cooperation agreement. Pursuant to the exclusive business cooperation agreement, NIO WFOE has the exclusive right to provide Beijing NIO with comprehensive technical support, consulting services and other services. Without prior written consent of NIO WFOE, Beijing NIO should not directly or indirectly accept the same or any similar services provided by any third party regarding the matters contemplated by this agreement. During the term of this agreement where necessary, Beijing NIO may enter into further service agreements with NIO WFOE or any other party designated by NIO WFOE, which shall provide the specific contents, methods, personnel, and fees for specific services. Beijing NIO should pay NIO WFOE service fees, which should be determined by NIO WFOE after considering, among other things, the operation conditions of Beijing NIO, contents and value of the services provided by NIO WFOE. NIO WFOE will have exclusive and proprietary ownership, rights and interests in any and all intellectual property arising out of or developed during the performance of this agreement. Unless terminated in accordance with the provisions of this agreement or terminated in writing by NIO WFOE, the agreement shall remain effective.

Agreements that provide us with the option to purchase the equity interests in Beijing NIO

Exclusive Option Agreement. On April 19, 2018, each shareholder of Beijing NIO, Beijing NIO and NIO WFOE entered into exclusive option agreements. The terms contained in the respective exclusive option agreements are substantially similar. Pursuant to the exclusive option agreement, the shareholders of Beijing NIO irrevocably granted NIO WFOE an irrevocable and exclusive right to purchase, or designate one or more persons to purchase the equity interests in Beijing NIO held by the shareholders at a price equal to the amount of registered capital contributed by the shareholders in Beijing NIO or any portion thereof, or at a price mutually agreed by NIO WFOE and the shareholders. Those shareholders further undertake that, without the prior written consent of NIO WFOE, Beijing NIO should not sell, transfer, mortgage or dispose of in any other manner any legal or equity interest in Beijing NIO held by its shareholders, or allow the encumbrance thereon, except for the interest placed in accordance with the equity interest pledge agreement, power of attorney and this agreement. Without the prior written consent of NIO WFOE, shareholders shall cause the shareholders' meeting or the directors (or the executive director) of Beijing NIO not to approve the merger or consolidation with any person, or acquisition of or investment in any person. This agreement will remain effective until all equity interests held by those shareholders in Beijing NIO have been transferred or assigned to NIO WFOE and/or any other person designated by NIO WFOE in accordance with this agreement.

In the opinion of Han Kun Law Offices, our PRC legal counsel:

- the ownership structures of our VIEs in China and NIO WFOE comply with all existing PRC laws and regulations; and
- the contractual arrangements between NIO WFOE, our VIEs and their respective shareholders governed by PRC laws are valid, binding and enforceable, and will not result in any violation of PRC laws or regulations currently in effect.

However, there are substantial uncertainties regarding the interpretation and application of current and future PRC laws, regulations and rules. On March 15, 2019, the National People's Congress approved the Foreign Investment Law, which has become effective on January 1, 2020. Since the law is relatively new, uncertainties exist in relation to its interpretation and implementation. The Foreign Investment Law does not explicitly classify whether variable interest entities that are controlled through contractual arrangements would be deemed as foreign invested enterprises if they are ultimately "controlled" by foreign investors. However, it has a catch-all provision under definition of "foreign investment" that includes investments made by foreign investors in China through other means as provided by laws, administrative regulations or the State Council. Therefore, it still leaves leeway for future laws, administrative regulations or provisions of the State Council to provide for contractual arrangements as a form of foreign investment. Accordingly, the PRC regulatory authorities may in the future take a view that is contrary to the above opinion of our PRC counsel. If the PRC government finds that the agreements that establish the structure for operating our business do not comply with PRC government restrictions on foreign investment, we may be required to unwind such agreements and/or dispose of such business. For a description of the risks related to our corporate structure, please see "Item 3. Key Information—D. Risk Factors—Risks Related to Our Corporate Structure."

D. Property, Plants and Equipment

Currently, we own land use rights with respect to a parcel of land in Nanjing of approximately 325,289.51 square meters and the ownership with respect to the plant thereon for a term ending on March 10, 2063, which are used for the manufacture of our e-propulsion system, battery pack and engine driving system. We also leased a number of our facilities. The following table sets forth the location, approximate size, primary use and lease term of our major leased facilities:

Location⁽¹⁾	Approximate Size (Building) in Square Meters/Feet⁽²⁾	Primary Use	Lease Expiration Date
Shanghai, China	69,671.69	Global headquarters and office	April 9, 2021 – June 19, 2025
	9,070.9	User center (sales, marketing, and customer service)	March 14, 2022 – September 30, 2025
	24,566	Integrated vehicle research and development	April 9, 2021 – June 19, 2025
	577.33	Power management	October 31, 2020 – September 30, 2023
	444.60	Warehouse	January 15, 2020 – March 31, 2024
Shenzhen	227.60	Sales, marketing, and customer service	April 30, 2022 – July 19, 2027
	529.25	Power management	July 31, 2020 – October 31, 2023
Chengdu	3,982	Sales, marketing, and customer service	January 25, 2021 – March 31, 2028
	438	Power management	September 30, 2022 – June 30, 2025
Hangzhou	1,221	Sales, marketing, and customer service	June 30, 2023 – December 31, 2023
	132	Power management	September 30, 2022 – August 31, 2023
Nanjing	5,405	Sales, marketing, and customer service	March 31, 2023 – October 31, 2023
	172.5	Power management	March 31, 2022 – August 31, 2023
Suzhou	355	Office	May 31, 2021
	8,631	Sales, marketing, and customer service	April 30, 2024 – August 31, 2024
	135	Power management	September 20, 2021 – August 30, 2022
Beijing	3,165.91	Office	July 31, 2020 – October 19, 2020
	18,324	Sales, marketing, and customer service	March 31, 2020 – June 30, 2027
	35.27	Warehouse	October 14, 2020
	1,003	Power management	February 28, 2020 – August 31, 2023
Hefei	45	Power management	February 28, 2023
Kunming	1,416	Sales, marketing, and customer service	December 31, 2020
	500	Sales, marketing, and customer service	June 30, 2020
Jinan	53	Office	December 9, 2020
	454	Sales, marketing, and customer service	March 27, 2020 - February 28, 2021
Zhuhai	55	Power management	November 30, 2021
Guangzhou	429	Office	October 31, 2020
	6,331	Sales, marketing, and customer service	December 31, 2020 - December 31, 2025
	1,327.7	Power management	December 31, 2019 – September 30, 2023
Wuhan	393.52	Office	November 14, 2020
	4,631	Sales, marketing, and customer service	October 31, 2020 - October 31, 2028
	204.73	Power management	November 14, 2020 - August 31, 2023
Xi'an	7,566	Sales, marketing, and customer service	June 30, 2023 – February 28, 2029
	40	Power management	April 30, 2025
Chongqing	8,326.13	Sales, marketing, and customer service	July 15, 2019 – September 5, 2025
	400	Power management	July 31, 2023 – November 30, 2023
Ningbo	4,666	Sales, marketing, and customer service	August 15, 2020 – November 6, 2022
	210	Power management	August 15, 2023 – December 14, 2023

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Location⁽¹⁾	Approximate Size (Building) in Square Meters/Feet⁽²⁾	Primary Use	Lease Expiration Date
Wenzhou	5,303	Sales, marketing, and customer service	October 20, 2020 – March 23, 2024
	107.25	Power management	March 20, 2022 -September 17, 2026
Wuxi	280	Power management	December 31, 2021 - August 31, 2023
	911	Sales, marketing, and customer service	February 15, 2024
Tianjin	4,903	Sales, marketing, and customer service	November 14, 2024 – September 30, 2028
	171	Power management	January 3, 2020 – October 1, 2023
Shijiazhuang	167.82	Office	June 30, 2021
	1,492.27	Sales, marketing, and customer service	November 8, 2023
	217	Power management	November 14, 2020 – September 24, 2023
Changsha	262.04	Office	July 24, 2021
	13,567	Sales, marketing, and customer service	August 9, 2020 – December 9, 2028
	370	Power management	August 14, 2022 – November 30, 2023
Zhengzhou	6762	Sales, marketing, and customer service	February 28, 2021 – October 31, 2024
	154	Power management	October 8, 2023 – October 31, 2024
	182	Office	January 13, 2022
Qingdao	5,670	Sales, marketing, and customer service	December 31, 2023 – December 14, 2024
	48	Power management	October 19, 2021
Fuzhou	909.2	Sales, marketing, and customer service	February 7, 2020 – December 9, 2020
	100	Power management	December 20, 2023
Lanzhou	78	Office	July 31, 2020
Taiyuan	98.51	Office	July 31, 2020
	529	Sales, marketing, and customer service	February 28, 2021
Nanchang	153.6	Sales, marketing, and customer service	August 31, 2021
Dalian	278.8	Office	December 31, 2021
Changzhou	356.76	Sales, marketing, and customer service	July 14, 2022
	55	Power management	July 31, 2023
Dongguan	1,392.53	Sales, marketing, and customer service	September 30, 2024
	54	Power management	June 30, 2023
Huangshan	25	Power management	September 7, 2021
	161.41	Office	November 25, 2020
Yiwu	410	Sales, marketing, and customer service	December 31, 2022
	41.25	Power management	September 27, 2023
Jiaxing	264	Office	November 30, 2020
	137	Sales, marketing, and customer service	December 31, 2020
Yinchuan	188	Office	January 24, 2020
Foshan	3563	Sales, marketing, and customer service	October 23, 2020 - September 30, 2028
Xiamen	9,584.01	Sales, marketing, and customer service	December 31, 2019- November 30, 2028
	90	Power management	September 30, 2023 – October 31, 2023
Haikou	355	Sales, marketing, and customer service	March 31, 2020
	50	Power management	December 31, 2023
Nantong	555	Sales, marketing, and customer service	April 30, 2024
Yichang	99	Office	March 31, 2020
Shantou	162.8	Office	January 31, 2020
Xining	110	Office	April 16, 2020

Location⁽¹⁾	Approximate Size (Building) in Square Meters/Feet⁽²⁾	Primary Use	Lease Expiration Date
Yinchuan	187.58	Office	January 24, 2020
San Jose, California		North American headquarters and global software development center	September 30, 2023
	85,017	Sales, marketing light assembly, research and development	September 30, 2023
	99,424	User experience/user interface team	September 1, 2019
San Francisco, California	12,250	Design headquarters	December 2020 – December 2021
Munich, Germany	3,679	Management, finance, legal, sponsorship, UK corporate HQ	January 2026, break option in January 2021
Air Street, London (UK)	2,960	Engineering function, HR, finance and IT	July 2022, break any-time after July 2020
Begbroke Science Park (Oxford, UK) Building 6	4,875		
Donington Park (UK)	7,458	EP9 Storage/Workshop	December 2023, break clause any time after December 2020

(1) We also lease a number of facilities for our NIO House and NIO Space locations, office space, service and logistics centers and small areas for battery swap stations in China.

(2) Properties in China and Germany are presented in square meters. All others are presented in square feet.

We intend to add new facilities or expand our existing facilities as we add employees and expand our production organization. We believe that suitable additional or alternative space will be available in the future on commercially reasonable terms to accommodate our foreseeable future expansion.

ITEM 4.A. UNRESOLVED STAFF COMMENTS

Not applicable.

ITEM 5. OPERATING AND FINANCIAL REVIEW AND PROSPECTS

The following discussion of our financial condition and results of operations is based upon and should be read in conjunction with our consolidated financial statements and their related notes included elsewhere in this annual report. This annual report contains forward-looking statements. See “Forward-Looking Information.” In evaluating our business, you should carefully consider the information provided under the caption “Item 3. Key Information—D. Risk Factors” in this annual report. We caution you that our businesses and financial performance are subject to substantial risks and uncertainties.

A. Operating Results

Overview

We are a pioneer in China’s premium electric vehicle market. We design, jointly manufacture, and sell smart and connected premium electric vehicles, driving innovations in next generation technologies in connectivity, autonomous driving and artificial intelligence. Redefining user experience, we aim to provide users with comprehensive, convenient and innovative charging solutions and other user-centric service offerings.

We launched our first volume manufactured electric vehicle, the seven-seater ES8, to the public at our NIO Day event on December 16, 2017. In December 2018, we launched its variant, the six-seater ES8, with delivery beginning in March 2019. The ES8 is an all-aluminum alloy body, premium electric SUV that offers exceptional performance, functionality and mobility lifestyle. As of December 31, 2019, we had delivered 17,940 seven-seater ES8s and 2,540 six-seater ES8s to customers in more than 270 cities.

We launched our second volume manufactured electric vehicle, the ES6, to the public at our NIO Day event on December 15, 2018, with delivery beginning in June 2019. The ES6 is a five-seater high-performance long-range premium electric SUV. The ES6 is smaller but more affordable than the ES8, allowing us to target a broader market in the premium SUV segment. As of December 31, 2019, we had delivered 11,433 ES6s to customers in more than 250 cities.

We launched our third volume manufactured electric vehicle, the EC6, to the public at our NIO Day event on December 28, 2019. EC6 is a smart premium electric coupe SUV. EC6 has an agile coupe design with drag coefficient at only 0.27Cd. It is dynamically shaped and equipped with a 2.1 square meter vault glass roof. With the 100-kilowatt-hour battery pack to be delivered in the fourth quarter of 2020, the EC6 boasts an NEDC range of up to 615 km. Users can pre-order the EC6 through the NIO App and we expect to begin making deliveries of the EC6 in September 2020. At the NIO Day event on December 28, 2019, we also released the all-new ES8, the flagship smart premium electric SUV. With the 100-kilowatt-hour battery pack to be delivered in the fourth quarter of 2020, the all-new ES8 will be allowed an NEDC range of up to 580 km, a major improvement in its range performance. We began making deliveries of the all-new ES8 in April 2020. The all-new ES8 boasts more than 180 product improvements with better performance, longer driving range and a more sophisticated and high-tech design.

We began making deliveries to users of the seven-seater ES8 on June 28, 2018, the six-seater ES8 in March 2019 and the ES6 in June 2019, and we recorded revenues of RMB7,824.9 million (US\$1,124.0 million) for the year ended December 31, 2019, which mainly consisted of revenues from the sales of our vehicles, revenue from a number of embedded products and services offered together with the sale of vehicles, revenues from our services including charging solutions such as our energy package and one-off usage of our Power Express services, as well as revenues from monthly fees, excluding those fees for statutory and third-party liability insurance and vehicle damage insurance paid directly to third-party insurers, under our service package.

The ES8 and the ES6 are manufactured in partnership with JAC at its Hefei manufacturing plant. Pursuant to our arrangement with JAC, given JAC’s significant investment in this plant for the manufacturing of our vehicles, we have agreed to compensate JAC to the extent the Hefei manufacturing plant incurs any operating losses for the first 36 months after the plant commences mass production, which occurred on April 10, 2018. We expect that the Hefei manufacturing plant’s ability to achieve and/or maintain profitability will be significantly affected by our sales volumes. If we are obligated to compensate JAC for any losses, our cash flows and financial position could be materially impacted, particularly if such losses are incurred as a result of lower than anticipated sales volumes. See “Item 3. Key Information—D. Risk Factors—Risks Related to Our Business and Industry—Manufacturing in collaboration with partners is subject to risks.”

Impact of COVID-19 on Our Operations

The majority of our revenues are derived from sales of our vehicles in China. Our results of operations and financial condition in 2020 has been and will continue to be affected by the spread of COVID-19. The COVID-19 has impact on China’s auto industry in general and the production and delivery of vehicles of our company. The extent to which COVID-19 impacts our financial position, results of operations and cash flows in 2020 will depend on the future developments of the outbreak, including new information concerning the global severity of and actions taken to contain the outbreak, which are highly uncertain and unpredictable. In addition, our financial position, results of operations and cash flows could be adversely affected to the extent that the outbreak harms the Chinese economy in general.

In response to intensifying efforts to contain the spread of COVID-19, the Chinese government has taken a number of actions, which included extending the Chinese New Year holiday, quarantining individuals infected with or suspected of having COVID-19, prohibiting residents from free travel, encouraging employees of enterprises to work remotely from home and cancelling public activities, among others. The COVID-19 has also resulted in temporary closure of many corporate offices, retail stores, manufacturing facilities and factories across China. At the time of this filing, we have taken a series of measures in response to the outbreak, including, among others, remote working arrangement for our employees. We have temporarily shut down some of our premises and facilities, and have followed and are continuing to follow all legal directions and safety guidelines with respect the remaining premises and facilities in operations. These measures have reduced the capacity and efficiency of our operations, which in turn have negatively affected our financial condition, results of operations and cash flows. We are working closely with JAC, the manufacturer of the ES8, ES6 and EC6, to resume productions and minimize the impact of COVID-19 on our manufacturing capabilities. In addition, we strive to expand our traffic channels, integrate our online and offline sales efforts and offer best services possible to bring business and operation back to normal. We will pay close attention to the development of the COVID-19 outbreak, perform further assessment of its impact and take relevant measures to minimize the impact. As a result of the COVID-19 outbreak, the total number of vehicles we delivered in the first quarter of 2020 was 3,838, showing a decrease by 53.5% from 8,224 in the fourth quarter of 2019, and a decrease by 3.8% from 3,989 in the first quarter of 2019. We will continue to monitor and evaluate the financial impact to our financial condition, results of operations and cash flows for the first quarter of 2020 and subsequent periods.

Key Line Items Affecting Our Results of Operations

Revenues

The following table presents our revenue components by amount and as a percentage of the total revenues for the years indicated.

	Year Ended December 31,			
	2017	2018	2019	
	RMB	RMB	RMB	US\$
	(in thousands)			
Revenues:				
Vehicle sales	—	4,852,470	7,367,113	1,058,220
Other sales	—	98,701	457,791	65,758
Total revenues	—	4,951,171	7,824,904	1,123,978

We began generating revenues in June 2018, when we began making deliveries and sales of the ES8. We currently generate revenues from (i) vehicle sales, which represent revenues from sales of the ES8 and the ES6, and (ii) other sales, which mainly consist of revenues from sales of our energy package and service package, and a number of embedded products and services offered together with vehicle sales. Embedded products and services include charging piles, vehicle internet connection service and extended lifetime warranty. Revenue from sales of the ES8 and the ES6 and charging piles are recognized when the vehicles are delivered and charging piles are installed. For vehicle internet connection services, we recognize revenue using a straight-line method. As for the extended lifetime warranty, given our limited operating history and lack of historical data, we recognize revenue over time based on a straight-line method initially, and will continue monitoring the cost pattern periodically and adjust the revenue recognition pattern to reflect the actual cost pattern as it becomes available with more data. Revenues for our energy package or service package are recognized over time on a monthly basis as our customers receive and consume the benefits of the related package.

In December 2019, we launched our third volume manufactured electric vehicle, the EC6, and the all-new ES8. Users can pre-order the EC6 and the all-new ES8 through the NIO App and we expect to generate revenues from sales of the all-new ES8 starting from April 2020 when we started making deliveries, and the EC6 as soon as we begin making deliveries, expected in September 2020.

Cost of Sales

The following table presents our cost of sales components by amount and as a percentage of our total cost of sales for the years indicated.

	Year Ended December 31,			
	2017	2018	2019	
	RMB	RMB	RMB	US\$
	(in thousands)			
Cost of Sales:				
Vehicle sales	—	(4,930,135)	(8,096,035)	(1,162,923)
Other sales	—	(276,912)	(927,691)	(133,254)
Total cost of sales	—	(5,207,047)	(9,023,726)	(1,296,177)

We incur cost of sales in relation to (i) vehicle sales, including, among others, purchases of raw materials and manufacturing expenses, and (ii) other sales, including cost of sales relating to our energy package and service package, the installation of charging piles and directly related staff costs. Cost of sales with respect to vehicle sales also includes compensation to JAC for actual losses incurred at the Hefei manufacturing plant where the ES8 and the ES6 is manufactured.

Operating Expenses

Research and Development Expenses

Research and development expenses consist primarily of (i) design and development expenses, which include, among others, consultation fees, outsourcing fees and expenses of testing materials and (ii) employee compensation, representing salaries, benefits and bonuses as well as share-based compensation expenses for our research and development staff. Our research and development expenses also include travel expenses, depreciation and amortization of equipment used in relation to our research and development activities, rental and related expenses with respect to laboratories and offices for research and development teams and others, which primarily consists of telecommunication expenses, office fees and freight charges.

Our research and development expenses are mainly driven by the number of our research and development employees, the stage and scale of our vehicle development and development of technology.

Selling, General and Administrative Expenses

Our selling, general and administrative expenses include (i) employee compensation, including salaries, benefits and bonuses as well as share-based compensation expenses with respect to our employees other than research and development staff, (ii) marketing and promotional expenses, which primarily consist of marketing and advertising costs, sponsorship fees and racing costs related to our Formula E team, (iii) rental and related expenses, which primarily consist of rental for NIO Houses, NIO Spaces and offices, (iv) professional service expenses, which consist of outsourcing fees primarily relating to human resources and IT functions, design fees paid for NIO Houses and NIO Spaces and fees paid to auditors and legal counsel, (v) depreciation and amortization expenses, primarily consisting of depreciation and amortization of leasehold improvements, IT equipment and software, among others, (vi) expenses of low value consumables, primarily consisting of, among others, IT consumables, office supplies, sample fees and IT-system related licenses, (vii) traveling expenses, and (viii) other expenses, which includes telecommunication expenses, utilities and other miscellaneous expenses.

Our selling, general and administrative expenses are significantly affected by the number of our non-research and development employees, marketing and promotion activities and the expansion of our sales and after-sales network, including NIO Houses, NIO Spaces and other leased properties.

Interest Income

Interest income primarily consists of interest earned on cash deposits in banks. In 2016, interest income also consisted of late payment penalties which we recorded as interest income related to a preferred shareholder having delayed its investment payment which was due in 2016.

Interest Expense

Interest expense consists of interest expense with respect to our indebtedness.

Share of losses of Equity Investees

Share of losses of equity investees primarily consists of our share of the losses net of shares of gains of Suzhou Zenlead XPT New Energy Technologies Co., Ltd., GAC JV, Changan NIO Renewable Automobile Co., Ltd., Hainan Weilai Xiqi Renewable Automobile Technology Co., Ltd., Kunshan Siwopu Intelligent Equipment Co., Ltd., Nanjing Weibang Transmission Technology Co., Ltd. and Nanjing Karui Innovation and Entrepreneurship Management Service Co., Ltd., in which, as of December 31, 2019, we held a 22.5% to 51.0% equity interest. Our equity interest is accounted for using the equity method since we exercise significant influence but do not own a majority equity interest in or control those investees.

Investment Income

Investment income primarily consists of gains on trading in short-term investment securities, primarily consisting of structured bank deposits.

Other Income/(Loss), Net

Other losses and income primarily consist of gains or losses we incur based on movements between the U.S. dollar and the Renminbi. We have historically held a significant portion of our cash and cash equivalents in U.S. dollars, while we have incurred a significant portion of our expenses in RMB. Other income also includes (i) income we received with respect to one-off design and research and development services we provided to certain parties and (ii) government grants.

Income Tax Expense

Income tax expense primarily consists of current income tax expense, mainly attributable to intra-group income earned by our German, UK and Hong Kong subsidiaries which are eliminated upon consolidation but were subject to tax in accordance with applicable tax law.

Taxation

Cayman Islands

We are incorporated in the Cayman Islands. The Cayman Islands currently have no form of income, corporate or capital gains tax and no estate duty, inheritance tax or gift tax. There are no other taxes likely to be material to us levied by the government of the Cayman Islands except for stamp duties which may be applicable on instruments executed in, or, after execution, brought within the jurisdiction of the Cayman Islands.

PRC

Generally, our PRC subsidiaries are subject to enterprise income tax on their taxable income in China at a statutory rate of 25%. The enterprise income tax is calculated based on the entity's global income as determined under PRC tax laws and accounting standards.

Our products and services are primarily subject to value-added tax at a rate of 13% on the vehicles and charging piles, repair and maintenance services and charging services as well as 6% on services such as research and development services, in each case less any deductible value-added tax we have already paid or born. We are also subject to surcharges on value-added tax payments in accordance with PRC law.

Dividends paid by our PRC subsidiaries in China to our Hong Kong subsidiaries will be subject to a withholding tax rate of 10%, unless the relevant Hong Kong entity satisfies all the requirements under the Double Taxation Avoidance Arrangement and receives approval from the relevant tax authority. If our Hong Kong subsidiaries satisfy all the requirements under the tax arrangement and receive approval from the relevant tax authority, then the dividends paid to the Hong Kong subsidiaries would be subject to withholding tax at the standard rate of 5%. Effective from November 1, 2015, the above-mentioned approval requirement has been abolished, but a Hong Kong entity is still required to file application package with the relevant tax authority, and settle the overdue taxes if the preferential 5% tax rate is denied based on the subsequent review of the application package by the relevant tax authority.

If NIO Inc. or any of our subsidiaries outside of China were deemed to be a "resident enterprise" under the PRC Enterprise Income Tax Law, it would be subject to enterprise income tax on its worldwide income at a rate of 25%.

Under the PRC Enterprise Income Tax Law, research and development expenses incurred by an enterprise in the course of carrying out research and development activities that have not formed intangible assets and are included in the profit and loss account for the current year. Besides deducting the actual amount of research and development expenses incurred, an enterprise is allowed an additional 75% deduction of the amount in calculating its taxable income for the relevant year. For research and development expenses that have formed intangible assets, the tax amortization is based on 175% of the costs of the intangible assets.

Critical Accounting Policies

Our consolidated financial statements have been prepared in accordance with U.S. GAAP. Significant accounting policies followed by us in the preparation of the accompanying consolidated financial statements are summarized below:

Revenue recognition

Revenue is recognized when or as the control of the goods or services is transferred to a customer. Depending on the terms of the contract and the laws that apply to the contract, control of the goods and services may be transferred over time or at a point in time. Control of the goods and services is transferred over time if our performance:

- provides all of the benefits received and consumed simultaneously by the customer;
- creates and enhances an asset that the customer controls as we perform; or
- does not create an asset with an alternative use to us and we have an enforceable right to payment for performance completed to date.

If control of the goods and services transfers over time, revenue is recognized over the period of the contract by reference to the progress towards complete satisfaction of that performance obligation. Otherwise, revenue is recognized at a point in time when the customer obtains control of the goods and services.

Contracts with customers may include multiple performance obligations. For such arrangements, we allocate revenue to each performance obligation based on its relative standalone selling price. We generally determine standalone selling prices based on the prices charged to customers. If the standalone selling price is not directly observable, it is estimated using expected cost plus a margin or adjusted market assessment approach, depending on the availability of observable information. Assumptions and estimations have been made in estimating the relative selling price of each distinct performance obligation, and changes in judgments on these assumptions and estimates may impact the revenue recognition.

When either party to a contract has performed, we present the contract in the statement of financial position as a contract asset or a contract liability, depending on the relationship between our performance and the customer's payment.

A contract asset is our right to consideration in exchange for goods and services that we have transferred to a customer. A receivable is recorded when we have an unconditional right to consideration. A right to consideration is unconditional if only the passage of time is required before payment of that consideration is due.

If a customer pays consideration or we have a right to an amount of consideration that is unconditional, before we transfer a good or service to the customer, we present the contract liability when the payment is made or a receivable is recorded (whichever is earlier). A contract liability is our obligation to transfer goods or services to a customer for which we have received consideration (or an amount of consideration is due) from the customer. Our contract liabilities primarily resulted from the multiple performance obligations identified in the vehicle sales contract and the sales of Energy and Service Packages, which are recorded as deferred revenue and advance from customers. As of December 31, 2018 and 2019, the balances of contract liabilities from vehicle sales contracts were RMB99,128 and RMB96,827, respectively. As of December 31, 2018 and 2019, the balances of contract liabilities from the sales of Energy and Service Packages were RMB32,226 and RMB65,361, respectively.

Vehicle sales

We generate revenue from sales of electric vehicles, currently the ES8 and ES6, together with a number of embedded products and services through a series of contracts. We identify the users who purchase the vehicle as our customers. There are multiple distinct performance obligations explicitly stated in a series of contracts, including sales of vehicles, charging piles, vehicle internet connection services and extended lifetime warranty which are accounted for in accordance with Accounting Standards Codification ("ASC") 606, Revenue From Contracts With Customers, or ASC 606. The standard warranty provided by us is accounted for in accordance with ASC 460, Guarantees, and the estimated costs are recorded as a liability when we transfer the control of vehicle to a user.

Customers only pay the amount after deducting the government subsidies to which they are entitled for the purchase of electric vehicles. The government subsidies are applied on their behalf and collected by us or JAC, from the government. We have concluded that government subsidies should be considered as a part of the transaction price we charge customers for the electric vehicle, as the subsidy is granted to the buyer of the electric vehicle and the buyer remains liable for such amount in the event the subsidies were not received by us. For efficiency reason, we or JAC applies and collects the payments on behalf of customers. In the instance that an eligible customer selects installment payment for battery, we believe such arrangement contains a significant financing component and as a result adjust the amount considering the impact of time value on the transaction price using an appropriate discount rate (i.e., the interest rates of the loan reflecting the credit risk of the borrower). The long-term receivable of installment payment for battery was recognized as non-current assets. The difference between the gross receivable and the present value is recorded as unrealized finance income. Interest income resulting from a significant financing component will be presented separately from revenue from contracts with customers as this is not our ordinary business.

We use a cost plus margin approach to determine the estimated standalone selling price for each individual distinct performance obligation identified, considering our pricing policies and practices, and the data utilized in making pricing decisions. The overall contract price is then allocated to each distinct performance obligation based on the relative estimated standalone selling price in accordance with ASC 606. The revenue for vehicle sales and charging piles are recognized at a point in time when the control of the product is transferred to the customer. For the vehicle internet connection service and free battery swapping service, we recognize the revenue using a straight-line method. As for the extended lifetime warranty, given our limited operating history and lack of historical data, we decide to recognize the revenue over time based on a straight-line method initially, and will continue monitoring the cost pattern periodically and adjust the revenue recognition pattern to reflect the actual cost pattern as it becomes available.

As the consideration for the vehicle and all embedded services must be paid in advance, which means the payments received are prior to the transfer of goods or services by us, we record a contract liability (deferred revenue) for the allocated amount regarding those unperformed obligations.

Sales of Energy and Service Packages

We also sell our users two packages, Energy Package and Service Package, in exchange for consideration. The Energy Package provides vehicle users with a comprehensive range of charging solutions (including charging and battery swapping). The energy service is applied by users on our mobile application depending on their needs. We can decide the most appropriate service to offer according to its available resource. Through the Service Package, we offer vehicle users with a “worry free” vehicle ownership experience (including free repair service with certain limitations, routine maintenance service, enhanced data package, etc.), which can be applied by users via our mobile application.

We identify the users who purchase Energy Package and Service Package to meet the definition of a customer. The agreements for Energy Package and Service Package create legal enforceability to both parties on a monthly basis as the respective Energy or Service Packages can be canceled at any time without any penalty. We conclude the energy or service provided in Energy Package or Service Package respectively meets the stand-ready criteria and contains only one performance obligation within each package, the revenue is recognized over time on a monthly basis as customer simultaneously receives and consumes the benefits provided and the term of legally enforceable contract is only one month.

Incentives

We offer a self-managed customer loyalty program points, which can be used in our online store and at NIO Houses to redeem NIO merchandise. We determine the value of each point based on estimated incremental cost. Customers and NIO fans and advocates have a variety of ways to obtain the points. The major accounting policy for its points program is described as follows:

(1) Sales of vehicles

We conclude the points offered linked to the purchase transactions of the vehicles are a material right and accordingly a separate performance obligation according to ASC 606, and should be taken into consideration when allocating the transaction price of the vehicle sales. We also estimate the probability of points redemption when performing the allocation. Since historical information does not yet exist for us to determine any potential points forfeitures and the fact that most merchandise can be redeemed without requiring a significant amount of points compared with the amount of points provided to users, we believe it is reasonable to assume all points will be redeemed and no forfeiture is estimated currently. The amount allocated to the points as a separate performance obligation is recorded as contract liability (deferred revenue) and revenue should be recognized when future goods or services are transferred. We will continue to monitor when and if forfeiture rate data becomes available and will apply and update the estimated forfeiture rate at each reporting period.

(2) Sales of Energy Package and Service Package

Energy Package—When the customers charge their vehicles without using our charging network, we will grant points based on the actual cost the customers incur. We record the value of the points as a reduction of revenue from the Energy Package.

Service Package—We grant points to the customers with safe driving record during the effective period of the service package. We record the value of the points as a reduction of revenue from the Service Package.

Since historical information is limited for us to determine any potential points forfeiture and most merchandise can be redeemed without requiring a significant amount of points compared with the amount of points provided to our users, we have used an estimated forfeiture rate of zero.

(3) Other scenarios

Customers or users of our mobile application can also obtain points through any other ways, such as frequent sign-ins to our mobile application and sharing articles from the application to users' own social media. We believe these points are to encourage user engagement and generate market awareness. As a result, we account for such points as selling and marketing expenses with a corresponding liability recorded under other current liabilities of our consolidated balance sheets upon the points offering. We estimate liabilities under the customer loyalty program based on cost of our merchandise that can be redeemed, and our estimate of probability of redemption. At the time of redemption, we record a reduction of inventory and other current liabilities. In certain cases where merchandise is sold for cash in addition to points, we record other revenue.

Similar to the reasons above, we estimate no points forfeiture currently and continue to assess when and if a forfeiture rate should be applied.

For the years ended December 31, 2017, 2018 and 2019, the revenue portion allocated to the points as separate performance obligation was nil, RMB47.3 million and RMB66.3 million (US\$9.5 million), respectively, which is recorded as contract liability (deferred revenue). For the years ended December 31, 2017, 2018 and 2019, the total points recorded as a reduction of revenue was nil, RMB0.4 million and RMB25.4 million (US\$3.6 million), respectively. For the years ended December 31, 2017, 2018 and 2019, the total points recorded as selling and marketing expenses were RMB16.5 million, RMB153.1 million and RMB142.4 million (US\$20.5 million), respectively.

As of December 31, 2018 and 2019, liabilities recorded related to unredeemed points were RMB143.9 million and RMB178.7 (US\$25.7 million), respectively.

Practical expedients and exemptions

We follow the guidance on immaterial promises when identifying performance obligations in the vehicle sales contracts and conclude that lifetime roadside assistance and out-of-town charging services are not performance obligations considering these two services are value-added services to enhance user experience rather than critical items for vehicle driving and forecast that usage of these two services will be very limited. We also perform an estimation on the stand-alone fair value of each promise, applying a cost plus margin approach and conclude that the standalone fair value of roadside assistance and out-of-town charging services are insignificant individually and in aggregate, representing less than 1% of the vehicle gross selling price and aggregate fair value of each individual promise.

Considering the qualitative assessment and the result of the quantitative estimate, we have concluded not to assess whether promises are performance obligations if they are immaterial in the context of the contract and the relative standalone fair value individually and in aggregate is less than 3% of the contract price, namely the road-side assistance and out-of-town charging services. Related costs are then accrued instead.

Cost of Sales

Vehicle

Cost of vehicle revenue includes direct parts, material, processing fee, loss compensation to JAC, labor costs, manufacturing overhead (including depreciation of assets associated with the production) and reserves for estimated warranty expenses. Cost of vehicle revenue also includes adjustments to warranty expense and charges to write down the carrying value of the inventory when it exceeds its estimated net realizable value and to provide for on-hand inventory that is either obsolete or in excess of forecasted demand.

Service and Other

Cost of service and other revenue includes direct parts, material, labor costs, vehicle internet connectivity costs, and depreciation of assets that are associated with sales of Energy and Service packages.

Share-based compensation

We grant restricted shares and share options to eligible employees and non-employee consultants and account for share-based compensation in accordance with ASC 718, Compensation—Stock Compensation and ASC 505-50, Equity-Based Payments to Non-Employees. There were no new grants to non-employee consultants after the effectiveness of ASU 2018-07—Compensation—stock compensation (Topic 718)—Improvements to nonemployee share-based payment accounting.

Employees' share-based compensation awards are measured at the grant date fair value of the awards and recognized as expenses (a) immediately at the grant date if no vesting conditions are required; (b) for share options or restricted shares granted with only service conditions, using the straight-line vesting method, net of estimated forfeitures, over the vesting period; (c) for share options granted with service conditions and the occurrence of an initial public offering as performance condition, cumulative share-based compensation expenses for the options that have satisfied the service condition should be recorded upon the completion of the initial public offering, using the graded vesting method. This performance condition was met upon completion of our initial public offering on September 12, 2018 and the associated share-based compensation expense for awards vested as of that date were recognized, or (d) for share options where the underlying share is liability within the scope of ASC 480, using the graded vesting method, net of estimated forfeitures, over the vesting period, and re-measuring the fair value of the award at each reporting period end until the award is settled.

All transactions in which goods or services are received in exchange for equity instruments are accounted for based on the fair value of the consideration received or the fair value of the equity instrument issued, whichever is more reliably measurable.

Share-based compensation expenses for share options and restricted shares granted to non-employees are measured at fair value at the earlier of the performance commitment date or the date service is completed, and recognized over the period during which the service is provided. We apply the guidance in ASC 505-50 to measure share options and restricted shares granted to non-employees based on the then-current fair value at each reporting date.

Before the completion of our initial public offering, the fair value of the restricted shares were assessed using the income approaches / market approaches, with a discount for lack of marketability given that the shares underlying the awards were not publicly traded at the time of grant. This assessment required complex and subjective judgments regarding our projected financial and operating results, our unique business risks, the liquidity of our ordinary shares and our operating history and prospects at the time the grants were made. Upon the completion of our initial public offering, the fair value of the restricted shares is based on the market value of the underlying ordinary shares on the date of grant. In addition, the binomial option-pricing model is used to measure the value of share options. The determination of the fair value is affected by the fair value of the ordinary shares as well as assumptions, including the expected share price volatility, actual and projected employee and non-employee share option exercise behavior, risk-free interest rates and expected dividends. The fair value of these awards was determined taking into account independent valuation advice.

The assumptions used in share-based compensation expense recognition represent management's best estimates, but these estimates involve inherent uncertainties and application of management judgment. If factors change or different assumptions are used, the share-based compensation expenses could be materially different for any period. Moreover, the estimates of fair value of the awards are not intended to predict actual future events or the value that ultimately will be realized by grantees who receive share-based awards, and subsequent events are not indicative of the reasonableness of the original estimates of fair value made by us for accounting purposes.

Forfeitures are estimated at the time of grant and revised in subsequent periods if actual forfeitures differ from those estimates. We use historical data to estimate pre-vesting options and record share-based compensation expenses only for those awards that are expected to vest.

Earnings/(Loss) per share

Basic earnings/(loss) per share is computed by dividing net income/(loss) attributable to holders of ordinary shares, considering the accretions to redemption value of the preferred shares, by the weighted average number of ordinary shares outstanding during the period using the two-class method. Under the two-class method, net income is allocated between ordinary shares and other participating securities based on their participating rights. Diluted earnings/(loss) per share is calculated by dividing net income/(loss) attributable to ordinary shareholders, as adjusted for the accretion and allocation of net income related to the preferred shares, if any, by the weighted average number of ordinary and dilutive ordinary equivalent shares outstanding during the period. Ordinary equivalent shares consist of shares issuable upon the conversion of the preferred shares using the if-converted method, unvested restricted shares, RSUs and ordinary shares issuable upon the exercise of outstanding share options (using the treasury stock method). Ordinary equivalent shares are not included in the denominator of the diluted earnings per share calculation when inclusion of such shares would be anti-dilutive.

Segment reporting

ASC 280, Segment Reporting, establishes standards for companies to report in their financial statements information about operating segments, products, services, geographic areas, and major customers.

Based on the criteria established by ASC 280, our chief operating decision maker (“CODM”) has been identified as our Chief Executive Officer, who reviews consolidated results when making decisions about allocating resources and assessing performance of the company. As a whole and hence, we have only one reportable segment. We do not distinguish between markets or segments for the purpose of internal reporting. As our long-lived assets are substantially located in the PRC, no geographical segments are presented.

Income taxes

Current income taxes are recorded in accordance with the regulations of the relevant tax jurisdiction. We account for income taxes under the asset and liability method in accordance with ASC 740, Income Tax. Under this method, deferred tax assets and liabilities are recognized for the tax consequences attributable to differences between carrying amounts of existing assets and liabilities in the financial statements and their respective tax basis, and operating loss carry-forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred taxes of a change in tax rates is recognized in the consolidated statements of comprehensive loss in the period of change. Valuation allowances are established when necessary to reduce the amount of deferred tax assets if it is considered more likely than not that amount of the deferred tax assets will not be realized.

We record liabilities related to uncertain tax positions when, despite our belief that our tax return positions are supportable, we believe that it is more likely than not that those positions may not be fully sustained upon review by tax authorities. Accrued interest and penalties related to unrecognized tax benefits are classified as income tax expense. We did not recognize uncertain tax positions as of December 31, 2018 and 2019.

Recently issued accounting pronouncements

For a summary of recently issued accounting pronouncements, see Note 3 to the consolidated financial statements of NIO Inc. and its subsidiaries pursuant to Item 17 of Part III of this annual report.

Results of Operations

The following table sets forth a summary of our consolidated results of operations for the years indicated. This information should be read together with our consolidated financial statements and related notes included elsewhere in this annual report. The operating results in any year are not necessarily indicative of the results that may be expected for any future period.

	Year Ended December 31,			
	2017	2018	2019	
	RMB	RMB	RMB	US\$
	(in thousands)			
Revenues: (1)				
Vehicle sales	—	4,852,470	7,367,113	1,058,220
Other sales	—	98,701	457,791	65,758
Total revenues	—	4,951,171	7,824,904	1,123,978
Cost of sales:(2)				
Vehicle sales	—	(4,930,135)	(8,096,035)	(1,162,923)
Other sales	—	(276,912)	(927,691)	(133,254)
Total cost of sales	—	(5,207,047)	(9,023,726)	(1,296,177)
Gross loss	—	(255,876)	(1,198,822)	(172,199)
Operating expenses:(2)				
Research and development(2)	(2,602,889)	(3,997,942)	(4,428,580)	(636,126)
Selling, general and administrative(2)	(2,350,707)	(5,341,790)	(5,451,787)	(783,100)
Total operating expenses	(4,953,596)	(9,339,732)	(9,880,367)	(1,419,226)
Loss from operations	(4,953,596)	(9,595,608)	(11,079,189)	(1,591,425)
Interest income	18,970	133,384	160,279	23,023
Interest expenses	(18,084)	(123,643)	(370,536)	(53,224)
Share of losses of equity investee	(5,375)	(9,722)	(64,478)	(9,262)
Investment income	3,498	—	—	—
Other income/(loss), net	(58,681)	(21,346)	66,160	9,503
Loss before income tax expenses	(5,013,268)	(9,616,935)	(11,287,764)	(1,621,385)
Income tax expense	(7,906)	(22,044)	(7,888)	(1,133)
Net loss	(5,021,174)	(9,638,979)	(11,295,652)	(1,622,518)

(1) We began generating revenues in June 2018, when we began making deliveries and sales of the ES8. We currently generate revenues from vehicle sales and other sales.

(2) Share-based compensation expenses were allocated in cost of sales and operating expenses as follows:

	Year Ended December 31,			
	2017	2018	2019	
	RMB	RMB	RMB	US\$
	(in thousands)			
Cost of Sales	—	9,289	9,763	1,402
Research and development expenses	23,210	109,124	82,680	11,876
Selling, general and administrative expenses	67,086	561,055	241,052	34,625
Total	90,296	679,468	333,495	47,903

Years Ended December 31, 2019 and 2018

Revenues

Our revenues increased by 58.0% from RMB4,951.2 million in 2018 to RMB7,824.9 million (US\$1,124.0 million) in 2019, primarily attributable to (i) an increase in the number of vehicles sold in 2019, and (ii) an increase in the incremental revenue recognized from user rights and service packages, which was in line with the growth of our vehicle sales.

Cost of sales

Our cost of sales increased by 73.3% from RMB5,207.0 million in 2018 to RMB9,023.7 million (US\$1,296.2 million) in 2019, mainly due to (i) an increase in direct parts, materials and manufacturing overhead (including depreciation of assets associated with the production) by RMB3,007.3 million; (ii) an increase in processing fee and compensation to JAC for its operating losses incurred in the amount by RMB158.6 million; and (iii) an increase in labor costs that are associated with sales of energy and service packages by RMB146.0 million.

Research and Development Expenses

Research and development expenses increased by 10.8% from RMB3,997.9 million in 2018 to RMB4,428.6 million (US\$636.1 million) in 2019, primarily due to (i) an 11.7% increase in design and development expense, which increased from RMB1,828.0 million in 2018 to RMB2,041.0 million (US\$293.2 million) in 2019 primarily due to the incurrence of incremental design and development costs for the ES6, EC6 and all-new ES8; and (ii) an 8.3% increase in employee compensation for our research and development employees, which increased from RMB1,850.9 million in 2018 to RMB2,004.9 million (US\$288.0 million) in 2019 primarily due to an increase in the year-round average number of our research and development employees (including employees of our product and software development teams).

Selling, General and Administrative Expenses

Selling, general and administrative expenses increased slightly by 2.1% from RMB5,341.8 million in 2018 to RMB5,451.8 million (US\$783.1 million) in 2019, primarily due to (i) a 63.9% increase in rental and related expenses, which increased from RMB450.1 million in 2018 to RMB737.6 million (US\$105.9 million) in 2019, due to the expansion of our network of NIO Houses and NIO Spaces since the second half of 2018; (ii) an 83.1% increase in depreciation and amortization expenses, which increased from RMB249.8 million in 2018 to RMB457.4 million (US\$65.7 million) in 2019, primarily due to the increased depreciation expenses from leasehold improvement of NIO Houses and office buildings; and (iii) a 32.0% increase in other expenses, which increased from RMB284.0 million in 2018 to RMB375.0 million (US\$53.9 million) in 2019 primarily due to the recognition of certain accrued allowance against receivables in 2019, partially offset by a decrease in marketing and promotional expenses from RMB1,158.5 million in 2018 to RMB818.1 million (US\$117.5 million) in 2019 in connection with reduced marketing and promotional activities.

Loss from Operations

As a result of the foregoing, we incurred a loss from operations of RMB11,079.2 million (US\$1,591.4 million) in 2019, as compared to a loss of RMB9,595.6 million in 2018.

Interest Income

In 2019, we recorded interest income of RMB160.3 million (US\$23.0 million) as compared to RMB133.4 million in 2018, primarily due to the interest income received on higher cash balances deposited with banks in 2018.

Interest Expense

In 2019, we recorded interest expense of RMB370.5 million (US\$53.2 million), as compared to interest expense of RMB123.6 million in 2018, primarily due to an increase in our indebtedness (including the 2024 Notes, the Affiliate Notes and bank debt) in 2019.

Share of Losses of Equity Investees

We recorded share of losses of equity investees of RMB64.5 million (US\$9.3 million) in 2019, as compared with share of losses of equity investee of RMB9.7 million in 2018, primarily because most of our equity investees were loss-making start-up companies.

Other Income, Net

We recorded other income of RMB66.2 million (US\$9.5 million) in 2019, as compared to other loss of RMB21.3 million in 2018, primarily due to the investment gains we recorded from the disposal of a subsidiary of NIO Capital.

Income Tax Expense

In 2019, our income tax expense was RMB7.9 million (US\$1.1 million), a decrease of 64.2% from RMB22.0 million in 2018, which was primarily due to our reduced business scale in Germany and the United Kingdom.

Net Loss

As a result of the foregoing, we incurred a net loss of RMB11,295.7 million (US\$1,622.5 million) in 2019, as compared to a net loss of RMB9,639.0 million in 2018.

Years Ended December 31, 2018 and 2017

Revenues

We recorded revenues of RMB4,951.2 million for vehicle sales and other sales in 2018, as we began making deliveries of our first volume manufactured electric vehicle, the ES8, on June 28, 2018 and delivered 11,348 vehicles by December 31, 2018. We did not record any revenues in 2017.

Cost of sales

We recorded cost of sales of RMB5,207.0 million in 2018. Our cost of sales mainly consists of (i) direct parts, materials and manufacturing overhead (including depreciation of assets associated with the production) of RMB4,527.5 million; (ii) processing fee and compensation to JAC for its operating losses incurred during the same period in the amount of RMB222.9 million; and (iii) labor costs that are associated with sales of energy and service packages of RMB102.6 million. We did not record any cost of sales in 2017.

Research and Development Expenses

Research and development expenses increased by 53.6% from RMB2,602.9 million in 2017 to RMB3,997.9 million in 2018, primarily due to a 84.2% increase in employee compensation, which increased from RMB1,004.8 million in 2017 to RMB1,850.9 million in 2018, primarily due to (i) an increase in share-based compensation expenses recognized related to the stock options granted to certain of our non-US employees after our initial public offering and (ii) an increase in the number of our research and development employees (including employees of our product and software development teams) by approximately 75% from 2017 to 2018.

Selling, General and Administrative Expenses

Selling, general and administrative expenses increased by 127.2% from RMB2,350.7 million in 2017 to RMB5,341.8 million in 2018, primarily due to, (i) a 142.6% increase in employee compensation with respect to our non-research and development employees, which increased from RMB929.9 million in 2017 to RMB2,256.5 million in 2018, primarily due to (x) an increase in the number of non-research and development employees by approximately 210% from 2017 to 2018, in line with the expansion of our business and (y) an increase in share-based compensation expenses recognized related to the stock options granted to certain of our non-US employees after our initial public offering; (ii) a 121.3% increase in marketing and promotional expenses, which increased from RMB523.5 million in 2017 to RMB1,158.5 million in 2018, as we increased our marketing and advertising expenses for the ES8 in 2018 and incurred expenses relating to (x) an auto exhibition in Beijing in May 2018 and (y) a number of nationwide test-drive activities for customers in 2018, (iii) a 108.3% increase in rental and related expenses, which increased from RMB216.1 million in 2017 to RMB450.1 million in 2018, as we continued to expand our network of NIO Houses and rented additional office space and (iv) a 142.3% increase in professional services expenses, which increased from RMB238.7 million in 2017 to RMB578.5 million in 2018, as we incurred more (x) outsourcing fees primarily related to human resources and IT functions that support business expansion, (y) design fees paid in connection with our NIO Houses and (z) auditor fees and legal fees.

Loss from Operations

As a result of the foregoing, we incurred a loss from operations of RMB9,595.6 million in 2018, as compared to a loss of RMB4,953.6 million in 2017.

Interest Income

In 2018, we recorded interest income of RMB133.4 million as compared to RMB19.0 million in 2017, primarily due to the interest income received on higher cash balances deposited with banks in 2018.

Interest Expense

In 2018, we recorded interest expense of RMB123.6 million, as compared to interest expense of RMB18.1 million in 2017, primarily due to an increase in our indebtedness in 2018.

Share of Losses of Equity Investees

We recorded share of losses of equity investees of RMB9.7 million in 2018, as compared with share of losses of equity investee of RMB5.4 million in 2017, primarily because most of our equity investees were loss-making start-up companies.

Investment Income

We recorded investment income RMB3.5 million in 2017, as compared to nil in 2018, we did not record any investment income, as we invested in certain short-term wealth management products in 2017 and recorded investment income generated therefrom.

Other Loss, Net

We recorded other losses of RMB21.3 million in 2018, as compared to other loss of RMB58.7 million in 2017, primarily due to the depreciation of RMB against the U.S. dollar in 2018. In 2018, we held a significant portion of our cash and cash equivalents in U.S. dollars, while we incurred a significant portion of our expenses in RMB.

Income Tax Expense

In 2018, our income tax expense was RMB22.0 million, an increase of 178.8% from RMB7.9 million in 2017. It represented income taxes paid and accrued with respect to transfer pricing compensation for our operations in Germany, UK and Hong Kong.

Net Loss

As a result of the foregoing, we incurred a net loss of RMB9,639.0 million in 2018, as compared to a net loss of RMB5,021.2 million in 2017.

B. Liquidity and Capital Resources

Cash Flows and Working Capital

We had net cash used in operating activities of RMB4,574.7 million, RMB7,911.8 million and RMB8,721.7 million (US\$1,252.8 million) in 2017, 2018 and 2019, respectively. Our principal sources of liquidity have been proceeds from issuances of equity securities in our initial public offering and private placements, our notes offering, and our bank facilities.

As of December 31, 2019, we had a total of RMB989.9 million (US\$142.2 million) in cash and cash equivalents and restricted cash. As of December 31, 2019, 83.7% of our cash and cash equivalents and restricted were denominated in Renminbi and held in the PRC, and the other cash and cash equivalents and restricted cash were mainly denominated in U.S. dollars or Hong Kong dollars and held in the United States or Hong Kong. Our cash and cash equivalents consist primarily of cash on hand, time deposits and highly-liquid investments placed with banks, which are unrestricted as to withdrawal and use, and which have original maturities of three months or less.

As of December 31, 2019, the total size of our bank facilities was RMB2,860.0 million (US\$410.8 million), of which RMB1,105.6 million (US\$158.8 million), RMB1,385.5 million (US\$199.0 million) and RMB30.0 million (US\$4.3 million) were utilized for borrowing, letters of credit and bankers' acceptance, respectively.

As of December 31, 2019, we had approximately US\$1,027.7 million in total long-term borrowings outstanding, consisting primarily of the 2024 Notes, the Affiliate Notes and our long-term bank debt. In addition, in February and March 2020, we issued and sold convertible notes in an aggregate principal amount of US\$435 million due 2021, or the 2021 Notes, to several unaffiliated Asia based investment funds. The 2021 Notes bear zero interest. Prior to maturity, the holders of the 2021 Notes have the right to convert either all or part of the principal amount of the 2021 Notes into Class A ordinary shares (or ADSs) of our company pursuant to conversion price and conditions as set forth in the respective convertible notes purchase agreements.

The 2024 Notes are unsecured debt and are not redeemable by us prior to the maturity date except for certain changes in tax law. In accordance with the indenture governing the 2024 Notes, or the 2024 Notes Indenture, holders of the 2024 Notes may require us to purchase all or any portion of their notes on February 1, 2022 at a repurchase price equal to 100% of the principal amount of the 2024 Notes to be repurchased, plus accrued and unpaid interest. Holders of the 2024 Notes may also require us, upon a fundamental change (as defined in the 2024 Notes Indenture), to repurchase for cash all or part of their 2024 Notes at a fundamental change repurchase price equal to 100% of the principal amount of the 2024 Notes to be repurchased, plus accrued and unpaid interest. Satisfying the obligations of the 2024 Notes could adversely affect the amount or timing of any distributions to our shareholders. We may choose to satisfy, repurchase, or refinance the 2024 Notes through public or private equity or debt financings if we deem such financings available on favorable terms.

The Affiliate Notes issued in the first tranche will mature in 360 days, bear no interest, and require us to pay a premium at 2% of the principal amount at maturity. The Affiliate Notes issued in the second tranche will mature in three years, bear no interest, and require us to pay a premium at 6% of the principal amount at maturity. The 360-day Affiliate Notes will be convertible into our Class A ordinary shares (or ADSs) at a conversion price of US\$2.98 per ADS at the holder's option from the 15th day immediately prior to maturity, and the three-year convertible notes will be convertible into our Class A ordinary shares (or ADSs) at a conversion price of US\$3.12 per ADS at the holder's option from the first anniversary of the issuance date. The holders of the three-year Affiliate Notes will have the right to require us to repurchase for cash all of the convertible notes or any portion thereof on February 1, 2022.

The 2021 Notes bear zero interest and will mature in February 2021. Prior to maturity, the holders of the 2021 Notes have the right to convert either all or part of the principal amount of the 2021 Notes into Class A ordinary shares (or ADSs) of our company pursuant to conversion price and conditions as set forth in the respective convertible notes purchase agreements. In accordance with the 2021 Notes Indenture, holders of the 2021 Notes may require us, upon a fundamental change (as defined in the 2021 Notes Indenture), to repurchase for cash all or part of their 2021 Notes at a fundamental change repurchase price equal to 100% of the principal amount of the 2021 Notes to be repurchased. Satisfying the obligations of the 2021 Notes could adversely affect the amount or timing of any distributions to our shareholders. We may choose to satisfy, repurchase, or refinance the 2021 Notes through public or private equity or debt financings if we deem such financings available on favorable terms.

As of December 31, 2019, the current liabilities exceeded the current assets in the amount of RMB4.6 billion. Our working capital and liquidity was not adequate for continuous operation in the 12 months from the date when this annual report is issued. Our continuous operation depends on our capability to obtain sufficient external equity or debt financing. On April 29, 2020, we entered into definitive agreements for investments in NIO China with Hefei Strategic Investors. The Hefei Strategic Investors will invest an aggregate of RMB7 billion in cash into NIO Anhui. We will inject our core businesses and assets in China, including vehicle research and development, supply chain, sales and services and NIO Power, valued at RMB17.77 billion in total, into NIO China, and invest RMB4.26 billion in cash into NIO China. We expect the closing of the investments to take place in the second quarter of 2020, subject to the satisfaction of customary closing conditions. Based on this evaluation, we believe that our current cash and cash equivalents, short-term investment, available banking facilities, anticipated cash receipts from sales of vehicles and provision of services and proceeds from the investments in NIO China by Hefei Strategic Investors, will be sufficient to meet our anticipated working capital requirements and capital expenditures and we will be able to meet our payment obligations when liabilities fall due for the next 12 months from the date when this annual report is issued. We may, however, decide to enhance our liquidity position or increase our cash reserve for future investments or operations through additional capital and finance funding. The issuance and sale of additional equity would result in further dilution to our shareholders. The incurrence of indebtedness would result in increased fixed obligations and could result in operating covenants that would restrict our operations.

The following table sets forth a summary of our cash flows for the years indicated.

	Year Ended December 31,			
	2017	2018	2019	
	RMB	RMB	RMB	US\$
	(in thousands)			
Summary of Consolidated Cash Flow Data:				
Net cash used in operating activities	(4,574,719)	(7,911,768)	(8,721,706)	(1,252,795)
Net cash provided by/(used in) investing activities	(1,190,273)	(7,940,843)	3,382,069	485,804
Net cash provided by financing activities	12,867,334	11,603,092	3,094,953	444,562
Effects of exchange rate changes on, cash equivalents and restricted cash	(168,120)	(56,947)	10,166	1,460
Net increase/(decrease) in cash, cash equivalents and restricted cash	6,934,222	(4,306,466)	(2,234,518)	(320,969)
Cash, cash equivalents and restricted cash at beginning of the year	596,631	7,530,853	3,224,387	463,154
Cash, cash equivalents and restricted cash at end of the year	7,530,853	3,224,387	989,869	142,185

Operating Activities

Net cash used in operating activities was RMB8,721.7 million (US\$1,252.8 million) in 2019, primarily attributable to a net loss of RMB11,295.7 million (US\$1,622.5 million), adjusted for (i) non-cash items of RMB2,137.2 million (US\$307.0 million), which primarily consisted of depreciation and amortization of RMB998.9 million (US\$143.5 million) and share-based compensation expenses of RMB333.5 million (US\$47.9 million) and (ii) a net decrease in operating assets and liabilities by RMB436.8 million (US\$62.7 million), which was primarily attributable to a decrease in inventory by RMB569.2 million (US\$81.8 million), and an increase in accruals and other liabilities by RMB848.4 million (US\$121.9 million), consisting primarily of research and development services, advance payments from ES8 and ES6 customers, salary and benefits payable and accounts payable in connection with marketing events. Net cash used in operating activities was partially offset by, among others, an increase in trade receivables by RMB681.6 million (US\$97.9 million) primarily consisting of an increase in the government subsidies relating to our vehicle sales, and payment of operating lease liabilities by RMB345.3 million (US\$49.6 million).

Net cash used in operating activities was RMB7,911.8 million in 2018, primarily attributable to a net loss of RMB9,639.0 million, adjusted for (i) non-cash items of RMB1,221.6 million, which primarily consisted of share-based compensation expenses of RMB679.5 million and depreciation and amortization of RMB474.2 million and (ii) a net decrease in operating assets and liabilities of RMB505.6 million, which was primarily attributable to an increase in trade payables of RMB2,827.1 million consisting primarily of accounts payable relating to the purchase of inventory; an increase in accruals and other liabilities of RMB1,348.6 million, consisting primarily of research and development services, advance payments from ES8 customers, salary and benefits payable and accounts payable in connection with marketing events; and an increase in other non-current liabilities of RMB291.1 million consisting primarily of rental payables, partially offset by, among others, an increase in inventory of RMB1,375.9 million primarily related to purchase of raw materials, works in progress and finished goods; an increase in prepayments and other current assets of RMB811.1 million consisting primarily of deductible value-added tax and prepaid expenses; an increase in trade receivables of RMB756.5 million primarily consisting of an increase in the government subsidies relating to our vehicle sales and an increase in long-term receivables of RMB574.7 million primarily resulting from battery payment installment arrangement with customers, and an increase in other non-current assets of RMB658.0 million.

Net cash used in operating activities was RMB4,574.7 million in 2017, primarily attributable to a net loss of RMB5,021.2 million, adjusted for (i) non-cash items of RMB315.7 million, which primarily consisted of depreciation and amortization of RMB167.9 million, foreign exchange losses of RMB49.5 million and share-based compensation expenses of RMB90.3 million and (ii) a net decrease in operating assets and liabilities of RMB130.7 million, which was primarily attributable to an increase in accruals and other liabilities of RMB603.4 million, consisting primarily of payables for research and development expenses, accrued expenses and salaries and benefits payables, and an increase in other non-current liabilities of RMB78.6 million, consisting primarily of rental payables and deferred government grants, offset partially by, among others, an increase in prepayment and other current assets of RMB404.8 million, which primarily related to deductible value-added tax, prepaid expenses and deposits; an increase in inventories of RMB89.5 million, primarily related to purchases of raw materials, works in progress and finished goods, as we began trial production of the ES8; and an increase in other non-current assets of RMB66.7 million.

Investing Activities

Net cash provided by investing activities was RMB3,382.1 million (US\$485.8 million) in 2019, primarily attributable to (i) proceeds from sale of short-term investments of RMB7,246.5 million (US\$1,040.9 million), and (ii) proceeds from disposal of equity investees of RMB76.7 million (US\$11.0 million), partially offset by purchases of short-term investments of RMB2,202.8 million (US\$316.4 million), and (ii) purchase of property, plant and equipment and intangible assets of RMB1,706.8 million (US\$245.2 million).

Net cash used in investing activities was RMB7,940.8 million in 2018, primarily attributable to (i) purchases of short-term investments of RMB8,090.7 million, (ii) purchases of property, plant and equipment and intangible assets of RMB2,644.0 million and (iii) acquisition of equity investees of RMB110.9 million, partially offset by the proceeds from sale of short-term investments of RMB2,936.0 million.

Net cash used in investing activities was RMB1,190.3 million in 2017, which was primarily attributable to (i) purchases of property, plant and equipment and intangible assets of RMB1,113.9 million, relating to the roll-out of our NIO House network and strengthening of research and development capabilities and (ii) purchases of held for trading securities of RMB1,337.4 million, consisting of certain short-term liquid investments, which were partially offset by proceeds from sales of securities held for trading of RMB1,340.9 million.

Financing Activities

Net cash provided by financing activities was RMB3,095.0 million (US\$444.6 million) in 2019, primarily attributable to (i) proceeds from issuance of convertible promissory note of RMB4,322.5 million (US\$620.9 million), and (ii) the proceeds from borrowings of RMB1,376.6 million (US\$197.7 million), partially offset by repayments of borrowings of RMB2,611.0 million (US\$375.0 million).

Net cash provided by financing activities was RMB11,603.1 million in 2018, primarily attributable to (i) the proceeds from the issuance of ordinary shares in our initial public offering of RMB7,531.0 million; (ii) the proceeds from the issuance of redeemable non-controlling interests of RMB1,265.9 million in connection with the issuance by a wholly-owned subsidiary of us of redeemable preferred shares to certain third party strategic investors and (iii) the proceeds from bank borrowings of RMB2,668.5 million.

Net cash provided by financing activities was RMB12,867.3 million in 2017, which was attributable to the net proceeds from the issuance of our series A, series B, series C, and series D preferred shares, with a sum of RMB12,226.5 million, and, to a lesser extent, the proceeds from borrowings of RMB633.7 million, and capital injections from non-controlling interests of RMB13.4 million.

Capital Expenditures

We made capital expenditures of RMB1,113.9 million, RMB2,644.0 million and RMB1,706.8 million (US\$245.2 million) in 2017, 2018 and 2019, respectively. In these periods, our capital expenditures were mainly used for the acquisition of property, plant and equipment and intangible assets which consisted primarily of mold and tooling, IT equipment, research and development equipment, leasehold improvements, consisting primarily of office space, NIO Houses and laboratory improvements as well as the roll-out of our power solutions. We expect our capital expenditures to continue to be significant in the foreseeable future as we expand our business, and that our level of capital expenditures will be significantly affected by user demand for our products and services. The fact that we have a limited operating history means we have limited historical data on the demand for our products and services. As a result, our future capital requirements may be uncertain and actual capital requirements may be different from those we currently anticipate. To the extent the proceeds of the 2024 Notes, Affiliate Notes and 2021 Notes and cash flows from our business activities are insufficient to fund future capital requirements, we may need to seek equity or debt financing. We will continue to make capital expenditures to support the expected growth of our business.

Borrowings

As of December 31, 2019, our total borrowings, including current borrowings and non-current borrowings, were RMB8,362.9 million (US\$1,201.3 million), primarily consisting of convertible notes of RMB 6,482.6 million (US\$931.2 million), bank loans of RMB1,400.6 million (US\$201.2 million), bankers' acceptance of RMB60.0 million (US\$8.6 million) and loan from investors of RMB419.7 million (US\$60.3 million).

Holding Company Structure

NIO Inc. is a holding company with no material operations of its own. We conduct a portion of our operations through our PRC subsidiaries, and, to a lesser extent, our variable interest entities and their subsidiaries in China. As a result, our ability to pay dividends depends significantly upon dividends paid by our PRC subsidiaries. If our existing PRC subsidiaries or any newly formed ones incur debt on their own behalf in the future, the instruments governing their debt may restrict their ability to pay dividends to us. In addition, our wholly foreign-owned subsidiaries in China are permitted to pay dividends to us only out of their retained earnings, if any, as determined in accordance with PRC accounting standards and regulations. Under PRC law, each of our subsidiaries and our variable interest entities and their subsidiaries in China is required to set aside at least 10% of its after-tax profits each year, if any, to fund certain statutory reserve funds until such reserve funds reach 50% of its registered capital. In addition, each of our wholly foreign-owned subsidiaries in China may allocate a portion of its after-tax profits based on PRC accounting standards to enterprise expansion funds, staff bonuses and welfare funds at its discretion, and each of our variable interest entities may allocate a portion of its after-tax profits based on PRC accounting standards to a discretionary surplus fund at its discretion. The statutory reserve funds and the discretionary funds are not distributable as cash dividends. Remittance of dividends by a wholly foreign-owned company out of China is subject to examination by the banks designated by the SAFE. Our PRC subsidiaries have not paid dividends and will not be able to pay dividends until they generate accumulated profits and meet the requirements for statutory reserve funds. Our VIEs did not have any material assets or liabilities as of December 31, 2019. In the future we expect Beijing NIO to focus on value-added telecommunications services, including, without limitation, performing internet services, operating our website and our mobile application as well as holding certain related licenses.

C. Research and Development, Patents and Licenses, etc.

See “Item 4. Information on the Company—B. Business Overview—Our Technology—Worldwide Research and Development Footprint” and “—Intellectual Property.”

D. Trend Information

Other than as disclosed elsewhere in this annual report, we are not aware of any trends, uncertainties, demands, commitments or events for the period from January 1, 2019 to December 31, 2019 that are reasonably likely to have a material effect on our net revenues, income, profitability, liquidity or capital resources, or that would cause the disclosed financial information to be not necessarily indicative of future operating results or financial conditions.

E. Off-Balance Sheet Arrangements

We have not entered into any off-balance sheet financial guarantees or other off-balance sheet commitments to guarantee the payment obligations of any third parties. We have not entered into any derivative contracts that are indexed to our shares and classified as shareholder’s equity or that are not reflected in our consolidated financial statements. Furthermore, we do not have any retained or contingent interest in assets transferred to an unconsolidated entity that serves as credit, liquidity or market risk support to such entity. We do not have any variable interest in any unconsolidated entity that provides financing, liquidity, market risk or credit support to us or engages in leasing, hedging or product development services with us.

F. Tabular Disclosure of Contractual Obligations

The following table sets forth our contractual obligations as of December 31, 2019:

	Payment due by period				
	Total	Less than 1 year	1-2 years (in RMB thousands)	2-3 years	More than 3 years
Capital commitments	620,234	615,776	4,148	279	31
Operating lease obligations	2,550,709	749,869	574,702	466,041	760,097
Finance lease obligations	142,734	50,043	36,585	28,206	27,900
Short-term and long-term borrowings	1,880,250	510,436	668,373	701,441	—
Interest on bank borrowings	112,231	66,500	41,462	4,269	—
Convertible notes with principal and interest	7,742,710	947,019	235,447	974,924	5,585,320
Total	13,048,868	2,939,643	1,560,717	2,175,160	6,373,348

Capital commitments are commitments in relation to the purchase of property and equipment including leasehold improvements. Operating lease obligations consist of leases in relation to certain offices and buildings, NIO Houses and other property for our sales and after-sales network.

Other than those shown above, we did not have any significant capital and other commitments, long-term obligations, or guarantees as of December 31, 2019.

G. Safe Harbor

See “Forward-Looking Statements” on page 2 of this annual report.

ITEM 6. DIRECTORS, SENIOR MANAGEMENT AND EMPLOYEES

A. Directors and Executive Officers

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

<u>Directors and Executive Officers</u>	<u>Age</u>	<u>Position/Title</u>
Bin Li	45	Chairman and Chief Executive Officer
Lihong Qin	46	Director and President
Feng Shen	56	Executive Vice President
Xin Zhou	50	Executive Vice President
Wei Feng	40	Chief Financial Officer
Ganesh V. Iyer	52	Chief Information Officer
Hai Wu	51	Independent Director
Denny Ting Bun Lee	52	Independent Director
James Gordon Mitchell	46	Director

Mr. Bin Li is our founder and has served as chairman of the board since our inception and our chief executive officer since January 2018. Mr. Li currently also serves as chairman of the board of directors at Bitauto Holdings Limited, a NYSE-listed automobile service company and a leading automobile service provider in China. In 2000, Mr. Li co-founded Beijing Bitauto E-Commerce Co., Ltd. and served as its director and president until 2006. In 2002, Mr. Li co-founded Beijing Creative & Interactive Digital Technology Co., Ltd. and has served as its chairman of the board of directors and chief executive officer since its inception. In addition, Mr. Li currently serves as vice-chairman of China Automobile Dealers Association, or CADA, and was recognized by CADA in 2008 as one of the top 10 most influential and distinguished people in China’s automobile dealer industry in the past 20 years. Mr. Li received his bachelor’s degree in sociology from Peking University where he minored in Law.

Mr. Lihong Qin is our co-founder and has served as our director and our president since our inception. Prior to joining us, Mr. Qin served as chief marketing officer and executive director at Longfor Properties Co., Ltd., a leading company involved in property development and investment in China, from 2008 to 2014. He also served as deputy general manager at Anhui Chery Automobile Sales and Service Company from 2005 to 2008, as senior consultant and project manager at Roland Berger Strategy Consultants from 2003 to 2005, and as assistant brand manager at the Marketing Department of Procter & Gamble (Guangzhou) Ltd. from 2001 to 2003. Mr. Qin received his bachelor’s degree and a master’s degree in law from Peking University in 1996 and 1999, respectively, and a master’s degree in public policy from Harvard University in 2001.

Mr. Feng Shen joined our company in December 2017, and currently serves as our executive vice president and chairman of quality management committee. Mr. Shen worked in several senior executive management roles, such as president of Polestar China and global chief technology officer at Polestar, president at Volvo Cars China R&D Company, vice president of Volvo Cars Asia-Pacific Operation, and chairman at China-Sweden Traffic Safety Research Center from 2010 to 2017. Prior to that, Mr. Shen worked as a powertrain manager, Six-Sigma Master Black Belt and technical expert at Ford Motor Company from 1999 to 2010 in the United States and China. Mr. Shen received a bachelor’s degree in mathematics and mechanics and a master’s degree in applied mechanics from Fudan University in 1984 and 1987, respectively. He also received a doctoral degree in mechanical engineering from Auburn University in 1996.

Mr. Xin Zhou joined our company in April 2015. He had served as the chairman of product committee since 2017, and currently serves as our executive vice president. Prior to joining our company, Mr. Zhou served as executive director at Qoros Automotive Co., Ltd. from September 2009 to April 2015. Prior to that, he was the engagement manager of McKinsey & Co. from April 2007 to September 2009, and executive director of Lear Corp. from May 1998 to April 2007. From 1995 to 1998, Mr. Zhou was a senior manager of General Motors China Inc. Mr. Zhou received a bachelor's degree in applied science from Fudan University in 1992 and a master's degree in business administration from China Europe International Business School in 2008.

Mr. Wei Feng has served as our Chief Financial Officer since November 2019. Prior to joining our company, Mr. Feng served as managing director and head of the auto and auto parts research team at China International Capital Corporation. Prior to that, Mr. Feng served as an equity analyst at Everbright Securities Co. Ltd. from 2010 to 2013. Mr. Feng's career also includes more than five years' working experience within the ZF Group where he participated in numerous corporate matters. Mr. Feng received his bachelor's degree in Engineering from the Department of Automotive Engineering at Tsinghua University, and his joint master's degree in Automotive System Engineering from RWTH Aachen University in Germany and Tsinghua University in China.

Mr. Ganesh V. Iyer has served as our global chief information officer since April 2016 and managing director of NIO U.S. since December 2018. Mr. Iyer has over 30 years of experience delivering results in various industries including autonomous technology, hi-tech, manufacturing, and telecom. Mr. Iyer worked as vice president of Information Technology at Tesla Inc. from 2012 to 2016. Prior to Tesla, he held senior information technology leadership roles at VMware from 2010 to 2012. Prior to VMware, Mr. Iyer served as director of information technology at Juniper Networks and WebEx. He also spent 10 years in consulting primarily at Electronic Data Systems and Tata Consultancy Services. Mr. Iyer received a bachelor's degree in chemical engineering with a minor in mathematics from the university of Calicut in India.

Mr. Hai Wu has served as our director since July 2016. Mr. Wu has served as a managing partner of Cenova Capital since May 2019. He has extensive experience in investments and management. Prior to Cenova Capital, Mr. Wu served as a managing director of China at Temasek Holdings Ltd. Since May 2014. Prior to that, Mr. Wu was the chief executive officer at Ramaxel Technology (Shenzhen) Limited from April 2012 to February 2014 and a managing director at CITIC Private Equity Funds Management Co., Ltd. from March 2010 to May 2012. Mr. Wu served as the global director and managing partner of the Beijing Branch office of McKinsey & Company from August 1999 to February 2010. He also served as a non-executive director of COFCO Meat Holdings Limited from September 2015 to December 2017. He received a bachelor's degree in physiology from Peking University, a master's degree in business administration from the Johnson School of Management, University of Cornell and a doctoral degree in neuroscience and cell biology from Rutgers University.

Mr. Denny Ting Bun Lee has served as our director since September 2018. Mr. Lee serves as an independent non-executive director on the board of NetEase, Inc., a leading internet and online game service provider in China listed on the Nasdaq Global Select Market. He was the chief financial officer of NetEase, Inc. from 2002 to 2007. Prior to joining NetEase, Inc., Mr. Lee worked in the Hong Kong office of KPMG for more than ten years. Mr. Lee currently serves as an independent non-executive director and the chairman of the audit committees of the following four companies: (1) Jianpu Technology Inc., a company listed on the NYSE, (2) New Oriental Education & Technology Group Inc., a provider of private education services in China listed on the NYSE, (3) Concord Medical Services Holdings Limited, a leading specialty hospital management solution provider and operator in China listed on the NYSE, and (4) China Metal Resources Utilization Ltd., a company principally engaged in the manufacture and sales of copper and related products in China listed on the main board of The Hong Kong Stock Exchange. Mr. Lee graduated from the Hong Kong Polytechnic University and is a member of the Hong Kong Institute of Certified Public Accountants and The Chartered Association of Certified Accountants.

Mr. James Gordon Mitchell has served as our director since September 2018. Currently, Mr. Mitchell serves as Senior Executive Vice President and Chief Strategy Officer of Tencent Holdings, where he has worked since July 2011. Mr. Mitchell has also served as the Chairman and non-executive director of the board of China Literature Limited since June 2017. He is also a non-executive director of certain other listed companies including TME Group Limited, a Chinese music entertainment company (stock code NYSE:TME); Yixin Group Limited, a Chinese automobile retail transaction platform company listed on the main board of Hong Kong Stock Exchange (stock code 2858) and Frontier Developments, a British video game development company listed on the London Stock Exchange (under the symbol AIM: FDEV), and a director of several unlisted companies. Prior to Tencent, Mr. Mitchell was a managing director at Goldman Sachs. He is a CFA® charterholder and received a degree from Oxford University.

B. Compensation of Directors and Executive Officers

For the year ended December 31, 2019, we paid an aggregate of approximately US\$2.26 million in cash to our directors and executive officers. For share incentive grants to our directors and executive officers, see “—Stock Incentive Plans.” We have not set aside or accrued any amount to provide pension, retirement or other similar benefits to our directors and executive officers. Our PRC subsidiaries and VIEs are required by law to make contributions equal to certain percentages of each employee’s salary for his or her pension insurance, medical insurance, unemployment insurance and other statutory benefits and a housing provident fund.

Employment Agreements and Indemnification Agreements

We have entered into employment agreements with each of our executive officers. Under these agreements, each of our executive officers is employed for a specified time period. We may terminate employment for cause, at any time, without advance notice or remuneration, for certain acts of the executive officer, such as conviction or plea of guilty to a felony or any crime involving moral turpitude, negligent or dishonest acts to our detriment, or misconduct or a failure to perform agreed duties. In such case of termination by us, we will provide severance payments to the executive officer as expressly required by applicable law of the jurisdiction where the executive officer is based.

Each executive officer has agreed to hold, both during and after the termination or expiry of the executive officer’s employment agreement, in strict confidence and not to use, except as required in the performance of the executive officer’s duties in connection with the executive officer’s employment or pursuant to applicable law, any of our confidential information or trade secrets, any confidential information or trade secrets of our clients or prospective clients, or the confidential or proprietary information of any third party received by us and for which we have confidential obligations. The executive officers have also agreed to disclose in confidence to us all inventions, designs and trade secrets which they conceive, develop or reduce to practice during the executive officer’s employment with us and to assign all right, title and interest in them to us, and assist us in obtaining and enforcing patents, copyrights and other legal rights for these inventions, designs and trade secrets.

In addition, each executive officer has agreed to be bound by non-competition and non-solicitation restrictions during the term of the executive officer’s employment and typically for one year following the last date of employment. Specifically, each executive officer has agreed not to (i) approach our suppliers, clients, customers or contacts or other persons or entities introduced to the executive officer in the executive officer’s capacity as a representative of us for the purpose of doing business with such persons or entities that will harm our business relationships with these persons or entities; (ii) assume employment with or provide services to any of our competitors, or engage, whether as principal, partner, licensor or otherwise, with any of our competitors, without our express consent; or (iii) seek directly or indirectly, to solicit the services of any of our employees who is employed by us on or after the date of the executive officer’s termination, or in the year preceding such termination, without our express consent.

We have also entered into indemnification agreements with each of our directors and executive officers. Under these agreements, we agree to indemnify our directors and executive officers against certain liabilities and expenses incurred by such persons in connection with claims made by reason of their being a director or officer of our company.

Stock Incentive Plans

Our board of directors has approved and adopted share-based awards under three stock incentive plans, namely, the 2015 Stock Incentive Plan, or the 2015 Plan, the 2016 Stock Incentive Plan, or the 2016 Plan, the 2017 Stock Incentive Plan, or the 2017 Plan. The terms of the 2015 Plan, the 2016 Plan and the 2017 Plan are substantially similar. The purpose of those plans is to attract and retain the best available personnel, to provide additional incentives to our employees, directors and consultants and to promote the success of our business. Our board of directors believes that our long-term success is dependent upon our ability to attract and retain superior individuals who, by virtue of their ability and qualifications, make important contributions to our business.

Under the 2015 Plan, the 2016 Plan and the 2017 Plan, the maximum numbers of Class A ordinary shares which may be issued pursuant to all awards are 46,264,378, 18,000,000 and 33,000,000, respectively. Under the 2018 Plan, a maximum number of 23,000,000 Class A ordinary shares may be issued pursuant to all awards. The amount should automatically increase each year by the number of shares representing 1.5% of the then total issued and outstanding share capital of our company as of the end of each preceding year. As of December 31, 2019, awards to purchase an aggregate amount of 88,843,972 Class A ordinary shares under our stock incentive plans have been granted and are outstanding, excluding awards that were forfeited or cancelled after the relevant grant dates.

The following paragraphs describe the principal terms of the 2015 Plan, the 2016 Plan, the 2017 Plan and the 2018 Plan.

Types of Awards. Our stock incentive plans permit the awards of options, restricted shares, restricted share units, share appreciation rights, dividend equivalent right or other right or benefit under each plan.

Plan Administration. Our board of directors or a committee of one or more members of the board of directors or officers will administer our stock incentive plans. The committee or the full board of directors, as applicable, will determine the grantees to receive awards, the type and number of awards to be granted to each grantee, and the terms and conditions of each award grant.

Award Agreement. Awards granted under our stock incentive plans are evidenced by an award agreement that sets forth terms, conditions and limitations for each award, which may include the term of the award, the provisions applicable in the event that the grantee's employment or service terminates, and our authority to unilaterally or bilaterally amend the award.

Eligibility. We may grant awards to our employees, consultants and directors.

Vesting Schedule. Except as approved by the plan administrator, options to be issued to the grantees under the stock incentive plans shall be subject to a minimum four (4) year vesting schedule calling for vesting no earlier than the following, counting from the applicable grant date or vesting commencement date (as determined by the plan administrator) with respect to the total issued options: the option representing 25% of the Class A ordinary shares under the option shall vest at the end of the first twelve (12) months commencing from the vesting commencement date, with remaining portions vesting in equal monthly installments over the next thirty-six (36) months.

Exercise of Options. The plan administrator determines the exercise price for each award, which is stated in the relevant award agreement. Options that are vested and exercisable will terminate if they are not exercised prior to the time as the plan administrator determines at the time of grant. However, In the case of an option granted to an employee who, at the time the option is granted, owns (or, pursuant to Section 424(d) of the U.S. Code, is deemed to own) stock representing more than 10% of the total combined voting power of all classes of shares of us or our subsidiary or affiliate, the term of the option will not be longer than seven to ten years from the date of grant under the 2017 Plan, or five years from the date of grant under the 2015 Plan and the 2016 Plan.

Drag-Along Events. Except as provided in the applicable award agreement or sub-plan, in the event of a drag-along event specified under the stock incentive plans, the grantees who hold any Class A ordinary shares upon exercise of the award shall sell, transfer, convey or assign all of their shares pursuant to, and so as to give effect to, the drag-along event, and each of such grantees shall grant to the board of directors or a person authorized by the board of directors, a power of attorney to transfer, sell, convey and assign the grantee's shares and to do and carry out all acts and to execute all documents that are necessary or advisable to complete the drag-along event.

Initial Public Offering. In the case of the initial public offering of our ADSs in September 2018, the grantees could enter into any agreements with any underwriter, coordinator, bankers or sponsor elected by us for the purpose of the offering, and each of such grantees would grant to the board of directors or a person authorized by the board of directors, a power of attorney to enter into any agreements with any underwriter, coordinator, bankers or sponsor elected by us and to do and carry out all the acts and to execute all the documents that are necessary or advisable to complete the offering.

Transfer Restrictions. Awards shall be transferable, subject to applicable laws, (i) by will and by the laws of descent and distribution and (ii) during the lifetime of the grantee, to the extent and in the manner authorized by the plan administrator. Notwithstanding the foregoing, the grantee may designate one or more beneficiaries of the grantee's award in the event of the grantee's death on a beneficiary designation form provided by the plan administrator.

Termination and Amendment of the Plan. Unless terminated earlier or extended before expiration, each of our stock incentive plans has a term of ten years. The board of directors has the authority to terminate, amend or modify the stock incentive plans; *provided, however,* that no such amendment shall be made without the approval of our shareholders to the extent such approval is required by applicable laws or provisions of the stock incentive plans. However, without the prior written consent of the grantee, no such action may adversely affect any outstanding award previously granted pursuant to the stock incentive plan.

The following table summarizes, as of December 31, 2019, the awards granted under the 2015 Plan, the 2016 Plan and the 2017 Plan to several of our executive officers, excluding awards that were forfeited or cancelled after the relevant grant dates.

Name	Class A Ordinary Shares Underlying Options and Restricted Share Units	Exercise Price (US\$/Share**)	Date of Grant	Date of Expiration
Bin Li	15,000,000	2.55	March 1, 2018	February 28, 2028
Lihong Qin	*	2.55	February 1, 2018	January 31, 2028
			February 28, 2018	February 27, 2028
Xin Zhou	*	2.05-2.55	February 1, 2018	January 31, 2028
			February 28, 2018	February 27, 2028
			September 25, 2019	September 24, 2026
Denny Ting Bun Lee	*	N/A	September 12, 2018	
Hai Wu	*	3.61	May 29, 2019	May 28, 2026
Feng Shen	*	1.80-2.55	December 31, 2017	December 30, 2027
			February 1, 2018	January 31, 2028
			September 25, 2019	September 24, 2026
Wei Feng	*	1.8	November 18, 2019	November 17, 2026
Ganesh V Iyer	*	0.27-2.55	May 3, 2016	May 2, 2026
			March 1, 2018	February 29, 2028
			September 25, 2019	September 24, 2026
Total	24,040,597			

* Less than one percent of our total outstanding shares.

** Applicable to options only.

As of December 31, 2019, non-executive officers and other grantees as a group held awards of options to purchase 64,520,670 Class A ordinary shares of our company. The exercise prices of the options range from US\$0.1 to US\$7.09 per share.

2018 Share Incentive Plan

In August 2018, our board of directors approved the 2018 Share Incentive Plan to attract and retain the best available personnel, provide additional incentives to employees, directors and consultants and promote the success of our business. Under the 2018 Share Incentive Plan, or the 2018 Plan, the maximum number of shares available for issuance shall be 23,000,000 ordinary shares, which should automatically increase each year by the number of shares representing 1.5% of the then total issued and outstanding share capital of our company as of the end of each preceding year. The 2018 Plan became effective as of January 1, 2019 with a term of five years.

As of December 31, 2019, share incentive award to purchase 14,986,295 ordinary shares has been granted and outstanding under the 2018 Plan.

The following paragraphs describe the principal terms of the 2018 Plan.

Types of Awards. The 2018 Plan permits the awards of options, restricted shares or any other type of awards that the committee grants.

Plan Administration. Our board of directors or a committee of one or more members of our board of directors will administer the 2018 Plan. The committee or the full board of directors, as applicable, will determine the participants to receive awards, the type and number of awards to be granted to each participant, and the terms and conditions of each award grant.

Award Agreement. Awards granted under the 2018 Plan are evidenced by an award agreement that sets forth terms, conditions and limitations for each award, which may include the term of the award, the provisions applicable in the event that the grantee's employment or service terminates, and our authority to unilaterally or bilaterally amend, modify, suspend, cancel or rescind the award.

Eligibility. We may grant awards to the employees, directors and consultants of our company. However, we may grant incentive share options only to our employees, parent and subsidiaries.

Vesting Schedule. In general, the plan administrator determines the vesting schedule, which is specified in the relevant award agreement.

Exercise of Options. The plan administrator determines the exercise price for each award, which is stated in the award agreement. The vested portion of an option will expire if not exercised prior to the time as the plan administrator determines at the time of its grant. However, the maximum exercisable term is five years from the date of a grant.

Transfer Restrictions. Awards may not be transferred in any manner by the recipient other than by will or the laws of descent and distribution, except as otherwise provided by the plan administrator.

Termination and amendment of the 2018 Plan. Unless terminated earlier, the 2018 Plan has a term of five years. Our board of directors has the authority to amend or terminate the plan. However, no such action may adversely affect in any material way any awards previously granted unless agreed by the recipient.

C. Board Practices

The board of directors of our company, or the board, consists of five directors. A director is not required to hold any shares in our company by way of qualification. A director may vote with respect to any contract, proposed contract or arrangement in which he is interested provided (a) such director has declared the nature of his interest at the earliest meeting of the board at which it is practicable for him to do so, either specifically or by way of a general notice and (b) if such contract or arrangement is a transaction with a related party, such transaction has been approved by the audit committee. The directors may exercise all the powers of our company to borrow money, mortgage our company's undertaking, property and uncalled capital, and issue debentures or other securities whenever money is borrowed or as security for any obligation of our company or of any third party. None of our non-executive directors has a service contract with us that provides for benefits upon termination of service.

Committees of the Board of Directors

We have established three committees under the board: an audit committee, a compensation committee and a nominating and corporate governance committee. We will adopt a charter for each of the three committees. Each committee's members and functions are described below.

Audit Committee. Our audit committee consists of Denny Ting Bun Lee and Hai Wu. Denny Ting Bun Lee is the chairman of our audit committee. We have determined that Denny Ting Bun Lee and Hai Wu satisfy the "independence" requirements of Section 303A of the Corporate Governance Rules of the New York Stock Exchange and Rule 10A-3 under the Exchange Act. We have determined that Denny Ting Bun Lee qualifies as an "audit committee financial expert." The audit committee oversees our accounting and financial reporting processes and the audits of the financial statements of our company. The audit committee is responsible for, among other things:

- appointing the independent auditors and pre-approving all auditing and non-auditing services permitted to be performed by the independent auditors;
- reviewing with the independent auditors any audit problems or difficulties and management's response;
- discussing the annual audited financial statements with management and the independent auditors;
- reviewing the adequacy and effectiveness of our accounting and internal control policies and procedures and any steps taken to monitor and control major financial risk exposures;
- reviewing and approving all proposed related party transactions;
- meeting separately and periodically with management and the independent auditors; and

- monitoring compliance with our code of business conduct and ethics, including reviewing the adequacy and effectiveness of our procedures to ensure proper compliance.

Compensation Committee. Our compensation committee consists of Hai Wu, Denny Ting Bun Lee and Bin Li. Hai Wu is the chairman of our compensation committee. We have determined that Hai Wu satisfies the “independence” requirements of Section 303A of the Corporate Governance Rules of the New York Stock Exchange. The compensation committee assists the board in reviewing and approving the compensation structure, including all forms of compensation, relating to our directors and executive officers. Our chief executive officer may not be present at any committee meeting during which his compensation is deliberated. The compensation committee is responsible for, among other things:

- reviewing and approving, or recommending to the board for its approval, the compensation for our chief executive officer and other executive officers;
- reviewing and recommending to the board for determination with respect to the compensation of our non-employee directors;
- reviewing periodically and approving any incentive compensation or equity plans, programs or similar arrangements; and
- selecting any compensation consultant, legal counsel or other adviser only after taking into consideration all factors relevant to that person’s independence from management.

Nominating and Corporate Governance Committee. Our nominating and corporate governance committee consists of Bin Li, Hai Wu and Denny Ting Bun Lee. Bin Li is the chairperson of our nominating and corporate governance committee. Hai Wu and Denny Ting Bun Lee satisfy the “independence” requirements of Section 303A of the Corporate Governance Rules of the New York Stock Exchange. The nominating and corporate governance committee assists the board in selecting individuals qualified to become our directors and in determining the composition of the board and its committees. The nominating and corporate governance committee is responsible for, among other things:

- selecting and recommending to the board nominees for election by the shareholders or appointment by the board;
- reviewing annually with the board the current composition of the board with regards to characteristics such as independence, knowledge, skills, experience and diversity;
- making recommendations on the frequency and structure of board meetings and monitoring the functioning of the committees of the board; and
- advising the board periodically with regard to significant developments in the law and practice of corporate governance as well as our compliance with applicable laws and regulations, and making recommendations to the board on all matters of corporate governance and on any remedial action to be taken.

Duties of Directors

Under Cayman Islands law, our directors owe fiduciary duties to our company, including a duty to act honestly, and a duty to act in good faith. The directors must act bona fide in what they consider to be in our best interests. Our directors must also exercise their powers only for a proper purpose. Our directors also have a duty to act with skills they actually possess and exercise the care and diligence that would be displayed by a reasonable director in comparable circumstances. It was previously considered that a director need not exhibit in the performance of his duties a greater degree of skill than may reasonably be expected from a person of his knowledge and experience. However, English and Commonwealth courts have moved towards an objective standard with regard to the required skill and care and these authorities are likely to be followed in the Cayman Islands. In fulfilling their duty of care to us, our directors must ensure compliance with our memorandum and articles of association, as amended and restated from time to time, and the class rights vested thereunder in the holders of the shares. Our directors owe their fiduciary duties to our company and not to our company's individual shareholders, and it is our company which has the right to seek damages if a duty owed by our directors is breached. In certain limited exceptional circumstances, a shareholder may have the right to seek damages in our name if a duty owed by our directors is breached.

Our board of directors has all the powers necessary for managing, and for directing and supervising, our business affairs. The functions and powers of our board of directors include, among others:

- convening shareholders' annual and extraordinary general meetings and reporting its work to shareholders at such meetings;
- declaring dividends and other distributions;
- appointing officers and determining the term of office of the officers;
- exercising the borrowing powers of our company and mortgaging the property of our company; and
- approving the transfer of shares in our company, including the registration of such shares in our share register.

Terms of Directors and Officers

Our officers are elected by and serve at the discretion of the board of directors. Our directors are not subject to a term of office (unless there is any written agreement between our Company and such director) and hold office until such time as they are removed from office by ordinary resolution of the shareholders or by the board pursuant to our eleventh amended and restated memorandum and articles of association. The office of a director shall be vacated if, among other things, the director (i) becomes bankrupt or makes any arrangement or composition with his creditors; or (ii) is found to be or becomes of unsound mind.

D. Employees

As of December 31, 2019, we had 7,442 full-time employees. The following table sets forth the numbers of our employees categorized by function and region as of December 31, 2019.

	<u>As of December 31, 2019</u>
China:	
User experience (sales and marketing and service)	3,632
Product and software development	2,176
Manufacturing	520
General administration	571
Northern California:	
Product and software development	357
General administration	20
Munich:	
Product and software development	101
General administration	27
United Kingdom:	
Product and software development	34
General administration	4
Total number of employees	<u><u>7,442</u></u>

Our employees have set up a labor union in China according to the related Chinese labor law. However, no collective bargaining agreement has been put in place. To date we have not experienced any labor strike, and we consider our relationship with our employees to be good.

E. Share Ownership

Except as specifically noted, the following table sets forth information with respect to the beneficial ownership of our ordinary shares as of March 31, 2020 with respect to:

- each of our directors and executive officers; and
- each person known to us to own beneficially more than 5% of our ordinary shares.

The calculations in the table below are based on 1,112,458,304 ordinary shares outstanding as of March 31, 2020, comprising of 831,928,082 Class A ordinary shares, 132,030,222 Class B ordinary shares and 148,500,000 Class C ordinary shares.

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Beneficial ownership is determined in accordance with the rules and regulations of the SEC. In computing the number of shares beneficially owned by a person and the percentage ownership of that person, we have included shares that the person has the right to acquire within 60 days, including through the exercise of any option, warrant, or other right or the conversion of any other security. These shares, however, are not included in the computation of the percentage ownership of any other person.

	Class A ordinary shares beneficially owned	Class B ordinary shares beneficially owned	Class C ordinary shares beneficially owned	Total ordinary shares beneficially owned	% of beneficial ownership	% of aggregate voting power†
Directors and Executive Officers**:						
Bin Li ⁽¹⁾	6,189,253	—	148,500,000	154,689,253	13.8	47.0
Lihong Qin ⁽²⁾	10,538,699	—	—	10,538,699	*	*
Feng Shen	*	—	—	*	*	*
Xin Zhou	*	—	—	*	*	*
Wei Feng	—	—	—	—	—	—
Ganesh V. Iyer ⁽³⁾	*	—	—	*	*	*
Hai Wu ⁽⁴⁾	—	—	—	—	—	—
Denny Ting Bun Lee ⁽⁵⁾	*	—	—	*	*	*
James Gordon Mitchell ⁽⁶⁾	—	—	—	—	—	—
All Directors and Executive Officers as a Group	19,621,947	—	148,500,000	168,121,947	15.0	46.6
Principal Shareholders:						
Founder vehicles ⁽⁷⁾	189,253	—	148,500,000	148,689,253	13.4	46.8
Tencent entities ⁽⁸⁾	8,544,826	132,030,222	—	140,575,048	12.6	21.1
Baillie Gifford & Co ⁽⁹⁾	101,370,431	—	—	101,370,431	9.1	4.0
Temasek Holdings (Private) Limited ⁽¹⁰⁾	13,909,836	—	—	13,909,836	1.3	0.5

* Less than 1% of our total outstanding shares.

** Except where otherwise disclosed in the footnotes below, the business address of all the directors and executive officers is Building 16, 20 and 22, No. 56 AnTuo Road, Anting Town, Jiading District, Shanghai 201804, People's Republic of China.

† For each person and group included in this column, percentage of voting power is calculated by dividing the voting power beneficially owned by such person or group by the voting power of all of our Class A, Class B and Class C ordinary shares as a single class. Each holder of our Class A ordinary shares is entitled to one vote per share, each holder of our Class B ordinary shares is entitled to four votes per share and each holder of our Class C ordinary shares is entitled to eight votes per share on all matters submitted to them for a vote. Our Class A ordinary shares, Class B ordinary shares and Class C ordinary shares vote together as a single class on all matters submitted to a vote of our shareholders, except as may otherwise be required by law.

- (1) Represents (i) 6,000,000 Class A ordinary shares issuable to Mr. Bin Li upon exercise of options within 60 days of the date of this annual report, (ii) 72,234,928 Class C ordinary shares held by Originalwish Limited, a British Virgin Islands company wholly owned by Mr. Bin Li, (iii) 26,454,325 Class C ordinary shares held by mobike Global Ltd., a British Virgin Islands company wholly owned by Mr. Bin Li, and (iv) 189,253 Class A ordinary shares and 49,810,747 Class C ordinary shares held by NIO Users Limited, a holding company controlled by NIO Users Trust, which is under the control of Mr. Bin Li.
- (2) Represents (i) 38,700 Class A ordinary shares issuable to Mr. Lihong Qin upon exercise of options within 60 days of the date of this annual report and (ii) 10,499,999 Class A ordinary shares held by DX Mix Limited, a holding company controlled by DX One Trust, which is under the control of Mr. Lihong Qin. The business address of Mr. Lihong Qin is Room 1401, No. 82, 1980 Nong, Luoxiu Road, Minhang District, Shanghai, People's Republic of China.
- (3) The business address of Mr. Iyer is 3200 North First Street, San Jose, CA 95134.
- (4) The business address of Mr. Wu is No. 53, Gaoyou Road, Xuhui District, Shanghai, People's Republic of China.
- (5) The business address of Mr. Lee is No. 4 Dianthus Road, Yau Yat Chuen, Kowloon, Hong Kong.
- (6) The business address of Mr. Mitchell is Level 29, Three Pacific Place, 1 Queen's Road East, Wanchai, Hong Kong.

- (7) Represents (i) 72,234,928 Class C ordinary shares held by Originalwish Limited, (ii) 26,454,325 Class C ordinary shares held by mobike Global Ltd., and (iii) 189,253 Class A ordinary shares and 49,810,747 Class C ordinary shares held by NIO Users Limited, which are collectively referred to in offering memorandum as Founder Vehicles. Each of Originalwish Limited and mobike Global Ltd. is a company incorporated in the British Virgin Islands and beneficially owned by Mr. Bin Li. NIO Users Limited is a holding company controlled by NIO Users Trust, which is under the control of Mr. Bin Li. The registered address of Originalwish Limited and mobike Global Ltd. is Sertus Chambers, P.O. Box 905, Quastisky Building, Road Town, Tortola, British Virgin Islands. The registered address of NIO Users Limited is Maples Corporate Services (BVI) Limited, Kingston Chambers, PO Box 173, Road Town, Tortola, British Virgin Islands.
- (8) Based on the statement on Schedule 13G/A filed on February 10, 2020 jointly by (i) Mount Putuo Investment Limited, (ii) Image Frame Investment (HK) Limited and (iii) Tencent Holdings Limited, pursuant to which Mount Putuo Investment Limited holds 40,905,125 Class B ordinary shares, Image Frame Investment (HK) Limited holds 87,388,807 Class B ordinary shares, TPP Follow-on I Holding D Limited, an entity controlled by Tencent Holdings Limited, holds 3,736,290 Class B ordinary shares, and Huang River Investment Limited, a wholly-owned subsidiary of Tencent Holdings Limited, holds 5,390,749 ADSs representing 5,390,749 Class A ordinary shares, and 3,154,077 ADSs representing 3,154,077 Class A ordinary shares, issuable upon the full conversion of the US\$30 million 2024 Notes held by Huang River Investment Limited based on a conversion rate of 105.1359 ADSs per US\$1,000 principal amount of the 2024 Notes. Mount Putuo Investment Limited, Image Frame Investment (HK) Limited, TPP Follow-on I Holding D Limited and Huang River Investment Limited are collectively referred to in this annual report as the Tencent entities. Mount Putuo Investment Limited is a company incorporated in the British Virgin Islands, Image Frame Investment (HK) Limited is a company incorporated in Hong Kong, and TPP Follow-on I Holding D Limited is a company incorporated in the Cayman Islands. The sole member of Image Frame Investment (HK) Limited is Tencent Holdings Limited, a company listed on the Main Board of The Stock Exchange of Hong Kong Limited. The registered address of Mount Putuo Investment Limited is P.O. Box 957, Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands. The registered address of Image Frame Investment (HK) Limited is 29/F Three Pacific Place, No. 1 Queen's Road East, Wanchai, Hong Kong. The registered address of TPP Follow-on I Holding D Limited is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands.
- (9) Based on the statement on Schedule 13G/A filed on January 17, 2020 by Baillie Gifford & Co., Baillie Gifford & Co. and/or one or more of its investment adviser subsidiaries own 101,370,431 ADSs representing 101,370,431 Class A ordinary shares. The registered address of Baillie Gifford & Co. is Calton Square, 1 Greenside Row, Edinburgh EH1 3AN, Scotland, UK.
- (10) Based on the statement on Schedule 13G filed on January 14, 2020 jointly by (i) Temasek Holdings (Private) Limited, or Temasek Holdings, (ii) Tembusu Capital Pte. Ltd., or Tembusu, (iii) Thomson Capital Pte. Ltd., or Thomson, and (iv) Anderson Investments Pte. Ltd., or Anderson, Anderson holds 13,909,836 Class A ordinary shares in the form of ADS. Anderson is wholly-owned by Thomson, which in turn is wholly-owned by Tembusu. Tembusu is wholly-owned by Temasek Holdings.

To our knowledge, as of the date of this annual report, 785,260,606 of our Class A ordinary shares were held by one record holder in the United States, which was Deutsche Bank Trust Company Americas, the depository of our ADS program. The number of beneficial owners of our ADSs in the United States is likely to be much larger than the number of record holders of our ordinary shares in the United States. We are not aware of any arrangement that may, at a subsequent date, result in a change of control of our company.

Our ordinary shares are divided into Class A ordinary shares, Class B ordinary shares and Class C ordinary shares. Holders of Class A ordinary shares are entitled to one vote per share, holders of Class B ordinary shares are entitled to four votes per share, and holders of Class C ordinary shares are entitled to eight votes per share. We issued Class A ordinary shares represented by our ADSs in our initial public offering in September 2018. Holders of our Class B ordinary shares and Class C ordinary shares may choose to convert their respective Class B ordinary shares and Class C ordinary shares into the same number of Class A ordinary shares at any time. Class A ordinary shares are not convertible into Class B ordinary shares or Class C ordinary shares under any circumstance. See “Item 10. Additional Information—B. Memorandum and Articles of Association” for a more detailed description of our Class A ordinary shares and Class B ordinary shares.

ITEM 7. MAJOR SHAREHOLDERS AND RELATED PARTY TRANSACTIONS

A. Major Shareholders

See “Item 6. Directors, Senior Management and Employees—E. Share Ownership.”

B. Related Party Transactions

Contractual Arrangements with Our VIEs and Their Respective Shareholders

See “Item 4. Information on the Company—C. Organizational Structure.”

Shareholders Agreement and Registration Rights

We entered into a shareholders agreement and a right of first refusal and co-sale agreement on November 10, 2017 with our shareholders, which consist of holders of ordinary shares and preferred shares.

The shareholders agreement and right of first refusal and co-sale agreement (i) provide for certain special rights, including right of first refusal, co-sale rights and preemptive rights and (ii) contain provisions governing board of directors and other corporate governance matters. Those special rights, as well as the corporate governance provisions, automatically terminated upon the closing of the initial public offering of our ADSs on September 12, 2018.

Pursuant to our shareholders agreement dated November 10, 2017, we have granted certain registration rights to our shareholders. Set forth below is a description of the registration rights granted under the agreement.

Demand Registration Rights. Holders holding 10% or more of the voting power of the then outstanding registrable securities held by all holders are entitled to request in writing that we effect a registration statement for any or all of the registrable securities of the initiating holders. We have the right to defer filing of a registration statement for a period of not more than 90 days if our board of directors determines in good faith judgment that filing of a registration statement in the near future will be materially detrimental to us or our shareholders, but we cannot exercise the deferral right on any one occasion or more than once during any twelve-month period and cannot register any other securities during such period. We are not obligated to effect more than two demand registrations. Further, if the registrable securities are offered by means of an underwritten offering, and the managing underwriter advises us that marketing factors require a limitation of the number of securities to be underwritten, the underwriters may decide to exclude up to 75% of the registrable securities requested to be registered but only after first excluding all other equity securities from the registration and underwritten offering, provided that the number of shares to be included in the registration on behalf of the non-excluded holders is allocated among all holders in proportion to the respective amounts of registrable securities requested by such holders to be included.

Registration on Form F-3 or Form S-3. Any holder is entitled to request us to file a registration statement on Form F-3 or Form S-3 if we qualify for registration on Form F-3 or Form S-3. The holders are entitled to an unlimited number of registrations on Form F-3 or Form S-3 so long as such registration offerings are in excess of US\$5,000,000. We have the right to defer filing of a registration statement for a period of not more than 60 days if our board of directors determines in good faith judgment that filing of a registration statement in the near future will be materially detrimental to us or our shareholders, but we cannot exercise the deferral right on any one occasion or more than once during any twelve-month period and cannot register any other securities during such period.

Piggyback Registration Rights. If we propose to register for our own account any of our equity securities, or for the account of any holder, other than current shareholders, of such equity securities, in connection with the public offering, we shall offer holders of our registrable securities an opportunity to be included in such registration. If the underwriters advise in writing that market factors require a limitation of the number of registrable securities to be underwritten, the underwriters may exclude up to 75% of the registrable securities requested to be registered but only after first excluding all other equity securities (except for securities sold for the account of our company) from the registration and underwriting, provided that the number of shares to be included in the registration on behalf of the non-excluded holders is allocated among all holders in proportion to the respective amounts of registrable securities requested by such holders to be included.

Expenses of Registration. We will bear all registration expenses, other than the underwriting discounts and selling commissions applicable to the sale of registrable securities, incurred in connection with registrations, filings or qualification pursuant to the shareholders agreement.

Termination of Obligations. We have no obligation to effect any demand, piggyback, Form F-3 or Form S-3 registration upon the earlier of (i) the tenth anniversary from the date of closing of a Qualified IPO as defined in the shareholders agreement, and (ii) with respect to any holder, the date on which such holder may sell without registration, all of such holder’s registrable securities under Rule 144 of the Securities Act in any 90-day period.

Employment Agreements and Indemnification Agreements

See “Item 6. Directors, Senior Management and Employees—B. Compensation of Directors and Executive Officers—Employment Agreements and Indemnification Agreements.”

Share Option Grants

See “Item 6. Directors, Senior Management and Employees—B. Compensation of Directors and Executive Officers—Stock Incentive Plans.”

Other Transactions with Related Parties

In September 2019, we issued US\$200 million principal amount of convertible notes to Huang River Investment Limited, to an affiliate of Tencent Holdings Limited, and Mr. Bin Li, our chairman of the board of directors and chief executive officer. Huang River Investment Limited and Mr. Bin Li each subscribed for US\$100 million principal amount of the convertible notes, each in two equally split tranches. The convertible notes issued in the first tranche will mature in 360 days, bear no interest, and require us to pay a premium at 2% of the principal amount at maturity. The convertible notes issued in the second tranche will mature in three years, bear no interest, and require us to pay a premium at 6% of the principal amount at maturity. The 360-day convertible notes will be convertible into our Class A ordinary shares (or ADSs) at a conversion price of US\$2.98 per ADS at the holder's option from the 15th day immediately prior to maturity, and the three-year convertible notes will be convertible into our Class A ordinary shares (or ADSs) at a conversion price of US\$3.12 per ADS at the holder's option from the first anniversary of the issuance date. The holders of the three-year convertible notes will have the right to require us to repurchase for cash all of the convertible notes or any portion thereof on February 1, 2022.

In February 2019, we issued \$750 million aggregate principal amount of 4.50% convertible senior notes due 2024, or the 2024 Notes. The 2024 Notes are unsecured debt and are not redeemable by us prior to the maturity date except for certain changes in tax law. The holders of the 2024 Notes may convert their notes to a number of our ADSs at their option at any time prior to the close of business on the second business day immediately preceding the maturity date pursuant to the 2024 Notes indenture. The 2024 Notes that are converted in connection with a make-whole fundamental change (as defined in the 2024 Notes Indenture) may be entitled to an increase in the conversion rate for such 2024 Notes. Huang River Investment Limited subscribed for US\$30 million aggregate principal amount of the 2024 Notes. As of December 2019, the amount of interest payable to Huang River Investment Limited for the 2024 Notes was US\$0.56 million.

In 2019, we borrowed RMB25.8 million principal amount of loan from Beijing Changxing Information Technology Co., Ltd., a company significantly influenced by one of our principal shareholders, at an interest rate of 15%. As of December 31, 2019, the loan remained outstanding.

In 2019, we received IT support services from Beijing Bit EP Information Technology Co., Ltd. and Beijing Yiche Information Science and Technology Co., Ltd., both are companies significantly influenced by Bin Li, and incurred expenses of IT support services of RMB4.1 million.

In 2018, we granted two interest free loans to NIO Capital, an entity affiliated with our founder Bin Li, with the principal amount of US\$5.0 million each. The loans mature in six months. One of the loans was converted into ordinary shares of a subsidiary of NIO Capital upon maturity at our option, and we disposed of such investment in 2019. The other loan was fully repaid before the initial public offering of our ADSs.

In 2017, 2018 and 2019, we received marketing and advertising services from Beijing Xinyi Hudong Guanggao Co., Ltd., Beijing Chehui Hudong Guanggao Co., Ltd., Bite Shijie (Beijing) Keji Co., Ltd., or Bite, Beijing Yiche Interactive Advertising Co., Ltd. Shanghai Branch, Shanghai Yiju Information Technology Co., Ltd., Tianjin Boyou Information Technology Co., Ltd. and Beijing Bit EP Information Technology Co., Ltd. In 2017, 2018 and 2019, we incurred expenses of marketing and advertising services RMB15.6 million, RMB38.1 million and RMB75.7 million, respectively. Beijing Chehui Hudong Guanggao Co., Ltd., Beijing Xinyi Hudong Guanggao Co., Ltd., Bite, Beijing Yiche Interactive Advertising Co., Ltd. Shanghai Branch, Shanghai Yiju Information Technology Co., Ltd., Tianjin Boyou Information Technology Co., Ltd. and Beijing Bit EP Information Technology Co., Ltd. are controlled by our principal shareholders.

In 2017, 2018 and 2019, we provided property management, administrative support, design and research and development services to our affiliates and companies controlled by our principal shareholders, including Hubei Changjiang Nextev New Energy Investment Management Co., Ltd., Beijing CHJ Information Technology Co., Ltd., Hubei Changjiang Nextev New Energy Industry Development Capital Partnership (Limited Partnership), Jiangsu Xindian Automotive Co., Ltd., Shanghai NIO Hongling Investment Management Co., Ltd., Shanghai Weishang Business Consulting Co., Ltd., Nanjing Weibang Transmission Technology Co., Ltd. In 2017, 2018 and 2019, we received total service income of RMB21.5 million, RMB3.6 million and RMB4.2 million, respectively.

In 2017, 2018 and 2019, we paid a total of RMB18.3 million, RMB132.2 million and RMB132.5 million, respectively, for the cost of manufacturing consignment to Suzhou Zenlead XPT New Energy Technologies Co., Ltd., or Suzhou Zenlead. Suzhou Zenlead is an affiliate of ours.

In 2017, we paid a total of RMB3.0 million to Bite for the purchase of property and equipment. In 2018, we paid a total of RMB11.1 million to Kunshan Siwopu Intelligent Equipment Co., Ltd, or Kushan Siwopu, an affiliate of ours, for purchase of property and equipment. In 2019, we paid a total of RMB42.2 million to Kunshan Siwopu Intelligent Equipment Co., Ltd. and Nanjing Weibang Transmission Technology Co., Ltd. for purchase of property and equipment.

In 2017, we granted interest-free loans to Ningbo Meishan Bonded Port Area Weilan Investment Co., Ltd., a company controlled by our principal shareholders. As of December 31, 2019, the loans remained outstanding.

In 2018, we paid a total of RMB8.1 million on behalf of Baidu Capital L.P., a shareholder of our company, to a third party.

In 2018, we made a payment of RMB2.8 million to a supplier on behalf of Nanjing Weibang Transmission Technology Co., Ltd., one of our affiliates. As of December 31, 2019, the amount receivable remained outstanding.

In 2018 and 2019, we received research and development and maintenance services from Kunshan Siwopu and Suzhou Zenlead, and paid a total of RMB17.2 million and RMB 0.3 million, respectively.

C. Interests of Experts and Counsel

Not applicable.

ITEM 8. FINANCIAL INFORMATION

A. Consolidated Statements and Other Financial Information

We have appended consolidated financial statements filed as part of this annual report.

Legal Proceedings

From time to time, we may be involved in legal proceedings in the ordinary course of our business. Between March and July 2019, several putative securities class action lawsuits were filed against us, certain of our directors and officers, our underwriters in the IPO and our process agent. Some of these actions have been withdrawn, transferred or consolidated. Currently, three securities class actions remain pending in the U.S. District Court for the Eastern District of New York (E.D.N.Y.), Supreme Court of the State of New York, New York County (N.Y. County), and Supreme Court of the State of New York, County of Kings (Kings County) respectively. In the E.D.N.Y. action, *In re NIO, Inc. Securities Litigation*, 1:19-cv-01424, the Court issued an order to appoint the lead plaintiff on March 3, 2020. The parties have entered into a stipulation whereby the plaintiffs will file a consolidated amended complaint on May 18, 2020, to which we and other defendants will have 60 days to respond. In the New York county action, *In re NIO Inc. Securities Litigation*, Index No. 653422/2019, the plaintiffs filed a consolidated amended complaint on October 25, 2019. On December 13, 2019, the Court granted the defendants' motion to stay the case in favor of the federal E.D.N.Y. action. In the Kings County action, *Sumit Agarwal v. NIO Inc. et al.*, Index No. 505647/2019, the complaint was filed on March 14, 2019. The judge has yet to be assigned and there has not been any major development. The plaintiffs in these cases allege, in sum and substance, that our statements in the Registration Statement and/or other public statements were false or misleading and in violation of the U.S. federal securities laws. These actions remain in their preliminary stages. We are currently unable to estimate the potential loss, if any, associated with the resolution of such lawsuits. We believe these cases are without merit and we are defending the actions vigorously.

For risks and uncertainties relating to the pending cases against us, please see “Item 3. Key Information—D. Risk Factors—Risks Related to Our Business—We and certain of our directors and officers have been named as defendants in several shareholder class action lawsuits, which could have a material adverse impact on our business, financial condition, results of operation, cash flows and reputation.”

Dividend Policy

The payment of dividends is at the discretion of our board of directors, subject to our eleventh amended and restated memorandum and articles of association. In addition, our shareholders may by ordinary resolution declare a dividend, but no dividend may exceed the amount recommended by our board of directors. In either case, all dividends are subject to certain restrictions under Cayman Islands law, namely that our company may only pay dividends out of profits or the share premium account, and provided that in no circumstances may a dividend be paid if this would result in our company being unable to pay its debts as they fall due in the ordinary course of business. Even if we decide to pay dividends, the form, frequency and amount will depend upon our future operations and earnings, capital requirements and surplus, general financial condition, contractual restrictions and other factors that the board of directors may deem relevant.

We do not have any present plan to pay any cash dividends on our ordinary shares in the foreseeable future. We currently intend to retain most, if not all, of our available funds and any future earnings to operate and expand our business.

We are a holding company incorporated in the Cayman Islands. We may rely on dividends paid by our subsidiaries in China for our cash requirements, including any payment of dividends to our shareholders. PRC regulations may restrict the ability of our PRC subsidiaries to pay dividends to us. See “Item 3. Key Information—D. Risk Factors—Risks Related to Doing Business in China—We may rely on dividends and other distributions on equity paid by our PRC subsidiaries to fund any cash and financing requirements we may have, and any limitation on the ability of our PRC subsidiaries to make payments to us could have a material and adverse effect on our ability to conduct our business.”

If we pay any dividends on our ordinary shares, we will pay those dividends which are payable in respect of the ordinary shares underlying our ADSs to the depository, as the registered holder of such ordinary shares, and the depository then will pay such amounts to our ADS holders in proportion to the ordinary shares underlying the ADSs held by such ADS holders, subject to the terms of the deposit agreements, including the fees and expenses payable thereunder. Cash dividends on our ordinary shares, if any, will be paid in U.S. dollars.

B. Significant Changes

Except as disclosed elsewhere in this annual report, we have not experienced any significant changes since the date of our audited consolidated financial statements included in this annual report.

ITEM 9. THE OFFER AND LISTING

A. Offering and Listing Details

Our ADSs, each representing one Class A ordinary share, have been listed on the NYSE since September 12, 2018 under the symbol “NIO.”

B. Plan of Distribution

Not applicable.

C. Markets

Our ADSs, each representing one Class A ordinary share, have been listed on the NYSE since September 12, 2018 under the symbol “NIO.”

D. Selling Shareholders

Not applicable.

E. Dilution

Not applicable.

F. Expenses of the Issue

Not applicable.

ITEM 10. ADDITIONAL INFORMATION

A. Share Capital

Not applicable.

B. Memorandum and Articles of Association

We are an exempted company incorporated under the laws of the Cayman Islands and our affairs are governed by our current eleventh amended and restated memorandum and articles of association, the Companies Law (2020 Revision) of the Cayman Islands, which we refer to as the Companies Law below, and the common law of the Cayman Islands.

The following are summaries of material provisions of our eleventh amended and restated memorandum and articles of association which became effective upon the completion of the initial public offering of our ADSs in September 2018, insofar as they relate to the material terms of our ordinary shares.

Objects of Our Company

Under our eleventh amended and restated memorandum and articles of association, the objects of our company are unrestricted and we have the full power and authority to carry out any object not prohibited by the law of the Cayman Islands.

Ordinary Shares

Our authorized share capital is US\$1,000,000 divided into 4,000,000,000 shares comprising of (i) 2,500,000,000 Class A ordinary shares of a par value of US\$0.00025 each, (ii) 132,030,222 Class B ordinary shares of a par value of US\$0.00025 each (iii) 148,500,000 Class C ordinary shares of a par value of US\$0.00025 each and (iv) 1,219,469,778 shares of a par value of US\$0.00025 each of such class or classes (however designated) as our board of directors may determine in accordance with our eleventh amended and restated memorandum and articles of association. All of our issued and outstanding ordinary shares are fully paid and non-assessable. Our ordinary shares are issued in registered form, and are issued when registered in our register of members. Our shareholders who are non-residents of the Cayman Islands may freely hold and vote their ordinary shares. Under our eleventh amended and restated memorandum and articles of association, our company may not issue bearer shares.

Class of ordinary shares

Holders of Class A ordinary shares, Class B ordinary shares and Class C ordinary shares shall at all times vote together as one class on all resolutions submitted to a vote by the holders of ordinary shares. Each Class A ordinary share shall entitle the holder thereof to one (1) vote on all matters subject to vote at general meetings of our company, each Class B ordinary share shall entitle the holder thereof to four (4) votes on all matters subject to vote at general meetings of our company, and each Class C ordinary share shall entitle the holder thereof to eight (8) votes on all matters subject to vote at general meetings of our company.

Conversion

Each Class B ordinary share is convertible into one (1) Class A ordinary share at any time at the option of the holder thereof. Each Class C ordinary share is convertible into one (1) Class A ordinary share at any time at the option of the holder thereof. In no event shall Class A ordinary shares be convertible into Class B ordinary shares or Class C ordinary shares. Upon any sale, transfer, assignment or disposition of any Class B ordinary share or Class C ordinary share by a shareholder to any person who is not an affiliate of such shareholder, or upon a change of ultimate beneficial ownership of any Class B ordinary share or Class C ordinary share to any person who is not an affiliate of the registered shareholder of such share, each such Class B ordinary share and Class C ordinary share, as applicable, shall be automatically and immediately converted into one (1) Class A ordinary share.

Dividends

The holders of our ordinary shares are entitled to such dividends as may be declared by our board of directors, subject to our eleventh amended and restated memorandum articles of association. In addition, our shareholders may by ordinary resolution declare a dividend, but no dividend may exceed the amount recommended by our directors. In either case, under the laws of the Cayman Islands, our company may pay a dividend out of either profits or share premium account, provided that in no circumstances may a dividend be paid if this would result in our company being unable to pay its debts as they fall due in the ordinary course of business.

Voting Rights

Voting at any shareholders' meeting is by show of hands unless a poll is demanded. Each Class A ordinary share shall entitle the holder thereof to one (1) vote on all matters subject to vote at general meetings of our company, each Class B ordinary share shall entitle the holder thereof to four (4) votes on all matters subject to vote at general meetings of our company, and each Class C ordinary share shall entitle the holder thereof to eight (8) votes on all matters subject to vote at general meetings of our company. A poll may be demanded by the chairman of such meeting or any one or more shareholders present in person or by proxy at the meeting.

An ordinary resolution to be passed at a meeting by the shareholders requires the affirmative vote of a simple majority of the votes attaching to the ordinary shares cast at a meeting, while a special resolution requires the affirmative vote of no less than two-thirds of the votes cast attaching to the outstanding ordinary shares at a meeting. A special resolution will be required for important matters such as a change of name or making changes to our eleventh amended and restated memorandum and articles of association. Holders of our ordinary shares may effect certain changes by ordinary resolution, including increasing the amount of our authorized share capital, consolidating all or any of our share capital into shares of larger amount than our existing shares, sub-dividing our shares or any of them into shares of an amount smaller than that fixed by our eleventh amended and restated memorandum and articles of association, and cancelling any unissued shares. Both ordinary resolution and special resolution may also be passed by a unanimous written resolution signed by all the shareholders of our company, as permitted by the Companies Law and our eleventh amended and restated memorandum and articles of association.

Appointment and Removal of Directors

Our board of directors may, by the affirmative vote of a simple majority of the directors present and voting at a board meeting, appoint any person as a director, to fill a casual vacancy on the board or as an addition to the existing board. Directors may be removed by ordinary resolution of our shareholders.

General Meetings of Shareholders

As a Cayman Islands exempted company, we are not obliged by the Companies Law to call shareholders' annual general meetings. Our eleventh amended and restated memorandum and articles of association provide that we may (but are not obliged to) in each year hold a general meeting as our annual general meeting in which case we shall specify the meeting as such in the notices calling it, and the annual general meeting shall be held at such time and place as may be determined by our directors.

Shareholders' general meetings may be convened by the chairman of board of directors or a majority of our board of directors. Advance notice of at least ten calendar days is required for the convening of our annual general shareholders' meeting (if any) and any other general meeting of our shareholders. A quorum required for any general meeting of shareholders consists of at least one shareholder present or by proxy, representing not less than one-third of all votes attaching to all of our shares in issue and entitled to vote.

The Companies Law provides shareholders with only limited rights to requisition a general meeting, and does not provide shareholders with any right to put any proposal before a general meeting. However, these rights may be provided in a company's articles of association. Our eleventh amended and restated memorandum and articles of association provide that upon the requisition of shareholders representing in aggregate not less than one-third of the votes attaching to the outstanding shares of our company entitled to vote at general meetings, our board will convene an extraordinary general meeting and put the resolutions so requisitioned to a vote at such meeting. However, our eleventh amended and restated memorandum and articles of association do not provide our shareholders with any right to put any proposals before annual general meetings or extraordinary general meetings not called by such shareholders.

Transfer of Ordinary Shares

Subject to the restrictions in our eleventh amended and restated memorandum and articles of association set out below, any of our shareholders may transfer all or any of his or her ordinary shares by an instrument of transfer in the usual or common form or any other form approved by our board of directors.

Our board of directors may, in its absolute discretion, decline to register any transfer of any ordinary share which is not fully paid up or on which we have a lien. Our board of directors may also decline to register any transfer of any ordinary share unless:

- the instrument of transfer is lodged with us, accompanied by the certificate for the ordinary shares to which it relates and such other evidence as our board of directors may reasonably require to show the right of the transferor to make the transfer;
- the instrument of transfer is in respect of only one class of ordinary shares;
- the instrument of transfer is properly stamped, if required;
- in the case of a transfer to joint holders, the number of joint holders to whom the ordinary share is to be transferred does not exceed four; and
- a fee of such maximum sum as the New York Stock Exchange may determine to be payable or such lesser sum as our directors may from time to time require is paid to us in respect thereof.

If our directors refuse to register a transfer they shall, within three months after the date on which the instrument of transfer was lodged, send to each of the transferor and the transferee notice of such refusal.

The registration of transfers may, after compliance with any notice required of the New York Stock Exchange, be suspended and the register closed at such times and for such periods as our board of directors may from time to time determine, *provided, however*, that the registration of transfers shall not be suspended nor the register closed for more than 30 days in any year as our board of directors may determine.

Liquidation

On the winding-up of our company, if the assets available for distribution among our shareholders shall be more than sufficient to repay the whole of the share capital at the commencement of the winding-up, the surplus shall be distributed amongst our shareholders in proportion to the par value of the shares held by them at the commencement of the winding-up, subject to a deduction from those shares in respect of which there are monies due, of all monies payable to our company for unpaid calls or otherwise. If our assets available for distribution are insufficient to repay all of the paid-up capital, the assets will be distributed so that the losses are borne by our shareholders in proportion to the par value of the shares held by them.

Calls on Shares and Forfeiture of Shares

Our board of directors may from time to time make calls upon shareholders for any amounts unpaid on their shares in a notice served to such shareholders at least 14 days prior to the specified time and place of payment. The shares that have been called upon and remain unpaid are subject to forfeiture.

Redemption, Repurchase and Surrender of Shares

We may issue shares on terms that such shares are subject to redemption, at our option or at the option of the holders of these shares, on such terms and in such manner as may be determined by our board of directors or by special resolution of our shareholders. Our company may also repurchase any of our shares on such terms and in such manner as have been approved by our board of directors or by an ordinary resolution of our shareholders. Under the Companies Law, the redemption or repurchase of any share may be paid out of our company's profits or out of the proceeds of a new issue of shares made for the purpose of such redemption or repurchase, or out of capital (including share premium account and capital redemption reserve) if our company can, immediately following such payment, pay its debts as they fall due in the ordinary course of business. In addition, under the Companies Law no such share may be redeemed or repurchased (a) unless it is fully paid up, (b) if such redemption or repurchase would result in there being no shares outstanding or (c) if the company has commenced liquidation. In addition, our company may accept the surrender of any fully paid share for no consideration.

Variations of Rights of Shares

If at any time, our share capital is divided into different classes of shares, the rights attached to any class of shares (unless otherwise provided by the terms of issue of the shares of that class), whether or not our company is being wound-up, may be varied with the consent in writing of holders of not less than two-thirds of the issued shares of that class or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class. The rights conferred upon the holders of the shares of any class issued shall not, subject to any rights or restrictions for the time being attached to the shares of that class, be deemed to be materially adversely varied by, inter alia, the creation, allotment or issue of further shares ranking *pari passu* with such existing class of shares.

Issuance of Additional Shares

Our eleventh amended and restated memorandum of association authorizes our board of directors to issue additional ordinary shares from time to time as our board of directors shall determine, to the extent of available authorized but unissued shares.

Our eleventh amended and restated memorandum of association also authorizes our board of directors to establish from time to time one or more series of preference shares and to determine, with respect to any series of preference shares, the terms and rights of that series, including:

- the designation of the series;
- the number of shares of the series;
- the dividend rights, dividend rates, conversion rights and voting rights; and
- the rights and terms of redemption and liquidation preferences.

Our board of directors may issue preference shares without action by our shareholders to the extent authorized but unissued. Issuance of these shares may dilute the voting power of holders of ordinary shares.

Inspection of Books and Records

Holders of our ordinary shares will have no general right under Cayman Islands law to inspect or obtain copies of our list of shareholders or our corporate records. However, we will provide our shareholders with annual audited financial statements. See "Item 10 Additional Information— H. Documents on Display."

Changes in Capital

Our shareholders may from time to time by ordinary resolution:

- increase our share capital by such sum, to be divided into shares of such classes and amount, as the resolution shall prescribe;
- consolidate and divide all or any of our share capital into shares of a larger amount than our existing shares;

- sub-divide our existing shares, or any of them into shares of a smaller amount, provided that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in case of the share from which the reduced share is derived; or
- cancel any shares that, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person and diminish the amount of our share capital by the amount of the shares so cancelled.

Our shareholders may, by special resolution and subject to confirmation by the Grand Court of the Cayman Islands on an application by our company for an order confirming such reduction, reduce our share capital and any capital redemption reserve in any manner authorized by law.

Anti-Takeover Provisions

Some provisions of our eleventh amended and restated memorandum and articles of association may discourage, delay or prevent a change of control of our company or management that shareholders may consider favorable, including provisions that:

- authorize our board of directors to issue preference shares in one or more series and to designate the price, rights, preferences, privileges and restrictions of such preference shares without any further vote or action by our shareholders; and
- limit the ability of shareholders to requisition and convene general meetings of shareholders.

However, under Cayman Islands law, our directors may only exercise the rights and powers granted to them under our eleventh amended and restated memorandum and articles of association for a proper purpose and for what they believe in good faith to be in the best interests of our company.

Exempted Company

We are an exempted company with limited liability under the Companies Law. The Companies Law distinguishes between ordinary resident companies, ordinary non-resident companies and exempted companies. Any company that is registered in the Cayman Islands but conducts business mainly outside of the Cayman Islands may apply to be registered as an exempted company. The requirements for an exempted company are essentially the same as for an ordinary resident/non-resident company except that an exempted company:

- does not have to file an annual return detailing its shareholders with the Registrar of Companies of the Cayman Islands;
- is not required to open its register of members for inspection;
- does not have to hold an annual general meeting;
- may issue negotiable or bearer shares or shares with no par value;
- may obtain an undertaking against the imposition of any future taxation (such undertakings are usually given for 20 years in the first instance);
- may register by way of continuation in another jurisdiction and be deregistered in the Cayman Islands;
- may register as a limited duration company; and
- may register as a segregated portfolio company.

“Limited liability” means that the liability of each shareholder is limited to the amount unpaid by the shareholder on the shares of the company (except in exceptional circumstances, such as involving fraud, the establishment of an agency relationship or an illegal or improper purpose or other circumstances in which a court may be prepared to pierce or lift the corporate veil).

C. Material Contracts

We have not entered into any material contracts other than in the ordinary course of business and other than those described in “Item 4. Information on the Company,” “Item 7. Major Shareholders and Related Party Transactions—B. Related Party Transactions” or elsewhere in this annual report.

D. Exchange Controls

See “Item 4. Information on the Company—B. Business Overview—Regulation—Regulations on Foreign Exchange.”

E. Taxation

The following discussion of Cayman Islands, PRC and United States federal income tax consequences of an investment in our ADSs or ordinary shares is based upon laws and relevant interpretations thereof in effect as of the date of this annual report, all of which are subject to change or differing interpretation, possibly with retroactive effect. This summary does not deal with all possible tax consequences relating to an investment in our ADSs or ordinary shares, such as the tax consequences under U.S. state and local tax laws or under the tax laws of jurisdictions other than the Cayman Islands, the People’s Republic of China and the United States.

Cayman Islands Taxation

The Cayman Islands currently have no form of income, corporate or capital gains tax and no estate duty, inheritance tax or gift tax. There are no other taxes likely to be material to us levied by the government of the Cayman Islands except for stamp duties which may be applicable on instruments executed in, or, after execution, brought within the jurisdiction of the Cayman Islands. The Cayman Islands are not party to any double tax treaties that are applicable to any payments made to or by our company. There are no exchange control regulations under Cayman Islands law.

Payments of dividends and capital in respect of our Class A ordinary shares and ADSs will not be subject to taxation in the Cayman Islands and no withholding will be required on the payment of a dividend or capital to any holder of our Class A ordinary shares or ADSs, nor will gains derived from the disposal of our Class A ordinary shares or ADSs be subject to Cayman Islands income or corporation tax.

People’s Republic of China Taxation

Under the PRC Enterprise Income Tax Law and its implementation rules, an enterprise established outside of the PRC with a “de facto management body” within the PRC is considered a resident enterprise and will be subject to the enterprise income tax at the rate of 25% on its global income. The implementation rules define the term “de facto management body” as the body that exercises full and substantial control over and overall management of the business, productions, personnel, accounts and properties of an enterprise. In April 2009, the State Administration of Taxation issued a circular, known as Circular 82, which provides certain specific criteria for determining whether the “de facto management body” of a PRC-controlled enterprise that is incorporated offshore is located in China. Although this circular only applies to offshore enterprises controlled by PRC enterprises or PRC enterprise groups, not those controlled by PRC individuals or foreigners, the criteria set forth in the circular may reflect the State Administration of Taxation’s general position on how the “de facto management body” test should be applied in determining the tax resident status of all offshore enterprises. According to Circular 82, an offshore incorporated enterprise controlled by a PRC enterprise or a PRC enterprise group will be regarded as a PRC tax resident by virtue of having its “de facto management body” in China only if all of the following conditions are met: (i) the primary location of the day-to-day operational management is in the PRC; (ii) decisions relating to the enterprise’s financial and human resource matters are made or are subject to approval by organizations or personnel in the PRC; (iii) the enterprise’s primary assets, accounting books and records, company seals, and board and shareholder resolutions, are located or maintained in the PRC; and (iv) at least 50% of voting board members or senior executives habitually reside in the PRC. Further to Circular 82, the State Administration of Taxation issued the SAT Bulletin 45, which took effect in September 2011, to provide more guidance on the implementation of Circular 82. SAT Bulletin 45 provides for procedures and administration details of determination on resident status and administration on post-determination matters.

We believe that NIO Inc. is not a PRC resident enterprise for PRC tax purposes. NIO Inc. is not controlled by a PRC enterprise or PRC enterprise group and we do not believe that NIO Inc. meets all of the conditions above. NIO Inc. is a company incorporated outside the PRC. As a holding company, its key assets are its ownership interests in its subsidiaries, and its key assets are located, and its records (including the resolutions of its board of directors and the resolutions of its shareholders) are maintained, outside the PRC. For the same reasons, we believe our other entities outside of China are not PRC resident enterprises either. However, the tax resident status of an enterprise is subject to determination by the PRC tax authorities and uncertainties remain with respect to the interpretation of the term “de facto management body.” There can be no assurance that the PRC government will ultimately take a view that is consistent with us.

If the PRC tax authorities determine that NIO Inc. is a PRC resident enterprise for enterprise income tax purposes, we may be required to withhold a 10% withholding tax from dividends we pay to our shareholders that are non-resident enterprises, including the holders of our ADSs. In addition, non-resident enterprise shareholders (including our ADS holders) may be subject to a 10% PRC tax on gains realized on the sale or other disposition of ADSs or Class A ordinary shares, if such income is treated as sourced from within the PRC. It is unclear whether our non-PRC individual shareholders (including our ADS holders) would be subject to any PRC tax on dividends or gains obtained by such non-PRC individual shareholders in the event we are determined to be a PRC resident enterprise. If any PRC tax were to apply to such dividends or gains, it would generally apply at a rate of 20% unless a reduced rate is available under an applicable tax treaty. It is also unclear whether non-PRC shareholders of NIO Inc. would be able to claim the benefits of any tax treaties between their country of tax residence and the PRC in the event that NIO Inc. is treated as a PRC resident enterprise. Pursuant to the EIT Law and its implementation rules, if a non-resident enterprise has not set up an organization or establishment in China, or has set up an organization or establishment but the income derived has no actual connection with such organization or establishment, it will be subject to a withholding tax on its PRC-sourced income at a rate of 10%. Pursuant to the *Arrangement between Mainland China and the Hong Kong Special Administrative Region for the Avoidance of Double Taxation and Tax Evasion on Income*, the tax rate in respect to dividends paid by a PRC enterprise to a Hong Kong enterprise is reduced to 5% from a standard rate of 10% if the Hong Kong enterprise directly holds at least 25% of the PRC enterprise. Pursuant to SAT Circular 81, a Hong Kong resident enterprise must meet the following conditions, among others, in order to enjoy the reduced tax rate: (i) it must directly own the required percentage of equity interests and voting rights in the PRC resident enterprise; and (ii) it must have directly owned such percentage in the PRC resident enterprise throughout the 12 months prior to receiving the dividends. Furthermore, the Administrative Measures for Non-Resident Enterprises to Enjoy Treatments under Tax Treaties, which became effective in November 2015, require that non-resident enterprises must obtain approval from the relevant tax authority in order to enjoy the reduced tax rate. There are also other conditions for enjoying the reduced tax rate according to other relevant tax rules and regulations. Accordingly, our subsidiaries may be able to enjoy the 5% tax rate for the dividends it receives from its PRC incorporated subsidiaries if they satisfy the conditions prescribed under SAT Circular 81 and other relevant tax rules and regulations and obtain the approvals as required. However, according to SAT Circular 81, if the relevant tax authorities determine our transactions or arrangements are for the primary purpose of enjoying a favorable tax treatment, the relevant tax authorities may adjust the favorable tax rate on dividends in the future.

Provided that our Cayman Islands holding company, NIO Inc., is not deemed to be a PRC resident enterprise, holders of our ADSs and Class A ordinary shares who are not PRC residents will not be subject to PRC income tax on dividends distributed by us or gains realized from the sale or other disposition of our shares or ADSs. Circular 7 further clarifies that, if a non-resident enterprise derives income by acquiring and selling shares in an offshore listed enterprise in the public market, such income will not be subject to PRC tax. However, there is uncertainty as to the application of Circular 7, we and our non-PRC resident investors may be at risk of being required to file a return and being taxed under Circular 7 and we may be required to expend valuable resources to comply with Circular 7 or to establish that we should not be taxed under Circular 7. See “Item 3. Key Information—D. Risk Factors—Risks Related to Doing Business in China—We face uncertainty with respect to indirect transfers of equity interests in PRC resident enterprises by their non-PRC holding companies.”

United States Federal Income Taxation

The following discussion is a summary of U.S. federal income tax considerations generally applicable to the ownership and disposition of our ADSs or Class A ordinary shares by a U.S. Holder (as defined below) that acquires our ADSs and holds our ADSs as “capital assets” (generally, property held for investment) under the U.S. Internal Revenue Code of 1986, as amended (the “Code”). This discussion is based upon existing U.S. federal tax law, which is subject to differing interpretations or change, possibly with retroactive effect. No ruling has been sought from the Internal Revenue Service (the “IRS”) with respect to any U.S. federal income tax consequences described below, and there can be no assurance that the IRS or a court will not take a contrary position. This discussion, moreover, does not address the U.S. federal estate, gift, Medicare, alternative minimum tax, and other non-income tax considerations or any state, local and non-U.S. tax considerations, relating to the ownership or disposition of our ADSs or Class A ordinary shares. The following summary does not address all aspects of U.S. federal income taxation that may be important to particular investors in light of their individual circumstances or to persons in special tax situations such as:

- banks and other financial institutions;
- insurance companies;
- pension plans;
- cooperatives;
- regulated investment companies;
- real estate investment trusts;
- broker-dealers;
- traders that elect to use a mark-to-market method of accounting;
- certain former U.S. citizens or long-term residents;
- tax-exempt entities (including private foundations);
- holders who acquire their ADSs or Class A ordinary shares pursuant to any employee share option or otherwise as compensation;
- investors that will hold their ADSs or Class A ordinary shares as part of a straddle, hedge, conversion, constructive sale or other integrated transaction for U.S. federal income tax purposes;
- investors that have a functional currency other than the U.S. dollar;
- investors required to accelerate the recognition of any item of gross income with respect to ADSs or Class A ordinary shares “as a result of such income being recognized on an applicable financial statement”;
- persons that actually or constructively own 10% or more of our stock (by vote or value); or
- partnerships or other entities taxable as partnerships for U.S. federal income tax purposes, or persons holding ADSs or Class A ordinary shares through such entities.

All of the foregoing may be subject to tax rules that differ significantly from those discussed below.

Each U.S. Holder is urged to consult its tax advisor regarding the application of U.S. federal taxation to its particular circumstances, and the state, local, non-U.S. and other tax considerations of the ownership and disposition of our ADSs or Class A ordinary shares.

General

For purposes of this discussion, a “U.S. Holder” is a beneficial owner of our ADSs or Class A ordinary shares that is, for U.S. federal income tax purposes:

- an individual who is a citizen or resident of the United States;
- a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created in, or organized under the law of the United States or any state thereof or the District of Columbia;
- an estate the income of which is includible in gross income for U.S. federal income tax purposes regardless of its source; or
- a trust (A) the administration of which is subject to the primary supervision of a U.S. court and which has one or more U.S. persons who have the authority to control all substantial decisions of the trust or (B) that has otherwise validly elected to be treated as a U.S. person under the Code.

If a partnership (or other entity treated as a partnership for U.S. federal income tax purposes) is a beneficial owner of our ADSs or Class A ordinary shares, the tax treatment of a partner in the partnership will generally depend upon the status of the partner and the activities of the partnership. Partnerships holding our ADSs or Class A ordinary shares and their partners are urged to consult their tax advisors regarding an investment in our ADSs or Class A ordinary shares.

For U.S. federal income tax purposes, a U.S. Holder of ADSs will generally be treated as the beneficial owner of the underlying shares represented by the ADSs. The remainder of this discussion assumes that a U.S. Holder of our ADSs will be treated in this manner. Accordingly, deposits or withdrawals of Class A ordinary shares for ADSs will generally not be subject to U.S. federal income tax.

Passive Foreign Investment Company Considerations

A non-U.S. corporation, such as our company, will be classified as a PFIC for U.S. federal income tax purposes for any taxable year, if either (i) 75% or more of its gross income for such year consists of certain types of “passive” income or (ii) 50% or more of the value of its assets (generally determined on the basis of a quarterly average) during such year is attributable to assets that produce or are held for the production of passive income. For this purpose, cash and assets readily convertible into cash are categorized as passive assets and the company’s goodwill and other unbooked intangibles are taken into account. Passive income generally includes, among other things, dividends, interest, rents, royalties, and gains from the disposition of passive assets. We will be treated as owning a proportionate share of the assets and earning a proportionate share of the income of any other corporation in which we own, directly or indirectly, 25% or more (by value) of the stock.

Although the law in this regard is not entirely clear, we treat our VIEs as being owned by us for U.S. federal income tax purposes because we control their management decisions and are entitled to substantially all of the economic benefits associated with these entities, and as a result, we consolidate their results of operations in our consolidated U.S. GAAP financial statements. If it were determined, however, that we do not own the VIEs for U.S. federal income tax purposes, we may be treated as a PFIC for the current taxable year and any subsequent taxable year.

Assuming that we are the owner of our VIEs for U.S. federal income tax purposes, and based upon our current income and assets, we do not believe we were a PFIC for the taxable year ended December 31, 2019 and we do not expect to be a PFIC for the current taxable year ended December 31, 2019 or the foreseeable future. While we do not expect to be or to become a PFIC in the current or foreseeable taxable years, no assurance can be given in this regard because the determination of whether we will be or become a PFIC is a factual determination made annually that will depend, in part, upon the composition of our income and assets. Fluctuations in the market price of our ADSs may cause us to be classified as a PFIC for the current or future taxable years because the value of our assets for purposes of the asset test, including the value of our goodwill and other unbooked intangibles, may be determined by reference to the market price of our ADSs from time to time (which may be volatile). Furthermore, the composition of our income and assets may also be affected by how, and how quickly, we use our liquid assets. Under circumstances where our passive income significantly increases relative to our non-passive income, or where we determine not to deploy significant amounts of cash for active purposes, our risk of becoming classified as a PFIC may substantially increase.

If we are classified as a PFIC for any year during which a U.S. Holder holds our ADSs or Class A ordinary shares, the PFIC rules discussed below under “—Passive Foreign Investment Company Rules” generally will apply to such U.S. Holder for such taxable year, and unless the U.S. Holder makes certain elections, will apply in future years even if we cease to be a PFIC.

The discussion below under “—Dividends” and “—Sale or Other Disposition” is written on the basis that we will not be or become classified as a PFIC for U.S. federal income tax purposes. The U.S. federal income tax rules that apply generally if we are treated as a PFIC are discussed below under “—Passive Foreign Investment Company Rules.”

Dividends

Subject to the discussion below under “Passive Foreign Investment Company Rules,” any cash distributions (including the amount of any PRC tax withheld) paid on our ADSs or Class A ordinary shares out of our current or accumulated earnings and profits, as determined under U.S. federal income tax principles, will generally be includible in the gross income of a U.S. Holder as dividend income on the day actually or constructively received by the U.S. Holder, in the case of Class A ordinary shares, or by the depository, in the case of ADSs. Because we do not intend to determine our earnings and profits on the basis of U.S. federal income tax principles, any distribution we pay will generally be treated as a “dividend” for U.S. federal income tax purposes. Dividends received on our ADSs or Class A ordinary shares will not be eligible for the dividends received deduction allowed to corporations. A non-corporate U.S. Holder will be subject to tax at the lower capital gain tax rate applicable to “qualified dividend income,” provided that certain conditions are satisfied, including that (1) our ADSs are readily tradeable on an established securities market in the United States, or, in the event that we are deemed to be a PRC resident enterprise under the PRC tax law, we are eligible for the benefit of the United States-PRC income tax treaty, (2) we are neither a PFIC nor treated as such with respect to such a U.S. Holder (as discussed below) for the taxable year in which the dividend was paid and the preceding taxable year, and (3) certain holding period requirements are met. We expect our ADSs (but not our Class A ordinary shares) will be considered to be readily tradeable on the New York Stock Exchange, which is an established securities market in the United States. There can be no assurance, however, that our ADSs will be considered readily tradeable on an established securities market in later years.

In the event that we are deemed to be a PRC resident enterprise under the PRC Enterprise Income Tax Law (see “—People’s Republic of China Taxation” above), we may be eligible for the benefits of the United States-PRC income tax treaty. If we are eligible for such benefits, dividends we pay on our Class A ordinary shares, regardless of whether such shares are represented by the ADSs, would be eligible for the reduced rates of taxation described in the preceding paragraph.

Dividends will generally be treated as income from foreign sources for U.S. foreign tax credit purposes and will generally constitute passive category income. Depending on the U.S. Holder’s individual facts and circumstances, a U.S. Holder may be eligible, subject to a number of complex limitations, to claim a foreign tax credit in respect of any foreign withholding taxes imposed on dividends received on our ADSs or Class A ordinary shares. A U.S. Holder who does not elect to claim a foreign tax credit for foreign tax withheld may instead claim a deduction, for U.S. federal income tax purposes, in respect of such withholding, but only for a year in which such holder elects to do so for all creditable foreign income taxes. The rules governing the foreign tax credit are complex and their outcome depends in large part on the U.S. Holder’s individual facts and circumstances. Accordingly, U.S. Holders are urged to consult their tax advisors regarding the availability of the foreign tax credit under their particular circumstances.

Sale or Other Disposition

Subject to the discussion below under “—Passive Foreign Investment Company Rules,” a U.S. Holder will generally recognize capital gain or loss upon the sale or other disposition of ADSs or Class A ordinary shares in an amount equal to the difference between the amount realized upon the disposition and the holder’s adjusted tax basis in such ADSs or Class A ordinary shares. Any capital gain or loss will be long-term if the ADSs or Class A ordinary shares have been held for more than one year and will generally be U.S.-source gain or loss for U.S. foreign tax credit purposes. Long-term capital gain of non-corporate U.S. Holders is generally eligible for a reduced rate of taxation. In the event that gain from the disposition of the ADSs or Class A ordinary shares is subject to tax in the PRC, such gain may be treated as PRC-source gain under the United States-PRC income tax treaty. If a U.S. Holder is not eligible for the benefits of the income tax treaty or fails to make the election to treat any gain as foreign source, then such U.S. Holder may not be able to use the foreign tax credit arising from any PRC tax imposed on the disposition of the ADSs or Class A ordinary shares unless such credit can be applied (subject to applicable limitations) against U.S. federal income tax due on other income derived from foreign sources in the same income category (generally, the passive category). The deductibility of a capital loss may be subject to limitations. U.S. Holders are urged to consult their tax advisors regarding the tax consequences if a foreign tax is imposed on a disposition of our ADSs or Class A ordinary shares, including the availability of the foreign tax credit under their particular circumstances.

Passive Foreign Investment Company Rules

If we are classified as a PFIC for any taxable year during which a U.S. Holder holds our ADSs or Class A ordinary shares, and unless the U.S. Holder makes a mark-to-market election (as described below), the U.S. Holder will generally be subject to special tax rules on (i) any excess distribution that we make to the U.S. Holder (which generally means any distribution paid during a taxable year to a U.S. Holder that is greater than 125 percent of the average annual distributions paid in the three preceding taxable years or, if shorter, the U.S. Holder's holding period for the ADSs or Class A ordinary shares), and (ii) any gain realized on the sale or other disposition of ADSs or Class A ordinary shares. Under the PFIC rules:

- the excess distribution or gain will be allocated ratably over the U.S. Holder's holding period for the ADSs or Class A ordinary shares;
- the amount allocated to the current taxable year and any taxable years in the U.S. Holder's holding period prior to the first taxable year in which we are classified as a PFIC (each, a "pre-PFIC year"), will be taxable as ordinary income;
- the amount allocated to each prior taxable year, other than a pre-PFIC year, will be subject to tax at the highest tax rate in effect for individuals or corporations, as appropriate, for that year; and
- an additional tax equal to the interest charge generally applicable to underpayments of tax will be imposed on the tax attributable to each prior taxable year, other than a pre-PFIC year.

If we are a PFIC for any taxable year during which a U.S. Holder holds our ADSs or Class A ordinary shares and any of our subsidiaries, our variable interest entities or any of the subsidiaries of our variable interest entities is also a PFIC, such U.S. Holder would be treated as owning a proportionate amount (by value) of the shares of the lower-tier PFIC for purposes of the application of these rules. U.S. Holders are urged to consult their tax advisors regarding the application of the PFIC rules to any of our subsidiaries, our variable interest entities or any of the subsidiaries of our variable interest entities.

As an alternative to the foregoing rules, a U.S. Holder of "marketable stock" in a PFIC may make a mark-to-market election with respect to such stock, provided that such stock is regularly traded. For those purposes, our ADSs, but not our Class A ordinary shares, will be treated as marketable stock upon their listing on the New York Stock Exchange. We anticipate that our ADSs should qualify as being regularly traded, but no assurances may be given in this regard. If a U.S. Holder makes this election, the holder will generally (i) include as ordinary income for each taxable year that we are a PFIC the excess, if any, of the fair market value of ADSs held at the end of the taxable year over the adjusted tax basis of such ADSs and (ii) deduct as an ordinary loss the excess, if any, of the adjusted tax basis of the ADSs over the fair market value of such ADSs held at the end of the taxable year, but such deduction will only be allowed to the extent of the amount previously included in income as a result of the mark-to-market election. The U.S. Holder's adjusted tax basis in the ADSs would be adjusted to reflect any income or loss resulting from the mark-to-market election. If a U.S. Holder makes a mark-to-market election in respect of a corporation classified as a PFIC and such corporation ceases to be classified as a PFIC, the holder will not be required to take into account the gain or loss described above during any period that such corporation is not classified as a PFIC. If a U.S. Holder makes a mark-to-market election, any gain such U.S. Holder recognizes upon the sale or other disposition of our ADSs in a year when we are a PFIC will be treated as ordinary income and any loss will be treated as ordinary loss, but such loss will only be treated as ordinary loss to the extent of the net amount previously included in income as a result of the mark-to-market election.

Because a mark-to-market election cannot be made for any lower-tier PFICs that we may own, a U.S. Holder may continue to be subject to the PFIC rules with respect to such U.S. Holder's indirect interest in any investments held by us that are treated as an equity interest in a PFIC for U.S. federal income tax purposes.

We do not intend to provide information necessary for U.S. Holders to make qualified electing fund elections which, if available, would result in tax treatment different from (and generally less adverse than) the general tax treatment for PFICs described above.

If a U.S. Holder owns our ADSs or Class A ordinary shares during any taxable year that we are a PFIC, the holder must generally file an annual IRS Form 8621. You should consult your tax advisors regarding the U.S. federal income tax consequences of owning and disposing of our ADSs or Class A ordinary shares if we are or become a PFIC.

F. Dividends and Paying Agents

Not applicable.

G. Statement by Experts

Not applicable.

H. Documents on Display

We are subject to the periodic reporting and other informational requirements of the Exchange Act. Under the Exchange Act, we are required to file reports and other information with the SEC. Specifically, we are required to file annually a Form 20-F no later than four months after the close of each fiscal year. Copies of reports and other information, when so filed, may be inspected without charge and may be obtained at prescribed rates at the public reference facilities maintained by the SEC at 100 F Street, N.E., Room 1580, Washington, D.C. 20549. The public may obtain information regarding the Washington, D.C. Public Reference Room by calling the SEC at 1-800-SEC-0330. The SEC also maintains a web site at www.sec.gov that contains reports, proxy and information statements, and other information regarding registrants that make electronic filings with the SEC using its EDGAR system. As a foreign private issuer, we are exempt from the rules under the Exchange Act prescribing the furnishing and content of quarterly reports and proxy statements, and officers, directors and principal shareholders are exempt from the reporting and short-swing profit recovery provisions contained in Section 16 of the Exchange Act.

We will furnish Deutsche Bank Trust Company Americas, the depository of our ADSs, with our annual reports, which will include a review of operations and annual audited consolidated financial statements prepared in conformity with U.S. GAAP, and all notices of shareholders' meetings and other reports and communications that are made generally available to our shareholders. The depository will make such notices, reports and communications available to holders of ADSs and, upon our request, will mail to all record holders of ADSs the information contained in any notice of a shareholders' meeting received by the depository from us.

In accordance with NYSE Rule 203.01, we will post this annual report on our website *ir.nio.com*. In addition, we will provide hardcopies of our annual report to shareholders, including ADS holders, free of charge upon request.

I. Subsidiary Information

Not applicable.

ITEM 11. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Foreign Exchange Risk

As we have begun sales of the ES8, the ES6 and the all-new ES8, and plan to deliver the EC6 in September 2020, we expect that substantially all of our revenues will be denominated in RMB while our expenses are denominated in RMB and other currencies including the U.S. dollar, the pound sterling and the Euro. As a result, we are exposed to risk related to movements between the Renminbi and such other currencies. In addition, the value of our ADSs will be affected by the exchange rate between U.S. dollar and RMB because the value of our business is effectively denominated in RMB, while our ADSs will be traded in U.S. dollars.

The conversion of Renminbi into foreign currencies, including U.S. dollars, is based on rates set by the People's Bank of China. The Renminbi has fluctuated against the U.S. dollar, at times significantly and unpredictably. It is difficult to predict how market forces or PRC or U.S. government policy may impact the exchange rate between the Renminbi and the U.S. dollar in the future.

To the extent that we need to convert U.S. dollars into Renminbi for our operations, appreciation of the Renminbi against the U.S. dollar would have an adverse effect on the RMB amount we receive from the conversion. Conversely, if we decide to convert Renminbi into U.S. dollars for the purpose of making payments for dividends on our ordinary shares or ADSs or for other business purposes, appreciation of the U.S. dollar against the Renminbi would have a negative effect on the U.S. dollar amounts available to us.

Interest Rate Risk

Our cash balance as of December 31, 2019 primarily consists of bank deposits, so our exposure to market risk for changes in interest rates is limited. The convertible notes we have issued either bear interest at a fixed rate or bear no interest, so we have no financial statement impact from changes in interest rates. However, changes in market interest rates impact the fair value of the convertible notes along with other variables such as our credit spreads and the market price and volatility of our ADSs and ordinary shares.

We may from time to time invest in interest-earning instruments. Investments in both fixed rate and floating rate interest earning instruments carry a degree of interest rate risk. Fixed rate securities may have their fair market value adversely impacted due to a rise in interest rates, while floating rate securities may produce less income than expected if interest rates fall.

Inflation

To date, inflation in the PRC has not materially impacted our results of operations. According to the National Bureau of Statistics of China, the year-over-year percent changes in the consumer price index for December 2017, 2018 and 2019 were increases of 1.8%, 1.9% and 4.5%, respectively. Although we have not been materially affected by inflation in the past, we may be affected in the future by higher rates of inflation in the PRC. For example, certain operating costs and expenses, such as employee compensation and office operating expenses may increase as a result of higher inflation. Additionally, because a substantial portion of our assets consists of cash and cash equivalents and short-term investments, high inflation could significantly reduce the value and purchasing power of these assets. We are not able to hedge our exposure to higher inflation in China.

Seasonality

Demand for new cars in the automotive industry in general typically declines over the summer season, while sales are generally higher in the fourth quarter and spring time, especially from October to December and from March to April each year. Our limited operating history makes it difficult for us to judge the exact nature or extent of the seasonality of our business. Also, any unusually severe weather conditions in some markets may impact demand for our vehicles.

ITEM 12. DESCRIPTION OF SECURITIES OTHER THAN EQUITY SECURITIES

A. Debt Securities

Not applicable.

B. Warrants and Rights

Not applicable.

C. Other Securities

Not applicable.

D. American Depositary Shares

Fees and Charges Our ADS holders May Have to Pay

Holders of our ADSs will be required to pay the following service fees to the depositary bank and certain taxes and governmental charges (in addition to any applicable fees, expenses, taxes and other governmental charges payable on the deposited securities represented by any of ADSs held):

Service	Fees
● To any person to which ADSs are issued or to any person to which a distribution is made in respect of ADS distributions pursuant to stock dividends or other free distributions of stock, bonus distributions, stock splits or other distributions (except where converted to cash)	Up to US\$0.05 per ADS issued
● Cancellation of ADSs, including the case of termination of the deposit agreement	Up to US\$0.05 per ADS cancelled
● Distribution of cash dividends	Up to US\$0.05 per ADS held
● Distribution of cash entitlements (other than cash dividends) and/or cash proceeds from the sale of rights, securities and other entitlements	Up to US\$0.05 per ADS held
● Distribution of ADSs pursuant to exercise of rights.	Up to US\$0.05 per ADS held
● Distribution of securities other than ADSs or rights to purchase additional ADSs	Up to US\$0.05 per ADS held
● Depositary services	Up to US\$0.05 per ADS held on the applicable record date(s) established by the depositary bank

Holders of our ADSs will also be responsible to pay certain fees and expenses incurred by the depositary bank and certain taxes and governmental charges (in addition to any applicable fees, expenses, taxes and other governmental charges payable on the deposited securities represented by any of your ADSs) such as:

- Fees for the transfer and registration of ordinary shares charged by the registrar and transfer agent for the ordinary shares in Cayman Islands (i.e., upon deposit and withdrawal of ordinary shares).
- Expenses incurred for converting foreign currency into U.S. dollars.
- Expenses for cable, telex and fax transmissions and for delivery of securities.
- Taxes and duties upon the transfer of securities, including any applicable stamp duties, any stock transfer charges or withholding taxes (i.e., when ordinary shares are deposited or withdrawn from deposit).
- Fees and expenses incurred in connection with the delivery or servicing of ordinary shares on deposit.
- Fees and expenses incurred in connection with complying with exchange control regulations and other regulatory requirements applicable to ordinary shares, deposited securities, ADSs and ADRs.
- Any applicable fees and penalties thereon.

The depositary fees payable upon the issuance and cancellation of ADSs are typically paid to the depositary bank by the brokers (on behalf of their clients) receiving the newly issued ADSs from the depositary bank and by the brokers (on behalf of their clients) delivering the ADSs to the depositary bank for cancellation. The brokers in turn charge these fees to their clients. Depositary fees payable in connection with distributions of cash or securities to ADS holders and the depositary services fee are charged by the depositary bank to the holders of record of ADSs as of the applicable ADS record date.

The depositary fees payable for cash distributions are generally deducted from the cash being distributed or by selling a portion of distributable property to pay the fees. In the case of distributions other than cash (i.e., share dividends, rights), the depositary bank charges the applicable fee to the ADS record date holders concurrent with the distribution. In the case of ADSs registered in the name of the investor (whether certificated or uncertificated in direct registration), the depositary bank sends invoices to the applicable record date ADS holders. In the case of ADSs held in brokerage and custodian accounts (via DTC), the depositary bank generally collects its fees through the systems provided by DTC (whose nominee is the registered holder of the ADSs held in DTC) from the brokers and custodians holding ADSs in their DTC accounts. The brokers and custodians who hold their clients' ADSs in DTC accounts in turn charge their clients' accounts the amount of the fees paid to the depositary banks.

In the event of refusal to pay the depositary fees, the depositary bank may, under the terms of the deposit agreements, refuse the requested service until payment is received or may set off the amount of the depositary fees from any distribution to be made to the ADS holder.

The depositary may make payments to us or reimburse us for certain costs and expenses, by making available a portion of the ADS fees collected in respect of the ADR program or otherwise, upon such terms and conditions as we and the depositary bank agree from time to time.

Fees and Other Payments Made by the Depositary to Us

Deutsche Bank Trust Company Americas, as the depositary, has agreed to reimburse us for certain expenses we incur that are related to establishment and maintenance of the ADR program upon such terms and conditions as we and the depositary may agree from time to time. The depositary may make available to us a set amount or a portion of the depositary fees charged in respect of the ADR program or otherwise upon such terms and conditions as we and the depositary may agree from time to time. In 2019, we received an after-tax reimbursement payment of US\$8,078,000 from the depositary.

PART II.

ITEM 13. DEFAULTS, DIVIDEND ARREARAGES AND DELINQUENCIES

None.

ITEM 14. MATERIAL MODIFICATIONS TO THE RIGHTS OF SECURITY HOLDERS AND USE OF PROCEEDS

Material Modifications to the Rights of Security Holders

See "Item 10—Additional Information—B. Memorandum and Articles of Association—Ordinary Shares" for a description of the rights of securities holders, which remain unchanged.

Use of Proceeds

The following "Use of Proceeds" information relates to the registration statement on Form F-1, as amended (File number: 333-226822) in relation to the initial public offering of 160,000,000 ADSs representing 160,000,000 of our Class A ordinary shares, at an initial offering price of US\$6.26 per ADS. Our initial public offering closed in September 2018. Morgan Stanley & Co. LLC, Goldman Sachs (Asia) L.L.C., J.P. Morgan Securities LLC, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Deutsche Bank Securities Inc., Citigroup Global Markets Inc., Credit Suisse Securities (USA) LLC, and UBS Securities LLC were the representatives of the underwriters for our initial public offering. Counting in the ADSs sold upon the exercise of the over-allotment option by our underwriters, we offered and sold 184,000,000 ADSs and received net proceeds of approximately US\$1,099.1 million, after deducting underwriting discounts and commissions and estimated offering expenses payable by us. The registration statement was declared effective by the SEC on September 11, 2018. The total expenses incurred for our company's account in connection with our initial public offering was approximately US\$46.7 million, which included US\$40.1 million in underwriting discounts and commissions for the initial public offering and approximately US\$6.7 million in other costs and expenses for our initial public offering. None of the transaction expenses included payments to directors or officers of our company or their associates, persons owning more than 10% or more of our equity securities or our affiliates. None of the net proceeds we received from the initial public offering were paid, directly or indirectly, to any of our directors or officers or their associates, persons owning 10% or more of our equity securities or our affiliates. We have used up the proceeds from our initial public offering.

ITEM 15. CONTROLS AND PROCEDURES

Evaluation of Disclosure Controls and Procedures

Our management, with the participation of our chief executive officer and chief financial officer, has performed an evaluation of the effectiveness of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act) as of the end of the period covered by this report, as required by Rule 13a-15(b) under the Exchange Act. Based upon that evaluation, our management has concluded that, as of December 31, 2019, our disclosure controls and procedures were not effective in ensuring that the information required to be disclosed by us in the reports that we file or submit under the Exchange Act is recorded, processed, summarized and reported, within the time periods specified in the SEC's rules and forms, and that the information required to be disclosed by us in the reports that 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 disclosure.

Management's Annual Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as defined in Rules 13a-15(f) and 15d-15(f) under the Securities Exchange Act of 1934, as amended. Our internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of our financial reporting and the preparation of financial statements for external purposes in accordance with Generally Accepted Accounting Principles (GAAP) in the United States of America and 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 our company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of consolidated financial statements in accordance with GAAP, and that receipts and expenditures of our company are being made only in accordance with authorizations of our management and directors; and (3) provide reasonable assurance regarding prevention or timely detection of the unauthorized acquisition, use or disposition of our company's assets that could have a material effect on the consolidated financial statements.

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

As required by Section 404 of the Sarbanes-Oxley Act of 2002 and related rules as promulgated by the Securities and Exchange Commission, our management including our Chief Executive Officer and Chief Financial Officer assessed the effectiveness of internal control over financial reporting as of December 31, 2019 using the criteria set forth in the report "Internal Control—Integrated Framework (2013)" published by the Committee of Sponsoring Organizations of the Treadway Commission. Based on this evaluation, the management concluded that our internal control over financial reporting was ineffective as of December 31, 2019 because of the material weakness described below.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the company's annual or interim financial statements will not be prevented or detected on a timely basis. The material weakness in our internal control over financial reporting identified as of December 31, 2019 was that we do not have sufficient competent financial reporting and accounting personnel with an appropriate understanding of U.S. GAAP to (i) design and implement formal period-end financial reporting policies and procedures to address complex U.S. GAAP technical accounting issues and (ii) prepare and review our consolidated financial statements and related disclosures in accordance with U.S. GAAP and the financial reporting requirements set forth by the SEC.

We have implemented and plan to implement a number of measures to address the material weakness. We have established clear roles and responsibilities for accounting and financial reporting staff to address accounting and financial reporting issues. Furthermore, we plan to expedite and streamline our reporting process and develop our compliance process, including: (i) hiring more qualified personnel equipped with relevant U.S. GAAP and SEC reporting experience and qualifications to strengthen the financial reporting function and setting up a financial and system control framework, (ii) implementing regular and consistent U.S. GAAP accounting and financial reporting training programs for our accounting and financial reporting personnel, (iii) establishing effective oversight and clarifying reporting requirements for non-recurring and complex transactions to ensure consolidated financial statements and related disclosures are accurate, complete and in compliance with U.S. GAAP and SEC reporting requirements, and (iv) enhancing our internal audit function. However, we cannot assure you that we will be able to continue implementing these measures in the future, or that we will not identify additional material weaknesses in the future.

Attestation Report of the Registered Public Accounting Firm

Our independent registered public accounting firm, PricewaterhouseCoopers Zhong Tian LLP, has audited the effectiveness of our company's internal control over financial reporting as of December 31, 2019, as stated in its report, which appears on page F-2 of this annual report on Form 20-F.

Changes in Internal Control over Financial Reporting

There were no changes in our internal controls over financial reporting that occurred during the period covered by this annual report on Form 20-F that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

ITEM 16.A. AUDIT COMMITTEE FINANCIAL EXPERT

Our board of directors has determined that Mr. Denny Ting Bun Lee, a member of our audit committee and independent director (under the standards set forth in Section 303A of the Corporate Governance Rules of the NYSE and Rule 10A-3 under the Securities Exchange Act of 1934), is an audit committee financial expert.

ITEM 16.B. CODE OF ETHICS

Our board of directors has adopted a code of ethics that applies to all of the directors, officers and employees of us and our subsidiaries, whether they work for us on a full-time, part-time, consultative, or temporary basis. Certain provisions of the code apply specifically to our chief executive officer, chief financial officer, senior finance officer, controller, senior vice presidents, vice presidents and any other persons who perform similar functions for us. We have posted a copy of our code of business conduct and ethics on our website at <https://www.nio.io/code-of-business-conduct-and-ethics>

ITEM 16.C. PRINCIPAL ACCOUNTANT FEES AND SERVICES

The following table sets forth the aggregate fees by the categories specified below in connection with certain professional services rendered by PricewaterhouseCoopers Zhong Tian LLP and its affiliates, our principal external auditors, for the years indicated. We did not pay any other fees to our principal external auditors during the years indicated below.

	For the Year Ended December 31,	
	2018	2019
	(in thousands of RMB)	
Audit fees ⁽¹⁾	11,906	8,500
Tax fees ⁽²⁾	2,805	1,747
Other fees ⁽³⁾	3,251	1,608
Total	17,962	11,855

Note:

- (1) "Audit fees" means the aggregate fees billed for professional services rendered by our principal external auditors for the audits of our annual financial statements and the quarterly reviews of our condensed consolidated financial information, including audit fees relating to our initial public offering in 2018.
- (2) "Tax fees" means the aggregate fees billed in each of the fiscal years listed for professional services rendered by our principal external auditors for tax compliance, tax advice, and tax planning.
- (3) "All other fees" means the aggregate fees billed for professional services rendered by our principal external auditors associated with other advisory services.

The policy of our audit committee is to pre-approve all audit and other service provided by PricewaterhouseCoopers Zhong Tian LLP and its affiliates, including audit services, tax services and other services described above, other than those for *de minimis* services which are approved by the Audit Committee prior to the completion of the audit.

ITEM 16.D. EXEMPTIONS FROM THE LISTING STANDARDS FOR AUDIT COMMITTEES

Not applicable.

ITEM 16.E. PURCHASES OF EQUITY SECURITIES BY THE ISSUER AND AFFILIATED PURCHASERS

None.

ITEM 16.F. CHANGE IN REGISTRANT'S CERTIFYING ACCOUNTANT

Not applicable.

ITEM 16.G. CORPORATE GOVERNANCE

As a Cayman Islands company listed on the New York Stock Exchange, we are subject to the NYSE corporate governance listing standards. However, NYSE rules permit a foreign private issuer like us to follow the corporate governance practices of its home country. Certain corporate governance practices in the Cayman Islands, which is our home country, may differ significantly from the NYSE corporate governance listing standards.

Pursuant to Sections 303A.01, 303A.04, 303A.05 and 303A.07 of the New York Stock Exchange Listed Company Manual, a company listed on the New York Stock Exchange must have a majority of independent directors, a nominating and corporate governance committee composed entirely of independent directors, a compensation committee composed entirely of independent directors and an audit committee with a minimum of three members. We currently follow our home country practice in lieu of these requirements. We may also continue to rely on these and other exemptions available to foreign private issuers in the future. See "Item 3. Key Information—D. Risk Factors—Risks relating to our ADSs and Trading Market—Our shareholders may face difficulties in protecting their interests, and ability to protect their rights through U.S. courts may be limited, because we are incorporated under Cayman Islands law."

Other than the home country practice described above, we are not aware of any significant differences between our corporate governance practices and those followed by U.S. domestic companies under the NYSE corporate governance listing standards.

ITEM 16.H. MINE SAFETY DISCLOSURE

Not applicable.

PART III.

ITEM 17. FINANCIAL STATEMENTS

We have elected to provide financial statements pursuant to Item 18.

ITEM 18. FINANCIAL STATEMENTS

The consolidated financial statements of NIO Inc. and its subsidiaries and the related notes are included at the end of this annual report.

ITEM 19. EXHIBITS

Exhibit Number	Description of Document
1.1	Eleventh Amended and Restated Memorandum and Articles of Association of the Registrant (incorporated herein by reference to Exhibit 3.2 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)
2.1	Registrant's Specimen American Depositary Receipt (included in Exhibit 2.3)
2.2	Registrant's Specimen Certificate for Class A ordinary shares (incorporated herein by reference to Exhibit 4.2 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)

2.3	Deposit Agreement, dated as of September 11, 2018, among the Registrant, Deutsche Bank Trust Company Americas, as the depository, and all holders and beneficial owners of the American Depositary Shares issued thereunder (incorporated herein by reference to Exhibit 4.3 to the registration statement on Form S-8 (File No. 333-229952), filed with the SEC on February 28, 2019)
2.4	Fifth Amended and Restated Shareholders' Agreement, dated as of November 10, 2017, among the Registrant and the other signatories thereto (incorporated herein by reference to Exhibit 4.4 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)
2.5*	Description of American Depositary Shares of the Registrant
2.6*	Description of Class A ordinary shares of the Registrant
4.1	2015 Share Incentive Plan (incorporated herein by reference to Exhibit 10.1 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)
4.2	2016 Share Incentive Plan (incorporated herein by reference to Exhibit 10.2 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)
4.3	2017 Share Incentive Plan (incorporated herein by reference to Exhibit 10.3 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)
4.4	2018 Share Incentive Plan (incorporated herein by reference to Exhibit 10.4 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)
4.5	Form of Indemnification Agreement, between the Registrant and its directors and executive officers (incorporated herein by reference to Exhibit 10.5 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)
4.6†	English translation of Manufacture Cooperation Agreement, dated as of May 23, 2016, between the registrant and Anhui Jianghuai Automobile Co., Ltd. (incorporated herein by reference to Exhibit 10.6 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)
4.7	Form of Employment Agreement, between the Registrant and its executive officers (Non-PRC citizens) (incorporated herein by reference to Exhibit 10.7 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)
4.8	Form of Employment Agreement, between the Registrant and its executive officers (PRC citizens) (incorporated herein by reference to Exhibit 10.8 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)
4.9	Employment Agreement and Severance Agreement, between the Registrant and Padmasree Warrior, dated as of November 23, 2015 and December 16, 2015, respectively (incorporated herein by reference to Exhibit 10.10 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)
4.10	English translation of Power of Attorney, dated as of April 19, 2018, among shareholders of Shanghai Anbin, Shanghai Anbin and NIO Co., Ltd. (incorporated herein by reference to Exhibit 10.11 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)
4.11	English translation of Loan Agreements, dated as of April 19, 2018, among shareholders of Shanghai Anbin, Shanghai Anbin and NIO Co., Ltd. (incorporated herein by reference to Exhibit 10.12 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)
4.12	English translation of Equity Interest Pledge Agreements, dated as of April 19, 2018, among shareholders of Shanghai Anbin, Shanghai Anbin and NIO Co., Ltd. (incorporated herein by reference to Exhibit 10.13 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)
4.13	English translation of Exclusive Business Cooperation Agreements, dated as of April 19, 2018, among shareholders of Shanghai Anbin, Shanghai Anbin and NIO Co., Ltd. (incorporated herein by reference to Exhibit 10.14 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)
4.14	English translation of Exclusive Option Agreements, dated as of April 19, 2018, among shareholders of Shanghai Anbin, Shanghai Anbin and NIO Co., Ltd. (incorporated herein by reference to Exhibit 10.15 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)
4.15	English translation of Power of Attorney, dated as of April 19, 2018, among shareholders of Beijing NIO, Beijing NIO and NIO Co., Ltd. (incorporated herein by reference to Exhibit 10.16 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)
4.16	English translation of Loan Agreements, dated April 19, 2018, among shareholders of Beijing NIO, Beijing NIO and NIO Co., Ltd. (incorporated herein by reference to Exhibit 10.17 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)

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4.17	English translation of Equity Interest Pledge Agreements, dated as of April 19, 2018, among shareholders of Beijing NIO, Beijing NIO and NIO Co., Ltd. (incorporated herein by reference to Exhibit 10.18 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)
4.18	English translation of Exclusive Business Cooperation Agreements, dated as of April 19, 2018, among shareholders of Beijing NIO, Beijing NIO and NIO Co., Ltd. (incorporated herein by reference to Exhibit 10.19 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)
4.19	English translation of Exclusive Option Agreements, dated as of April 19, 2018, among shareholders of Beijing NIO, Beijing NIO and NIO Co., Ltd. (incorporated herein by reference to Exhibit 10.20 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)
4.20	Indenture, dated as of February 4, 2019, by and between the Registrant, as issuer, and The Bank of New York Mellon, as trustee (incorporated herein by reference to Exhibit 4.22 to the Company's Report on Form 20-F (File No. 001-38638), as amended, initially filed with the SEC on April 2, 2019)
4.21	Form of 4.50% Convertible Senior Notes due 2024 (included in Exhibit 4.22) (incorporated herein by reference to Exhibit 4.22 to the Company's Report on Form 20-F (File No. 001-38638), as amended, initially filed with the SEC on April 2, 2019)
4.22	Deposit Agreement for Restricted Securities, dated as of February 4, 2019, among the Registrant, Deutsche Bank Trust Company Americas, as the depository, and all holders and beneficial owners of the American Depositary Shares issued thereunder (incorporated herein by reference to Exhibit 4.24 to the Company's Report on Form 20-F (File No. 001-38638), as amended, initially filed with the SEC on April 2, 2019)
4.23*†	English translation of NIO ES6 Manufacture Cooperation Agreement, dated as of April 30, 2019, between the registrant and Anhui Jianghuai Automobile Co., Ltd.
4.24*†	English translation of NIO Fury (EC6) Manufacture Cooperation Agreement, dated as of March 10, 2020, between the registrant and Anhui Jianghuai Automobile Co., Ltd.
4.25*	Convertible Notes Subscription Agreement, dated September 4, 2019, between the Registrant and Huang River Investment Limited
4.26*	Convertible Notes Subscription Agreement, dated September 4, 2019, between the Registrant and Serene View Investment Limited
4.27*	Form of 0% Convertible Senior Notes due 2020 (included in Exhibit 4.25)
4.28*	Form of 0% Convertible Senior Notes due 2022 (included in Exhibit 4.25)
4.29*	Indenture, dated as of February 10, 2020, among the Registrant, The Bank of New York Mellon, London Branch, as trustee, The Bank of New York Mellon, London Branch, as paying agent and conversion agent, and The Bank of New York Mellon SA/NV, Luxembourg Branch, as registrar and transfer agent
4.30*	Form of 0% Convertible Senior Notes due 2021 (included in Exhibit 4.29)
4.31*	Indenture, dated as of February 19, 2020, among the Registrant, The Bank of New York Mellon, London Branch, as trustee, The Bank of New York Mellon, London Branch, as paying agent and conversion agent, and The Bank of New York Mellon SA/NV, Luxembourg Branch, as registrar and transfer agent
4.32*	Form of 0% Convertible Senior Notes due 2021 (included in Exhibit 4.31)
4.33*	Indenture, dated as of March 11, 2020, among the Registrant, The Bank of New York Mellon, London Branch, as trustee, The Bank of New York Mellon, London Branch, as paying agent and conversion agent, and The Bank of New York Mellon SA/NV, Luxembourg Branch, as registrar and transfer agent
4.34*	Form of 0% Convertible Senior Notes due 2021 (included in Exhibit 4.33)
4.35*	English translation of Investment Agreement, dated April 29, 2020, among Hefei Construction Investment Holdings (Group) Co., Ltd., the Registrant, NIO Nextev Limited, NIO Power Express Limited, NIO (Anhui) Holding Co., Ltd. and other parties thereto.
4.36*	English translation of Shareholders' Agreement, dated April 29, 2020, among Hefei Construction Investment Holdings (Group) Co., Ltd., the Registrant, NIO Nextev Limited, NIO Power Express Limited, NIO (Anhui) Holding Co., Ltd. and other parties thereto.
8.1*	List of Principal Subsidiaries and Consolidated Variable Interest Entities
11.1	Code of Business Conduct and Ethics of the Registrant (incorporated herein by reference to Exhibit 99.1 to the registration statement on Form F-1 (File No. 333-226822), as amended, initially filed with the SEC on August 13, 2018)
12.1*	CEO Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
12.2*	CFO Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
13.1**	CEO Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.
13.2**	CFO Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

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15.1*	Consent of PricewaterhouseCoopers Zhong Tian LLP
15.2*	Consent of Han Kun Law Offices
101.INS*	Inline XBRL Instance Document—this instance document does not appear in the Interactive Data File because its XBRL tags are not embedded within the Inline XBRL document
101.SCH*	Inline XBRL Taxonomy Extension Schema Document
101.CAL*	Inline XBRL Taxonomy Extension Calculation Linkbase Document
101.DEF*	Inline XBRL Taxonomy Extension Definition Linkbase Document
101.LAB*	Inline XBRL Taxonomy Extension Label Linkbase Document
101.PRE*	Inline XBRL Taxonomy Extension Presentation Linkbase Document
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

* Filed herewith.

** Furnished herewith.

† Confidential treatment has been requested for certain portions of this exhibit pursuant to Rule 406 under the Securities Act and Division of Corporation Finance Staff Legal Bulletin No. 1. In accordance with Rule 406 and Staff Legal Bulletin No. 1, these confidential portions have been omitted and filed separately with the SEC.

SIGNATURES

The registrant hereby certifies that it meets all of the requirements for filing its annual report on Form 20-F and that it has duly caused and authorized the undersigned to sign this annual report on its behalf.

NIO Inc.

By: /s/ Bin Li

Name: Bin Li

Title: Chairman of the Board of Directors
and Chief Executive Officer

Date: May 14, 2020

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Report of Independent Registered Public Accounting Firm

To the Board of Directors and Shareholders of NIO Inc.

Opinions on the Financial Statements and Internal Control over Financial Reporting

We have audited the accompanying consolidated balance sheets of NIO Inc. and its subsidiaries (the “Company”) as of December 31, 2019 and 2018, and the related consolidated statements of comprehensive loss, of shareholders’ (deficit)/equity and of cash flows for each of the three years in the period ended December 31, 2019, including the related notes (collectively referred to as the “consolidated financial statements”). We also have audited the Company’s internal control over financial reporting as of December 31, 2019, 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 consolidated financial statements referred to above present fairly, in all material respects, the financial position of the Company as of December 31, 2019 and 2018, and the results of its operations and its cash flows for each of the three years in the period ended December 31, 2019 in conformity with accounting principles generally accepted in the United States of America (“US GAAP”). Also in our opinion, the Company did not maintain, in all material respects, effective internal control over financial reporting as of December 31, 2019, based on criteria established in *Internal Control - Integrated Framework* (2013) issued by the COSO because a material weakness in internal control over financial reporting existed as of that date related to the lack of sufficient competent financial reporting and accounting personnel with an appropriate understanding of US GAAP.

A material weakness is a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of the annual or interim financial statements will not be prevented or detected on a timely basis. The material weakness referred to above is described in Management’s Annual Report on Internal Control over Financial Reporting appearing under Item 15. We considered this material weakness in determining the nature, timing, and extent of audit tests applied in our audit of the 2019 consolidated financial statements, and our opinion regarding the effectiveness of the Company’s internal control over financial reporting does not affect our opinion on those consolidated financial statements.

Change in Accounting Principle

As discussed in Note 2 to the consolidated financial statements, the Company changed the manner in which it accounts for leases in 2019.

Basis for Opinions

The Company’s management is responsible for these consolidated 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 management’s report referred to above. Our responsibility is to express opinions on the Company’s consolidated financial statements and 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 consolidated 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 consolidated financial statements included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. 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 (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) 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 (iii) 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 matter communicated below is a matter arising from the current period audit of the consolidated financial statements that was communicated or required to be communicated to the audit committee and that (i) relates to accounts or disclosures that are material to the consolidated financial statements and (ii) involved our especially challenging, subjective, or complex judgments. The communication of critical audit matters does not alter in any way our opinion on the consolidated financial statements, taken as a whole, and we are not, by communicating the critical audit matter below, providing a separate opinion on the critical audit matter or on the accounts or disclosures to which it relates.

Going Concern Assessment

As described in Note 1 to the consolidated financial statements, the Company prepared its consolidated financial statements on a going concern basis, and management has concluded that the Company will be able to realize its assets and discharge its liabilities in the normal course of operations as they become due for the next twelve months from the date of issuance of the consolidated financial statements. For the years ended December 31, 2017, 2018 and 2019, the Company incurred net losses of RMB 5.0 billion, RMB 9.6 billion and RMB11.3 billion, respectively, with net cash used in operating activities of RMB 4.6 billion, RMB 7.9 billion and RMB 8.7 billion, respectively. As of December 31, 2018 and 2019, accumulated deficit amounted to RMB 35.0 billion and RMB 46.3 billion, respectively. As of December 31, 2019, the Company's total shareholders' deficit was RMB 6.3 billion and the current liabilities exceeded the current assets in the amount of RMB 4.6 billion. These adverse conditions and events, before consideration of management's plans, raised substantial doubt about the Company's ability to continue as a going concern. Management's plans to mitigate the adverse conditions and events include a business plan with forecasted cash flows covering the next twelve months from the date of issuance of the consolidated financial statements and the consummation of an external financing project.

The principal consideration for our determination that performing procedures relating to the Company's going concern assessment is a critical audit matter is there was significant judgment by management when preparing the business plan with forecasted cash flows and the consummation of an external financing project included in the going concern assessment, which in turn led to a high degree of auditor judgment, subjectivity and effort in performing procedures and evaluating audit evidence related to management's business plan with forecasted cash flows and the consummation of an external financing project.

Addressing the matter involved performing procedures and evaluating audit evidence in connection with forming our overall opinion on the consolidated financial statements. These procedures included testing the effectiveness of internal controls relating to management's going concern assessment. These procedures also included, among others, testing management's process for preparing the business plan with forecasted cash flows and the consummation of an external financing project included in the going concern assessment; testing the completeness, accuracy, and relevance of underlying data used; and evaluating the reasonableness of the assumptions included in the forecasted cash flows used by management in their business plan. Evaluating the forecasted cash flows involved evaluating whether the underlying assumptions were reasonable considering (i) the Company's current and past performance, (ii) the consistency with external market and industry data, and (iii) whether these assumptions were consistent with evidence obtained in other areas of the audit. The evaluation of management's going concern assessment also included assessing the level of certainty in the consummation of the external financing project.

/s/PricewaterhouseCoopers Zhong Tian LLP

Shanghai, the People's Republic of China
May 14, 2020

We have served as the Company's auditor since 2015.

NIO INC.
CONSOLIDATED BALANCE SHEETS
(All amounts in thousands, except for share and per share data)

	As of December 31,		
	2018 RMB	2019 RMB	2019 US\$ Note 2(e)
ASSETS			
Current assets:			
Cash and cash equivalents	3,133,847	862,839	123,939
Restricted cash	57,012	82,507	11,851
Short-term investment	5,154,703	111,000	15,944
Trade receivable	756,508	1,352,093	194,216
Amounts due from related parties	88,066	50,783	7,295
Inventory	1,465,239	889,528	127,773
Prepayments and other current assets	1,514,257	1,579,258	226,846
Total current assets	12,169,632	4,928,008	707,864
Non-current assets:			
Long-term restricted cash	33,528	44,523	6,395
Property, plant and equipment, net	4,853,157	5,533,064	794,775
Intangible assets, net	3,470	1,522	219
Land use rights, net	213,662	208,815	29,994
Long-term investments	148,303	115,325	16,565
Amounts due from related parties	7,970	—	—
Right-of-use assets - operating lease	—	1,997,672	286,948
Other non-current assets	1,412,830	1,753,100	251,817
Total non-current assets	6,672,920	9,654,021	1,386,713
Total assets	18,842,552	14,582,029	2,094,577
LIABILITIES			
Current liabilities:			
Short-term borrowings	1,870,000	885,620	127,211
Trade payable	2,869,953	3,111,699	446,968
Amounts due to related parties	219,583	309,729	44,490
Taxes payable	51,317	43,986	6,318
Current portion of operating lease liabilities	—	608,747	87,441
Current portion of long-term borrowings	198,852	322,436	46,315
Accruals and other liabilities	3,383,681	4,216,641	605,682
Total current liabilities	8,593,386	9,498,858	1,364,425
Non-current liabilities:			
Long-term borrowings	1,168,012	7,154,798	1,027,722
Non-current operating lease liabilities	—	1,598,372	229,592
Other non-current liabilities	930,812	1,151,813	165,448
Total non-current liabilities	2,098,824	9,904,983	1,422,762
Total liabilities	10,692,210	19,403,841	2,787,187
Commitments and contingencies (Note 28)			

NIO INC.
CONSOLIDATED BALANCE SHEETS
(All amounts in thousands, except for share and per share data)

	As of December 31,		
	2018 RMB	2019 RMB	2019 US\$ Note 2(e)
MEZZANINE EQUITY			
Redeemable non-controlling interests	1,329,197	1,455,787	209,111
Total mezzanine equity	<u>1,329,197</u>	<u>1,455,787</u>	<u>209,111</u>
SHAREHOLDERS' EQUITY/(DEFICIT)			
Class A Ordinary Shares (US\$0.00025 par value; 2,500,000,000 and 2,500,000,000 shares authorized; 777,200,790 and 786,937,655 shares issued; 770,268,810 and 783,942,438 shares outstanding as of December 31, 2018 and 2019, respectively)	1,329	1,347	194
Class B Ordinary Shares (US\$0.00025 par value; 132,030,222 and 132,030,222 shares authorized, issued and outstanding as of December 31, 2018 and 2019, respectively)	226	226	32
Class C Ordinary Shares (US\$0.00025 par value; 148,500,000 and 148,500,000 shares authorized, issued and outstanding as of December 31, 2018 and 2019, respectively)	254	254	36
Less: Treasury shares (6,931,980 and 2,995,217 shares as of December 31, 2018 and 2019, respectively)	(9,186)	—	—
Additional paid in capital	41,918,936	40,227,856	5,778,370
Accumulated other comprehensive loss	(34,708)	(203,048)	(29,166)
Accumulated deficit	<u>(35,039,810)</u>	<u>(46,326,321)</u>	<u>(6,654,360)</u>
Total NIO Inc. shareholders' equity/(deficit)	<u>6,837,041</u>	<u>(6,299,686)</u>	<u>(904,894)</u>
Non-controlling interests	<u>(15,896)</u>	<u>22,087</u>	<u>3,173</u>
Total shareholders' equity/(deficit)	<u>6,821,145</u>	<u>(6,277,599)</u>	<u>(901,721)</u>
Total liabilities, mezzanine equity and shareholders' equity	<u>18,842,552</u>	<u>14,582,029</u>	<u>2,094,577</u>

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

NIO INC.
CONSOLIDATED STATEMENTS OF COMPREHENSIVE LOSS
(All amounts in thousands, except for share and per share data)

	For the Year Ended December 31,			
	2017 RMB	2018 RMB	2019 RMB	2019 US\$ Note 2(e)
Revenues:				
Vehicle sales	—	4,852,470	7,367,113	1,058,220
Other sales	—	98,701	457,791	65,758
Total revenues	<u>—</u>	<u>4,951,171</u>	<u>7,824,904</u>	<u>1,123,978</u>
Cost of sales:				
Vehicle sales	—	(4,930,135)	(8,096,035)	(1,162,923)
Other sales	—	(276,912)	(927,691)	(133,254)
Total cost of sales	<u>—</u>	<u>(5,207,047)</u>	<u>(9,023,726)</u>	<u>(1,296,177)</u>
Gross loss	<u>—</u>	<u>(255,876)</u>	<u>(1,198,822)</u>	<u>(172,199)</u>
Operating expenses:				
Research and development	(2,602,889)	(3,997,942)	(4,428,580)	(636,126)
Selling, general and administrative	(2,350,707)	(5,341,790)	(5,451,787)	(783,100)
Total operating expenses	<u>(4,953,596)</u>	<u>(9,339,732)</u>	<u>(9,880,367)</u>	<u>(1,419,226)</u>
Loss from operations	<u>(4,953,596)</u>	<u>(9,595,608)</u>	<u>(11,079,189)</u>	<u>(1,591,425)</u>
Interest income	18,970	133,384	160,279	23,023
Interest expenses	(18,084)	(123,643)	(370,536)	(53,224)
Share of losses of equity investees	(5,375)	(9,722)	(64,478)	(9,262)
Investment income	3,498	—	—	—
Other (loss)/income, net	(58,681)	(21,346)	66,160	9,503
Loss before income tax expense	<u>(5,013,268)</u>	<u>(9,616,935)</u>	<u>(11,287,764)</u>	<u>(1,621,385)</u>
Income tax expense	(7,906)	(22,044)	(7,888)	(1,133)
Net loss	<u>(5,021,174)</u>	<u>(9,638,979)</u>	<u>(11,295,652)</u>	<u>(1,622,518)</u>
Accretion on convertible redeemable preferred shares to redemption value	(2,576,935)	(13,667,291)	—	—
Accretion on redeemable non-controlling interests to redemption value	—	(63,297)	(126,590)	(18,184)
Net loss attributable to non-controlling interests	36,440	41,705	9,141	1,313
Net loss attributable to ordinary shareholders of NIO Inc.	<u>(7,561,669)</u>	<u>(23,327,862)</u>	<u>(11,413,101)</u>	<u>(1,639,389)</u>
Net loss	<u>(5,021,174)</u>	<u>(9,638,979)</u>	<u>(11,295,652)</u>	<u>(1,622,518)</u>
Other comprehensive loss				
Foreign currency translation adjustment, net of nil tax	(124,374)	(20,786)	(168,340)	(24,181)
Total other comprehensive loss	<u>(124,374)</u>	<u>(20,786)</u>	<u>(168,340)</u>	<u>(24,181)</u>
Total comprehensive loss	<u>(5,145,548)</u>	<u>(9,659,765)</u>	<u>(11,463,992)</u>	<u>(1,646,699)</u>
Accretion on convertible redeemable preferred shares to redemption value	(2,576,935)	(13,667,291)	—	—
Accretion on redeemable non-controlling interests to redemption value	—	(63,297)	(126,590)	(18,184)
Net loss attributable to non-controlling interests	36,440	41,705	9,141	1,313
Comprehensive loss attributable to ordinary shareholders of NIO Inc.	<u>(7,686,043)</u>	<u>(23,348,648)</u>	<u>(11,581,441)</u>	<u>(1,663,570)</u>
Weighted average number of ordinary shares used in computing net loss per share				
Basic and diluted	21,801,525	332,153,211	1,029,931,705	1,029,931,705
Net loss per share attributable to ordinary shareholders				
Basic and diluted	(346.84)	(70.23)	(11.08)	(1.59)
Weighted average number of ADS used in computing net loss per ADS				
Basic and diluted	—	332,153,211	1,029,931,705	1,029,931,705
Net loss per ADS attributable to ordinary shareholders				
Basic and diluted	—	(70.23)	(11.08)	(1.59)

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

NIO INC.
CONSOLIDATED STATEMENTS OF SHAREHOLDERS' (DEFICIT)/EQUITY
 (All amounts in thousands, except for share and per share data)

	Ordinary Shares		Treasury Shares		Additional Paid in Capital	Accumulated Other Comprehensive Income/(Loss)	Accumulated Deficit	Total Shareholders' Deficit	Non- Controlling Interests	Total (Deficit)/ Equity
	Shares	Par Value	Shares	Amount						
Balance as of December 31, 2016	32,003,810	52	(14,230,351)	(9,186)	70,850	110,452	(4,076,945)	(3,904,777)	(11,583)	(3,916,360)
Accretion on Series A-1 and A-2 convertible redeemable preferred shares to redemption value	—	—	—	—	—	—	(2,205,227)	(2,205,227)	—	(2,205,227)
Accretion on Series A-3 convertible redeemable preferred shares to redemption value	—	—	—	—	—	—	(120,451)	(120,451)	—	(120,451)
Accretion on Series B convertible redeemable preferred shares to redemption value	—	—	—	—	—	—	(40,011)	(40,011)	—	(40,011)
Accretion on Series C convertible redeemable preferred shares to redemption value	—	—	—	—	—	—	(56,283)	(56,283)	—	(56,283)
Accretion on Series D convertible redeemable preferred shares to redemption value	—	—	—	—	—	—	(154,963)	(154,963)	—	(154,963)
Grant of restricted shares	2,000,000	3	(2,000,000)	—	—	—	—	3	—	3
Exercise of share options	2,723,540	5	—	—	6,207	—	—	6,212	—	6,212
Vesting of restricted shares	—	—	3,353,344	—	24,723	—	—	24,723	—	24,723
Vesting of share options	—	—	—	—	30,127	—	—	30,127	—	30,127
Capital injection by non-controlling interests	—	—	—	—	—	—	—	—	13,376	13,376
Acquisition of additional interests in subsidiaries from non-controlling interests	—	—	—	—	—	—	(73,334)	(73,334)	45,956	(27,378)
Foreign currency translation adjustment	—	—	—	—	—	(124,374)	—	(124,374)	—	(124,374)
Net loss	—	—	—	—	—	—	(4,984,734)	(4,984,734)	(36,440)	(5,021,174)
Balance as of December 31, 2017	<u>36,727,350</u>	<u>60</u>	<u>(12,877,007)</u>	<u>(9,186)</u>	<u>131,907</u>	<u>(13,922)</u>	<u>(11,711,948)</u>	<u>(11,603,089)</u>	<u>11,309</u>	<u>(11,591,780)</u>

NIO INC.
CONSOLIDATED STATEMENTS OF SHAREHOLDERS' (DEFICIT)/EQUITY
(All amounts in thousands, except for share and per share data)

	Ordinary Shares		Treasury Shares		Additional Paid in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Shareholders' (Deficit)/Equity	Non- Controlling Interests	Total (Deficit)/ Equity
	Shares	Par Value	Shares	Amount						
Balance as of December 31, 2017	36,727,350	60	(12,877,007)	(9,186)	131,907	(13,922)	(11,711,948)	(11,603,089)	11,309	(11,591,780)
Accretion on Series A-1 and A-2 convertible redeemable preferred shares to redemption value	—	—	—	—	—	—	(7,091,163)	(7,091,163)	—	(7,091,163)
Accretion on Series A-3 convertible redeemable preferred shares to redemption value	—	—	—	—	—	—	(565,979)	(565,979)	—	(565,979)
Accretion on Series B convertible redeemable preferred shares to redemption value	—	—	—	—	—	—	(2,417,979)	(2,417,979)	—	(2,417,979)
Accretion on Series C convertible redeemable preferred shares to redemption value	—	—	—	—	—	—	(2,375,943)	(2,375,943)	—	(2,375,943)
Accretion on Series D convertible redeemable preferred shares to redemption value	—	—	—	—	—	—	(1,216,227)	(1,216,227)	—	(1,216,227)
Accretion on redeemable non-controlling interests to redemption value	—	—	—	—	—	—	(63,297)	(63,297)	—	(63,297)
Issuance of ordinary shares	184,000,000	315	—	—	7,526,681	—	—	7,526,996	—	7,526,996
Conversion of preferred shares	821,378,518	1,408	—	—	33,724,621	—	—	33,726,029	—	33,726,029
Exercise of share options	16,026,060	27	(2,176,570)	—	42,224	—	—	42,251	—	42,251
Vesting of restricted shares	—	—	7,720,681	—	56,183	—	—	56,183	—	56,183
Vesting of share options	—	—	—	—	437,320	—	—	437,320	—	437,320
Grant of restricted shares	509,001	1	(509,001)	—	—	—	—	1	—	1
Cancellation of restricted shares	(909,917)	(2)	909,917	—	—	—	—	(2)	—	(2)
Capital injection by non-controlling interests	—	—	—	—	—	—	—	—	14,500	14,500
Foreign currency translation adjustment	—	—	—	—	—	(20,786)	—	(20,786)	—	(20,786)
Net loss	—	—	—	—	—	—	(9,597,274)	(9,597,274)	(41,705)	(9,638,979)
Balance as of December 31, 2018	<u>1,057,731,012</u>	<u>1,809</u>	<u>(6,931,980)</u>	<u>(9,186)</u>	<u>41,918,936</u>	<u>(34,708)</u>	<u>(35,039,810)</u>	<u>6,837,041</u>	<u>(15,896)</u>	<u>6,821,145</u>



NIO INC.
CONSOLIDATED STATEMENTS OF SHAREHOLDERS' (DEFICIT)/EQUITY
 (All amounts in thousands, except for share and per share data)

	Ordinary Shares		Treasury Shares		Additional Paid in Capital	Accumulated Other Comprehensive Loss	Accumulated Deficit	Total Shareholders' (Deficit)/Equity	Non- Controlling Interests	Total (Deficit)/ Equity
	Shares	Par Value	Shares	Amount						
Balance as of December 31, 2018	1,057,731,012	1,809	(6,931,980)	(9,186)	41,918,936	(34,708)	(35,039,810)	6,837,041	(15,896)	6,821,145
Accretion on redeemable non-controlling interests to redemption value	—	—	—	—	(126,590)	—	—	(126,590)	—	(126,590)
Purchase of capped call options and zero-strike call options in connection with issuance of convertible senior notes	—	—	—	—	(1,939,567)	—	—	(1,939,567)	—	(1,939,567)
Exercise of share options	12,775,127	22	—	—	50,768	—	—	50,790	—	50,790
Vesting of restricted shares	—	—	1,636,001	—	3,802	—	—	3,802	—	3,802
Vesting of share options	—	—	—	—	329,693	—	—	329,693	—	329,693
Cancellation of restricted shares	(3,038,262)	(4)	2,300,762	9,186	(9,186)	—	—	(4)	—	(4)
Capital injection by non-controlling interests	—	—	—	—	—	—	—	—	47,124	47,124
Foreign currency translation adjustment	—	—	—	—	—	(168,340)	—	(168,340)	—	(168,340)
Net loss	—	—	—	—	—	—	(11,286,511)	(11,286,511)	(9,141)	(11,295,652)
Balance as of December 31, 2019	<u>1,067,467,877</u>	<u>1,827</u>	<u>(2,995,217)</u>	<u>—</u>	<u>40,227,856</u>	<u>(203,048)</u>	<u>(46,326,321)</u>	<u>(6,299,686)</u>	<u>22,087</u>	<u>(6,277,599)</u>

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

NIO INC.
CONSOLIDATED STATEMENTS OF CASH FLOWS
(All amounts in thousands, except for share and per share data)

	For the Year Ended December 31,			
	2017	2018	2019	2019
	RMB	RMB	RMB	US\$ Note 2(e)
CASH FLOWS FROM OPERATING ACTIVITIES				
Net loss	(5,021,174)	(9,638,979)	(11,295,652)	(1,622,518)
Adjustments to reconcile net loss to net cash used in operating activities:				
Depreciation and amortization	167,858	474,223	998,938	143,488
Allowance against receivables	—	—	108,459	15,579
Write-downs of inventory	—	—	10,427	1,498
Impairment on property, plant and equipment	—	—	75,278	10,813
Foreign exchange loss	49,503	36,597	13,876	1,993
Share-based compensation expenses	90,296	679,468	333,495	47,903
Investment income	(3,498)	—	—	—
Gain from disposal of an equity investee	—	—	(40,722)	(5,849)
Share of losses of equity investee	5,375	9,722	64,478	9,262
Loss on disposal of property, plant and equipment	6,192	21,547	50,845	7,303
Amortization of right-of-use assets	—	—	522,035	74,986
Changes in operating assets and liabilities:				
Prepayments and other current assets	(404,762)	(811,138)	(58,728)	(8,437)
Inventory	(89,464)	(1,375,862)	569,163	81,755
Other non-current assets	(66,698)	(657,986)	(243,936)	(35,039)
Taxes payable	9,650	21,398	(7,948)	(1,142)
Trade receivable	—	(756,508)	(681,556)	(97,899)
Trade payable	—	2,827,144	116,527	16,738
Long-term receivables	—	(574,677)	(83,021)	(11,925)
Operating lease liabilities	—	—	(345,323)	(49,603)
Non-current deferred revenue	—	193,524	102,391	14,708
Accruals and other liabilities	603,374	1,348,622	848,361	121,860
Other non-current liabilities	78,629	291,137	220,907	31,731
Net cash used in operating activities	(4,574,719)	(7,911,768)	(8,721,706)	(1,252,795)
CASH FLOWS FROM INVESTING ACTIVITIES				
Purchase of property, plant and equipment and intangible assets	(1,113,893)	(2,643,964)	(1,706,787)	(245,165)
Purchases of short-term investments	—	(8,090,703)	(2,202,762)	(316,407)
Proceeds from sale of short-term investments	—	2,936,000	7,246,465	1,040,890
Purchase of held for trading securities	(1,337,413)	—	—	—
Sale of held for trading securities	1,340,911	—	—	—
Loan to related parties	—	(65,342)	—	—
Loan repayment from related parties	—	34,066	—	—
Acquisitions of equity investees	(52,500)	(110,900)	(31,500)	(4,525)
Acquisition of additional interests in subsidiaries from non-controlling interests	(27,378)	—	—	—
Proceeds from disposal of an equity investee	—	—	76,653	11,011
Net cash provided by/(used) in investing activities	(1,190,273)	(7,940,843)	3,382,069	485,804
CASH FLOWS FROM FINANCING ACTIVITIES				
Proceeds from exercise of stock options	6,207	42,251	50,790	7,296
Proceeds from issuance of series A convertible redeemable preferred shares, net of issuance costs	273,686	—	—	—
Proceeds from issuance of series B convertible redeemable preferred shares, net of issuance costs	240,066	—	—	—
Proceeds from issuance of series C convertible redeemable preferred shares, net of issuance costs	4,398,313	—	—	—
Proceeds from collection of receivable from a holder of Series D convertible redeemable preferred shares	7,314,387	78,651	—	—
Capital injection from non-controlling interests	13,376	14,500	—	—
Deposit from non-controlling interest	—	47,124	—	—
Proceeds from issuance of redeemable non-controlling interests	—	1,265,900	—	—
Repayment of non-recourse loan	—	82,863	—	—
Repurchase of restricted shares	—	(7,490)	—	—
Principal payments on finance leases	—	—	(43,916)	(6,308)
Proceeds from issuance of convertible promissory note	312,624	—	4,322,457	620,882
Repayment of convertible promissory note	(325,013)	—	—	—
Proceeds from borrowings	633,688	2,668,461	1,376,580	197,733
Repayments of borrowings	—	(120,205)	(2,610,958)	(375,041)
Proceeds from issuance of ordinary share, net	—	7,531,037	—	—
Net cash provided by financing activities	12,867,334	11,603,092	3,094,953	444,562
Effects of exchange rate changes on cash, cash equivalents and restricted cash	(168,120)	(56,947)	10,166	1,460
NET INCREASE/(DECREASE) IN CASH, CASH EQUIVALENTS AND RESTRICTED CASH	6,934,222	(4,306,466)	(2,234,518)	(320,969)
Cash, cash equivalents and restricted cash at beginning of the year	596,631	7,530,853	3,224,387	463,154
Cash, cash equivalents and restricted cash at end of the year	7,530,853	3,224,387	989,869	142,185
NON-CASH INVESTING AND FINANCING ACTIVITIES				
Issuance of series D convertible redeemable preferred shares	85,553	—	—	—
Acquisition of an equity investee	—	—	35,931	5,161
Accruals related to purchase of property and equipment	410,726	1,027,377	1,121,715	161,124
	496,279	1,027,377	1,157,646	166,285
Supplemental Disclosure				
Interest paid	15,434	112,682	260,377	37,401
Income taxes paid	1,129	11,157	18,189	2,613

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

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1. Organization and Nature of Operations

NIO Inc. (“NIO”, or “the Company”) was incorporated under the laws of the Cayman Islands in November, 2014, as an exempted company with limited liability. The Company was formerly known as NextCar Inc.. It changed its name to NextEV Inc. in December, 2014, and then changed to NIO Inc. in July, 2017. The Company, its subsidiaries and consolidated variable interest entities (“VIEs”) are collectively referred to as the “Group”.

The Group designs and develops high-performance fully electric vehicles. It launched the first volume manufactured electric vehicle, the ES8, to the public in December 2017. The Group jointly manufactures its vehicles through strategic collaboration with other Chinese vehicle manufacturers. The Group also offers Energy and Service packages to its users. As of December 31, 2018 and 2019, its primary operations are conducted in the People’s Republic of China (“PRC”). The Group began to sell its first vehicles in June 2018. As of December 31, 2019, the Company’s principal subsidiaries and VIEs are as follows:

Subsidiaries	Equity interest held	Place and date of incorporation or date of acquisition	Principal activities
NIO NextEV Limited (“NIO HK”) (formerly known as NextEV Limited)	100%	Hong Kong, February 2015	Investment holding
NIO GmbH (formerly known as NextEV GmbH)	100%	Germany, May 2015	Design and technology development
NIO Co., Ltd. (“NIO SH”) (formerly known as NextEV Co., Ltd.)	100%	Shanghai, PRC, May 2015	Headquarter and technology development
NIO USA, Inc. (“NIO US”) (formerly known as NextEV USA, Inc.)	100%	United States, November 2015	Technology development
XPT Limited (“XPT”)	100%	Hong Kong, December 2015	Investment holding
NIO Performance Engineering Limited (“NPE”)	100%	United Kingdom, July 2019	Marketing and technology development
NIO Sport Limited (“NIO Sport”) (formerly known as NextEV NIO Sport Limited)	100%	Hong Kong, April 2016	Racing management
XPT Technology Limited (“XPT Technology”)	100%	Hong Kong, April 2016	Investment holding
XPT Inc. (“XPT US”)	100%	United States, April 2016	Technology development
XPT (Jiangsu) Investment Co., Ltd. (“XPT Jiangsu”)	100%	Jiangsu, PRC, May 2016	Investment holding
Shanghai XPT Technology Limited	100%	Shanghai, PRC, May 2016	Technology development
XPT (Nanjing) E-Powertrain Technology Co., Ltd. (“XPT NJEP”)	100%	Nanjing, PRC, July 2016	Manufacturing of E-Powertrain
XPT (Nanjing) Energy Storage System Co., Ltd. (“XPT NJES”)	100%	Nanjing, PRC, October 2016	Manufacturing of battery pack
NIO Power Express Limited (“PE HK”)	100%	Hong Kong, January 2017	Investment holding
NextEV User Enterprise Limited (“UE HK”)	100%	Hong Kong, February 2017	Investment holding
Shanghai NIO Sales and Services Co., Ltd. (“UE CNHC”)	100%	Shanghai, PRC, March 2017	Investment holding and sales and after sales management
NIO Energy Investment (Hubei) Co., Ltd. (“PE CNHC”)	100%	Wuhan PRC, April 2017	Investment holding
Wuhan NIO Energy Co., Ltd. (“PE WHJV”)	100%	Wuhan, PRC, May 2017	Investment holding
XTRONICS (Nanjing) Automotive Intelligent Technologies Co. Ltd. (“XPT NJWL”)	50%	Nanjing, PRC, June 2017	Manufacturing of components
XPT (Jiangsu) Automotive Technology Co., Ltd. (“XPT AUTO”)	100%	Nanjing, PRC, May 2018	Investment holding

VIE and VIE’s subsidiaries	Economic interest held	Place and Date of incorporation or date of acquisition
Prime Hubs Limited (“Prime Hubs”)	100%	BVI, October 2014
NIO Technology Co., Ltd. (“NIO SHTECH”) (formerly known as Shanghai NextEV Technology Co., Ltd.)	100%	Shanghai, PRC, November 2014
Beijing NIO Network Technology Co., Ltd. (“NIO BJTECH”)	100%	Beijing, PRC, July 2017
Shanghai Anbin Technology Co., Ltd. (“NIO ABTECH”)	100%	Shanghai, PRC, April 2018

In accordance with the Article of Association of XPT NJWL, the Company has the power to control the board of directors of XPT NJWL to unilaterally govern the financial and operating policies of XPT NJWL and the non-controlling shareholder does not have substantive participating rights, therefore, the Group consolidates this entity.

Initial Public Offering

On September 12, 2018, the Company consummated its initial public offering (the “IPO”) on the New York Stock Exchange, where 160,000,000 ordinary shares were newly issued with the total net proceeds of RMB6,568,291 (US\$956,362). Subsequently on October 12, 2018, over-allotment option were fully exercised and the Company received a net proceeds of RMB962,746 (US\$138,982) associated with issuing additional 24,000,000 ordinary shares.

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Variable interest entity

NIO SHTECH was established by Li Bin and Qin Lihong (the “Nominee Shareholders”) in November, 2014. In 2015, NIO SH, NIO SHTECH, and the Nominee Shareholders of NIO SHTECH entered into a series of contractual agreements, including a loan agreement, an equity pledge agreement, exclusive call option agreement and power of attorney that irrevocably authorized the Nominee Shareholders designated by NIO SH to exercise the equity owner’s rights over NIO SHTECH. These agreements provide the Company, as the only shareholder of NIO SH, with effective control over NIO SHTECH to direct the activities that most significantly impact NIO SHTECH’s economic performance and enable the Company to obtain substantially all of the economic benefits arising from NIO SHTECH. Management concluded that NIO SHTECH is a variable interest entity of the Company and the Company is the ultimate primary beneficiary of NIO SHTECH and shall consolidate the financial results of NIO SHTECH in the Group’s consolidated financial statements. In April 2018, the above mentioned contractual agreements were terminated. On the same date, NIO SHTECH became a subsidiary wholly owned by NIO ABTECH, who also became a VIE of the Group on that day. As of December 31, 2018 and 2019, NIO SHTECH did not have significant operations, nor any material assets or liabilities.

In October 2014, Prime Hubs, a British Virgin Islands (“BVI”) incorporated company and a consolidated variable interest entity of the Group, was established by the shareholders of the Group to facilitate the adoption of the Company’s employee stock incentive plans. The Company entered into a management agreement with Prime Hubs and Li Bin. The agreement provides the company with effective control over Prime Hubs and enables the Company to obtain substantially all of the economic benefits arising from Prime Hubs. As of December 31, 2018 and 2019, Prime Hubs held 4,250,002 Class A Ordinary Shares and 4,250,002 Class A Ordinary Shares of the Company, respectively.

In April 2018, NIO SH entered into a series of contractual arrangements with the Nominee Shareholders as well as NIO ABTECH and NIO BJTECH separately, each including a loan agreement, an equity pledge agreement, exclusive call option agreement and power of attorney that irrevocably authorized the Nominee Shareholders designated by NIO SH to exercise the equity owner’s rights over NIO ABTECH and NIO BJTECH. These agreements provide the Company, as the only shareholder of NIO SH, with effective control over NIO ABTECH and NIO BJTECH to direct the activities that most significantly impact their economic performance and enable the Company to obtain substantially all of the economic benefits arising from them. Management concluded that NIO ABTECH and NIO BJTECH are variable interest entities of the Company and the Company is the ultimate primary beneficiary of them and shall consolidate the financial results of NIO ABTECH and NIO BJTECH in the Group’s consolidated financial statements. As of December 31, 2019, NIO ABTECH and NIO BJTECH did not have significant operations, nor any material assets or liabilities.

Liquidity and Going Concern

The Group’s consolidated financial statements have been prepared on a going concern basis, which assumes that the Group will continue in operation for the foreseeable future and, accordingly, will be able to realize its assets and discharge its liabilities in the normal course of operations as they come due.

The Group has been incurring losses from operations since inception. The Group incurred net losses of RMB5.0 billion, RMB9.6 billion and RMB11.3 billion for the years ended December 31, 2017, 2018 and 2019, respectively. Accumulated deficit amounted to RMB35.0 billion and RMB46.3 billion as of December 31, 2018 and 2019, respectively. Net cash used in operating activities was RMB4.6 billion, RMB7.9 billion and RMB8.7 billion for the years ended December 31, 2017, 2018 and 2019, respectively. As of December 31, 2019, the Group’s total shareholders’ deficit was RMB6.3 billion and the current liabilities exceeded the current assets in the amount of RMB4.6 billion. The Group’s cash balance as of December 31, 2019 is not sufficient to meet its obligations or liabilities when they become due, nor is it adequate to provide the required working capital and liquidity for continuous operation over the next twelve months from the date of issuance of the consolidated financial statements.

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These adverse conditions and events indicate there could be substantial doubt about the Group's ability to continue as a going concern. Management has developed plans to mitigate these adverse conditions and events which included a business plan covering the next twelve months from the date of issuance of the consolidated financial statements which considers the increase in revenue and optimizing operation efficiency to improve operating cash flows, the use of and the consummation of external financing projects since the Group's operation has historically depended on, and will continue to depend on its capability to obtain sufficient external equity or debt financing. As described in Note 29, on April 29, 2020, the Group entered into a definitive agreement with several third party investors who are committed to invest in a subsidiary of the Group with a total cash consideration of RMB 7 billion. In addition, as of the date of issuance of the consolidated financial statements, the Company had unused loan facilities of RMB 1.5 billion with respective expiration dates between June 2020 and May 2022. Management believes that funds from the equity financing and available loan facilities will be sufficient to support the Group's continuous operations and the Group will be able to meet its payment obligations when liabilities fall due within the next twelve months from the date of issuance of these consolidated financial statements. Accordingly, management continues to prepare the Group's consolidated financial statements on going concern basis.

2. Summary of Significant Accounting Policies

(a) Basis of presentation

The consolidated financial statements of the Group have been prepared in accordance with accounting principles generally accepted in the United States of America ("US GAAP"). Significant accounting policies followed by the Group in the preparation of the accompanying consolidated financial statements are summarized below.

(b) Principles of consolidation

The consolidated financial statements include the financial statements of the Company, its subsidiaries and the VIE for which the Company is the ultimate primary beneficiary.

A subsidiary is an entity in which the Company, directly or indirectly, controls more than one half of the voting power; has the power to appoint or remove the majority of the members of the board of directors (the "Board"): to cast majority of votes at the meeting of the Board or to govern the financial and operating policies of the investee under a statute or agreement among the shareholders or equity holders.

A VIE is an entity in which the Company, or its subsidiary, through contractual arrangements, bears the risks of, and enjoys the rewards normally associated with, ownership of the entity, and therefore the Company or its subsidiary is the primary beneficiary of the entity.

All significant transactions and balances between the Company, its subsidiaries and the VIE have been eliminated upon consolidation. The non-controlling interests in consolidated subsidiaries are shown separately in the consolidated financial statements.

(c) Use of estimates

The preparation of the consolidated financial statements in conformity with U.S. GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, related disclosures of contingent assets and liabilities at the balance sheet date, and the reported revenue and expenses during the reported period in the consolidated financial statements and accompanying notes. Significant accounting estimates reflected in the Group's consolidated financial statements mainly include, but are not limited to, standalone selling price of each distinct performance obligation in revenue recognition, the valuation and recognition of share-based compensation arrangements, depreciable lives of property, equipment and software, assessment for impairment of long-lived assets, inventory valuation for excess and obsolete inventories, lower of cost and net realizable value of inventories, valuation of deferred tax assets, recoverability of receivables, warranty liabilities as well as redemption value of the convertible redeemable preferred shares. Actual results could differ from those estimates.

(d) Functional currency and foreign currency translation

The Group's reporting currency is the Renminbi ("RMB"). The functional currency of the Company and its subsidiaries which are incorporated in HK is United States dollars ("US\$"), except NIO Sport which operates mainly in United Kingdom and uses Great Britain pounds ("GBP"). The functional currencies of the other subsidiaries and the VIE are their respective local currencies. The determination of the respective functional currency is based on the criteria set out by ASC 830, *Foreign Currency Matters*.

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Transactions denominated in currencies other than in the functional currency are translated into the functional currency using the exchange rates prevailing at the transaction dates. Monetary assets and liabilities denominated in foreign currencies are translated into functional currency using the applicable exchange rates at the balance sheet date. Non-monetary items that are measured in terms of historical cost in foreign currency are re-measured using the exchange rates at the dates of the initial transactions. Exchange gains or losses arising from foreign currency transactions are included in the consolidated statements of comprehensive loss.

The financial statements of the Group's entities of which the functional currency is not RMB are translated from their respective functional currency into RMB. Assets and liabilities denominated in foreign currencies are translated into RMB at the exchange rates at the balance sheet date. Equity accounts other than earnings generated in current period are translated into RMB at the appropriate historical rates. Income and expense items are translated into RMB using the periodic average exchange rates. The resulting foreign currency translation adjustments are recorded in other comprehensive loss in the consolidated statements of comprehensive gain or loss, and the accumulated foreign currency translation adjustments are presented as a component of accumulated other comprehensive loss in the consolidated statements of shareholders' (deficit)/equity. Total foreign currency translation adjustment losses were RMB124,374, RMB20,786 and RMB168,340 for the years ended December 31, 2017, 2018 and 2019, respectively. The grant-date fair value of the Group's share-based compensation expenses is reported in US\$ as the respective valuation is conducted in US\$ as the shares are denominated in US\$.

(e) Convenience translation

Translations of balances in the consolidated balance sheets, consolidated statements of comprehensive loss and consolidated statements of cash flows from RMB into US\$ as of and for the year ended December 31, 2019 are solely for the convenience of the reader and were calculated at the rate of US\$1.00 = RMB6.9618, representing the noon buying rate in The City of New York for cable transfers of RMB as certified for customs purposes by the Federal Reserve Bank of New York on December 31, 2019. No representation is made that the RMB amounts represent or could have been, or could be, converted, realized or settled into US\$ at that rate on December 31, 2019, or at any other rate.

(f) Fair value

Fair value is defined as the price that would be received from selling an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. When determining the fair value measurements for assets and liabilities required or permitted to be either recorded or disclosed at fair value, the Group considers the principal or most advantageous market in which it would transact, and it also considers assumptions that market participants would use when pricing the asset or liability.

Accounting guidance establishes a fair value hierarchy that requires an entity to maximize the use of observable inputs and minimize the use of unobservable inputs when measuring fair value. A financial instrument's categorization within the fair value hierarchy is based upon the lowest level of input that is significant to the fair value measurement. Accounting guidance establishes three levels of inputs that may be used to measure fair value:

Level 1—Quoted prices (unadjusted) in active markets for identical assets or liabilities.

Level 2—Observable, market-based inputs, other than quoted prices, in active markets for identical assets or liabilities.

Level 3—Unobservable inputs to the valuation methodology that are significant to the measurement of the fair value of the assets or liabilities.

Financial assets and liabilities of the Group primarily consist of cash and cash equivalents, restricted cash, short-term investments, trade receivable, amounts due from related parties, prepayments and other current assets, long-term investments, trade payable, amounts due to related parties, short-term borrowings, taxes payable, accruals and other liabilities, long-term receivables and long-term borrowings. As of December 31, 2018 and 2019, the carrying values of these financial instruments are approximated to their fair values due to the short-term maturity of these instruments except for long-term receivables, long-term borrowings and certain investments which are carried at fair value at each balance sheet date. Certain long-term investments in equity investees classified within Level 3 are valued based on a model utilizing unobservable inputs which require significant management judgment and estimation.

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When available, the Group uses quoted market prices to determine the fair value of an asset or liability. If quoted market prices are not available, the Group will measure fair value using valuation techniques that use, when possible, current market-based or independently sourced market parameters, such as interest rates and currency rates. Below is a description of the valuation techniques that the Group uses to measure the fair value of assets that the Group reports on its consolidated balance sheets at fair value on a recurring basis.

Time deposits. The Group values its time deposits held in certain bank accounts using quoted prices for securities with similar characteristics and other observable inputs, and accordingly, the Group classifies the valuation techniques that use these inputs as Level 2.

Short-term borrowings. The rates of interest under the loan agreements with the lending banks were determined based on the prevailing interest rates in the market. The Group classifies the valuation techniques that use these inputs as Level 2.

Short-term receivables and payables. Trade receivable and prepayments and other current assets are financial assets with carrying values that approximate fair value due to their short term nature. Trade payable, accruals and other liabilities are financial liabilities with carrying values that approximate fair value due to their short term nature.

Prepayments and other assets in non-current assets. Prepayments and other assets in non-current assets are financial assets with carrying values that approximates fair value due to the change in fair value after considering the discount rate. The Group estimated fair values of non-current prepayments and other assets using the discount cash flow method.

(g) Cash, cash equivalents and restricted cash

Cash and cash equivalents represent cash on hand, time deposits and highly-liquid investments placed with banks or other financial institutions, which are unrestricted as to withdrawal and use, and which have original maturities of three months or less.

Restricted cash is restricted to withdrawal for use or pledged as security is reported separately on the face of the Consolidated Balance Sheets. The Group's restricted cash mainly represents (a) the secured deposits held in designated bank accounts for issuance of bank credit card; (b) time deposit that are pledged for property lease.

Cash, cash equivalents and restricted cash as reported in the consolidated statement of cash flows are presented separately on our consolidated balance sheet as follows:

	December 31, 2017	December 31, 2018	December 31 2019
Cash and cash equivalents	7,505,954	3,133,847	862,839
Restricted cash	10,606	57,012	82,507
Long-term restricted cash	14,293	33,528	44,523
Total	<u>7,530,853</u>	<u>3,224,387</u>	<u>989,869</u>

(h) Short-term investment

Short-term investments consist primarily of investments in fixed deposits with maturities between three months and one year and investments in money market funds and financial products issued by banks. As of December 31, 2018 and 2019, the investment in fixed deposits that were recorded as short-term investments amounted to RMB5,154,703 and RMB111,000, respectively, among which, RMB1,775,000 and RMB96,000 were restricted as collateral for bank borrowings and letter of guarantee as of December 31, 2018 and 2019 respectively.

(i) Accounts Receivable and Allowance for Doubtful Accounts

Accounts receivable primarily include amounts of vehicle sales in relation of government subsidy to be collected from government on behalf of customers, current portion of battery installment and receivables due from vehicle users. The Group provides an allowance against accounts receivable when there is doubt as to the collectability of individual balances. The Group writes off accounts receivable when they are deemed uncollectible. Allowance for doubtful accounts recognized for the years ended December 31, 2017, 2018 and 2019 was nil, nil and RMB85,824, respectively.

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(j) Inventory

Inventories are stated at the lower of cost or net realizable value. Cost is calculated on the average basis and includes all costs to acquire and other costs to bring the inventories to their present location and condition. The Group records inventory write-downs for excess or obsolete inventories based upon assumptions on current and future demand forecasts. If the inventory on hand is in excess of future demand forecast, the excess amounts are written off. The Group also reviews inventory to determine whether its carrying value exceeds the net amount realizable upon the ultimate sale of the inventory. This requires the determination of the estimated selling price of the vehicles less the estimated cost to convert inventory on hand into a finished product. Once inventory is written-down, a new, lower-cost basis for that inventory is established and subsequent changes in facts and circumstances do not result in the restoration or increase in that newly established cost basis.

(k) Trading securities

Trading securities are comprised of bonds and are all designated as trading securities as they have been acquired principally for the purpose of selling in the near term. They are recognized on the trade date, when the Group enters into contractual arrangements with counterparties, and are normally derecognized when sold. They are initially measured at fair value, with transaction costs taken to the Statements of Comprehensive Loss. Subsequent changes in their fair values and interest are recognized in the Statements of Comprehensive Loss.

(l) Property, plant and equipment, net

Property, plant and equipment are stated at cost less accumulated depreciation and impairment loss, if any. Property and equipment are depreciated at rates sufficient to write off their costs less impairment and residual value, if any, over their estimated useful lives on a straight-line basis. Leasehold improvements are amortized over the shorter of the lease term or the estimated useful lives of the related assets.

The estimated useful lives are as follows:

	<u>Useful lives</u>
Building and constructions	20 years
Production facilities	10 years
Charging & battery swap infrastructure	5 years
R&D equipment	5 years
Computer and electronic equipment	3 years
Purchased software	3 years
Leasehold improvements	Shorter of the estimated useful life or remaining lease term
Others	3 to 5 years

Depreciation for mold and tooling is computed using the units-of-production method whereby capitalized costs are amortized over the total estimated productive life of the related assets.

The cost of maintenance and repairs is expensed as incurred, whereas the cost of renewals and betterment that extends the useful lives of property, plant and equipment is capitalized as additions to the related assets. Interest expense on outstanding debt is capitalized during the period of significant capital asset construction. Capitalized interest on construction-in-progress is included within property, plant and equipment and is amortized over the life of the related assets. When assets are retired or otherwise disposed of, the cost and related accumulated depreciation and amortization are removed from their respective accounts, and any gain or loss on such sale or disposal is reflected in the statements of comprehensive loss.

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(m) Intangible assets, net

Intangible assets are carried at cost less accumulated amortization and impairment, if any. Intangible assets are amortized using the straight-line method over the estimated useful lives as below:

	<u>Useful lives</u>
Domain names and others	5 years
License	3 years

The estimated useful lives of amortized intangible assets are reassessed if circumstances occur that indicate the original estimated useful lives have changed.

(n) Land use rights, net

Land use rights are recorded at cost less accumulated amortization. Amortization is provided on a straight-line basis over the estimated useful lives which are 536 months representing the shorter of the estimated usage periods or the terms of the agreements.

(o) Long-term investments

The Group's long-term investments include equity investments in entities. Investments in entities in which the Group can exercise significant influence and holds an investment in voting common stock or in-substance common stock (or both) of the investee but does not own a majority equity interest or control are accounted for using the equity method of accounting in accordance with ASC topic 323, *Investments—Equity Method and Joint Ventures* ("ASC 323"). Under the equity method, the Group initially records its investments at fair value. The Group subsequently adjusts the carrying amount of the investments to recognize the Group's proportionate share of each equity investee's net income or loss into earnings after the date of investment. The Group evaluates the equity method investments for impairment under ASC 323. An impairment loss on the equity method investments is recognized in earnings when the decline in value is determined to be other-than-temporary. The carrying value of the Group's long-term investments measured under equity method was RMB148,303 and RMB115,325 as of December 31, 2018 and 2019, respectively. No impairment charge was recognized for the years ended December 31, 2017, 2018 and 2019.

(p) Impairment of long-lived assets

Long-lived assets are evaluated for impairment whenever events or changes in circumstances (such as a significant adverse change to market conditions that will impact the future use of the assets) indicate that the carrying amount may not be fully recoverable or that the useful life is shorter than the Group had originally estimated. When these events occur, the Group evaluates the impairment by comparing carrying value of the assets to an estimate of future undiscounted cash flows expected to be generated from the use of the assets and their eventual disposition. If the sum of the expected future undiscounted cash flows is less than the carrying value of the assets, the Group recognizes an impairment loss based on the excess of the carrying value of the assets over the fair value of the assets. Impairment charge recognized for the years ended December 31, 2017, 2018 and 2019 was nil, nil and RMB75,278, respectively.

(q) Warranty liabilities

The Company accrues a warranty reserve for all new vehicles sold by the Company, which includes the Company's best estimate of the projected costs to repair or replace items under warranties. These estimates are based on actual claims incurred to date and an estimate of the nature, frequency and costs of future claims. These estimates are inherently uncertain given the Company's relatively short history of sales, and changes to the historical or projected warranty experience may cause material changes to the warranty reserve when the Company accumulates more actual data and experience in the future.

The portion of the warranty reserve expected to be incurred within the next 12 months is included within accruals and other liabilities, while the remaining balance is included within other non-current liabilities on the consolidated balance sheets. Warranty expense is recorded as a component of cost of revenues in the consolidated statements of comprehensive loss.

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The following table shows a reconciliation in the current reporting period related to carried-forward warranty liabilities.

	For the Year Ended December 31		
	2017	2018	2019
Warranty – beginning of year	—	—	177,293
Provision for warranty	—	179,766	283,647
Warranty costs incurred	—	(2,473)	(48,936)
Warranty– end of year	—	177,293	412,004

(r) Revenue recognition

Revenue is recognized when or as the control of the goods or services is transferred to a customer. Depending on the terms of the contract and the laws that apply to the contract, control of the goods and services may be transferred over time or at a point in time. Control of the goods and services is transferred over time if the Group’s performance:

- provides all of the benefits received and consumed simultaneously by the customer;
- creates and enhances an asset that the customer controls as the Group performs; or
- does not create an asset with an alternative use to the Group and the Group has an enforceable right to payment for performance completed to date.

If control of the goods and services transfers over time, revenue is recognized over the period of the contract by reference to the progress towards complete satisfaction of that performance obligation. Otherwise, revenue is recognized at a point in time when the customer obtains control of the goods and services.

Contracts with customers may include multiple performance obligations. For such arrangements, the Group allocates revenue to each performance obligation based on its relative standalone selling price. The Group generally determines standalone selling prices based on the prices charged to customers. If the standalone selling price is not directly observable, it is estimated using expected cost plus a margin or adjusted market assessment approach, depending on the availability of observable information. Assumptions and estimations have been made in estimating the relative selling price of each distinct performance obligation, and changes in judgments on these assumptions and estimates may impact the revenue recognition.

When either party to a contract has performed, the Group presents the contract in the statement of financial position as a contract asset or a contract liability, depending on the relationship between the entity’s performance and the customer’s payment.

A contract asset is the Group’s right to consideration in exchange for goods and services that the Group has transferred to a customer. A receivable is recorded when the Group has an unconditional right to consideration. A right to consideration is unconditional if only the passage of time is required before payment of that consideration is due.

If a customer pays consideration or the Group has a right to an amount of consideration that is unconditional, before the Group transfers a good or service to the customer, the Group presents the contract liability when the payment is made, or a receivable is recorded (whichever is earlier). A contract liability is the Group’s obligation to transfer goods or services to a customer for which the Group has received consideration (or an amount of consideration is due) from the customer. The Group’s contract liabilities primarily resulted from the multiple performance obligations identified in the vehicle sales contract and the sales of Energy and Service Packages, which is recorded as deferred revenue and advance from customers. As of December 31, 2018 and 2019, the balances of contract liabilities from vehicle sales contracts were RMB99,128 and RMB96,827, respectively. As of December 31, 2018 and 2019, the balances of contract liabilities from the sales of Energy and Service Packages were RMB32,226 and RMB65,361, respectively.

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Vehicle sales

The Group generates revenue from sales of electric vehicles, together with a number of embedded products and services through a series of contracts. The Group identifies the users who purchase the vehicle as its customers. There are multiple distinct performance obligations explicitly stated in a series of contracts including sales of vehicles, charging piles, vehicle internet connection services and extended lifetime warranty which are accounted for in accordance with ASC 606. The standard warranty provided by the Group is accounted for in accordance with ASC 460, Guarantees, and the estimated costs are recorded as a liability when NIO transfers the control of vehicle to a user.

Customers only pay the amount after deducting the government subsidies to which they are entitled for the purchase of electric vehicles. The government subsidies are applied on their behalves and collected by the Group or Jianghuai Automobile Group Co., Ltd. (“JAC”) from the government. The Group has concluded that government subsidies should be considered as a part of the transaction price it charges the customers for the electric vehicle, as the subsidy is granted to the buyer of the electric vehicle and the buyer remains liable for such amount in the event the subsidies were not received by the Group. For efficiency reason, the Group or JAC applies and collects the payment on behalf of the customers. In the instance that some eligible customer selects installment payment for battery, the Group believes such arrangement contains a significant financing component and as a result adjusts the amount considering the impact of time value on the transaction price using an appropriate discount rate (i.e. the interest rates of the loan reflecting the credit risk of the borrower). The long-term receivable of installment payment for battery was recognized as non-current assets. The difference between the gross receivable and the present value is recorded as unrealized finance income. Interest income resulting from a significant financing component will be presented separately from revenue from contracts with customers as this is not the Group’s ordinary business.

The Group uses a cost plus margin approach to determine the estimated standalone selling price for each individual distinct performance obligation identified, considering the Group’s pricing policies and practices, and the data utilized in making pricing decisions. The overall contract price is then allocated to each distinct performance obligation based on the relative estimated standalone selling price in accordance with ASC 606. The revenue for vehicle sales and charging piles are recognized at a point in time when the control of the product is transferred to the customer. For the vehicle internet connection service and free battery swapping service, the Group recognizes the revenue using a straight-line method. As for the extended lifetime warranty, given limited operating history and lack of historical data, the Group decides to recognize the revenue over time based on a straight-line method initially, and will continue monitoring the cost pattern periodically and adjust the revenue recognition pattern to reflect the actual cost pattern as it becomes available.

As the consideration for the vehicle and all embedded services must be paid in advance, which means the payments received are prior to the transfer of goods or services by the Group, the Group records a contract liability (deferred revenue) for the allocated amount regarding those unperformed obligations.

Sales of Energy and Service Packages

The Group also sells the two packages, Energy Package and Service Package in exchange of considerations. The Energy Package provides vehicle users with a comprehensive range of charging solutions (including charging and battery swapping). The energy service is applied by users on the mobile application depending on their needs and the Group can decide the most appropriate service to offer according to its available resource. Through the Service Package, the Group offers vehicle users with a “worry free” vehicle ownership experience (including free repair service with certain limitations, routine maintenance service, enhanced data package, etc.), which can be applied by user via mobile application.

The Group identifies the users who purchase Energy Package and Service Package meet the definition of a customer. The agreements for Energy Package and Service Package create legal enforceability to both parties on a monthly basis as the respective Energy or Service Packages can be canceled at any time without any penalty. The Group concludes the energy or service provided in Energy Package or Service Package respectively meets the stand-ready criteria and contains only one performance obligation within each package, the revenue is recognized over time on a monthly basis as customer simultaneously receives and consumes the benefits provided and the term of legally enforceable contract is only one month.

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Incentives

The Group offers a self-managed customer loyalty program points, which can be used in the Group's online store and at NIO houses to redeem NIO merchandise. The Group determines the value of each point based on estimated incremental cost. Customers and NIO fans and advocates have a variety of ways to obtain the points. The major accounting policy for its points program is described as follows:

(i) Sales of vehicle

The Group concludes the points offered linked to the purchase transaction of the vehicle is a material right and accordingly a separate performance obligation according to ASC 606, and should be taken into consideration when allocating the transaction price of the vehicle sales. The Group also estimates the probability of points redemption when performing the allocation. Since historical information does not yet exist for the Group to determine any potential points forfeitures and the fact that most merchandise can be redeemed without requiring a significant amount of points compared with the amount of points provided to users, the Group believes it is reasonable to assume all points will be redeemed and no forfeiture is estimated currently. The amount allocated to the points as separate performance obligation is recorded as contract liability (deferred revenue) and revenue should be recognized when future goods or services are transferred. The Group will continue to monitor when and if forfeiture rate data becomes available and will apply and update the estimated forfeiture rate at each reporting period.

(ii) Sales of Energy Package and Service Package

Energy Package—When the customers charge their vehicles without using the Group's charging network, the Group will grant points based on the actual cost the customers incur. The Group records the value of the points as a reduction of revenue from the Energy Package.

Service Package—The Group grants points to the customers with safe driving record during the effective period of the service package. The Group records the value of the points as a reduction of revenue from the Service Package.

Since historical information is limited for the Group to determine any potential points forfeiture and most merchandise can be redeemed without requiring a significant amount of points compared with the amount of points provided to users, the Group has used an estimated forfeiture rate of zero.

(iii) Other scenarios

Customers or users of the mobile application can also obtain points through any other ways such as frequent sign-ins to the Group's mobile application, sharing articles from the application to users' own social media. The Group believes these points are to encourage user engagement and generate market awareness. As a result, the Group accounts for such points as selling and marketing expenses with a corresponding liability recorded under other current liabilities of its consolidated balance sheets upon the points offering. The Group estimates liabilities under the customer loyalty program based on cost of the NIO merchandise that can be redeemed, and its estimate of probability of redemption. At the time of redemption, the Group records a reduction of inventory and other current liabilities. In certain cases where merchandise is sold for cash in addition to points, the Group records other revenue.

Similar to the reasons above, the Group estimates no points forfeiture currently and continues to assess when and if a forfeiture rate should be applied.

For the years ended December 31, 2017, 2018 and 2019, the revenue portion allocated to the points as separate performance obligation was nil, RMB47,310 and RMB66,286, respectively, which is recorded as contract liability (deferred revenue). For the years ended December 31, 2017, 2018 and 2019, the total points recorded as a reduction of revenue was nil, RMB441 and RMB25,408, respectively. For the years ended December 31, 2017, 2018 and 2019, the total points recorded as selling and marketing expenses were RMB16,460, RMB153,057 and RMB142,425, respectively.

As of December 31, 2018 and 2019, liabilities recorded related to unredeemed points were RMB143,868 and RMB178,666, respectively.

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Practical expedients and exemptions

The Group follows the guidance on immaterial promises when identifying performance obligations in the vehicle sales contracts and concludes that lifetime roadside assistance and out-of-town charging services are not performance obligations considering these two services are value-added services to enhance user experience rather than critical items for vehicle driving and forecasted that usage of these two services will be very limited. The Group also performs an estimation on the standalone fair value of each promise applying a cost plus margin approach and concludes that the standalone fair value of roadside assistance and out-of-town charging services are insignificant individually and in aggregate, representing less than 1% of vehicle gross selling price and aggregate fair value of each individual promise.

Considering the qualitative assessment and the result of the quantitative estimate, the Group concluded not to assess whether promises are performance obligations if they are immaterial in the context of the contract and the relative standalone fair value individually and in aggregate is less than 3% of the contract price, namely the road-side assistance and out-of-town charging services. Related costs are recognized as incurred.

(s) Cost of Sales

Vehicle

Cost of vehicle revenue includes direct parts, material, processing fee, loss compensation to JAC, labor costs, manufacturing overhead (including depreciation of assets associated with the production), and reserves for estimated warranty expenses. Cost of vehicle revenue also includes adjustments to warranty expense and charges to write-down the carrying value of the inventory when it exceeds its estimated net realizable value and to provide for on-hand inventory that is either obsolete or in excess of forecasted demand.

Service and Other

Cost of service and other revenue includes direct parts, material, labor costs, vehicle internet connectivity costs, and depreciation of assets that are associated with sales of Energy and Service packages.

(t) Sales and marketing expenses

Sales and marketing expenses consist primarily of marketing and promotional expenses, salaries and other compensation-related expenses to sales and marketing personnel. Advertising expenses consist primarily of costs for the promotion of corporate image and product marketing. The Group expenses all advertising costs as incurred and classifies these costs under sales and marketing expenses. For the years ended December 31, 2017, 2018 and 2019, advertising costs totalled RMB63,427, RMB218,060 and RMB230,061, respectively.

(u) Research and development expenses

Certain costs associated with developing internal-use software are capitalized when such costs are incurred within the application development stage of software development. Other than that, all costs associated with research and development (“R&D”) are expensed as incurred. R&D expenses are primary comprised of charges for R&D and consulting work performed by third parties; salaries, bonuses, share-based compensation, and benefits for those employees engaged in research, design and development activities; costs related to design tools; license expenses related to intellectual property, supplies and services; and allocated costs, including depreciation and amortization, rental fees, and utilities.

(v) General and administrative expenses

General and administrative expenses consist primarily of salaries, bonuses, share-based compensation and benefits for employees involved in general corporate functions and those not specifically dedicated to research and development activities, depreciation and amortization of fixed assets which are not used in research and development activities, legal and other professional services fees, rental and other general corporate related expenses.

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(w) Employee benefits

Full time employees of the Group in the PRC participate in a government mandated defined contribution plan, pursuant to which certain pension benefits, medical care, employee housing fund and other welfare benefits are provided to the employees. Chinese labor regulations require that the PRC subsidiaries and VIE of the Group make contributions to the government for these benefits based on certain percentages of the employees' salaries, up to a maximum amount specified by the local government. The Group has no legal obligation for the benefits beyond the contributions made. Total amounts of such employee benefit expenses, which were expensed as incurred, were approximately RMB231,070, RMB517,787 and RMB553,523 for the years ended December 31, 2017, 2018 and 2019, respectively.

(x) Government grants

The Group's PRC based subsidiaries received government subsidies from certain local governments. The Group's government subsidies consisted of specific subsidies and other subsidies. Specific subsidies are subsidies that the local government has provided for a specific purpose, such as product development and renewal of production facilities. Other subsidies are the subsidies that the local government has not specified its purpose for and are not tied to future trends or performance of the Group; receipt of such subsidy income is not contingent upon any further actions or performance of the Group and the amounts do not have to be refunded under any circumstances. The Group recorded specific purpose subsidies as advances payable when received. For specific subsidies, upon government acceptance of the related project development or asset acquisition, the specific purpose subsidies are recognized to reduce related R&D expenses or the cost of asset acquisition. Other subsidies are recognized as other income upon receipt as further performance by the Group is not required.

(y) Income taxes

Current income taxes are recorded in accordance with the regulations of the relevant tax jurisdiction. The Group accounts for income taxes under the asset and liability method in accordance with ASC 740, *Income Tax*. Under this method, deferred tax assets and liabilities are recognized for the tax consequences attributable to differences between carrying amounts of existing assets and liabilities in the financial statements and their respective tax basis, and operating loss carry-forwards. Deferred tax assets and liabilities are measured using enacted tax rates expected to apply to taxable income in the years in which those temporary differences are expected to be recovered or settled. The effect on deferred taxes of a change in tax rates is recognized in the consolidated statements of comprehensive loss in the period of change. Valuation allowances are established when necessary to reduce the amount of deferred tax assets if it is considered more likely than not that amount of the deferred tax assets will not be realized.

The Group records liabilities related to uncertain tax positions when, despite the Group's belief that the Group's tax return positions are supportable, the Group believes that it is more likely than not that those positions may not be fully sustained upon review by tax authorities. Accrued interest and penalties related to unrecognized tax benefits are classified as income tax expense. The Group did not recognize uncertain tax positions as of December 31, 2018 and 2019.

(z) Share-based compensation

The Company grants restricted shares and share options to eligible employees and non-employee consultants and accounts for share-based compensation in accordance with ASC 718, *Compensation—Stock Compensation* and ASC 505-50 *Equity-Based Payments to Non-Employees*. There were no new grants to non-employee consultants after the effectiveness of ASU 2018-07-*Compensation-stock compensation* (Topic 718)-Improvements to nonemployee share-based payment accounting.

Employees' share-based compensation awards are measured at the grant date fair value of the awards and recognized as expenses a) immediately at the grant date if no vesting conditions are required; or b) for share options or restricted shares granted with only service conditions, using the straight-line vesting method, net of estimated forfeitures, over the vesting period; or c) for share options granted with service conditions and the occurrence of an IPO as performance condition, cumulative share-based compensation expenses for the options that have satisfied the service condition should be recorded upon the completion of the IPO, using the graded vesting method. This performance condition was met upon completion of the Company's IPO on September 12, 2018 and the associated share-based compensation expense for awards vested as of that date were recognized; or d) for share options where the underlying share is liability within the scope of ASC 480, using the graded vesting method, net of estimated forfeitures, over the vesting period, and re-measuring the fair value of the award at each reporting period end until the award is settled.

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All transactions in which goods or services are received in exchange for equity instruments are accounted for based on the fair value of the consideration received or the fair value of the equity instrument issued, whichever is more reliably measurable.

Share-based compensation expenses for share options and restricted shares granted to non-employees are measured at fair value at the earlier of the performance commitment date or the date service is completed, and recognized over the period during which the service is provided. The Group applies the guidance in ASC 505-50 to measure share options and restricted shares granted to non-employees based on the then-current fair value at each reporting date.

Before the completion of the Company's IPO, the fair value of the restricted shares was assessed using the income approaches / market approaches, with a discount for lack of marketability given that the shares underlying the awards were not publicly traded at the time of grant. This assessment required complex and subjective judgments regarding the Company's projected financial and operating results, its unique business risks, the liquidity of its ordinary shares and its operating history and prospects at the time the grants were made. Upon the completion of the IPO, the fair value of the restricted shares is based on the fair market value of the underlying ordinary shares on the date of grant. In addition, the binomial option-pricing model is used to measure the value of share options. The determination of the fair value is affected by the fair value of the ordinary shares as well as assumptions including the expected share price volatility, actual and projected employee and non-employee share option exercise behavior, risk-free interest rates and expected dividends. The fair value of these awards was determined taking into account independent valuation advice.

The assumptions used in share-based compensation expense recognition represent management's best estimates, but these estimates involve inherent uncertainties and application of management judgment. If factors change or different assumptions are used, the share-based compensation expenses could be materially different for any period. Moreover, the estimates of fair value of the awards are not intended to predict actual future events or the value that ultimately will be realized by grantees who receive share-based awards, and subsequent events are not indicative of the reasonableness of the original estimates of fair value made by the Company for accounting purposes.

Forfeitures are estimated at the time of grant and revised in subsequent periods if actual forfeitures differ from those estimates. The Group uses historical data to estimate pre-vesting options and records share-based compensation expenses only for those awards that are expected to vest.

(aa) Comprehensive income/(loss)

The Group applies ASC 220, *Comprehensive Income*, with respect to reporting and presentation of comprehensive loss and its components in a full set of financial statements. Comprehensive loss is defined to include all changes in equity of the Group during a period arising from transactions and other event and circumstances except those resulting from investments by shareholders and distributions to shareholders. For the years presented, the Group's comprehensive loss includes net loss and other comprehensive loss, which mainly consists of the foreign currency translation adjustment that have been excluded from the determination of net loss.

(ab) Leases

In February 2016, the FASB issued ASU No. 2016-02 ("ASC 842"), Leases, to require lessees to recognize all leases, with certain exceptions, on the balance sheet, while recognition on the statement of operations will remain similar to current lease accounting. Subsequently, the FASB issued ASU No. 2018-10, Codification Improvements to Topic 842, Leases, ASU No. 2018-11, Targeted Improvements, ASU No. 2018-20, Narrow-Scope Improvements for Lessors, and ASU 2019-01, Codification Improvements, to clarify and amend the guidance in ASU No. 2016-02. ASC 842 eliminates real estate-specific provisions and modifies certain aspects of lessor accounting. This standard is effective for interim and annual periods beginning after December 15, 2018, with early adoption permitted. The Group adopted ASC 842 as of January 1, 2019 using the additional transition method ("adoption of the new lease standard"). In addition, the Group elected the package of practical expedients permitted under the transition guidance within the new standard, which allowed us to carry forward the historical determination of contracts as leases, lease classification and not reassess initial direct costs for historical lease arrangements. Accordingly, previously reported financial statements, including footnote disclosures, have not been recast to reflect the application of the new standard to all comparative periods presented. The finance lease classification under ASC 842 includes leases previously classified as capital leases under ASC 840.

Operating lease assets are included within right-of-use assets - operating lease, and the corresponding operating lease liabilities are included within operating lease liabilities on the consolidated balance sheet as of December 31, 2019. Finance lease assets are included within other non-current assets, and the corresponding finance lease liabilities are included within accruals and other liabilities for the current portion, and within other non-current liabilities on our consolidated balance sheet as of December 31, 2019.

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Adoption of the new lease standard on January 1, 2019 had a material impact on the consolidated financial statements. The most significant impacts related to the 1) recognition of right-of-use assets of RMB2,023.8 million and lease liabilities of RMB2,102.2 million for operating leases on the consolidated balance sheet; 2) recognition of right-of-use assets of RMB5.6 million and lease liabilities of RMB7.7 million for finance leases on the consolidated balance sheet.

There was no impact to accumulated deficit at adoption.

The cumulative effect of the changes made to our consolidated balance sheet as of January 1, 2019 for the adoption of the new lease standard was as follows (in thousands):

	Balances at December 31, 2018	Adjustments from Adoption of New Lease Standard	Balances at January 1, 2019
Assets			
Prepayments and other current assets	1,514,257	(90,074)	1,424,183
Property, plant and equipment, net	4,853,157	(5,563)	4,847,594
Right-of-use assets - operating lease	—	2,023,785	2,023,785
Other non-current assets	—	5,563	5,563
Liabilities			
Current portion of operating lease liabilities	—	510,295	510,295
Accruals and other liabilities	3,383,681	(37,137)	3,346,544
Non-current operating lease liabilities	—	1,591,865	1,591,865
Other non-current liabilities	930,812	(131,312)	799,500

(ac) Dividends

Dividends are recognized when declared. No dividends were declared for the years ended December 31, 2017, 2018 and 2019.

(ad) Earnings/(Loss) per share

Basic earnings/(loss) per share is computed by dividing net income/(loss) attributable to holders of ordinary shares, considering the accretions to redemption value of the preferred shares, by the weighted average number of ordinary shares outstanding during the period using the two-class method. Under the two-class method, net income is allocated between ordinary shares and other participating securities based on their participating rights. Diluted earnings/(loss) per share is calculated by dividing net income/(loss) attributable to ordinary shareholders, as adjusted for the accretion and allocation of net income related to the preferred shares, if any, by the weighted average number of ordinary and dilutive ordinary equivalent shares outstanding during the period. Ordinary equivalent shares consist of shares issuable upon the conversion of the preferred shares using the if-converted method, unvested restricted shares, restricted share units and ordinary shares issuable upon the exercise of outstanding share options (using the treasury stock method). Ordinary equivalent shares are not included in the denominator of the diluted earnings per share calculation when inclusion of such shares would be anti-dilutive.

(ae) Segment reporting

ASC 280, *Segment Reporting*, establishes standards for companies to report in their financial statements information about operating segments, products, services, geographic areas, and major customers.

Based on the criteria established by ASC 280, the Group's chief operating decision maker ("CODM") has been identified as the Chief Executive Officer, who reviews consolidated results when making decisions about allocating resources and assessing performance of the Group. As a whole and hence, the Group has only one reportable segment. The Group does not distinguish between markets or segments for the purpose of internal reporting. As the Group's long-lived assets are substantially located in the PRC, no geographical segments are presented.

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3. Recent Accounting Pronouncements

In June 2016, the FASB issued ASU 2016-13, Financial Instruments — Credit Losses (Topic 326), Measurement of Credit Losses on Financial Statements. This ASU update on the measurement of credit losses for certain financial assets measured at amortized cost and available-for-sale debt securities. In April 2019, the FASB issued ASU 2019-04 "Codification Improvements to Topic 326, Financial Instruments — Credit Losses, Topic 815, Derivatives and Hedging, and Topic 825, Financial Instruments." For financial assets measured at amortized cost, this update requires an entity to (1) estimate its lifetime expected credit losses upon recognition of the financial assets and establish an allowance to present the net amount expected to be collected, (2) recognize this allowance and changes in the allowance during subsequent periods through net income and (3) consider relevant information about past events, current conditions and reasonable and supportable forecasts in assessing the lifetime expected credit losses. For available-for-sale debt securities, this update made several targeted amendments to the existing other-than-temporary impairment model, including (1) requiring disclosure of the allowance for credit losses, (2) allowing reversals of the previously recognized credit losses until the entity has the intent to sell, is more-likely-than-not required to sell the securities or the maturity of the securities, (3) limiting impairment to the difference between the amortized cost basis and fair value and (4) not allowing entities to consider the length of time that fair value has been less than amortized cost as a factor in evaluating whether a credit loss exists. The Company adopted this update in the first quarter of 2020 and applied this update on a modified retrospective basis. The adoption did not have a material impact to the Company's 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," which eliminates, adds and modifies certain disclosure requirements for fair value measurements as part of the FASB's disclosure framework project. The new guidance is effective for the fiscal years and interim reporting periods within those fiscal years, beginning after December 15, 2019. Early adoption is permitted for the adoption of either the entire ASU or only the provisions that eliminate or modify the requirements. The Company is evaluating the effects, if any, of the adoption of this guidance on the fair value disclosure in the consolidated financial statements.

In December 2019, the FASB issued ASU 2019-12 - Income Taxes (Topic 740): Simplifying the Accounting for Income Taxes. This ASU provides an exception to the general methodology for calculating income taxes in an interim period when a year-to-date loss exceeds the anticipated loss for the year. This update also (1) requires an entity to recognize a franchise tax (or similar tax) that is partially based on income as an income-based tax and account for any incremental amount incurred as a non-income-based tax, (2) requires an entity to evaluate when a step-up in the tax basis of goodwill should be considered part of the business combination in which goodwill was originally recognized for accounting purposes and when it should be considered a separate transaction, and (3) requires that an entity reflect the effect of an enacted change in tax laws or rates in the annual effective tax rate computation in the interim period that includes the enactment date. The standard is effective for the Company for fiscal years beginning after December 15, 2020, with early adoption permitted. The Company is currently evaluating the impact.

4. Concentration and Risks

(a) Concentration of credit risk

Assets that potentially subject the Group to significant concentrations of credit risk primarily consist of cash and cash equivalents, restricted cash and short-term investment. The maximum exposure of such assets to credit risk is their carrying amounts as of the balance sheet dates. As of December 31, 2018 and 2019, all of the Group's cash and cash equivalents, restricted cash and short-term investments were held by major financial institutions located in the PRC and Hong Kong which management believes are of high credit quality. The PRC does not have an official deposit insurance program, nor does it have an agency similar to the Federal Deposit Insurance Corporation (FDIC) in the United States. However, the Group believes that the risk of failure of any of these PRC banks is remote. Bank failure is uncommon in China and the Group believes that those Chinese banks that hold the Group's cash and cash equivalents and restricted cash are financially sound based on publicly available information.

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(b) Currency convertibility risk

The PRC government imposes controls on the convertibility of RMB into foreign currencies. The Group's cash and cash equivalents and restricted cash denominated in RMB that are subject to such government controls amounted to RMB2,051,482 and RMB829,175 as of December 31, 2018 and 2019, respectively. The value of RMB is subject to changes in the central government policies and to international economic and political developments affecting supply and demand in the PRC foreign exchange trading system market. In the PRC, certain foreign exchange transactions are required by law to be transacted only by authorized financial institutions at exchange rates set by the People's Bank of China (the "PBOC"). Remittances in currencies other than RMB by the Group in the PRC must be processed through PBOC or other Chinese foreign exchange regulatory bodies which require certain supporting documentation in order to process the remittance.

(c) Foreign currency exchange rate risk

Since July 21, 2005, the RMB has been permitted to fluctuate within a narrow and managed band against a basket of certain foreign currencies. While the international reaction to the RMB appreciation has generally been positive, there remains significant international pressure on the PRC government to adopt an even more flexible currency policy, which could result in a further and more significant appreciation of the RMB against other currencies.

5. Inventory

Inventory consists of the following:

	December 31, 2018	December 31, 2019
Raw materials	696,005	510,990
Work in process	6,727	1,862
Finished Goods	723,591	291,116
Merchandise	38,916	95,987
Less: write-downs	—	(10,427)
Total	<u>1,465,239</u>	<u>889,528</u>

Raw materials primarily consist of materials for volume production as well as spare parts used for aftersales services.

Work in progress are mainly used for research and development of new models and will be expensed when incurred. Electric drive systems in production are also recorded as work in progress.

Finished goods include vehicles ready for transit at production factory, vehicles in transit to fulfill customer orders, new vehicles available for immediate sale at our sales and service center locations and charging piles.

Merchandise inventory includes accessories and branded merchandise of NIO which can be redeemed by deducting membership rewards points of customer loyalty program in the Group's application store.

Inventory write-downs recognized in cost of sales for the years ended December 31, 2017 and 2018 and 2019 were nil, nil and 10,427, respectively.

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6. Prepayments and Other Current Assets

Prepayments and other current assets consist of the following:

	December 31, 2018	December 31, 2019
Deductible VAT input	1,018,766	1,253,617
Prepayment to vendors	333,367	88,900
Deposits	23,321	73,271
Other receivables	138,803	186,105
Less: Allowance for doubtful accounts	—	(22,635)
Total	<u>1,514,257</u>	<u>1,579,258</u>

Prepayment to vendors mainly consist of prepayment for raw materials, prepaid rental for offices and NIO Houses, and prepaid expenses for R&D services provided by suppliers.

Allowance for doubtful accounts in prepayments and other current assets recognized for the years ended December 31, 2017, 2018 and 2019 was nil, nil and RMB22,635, respectively.

7. Property, Plant and Equipment, Net

Property and equipment and related accumulated depreciation were as follows:

	December 31, 2018	December 31, 2019
Mold and tooling	1,032,685	1,898,975
Leasehold improvements	653,298	1,025,570
Production facilities	456,569	869,819
Building and construction	481,121	828,958
Charging & battery swap infrastructure	470,506	608,919
Construction in process	1,289,611	475,977
Computer and electronic equipment	393,931	428,028
R&D equipment	320,362	400,461
Purchased software	286,034	341,379
Others	146,869	279,233
Subtotal	<u>5,530,986</u>	<u>7,157,319</u>
Less: Accumulated depreciation	(677,829)	(1,548,977)
Less: Accumulated impairment	—	(75,278)
Total property, plant and equipment, net	<u>4,853,157</u>	<u>5,533,064</u>

The Group recorded depreciation expenses of RMB165,960, RMB469,408 and RMB993,070 for the years ended December 31, 2017, 2018 and 2019, respectively.

8. Intangible Assets, Net

Intangible assets and related accumulated amortization were as follows:

	December 31, 2018			December 31, 2019		
	Gross carrying value	Accumulated amortization	Net carrying value	Gross carrying value	Accumulated amortization	Net carrying value
Domain names and others	5,269	(1,974)	3,295	4,342	(2,820)	1,522
License	3,161	(2,986)	175	—	—	—
Total intangible assets, net	<u>8,430</u>	<u>(4,960)</u>	<u>3,470</u>	<u>4,342</u>	<u>(2,820)</u>	<u>1,522</u>

The Group recorded amortization expenses of RMB1,898, RMB1,988 and RMB1,021 for the years ended December 31, 2017, 2018 and 2019, respectively.

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9. Land Use Rights, Net

Land use rights and related accumulated amortization were as follows:

	December 31, 2018	December 31, 2019
Land use rights	216,489	216,489
Less: Accumulated amortization—land use rights	(2,827)	(7,674)
Total land use rights, net	213,662	208,815

In June 2018, XPT NJEP entered into an agreement to purchase land use rights for usage of land to build a factory for manufacturing of e-powertrain for the Group.

The Group recorded amortization expenses for land use rights of nil, RMB2,827 and RMB4,847 for the years ended December 31, 2017, 2018 and 2019, respectively.

10. Other Non-current Assets

Other non-current assets consist of the following:

	December 31, 2018	December 31, 2019
Long-term deposits	616,199	848,655
Receivables of installment payments for battery	574,677	657,698
Right-of-use assets - finance lease	—	155,051
Prepayments for purchase of property and equipment	159,341	17,603
Others	62,613	74,093
Total	1,412,830	1,753,100

Long-term deposit mainly consists of deposits to vendors for guarantee of production capacity as well as rental deposit for offices and NIO Houses which will not be collectible within one year.

11. Accruals and Other Liabilities

Accruals and other liabilities consist of the following:

	December 31, 2018	December 31, 2019
Payables for purchase of property and equipment	1,027,377	1,121,715
Payable for R&D expenses	437,731	694,081
Payables for marketing events	423,953	436,610
Salaries and benefits payable	402,163	344,922
Advance from customers	233,767	297,096
Accrued expenses	308,486	246,121
Current portion of deferred revenue	108,250	189,172
Investment deposit from investors	47,124	154,643
Warranty liabilities	46,574	120,161
Interest payables	2,584	105,940
Current portion of deferred construction allowance	87,330	84,495
Current portion of finance lease liabilities	—	40,334
Payables for traveling expenses of employees	43,147	17,685
Other payables	215,195	363,666
Total	3,383,681	4,216,641

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12. Borrowings

Borrowings consist of the following:

	December 31, 2018	December 31, 2019
Short-term borrowing:		
Bank loan (i)	1,870,000	188,000
Convertible notes (ii)	—	697,620
Current portion of long-term bank loan (iii)	198,852	322,436
Long-term borrowings:		
Bank loan(iii)	766,592	950,154
Convertible notes(ii)	—	5,784,984
Loan from joint investor(iv)	401,420	419,660
Total	<u>3,236,864</u>	<u>8,362,854</u>

(i) Short-term bank loan

As of December 31, 2018, we obtained short-term borrowings from ten banks of RMB1,870,000 in aggregate collateralized by bank deposit of RMB1,375,000 classified as short-term investment provided by one of our wholly-owned subsidiaries. The annual interest rate of these borrowings is approximately 4.35% to 5.22%.

As of December 31, 2019, we obtained short-term borrowings from several banks of RMB128,000 in aggregate and bank acceptance of RMB60,000. The annual interest rate of these borrowings is approximately 3.45% to 4.87%.

(ii) Convertible notes

On January 30, 2019, the Group issued US\$650,000 convertible senior notes and additional US\$100,000 senior notes (collectively the “Notes”) to the notes purchasers (the “Notes Offering”). The Notes bears interest at a rate of 4.50% per year, payable semi-annually in arrears on February 1 and August 1 of each year, beginning on August 1, 2019. The Notes is convertible into the Company’s American Depositary Shares at the pre-agreed fixed conversion price at the discretion of the holders and will mature for repayment on February 1, 2024. Holders of the Notes are entitled to require the Company to repurchase all or part of the Notes in cash on February 1, 2022 or in the event of certain fundamental changes. In connection with the Notes Offering, the Company entered into capped call transactions with certain notes purchasers and/or their respective affiliates and/or other financial institutions (the “Capped Call Option Counterparties”) and used a portion of the net proceeds of the Notes Offering to pay the cost of such transactions. In addition, the Company also entered into privately negotiated zero-strike call option transactions with certain notes purchasers or their respective affiliates (the “Zero-Strike Call Option Counterparties”) and used a portion of the net proceeds of the Notes Offering to pay the aggregate premium under such transactions. The Company accounts for the Notes as a single instruments as a long-term debt. The debt issuance cost were recorded as reduction to the long-term debts and are amortised as interest expenses using the effective interest method. The value of the Notes are measured by the cash received. The cost for the capped call transactions have been recorded as deduction of additional paid-in capital within total shareholders’ deficit. The zero-strike call option was deemed as a prepaid forward to purchase the Company’s own shares and recognized as permanent equity at its fair value at inception as a reduction to additional paid in capital in the consolidated balance sheet.

On September 5, 2019, the Group issued US\$200,000 convertible senior notes to an affiliate of Tencent Holdings Limited and Mr. Bin Li, chairman and chief executive officer of the Company. Tencent and Mr. Li each subscribed for US\$100 principal amount of the convertible notes, each in two equally split tranches. The 360-day Notes will be convertible into Class A ordinary shares (or ADSs) of the Company at a conversion price of US\$2.98 per ADS at the holder’s option from the 15th day immediately prior to maturity, and the 3-year Notes will be convertible into Class A ordinary shares (or ADSs) of the Company at a conversion price of US\$3.12 per ADS at the holder’s option from the first anniversary of the issuance date. The holders of the 3-year Notes will have the right to require the Company to repurchase for cash all of the Notes or any portion thereof on February 1, 2022. The 360-day Notes was recorded in short-term borrowings and the 3-year Notes were recorded in short-term borrowings. The company will pay an annual premium of 2% at maturity. Interest expenses were accrued over the term of each note using the effective interest method.

As of December 31, 2019, RMB697,620 of convertible notes will be due within one year.

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(iii) Long-term bank loan

On May 17, 2017, the Group entered into a secured loan agreement with the Bank of Nanjing of a facility amount of RMB685,000 with a maturity date of May 17, 2022. As of December 31, 2018 and 2019, the aggregated draw amounted to RMB674,279 and RMB475,382, respectively. The annual interest rate of these borrowings is approximately 4.75% to 5.80%. The loan was guaranteed by Nanjing Xingzhi to support XPT NJES to continue doing business in the respective region. There is no restrictive financial covenants attached to the loan.

On September 28, 2017, the Group entered into a loan agreement with China Merchants Bank of a facility amount of RMB200,000 with a maturity date of September 14, 2021. December 31, 2019, the aggregated draw amounted to RMB96,000 subject to a floating interest of 10% to 18% above the benchmark interest rate of three-year RMB loan announced by PBOC.

On February 2, 2018, the Group entered into a loan agreement with China CITIC Bank of a principal of RMB50,000 with a maturity date of February 1, 2021. The As of December 31, 2019, the aggregated draw amounted to RMB44,500 subject to a floating interest rate of 10% above the average quoted interest rate of one-year RMB loan announced by the National Interbank Funding Center. On August 17, 2018, the Group entered into a loan agreement with China CITIC Bank of a principal of RMB50,000 with a maturity date of Mar 7, 2021. As of December 31, 2019, the aggregated draw amounted to RMB49,500 subject to a floating interest rate of 26% above the average quoted interest rate of one-year RMB loan announced by the National Interbank Funding Center.

On November 30, 2018, the Group entered into a loan agreement with Bank of Shanghai of a principal of RMB5,200 with a maturity date of November 30, 2021. As of December 31, 2019, the aggregated draw amounted to RMB4,102 subject to a floating interest rate of 30% above the average quoted interest rate of three-year RMB loan announced by PBOC.

On December 24, 2018, the Group entered into a loan agreement with Bank of Shanghai of a principal of RMB40,000 with a maturity date of November 30, 2021. As of December 31, 2019, the aggregated draw amounted to RMB32,305, subject to a floating interest rate of 30% above the average quoted interest rate of three-year RMB loan announced by PBOC.

On September 7, 2016, the Group entered into a joint investment agreement with Nanjing Xingzhi Technology Industry Development Co., Ltd (“Nanjing Xingzhi”, formerly known as Nanjing Zijin (New Harbor) Technology Entrepreneurial Special Community Construction Development Co., Ltd). Nanjing Xingzhi invested in XPT NJES, a subsidiary of the Group, with a contribution of RMB37,500. According to the agreement, the annual rate of return on investment of Nanjing Xingzhi equals the benchmark interest rate of one-year RMB loan announced by PBOC. Given Nanjing Xingzhi does not bear the risk of the losses and only entitles to fixed interest income, the Group regarded it a loan in substance and recorded it in liability with the interest expenses amortized through the period. On May 16, 2018, the Group entered into an agreement with Nanjing Xingzhi to purchase Nanjing Xingzhi’s shareholding in XPT NJES at a price of RMB41,773, which approximately the entire principal plus interest accrued then.

On January 3, 2019, the Group entered into a loan agreement with Bank of Shanghai of a principal of RMB20,000 with a maturity date of November 30, 2021. As of December 31, 2019, the aggregated draw amounted to RMB16,145, subject to a floating interest rate of 30% above the average quoted interest rate of three-year RMB loan announced by PBOC.

On January 10, 2019, the Group entered into a loan agreement with Bank of Shanghai of a principal of RMB40,000 with a maturity date of November 30, 2021. As of December 31, 2019, the aggregated draw amounted to RMB32,305, subject to a floating interest rate of 30% above the average quoted interest rate of three-year RMB loan announced by PBOC.

On January 17, 2019, the Group entered into a loan agreement with Bank of Shanghai of a principal of RMB40,000 with a maturity date of November 30, 2021. As of December 31, 2019, the aggregated draw amounted to RMB32,305, is subject to a floating interest rate of 30% above the average quoted interest rate of three-year RMB loan announced by PBOC.

On January 24, 2019, the Group entered into a loan agreement with Bank of Shanghai of a principal of RMB35,000 with a maturity date of November 30, 2021. As of December 31, 2019, the aggregated draw amounted to RMB28,257, subject to a floating interest rate of 30% above the average quoted interest rate of three-year RMB loan announced by PBOC.

On March 25, 2019, the Group entered into a loan agreement with Bank of Shanghai of a principal of RMB150,000 with a maturity date of November 30, 2021. As of December 31, 2019, the aggregated draw amounted to RMB128,354, subject to a floating interest rate of 15% above the average quoted interest rate of three-year RMB loan announced by PBOC.

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On March 27, 2019, the Group entered into a loan agreement with Bank of Shanghai of a principal of RMB50,000 with a maturity date of November 30, 2021. As of December 31, 2019, the aggregated draw amounted to RMB42,777, subject to a floating interest rate of 15% above the average quoted interest rate of three-year RMB loan announced by PBOC.

On March 29, 2019, the Group entered into a loan agreement with Hanhou Bank of a facility amount of RMB200,000 with a maturity date of March 29, 2022. As of December 31, 2019, the aggregated draw amounted to RMB199,000, subject to a floating interest of 20% above the benchmark interest rate of three-year RMB loan announced by PBOC.

On June 26, 2019, the Group entered into a loan agreement with Bank of Shanghai of a principal of RMB20,000 with a maturity date of November 30, 2021. As of December 31, 2019, the aggregated draw amounted to RMB18,072, is subject to a floating interest rate of 15% above the average quoted interest rate of three-year RMB loan announced by PBOC.

On September 11, 2019, the Group entered into a loan agreement with Bank of Shanghai of a principal of RMB80,000 with a maturity date of November 30, 2021. As of December 31, 2019, the aggregated draw amounted to RMB73,587, is subject to a floating interest rate of 15% above the average quoted interest rate of three-year RMB loan announced by PBOC.

As of December 31, 2018 and 2019, RMB198,852 and RMB322,436 of long-term bank borrowings will be due within one year, respectively.

(iv) Loan from joint investor

On May 18, 2017, the Group entered into a joint investment agreement with Wuhan Donghu New Technology Development Zone Management Committee ("Wuhan Donghu") to set up an entity (the "PE WHJV"). Wuhan Donghu subscribed for RMB384,000 paid in capital in PE WHJV with 49% of the shares. On June 30, 2017, September 29, 2017 and April 16, 2018, Wuhan Donghu injected RMB50,000, RMB100,000 and RMB234,000 in cash to PE WHJV, respectively. Pursuant to the investment agreement, Wuhan Donghu does not have substantive participating rights to PE WHJV, nor is allowed to transfer its equity interest in PE WHJV to other third party. In addition, within five years or when the net assets of PE WHJV is less than RMB550,000, the Group is obligated to purchase from Wuhan Donghu all of its interest in PE WHJV at its investment amount paid plus interest at the current market rate announced by PBOC. As such, the Group consolidates PE WHJV. The investment by Wuhan Donghu is accounted for as a loan because it is only entitled to fixed interest income and subject to repayment within five years or upon the financial covenant violation. As of December 31, 2018 and 2019, RMB17,420 and RMB35,660 of interest were accrued at the benchmark rate of medium and long-term loan announced by PBOC.

13. Other Non-Current Liabilities

Other non-current liabilities consist of the following:

	December 31, 2018	December 31, 2019
Deferred government grants	351,896	340,667
Deferred revenue	193,524	295,915
Warranty liabilities	130,719	291,843
Non-current finance lease liabilities	—	88,790
Deferred construction allowance	124,678	72,762
Rental payable	129,995	—
Others	—	61,836
Total	<u>930,812</u>	<u>1,151,813</u>

Deferred government grants mainly consist of specific government subsidies for purchase of land use right and buildings, product development and renewal of production facilities, which is amortized using the straight-line method as a deduction of the amortization expense of the land use right over its remaining estimated useful life.

Rental payable represents the difference between the straight-line rental expenses and the actual rental fee paid for long term rental agreements. On January 1, 2019, the Group adopted ASC 842 *Leases* and used the additional transition method to initially apply this new lease standard at the adoption date. Liabilities were recognized on the Company's consolidated financial statements.

Deferred construction allowance consists of long-term payable of construction projects, with payment terms over one year.

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14. Lease

The Group has entered into various non-cancellable operating and finance lease agreements for certain offices, warehouses, retail and service locations, equipment and vehicles worldwide. The Group determines if an arrangement is a lease, or contains a lease, at inception and record the leases in the financial statements upon lease commencement, which is the date when the underlying asset is made available for use by the lessor.

The balances for the operating and finance leases where the Group is the lessee are presented as follows within the consolidated balance sheet:

	As of December 31, 2019
Operating leases:	
Right-of-use assets - operating lease	1,997,672
Current portion of operating lease liabilities	608,747
Non-current operating lease liabilities	1,598,372
Total operating lease liabilities	2,207,119
Finance leases:	
Right-of-use assets - finance lease	155,051
Current portion of finance lease liabilities	40,334
Non-current finance lease liabilities	88,790
Total finance lease liabilities	129,124

The components of lease expenses were as follows:

	Year Ended December 31, 2019
Lease cost:	
Amortization of right-of-use assets	522,035
Interest of operating lease liabilities	137,459
Expenses for short-term leases within 12 months and other non-lease component	155,613
Total lease cost	815,107

Other information related to leases where the Group is the lessee is as follows:

	As of December 31, 2019
Weighted-average remaining lease term:	
Operating leases	4.7 years
Finance leases	3.9 years
Weighted-average discount rate:	
Operating leases	5.83 %
Finance leases	5.77 %

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

	Year Ended December 31, 2019
Operating cash outflows from operating leases	482,782
Operating cash outflows from finance leases (interest payments)	5,969
Financing cash outflows from finance leases	43,916
Right-of-use assets obtained in exchange for operating lease liabilities	777,169

As of Dec 31, 2019, the maturities of our operating and finance lease liabilities (excluding short-term leases) are as follows (in thousands):

	Operating Leases	Finance Leases
2020	716,289	50,043
2021	574,702	36,585
2022	466,041	28,206
2023	332,357	20,042
2024	173,133	7,858
Thereafter	254,607	—
Total minimum lease payments	2,517,129	142,734
Less: Interest	310,010	13,610
Present value of lease obligations	2,207,119	129,124
Less: Current portion	608,747	40,334
Long-term portion of lease obligations	1,598,372	88,790

As of December 31, 2019, the Group had future minimum lease payments for non-cancelable short-term operating leases of RMB33,580.

As previously reported in our Annual Report on Form 20-F for the year ended December 31, 2018 and under legacy lease accounting (ASC 840), future minimum lease payments under non-cancellable leases as of December 31, 2018 are as follows:

	Operating Leases
2019	393,734
2020	457,892
2021	444,909
Thereafter	1,091,911
Total minimum lease payments	2,388,446

For the year ended December 31, 2017 and 2018, the Company recognized lease expense of RMB228,478 and RMB490,936, respectively, under ASC 840.

15. Revenues

Revenues by source consists of the following:

	For the Year Ended December 31,		
	2017	2018	2019
Vehicle sales	—	4,852,470	7,367,113
Sales of charging pile	—	82,184	127,632
Sales of Packages	—	10,220	111,448
Others	—	6,297	218,711
Total	—	4,951,171	7,824,904

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16. Deferred Revenue/Income

The following table shows a reconciliation in the current reporting period related to carried-forward deferred revenue/income.

	For the Year Ended December 31		
	2017	2018	2019
Deferred revenue/income – beginning of year	—	—	301,774
Additions	—	384,116	428,786
Recognition	—	(82,342)	(246,861)
Effects on foreign exchange adjustment	—	—	1,388
Deferred revenue/income – end of year	<u>—</u>	<u>301,774</u>	<u>485,087</u>

Deferred revenue mainly includes the transaction price allocated to the performance obligations that are unsatisfied, or partially satisfied, which mainly arises from the undelivered charging pile, the vehicle internet connection service, the extended lifetime warranty service, the points offered to customers as well as free battery swapping service embedded in the vehicle sales contract, with unrecognized deferred revenue balance of RMB181,539 and RMB405,326 as of December 31, 2018 and 2019.

The Group expects that 39% of the transaction price allocated to unsatisfied performance obligation as at December 31, 2019 will be recognized as revenue during the period from January 1, 2020 to December 31, 2020. The remaining 61% will be recognized during the period from January 1, 2021 to December 31, 2024.

Deferred income includes the reimbursement from a depository bank in connection with the advancement of the Company's ADR and investor relations programs in the next five years. The Company initially recorded the payment from the depository bank as deferred revenue and then recognized as other gain over the beneficial period, with unrecognized deferred income balance of RMB99,684 and RMB79,761 as of December 31, 2018 and 2019.

17. Manufacturing in collaboration with JAC

In May 2016 and April 2019, the Group entered into an arrangement with JAC for the manufacture of the ES8 and the ES6 for five years. Pursuant to the arrangement, JAC built up a new manufacturing plant ("Hefei Manufacturing Plant") and is responsible for the equipment used on the product line while NIO is responsible for the tooling. For each vehicle produced the Group pays processing fee to JAC on a per-vehicle basis monthly for the first three years on the basis that NIO provides all the raw materials to JAC. In addition, for the first 36 months after agreed time of start of production, which was April 2018, the Group should compensate JAC operating losses incurred in Hefei Manufacturing Plant. For the years ended December 31, 2017, 2018 and 2019, JAC charged the Group nil, RMB126,425 and RMB206,736, respectively, based on the actual losses incurred in Hefei Manufacturing Plant during the same periods, which was recorded in cost of sales.

18. Research and Development Expenses

Research and development expenses consist of the following:

	Year Ended December 31,		
	2017	2018	2019
Design and development expenses	1,455,297	1,827,980	2,041,024
Employee compensation	1,004,835	1,850,886	2,004,931
Depreciation and amortization expenses	38,940	103,427	187,137
Travel and entertainment expenses	60,622	104,949	63,998
Rental and related expenses	12,367	33,105	57,401
Others	30,828	77,595	74,089
Total	<u>2,602,889</u>	<u>3,997,942</u>	<u>4,428,580</u>

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19. Selling, General and Administrative Expenses

Selling, general and administrative expenses consist of the following:

	Year Ended December 31,		
	2017	2018	2019
Employee compensation	929,928	2,256,455	2,231,698
Marketing and promotional expenses	523,535	1,158,519	818,053
Rental and related expenses	216,111	450,113	737,578
Professional services	238,740	578,469	487,537
Depreciation and amortization expenses	128,918	249,765	457,364
Travel and entertainment expenses	71,278	197,187	126,571
IT consumable, office supply and other low value consumable	114,668	167,323	109,501
Allowance against receivables	—	—	108,459
Others	127,529	283,959	375,026
Total	<u>2,350,707</u>	<u>5,341,790</u>	<u>5,451,787</u>

20. Convertible Promissory Note

On February 16, 2017, the Company issued convertible promissory note (“the Note”) in the aggregated principal amount of US\$48,000 (RMB312,624 equivalent) to one of its existing convertible redeemable preferred shareholder with compounding interest at 15% per annum, maturing 90 days after the issuance date. Pursuant to the Note agreements, the holders of the Note may (i) convert the outstanding principal and accrued interest of the Note into the most recent round of equity security at a conversion price equal to 97% of the per share price paid by the investors in the event that the Company issues and sells equity security to investors on or before the date of the repayment in full of this Note in an equity financing resulting in gross proceeds to the Company of at least US\$100,000 (“Qualified Financing”), however, the Company and the Note holder both agreed that the 3% discount on the price shall not be applicable to the Series C Convertible Redeemable Preferred Shares (“Series C Preferred Shares”), or (ii) convert the outstanding principal and accrued interest of the Note into Series B Convertible Redeemable Preferred Shares (“Series B Preferred Shares”) of the Company at a conversion price of US\$2.751 per share if no Qualified Financing occurred before prior to the maturity date. The Company may elect to repay the accrued interests in cash under either way. The issuance cost for the Note was immaterial. On May 17, 2017, the Note was fully repaid in cash together with the accrued interest of US\$1,800 (RMB12,389 equivalent).

21. Convertible Redeemable Preferred Shares

In March 2015, the Company issued 165,000,000 shares of Series A-1 convertible redeemable preferred shares (“Series A-1 Preferred Shares”) for US\$1.00 per share for cash of US\$165,000. The total consideration was paid in three instalments and were fully paid in January 2017. In March and May 2015, the Company issued 130,000,000 shares of Series A-2 convertible redeemable preferred shares (“Series A-2 Preferred Shares”) for US\$1.00 per share for cash of US\$130,000. In September 2015, the Company issued 24,210,431 shares of Series A-3 Preferred Shares for US\$1.6522 per share for cash of US\$40,000. The Series A-1, A-2 and A-3 Preferred Shares are collectively referred to as the “Series A Preferred Shares”.

In June, July, August, September 2016 and February 2017, the Company issued 114,867,321 shares of Series B convertible redeemable preferred shares (“Series B Preferred Shares”) for US\$2.751 per share for cash of US\$316,000.

In March, April, May and July 2017, the Company issued 166,205,830 shares of Series C convertible redeemable preferred shares (“Series C Preferred Shares”) for US\$3.885 per share for cash of US\$645,709.

In November and December 2017, the Company issued 211,156,415 shares of Series D convertible redeemable preferred shares (“Series D Preferred Shares”) for US\$5.353 per share for cash of US\$1,130,320. US\$12,000 out of the total consideration from one of the investor was not paid until March 28, 2018 and it was treated as a reduction of Series D Preferred Shares until it was paid. In addition, a finder’s commission of US\$26,000 was incurred for the Series D Preferred Shares financing. The Company paid 50% of the commission in cash amounted US\$13,000 and the remaining 50% by issuance of 2,428,588 shares of Series D Preferred Shares for free to the financial advisory. The total of the finder’s commission was also recorded as an issuance cost as a deduction of the preferred shares.

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The Series A-1, A-2, A-3, B, C and D Preferred Shares are collectively referred to as the “Preferred Shares”. All series of Preferred Shares have the same par value of US\$0.00025 per share.

The Company classified the Preferred Shares in the mezzanine section of the consolidated balance sheets because they were redeemable at the holders’ option any time after a certain date and were contingently redeemable upon the occurrence of certain liquidation events outside of the Company’s control, that being the Company’s failure to complete a QIPO by December 31, 2021. The Preferred Shares are recorded initially at fair value, net of issuance costs. The issuance costs for Series A-1, A-2, A-3, B, C, and D were RMB1,892, RMB1,177, RMB1,296, RMB11,857, RMB10,039 and RMB6,033 (US\$301, US\$189, US\$208, US\$1,782, US\$1,489 and US\$901, equivalent).

The major rights, preferences and privileges of the Preferred Shares are as follows:

Voting Rights

The holders of the Preferred Shares shall have the right to one vote for each ordinary share into which each outstanding Preferred Share held could then be converted. The holders of the Preferred Shares vote together with the Ordinary Shareholders, and not as a separate class or series, on all matters put before the shareholders. The holders of the Preferred Shares are entitled to appoint a total of 10 out of 11 directors of the Board.

Dividends

Subject to the approval and declaration by the Board of Directors, the holders of the Preferred Shares (exclusive of unpaid shares) are entitled to receive dividends in the following order:

- Series D Preferred Shareholders are entitled to receive dividends at an amount equal to 5% of the issue price prior to and in preference to any dividend on the Series C preferred Shares, Series B preferred shares, Series A Preferred Shares and ordinary shares;
- Series C Preferred Shareholders are entitled to receive dividends at an amount equal to 5% of the issue price prior to and in preference to any dividend on the Series B preferred shares, Series A Preferred Shares and ordinary shares;
- Series B Preferred Shareholders are entitled to receive dividends at an amount equal to 5% of the issue price prior to and in preference to any dividend on the Series A Preferred Shares and ordinary shares;
- Series A Preferred Shareholders are entitled to receive dividends at an amount equal to 5% of the issue price prior to and in preference to any ordinary shares;
- any remaining dividends shall be distributed on a pro rata basis to holders of all the Preferred Shares and ordinary shares on a fully diluted and as-if converted basis.

No dividends on preferred and ordinary shares have been declared since the issuance date through December 31, 2018 and 2019.

Liquidation

In the event of any liquidation, the holders of Preferred Shares have preference over holders of ordinary shares with respect to payment of dividends and distribution of assets. Upon Liquidation, Series D Preferred Shares shall rank senior to Series C Preferred Shares, Series C Preferred Shares shall rank senior to Series B Preferred Shares, Series B Preferred Shares shall rank senior to Series A-3 Preferred Shares, Series A-3 Preferred Shares shall rank senior to Series A-1 and A-2 Preferred Shares, Series A-1 and A-2 Preferred Shares shall rank senior to ordinary shares.

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The holders of Preferred Shares (exclusive of unpaid shares) shall be entitled to receive an amount per share equal to (A) an amount equal to the higher of (1) 100% of the original issue price of such Preferred Shares, and (2) the amount that would be payable on such Preferred Shares if converted into ordinary shares immediately before such Liquidation; and (B) the amount of all declared but unpaid dividends on such Preferred Shares based on such holder's pro rata portion of the total number of the Preferred Shares. If there are still assets of the Company legally available for distribution, such remaining assets of the Company shall be distributed to the holders of issued and outstanding Ordinary Shares on pro rata basis among themselves.

Conversion

The Preferred Shares (exclusive of unpaid shares) would automatically be converted into common shares 1) upon a QIPO; or 2) upon the written consent of the holders of a majority of the outstanding Preferred Share of each class with respect to conversion of each class.

The initial conversion ratio of Preferred Shares to ordinary shares shall be 1:1, subject to adjustments in the event of (i) share splits, share dividends, combinations, recapitalization and similar events, or (ii) issuance of Ordinary Shares (excluding certain events such as issuance of ordinary shares pursuant to a public offering) at a price per share less than the conversion price in effect on the date of or immediately prior to such issuance.

The Company determined that there were no beneficial conversion features identified for any of the Preferred Shares during any of the periods. In making this determination, the Company compared the fair value of the ordinary shares into which the Preferred Shares are convertible with the respective effective conversion price at the issuance date. In all instances, the effective conversion price was greater than the fair value of the ordinary shares. To the extent a conversion price adjustment occurs, as described above, the Company will re-evaluate whether or not a beneficial conversion feature should be recognized.

Redemption

The Company shall redeem, at the option of any holder of outstanding Preferred Shares, all of the outstanding Preferred Shares (other than the unpaid shares) held by the requesting holder, at any time after the earliest to occur of (a) December 31, 2021, if no QIPO or Approved Sale has been consummated prior to such date, (b) any material change in applicable law that would prohibit or otherwise make it illegal to continue to operate the business under the then-existing equity structure of the Group, which could not be solved by alteration or adjustment of the equity structure of the Group after good faith consultation among the Company and its shareholders, (c) the early termination of employment or service contracts of no less than 30% of the certain key employees (or subsequent persons holding their respective positions) with the Group during any six-month period (excluding any early termination with cause) which has resulted in material adverse effect with respect to the Business of the Group as a whole, and (d) termination or disruption of the business of the Group as a whole, which is attributable to any Group Company's non-compliance with applicable laws or breach or early termination of material business contracts or business arrangements with any supplier, clients or otherwise (any matter or event as described in items (a) to (d), hereinafter a "Redemption Event"), or (e) any other Preferred Share holder has requested the Company to redeem its shares in any Redemption Event by delivery of a notice.

The redemption amount payable for each Preferred Share (other than the unpaid shares) will be an amount equal to the greater of (a) 100% of the Preferred Shares' original issue price, plus all accrued but unpaid dividends thereon up to the date of redemption and compound interest on the preferred shares' original issue price at the rate of 8% per annum, proportionally adjusted for share subdivisions, share dividends, reorganizations, reclassifications, consolidations, mergers or similar transactions, and (b) the fair market value of such Preferred Shares at the date of redemption.

Upon the redemption, Series D Preferred Shares shall rank senior to Series C Preferred Shares, Series C Preferred Shares shall rank senior to Series B Preferred Shares, Series B Preferred Shares shall rank senior to Series A-3 Preferred Shares, Series A-3 Preferred Shares shall rank senior to Series A-1 and A-2 Preferred Shares, Series A-1 and A-2 Preferred Shares shall rank pari passu to each other.

Conversion upon IPO

On September 14, 2018, in connection with the completion of IPO, all of the Preferred Shares were automatically converted to 821,378,518 ordinary shares based on the aforementioned conversion price.

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Accounting for Preferred Shares

The Company recognized accretion to the respective redemption value of the Preferred Shares over the period starting from issuance date to September 12, 2018, the earliest redemption date. According to the redemption price calculation described above, the Company recognized accretion of the Preferred Shares amounted to RMB2,576,935, RMB13,667,291 and nil for the years ended December 31, 2017, 2018 and 2019.

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The Company's convertible redeemable preferred shares activities for the years ended December 31, 2017 and 2018 are summarized below.:

	Series A-1 & A-2		Series A-3		Series B		Series C		Series D		Total	
	Number of shares	Amount (RMB)	Number of shares	Amount (RMB)	Number of shares	Amount (RMB)	Number of shares	Amount (RMB)	Number of shares	Amount (RMB)	Number of shares	Amount (RMB)
Balances as of December 31, 2016	295,000,000	2,539,993	24,210,431	306,678	102,144,675	2,014,903	—	—	—	—	421,355,106	4,861,574
Proceeds from Series A-1 Preferred Shares	—	266,511	—	—	—	—	—	—	—	—	—	266,511
Issuance of preferred shares	—	—	—	—	12,722,646	240,066	166,205,830	4,398,313	213,585,003	7,314,387	392,513,479	11,952,766
Accretion on convertible redeemable preferred shares to redemption value	—	2,205,227	—	120,451	—	40,011	—	56,283	—	154,963	—	2,576,935
Balances as of December 31, 2017	<u>295,000,000</u>	<u>5,011,731</u>	<u>24,210,431</u>	<u>427,129</u>	<u>114,867,321</u>	<u>2,294,980</u>	<u>166,205,830</u>	<u>4,454,596</u>	<u>213,585,003</u>	<u>7,469,350</u>	<u>813,868,585</u>	<u>19,657,786</u>

	Series A-1 & A-2		Series A-3		Series B		Series C		Series D		Total	
	Number of shares	Amount (RMB)	Number of shares	Amount (RMB)	Number of shares	Amount (RMB)	Number of shares	Amount (RMB)	Number of shares	Amount (RMB)	Number of shares	Amount (RMB)
Balances as of December 31, 2017	295,000,000	5,011,731	24,210,431	427,129	114,867,321	2,294,980	166,205,830	4,454,596	213,585,003	7,469,350	813,868,585	19,657,786
Issuance of Series A-3 Preferred Shares (note 24(c))	—	—	7,509,933	—	—	—	—	—	—	—	7,509,933	—
Proceeds from Series D Preferred Shares	—	—	—	—	—	—	—	—	—	78,651	—	78,651
Accretion on convertible redeemable preferred shares to redemption value	—	7,091,163	—	565,979	—	2,417,979	—	2,375,943	—	1,216,227	—	13,667,291
Conversion of Series A-1 and A-2 Preferred Shares to Ordinary shares	(295,000,000)	(12,102,894)	—	—	—	—	—	—	—	—	(295,000,000)	(12,102,894)
Conversion of Series A-3 Preferred Shares to Ordinary shares	—	—	(31,720,364)	(993,108)	—	—	—	—	—	—	(31,720,364)	(993,108)
Conversion of Series B Preferred Shares to Ordinary shares	—	—	—	—	(114,867,321)	(4,712,959)	—	—	—	—	(114,867,321)	(4,712,959)
Conversion of Series C Preferred Shares to Ordinary shares	—	—	—	—	—	—	(166,205,830)	(6,830,539)	—	—	(166,205,830)	(6,830,539)
Conversion of Series D Preferred Shares to Ordinary shares	—	—	—	—	—	—	—	—	(213,585,003)	(8,764,228)	(213,585,003)	(8,764,228)
Balances as of December 31, 2018	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>	<u>—</u>

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22. Redeemable non-controlling interests

XPT (Jiangsu) Automotive Technology Co., Ltd. (“XPT Auto”), the Group’s wholly owned subsidiary had its redeemable preferred share (“XPT Auto PS”) financing of RMB1,269,900 to certain third party strategic investors in the second quarter of 2018. These third party strategic investors’ contributions in XPT Auto were accounted for as the Group’s redeemable non-controlling interests, and were classified as Mezzanine equity. Pursuant to XPT Auto’s share purchase agreement, the XPT Auto PS issued to third party strategic investors have the same rights as the existing ordinary shareholder of XPT Auto except that they have following privileges:

Redemption

The holders of XPT Auto PS have the option to request XPT Auto to redeem those shares under certain circumstance: (1) a qualified initial public offering of XPT Auto has not occurred by the fifth anniversary after the issuance of XPT Auto PS; (2) XPT Auto doesn’t meet its performance target (revenue and net profit) for each of the year during FY2019 and FY2023; or (3) a deadlock event lasts for 60 working days and cannot be resolved.

The redemption price should be equal to the original issue price plus simple interest on the original issue price at the rate of 10% per annum minus the dividends paid up to the date of redemption.

Liquidation

In the event of any liquidation, the holders of XPT Auto PS have preference over holders of ordinary shares. On a return of capital on liquidation, XPT Auto’s assets available for distribution among the investors shall first be paid to XPT Auto PS investors at the amount equal to the original issue price plus simple interest on the original issue price at the rate of 10% per annum minus the dividends paid up to the date of liquidation. The remaining assets of XPT Auto shall all be distributed to its ordinary shareholders.

The Company recognized accretion to the respective redemption value of the XPT Auto PS as a reduction of additional paid in capital over the period starting from issuance date. As of December 31, 2019, RMB1,265,900 out of the total consideration was paid by those investors and the remaining RMB4,000 were still outstanding.

23. Ordinary Shares

Upon inception, each ordinary share was issued at a par value of US\$0.00025 per share. Various numbers of ordinary shares were issued to share-based compensation award recipients. As of December 31, 2018 and 2019, the authorized share capital of the Company is US\$1,000 divided into 4,000,000,000 shares, comprising of: 2,500,000,000 Class A Ordinary Shares, 132,030,222 Class B Ordinary Shares, 148,500,000 Class C Ordinary Shares, each at a par value of US\$0.00025 per share, and 1,219,469,778 shares of a par value of US\$0.00025 each of such class or classes as the board of directors may determine.

As of December 31, 2018 and 2019, 4,000,000,000 ordinary shares were authorized. 1,057,731,012 and 1,067,467,877 shares were issued and 1,050,799,032 and 1,064,472,660 shares were outstanding as of December 31, 2018 and 2019, respectively. The share number excludes 47,985,539 Class A Ordinary Shares issued to the depository bank for bulk issuance of ADSs reserved for future issuance upon the exercise or vesting of awards granted under the Company’s share incentive plans.

24. Share-based Compensation

Compensation expenses recognized for share-based awards granted by the Company were as follows:

	For the Year Ended December 31,		
	2017	2018	2019
Cost of sales	—	9,289	9,763
Research and development expenses	23,210	109,124	82,680
Selling, general and administrative expenses	67,086	561,055	241,052
Total	<u>90,296</u>	<u>679,468</u>	<u>333,495</u>

There was no income tax benefit recognized in the consolidated statements of comprehensive loss for share-based compensation expenses and the Group did not capitalize any of the share-based compensation expenses as part of the cost of any assets in the years ended December 31, 2017, 2018 and 2019.

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(a) Prime Hubs' Restricted Shares Plan

In 2015, the Company adopted the Prime Hubs Restricted Shares Plan (the "Prime Hubs Plan"). Pursuant to the Prime Hubs Plan, restricted shares were granted to certain employees and non-employee consultants of the Group as approved by the board of directors. The restricted shares granted require the non-employee consultants to serve the Group for a period of one year with 100% of the restricted shares vesting upon the completion of the service period and the employees to serve the group for a period of four years with 25% of the restricted shares vesting at each anniversary of the service commencement date. The restricted shares issued under the Prime Hubs Plan are held by Prime Hubs, a consolidated variable interest entity of the Company, and are accounted for as treasury stocks of the Company prior to their vesting.

The following table summarizes activities of the Company's restricted shares granted to employees under the Prime Hubs Plan:

<u>Employees</u>	<u>Number of Shares Outstanding</u>	<u>Weighted Average Grant Date Fair Value US\$</u>
Unvested as of December 31, 2016	8,400,000	0.72
Granted	2,000,000	2.05
Vested	(3,133,329)	0.84
Forfeited	(208,333)	0.72
Unvested as of December 31, 2017	7,058,338	1.04
Vested	(7,058,338)	1.04
Unvested as of December 31, 2018	—	—

In August 2018, the Company agreed to repurchase 562,500 vested Prime Hubs restricted shares from a former employee who passed away with total cash consideration of RMB7,490 at the fair value.

For the years ended December 31, 2017, 2018 and 2019, total share-based compensation expenses recognized for the employee restricted shares granted under the Prime Hubs Plan were RMB20,572, RMB39,560 and nil, respectively.

As of December 31, 2018, all the employee restricted shares granted under the Prime Hubs Plan have been fully vested and hence all related share-based compensation expenses have been recognized.

(b) NIO Incentive Plans

In 2015, the Company adopted the 2015 Stock Incentive Plan (the "2015 Plan"), which allows the plan administrator to grant options and restricted shares of the Company to its employees, directors, and consultants.

The Company granted both share options and restricted shares to the employees. The share options and restricted shares of the Company under 2015 Plan have a contractual term of ten years from the grant date, and vest over a period of four years of continuous service, one fourth (1/4) of which vest upon the first anniversary of the stated vesting commencement date and the remaining vest ratably over the following 36 months. Under the 2015 plan, share options granted to the non-NIO US employees of the Group are only exercisable upon the occurrence of an initial public offering by the Company.

In 2016, 2017 and 2018, the Board of Directors further approved the 2016 Stock Incentive Plan (the "2016 Plan"), the 2017 Stock Incentive Plan (the "2017 Plan") and the 2018 Stock Incentive Plan (the "2018 Plan"). The share options of the Company under 2016 and 2017 Plan have a contractual term of seven or ten years from the grant date, and vest immediately or over a period of four or five years of continuous service.

The Group did not recognize any share-based compensation expenses for options granted to the non-NIO US employees of the Group until completion of the Company's IPO on September 12, 2018. The Group recognized the share options and restricted shares of the Company granted to the employees of NIO US on a straight-line basis over the vesting term of the awards, net of estimated forfeitures. Share-based compensation expenses for options granted to the non-NIO US employees of the Group before IPO were recognized by using the graded-vesting method.

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(i) Share Options

The following table summarizes activities of the Company's share options under the 2016, 2017 and 2018 Plans for the years ended December 31, 2017, 2018 and 2019:

	<u>Number of Options Outstanding</u>	<u>Weighted Average Exercise Price US\$</u>	<u>Weighted Average Remaining Contractual Life In Years</u>	<u>Aggregate Intrinsic Value US\$</u>
Outstanding as of December 31, 2016	52,623,554	0.32	8.30	51,506
Granted	13,460,477	1.46	—	—
Exercised	(2,723,540)	0.39	—	—
Cancelled	(5,236,562)	0.44	—	—
Expired	(348,015)	0.25	—	—
Outstanding as of December 31, 2017	57,775,914	0.57	8.52	114,299
Granted	47,216,792	2.79	—	—
Exercised	(7,732,317)	0.40	—	—
Cancelled	(5,498,453)	1.17	—	—
Expired	(687,796)	0.62	—	—
Outstanding as of December 31, 2018	91,074,140	1.69	8.23	425,988
Granted	33,964,176	3.29	—	—
Exercised	(20,133,668)	0.49	—	—
Cancelled	(14,759,778)	2.69	—	—
Expired	(1,300,898)	4.11	—	—
Outstanding as of December 31, 2019	88,843,972	2.38	6.77	164,363
Vested and expected to vest as of December 31, 2017	55,832,678	—	—	107,299
Exercisable as of December 31, 2017	5,089,894	—	—	11,070
Vested and expected to vest as of December 31, 2018	99,702,386	—	—	467,127
Exercisable as of December 31, 2018	32,959,964	—	—	185,787
Vested and expected to vest as of December 31, 2019	118,546,834	—	—	354,839
Exercisable as of December 31, 2019	32,925,154	—	—	80,801

The weighted-average grant date fair value for options granted under the Company's 2016, 2017 and 2018 Plans during the years ended December 31, 2017, 2018 and 2019 was US\$1.21, US\$1.93 and US\$1.46, respectively, computed using the binomial option pricing model.

The total share-based compensation expenses recognized for share options during the years ended December 31, 2017, 2018 and 2019 was RMB30,127, RMB437,320 and RMB329,693 respectively.

The fair value of each option granted under the Company's 2016, 2017 and 2018 Plans during 2017, 2018 and 2019 was estimated on the date of each grant using the binomial option pricing model with the assumptions (or ranges thereof) in the following table:

	<u>2017</u>		<u>2018</u>		<u>2019</u>	
Exercise price (US\$)	0.61	- 2.55	0.10	- 6.74	1.80	- 7.09
Fair value of the ordinary shares on the date of option grant (US\$)	1.30	- 2.55	3.38	- 6.74	1.80	- 7.09
Risk-free interest rate	2.31 % - 2.40 %		2.74 % - 3.15 %		1.66 % - 2.54 %	
Expected term (in years)	10		7 - 10		7 - 10	
Expected dividend yield	0 %		0 %		0 %	
Expected volatility	51 % - 52 %		47 % - 51 %		44 % - 52 %	
Expected forfeiture rate (post-vesting)	5 %		5 % - 8 %		6 % - 8 %	

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Risk-free interest rate is estimated based on the yield curve of US Sovereign Bond as of the option valuation date. The expected volatility at the grant date and each option valuation date is estimated based on annualized standard deviation of daily stock price return of comparable companies with a time horizon close to the expected expiry of the term of the options. The Company has never declared or paid any cash dividends on its capital stock, and the Group does not anticipate any dividend payments in the foreseeable future. Expected term is the contract life of the options.

As of December 31, 2018 and 2019, there were RMB117,367 and RMB89,896 of unrecognized compensation expenses related to the stock options granted to the employees of NIO US, which is expected to be recognized over a weighted-average period of 2.67 and 2.78 years, respectively.

As of December 31, 2018 and 2019, there were RMB345,072 and RMB269,425 of unrecognized compensation expenses related to the stocks options granted to the Group's non-NIO US employees which is expected to be recognized over a weighted-average period of 3.02 years and 2.67 years, respectively.

(ii) Restricted shares

The fair value of each restricted share granted with service conditions is estimated based on the fair market value of the underlying ordinary shares of the Company on the date of grant.

The following table summarizes activities of the Company's restricted shares to US employees under the 2016 plan:

	<u>Number of Restricted Shares Outstanding</u>	<u>Weighted Average Grant Date Fair Value</u> US\$
Unvested at December 31, 2016	1,837,387	0.96
Vested	(470,015)	0.96
Forfeited	(254,395)	0.96
Unvested at December 31, 2017	1,112,977	0.96
Vested	(608,406)	0.96
Forfeited	(63,058)	0.96
Unvested at December 31, 2018	441,513	0.96
Vested	(362,685)	0.96
Forfeited	(78,828)	0.96
Unvested at December 31, 2019	—	—

Share-based compensation expenses of RMB4,151, RMB3,790 and RMB2,357 related to restricted shares granted to the employees of NIO US was recognized for the years ended December 31, 2017, 2018 and 2019, respectively.

As of December 31, 2018 and 2019, there were RMB2,812 and nil of unrecognized compensation expenses related to restricted shares granted to the employees of NIO US, which is expected to be recognized over a weighted-average period of 0.75 and 0 years, respectively.

The following table summarizes activities of the Company's restricted shares to non-US employees under the 2017 and 2018 plan:

	<u>Number of Restricted Shares Outstanding</u>	<u>Weighted Average Grant Date Fair Value</u> US\$
Unvested at December 31, 2017	—	—
Granted	509,001	6.72
Vested	(445,104)	6.74
Unvested at December 31, 2018	63,897	6.60
Granted	—	—
Vested	(31,949)	6.60
Unvested at December 31, 2019	31,948	6.60

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As of December 31, 2018 and 2019, there were RMB2,798 and RMB1,028 of unrecognized compensation expenses related to restricted shares granted to the non-US employees, which is expected to be recognized over a weighted-average period of 1.7 and 0.7 years, respectively.

Share-based compensation expenses of nil, RMB20,323 and RMB1,445 related to restricted shares granted to the non-US employees was recognized for the years ended December 31, 2017, 2018 and 2019.

(c) Non-recourse Loan

In November 2015, the Company issued an offer letter to one of its key management team member (“the Borrower”). In the offer letter, the Company offered the Borrower to purchase 7,509,933 Series A-3 Preferred Shares of the Company at the price of US \$1.6522 per share, which equals to the purchase price same class of preferred shares by other third party investors in the most recent round of financing prior to the offer letter. In addition, the Company agreed to provide a loan in the amount of US \$12,408 with an interest rate of 1.8% compounded semiannually to paid for the fund the purchase of such Series A-3 Preferred Shares by the Borrower (“the Loan”). The Loan agreement was signed on March 10, 2016. The Loan is subject to a three-year service condition with 25% immediately vested on the grant date and 25% cliff vesting annually. The Borrower’s personal liability on the Loan, and the Company’s recourse against the Borrower personally on the Loan, shall be limited to 50% of the then-outstanding principal amount of the Loan, including any interest accrued thereon.

In June 2018, the Borrower repaid the loan pursuant to the agreement, including the interest accrued, to the Company, amounting to RMB82,863. By the time of the repayment, 75% of the Award was vested and considered as exercised while 25% remained as unvested.

Pursuant to ASC 718, the Company accounted for the Loan as a stock liability (the “Award”). Given the underlying of the Award is Series A-3 Preferred Shares, it was treated as a liability award following ASC 480. The Award was initially recognized at fair value and subsequently re-measured by recognizing the change in fair value as an adjustment to the compensation costs. The fair value of the Award granted was estimated on each reporting date using the Black-Scholes option pricing model with the assumptions (or ranges thereof) in the following table:

	2017	2018
Exercise price	1.82	1.74
Fair value of the Preferred Shares on the measurement date	2.70	4.54
Risk-free interest rate	2 %	2 %
Remaining life (in years)	3.64	0.26
Expected dividend yield	0 %	0 %
Expected volatility	47 -48 %	43%-44 %

As of December 31, 2018, the Award was fully vested and exercised.

Share-based compensation expenses related to the Award of RMB35,446, RMB178,475 and nil was recognized for the years ended December 31, 2017, 2018 and 2019, respectively.

25. Taxation

(a) Income taxes

Cayman Islands

The Company was incorporated in the Cayman Islands and conducts most of its business through its subsidiaries located in Mainland China, Hong Kong, United States, United Kingdom and Germany. Under the current laws of the Cayman Islands, the Company is not subject to tax on either income or capital gain. Additionally, upon payments of dividends to the shareholders, no Cayman Islands withholding tax will be imposed.

PRC

All Chinese companies are subject to enterprise income tax (“EIT”) at a uniform rate of 25%.

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Under the EIT Law enacted by the National People's Congress of PRC on March 16, 2007 and its implementation rules which became effective on January 1, 2008, dividends generated after January 1, 2008 and payable by a foreign investment enterprise in the PRC to its foreign investors who are non-resident enterprises are subject to a 10% withholding tax, unless any such foreign investor's jurisdiction of incorporation has a tax treaty with the PRC that provides for a different withholding arrangement. Under the taxation arrangement between the PRC and Hong Kong, a qualified Hong Kong tax resident which is the "beneficial owner" and directly holds 25% or more of the equity interest in a PRC resident enterprise is entitled to a reduced withholding tax rate of 5%. The Cayman Islands, where the Company was incorporated, does not have a tax treaty with PRC.

The EIT Law also provides that an enterprise established under the laws of a foreign country or region but whose "de facto management body" is located in the PRC be treated as a resident enterprise for PRC tax purposes and consequently be subject to the PRC income tax at the rate of 25% for its global income. The Implementing Rules of the EIT Law merely define the location of the "de facto management body" as "the place where the exercising, in substance, of the overall management and control of the production and business operation, personnel, accounting, properties, etc., of a non-PRC company is located." Based on a review of surrounding facts and circumstances, the Group does not believe that it is likely that its operations outside of the PRC will be considered a resident enterprise for PRC tax purposes. However, due to limited guidance and implementation history of the EIT Law, there is uncertainty as to the application of the EIT Law. Should the Company be treated as a resident enterprise for PRC tax purposes, the Company will be subject to PRC income tax on worldwide income at a uniform tax rate of 25%.

According to relevant laws and regulations promulgated by the State Administration of Tax of the PRC effective from 2008 onwards, enterprises engaging in research and development activities are entitled to claim 175% of their qualified research and development expenses so incurred as tax deductible expenses when determining their assessable profits for the year ('Super Deduction'). The additional deduction of 75% of qualified research and development expenses can only be claimed directly in the annual EIT filing and subject to the approval from the relevant tax authorities.

Hong Kong

Under the current Hong Kong Inland Revenue Ordinance, the subsidiaries of the Group incorporated in Hong Kong are subject to 16.5% Hong Kong profit tax on their taxable income generated from operations in Hong Kong. Additionally, payments of dividends by the subsidiaries incorporated in Hong Kong to the Company are not subject to any Hong Kong withholding tax.

Other Countries

The maximum applicable income tax rates of other countries where the Company's subsidiaries having significant operations for the years ended December 31, 2017, 2018 and 2019 are as follows:

	For the Year Ended December 31,		
	2017	2018	2019
United States	42.84 %	29.84 %	29.84 %
United Kingdom	19.25 %	19.00 %	19.00 %
Germany	32.98 %	32.98 %	32.98 %

Composition of income tax expense for the periods presented are as follows:

	For the Year Ended December 31,		
	2017	2018	2019
Current income tax expense	<u>7,906</u>	<u>22,044</u>	<u>7,888</u>

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Reconciliations of the income tax expense computed by applying the PRC statutory income tax rate of 25% to the Group's income tax expense of the years presented are as follows:

	For the Year Ended December 31,		
	2017	2018	2019
Loss before income tax expense	(5,013,268)	(9,616,935)	(11,287,764)
Income tax expense computed at PRC statutory income tax rate of 25%	(1,253,318)	(2,404,234)	(2,821,941)
Non-deductible expenses	91,093	96,684	58,374
Foreign tax rates differential	(74,531)	167,180	107,617
Additional 75% (2017: 50%) tax deduction for qualified research and development expenses	(93,513)	(216,993)	(22,630)
Tax exempted interest income	(845)	(10,377)	(3,093)
Effect of U.S. tax law change	165,898	—	—
US tax credits	(52,185)	(42,781)	(72,448)
Prior year adjustments	(10,293)	(1,422)	(16,259)
Tax benefit contributed by Non-controlling interest	—	—	2,285
Tax benefit not utilized	1,235,600	2,433,987	2,775,983
Income tax expense	<u>7,906</u>	<u>22,044</u>	<u>7,888</u>

The PRC statutory income tax rate was used because the majority of the Group's operations are based in PRC.

(b) Deferred tax

The Group considers positive and negative evidence to determine whether some portion or all of the deferred tax assets will be more-likely-than-not realized. This assessment considers, among other matters, the nature, frequency and severity of recent losses and forecasts of future profitability. These assumptions require significant judgment and the forecasts of future taxable income are consistent with the plans and estimates the Group is using to manage the underlying business. The statutory income tax rate of 25% or applicable preferential income tax rates were applied when calculating deferred tax assets.

The Group's deferred tax assets consist of the following components:

	As of December 31,		
	2017	2018	2019
Deferred tax assets			
Net operating loss carry-forwards	1,620,535	3,777,696	6,005,461
Accrued and prepaid expenses	84,320	255,240	420,714
Tax credit carry-forwards	60,624	117,801	213,773
Deferred Revenue	—	83,877	105,840
Intangible assets	7,104	15,687	36,362
Unrealized financing cost	—	41,939	29,200
Allowance against receivables	—	—	27,196
Deferred rent	8,699	36,729	19,035
Property, plant and equipment, net	27,463	17,467	10,584
Share-based compensation	4,106	8,962	7,688
Write-downs of inventory	—	—	2,607
Advertising expenses in excess of deduction limit	65,737	14,234	353
Unrealized foreign exchange loss	55	55	55
Others	—	—	162
Total deferred tax assets	<u>1,878,643</u>	<u>4,369,687</u>	<u>6,879,030</u>
Less: Valuation allowance	<u>(1,878,643)</u>	<u>(4,369,687)</u>	<u>(6,879,030)</u>
Total deferred tax assets, net	<u>—</u>	<u>—</u>	<u>—</u>

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Full valuation allowances have been provided where, based on all available evidence, management determined that deferred tax assets are not more likely than not to be realizable in future tax years. Movement of valuation allowance is as follow:

	As of December 31,		
	2017	2018	2019
Valuation allowance			
Balance at beginning of the year	672,889	1,878,643	4,369,687
Additions	1,205,754	2,491,044	2,509,343
Balance at end of the year	<u>1,878,643</u>	<u>4,369,687</u>	<u>6,879,030</u>

The Group has tax losses arising in Mainland China of 18,484,434 that will expire in one to five years for deduction against future taxable profit.

Loss expiring in 2020	186,827
Loss expiring in 2021	1,335,168
Loss expiring in 2022	3,007,243
Loss expiring in 2023	5,950,981
Loss expiring in 2024	8,004,215
Total	<u>18,484,434</u>

The Group has tax losses arising in Hong Kong of 2,497,854 for which could be carried forward indefinitely against future taxable income.

The Group has tax losses arising in United States of 24,513, 248,151, 869,914 and 2,139,756 that will expire in sixteen, seventeen, eighteen and infinite years for deduction against future taxable income.

Uncertain Tax Position

The Group did not identify any significant unrecognized tax benefits for each of the periods presented. The Group did not incur any interest related to unrecognized tax benefits, did not recognize any penalties as income tax expense and also does not anticipate any significant change in unrecognized tax benefits within 12 months from December 31, 2019.

26. Loss Per Share

Basic loss per share and diluted loss per share have been calculated in accordance with ASC 260 on computation of earnings per share for the years ended December 31, 2017, 2018 and 2019 as follows:

	For the Year Ended December 31,		
	2017	2018	2019
Numerator:			
Net loss	(5,021,174)	(9,638,979)	(11,295,652)
Accretion on convertible redeemable preferred shares to redemption value	(2,576,935)	(13,667,291)	—
Accretion on redeemable non-controlling interests to redemption value	—	(63,297)	(126,590)
Net loss attributable to non-controlling interests	36,440	41,705	9,141
Net loss attributable to ordinary shareholders of NIO Inc. for basic/dilutive net loss per share	<u>(7,561,669)</u>	<u>(23,327,862)</u>	<u>(11,413,101)</u>
Denominator:			
Weighted-average number of ordinary shares outstanding — basic and diluted	21,801,525	332,153,211	1,029,931,705
Basic and diluted net loss per share attributable to ordinary shareholders of NIO Inc.	<u>(346.84)</u>	<u>(70.23)</u>	<u>(11.08)</u>

For the years ended December 31, 2017, 2018 and 2019, assumed conversion of the Preferred Shares into ordinary shares were excluded from the calculations of diluted net loss per share of the Company due to the anti-dilutive effect. The effects of all outstanding share options have also been excluded from the computation of diluted net loss per share for the years ended December 31, 2017, 2018 and 2019 as their effects would be anti-dilutive.

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For the years ended December 31, 2017, 2018 and 2019, the Company had potential ordinary shares, including non-vested restricted shares, option granted, Convertible Notes and Preferred Shares. As the Group incurred losses for the years ended December 31, 2017, 2018 and 2019, these potential ordinary shares were anti-dilutive and excluded from the calculation of diluted net loss per share of the Company. Such weighted average numbers of ordinary shares outstanding are as following:

	For the Year Ended December 31,		
	2017	2018	2019
Non-vested restricted shares	8,323,591	340,518	459,199
Outstanding weighted average options granted	27,495,737	72,735,288	31,276,979
Convertible Notes	—	—	92,512,382
Preferred Shares	593,611,970	678,614,152	—
Total	629,431,298	751,689,958	124,248,560

27. Related Party Balances and Transactions

The principal related parties with which the Group had transactions during the years presented are as follows:

Name of Entity or Individual	Relationship with the Company
Baidu Capital L.P.	Shareholder
Hubei Changjiang Nextev New Energy Investment Management Co., Ltd.	Controlled by Principal Shareholder
Jiangsu Xindian Automotive Co., Ltd.	Controlled by Principal Shareholder
Beijing CHJ Information Technology Co., Ltd.	Controlled by Principal Shareholder
Ningbo Meishan Bonded Port Area Weilan Investment Co., Ltd.	Controlled by Principal Shareholder
Shanghai NIO Hongling Investment Management Co., Ltd.	Controlled by Principal Shareholder
NIO Capital	Controlled by Principal Shareholder
Hubei Changjiang Nextev New Energy Industry Development Capital Partnership (Limited Partnership)	Controlled by Principal Shareholder
Suzhou Zenlead XPT New Energy Technologies Co., Ltd.	Affiliate
Beijing Chehui Hudong Guanggao Co., Ltd.	Controlled by Principal Shareholder
Beijing Xinyi Hudong Guanggao Co., Ltd.	Controlled by Principal Shareholder
Bite Shijie (Beijing) Keji Co., Ltd.	Controlled by Principal Shareholder
Kunshan Siwopu Intelligent Equipment Co., Ltd.	Affiliate
Nanjing Weibang Transmission Technology Co., Ltd.	Affiliate
Shanghai Weishang Business Consulting Co., Ltd.	Controlled by Principal Shareholder
Beijing Bit Ep Information Technology Co., Ltd.	Controlled by Principal Shareholder
Serene View Investment Limited	Controlled by Principal Shareholder
Huang River Investment Limited	Controlled by Principal Shareholder
Tianjin Boyou Information Technology Co., Ltd.	Controlled by Principal Shareholder
Wistron Info Comm (Kunshan) Co., Ltd.	Subsidiary's Non-controlling shareholder
Beijing Yiche Information Science and Technology Co., Ltd.	Controlled by Principal Shareholder
Beijing Yiche Interactive Advertising Co., Ltd. Shanghai Branch	Controlled by Principal Shareholder
Shanghai Yiju Information Technology Co., Ltd.	Controlled by Principal Shareholder
Beijing Changxing Information Technology Co., Ltd.	Significantly influenced by Principal Shareholder

In September 2018, Xiang Li resigned as the Company's board director. Since then, Beijing CHJ Information Technology Co., Ltd. and Jiangsu Xindian Automotive Co., Ltd., companies controlled by Xiang Li, were no longer the Group's related parties.

In June 2018, Wenjie Wu, originally appointed by Baidu Capital L.P. to be a board director of the Company, resigned and since then, Baidu Capital L.P. ceased to have significant influence over the Company and was no longer the Group's related party.

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(a) The Group entered into the following significant related party transactions:

(i) Provision of service

For the years ended December 31, 2017, 2018 and 2019, service income was primarily generated from property management and miscellaneous research and development services the Group provided to its related parties.

	For the Year Ended December 31,		
	2017	2018	2019
Nanjing Weibang Transmission Technology Co., Ltd.	—	—	2,417
Shanghai Weishang Business Consulting Co., Ltd.	—	905	1,806
Shanghai NIO Hongling Investment Management Co., Ltd.	—	2,707	—
Hubei Changjiang Nextev New Energy Investment Management Co., Ltd.	11,121	—	—
Beijing CHJ Information Technology Co., Ltd.	4,588	—	—
Hubei Changjiang Nextev New Energy Industry Development Capital Partnership (Limited Partnership)	4,015	—	—
Jiangsu Xindian Automotive Co., Ltd.	1,785	—	—
	<u>21,509</u>	<u>3,612</u>	<u>4,223</u>

(ii) Acceptance of service

	For the Year Ended December 31,		
	2017	2018	2019
Beijing Xinyi Hudong Guanggao Co., Ltd.	8,021	28,245	37,935
Beijing Chehui Hudong Guanggao Co., Ltd.	544	6,915	29,599
Beijing Yiche Interactive Advertising Co., Ltd. Shanghai Branch	—	—	6,132
Beijing Bit Ep Information Technology Co., Ltd.	—	—	3,627
Bite Shijie (Beijing) Keji Co., Ltd.	6,987	2,865	1,664
Beijing Yiche Information Science and Technology Co., Ltd.	—	32	466
Tianjin Boyou Information Technology Co., Ltd.	—	—	264
Shanghai Yiju Information Technology Co., Ltd.	—	—	76
	<u>15,552</u>	<u>38,057</u>	<u>79,763</u>

(iii) Loan to related party

	For the Year Ended December 31,		
	2017	2018	2019
NIO Capital	—	66,166	—
Ningbo Meishan Bonded Port Area Weilan Investment Co., Ltd.	50,000	—	—
	<u>50,000</u>	<u>66,166</u>	<u>—</u>

In 2017, the Company granted interest-free loans to Ningbo Meishan Bonded Port Area Weilan Investment Co., Ltd. As of December 31, 2019, the loans remain outstanding.

On January 12, 2018, the Group granted two interest free loans to NIO Capital, with principal amount of US\$5,000 each. The loans mature in six months. One of the loan has been received by the Group and the other has been converted into the investment in ordinary shares of a subsidiary of NIO Capital, which was further disposed in 2019.

(iv) Cost of manufacturing consignment

	For the Year Ended December 31,		
	2017	2018	2019
Suzhou Zenlead XPT New Energy Technologies Co., Ltd.	18,324	132,152	132,511

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(v) Purchase of property and equipment

	For the Year Ended December 31,		
	2017	2018	2019
Nanjing Weibang Transmission Technology Co., Ltd.	—	—	34,220
Kunshan Siwopu Intelligent Equipment Co., Ltd.	—	11,107	7,982
Bite Shijie (Beijing) Keji Co., Ltd.	2,960	—	—
	<u>2,960</u>	<u>11,107</u>	<u>42,202</u>

(vi) Interest payable on behalf of related party

	For the Year Ended December 31,		
	2017	2018	2019
Baidu Capital L.P.	21,671	8,065	—

(vii) Acceptance of R&D and maintenance service

	For the Year Ended December 31,		
	2017	2018	2019
Kunshan Siwopu Intelligent Equipment Co., Ltd.	—	2,436	341
Suzhou Zenlead XPT New Energy Technologies Co., Ltd.	—	14,776	—
	<u>—</u>	<u>17,212</u>	<u>341</u>

(viii) Payment on behalf of related party

	For the Year Ended December 31,		
	2017	2018	2019
Nanjing Weibang Transmission Technology Co., Ltd.	—	2,790	—

(ix) Loan from related party

	For the Year Ended December 31,		
	2017	2018	2019
Beijing Changxing Information Technology Co., Ltd.	—	—	25,799

In 2019, the Company signed a loan agreement with Beijing Changxing Information Technology Co., Ltd. for a loan of RMB25,799 at an interest rate of 15%. As of December 31, 2019, the loan remains outstanding.

(x) Sale of raw material, property and equipment

	For the Year Ended December 31,		
	2017	2018	2019
Wistron Info Comm (Kunshan) Co., Ltd.	—	—	725

(xi) Convertible notes issued to related parties (Note 12)

	For the Year Ended December 31,		
	2017	2018	2019
Huang River Investment Limited	—	—	920,914
Serene View Investment Limited	—	—	614,926
	<u>—</u>	<u>—</u>	<u>1,535,840</u>

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(b) The Group had the following significant related party balances:

(i) Amounts due from related parties

	December 31, 2018	December 31, 2019
Ningbo Meishan Bonded Port Area Weilan Investment Co., Ltd.	50,000	50,000
Nanjing Weibang Transmission Technology Co., Ltd.	2,790	674
Wistron Info Comm (Kunshan) Co., Ltd.	—	109
NIO Capital	34,316	—
Kunshan Siwopu Intelligent Equipment Co., Ltd.	7,970	—
Shanghai NIO Hongling Investment Management Co., Ltd.	960	—
Total	96,036	50,783

(ii) Amounts due to related parties

	December 31, 2018	December 31, 2019
Suzhou Zenlead XPT New Energy Technologies Co., Ltd.	210,868	180,687
Beijing Xinyi Hudong Guanggao Co., Ltd.	3,530	36,714
Nanjing Weibang Transmission Technology Co., Ltd.	—	33,018
Beijing Changxing Information Technology Co., Ltd.	—	25,799
Beijing Chehui Hudong Guanggao Co., Ltd.	4,085	25,170
Beijing Yiche Interactive Advertising Co., Ltd. Shanghai Branch	—	3,500
Beijing Bit Ep Information Technology Co., Ltd.	—	2,598
Bite Shijie (Beijing) Keji Co., Ltd.	339	1,549
Kunshan Siwopu Intelligent Equipment Co., Ltd.	761	379
Beijing Yiche Information Technology Cp., Ltd.	—	205
Shanghai Yiju Information Technology Co., Ltd.	—	80
Tianjin Boyou Information Technology Co., Ltd.	—	30
Total	219,583	309,729

(iii) Short-term borrowings

	December 31, 2018	December 31, 2019
Huang River Investment Limited	—	354,840
Serene View Investment Limited	—	350,255
Total	—	705,095

(iv) Long-term borrowings

	December 31, 2018	December 31, 2019
Huang River Investment Limited	—	560,325
Serene View Investment Limited	—	258,213
Total	—	818,538

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28. Commitments and Contingencies

(a) Capital commitment

Capital expenditures contracted for at the balance sheet dates but not recognized in the Group's consolidated financial statements are as follows:

	December 31, 2018	December 31, 2019
Property and equipment	1,454,031	551,582
Leasehold improvements	149,551	68,652
Total	<u>1,603,582</u>	<u>620,234</u>

(b) Contingencies

Between March and July 2019, several putative securities class action lawsuits were filed against the Company, certain of the Company's directors and officers, the underwriters in the IPO and the process agent, alleging, in sum and substance, that the Company's statements in the Registration Statement and/or other public statements were false or misleading and in violation of the U.S. federal securities laws. Some of these actions have been withdrawn, transferred or consolidated. Currently, three securities class actions remain pending in the U.S. District Court for the Eastern District of New York (E.D.N.Y.), Supreme Court of the State of New York, New York County (N.Y. County), and Supreme Court of the State of New York, County of Kings (Kings County) respectively. These actions remain in their preliminary stages. The Company is currently unable to determine any estimate of the amount or range of any potential loss, if any, associated with the resolution of such lawsuits, if they proceed.

29. Subsequent Events

In January and February 2020, the Company consummated the issuance of convertible notes to several third party investors in an aggregate principal amount of US\$200 million (Rmb 1,389 million). The notes issued bear zero interest and mature on February 4, 2021. Prior to maturity, the holder of the notes has the right to convert the notes (a) after the six-month anniversary, into ADSs representing Class A ordinary shares of the Company at an initial conversion price of US\$3.07 per ADS or (b) upon the completion of a bona fide issuance of equity securities of the Company for fundraising purposes, into ADSs representing Class A ordinary shares of the Company at the conversion price derived from such equity financing.

In March 2020, the Company consummated the issuance of convertible notes to several third party investors with in an aggregate principal amount of US\$235 million (Rmb 1,636 million). The notes issued bear zero interest and will mature on March 5, 2021. Prior to maturity, holders of the notes have the right to convert either all or part of the principal amount of the notes into Class A ordinary shares (or ADSs) of the Company from September 5, 2020, at a conversion price of US\$3.50 per ADS, subject to certain adjustments.

In December 2019, it was reported that a novel strain of coronavirus, later named COVID-19, has surfaced and subsequently spread throughout China and worldwide. In response to intensifying efforts to contain the spread of COVID-19, the Chinese government has taken a number of actions, which included extending the Chinese New Year holiday, quarantining individuals infected with or suspected of having COVID-19, prohibiting residents from free travel, encouraging employees of enterprises to work remotely from home and cancelling public activities, among others. The COVID-19 has also resulted in temporary closure of many corporate offices, retail stores, manufacturing facilities and factories across China.

The COVID-19 has impact on China's auto industry in general and the production and delivery of vehicles of the Group. The production of electric vehicles were suspended due to the temporary closure of manufacturing facilities of the Group's suppliers and JAC. In addition, the Group has several service centers and vehicle delivery centers in Wuhan and other major cities in China, which were temporarily closed during the outbreak.

As a result of the outbreak of COVID-19, the Group's businesses, results of operation, financial positions and cash flows are materially and adversely affected in the first quarter of 2020 with potential continuing impacts on subsequent periods, including but not limited to the adverse impact on the Group's revenues and operating cash flows. The Group has been closely monitoring the impacts of COVID-19 and because of the uncertainties surrounding the COVID-19, the exact financial impact is unpredictable and will depend on future developments, including the duration, severity and reach of the COVID-19 outbreak globally.

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On April 29, 2020, the Group entered into definitive agreements for investments in NIO (Anhui) Holding Ltd., (“NIO China”) with a group of investors (collectively, the “Strategic Investors”) led by Hefei City Construction and Investment Holding (Group) Co., Ltd., CMG-SDIC Capital Co., Ltd., and Anhui Provincial Emerging Industry Investment Co., Ltd. Under the definitive agreements, the Strategic Investors will invest an aggregate of RMB7 billion in cash into NIO China. The Group will inject its core businesses and assets in China, including vehicle research and development, supply chain, sales and services and NIO Power (the “Asset Consideration”), into NIO China. The Asset Consideration is valued at RMB17.77 billion, as calculated based on 85% of the market value of NIO Inc. (calculated based on the Company’s average ADS trading price over the thirty public trading days preceding April 21, 2020). Further, NIO will invest RMB4.26 billion in cash into NIO China. Upon the completion of the investments, NIO will hold 75.9% of controlling equity interests in NIO China, and the Strategic Investors will collectively hold the remaining 24.1%. The Strategic Investors and NIO will each inject cash into NIO China in five installments, namely (i) RMB3.5 billion and RMB1.278 billion respectively within five business days of the satisfaction of closing conditions, (ii) RMB1.5 billion and RMB1.278 billion respectively on or prior to June 30, 2020, (iii) RMB1 billion and RMB0.852 billion respectively on or prior to September 30, 2020, (iv) RMB0.5 billion and RMB0.426 billion respectively on or prior to December 31, 2020, and (v) RMB0.5 billion and RMB0.426 billion respectively on or prior to March 31, 2021. The Group expects the closing of the investments to take place in the second quarter of 2020 when certain customary closing conditions are met.

30. Parent Company Only Condensed Financial Information

The Company performed a test on the restricted net assets of its consolidated subsidiaries and VIEs in accordance with Securities and Exchange Commission Regulation S-X Rule 4-08 (e) (3), “General Notes to Financial Statements” and concluded that it was applicable for the Company to disclose the financial information for the Company only.

The subsidiaries did not pay any dividend to the Company for the years presented. Certain information and footnote disclosures generally included in financial statements prepared in accordance with U.S. GAAP have been condensed and omitted. The footnote disclosures contain supplemental information relating to the operations of the Company, as such, these statements are not the general-purpose financial statements of the reporting entity and should be read in conjunction with the notes to the consolidated financial statements of the Company.

The Company did not have significant capital and other commitments, or guarantees as of December 31, 2019.

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Condensed Balance Sheets

	As of December 31,		
	2018 RMB	2019 RMB	2019 US\$ Note 2(e)
ASSETS			
Current assets:			
Cash and cash equivalents	17,179	11,629	1,670
Amounts due from related parties	20,701	22,698	3,260
Prepayments and other current assets	54,847	—	—
Total current assets	92,727	34,327	4,930
Non-current assets:			
Investments in subsidiaries and VIEs	8,891,882	2,884,635	414,352
Total non-current assets	8,891,882	2,884,635	414,352
Total assets	8,984,609	2,918,962	419,282
LIABILITIES			
Current liabilities:			
Short-term borrowings	—	697,620	100,207
Amounts due to related parties	2,046,971	2,555,511	367,076
Accruals and other liabilities	913	100,772	14,475
Total current liabilities	2,047,884	3,353,903	481,758
Long-term borrowings	—	5,784,984	830,961
Deferred revenue	99,684	79,761	11,457
Total non-current liabilities	99,684	5,864,745	842,418
Total liabilities	2,147,568	9,218,648	1,324,176
SHAREHOLDERS' EQUITY/(DEFICIT)			
Class A Ordinary Shares	1,329	1,347	194
Class B Ordinary Shares	226	226	32
Class C Ordinary Shares	254	254	36
Treasury shares	(9,186)	—	—
Additional paid in capital	41,918,936	40,227,856	5,778,370
Accumulated other comprehensive loss	(34,708)	(203,048)	(29,166)
Accumulated deficit	(35,039,810)	(46,326,321)	(6,654,360)
Total shareholders' equity/(deficit)	6,837,041	(6,299,686)	(904,894)
Total liabilities, mezzanine equity and shareholders' equity	8,984,609	2,918,962	419,282

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Condensed Statements of Comprehensive Loss

	For the Year ended December 31,			
	2017 RMB	2018 RMB	2019 RMB	2019 US\$ Note 2(e)
Operating expenses:				
Selling, general and administrative	(52,518)	(178,479)	(97)	(14)
Total operating expenses	<u>(52,518)</u>	<u>(178,479)</u>	<u>(97)</u>	<u>(14)</u>
Loss from operations	<u>(52,518)</u>	<u>(178,479)</u>	<u>(97)</u>	<u>(14)</u>
Interest income	2,391	7,692	4,212	605
Interest expense	(12,389)	—	(237,374)	(34,097)
Equity in loss of subsidiaries and VIEs	(4,924,897)	(9,432,640)	(11,076,907)	(1,591,097)
Investment income	3,498	—	—	—
Other (loss)/gain, net	(819)	6,153	23,655	3,398
Loss before income tax expense	<u>(4,984,734)</u>	<u>(9,597,274)</u>	<u>(11,286,511)</u>	<u>(1,621,205)</u>
Income tax expense	—	—	—	—
Net loss	<u>(4,984,734)</u>	<u>(9,597,274)</u>	<u>(11,286,511)</u>	<u>(1,621,205)</u>
Accretion on convertible redeemable preferred shares to redemption value	(2,576,935)	(13,667,291)	—	—
Accretion on redeemable non-controlling interests to redemption value	—	(63,297)	(126,590)	(18,184)
Net loss attributable to ordinary shareholders of NIO Inc.	<u>(7,561,669)</u>	<u>(23,327,862)</u>	<u>(11,413,101)</u>	<u>(1,639,389)</u>

Condensed Statements of Cash Flows

	For The Year ended December 31,			
	2017 RMB	2018 RMB	2019 RMB	2019 US\$ Note 2(e)
CASH FLOWS FROM OPERATING ACTIVITIES				
Net cash used in operating activities	(4,920,905)	3,917,654	438,465	62,981
CASH FLOWS FROM INVESTING ACTIVITIES				
Proceeds from sale of trading securities	1,340,911	—	—	—
Purchase of held for trading securities	(1,337,413)	—	—	—
Acquisitions of equity investees	(6,223,178)	(11,693,144)	(4,817,498)	(691,990)
Net cash used in investing activities	<u>(6,219,680)</u>	<u>(11,693,144)</u>	<u>(4,817,498)</u>	<u>(691,990)</u>
CASH FLOWS FROM FINANCING ACTIVITIES				
Proceeds from exercise of stock options	6,207	42,251	50,790	7,296
Repurchase of restricted shares	—	(7,490)	—	—
Proceeds from issuance of convertible promissory note	312,624	—	4,322,457	620,882
Repayment of convertible promissory note	(325,013)	—	—	—
Repayment of non-recourse loan	—	82,863	—	—
Proceeds from issuance of ordinary shares, net of issuance costs	—	7,566,470	—	—
Proceeds from issuance of convertible redeemable preferred shares, net of issuance costs	11,093,377	78,651	—	—
Net cash provided by financing activities	<u>11,087,195</u>	<u>7,762,745</u>	<u>4,373,247</u>	<u>628,178</u>
Effects of exchange rate changes on cash and cash equivalents	(3,031)	6,654	236	33
NET DECREASE IN CASH AND CASH EQUIVALENTS	<u>(56,421)</u>	<u>(6,091)</u>	<u>(5,550)</u>	<u>(798)</u>
Cash and cash equivalents at beginning of the year	79,691	23,270	17,179	2,468
Cash and cash equivalents at end of the year	<u>23,270</u>	<u>17,179</u>	<u>11,629</u>	<u>1,670</u>

Basis of presentation

The Company's accounting policies are the same as the Group's accounting policies with the exception of the accounting for the investments in subsidiaries and VIEs.

For the Company only condensed financial information, the Company records its investments in subsidiaries and VIEs under the equity method of accounting as prescribed in ASC 323, Investments—Equity Method and Joint Ventures.

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Such investments are presented on the Condensed Balance Sheets as “Investments in subsidiaries and VIEs” and shares in the subsidiaries and VIEs’ loss are presented as “Equity in loss of subsidiaries and VIEs” on the Condensed Statements of Comprehensive Loss. The parent company only condensed financial information should be read in conjunction with the Group’ consolidated financial statements.

**Description of American Depositary Shares
registered under Section 12 of the Securities Exchange Act of 1934 (the “Exchange Act”)**

American Depositary Shares (“ADSs”), each representing one Class A ordinary share of NIO Inc. (the “we,” “us,” “our company” or “our”) are listed and traded on the New York Stock Exchange. This exhibit contains a description of the rights of the holders of ADSs.

Deutsche Bank Trust Company Americas, as depositary, registers and delivers the ADSs. Each ADS represents ownership of one class A ordinary share, deposited with Deutsche Bank AG, Hong Kong Branch, as custodian for the depositary. Each ADS also represents ownership of any other securities, cash or other property which may be held by the depositary. The depositary’s corporate trust office at which the ADSs are administered is located at 60 Wall Street, New York, NY 10005, USA. The principal executive office of the depositary is located at 60 Wall Street, New York, NY 10005, USA.

The Direct Registration System, or DRS, is a system administered by The Depository Trust Company, or DTC, pursuant to which the depositary may register the ownership of uncertificated ADSs, which ownership shall be evidenced by periodic statements issued by the depositary to the ADS holders entitled thereto.

We will not treat ADS holders as our shareholders and accordingly, you, as an ADS holder, will not have shareholder rights. Cayman Islands law governs shareholder rights. The depositary will be the holder of the Class A ordinary shares underlying your ADSs. Holder of our ADSs have ADS holder rights. A deposit agreement among our company, the depositary and the holders and the beneficial owners of our ADSs sets out ADS holder rights as well as the rights and obligations of the depositary. The laws of the State of New York govern the deposit agreement and the ADSs.

The following is a summary of the material provisions of the deposit agreement. For more complete information, you should read the entire deposit agreement and the form of American Depositary Receipt, which has been filed with the SEC as an exhibit to our Registration Statement on Form F-1 (File No. 333-226822)..

Holding the ADSs

How will you hold your ADSs?

You may hold ADSs either (1) directly (a) by having an American Depositary Receipt, or ADR, which is a certificate evidencing a specific number of ADSs, registered in your name, or (b) by holding ADSs in DRS, or (2) indirectly through your broker or other financial institution. If you hold ADSs directly, you are an ADS holder. This description assumes you hold your ADSs directly. ADSs will be issued through DRS, unless you specifically request certificated ADRs. If you hold the ADSs indirectly, you must rely on the procedures of your broker or other financial institution to assert the rights of ADS holders described in this section. You should consult with your broker or financial institution to find out what those procedures are.

Dividends and Other Distributions

How will you receive dividends and other distributions on the shares?

The depositary has agreed to pay to you the cash dividends or other distributions it or the custodian receives on ordinary shares or other deposited securities, after deducting its fees and expenses. You will receive these distributions in proportion to the number of ordinary shares your ADSs represent as of the record date (which will be as close as practicable to the record date for our ordinary shares) set by the depositary with respect to the ADSs.

- *Cash.* The depositary will convert or cause to be converted any cash dividend or other cash distribution we pay on the ordinary shares or any net proceeds from the sale of any ordinary shares, rights, securities or other entitlements under the terms of the deposit agreement into U.S. dollars if it can do so on a practicable basis, and can transfer the U.S. dollars to the United States and will distribute promptly the amount thus received. If the depositary shall determine in its judgment that such conversions or transfers are not practical or lawful or if any government approval or license is needed and cannot be obtained at a reasonable cost within a reasonable period or otherwise sought, the deposit agreement allows the depositary to distribute the foreign currency only to those ADS holders to whom it is possible to do so. It will hold or cause the custodian to hold the foreign currency it cannot convert for the account of the ADS holders who have not been paid and such funds will be held for the respective accounts of the ADS holders. It will not invest the foreign currency and it will not be liable for any interest for the respective accounts of the ADS holders.

Before making a distribution, any taxes or other governmental charges, together with fees and expenses of the depositary, that must be paid, will be deducted. It will distribute only whole U.S. dollars and cents and will round down fractional cents to the nearest whole cent. *If the exchange rates fluctuate during a time when the depositary cannot convert the foreign currency, you may lose some or all of the value of the distribution.*

- *Shares.* For any ordinary shares we distribute as a dividend or free distribution, either (1) the depositary will distribute additional ADSs representing such ordinary shares or (2) existing ADSs as of the applicable record date will represent rights and interests in the additional ordinary shares distributed, to the extent reasonably practicable and permissible under law, in either case, net of applicable fees, charges and expenses incurred by the depositary and taxes and/or other governmental charges. The depositary will only distribute whole ADSs. It will try to sell ordinary shares which would require it to deliver a fractional ADS and distribute the net proceeds in the same way as it does with cash. The depositary may sell a portion of the distributed ordinary shares sufficient to pay its fees and expenses, and any taxes and governmental charges, in connection with that distribution.
- *Elective Distributions in Cash or Shares.* If we offer holders of our ordinary shares the option to receive dividends in either cash or shares, the depositary, after consultation with us and having received timely notice as described in the deposit agreement of such elective distribution by us, has discretion to determine to what extent such elective distribution will be made available to you as a holder of the ADSs. We must timely first instruct the depositary to make such elective distribution available to you and furnish it with

satisfactory evidence that it is legal to do so. The depositary could decide it is not legal or reasonably practicable to make such elective distribution available to you. In such case, the depositary shall, on the basis of the same determination as is made in respect of the ordinary shares for which no election is made, distribute either cash in the same way as it does in a cash distribution, or additional ADSs representing ordinary shares in the same way as it does in a share distribution. The depositary is not obligated to make available to you a method to receive the elective dividend in shares rather than in ADSs. There can be no assurance that you will be given the opportunity to receive elective distributions on the same terms and conditions as the holders of ordinary shares.

- *Rights to Purchase Additional Shares.* If we offer holders of our ordinary shares any rights to subscribe for additional shares, the depositary shall having received timely notice as described in the deposit agreement of such distribution by us, consult with us, and we must determine whether it is lawful and reasonably practicable to make these rights available to you. We must first instruct the depositary to make such rights available to you and furnish the depositary with satisfactory evidence that it is legal to do so. If the depositary decides it is not legal or reasonably practicable to make the rights available but that it is lawful and reasonably practicable to sell the rights, the depositary will endeavor to sell the rights and in a riskless principal capacity or otherwise, at such place and upon such terms (including public or private sale) as it may deem proper distribute the net proceeds in the same way as it does with cash. The depositary will allow rights that are not distributed or sold to lapse. In that case, you will receive no value for them.

If the depositary makes rights available to you, it will establish procedures to distribute such rights and enable you to exercise the rights upon your payment of applicable fees, charges and expenses incurred by the depositary and taxes and/or other governmental charges. The Depositary shall not be obliged to make available to you a method to exercise such rights to subscribe for ordinary shares (rather than ADSs).

U.S. securities laws may restrict transfers and cancellation of the ADSs represented by shares purchased upon exercise of rights. For example, you may not be able to trade these ADSs freely in the United States. In this case, the depositary may deliver restricted depositary shares that have the same terms as the ADSs described in this section except for changes needed to put the necessary restrictions in place.

There can be no assurance that you will be given the opportunity to exercise rights on the same terms and conditions as the holders of ordinary shares or be able to exercise such rights.

- *Other Distributions.* Subject to receipt of timely notice, as described in the deposit agreement, from us with the request to make any such distribution available to you, and provided the depositary has determined such distribution is lawful and reasonably practicable and feasible and in accordance with the terms of the deposit agreement, the depositary will distribute to you anything else we distribute on deposited securities by any means it may deem practicable, upon your payment of applicable fees, charges and expenses incurred by the depositary and taxes and/or other governmental charges. If any of the conditions above are not met, the depositary will endeavor to sell, or cause to be sold,

what we distributed and distribute the net proceeds in the same way as it does with cash; or, if it is unable to sell such property, the depositary may dispose of such property in any way it deems reasonably practicable under the circumstances for nominal or no consideration, such that you may have no rights to or arising from such property.

The depositary is not responsible if it decides that it is unlawful or impractical to make a distribution available to any ADS holders. We have no obligation to register ADSs, shares, rights or other securities under the Securities Act. We also have no obligation to take any other action to permit the distribution of ADSs, shares, rights or anything else to ADS holders. This means that you may not receive the distributions we make on our shares or any value for them if we and/or the depositary determines that it is illegal or not practicable for us or the depositary to make them available to you.

Deposit, Withdrawal and Cancellation

How are ADS issued?

The depositary will deliver ADSs if you or your broker deposit ordinary shares or evidence of rights to receive ordinary shares with the custodian. Upon payment of its fees and expenses and of any taxes or charges, such as stamp taxes or stock transfer taxes or fees, the depositary will register the appropriate number of ADSs in the names you request and will deliver the ADSs to or upon the order of the person or persons entitled thereto.

How do ADR holders cancel an American Depositary Share?

You may turn in your ADSs at the depositary's corporate trust office or by providing appropriate instructions to your broker. Upon payment of its fees and expenses and of any taxes or charges, such as stamp taxes or stock transfer taxes or fees, the depositary will deliver the ordinary shares and any other deposited securities underlying the ADSs to you or a person you designate at the office of the custodian. Or, at your request, risk and expense, the depositary will deliver the deposited securities at its corporate trust office, to the extent permitted by law.

How do ADS holders interchange between Certificated ADSs and Uncertificated ADSs?

You may surrender your ADR to the depositary for the purpose of exchanging your ADR for uncertificated ADSs. The depositary will cancel that ADR and will send you a statement confirming that you are the owner of uncertificated ADSs. Alternatively, upon receipt by the depositary of a proper instruction from a holder of uncertificated ADSs requesting the exchange of uncertificated ADSs for certificated ADSs, the depositary will execute and deliver to you an ADR evidencing those ADSs.

Voting Rights

How do you vote?

You may instruct the depositary to vote the ordinary shares or other deposited securities underlying your ADSs at any meeting at which you are entitled to vote pursuant to any applicable law, the provisions of our memorandum and articles of association, and the provisions

of or governing the deposited securities. Otherwise, you could exercise your right to vote directly if you withdraw the ordinary shares. However, you may not know about the meeting sufficiently enough in advance to withdraw the ordinary shares.

If we ask for your instructions and upon timely notice from us by regular, ordinary mail delivery, or by electronic transmission, as described in the deposit agreement, the depositary will notify you of the upcoming meeting at which you are entitled to vote pursuant to any applicable law, the provisions of our memorandum and articles of association, and the provisions of or governing the deposited securities, and arrange to deliver our voting materials to you. The materials will include or reproduce (a) such notice of meeting or solicitation of consents or proxies; (b) a statement that the ADS holders at the close of business on the ADS record date will be entitled, subject to any applicable law, the provisions of our memorandum and articles of association, and the provisions of or governing the deposited securities, to instruct the depositary as to the exercise of the voting rights, if any, pertaining to the ordinary shares or other deposited securities represented by such holder's ADSs; and (c) a brief statement as to the manner in which such instructions may be given to the depositary or deemed given in accordance with the second to last sentence of this paragraph if no instruction is received to the depositary to give a discretionary proxy to a person designated by us. Voting instructions may be given only in respect of a number of ADSs representing an integral number of ordinary shares or other deposited securities. For instructions to be valid, the depositary must receive them in writing on or before the date specified. The depositary will try, as far as practical, subject to applicable law and the provisions of our memorandum and articles of association, to vote or to have its agents vote the ordinary shares or other deposited securities (in person or by proxy) as you instruct. The depositary will only vote or attempt to vote as you instruct. If we timely requested the depositary to solicit your instructions but no instructions are received by the depositary from an owner with respect to any of the deposited securities represented by the ADSs of that owner on or before the date established by the depositary for such purpose, the depositary shall deem that owner to have instructed the depositary to give a discretionary proxy to a person designated by us with respect to such deposited securities, and the depositary shall give a discretionary proxy to a person designated by us to vote such deposited securities. However, no such instruction shall be deemed given and no such discretionary proxy shall be given with respect to any matter if we inform the depositary we do not wish such proxy given, substantial opposition exists or the matter materially and adversely affects the rights of holders of the ordinary shares.

We cannot assure you that you will receive the voting materials in time to ensure that you can instruct the depositary to vote the ordinary shares underlying your ADSs. In addition, there can be no assurance that ADS holders and beneficial owners generally, or any holder or beneficial owner in particular, will be given the opportunity to vote or cause the custodian to vote on the same terms and conditions as the holders of our ordinary shares.

The depositary and its agents are not responsible for failing to carry out voting instructions or for the manner of carrying out voting instructions. This means that you may not be able to exercise your right to vote and you may have no recourse if the ordinary shares underlying your ADSs are not voted as you requested.

In order to give you a reasonable opportunity to instruct the depositary as to the exercise of voting rights relating to deposited securities, if we request the depositary to act, we will give

the depositary notice of any such meeting and details concerning the matters to be voted at least 30 business days in advance of the meeting date.

Compliance with Regulations

Information Requests

Each ADS holder and beneficial owner shall (a) provide such information as we or the depositary may request pursuant to law, including, without limitation, relevant Cayman Islands law, any applicable law of the United States of America, our memorandum and articles of association, any resolutions of our Board of Directors adopted pursuant to such memorandum and articles of association, the requirements of any markets or exchanges upon which the ordinary shares, ADSs or ADRs are listed or traded, or to any requirements of any electronic book-entry system by which the ADSs or ADRs may be transferred, regarding the capacity in which they own or owned ADRs, the identity of any other persons then or previously interested in such ADRs and the nature of such interest, and any other applicable matters, and (b) be bound by and subject to applicable provisions of the laws of the Cayman Islands, our memorandum and articles of association, and the requirements of any markets or exchanges upon which the ADSs, ADRs or ordinary shares are listed or traded, or pursuant to any requirements of any electronic book-entry system by which the ADSs, ADRs or ordinary shares may be transferred, to the same extent as if such ADS holder or beneficial owner held ordinary shares directly, in each case irrespective of whether or not they are ADS holders or beneficial owners at the time such request is made.

Disclosure of Interests

Each ADS holder and beneficial owner shall comply with our requests pursuant to Cayman Islands law, the rules and requirements of the New York Stock Exchange and any other stock exchange on which the ordinary shares are, or will be, registered, traded or listed or our memorandum and articles of association, which requests are made to provide information, inter alia, as to the capacity in which such ADS holder or beneficial owner owns ADS and regarding the identity of any other person interested in such ADS and the nature of such interest and various other matters, whether or not they are ADS holders or beneficial owners at the time of such requests.

Payment of Taxes

You will be responsible for any taxes or other governmental charges payable, or which become payable, on your ADSs or on the deposited securities represented by any of your ADSs. The depositary may refuse to register or transfer your ADSs or allow you to withdraw the deposited securities represented by your ADSs until such taxes or other charges are paid. It may apply payments owed to you or sell deposited securities represented by your ADSs to pay any taxes owed and you will remain liable for any deficiency. If the depositary sells deposited securities, it will, if appropriate, reduce the number of ADSs to reflect the sale and pay to you any net proceeds, or send to you any property, remaining after it has paid the taxes. You agree to indemnify us, the depositary, the custodian and each of our and their respective agents, directors, employees and affiliates for, and hold each of them harmless from, any claims with respect to

taxes (including applicable interest and penalties thereon) arising from any refund of taxes, reduced rate of withholding at source or other tax benefit obtained for you. Your obligations under this paragraph shall survive any transfer of ADRs, any surrender of ADRs and withdrawal of deposited securities or the termination of the deposit agreement.

Reclassifications, Recapitalizations and Mergers

If we:	Then:
Change the nominal or par value of our class A ordinary shares	The cash, shares or other securities received by the depositary will become deposited securities.
Reclassify, split up or consolidate any of the deposited securities	Each ADS will automatically represent its equal share of the new deposited securities.
Distribute securities on the class A ordinary shares that are not distributed to you, or Recapitalize, reorganize, merge, liquidate, sell all or substantially all of our assets, or take any similar action	The depositary may distribute some or all of the cash, shares or other securities it received. It may also deliver new ADSs or ask you to surrender your outstanding ADRs in exchange for new ADRs identifying the new deposited securities.

Amendment and Termination

How may the deposit agreement be amended?

We may agree with the depositary to amend the deposit agreement and the form of ADR without your consent for any reason. If an amendment adds or increases fees or charges, except for taxes and other governmental charges or expenses of the depositary for registration fees, facsimile costs, delivery charges or similar items, including expenses incurred in connection with foreign exchange control regulations and other charges specifically payable by ADS holders under the deposit agreement, or materially prejudices a substantial existing right of ADS holders, it will not become effective for outstanding ADSs until 30 days after the depositary notifies ADS holders of the amendment. At the time an amendment becomes effective, you are considered, by continuing to hold your ADSs, to agree to the amendment and to be bound by the ADRs and the deposit agreement as amended. If any new laws are adopted which would require the deposit agreement to be amended in order to comply therewith, we and the depositary may amend the deposit agreement in accordance with such laws and such amendment may become effective before notice thereof is given to ADS holders.

How may the deposit agreement be terminated?

The depositary will terminate the deposit agreement if we ask it to do so, in which case the depositary will give notice to you at least 90 days prior to termination. The depositary may also terminate the deposit agreement if the depositary has told us that it would like to resign, or if we have removed the depositary, and in either case we have not appointed a new depositary within 90 days. In either such case, the depositary must notify you at least 30 days before termination.

After termination, the depositary and its agents will do the following under the deposit agreement but nothing else: collect distributions on the deposited securities, sell rights and other property and deliver ordinary shares and other deposited securities upon cancellation of ADSs after payment of any fees, charges, taxes or other governmental charges. Six months or more after the date of termination, the depositary may sell any remaining deposited securities by public or private sale. After that, the depositary will hold the money it received on the sale, as well as any other cash it is holding under the deposit agreement, for the pro rata benefit of the ADS holders that have not surrendered their ADSs. It will not invest the money and has no liability for interest. After such sale, the depositary's only obligations will be to account for the money and other cash. After termination, we shall be discharged from all obligations under the deposit agreement except for our obligations to the depositary thereunder.

Books of Depositary

The depositary will maintain ADS holder records at its depositary office. You may inspect such records at such office during regular business hours but solely for the purpose of communicating with other holders in the interest of business matters relating to the Company, the ADRs and the deposit agreement.

The depositary will maintain facilities in the Borough of Manhattan, The City of New York to record and process the issuance, cancellation, combination, split-up and transfer of ADRs.

These facilities may be closed at any time or from time to time when such action is deemed necessary or advisable by the depositary in connection with the performance of its duties under the deposit agreement or at our reasonable written request.

Limitations on Obligations and Liability to ADR Holders

Limits on our Obligations and the Obligations of the Depositary and the Custodian; Limits on Liability to Holders of ADSs

The deposit agreement expressly limits our obligations and the obligations of the depositary and the custodian. It also limits our liability and the liability of the depositary. The depositary and the custodian:

- are only obligated to take the actions specifically set forth in the deposit agreement without gross negligence or willful misconduct;
- are not liable if any of us or our respective controlling persons or agents are prevented or forbidden from, or subjected to any civil or criminal penalty or restraint on account of, or delayed in, doing or performing any act or thing required by the terms of the deposit agreement and any ADR, by reason of any provision of any present or future law or regulation of the United States or any state thereof, Cayman Islands or any other country, or of any other governmental authority or regulatory authority or stock exchange, or on account of the possible criminal or civil penalties or restraint, or by reason of any provision, present or future, of our memorandum and articles of association or any provision of or governing any deposited securities, or by reason of any act of God or war or other

circumstances beyond its control (including, without limitation, nationalization, expropriation, currency restrictions, work stoppage, strikes, civil unrest, revolutions, rebellions, explosions and computer failure);

- are not liable by reason of any exercise of, or failure to exercise, any discretion provided for in the deposit agreement or in our memorandum and articles of association or provisions of or governing deposited securities;
- are not liable for any action or inaction of the depository, the custodian or us or their or our respective controlling persons or agents in reliance upon the advice of or information from legal counsel, any person presenting ordinary shares for deposit or any other person believed by it in good faith to be competent to give such advice or information;
- are not liable for the inability of any holder of ADSs to benefit from any distribution on deposited securities that is not made available to holders of ADSs under the terms of the deposit agreement;
- are not liable for any special, consequential, indirect or punitive damages for any breach of the terms of the deposit agreement, or otherwise;
- may rely upon any documents we believe in good faith to be genuine and to have been signed or presented by the proper party;
- disclaim any liability for any action or inaction of any of us or our respective controlling persons or agents in reliance upon the advice of or information from legal counsel, accountants, any person presenting ordinary shares for deposit, holders and beneficial owners (or authorized representatives) of ADSs, or any person believed in good faith to be competent to give such advice or information; and
- disclaim any liability for inability of any holder to benefit from any distribution, offering, right or other benefit made available to holders of deposited securities but not made available to holders of ADS.

The depository and any of its agents also disclaim any liability (i) for any failure to carry out any instructions to vote, the manner in which any vote is cast or the effect of any vote or failure to determine that any distribution or action may be lawful or reasonably practicable or for allowing any rights to lapse in accordance with the provisions of the deposit agreement, (ii) the failure or timeliness of any notice from us, the content of any information submitted to it by us for distribution to you or for any inaccuracy of any translation thereof, (iii) any investment risk associated with the acquisition of an interest in the deposited securities, the validity or worth of the deposited securities, the credit-worthiness of any third party, (iv) for any tax consequences that may result from ownership of ADSs, ordinary shares or deposited securities, or (v) for any acts or omissions made by a successor depository whether in connection with a previous act or omission of the depository or in connection with any matter arising wholly after the removal or resignation of the depository, provided that in connection with the issue out of which such potential liability arises the depository performed its obligations without gross negligence or willful misconduct while it acted as depository.

In the deposit agreement, we and the depositary agree to indemnify each other under certain circumstances.

Requirements for Depositary Actions

Before the depositary will issue, deliver or register a transfer of an ADS, split-up, subdivide or combine ADSs, make a distribution on an ADS, or permit withdrawal of ordinary shares, the depositary may require:

- payment of stock transfer or other taxes or other governmental charges and transfer or registration fees charged by third parties for the transfer of any ordinary shares or other deposited securities and payment of the applicable fees, expenses and charges of the depositary;
- satisfactory proof of the identity and genuineness of any signature or any other matters contemplated in the deposit agreement; and
- compliance with (A) any laws or governmental regulations relating to the execution and delivery of ADRs or ADSs or to the withdrawal or delivery of deposited securities and (B) such reasonable regulations and procedures as the depositary may establish, from time to time, consistent with the deposit agreement and applicable laws, including presentation of transfer documents.

The depositary may refuse to issue and deliver ADSs or register transfers of ADSs generally when the register of the depositary or our transfer books are closed or at any time if the depositary or we determine that it is necessary or advisable to do so.

Your Rights to Receive the Shares Underlying Your ADSs

You have the right to cancel your ADSs and withdraw the underlying ordinary shares at any time except:

- when temporary delays arise because: (1) the depositary has closed its transfer books or we have closed our transfer books; (2) the transfer of ordinary shares is blocked to permit voting at a shareholders' meeting; or (3) we are paying a dividend on our ordinary shares;
- when you owe money to pay fees, taxes and similar charges;
- when it is necessary to prohibit withdrawals in order to comply with any laws or governmental regulations that apply to ADSs or to the withdrawal of ordinary shares or other deposited securities, or
- other circumstances specifically contemplated by Section I.A.(1) of the General Instructions to Form F-6 (as such General Instructions may be amended from time to time); or
- for any other reason if the depositary or we determine, in good faith, that it is necessary or advisable to prohibit withdrawals.

The depository shall not knowingly accept for deposit under the deposit agreement any ordinary shares or other deposited securities required to be registered under the provisions of the Securities Act, unless a registration statement is in effect as to such ordinary shares.

This right of withdrawal may not be limited by any other provision of the deposit agreement.

Direct Registration System

In the deposit agreement, all parties to the deposit agreement acknowledge that the DRS and Profile Modification System, or Profile, will apply to uncertificated ADSs upon acceptance thereof to DRS by DTC. DRS is the system administered by DTC pursuant to which the depository may register the ownership of uncertificated ADSs, which ownership shall be evidenced by periodic statements issued by the depository to the ADS holders entitled thereto. Profile is a required feature of DRS which allows a DTC participant, claiming to act on behalf of an ADS holder, to direct the depository to register a transfer of those ADSs to DTC or its nominee and to deliver those ADSs to the DTC account of that DTC participant without receipt by the depository of prior authorization from the ADS holder to register such transfer.

**Description of Class A Ordinary Shares
registered under Section 12 of the Securities Exchange Act of 1934 (the "Exchange Act")**

In connection with our initial public offering, but not for trading, our Class A ordinary shares are registered under Section 12(b) of the Exchange Act. This exhibit contains a description of the rights of the holders of Class A ordinary shares.

The following is a summary of material provisions of our currently effective eleventh amended and restated memorandum and articles of association (the "Memorandum and Articles of Association"), as well as the Companies Law (as amended) of the Cayman Islands (the "Companies Law") insofar as they relate to the material terms of our ordinary shares. Notwithstanding this, because it is a summary, it may not contain all the information that you may otherwise deem important. For more complete information, you should read the entire Memorandum and Articles of Association, which has been filed with the SEC as an exhibit to our Registration Statement on Form F-1 (File No. 333-226822).

Ordinary Shares

Our authorized share capital is US\$1,000,000 divided into 4,000,000, 000 shares comprising of (i) 2,500,000,000 Class A ordinary shares of a par value of US\$0.00025 each, (ii) 132,030,222 Class B ordinary shares of a par value of US\$0.00025 each (iii) 148,500,000 Class C ordinary shares of a par value of US\$0.00025 each and (iv) 1,219,469,778 shares of a par value of US\$0.00025 each of such class or classes (however designated) as our board of directors may determine in accordance with our eleventh amended and restated memorandum and articles of association. All of our issued and outstanding ordinary shares are fully paid and non-assessable. Our ordinary shares are issued in registered form, and are issued when registered in our register of members. Our shareholders who are non-residents of the Cayman Islands may freely hold and vote their ordinary shares. Under our eleventh amended and restated memorandum and articles of association, our company may not issue bearer shares.

Class of ordinary shares

Holders of Class A ordinary shares, Class B ordinary shares and Class C ordinary shares shall at all times vote together as one class on all resolutions submitted to a vote by the holders of ordinary shares. Each Class A ordinary share shall entitle the holder thereof to one (1) vote on all matters subject to vote at general meetings of our company, each Class B ordinary share shall entitle the holder thereof to four (4) votes on all matters subject to vote at general meetings of our company, and each Class C ordinary share shall entitle the holder thereof to eight (8) votes on all matters subject to vote at general meetings of our company.

Conversion

Each Class B ordinary share is convertible into one (1) Class A ordinary share at any time at the option of the holder thereof. Each Class C ordinary share is convertible into one (1) Class A ordinary share at any time at the option of the holder thereof. In no event shall Class A

ordinary shares be convertible into Class B ordinary shares or Class C ordinary shares. Upon any sale, transfer, assignment or disposition of any Class B ordinary share or Class C ordinary share by a shareholder to any person who is not an affiliate of such shareholder, or upon a change of ultimate beneficial ownership of any Class B ordinary share or Class C ordinary share to any person who is not an affiliate of the registered shareholder of such share, each such Class B ordinary share and Class C ordinary share, as applicable, shall be automatically and immediately converted into one (1) Class A ordinary share.

Dividends

The holders of our ordinary shares are entitled to such dividends as may be declared by our board of directors, subject to our eleventh amended and restated memorandum articles of association. In addition, our shareholders may by ordinary resolution declare a dividend, but no dividend may exceed the amount recommended by our directors. In either case, under the laws of the Cayman Islands, our company may pay a dividend out of either profits or share premium account, provided that in no circumstances may a dividend be paid if this would result in our company being unable to pay its debts as they fall due in the ordinary course of business.

Voting Rights

Voting at any shareholders' meeting is by show of hands unless a poll is demanded. Each Class A ordinary share shall entitle the holder thereof to one (1) vote on all matters subject to vote at general meetings of our company, each Class B ordinary share shall entitle the holder thereof to four (4) votes on all matters subject to vote at general meetings of our company, and each Class C ordinary share shall entitle the holder thereof to eight (8) votes on all matters subject to vote at general meetings of our company. A poll may be demanded by the chairman of such meeting or any one or more shareholders present in person or by proxy at the meeting.

An ordinary resolution to be passed at a meeting by the shareholders requires the affirmative vote of a simple majority of the votes attaching to the ordinary shares cast at a meeting, while a special resolution requires the affirmative vote of no less than two-thirds of the votes cast attaching to the outstanding ordinary shares at a meeting. A special resolution will be required for important matters such as a change of name or making changes to our eleventh amended and restated memorandum and articles of association. Holders of our ordinary shares may effect certain changes by ordinary resolution, including increasing the amount of our authorized share capital, consolidating all or any of our share capital into shares of larger amount than our existing shares, sub-dividing our shares or any of them into shares of an amount smaller than that fixed by our eleventh amended and restated memorandum and articles of association, and cancelling any unissued shares. Both ordinary resolution and special resolution may also be passed by a unanimous written resolution signed by all the shareholders of our company, as permitted by the Companies Law and our eleventh amended and restated memorandum and articles of association.

Appointment and Removal of Directors

Our board of directors may, by the affirmative vote of a simple majority of the directors present and voting at a board meeting, appoint any person as a director, to fill a casual vacancy

on the board or as an addition to the existing board. Directors may be removed by ordinary resolution of our shareholders.

General Meetings of Shareholders

As a Cayman Islands exempted company, we are not obliged by the Companies Law to call shareholders' annual general meetings. Our eleventh amended and restated memorandum and articles of association provide that we may (but are not obliged to) in each year hold a general meeting as our annual general meeting in which case we shall specify the meeting as such in the notices calling it, and the annual general meeting shall be held at such time and place as may be determined by our directors.

Shareholders' general meetings may be convened by the chairman of board of directors or a majority of our board of directors. Advance notice of at least ten calendar days is required for the convening of our annual general shareholders' meeting (if any) and any other general meeting of our shareholders. A quorum required for any general meeting of shareholders consists of at least one shareholder present or by proxy, representing not less than one-third of all votes attaching to all of our shares in issue and entitled to vote.

The Companies Law provides shareholders with only limited rights to requisition a general meeting, and does not provide shareholders with any right to put any proposal before a general meeting. However, these rights may be provided in a company's articles of association. Our eleventh amended and restated memorandum and articles of association provide that upon the requisition of shareholders representing in aggregate not less than one-third of the votes attaching to the outstanding shares of our company entitled to vote at general meetings, our board will convene an extraordinary general meeting and put the resolutions so requisitioned to a vote at such meeting. However, our eleventh amended and restated memorandum and articles of association do not provide our shareholders with any right to put any proposals before annual general meetings or extraordinary general meetings not called by such shareholders.

Transfer of Ordinary Shares

Subject to the restrictions in our eleventh amended and restated memorandum and articles of association set out below, any of our shareholders may transfer all or any of his or her ordinary shares by an instrument of transfer in the usual or common form or any other form approved by our board of directors.

Our board of directors may, in its absolute discretion, decline to register any transfer of any ordinary share which is not fully paid up or on which we have a lien. Our board of directors may also decline to register any transfer of any ordinary share unless:

- the instrument of transfer is lodged with us, accompanied by the certificate for the ordinary shares to which it relates and such other evidence as our board of directors may reasonably require to show the right of the transferor to make the transfer;
- the instrument of transfer is in respect of only one class of ordinary shares;
- the instrument of transfer is properly stamped, if required;

- in the case of a transfer to joint holders, the number of joint holders to whom the ordinary share is to be transferred does not exceed four; and
- a fee of such maximum sum as the New York Stock Exchange may determine to be payable or such lesser sum as our directors may from time to time require is paid to us in respect thereof.

If our directors refuse to register a transfer they shall, within three months after the date on which the instrument of transfer was lodged, send to each of the transferor and the transferee notice of such refusal.

The registration of transfers may, after compliance with any notice required of the New York Stock Exchange, be suspended and the register closed at such times and for such periods as our board of directors may from time to time determine, provided, however, that the registration of transfers shall not be suspended nor the register closed for more than 30 days in any year as our board of directors may determine.

Liquidation

On the winding-up of our company, if the assets available for distribution among our shareholders shall be more than sufficient to repay the whole of the share capital at the commencement of the winding-up, the surplus shall be distributed amongst our shareholders in proportion to the par value of the shares held by them at the commencement of the winding-up, subject to a deduction from those shares in respect of which there are monies due, of all monies payable to our company for unpaid calls or otherwise. If our assets available for distribution are insufficient to repay all of the paid-up capital, the assets will be distributed so that the losses are borne by our shareholders in proportion to the par value of the shares held by them.

Calls on Shares and Forfeiture of Shares

Our board of directors may from time to time make calls upon shareholders for any amounts unpaid on their shares in a notice served to such shareholders at least 14 days prior to the specified time and place of payment. The shares that have been called upon and remain unpaid are subject to forfeiture.

Redemption, Repurchase and Surrender of Shares

We may issue shares on terms that such shares are subject to redemption, at our option or at the option of the holders of these shares, on such terms and in such manner as may be determined by our board of directors or by special resolution of our shareholders. Our company may also repurchase any of our shares on such terms and in such manner as have been approved by our board of directors or by an ordinary resolution of our shareholders. Under the Companies Law, the redemption or repurchase of any share may be paid out of our company's profits or out of the proceeds of a new issue of shares made for the purpose of such redemption or repurchase, or out of capital (including share premium account and capital redemption reserve) if our company can, immediately following such payment, pay its debts as they fall due in the ordinary course of business. In addition, under the Companies Law no such share may be redeemed or repurchased (a) unless it is fully paid up, (b) if such redemption or repurchase would result in

there being no shares outstanding or (c) if the company has commenced liquidation. In addition, our company may accept the surrender of any fully paid share for no consideration.

Variations of Rights of Shares

If at any time, our share capital is divided into different classes of shares, the rights attached to any class of shares (unless otherwise provided by the terms of issue of the shares of that class), whether or not our company is being wound-up, may be varied with the consent in writing of holders of not less than two-thirds of the issued shares of that class or with the sanction of a special resolution passed at a separate meeting of the holders of the shares of that class. The rights conferred upon the holders of the shares of any class issued shall not, subject to any rights or restrictions for the time being attached to the shares of that class, be deemed to be materially adversely varied by, inter alia, the creation, allotment or issue of further shares ranking *pari passu* with such existing class of shares.

Issuance of Additional Shares

Our eleventh amended and restated memorandum of association authorizes our board of directors to issue additional ordinary shares from time to time as our board of directors shall determine, to the extent of available authorized but unissued shares.

Our eleventh amended and restated memorandum of association also authorizes our board of directors to establish from time to time one or more series of preference shares and to determine, with respect to any series of preference shares, the terms and rights of that series, including:

- the designation of the series;
- the number of shares of the series;
- the dividend rights, dividend rates, conversion rights and voting rights; and
- the rights and terms of redemption and liquidation preferences.

Our board of directors may issue preference shares without action by our shareholders to the extent authorized but unissued. Issuance of these shares may dilute the voting power of holders of ordinary shares.

Inspection of Books and Records

Holders of our ordinary shares will have no general right under Cayman Islands law to inspect or obtain copies of our list of shareholders or our corporate records. However, we will provide our shareholders with annual audited financial statements. See “Item 10 Additional Information— H. Documents on Display.”

Changes in Capital

Our shareholders may from time to time by ordinary resolution:

- increase our share capital by such sum, to be divided into shares of such classes and amount, as the resolution shall prescribe;
- consolidate and divide all or any of our share capital into shares of a larger amount than our existing shares;
- sub-divide our existing shares, or any of them into shares of a smaller amount, provided that in the subdivision the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in case of the share from which the reduced share is derived; or
- cancel any shares that, at the date of the passing of the resolution, have not been taken or agreed to be taken by any person and diminish the amount of our share capital by the amount of the shares so cancelled.

Our shareholders may, by special resolution and subject to confirmation by the Grand Court of the Cayman Islands on an application by our company for an order confirming such reduction, reduce our share capital and any capital redemption reserve in any manner authorized by law.

Anti-Takeover Provisions

Some provisions of our eleventh amended and restated memorandum and articles of association may discourage, delay or prevent a change of control of our company or management that shareholders may consider favorable, including provisions that:

- authorize our board of directors to issue preference shares in one or more series and to designate the price, rights, preferences, privileges and restrictions of such preference shares without any further vote or action by our shareholders; and
- limit the ability of shareholders to requisition and convene general meetings of shareholders.

However, under Cayman Islands law, our directors may only exercise the rights and powers granted to them under our eleventh amended and restated memorandum and articles of association for a proper purpose and for what they believe in good faith to be in the best interests of our company.

Exempted Company

We are an exempted company with limited liability under the Companies Law. The Companies Law distinguishes between ordinary resident companies, ordinary non-resident companies and exempted companies. Any company that is registered in the Cayman Islands but conducts business mainly outside of the Cayman Islands may apply to be registered as an exempted company. The requirements for an exempted company are essentially the same as for an ordinary resident/non-resident company except that an exempted company:

- does not have to file an annual return detailing its shareholders with the Registrar of Companies of the Cayman Islands;
- is not required to open its register of members for inspection;
- does not have to hold an annual general meeting;
- may issue negotiable or bearer shares or shares with no par value;
- may obtain an undertaking against the imposition of any future taxation (such undertakings are usually given for 20 years in the first instance);
- may register by way of continuation in another jurisdiction and be deregistered in the Cayman Islands;
- may register as a limited duration company; and
- may register as a segregated portfolio company.

“Limited liability” means that the liability of each shareholder is limited to the amount unpaid by the shareholder on the shares of the company (except in exceptional circumstances, such as involving fraud, the establishment of an agency relationship or an illegal or improper purpose or other circumstances in which a court may be prepared to pierce or lift the corporate veil).

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT,
MARKED BY [***], HAS BEEN OMITTED BECAUSE NIO INC. HAS DETERMINED THE
INFORMATION (I) IS NOT MATERIAL AND (II) WOULD LIKELY CAUSE
COMPETITIVE HARM TO NIO INC. IF PUBLICLY DISCLOSED.

NIO ES6 Manufacturing Cooperation Agreement

Between

Party A: Jianghuai Automobile Group Co., Ltd.

And

Party B: NIO Co., Ltd.

Dated: April 30, 2019

This AGREEMENT (this “**Agreement**”) is made by and between Jianghuai Automobile Group Co., Ltd. (formerly known as Anhui Jianghuai Automobile Co., Ltd. and renamed to Anhui Jianghuai Automobile Group Co., Ltd. on November 18, 2016, “**Party A**”) and NIO Co., Ltd. (“**Party B**”, collectively with Party A, the “Parties”) through negotiations based on the Manufacturing Cooperation Agreement dated May 23, 2016 made by and between Party A and Party B, with the view to further providing for cooperation in NIO ES6 manufacturing and certain matters relating thereto.

I. Cooperation

1. Scope of cooperation

The Parties have had their first cooperation on Model ES8 based on the Manufacturing Cooperation Agreement. Considering the satisfactory development of the ES8 cooperation, the Parties agree to continue cooperation on mass production of the NIO ES6, whereby Party A shall be responsible for manufacturing of the NIO ES6. Unless otherwise expressly agreed by the Parties in writing, it is agreed that the provisions in the Manufacturing Cooperation Agreement and the Ancillary Agreements made by the Parties regarding cooperation to manufacture the ES8 (the “**Ancillary Agreements**”) shall apply to the cooperation to manufacture the NIO ES6.

2. New investment

Party B shall be responsible for investment in new technical equipment and ancillary facilities necessary for satisfactory production of NIO ES6 in the applicable manufacturing plant of Party A (“**Party A Manufacturing Plant**”).

3. Calculation and payment of manufacturing and processing fee

3.1 It is agreed that in 2019, Party B shall pay Party A monthly a manufacturing and processing fee of RMB[***] (excluding tax) for each mass produced NIO ES6 vehicle. For ease of settlement, Party A will issue an invoice to Party B for the amount of the manufacturing and processing fee confirmed by the Parties on the last business day of each month, and it is agreed that the amount so confirmed shall be paid by Party B to Party A within the first five business days of the next month.

3.2 [***]

3.3 It is agreed that from January 1, 2019, the Parties shall settle payment by way of providing from Party A to Party B an invoice of an amount equal to raw material costs plus processing fees (excluding tax) for the vehicles manufactured by the Parties (including ES8 and ES6). It is agreed that Party B shall pay the invoiced amount (including tax) to Party A within the first five business days of the next month. Reconciliation of any amount invoiced in the first quarter of 2019 will be made in the third quarter of 2019.

4. Loss indemnification

Party B agrees to indemnify the entire annual losses incurred by Party A Manufacturing Plant due to low sales volume for the three-year period (from April 10, 2018 to April 9, 2021) provided under the Manufacturing Cooperation Agreement, and the amount of such indemnification shall be determined based on the audit results of annual accounting firm engaged by Party A, which audit results shall be subject to confirmation of the Parties. If any material difference occurs between the Parties regarding the audit results (any difference more than RMB5 million regarding the annual indemnification amount based on the audit results shall be regarded as major difference) or the foregoing audit firm is found with material negligence or in breach of any Chinese laws and regulations in its audit, either of the Parties may request engagement of a third-party audit firm acceptable to the Party to conduct audit.

[***]

5. Return of government subsidy

Party A shall return to Party B within five business days any government subsidy received by it in connection with the manufacturing of the ES8 and ES6 less any outstanding loss and any subsidy related expenses.

II. Certain notes

Any other matter regarding the NIO ES6 under the cooperation of Party A and Party B, including without limitation prototype trial, product announcement, trademark licensing, technical permit, vehicle technical standards and quality assurance, manufacturing operation, general distribution, manufacturing preparation area management, vehicle parking management, mode and tool custody, product filing and application of government subsidy, product after-sales service and guarantee, and supply of after-sales factory-made parts, shall be subject to applicable provisions under the Manufacturing Cooperation Agreement and the Ancillary Agreements. If there is any conflict between those agreements and this Agreement, this Agreement shall prevail.

Party B shall provide to Party A by April 30, 2019 the list of product parameters and deliverables of NIO ES6, which shall form a supplementary delivery list of the Technology License Agreement.

This Agreement is a supplement to and has the same effect with the Manufacturing Cooperation Agreement. Any matter not provided hereunder shall be resolved by the Parties through negotiations.

III. Confidentiality

Each of the Parties shall keep contents of this Agreement in strict confidence and, unless otherwise expressly provided hereunder, may not disclose contents of this Agreement to any person or affiliate not involved in the cooperation without prior written consent of the Parties.

IV. Counterparts and effect

This Agreement is made in four counterparts with each Party holding two thereof, each of which shall have the same legal effect, become effective as of the date of signature and affixture of corporate seal hereupon by the Parties.

Party A: Jianghuai Automobile Group Co., Ltd.

Party B: NIO Co., Ltd.

/s/: legal representative/authorized representative

/s/: legal representative/authorized representative

CERTAIN CONFIDENTIAL INFORMATION CONTAINED IN THIS DOCUMENT,
MARKED BY [***], HAS BEEN OMITTED BECAUSE NIO INC. HAS DETERMINED THE
INFORMATION (I) IS NOT MATERIAL AND (II) WOULD LIKELY CAUSE
COMPETITIVE HARM TO NIO INC. IF PUBLICLY DISCLOSED.

NIO Fury (EC6) Manufacturing Cooperation Agreement

Between

Party A: Jianghuai Automobile Group Co., Ltd.

And

Party B: NIO Co., Ltd.

Dated: March 10, 2020

This AGREEMENT (this “**Agreement**”) is made by and between Party A (formerly known as Anhui Jianghuai Automobile Co., Ltd. and renamed to Anhui Jianghuai Automobile Group Co., Ltd. on November 18, 2016) and Party B through negotiations based on the Manufacturing Cooperation Agreement dated May 23, 2016, the NIO ES6 Manufacturing Cooperation Agreement dated April 30, and the ancillary agreements relating to ES8 manufacturing cooperation (the “**Ancillary Agreements**”), each made by and between Party A and Party B (collectively, the “**Parties**”), with the view to further providing for cooperation in NIO Fury (EC6) manufacturing and certain matters relating thereto.

I. Cooperation

1 . Scope of cooperation

The Parties have had cooperation on two models of automobile (the ES8 and ES6) based on the Manufacturing Cooperation Agreement, NIO ES6 Manufacturing Cooperation Agreement and the Ancillary Agreements. Considering satisfactory development of previous cooperation, the Parties agree to continue cooperation on mass production of the NIO Fury (EC6), whereby Party A shall be responsible for manufacturing and any other work related thereto. Unless otherwise expressly agreed by the Parties in writing,, it is agreed that the provisions in the Manufacturing Cooperation Agreement, the NIO ES6 Manufacturing Cooperation Agreement and the Ancillary Agreements shall apply to the cooperation to manufacture the NIO Fury (EC6).

2 . New investment

Party B shall be responsible for investment in new technical equipment and ancillary facilities necessary for satisfactory production of NIO Fury (EC6) in the new energy automobile manufacturing plant of Party A (“**Party A Manufacturing Plant**”).

3 . Calculation and payment of manufacturing and processing fee

It is agreed that in 2020, Party B shall pay Party A a monthly manufacturing and processing fee of RMB[***] (excluding tax) for each mass produced NIO Fury (EC6) vehicle. For ease of settlement, Party A will issue an invoice to Party B for amount of the manufacturing and processing fee confirmed by the Parties on the last business day of each month, and it is agreed that the amount so confirmed shall be paid by Party B to Party A within the first five business days of the next month. If Party A Manufacturing Plant incurs any loss, Party B shall make up such loss to Party A on a monthly basis in accordance with the detailed loss make-up plan provided under the NIO ES6 Manufacturing Cooperation Agreement (the “**Loss Make-up Plan**”).

4 . Vehicle trial production

Party B shall be responsible for investment in production increase and renovation in connection with the trial production. The operating expenses incurred during trial production shall be included in the operating costs of Party A Manufacturing Plant as well as the Loss Make-up Plan. The fee for the manufacture of the Fury (EC6) vehicle by the main manufacturing line of

Party A Manufacturing Plant during trial production shall be RMB[***] per vehicle (excluding tax), consisting of: (a) a processing fee of RMB[***] per vehicle (excluding tax), which will be accounted for in the Loss Make-up Plan, and (b) an additional cost of RMB[***] per vehicle (excluding tax), which will be accounted for separately from the Make-up Plan. The number of trial-manufactured vehicles and the manufacturing and processing fees thereof shall be confirmed by the Parties within five business days after the date of completion of the trial production (which date shall be agreed by both Parties). Party A shall provide to Party B an invoice of the amount of the fees so confirmed and Party B, upon receipt of the correctly issued invoice, shall pay Party A the amount of the fee so confirmed by the Parties within the first five business days of the next month. The Parties shall avoid double counting of any manner and jointly calculate the number of trial-produced vehicles.

5 . Consultation services

Party A shall designate relevant employees from its technical center to participate in trial and mass productions at the expenses of Party B to meet the technical standards of NIO Fury (EC6) production technology standards. The list and costs and expenses of such employees shall be agreed by the Parties in advance and duly documented by the Parties in the consulting service stage. After completion of the support by the employees designated by Party A and before Fury (EC6) SOP (which is the time when Fury (EC6) is put into production), the Parties shall complete settlement of such consulting service fees payable by Party B and enter into a separate settlement agreement thereof. Such fees shall be accounted for separately from the Loss Make-up Plan and any tax and levy imposed thereupon shall be paid by Party B.

II. Certain notes

Any other matter regarding the model of NIO Fury (EC6) under cooperation of Party A and Party B, including without limitation prototype trial, product announcement, trademark licensing, technical permit, vehicle technical standards and quality assurance, manufacturing operation, general distribution, manufacturing preparation area management, vehicle parking management, mode and tool custody, product filing and application of government subsidy, product after-sales service and guarantee, and supply of after-sales factory-made parts, shall be subject to applicable provisions under the Manufacturing Cooperation Agreement, the NIO ES6 Manufacturing Cooperation Agreement and the Ancillary Agreements. If there is any conflict between those agreements and this Agreement, this Agreement shall prevail.

Party B shall provide to Party A the list of product parameters and deliverables of NIO Fury (EC6) before the deadline set forth in Annex I attached hereto, which shall form a supplementary delivery list of the Technology License Agreement.

This Agreement is a supplement to and has the same effect with the Manufacturing Cooperation Agreement, the NIO ES6 Manufacturing Cooperation Agreement and the Ancillary Agreements. Any matter not provided hereunder shall be resolved by the Parties through negotiations. The term of this Agreement shall be consistent with that of the Manufacturing Cooperation Agreement and the NIO ES6 Manufacturing Cooperation Agreement.

III. Confidentiality

Each of the Parties shall keep contents of this Agreement in strict confidence and, unless otherwise expressly provided hereunder, may not disclose contents of this Agreement to any person or affiliate not involved in the cooperation without prior written consent of the Parties.

IV. Counterparts and effect

This Agreement is made in four counterparts with each Party holding two thereof, each of which shall have the same legal effect, become effective as of the date of signature and affixture of corporate seal hereupon by the Parties, and be binding on each of the Parties.

V. Governing law and dispute resolution

This Agreement shall be governed by Chinese laws in all respects. All disputes arising from interpretation or performance of this Agreement shall be resolved in accordance with the dispute resolution provisions under Section Article 13.1 of the Manufacturing Cooperation Agreement.

Party A: Jianghuai Automobile Group Co., Ltd.

Party B: NIO Co., Ltd.

/s/: legal representative/authorized representative

/s/: legal representative/authorized representative

CONVERTIBLE NOTES SUBSCRIPTION AGREEMENT

dated as of September 4, 2019

between

NIO INC.

and

HUANG RIVER INVESTMENT LIMITED

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CONVERTIBLE NOTES SUBSCRIPTION AGREEMENT

CONVERTIBLE NOTES SUBSCRIPTION AGREEMENT (this "Agreement"), dated as of September 4, 2019, is entered into by and between (i) NIO INC., an exempted company with limited liability organized and existing under the laws of the Cayman Islands (the "Company"), and HUANG RIVER INVESTMENT LIMITED, a company limited by shares incorporated under the laws of the British Virgin Islands (the "Purchaser").

RECITALS

WHEREAS, the Purchaser desires to subscribe for and purchase, and the Company desires to issue and sell, certain Convertible Notes pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements set forth herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the Parties hereto, intending to be legally bound, agrees as follows:

ARTICLE I

DEFINITION AND INTERPRETATION

Section 1.01 Definition, Interpretation and Rules of Construction

(a) As used in this Agreement, the following terms have the following meanings:

"ADSs" means the American depositary shares of the Company, each representing one (1) Class A Share of the Company as of the date hereof.

"ADRs" means the American depositary receipts issued by the relevant depositary evidencing the ADSs.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person; provided, that none of the Company, nor any of its Subsidiaries shall be considered an Affiliate of the Purchaser. For purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have correlative meanings.

"Applicable Law" means, with respect to any Person, any transnational, domestic or foreign, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority that is binding upon or applicable to such Person, as amended unless expressly specified otherwise.

“Business Day” means any day other than a Saturday, Sunday or another day on which commercial banks in the People’s Republic of China (the “PRC” or “China”, which for the purpose of this Agreement shall exclude Hong Kong SAR, Macau SAR and Taiwan), Hong Kong SAR or New York are required or authorized by law or executive order to be closed.

“Class A Shares” means Class A ordinary shares, par value US\$0.00025 per share, in the share capital of the Company.

“Class B Shares” means the Class B ordinary shares, par value US\$0.00025 per share, in the share capital of the Company.

“Class C Shares” means the Class C ordinary shares, par value US\$0.00025 per share, in the share capital of the Company.

“Company SEC Documents” means all registration statements, proxy statements and other statements, reports, schedules, forms and other documents required to be filed or furnished by the Company with the SEC pursuant to the Exchange Act and the Securities Act and all exhibits included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein, in each case, filed or furnished with the SEC.

“Company Securities” means (i) Ordinary Shares, (ii) securities convertible into or exchangeable for Ordinary Shares, (iii) any options, warrants or other rights to acquire Ordinary Shares (including any awards under the Employee Stock Incentive Plans) and (iv) any depository receipts or similar instruments issued in respect of Ordinary Shares.

“Condition” means any condition to any Party’s obligation to effect the Closing as set forth in ARTICLE III, and collectively, the “Conditions”.

“Employee Benefit Plan” means any written plan, program, policy, contract or other arrangement providing for severance, termination pay, deferred compensation, performance awards, share or share-related awards, housing funds, insurance arrangements, fringe benefits, perquisites, superannuation funds retirement benefits, pension schemes or other employee benefits, that is maintained, contributed to or required to be contributed to by the Company or any of its Subsidiaries for the benefit of any current or former employee, director, officer or independent contractor of the Company or any of its Subsidiaries, or with respect to which the Company or any of its Subsidiaries has or would reasonably expect to have any liability or obligation, other than, in each case, one that is sponsored and maintained by a Governmental Authority;

“Environment” means land (including, without limitation, surface land, sub-surface strata and natural and man-made structures), water (including, without limitation, coastal and inland waters, surface waters, ground waters and water in drains and sewers), and air.

“Environmental Law” means all Applicable Laws in relation to (i) pollution or contamination of the Environment; (ii) the production, storage, use, transport, disposal, release or discharge of hazardous substances; (iii) the exposure of any person or other

living organism to hazardous substances; or (iv) the creation of any noise, vibration or other material adverse impact on the Environment.

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

“Fundamental Warranties” means any representations and warranties of the Company contained in Section 4.01(a) to Section 4.01(f) and Section 4.01(i).

“GAAP” means generally accepted accounting principles in the United States.

“Material Adverse Effect” with respect to a party means any event, fact, circumstance or occurrence that, individually or in the aggregate with any other events, facts, circumstances or occurrences, results in or would reasonably be expected to result in a material adverse change in or a material adverse effect on (i) the financial condition, assets, liabilities, results of operations, business or operations of such party and its Subsidiaries taken as a whole, or (ii) the ability of such party to consummate the transactions contemplated by the Transaction Agreements and to timely perform its obligations hereunder and thereunder, except to the extent that any such material adverse effect results from (a) changes in generally accepted accounting principles that are generally applicable to comparable companies (to the extent not materially disproportionately affecting such party and its Subsidiaries), (b) changes in general economic and market conditions and capital market conditions or changes affecting any of the industries in which such party and its Subsidiaries operate generally (in each case to the extent not materially disproportionately affecting such party and its Subsidiaries), (c) the announcement or disclosure of this Agreement or any other Transaction Agreement or the consummation of the transactions hereunder or thereunder, or any act or omission required or specifically permitted by this Agreement and/or any other Transaction Agreement; (d) any pandemic, earthquake, typhoon, tornado or other natural disaster or similar force majeure event, (e) in the case of the Company, any failure to meet any internal or public projections, forecasts, or guidance, or (f) in the case of the Company, any change in the Company’s stock price or trading volume, in and of itself; provided, however, that the underlying causes giving rise to or contributing to any such change or failure under sub-clause (e) or (f) shall not be excluded in determining whether a Material Adverse Effect has occurred except to the extent such underlying causes are otherwise excluded pursuant to any of sub-clauses (a) through (d).

“Ordinary Shares” means, collectively, the Class A Shares, the Class B Shares and the Class C Shares.

“Parties” means, collectively, the Company and the Purchaser.

“Person” means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization.

“Sarbanes-Oxley Act” means the Sarbanes-Oxley Act of 2002, as amended.

“SEC” means the Securities and Exchange Commission of the United States of America or any other federal agency at the time administering the Securities Act.

“Securities Act” means the Securities Act of 1933, as amended, and all of the rules and regulations promulgated thereunder.

“Shareholders’ Agreement” means Fifth Amended and Restated Shareholders’ Agreement, dated November 10, 2017, by and among the Company and the parties listed therein.

“Subsidiary” of a party means any organization or entity, whether incorporated or unincorporated, which is controlled by such party and, for the avoidance of doubt, the Subsidiaries of a party shall include any variable interest entity over which such party or any of its Subsidiaries effects control pursuant to contractual arrangements and which is consolidated with such party in accordance with generally accepted accounting principles applicable to such party and any Subsidiaries of such variable interest entity.

Significant Subsidiaries has the meaning given to it in Article 1, Rule 1-02 of Regulation S-X under the U.S. Securities Exchange Act of 1934, as amended.

“Transaction Agreements” means, collectively, this Agreement and each of the Convertible Notes and each of the other agreements and documents entered into or delivered by the parties hereto or their respective Affiliates in connection with the transactions contemplated by this Agreement.

“Underlying ADSs” means the ADSs issuable upon conversion and registration with the SEC in accordance with the Shareholders’ Agreement.

(b) Each of the following terms is defined in the Section set forth opposite such term:

<u>Term</u>	<u>Section</u>
“ <u>2020 Convertible Note</u> ”	2.01
“ <u>2022 Convertible Note</u> ”	2.01
“ <u>Agreement</u> ”	Preamble
“ <u>Bankruptcy and Equity Exception</u> ”	4.01(b)
“ <u>Bin Li Subscription Agreement</u> ”	3.02(h)
“ <u>Claim Notice</u> ”	6.02(a)
“ <u>Closing</u> ”	2.02(a)
“ <u>Closing Date</u> ”	2.02(a)
“ <u>Company</u> ”	Preamble
“ <u>Confidential Information</u> ”	7.11(a)
“ <u>Control Contracts</u> ”	4.01(aa)
“ <u>Convertible Notes</u> ”	2.01
“ <u>Conversion Shares</u> ”	2.01
“ <u>Encumbrances</u> ”	4.01(d)
“ <u>ESOP</u> ”	4.01(i)
“ <u>EU</u> ”	4.01(ee)
“ <u>Governmental Authority</u> ”	3.01(a)
“ <u>HMT</u> ”	4.01(ee)
“ <u>Indemnifying Party</u> ”	6.01
“ <u>Indemnified Party</u> ”	6.01

<u>Term</u>	<u>Section</u>
“ <u>Indemnity Notice</u> ”	6.03
“ <u>Intellectual Property</u> ”	4.01(u)
“ <u>Losses</u> ”	6.01
“ <u>Material Contracts</u> ”	4.01(r)
“ <u>MFN Period</u> ”	5.03(a)
“ <u>NDRC</u> ”	4.01(cc)
“ <u>NDRC Circular</u> ”	4.01(cc)
“ <u>OFAC</u> ”	4.01(ee)
“ <u>Permits</u> ”	4.01(g)
“ <u>Purchase Price</u> ”	2.01
“ <u>Purchaser</u> ”	Preamble
“ <u>Returns</u> ”	4.01(w)
“ <u>Sanctions</u> ”	4.01(ee)
“ <u>Tax</u> ”	4.01(r)
“ <u>Third Party Claim</u> ”	6.02(a)
“ <u>UNSC</u> ”	4.01(ee)

(c) In this Agreement, except to the extent otherwise provided or that the context otherwise requires:

(i) The words “Party” and “Parties” shall be construed to mean a party or the parties to this Agreement, and any reference to a party to this Agreement or any other agreement or document contemplated hereby shall include such party’s successors and permitted assigns.

(ii) When a reference is made in this Agreement to an Article, Section, Exhibit, Schedule or clause, such reference is to an Article, Section, Exhibit, Schedule or clause of this Agreement.

(iii) The headings for this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement.

(iv) Whenever the words “include,” “includes” or “including” are used in this Agreement, they are deemed to be followed by the words “without limitation.”

(v) The words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement.

(vi) All terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein.

(vii) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms.

- (viii) The use of “or” is not intended to be exclusive unless expressly indicated otherwise.
- (ix) The term “\$” means United States Dollars.
- (x) The word “will” shall be construed to have the same meaning and effect as the word “shall.”
- (xi) References to “law,” “laws” or to a particular statute or law shall be deemed also to include any and all Applicable Law.
- (xii) A reference to any legislation or to any provision of any legislation shall include any modification, amendment, re-enactment thereof, any legislative provision substituted therefor and all rules, regulations and statutory instruments issued or related to such legislation.
- (xiii) References herein to any gender include the other gender.
- (xiv) The Parties hereto have each participated in the negotiation and drafting of this Agreement and if any ambiguity or question of interpretation should arise, this Agreement shall be construed as if drafted jointly by the Parties hereto and no presumption or burden of proof shall arise favoring or burdening any Party by virtue of the authorship of any of the provisions in this Agreement or any interim drafts thereof.

ARTICLE II
PURCHASE AND SALE; CLOSING

Section 2.01 Issuance, Sale and Purchase of the Convertible Notes.

Upon the terms and subject to the conditions of this Agreement, at Closing (as defined below), the Purchaser hereby agrees to subscribe for and purchase, and the Company hereby agrees to issue and sell to the Purchaser (i) Convertible Senior Note due 2020 with the principal amount of US\$50,000,000, in the form attached hereto as Exhibit A (the “2020 Convertible Note”), and (ii) Convertible Senior Note due 2022 with the principal amount of US\$50,000,000, in the form attached hereto as Exhibit B (the “2022 Convertible Note”, together with the 2020 Convertible Note, the “Convertible Notes”), each convertible into certain number of Class A Shares of the Company or ADSs at the option of the holder or holders of such Convertible Notes (the “Conversion Shares”) on, and subject to, the terms and conditions set forth in the Convertible Notes, for an aggregate purchase price of US\$100,000,000 (the “Purchase Price”).

Section 2.02 Closing.

(a) Closing. Subject to satisfaction or, to the extent permissible, waiver by the Party or Parties entitled to the benefit of the relevant Conditions, of all the Conditions (other than Conditions that by their nature are to be satisfied at Closing, but subject to the satisfaction or, to the extent permissible, waiver of those Conditions at Closing), the closing of the sale and purchase of the Convertible Notes pursuant to this

Section 2.02(a) (the “Closing”) shall take place remotely by electronic means on the earlier of (i) the third (3rd) Business Day after the date on which the Conditions (other than the Conditions that by their nature are to be satisfied at Closing, but subject to the satisfaction or, to the extent permissible, waiver of those Conditions at the Closing) are satisfied, or (ii) any other earlier time before such date as may be agreed by the Purchaser and the Company in writing (the “Closing Date”).

(b) Payment and Delivery. At Closing,

(i) the Purchaser shall arrange for electronic funds transfer in immediately available funds of the Purchase Price in U.S. dollars to such bank account designated in writing by the Company to the Purchaser on the date of this Agreement; and

(ii) the Company shall deliver

(1) the duly executed 2020 Convertible Note dated as of the Closing Date and issued in the name of the Purchaser;

(2) the duly executed 2022 Convertible Note dated as of the Closing Date and issued in the name of the Purchaser;

(3) copies of the Bin Li Subscription Agreement referred to in Section 3.02(h);

(4) copies of all the written consents and waivers referred to in Section 3.02(i); and

(5) copies of the certificate referred to in Section 3.02(j).

(c) Restrictive Legend. Each certificate representing any Ordinary Shares received by the Purchaser after conversion of the Convertible Notes on, and subject to, the terms and conditions set forth in the applicable Convertible Notes shall be endorsed with the following legend:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (AS AMENDED, THE “SECURITIES ACT”) OR UNDER THE SECURITIES LAWS OF ANY OTHER JURISDICTIONS. THESE SECURITIES MAY NOT BE TRANSFERRED, SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED: (A) IN THE ABSENCE OF (1) AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (2) AN EXEMPTION OR QUALIFICATION UNDER APPLICABLE SECURITIES LAWS, AND (B) UNLESS IN COMPLIANCE WITH THE CONVERTIBLE NOTES SUBSCRIPTION AGREEMENT BETWEEN THE COMPANY AND HUANG RIVER INVESTMENT LIMITED, DATED SEPTEMBER 4, 2019 (THE “SUBSCRIPTION AGREEMENT”). ANY ATTEMPT TO TRANSFER, SELL, PLEDGE OR HYPOTHECATE THIS SECURITY IN VIOLATION OF

THESE RESTRICTIONS OR ANY OTHER RESTRICTIONS SET FORTH IN THE SUBSCRIPTION AGREEMENT SHALL BE VOID.

ARTICLE III
CONDITIONS TO CLOSING

Section 3.01 Conditions to Obligations of Both Parties.

(a) No United States or non-United States federal, national, supranational, state, provincial, local or similar government, governmental, regulatory or administrative authority, branch, agency or commission or any court, tribunal, or arbitral or judicial body (including any grand jury) (each, a “Governmental Authority”) shall have enacted, issued, promulgated, enforced or entered any law, rule, regulation, judgment, injunction, order or decree (in each case, whether temporary, preliminary or permanent) that is in effect and restrains, enjoins, prevents, prohibits or otherwise makes illegal the consummation of the transactions contemplated by the Transaction Agreements.

(b) No action, suit, proceeding or investigation shall have been instituted or threatened by a Governmental Authority or any third party that seeks to restrain, enjoin, prevent, prohibit or otherwise make illegal the consummation of the transactions contemplated by the Transaction Agreements.

Section 3.02 Conditions to Obligations of Purchaser. The obligations of the Purchaser to subscribe for, purchase and pay for the Convertible Notes as contemplated by this Agreement are subject to the satisfaction, on or before the Closing Date, of the following conditions (except that the conditions set out in Section 3.02(h) shall be satisfied at least three (3) Business Days before the Closing Date, subject to Section 2.02), any of which may be waived in writing by the Purchaser in its sole discretion:

(a) The Fundamental Warranties shall have been true and correct in all respects on the date of this Agreement and true and accurate on and as of the Closing Date as though such representations and warranties were made on and as of the Closing Date (except for representations and warranties that expressly speak as of a specific date, in which case on and as of such specified date). Other representations and warranties of the Company contained in Section 4.01 of this Agreement shall have been true and correct on the date of this Agreement, and true and correct in all material respects (or, if qualified by materiality or Material Adverse Effect, true and correct in all respects) on and as of the Closing Date as though such representations and warranties were made on and as of the Closing Date (except for representations and warranties that expressly speak as of a specified date, in which case on and as of such specified date).

(b) The Company shall have performed and complied with all, and not be in breach or default in under any agreements, covenants, conditions and obligations contained in this Agreement that are required to be performed or complied with on or before the Closing Date in all material aspects.

(c) There shall have been no Material Adverse Effect with respect to the Company.

(d) All corporate and other actions required to be taken by the Company in connection with the issuance and sale of the Convertible Notes and the Company's execution, delivery and performance of this Agreement and the other Transaction Agreements and the transactions contemplated hereby and thereby shall have been completed.

(e) The Purchaser shall have received an opinion, dated the Closing Date, of Maples and Calder (Hong Kong) LLP, Cayman counsel to the Company, in form and substance to the satisfaction of the Purchaser.

(f) No stop order or suspension of trading shall have been imposed by The New York Stock Exchange, the SEC or any other Governmental Authority with respect to the public trading of the ADSs.

(g) The Company shall have duly executed and delivered or shall have caused to be duly executed and delivered each Transaction Agreement to which it is a party to the Purchaser at or prior to Closing.

(h) The Company shall have entered into a definitive agreement (the "Bin Li Subscription Agreement") with Mr. Bin Li and/or his holding entity relating to the subscription by Mr. Bin Li of certain convertible notes of the Company on substantially the same terms as the Convertible Notes on the date of this Agreement, with the completion date of such subscription expected to be before September 30, 2019; and the Bin Li Subscription Agreement shall have been in full force and effect and not terminated by any parties thereto.

(i) All consents required to be obtained by the Company in connection with the issuance and sale of the Convertible Notes and the Company's execution, delivery and performance of this Agreement and the other Transaction Agreements and the transactions contemplated hereby and thereby shall have been obtained.

(j) The Purchaser shall have received a certificate signed by a director of the Company confirming the satisfaction of Sections 3.02 (a) to (i) above.

Section 3.03 Conditions to Obligations of the Company. The obligation of the Company to issue and sell the Convertible Notes to the Purchaser as contemplated by this Agreement are subject to the satisfaction, on or before the Closing Date, of each of the following conditions, any of which may be waived in writing by the Company in its sole discretion:

(a) The representations and warranties of the Purchaser contained in Section 4.02 of this Agreement shall have been true and correct in all material respects (or, if qualified by materiality or Material Adverse Effect, true and correct in all respects) on the date of this Agreement and on and as of the Closing Date as though such representations and warranties were made on and as of the Closing Date; provided that each representation and warranty of the Purchaser contained in Sections 4.02(a) to 4.02(c) of this Agreement shall have been true and correct in all respects on the date of this Agreement and on and as of the Closing Date as though such representations and warranties were made on and as of the Closing Date.

(b) The Purchaser shall have performed and complied with all, and not be in breach or default under any, agreements, covenants, conditions and obligations contained in this Agreement that are required to be performed or complied with on or before the Closing Date.

(c) The Purchaser shall have duly executed and delivered each Transaction Agreement to which it is a party to the Company at or prior to Closing.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES

Section 4.01 Representations and Warranties of the Company. The Company hereby represents and warrants to the Purchaser, as of the date hereof and as of the Closing Date that, except as set forth in the Company SEC Documents:

(a) Due Formation. The Company is an exempted company, duly incorporated, validly existing and in good standing under the laws of the Cayman Islands. Each of the Company and the Company's Subsidiaries is duly formed, validly existing and in good standing in the jurisdiction of its organization. Each of the Company and the Subsidiaries has all requisite power and authority to carry on its business as it is currently being conducted.

(b) Authority; Valid Agreement. The Company has all requisite legal power and authority to execute, deliver and perform its obligations under the Transaction Agreements to which it is a party and each other agreement, certificate, document and instrument to be executed by the Company pursuant to this Agreement and each other Transaction Agreement. The execution, delivery and performance by the Company of this Agreement and each other Transaction Agreement to which it is a party and the performance by the Company of its obligations hereunder and thereunder have been duly authorized by all necessary corporate action on the part of the Company. This Agreement has been, and each other Transaction Agreements to which it is a party will be duly executed and delivered by the Company and, assuming due authorization, execution and delivery by the Purchaser, constitutes (or, when executed and delivered in accordance herewith will constitute) a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as enforcement may be limited by general principles of equity, whether applied in a court of law or a court of equity, and by applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar law affecting creditors' rights and remedies generally (the "Bankruptcy and Equity Exception"). Without limiting the generality of the foregoing, as of Closing, no approval by the shareholders of the Company is required in connection with this Agreement or other Transaction Agreements, the performance by the Company of its obligations hereunder or thereunder, or the consummation by the Company of the transactions contemplated hereby or thereby, except for those that have been obtained, waived or exempted at or prior to Closing.

(c) Convertible Notes. Each of 2020 Convertible Note and 2022 Convertible Note, when issued and delivered by the Company, will constitute direct, unconditional, unsecured and unsubordinated obligations of the Company and will at all times rank *pari passu* with all other present and future unconditional and unsubordinated

obligations of the Company (other than those preferred by Applicable Law that are mandatory and of general application).

(d) Conversion Shares. The Conversion Shares have been duly and validly authorized for issuance by the Company and, when issued and delivered by the Company to the Purchaser in accordance with the terms of each of the 2020 Convertible Note and 2022 Convertible Note will be (i) duly and validly issued, fully paid and non-assessable, and rank *pari passu* with, and carry the same rights in all aspects as, the other Class A Shares then in issue, (ii) entitled to all dividends and other distributions declared, paid or made thereon, and (iii) free and clear of any pledge, mortgage, security interest, encumbrance, lien, charge, assessment, right of first refusal, right of pre-emption, third party right or interest, claim or restriction of any kind or nature, except for restrictions arising under the Securities Act or as disclosed in the Company SEC Documents or created by virtue of the transactions under this Agreement (collectively, the “Encumbrances”). Upon entry of the Purchaser into the register of members of the Company as the legal owner of the Conversion Shares, the Company will transfer to the Purchaser good and valid title to the Conversion Shares, free and clear of any Encumbrances.

(e) Non-contravention. None of the execution and the delivery of this Agreement and other Transaction Agreements, nor the consummation of the transactions contemplated hereby or thereby, will (i) violate any provision of the organizational documents of the Company, (ii) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental entity or court to which the Company is subject, or (iii) conflict with, result in a breach of, constitute a default under, result in the acceleration of or creation of any Encumbrances under, or create in any party the right to accelerate, terminate, modify, or cancel, any agreement, contract, lease, license, instrument, or other arrangement to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound or to which any of the Company’s or any of its Subsidiaries’ assets are subject, except, in the case of (ii) and (iii) above, for such conflicts, breach, defaults, rights or violations, which would not reasonably be expected to result in a Material Adverse Effect. There is no action, suit or proceeding, pending or, to the knowledge of the Company, threatened against the Company that questions the validity of the Transaction Agreements or the right of the Company to enter into this Agreement or to consummate the transactions contemplated hereby or thereby.

(f) Consents and Approvals. None of the execution and delivery by the Company of this Agreement or any Transaction Agreement, nor the consummation by the Company of any of the transactions contemplated hereby or thereby, nor the performance by the Company of this Agreement or other Transaction Agreements in accordance with their respective terms requires the consent, approval, order or authorization of, or registration with, or the giving notice to, any governmental or public body or authority or any third party, except such as have been or will have been obtained, made or given on or prior to the Closing Date and except for any filing or notification required to be made with the SEC or the New York Stock Exchange regarding the issuance of the Convertible Notes or the Conversion Shares.

(g) Compliance with Laws. The business of the Company and its Subsidiaries is not being conducted, and has not been conducted at any time during the

three years prior to the date hereof, in violation of any applicable law (including, without limitation, the U.S. Foreign Corrupt Practices Act, the UK Bribery Act 2010, the PRC anti-bribery laws, the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) and the applicable anti-money laundering statutes of jurisdictions where the Company and its Subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental or regulatory agency, in each case as supplemented, amended, re-enacted or replaced from time to time) or government order applicable to the Company in any material respect. Except as disclosed in the Company SEC Documents, the Company and each of its Subsidiaries have all permits, licenses, authorizations, consents, orders and approvals in material respects (collectively, “Permits”) that are required in order to carry on their business as presently conducted. Except as disclosed in the Company SEC Documents, all such Permits are in full force and effect and, to the knowledge of the Company, no suspension or cancellation of any of them is threatened. The Company has complied with the applicable listing and corporate governance rules and regulations of the New York Stock Exchange in all material respects. The Company and its Subsidiaries have taken no action designed to, or reasonably likely to have the effect of, delisting the ADSs from the New York Stock Exchange. There are no proceedings pending or, to the Company’s knowledge, threatened against the Company relating to the continued listing of the ADSs on the New York Stock Exchange and the Company has not received any notification that the SEC or the New York Stock Exchange is contemplating suspending or terminating such listing (or the applicable registration under the Exchange Act related thereto).

(h) Information. All information which has been provided by or on behalf of the Company or its authorized representatives to the Purchaser, its advisers or agents in the course of the due diligence conducted by the Purchaser and the negotiation leading to this Agreement and the other Transaction Agreements is true, complete and accurate.

(i) Capitalization.

(i) The authorized share capital of the Company consists of 4,000,000,000 Ordinary Shares, of which 832,665,477 Class A Shares (including 120,264,378 Class A Shares that have been reserved under the 2015 Stock Incentive Plan, 2016 Stock Incentive Plan, 2017 Stock Incentive Plan and 2018 Share Incentive Plan of the Company as disclosed in the Company SEC Documents (altogether, the “ESOP”), 132,030,222 Class B Shares and 148,500,000 Class C Shares are issued and outstanding as of the date hereof. All of the Company’s issued and outstanding Ordinary Shares are fully paid and non-assessable. As of the date of this Agreement, 8,201,639 Class A Shares have been authorized and reserved and available for issuance pursuant to the ESOP. Except as disclosed in the Company SEC Documents, the Company has no outstanding bonds, debentures, notes or other obligations, the holders of which have been granted the right to vote (or which are convertible into or exercisable for securities having the right to vote) with the shareholders of the Company on any matter. All issued and outstanding Ordinary Shares have been duly authorized and validly issued and are fully paid and non-assessable, are free of preemptive rights, were

issued in compliance with applicable U.S. and other applicable securities laws and were not issued in violation of any preemptive right, resale right, right of first refusal, or similar right and the ADSs have been duly listed and admitted and authorized for trading on the New York Stock Exchange.

(ii) Except as set forth above in this Section 4.01(i), there are no outstanding (A) shares of capital stock or voting securities of the Company, (B) securities of the Company convertible into or exchangeable for shares of capital stock or voting securities of the Company or (C) preemptive or other outstanding rights, options, warrants, conversion rights, “phantom” stock rights, stock appreciation rights, redemption rights, repurchase rights, agreements, arrangements, calls, commitments or rights of any kind that obligate the Company to issue or sell any shares of capital stock or other securities of the Company or any securities or obligations convertible or exchangeable into or exercisable for, or giving any person a right to subscribe for or acquire, any securities of the Company, and no securities or obligations evidencing such rights are authorized, issued or outstanding.

(iii) Except as disclosed in the Company SEC Documents, to the knowledge of the Company, there are no registration rights, rights of first offer, rights of first refusal, tag-along rights with respect to the securities of the Company or any Subsidiary of the Company that have been granted to any Person.

(iv) All outstanding shares of capital stock or other securities or ownership interests of the Subsidiaries are duly authorized, validly issued, fully paid and non-assessable and all such shares or other securities or ownership interests in any Subsidiary of the Company (except for any Subsidiary which is a variable interest entity over which the Company or any of its Subsidiaries effects control pursuant to the Control Contracts) are owned, directly or indirectly, by the Company free and clear of any Encumbrance.

(j) SEC Matters. The Company has filed or furnished, as applicable, on a timely basis, all registration statements, proxy statements and other documents required to be filed or furnished by it with the SEC, including the Company SEC Documents. None of the Subsidiaries is required to file periodic reports with the SEC pursuant to the Exchange Act. As of their respective effective dates (in the case of the Company SEC Documents that are registration statements filed pursuant to the requirements of the Securities Act) and as of their respective SEC filing dates (in the case of all other Company SEC Documents), or in each case, if amended prior to the date hereof, as of the date of the last such amendment: (A) each of the Company SEC Documents complied in all material respects with the applicable requirements of the Securities Act or the Exchange Act and the Sarbanes-Oxley Act of 2002, as amended, and any rules and regulations promulgated thereunder applicable to the Company SEC Documents (as the case may be) and (B) none of the Company SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(k) Financial Statements.

(i) The financial statements (including any related notes) contained in the Company SEC Documents: (A) complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, (B) were prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby (except (a) as may be otherwise specifically provided in such financial statements or the notes thereto, or (b) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed to summary statements) and (C) fairly present in all material respects the consolidated financial position of the Company and the Subsidiaries as of the respective dates thereof and the consolidated results of operations and cash flows of the Company and its Subsidiaries for the periods covered thereby (other than as may have corrected or clarified in a subsequent Company SEC Document), in each case except as disclosed therein and as permitted under the Exchange Act.

(ii) Neither the Company nor any of its Subsidiaries is a party to, nor has any commitment to become a party to, any joint venture, off-balance sheet partnership or any similar contract, agreement, arrangement or undertaking (including any contract, agreement, arrangement or undertaking relating to any transaction or relationship between or among one or more of the Company and/or any of its Subsidiaries, on the one hand, and any unconsolidated Affiliate, including any structured finance, special purpose or limited purpose entity or Person, on the other hand), or any “off-balance sheet arrangements” (as defined in Item 303(a) of Regulation S-K promulgated by the SEC), where the result, purpose or intended effect of such contract, agreement, arrangement or undertaking is to avoid disclosure of any material transaction involving, or material liabilities of, the Company or any of the Subsidiaries in the Company’s or such Subsidiary’s published financial statements or other Company SEC Documents.

(iii) PricewaterhouseCoopers Zhong Tian LLP, who have certified certain financial statements of the Company, are independent public accountants as required by the Securities Act and the rules and regulations of the SEC thereunder and are independent in accordance with the requirements of the U.S. Public Company Accounting Oversight Board.

(l) Internal Control and Procedures. The Company has established and maintains a system of internal control over financial reporting (as defined in Rule 13a-15 or 15d-15, as applicable, under the Exchange Act) sufficient to provide reasonable assurance regarding the reliability of financial reporting, including policies and procedures that (A) mandate the maintenance of records that in reasonable detail accurately and fairly reflect the material transactions and dispositions of the assets of the Company, (B) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures of the Company are being made only in accordance with appropriate authorizations of management and the board of directors of the Company and (C) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of the Company. Save as disclosed in the Company SEC Documents, there are no material weaknesses or significant deficiencies in the Company’s internal controls. The Company’s auditors and the audit committee of the board of

directors of the Company have not been advised of any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting. Since December 31, 2014, there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting, except for the implementation of certain measures to address the material weakness in the Company's internal control over financial reporting that has been disclosed in the Company SEC Documents.

(m) No Undisclosed Liabilities. There are no liabilities of the Company or any Subsidiary of any kind, whether accrued, contingent, absolute, determined, determinable or otherwise, and there is no existing condition, situation or set of circumstances which could reasonably be expected to result in such a liability, other than: (i) liabilities reflected on, reserved against, or disclosed in the Company's unaudited consolidated balance sheet as of December 31, 2018, (ii) liabilities incurred since December 31, 2018 in the ordinary course of business consistent with past practices, (iii) any other undisclosed liabilities that are not material to the Company and its Subsidiaries on a consolidated basis, and (iv) any liabilities incurred as a result of the Company's performing the transactions contemplated by any Transaction Agreement. There are no unconsolidated Subsidiaries of the Company or any off-balance sheet arrangements of any type (including any off-balance sheet arrangement required to be disclosed pursuant to Item 303(a)(4) of Regulation S-K promulgated under the Securities Act) that have not been so described in the Company SEC Documents nor any obligations to enter into any such arrangements.

(n) Investment Company. The Company is not and, after giving effect to the offering and sale of the Convertible Notes, the consummation of the offering and the application of the proceeds hereof, will not be an "investment company," as such term is defined in the U.S. Investment Company Act of 1940, as amended.

(o) No Registration. Assuming the accuracy of the representations and warranties set forth in Section 4.02 of this Agreement, it is not necessary in connection with the issuance and sale of each of the 2020 Convertible Note and the 2022 Convertible Note (and, when issued, the Conversion Shares) to register each of the 2020 Convertible Note and the 2022 Convertible Note (and, when issued, the Conversion Shares) under the Securities Act or to qualify or register them under applicable U.S. state securities laws. No directed selling efforts (as defined in Rule 902 of Regulation S under the Securities Act) have been made by any of the Company, any of its Affiliates or any person acting on its behalf with respect to any Convertible Notes; and none of such Persons has taken any actions that would result in the sale of any of the Convertible Notes to the Purchaser under this Agreement requiring registration under the Securities Act; and the Company is a "foreign issuer" (as defined in Regulation S).

(p) Brokers. The Company has not dealt with any broker, finder, commission agent, placement agent or arranger in connection with the sale of the Convertible Notes, and the Company is not under any obligation to pay any broker's fee or commission in connection with the sale of the Convertible Notes.

(q) Absence of Changes. Since December 31, 2018, the Company and its Subsidiaries have conducted their business in the ordinary course of business consistent with past practice and there has not been

(i) any declaration, setting aside or payment of any dividend or other distribution with respect to any securities of the Company or any of its Subsidiaries (except for dividends or other distributions by any Subsidiary to the Company or to any of the Company's wholly owned Subsidiaries);

(ii) any issuances or sales of shares of capital stock or other securities or obligations convertible or exchangeable into or exercisable for, or giving any person a right to subscribe for or acquire, any securities of the Company or any of its Subsidiaries or any redemption, share splits, reclassifications, share dividends, share combinations or other recapitalizations of any such securities other than pursuant to any Employee Benefit Plan effective as at the date of this Agreement;

(iii) any amendment to the constitutional documents of the Company;

(iv) any redemption or repurchase of any equity securities of the Company; or

(v) any entry into any contract, agreement, instrument or other document in respect of any of the foregoing.

(r) Contracts. The Company has filed as exhibits to the Company SEC Documents all contracts, agreements and instruments (including all amendments thereto) to which the Company or any of its Subsidiaries is a party or by which it is bound and which is material to the business of the Company and its Subsidiaries, taken as a whole, and are required to be filed as an exhibit to the Company SEC Documents pursuant to Item 601(b)(4) or Item 601(b)(10) of Regulation S-K promulgated by the SEC (the "Material Contracts"). Each Material Contract is in full force and effect and, to the knowledge of the Company, enforceable against the counterparties of the Company or the Subsidiaries party thereto, except for the contracts and agreements that have already expired pursuant to the terms therein (which for the avoidance of doubt excludes those contracts or agreements that had been terminated by the other party thereto for cause). The Company and its Subsidiaries and, to the knowledge of the Company, each other party thereto, are not in default under, or in breach or violation of, any Material Contract, in all material respects. To the Company's knowledge, no event, fact or circumstance has occurred that will have or is reasonably expected to have a material adverse impact on the renewal or extension of any Material Contract.

(s) Litigation. Except as disclosed in the Company SEC Documents and to the knowledge of the Company, any officer and director of the Company or any of its Subsidiaries in their capacities as such, there are no pending or threatened material actions, claims, demands, investigations, examinations, indictments, litigations, suits or other criminal, civil or administrative or investigative proceedings before or by any Governmental Authority or by any other person against the Company or any of its

Subsidiaries or any proceedings that seek to restrain or enjoin the consummation of the transactions under the Transaction Agreements.

(t) Ownership of Assets. The Company and its Subsidiaries have good and marketable title to, or in the case of leased property and assets, have valid leasehold interests in, all property and assets (whether real, personal, tangible or intangible) reflected on the Company's consolidated unaudited balance sheet as of December 31, 2018 or acquired thereafter, except for properties and assets sold since such date in the ordinary course of business consistent with past practices and except where the failure to have such good and marketable title or valid leasehold interests would not have a Material Adverse Effect.

(u) Intellectual Property. All registered or unregistered, (i) patents, patentable inventions and other patent rights (including any divisions, continuations, continuations-in-part, reissues, reexaminations and interferences thereof); (ii) trademarks, service marks, trade dress, trade names, taglines, brand names, logos and corporate names and all goodwill related thereto; (iii) copyrights, mask works and designs; (iv) trade secrets, know-how, inventions, processes, procedures, databases, confidential business information and other proprietary information and rights; (v) computer software programs, including all source code, object code, specifications, designs and documentation related thereto; and (vi) domain names, Internet addresses and other computer identifiers, in each case that is material to the business of the Company or any of its Subsidiaries as currently being conducted (the "Intellectual Property") is either (a) owned by the Company or one or more of its Subsidiaries or (b) is used by the Company or one or more of its Subsidiaries pursuant to a valid license. To the knowledge of the Company, there are no material infringements or other material violations of any Intellectual Property owned by the Company or any of its Subsidiaries by any third party. The Company and its Subsidiaries have taken all necessary actions to maintain and protect each item of Intellectual Property. The conduct of the business of the Company and its Subsidiaries does not infringe or otherwise violate any intellectual property or other proprietary rights of any other person in material respects, and there is no action pending or, to the knowledge of the Company, threatened alleging any such infringement or violation or challenging the Company's or any of its Subsidiaries' rights in or to any Intellectual Property which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(v) Employment Matters.

(i) Neither the Company nor any of its Significant Subsidiaries is a party to or bound by any collective bargaining agreement or other labor union contract applicable to persons employed by the Company or any of its Significant Subsidiaries. There are no unfair labor practice complaints pending, or to the knowledge of the Company, threatened, against the Company or any of its Significant Subsidiaries before any Governmental Authority. Each of the Company and its Subsidiaries complies with all Applicable Laws relating to employment and employment practices (including without limitation, terms and conditions of employment, termination of employment, mandatory severance benefits, pension programs, social insurance programs, employee health and safety, equal employment, employment of veterans and the handicapped, and prohibition of

discrimination) in all material aspects. There is no material claim with respect to payment of wages, salary, overtime pay, withholding individual income taxes, social security fund or housing fund that has been asserted and is now pending or, to the knowledge of the Company, threatened before any Governmental Authority with respect to any persons currently or formerly employed by the Company or any of its Significant Subsidiaries.

(ii) Each Employee Benefit Plan is in compliance in all material respects with its terms and the requirements of all Applicable Laws. All employer and employee contributions to each Employee Benefit Plan required by the terms of such Employee Benefit Plan or by the Applicable Laws have been made, or, if applicable, accrued in accordance with normal accounting practices and in compliance in all material respects with its terms and the requirements of all Applicable Laws. Each Employee Benefit Plan required to be registered has been registered and has been maintained in good standing with applicable Governmental Authorities.

(w) Tax Status. Except as disclosed in the Company SEC Documents, the Company and each of its Subsidiaries (i) has made or filed in the appropriate jurisdictions all material foreign, federal and state income and all other tax returns required to be filed or maintained in connection with the calculation, determination, assessment or collection of any and all federal, state, local, foreign and other taxes, levies, fees, imposts, duties, governmental fees and charges of whatever kind (including any interest, penalties or additions to the tax imposed in connection therewith or with respect thereto) (each a “Tax”), including all amended returns required as a result of examination adjustments made by any Governmental Authority responsible for the imposition of any Tax (collectively, the “Returns”), and such Returns are true, correct and complete in all material respects, and (ii) has paid all material Taxes and other governmental assessments and charges shown or determined to be due on such Returns, except those being contested or will be contested in good faith. Except as disclosed in the Company SEC Documents, neither the Company nor any of its Subsidiaries has received notice regarding unpaid foreign, federal and state income in any amount or any Taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the Company is not aware of any reasonable basis for such claim. No Returns filed by or on behalf of the Company or any of its Subsidiaries with respect to material Taxes are currently being audited, and neither the Company nor any of its Subsidiaries has received notice of any such audit.

(x) Tax Election. No Tax elections under the income tax laws of the United States have been made with respect to the Company or any of its Subsidiaries. None of the Company or any of its Subsidiaries is, or is at risk of being or becoming, classified as a “passive foreign investment company” or a “controlled foreign corporation” for United States federal income tax purposes.

(y) Solvency. Both before and after giving effect to the transactions contemplated by this Agreement and other Transaction Agreements, each of the Company and its Subsidiaries (i) will be solvent (in that both the fair value of its assets will not be less than the sum of its debts and that the present fair saleable value of its assets will not be less than the amount required to pay its probable liability on its recourse debts as they mature or become due) and (ii) will have adequate capital and liquidity with which

to engage in the their businesses as currently conducted and as described in the Company SEC Documents.

(z) Transactions with Affiliates and Employees. All related party transactions required to be disclosed under applicable rules of the New York Stock Exchange or the applicable securities law have been accurately described in the Company SEC Documents in all material respects. Any such related party transaction was entered into on terms and conditions no less favorable to the Company or its applicable Subsidiary than those applicable in comparable transactions between independent parties acting at arm's length.

(aa) Variable Interest Entities. The Company controls its variable interest entities, Beijing Wo Mai Wo Pai Auction Co., Ltd. and Beijing Secoo Trading Limited, through a series of contractual arrangements ("Control Contracts"), and there is no enforceable agreement or understanding to rescind, amend or change the nature of such captive structure or the terms of the Control Contracts.

(bb) Environment. Each of the Company and its Subsidiaries (i) has at all times complied and are presently in compliance with all applicable Environmental Laws in all material respects; (ii) has not received any notice, demand, claim, letter or request for information, relating to any alleged violation of Environmental Law, or otherwise identifies an environmental concern, health and safety concern or any other concern relating to the security and protection of people, property, flora and fauna relating thereto; (iii) possesses all approvals, consents or authorizations required under Environmental Laws for its business as presently conducted and there are no circumstances that could reasonably be expected to result in any such approvals, consents or authorizations being revoked, terminated, revised, amended or not renewed in the ordinary course of its business. There has been no incident of any occupational disease incurred by any employees of the Company or any of its Subsidiaries due to harmful factors present in their working environment or the nature of their work, and there are no other circumstances or conditions. There are no costs or liabilities associated with Environmental Laws (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties) which would, singly or in the aggregate, have a Material Adverse Effect.

(cc) NDRC. The Company (through a PRC Subsidiary) obtained an enterprise foreign debt registration certificate dated January 21, 2019 with a validity period of one year (the "Registration Certificate") from the National Development and Reform Commission ("NDRC"). Such registration has not been withdrawn and is not subject to any condition which has not been fulfilled or performed, except for the filing by such PRC Subsidiary with NDRC of the requisite information and documents in relation to the issue and sale of the 2022 Convertible Note within ten (10) business days in the PRC after the date of issuance of the 2022 Convertible Note in accordance with the Circular on Promoting the Reform of the Administrative System on the Issuance by Enterprises of Foreign Debt Filings and Registrations (国家发展改革委关于推进企业发行外债备案登记制管理改革的通知(发改外资[2015]2044号)) (the "NDRC Circular").

(dd) Use of Proceeds. The application of the net proceeds from the issue and sale of the Convertible Notes will not (i) contravene any provision of any current and applicable laws or the current constituent documents of the Company or any of its Subsidiaries, (ii) contravene the terms or provisions of, or constitute a default under, any material indenture, mortgage, deed of trust, loan agreement, note, lease or other agreement or instrument currently binding upon the Company or any of its Subsidiaries, or (iii) contravene or violate the terms or provisions of any order or decree of any government entity having jurisdiction over the Company or any Subsidiary.

(ee) Sanctions.

(i) None of the Company, any of its Subsidiaries, or any director or officer thereof, or, to the Company's knowledge, any agent, affiliate, employee or other representative of the Company or any of its Subsidiaries, is a Person that is, or is owned or controlled by one or more Persons that are: (A) the subject of any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC"), the U.S. Department of State, the United Nations Security Council ("UNSC"), the European Union ("EU") (including under Council Regulation (EC) No. 194/2008), Her Majesty's Treasury ("HMT"), the State Secretariat for Economic Affairs, or other relevant sanctions authority (collectively, "Sanctions"), or engaged in any activities sanctionable under the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, the Iran Sanctions Act, the Iran Threat Reduction and Syria Human Rights Act, or any applicable executive order, or (B) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Crimea, Cuba, Iran, North Korea and Syria).

(ii) The Company will not, directly or indirectly, use the proceeds of the offering received by the Company, or lend, contribute or otherwise make available such proceeds to any Subsidiary, Affiliate, joint venture partner or other Person: (A) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or (B) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise).

(iii) For the past 5 years, the Company and its Subsidiaries have not knowingly engaged in, are not now knowingly engaged in, and will not knowingly engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

(ff) No Stamp Duty. Except as disclosed in the Company SEC Documents, no stamp, documentary, issuance, registration, transfer, withholding, capital gains, income or other taxes or duties are payable by or on behalf of the Purchasers, the Company or any of its Subsidiaries in the Cayman Islands, the PRC, any other jurisdiction in which the Company is organized, incorporated, engaged in business for tax purposes or is otherwise resident for tax purposes, any jurisdiction from or through which a payment is made by or on behalf of the Company or any political subdivision thereof or therein

having the authority to tax, in connection with (i) the execution, delivery or consummation of, or consummation of the transactions contemplated by, this Agreement, the 2020 Convertible Note or the 2022 Convertible Note, (ii) the creation, allotment and issuance of the Ordinary Shares represented by the Underlying ADSs to be issued upon conversion of the Conversion Shares, (iii) the deposit with the Depository of the Ordinary Shares represented by the Underlying ADSs by the Company against the issuance of ADRs evidencing the Underlying ADSs, (iv) the issuance and delivery of the Underlying ADSs, when issued by the Company upon conversion of the Conversion Shares, (v) the issuance, sale and delivery of the Conversion Shares to or for the accounts of the Purchaser, or (vi) the resale and delivery of the Conversion Shares by the Purchaser in the manner contemplated herein.

(gg) Labor disputes. No material labor dispute with the employees of the Company or any of its Subsidiaries exists, except as described in the Company SEC Documents, or, to the knowledge of the Company, is imminent; and, to the Company's knowledge, there is no existing, threatened or imminent labor disturbance by the employees of any of its principal suppliers, manufacturers or contractors that could have a Material Adverse Effect.

(hh) Insurance. The Company and each of its Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as the Company believes are prudent and customary in the businesses in which they are engaged; neither the Company nor any of its Subsidiaries has been refused any insurance coverage sought or applied for; and neither the Company nor any of its Subsidiaries has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect, except in each case as described in the Company SEC Documents.

(ii) No Side Agreement. None of the Company nor any of its Subsidiaries has entered into any side agreement, side letter or any other agreements or documents or consummated any transactions referred to in Section 5.03(a) of which true and accurate copies of such agreements or documents, or materials related to such transactions have not been provided to the Purchaser.

(jj) Registrable Securities. The Company acknowledges that the Conversion Shares shall be considered "Registrable Securities" under the Shareholders' Agreement and that the Purchaser shall be entitled to the registration rights set forth in and in accordance with the Shareholders' Agreement.

Section 4.02 Representations and Warranties of the Purchaser. The Purchaser hereby represents and warrants to the Company as of the date hereof and as of Closing, as follows:

(a) Due Formation. The Purchaser is duly formed, validly existing and in good standing in the jurisdiction of its organization. The Purchaser has all requisite power and authority to carry on its business as it is currently being conducted.

(b) Authority. The Purchaser has full power and authority to enter into, execute and deliver this Agreement and other Transaction Agreements to which

it is to become a party and each other agreement, certificate, document and instrument to be executed and delivered by the Purchaser pursuant to this Agreement and each other Transaction Agreement and to perform its obligations hereunder and thereunder. The execution and delivery by the Purchaser of this Agreement and each other Transaction Agreement to which it is or is to become a party and the performance by the Purchaser of its obligations hereunder and thereunder have been duly authorized by all requisite actions on its part.

(c) Valid Agreement. This Agreement has been, and each other Transaction Agreement to which it is to become a party will be, duly executed and delivered by the Purchaser and, assuming the due authorization, execution and delivery by the Company, constitutes (or, when executed and delivered in accordance herewith will constitute), the legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, subject to the Bankruptcy and Equity Exception and except as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

(d) Non-contravention. None of the execution and the delivery of this Agreement or any other Transaction Agreement, nor the consummation of the transactions contemplated hereby or thereby, by the Purchaser will violate any provision of the organizational documents of the Purchaser or violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental entity or court to which the Purchaser is subject.

(e) Consents and Approvals. None of the execution and delivery by the Purchaser of this Agreement and the Transaction Agreements to which the Purchaser is to become a Party, nor the consummation by the Purchaser of any of the transactions contemplated hereby or thereby, nor the performance by the Purchaser of this Agreements or any such Transaction Agreement in accordance with its terms requires the consent, approval, order or authorization of, or registration with, or the giving notice to, any governmental or public body or authority or any third party, except such as have been or will have been obtained, made or given at or prior to Closing.

(f) Status and Investment Intent.

(i) Experience. The Purchaser has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the relevant Convertible Notes. The Purchaser is capable of bearing the economic risks of such investment, including a complete loss of its investment.

(ii) Purchase Entirely for Own Account. The Purchaser is acquiring the Convertible Notes pursuant to this Agreement for investment for its own account for investment purposes only and not with the view to, or with any intention of, resale, distribution or other disposition thereof in a manner that would violate the registration requirements of the Securities Act.

(iii) Restricted Securities. The Purchaser acknowledges that the Convertible Notes are “restricted securities” that have not been registered under the Securities Act or any applicable state securities law. The Purchaser

further acknowledges that, absent an effective registration under the Securities Act, the Securities may only be offered, sold or otherwise transferred (x) to the Company, (y) outside the United States in accordance with Rule 904 of Regulation S under the Securities Act, or (z) pursuant to an exemption from registration under the Securities Act.

(iv) Not a U.S. Person. The Purchaser is either (i) not a “U.S. person” as defined in Rule 902 of Regulation S, or (ii) an “accredited investor” within the meaning of Rule 501(a) under Regulation D of the Securities Act.

ARTICLE V COVENANTS

Section 5.01 Conduct of Business of the Company. From the date hereof until the Closing Date,

(a) the Company shall, and the Company shall cause each of its Subsidiaries to (i) conduct its business and operations in the ordinary course of business consistent with past practice, and (ii) not take any action, or omit to take any action, that would reasonably be expected to make any of its representations and warranties in this Agreement untrue such that the Condition set out in Section 3.02(a) would not be satisfied at the Closing Date;

(b) the Company shall (i) take all actions necessary to continue the listing and trading of its ADSs on the New York Stock Exchange and shall comply with the Company’s reporting, filing and other obligations under the rules of the New York Stock Exchange, and (ii) file with the New York Stock Exchange a supplemental listing application in respect of the Conversion Shares, when issued and delivered in the manner contemplated by the applicable Convertible Notes; and

(c) the Company shall promptly notify the Purchaser of any event, condition or circumstance occurring prior to the Closing Date that would constitute a breach of any terms and conditions contained in this Agreement.

Section 5.02 FPI Status. Without limiting the generality of the foregoing, the Company shall promptly after the date hereof and reasonably prior to Closing take all necessary or desirable actions required to duly and validly rely on the exemption for foreign private issuers from applicable rules and regulations of the New York Stock Exchange with respect to corporate governance to rely on “home country practice” in connection with the transactions contemplated hereunder (including an exemption from any New York Stock Exchange rules that would otherwise require seeking shareholder approval in respect of such transactions), including without limitation, to the extent necessary, making disclosures, notices and filings to or with the SEC and New York Stock Exchange and obtaining an adequate opinion of counsel in respect of the home country practice exemption. The Company will use commercially reasonable efforts to continue the listing and trading of its ADSs on New York Stock Exchange and, in accordance, therewith, will use commercially reasonable efforts to comply in all respects with the Company’s reporting, filing and other obligations under the bylaws or rules of such market or exchange, as applicable.

Section 5.03 Other Transactions.

(a) Subject to Section 5.03(b), during the period from the date of this Agreement and continuing until the earlier of the termination of this Agreement pursuant to Section 7.14 hereof or one (1) year after the Closing Date (such period, the “MFN Period”), the Company agrees not, without the consent of the Purchaser, to initiate, solicit, encourage or engage in any discussion or negotiation of any type with, provide any information to, accept any proposal from, or enter into any letter of intent, purchase contract or any other similar agreement, or consummate any transaction, with any Persons other than the Purchaser with respect to the issuance, sale, grant, transfer, purchase or other acquisition by any such Person of any Company Securities other than pursuant to the Employee Benefit Plan effective as at the date of this Agreement, except that the relevant transaction with respect to the issuance, sale, grant, transfer, purchase or other acquisition by any such Person of any Company Securities contains terms and conditions with respect to the subscription or purchase of securities of the Company, or has the effect of establishing any investor or shareholder rights or benefits to such Person, that are in each case not more favorable than the comparable terms and conditions or rights or benefits of the Purchaser under this Agreement or the other Transaction Agreements. During the MFN Period, the Company undertakes not to, and cause all of its Subsidiaries not to, enter into any agreement, side letter or any other agreements or documents or consummated any transactions referred to in this Section 5.03(a) of which true and accurate copies of such agreements or documents, or materials relating to such transactions shall have not been provided to the Purchaser.

(b) The Company undertakes to use its best endeavors to complete a transaction or a series of transactions during the MFN Period relating to the issuance and subscription of any notes convertible into equity securities of the Company, or any other debt securities of the Company on private placement basis or that are capable of being quoted, listed or dealt in or traded on any stock exchange or over-the-counter or other securities market, and the Company agrees that, notwithstanding Section 5.03(a), (i) the tenor of such securities, if applicable, may be less than one year, but in no event shall the tenor be less than 360 days, if such transaction or transactions are completed at or within 30 days after the Closing Date, and (ii) more than 50% of the aggregate principal amount of such securities shall have a tenor of not less than 3 years, if applicable, if such transaction or transactions are completed during the MFN Period but more than 30 days after the Closing Date.

Section 5.04 Further Assurances. From the date of this Agreement until Closing, the Parties shall each use their respective reasonable best efforts to fulfill or obtain the fulfillment of the conditions precedent to the consummation of the transactions contemplated hereby and by the Transaction Agreements.

Section 5.05 No Contract. Without limiting the generality of the foregoing, the Company agrees that from the date hereof until the Closing Date, it shall not make (or otherwise enter into any contract with respect to) (x) any material change in any method of accounting or accounting practice by the Company or any of its Subsidiaries; (y) any declaration, setting aside or payment of any dividend or other distribution with respect to any securities of the Company or any of its Subsidiaries (except for dividends or other distributions by any Subsidiary to the Company or to any of the Company’s

Subsidiaries) or (z) any redemption, repurchase or other acquisition of any share capital of the Company or any of its Subsidiaries, except in each case for the avoidance of doubt as contemplated by the Transaction Agreements.

Section 5.06 Reservation of Shares. The Company shall ensure that it has sufficient number of duly authorized Ordinary Shares to comply with its obligations to issue the Conversion Shares pursuant to the terms of each of the 2020 Convertible Note and the 2022 Convertible Note.

Section 5.07 No Integrated Offering. The Company shall not, and shall cause its Affiliates and any Person acting on its or their behalf not to, directly or indirectly, make any offers or sales of any security or solicit any offers to buy any security, under circumstances that would require registration of the issuance of any of the Convertible Notes (and, when issued, the Conversion Shares) under the Securities Act whether through integration with prior offerings or otherwise.

Section 5.08 Use of Proceeds. The Company undertakes to reserve and dedicate the proceeds from the issue and sale of the Convertible Notes solely for capital expenditure and/or other working capital purpose in connection with the Company's daily operations, and/or any other purposes as approved by the Purchaser from time to time.

ARTICLE VI

INDEMNIFICATION

Section 6.01 Indemnification. From and after the Closing Date and subject to Section 6.04, the Company (the "Indemnifying Party"), shall indemnify and hold the Purchaser, its Affiliates and their respective directors, officers, agents, successors and assigns (collectively, the "Indemnified Party") harmless from and against any losses, claims, damages, liabilities, judgments, fines, obligations, expenses and liabilities, including but not limited to any investigative, legal and other expenses incurred and any Taxes or levies that may be payable by reason of the indemnification of any indemnifiable loss hereunder (collectively, "Losses") by any Indemnified Party as a result of or arising out of: (i) breach of any representation or warranty of the Indemnifying Party contained in the Transaction Agreements; (ii) violation or nonperformance, partial or total, of any covenant or agreement of the Indemnifying Party contained in the Transaction Agreements; or (iii) any failure of the Indemnifying Party to comply with Applicable Laws in relation to Taxes to the extent required in connection with the transactions contemplated by this Agreement or any other Transaction Agreement and/or any conversion of the Convertible Notes. In calculating the amount of any Losses of an Indemnified Party hereunder, there shall be subtracted the amount of any insurance proceeds and third-party payments received by the Indemnified Party with respect to such Losses, if any.

Section 6.02 Third Party Claims.

(a) If any third party shall notify any Indemnified Party in writing with respect to any matter involving a claim by such third party (a "Third Party Claim") which such Indemnified Party believes would give rise to a claim for indemnification against the Indemnifying Party under this ARTICLE VI, then the Indemnified Party shall promptly following receipt of notice of such claim (i) notify the Indemnifying Party thereof in writing and (ii) transmit to the Indemnifying Party a written notice ("Claim

Notice”) describing in reasonable detail the nature of the Third Party Claim, a copy of all papers served with respect to such claim (if any), and the basis of the Indemnified Party’s request for indemnification under this Agreement. Notwithstanding the foregoing, no failure or delay in providing such notice shall constitute a waiver or otherwise modify the Indemnified Party’s right to indemnity hereunder, except to the extent that the Indemnifying Party shall have been materially prejudiced by such failure or delay.

(b) Upon receipt of a Claim Notice with respect to a Third Party Claim, the Indemnifying Party shall have the right to assume the defense of any Third Party Claim by, within 30 days of receipt of the Claim Notice, notifying the Indemnified Party in writing that the Indemnifying Party elects to assume the defense of such Third Party Claim, and upon delivery of such notice by the Indemnifying Party, the Indemnifying Party shall have the right to fully control and settle the proceeding; provided, that, any such settlement or compromise shall be permitted hereunder only with the written consent of the Indemnified Party. Notwithstanding the foregoing, the Indemnifying Party shall not be entitled to assume the defense of any Third Party Claim if (i) the Third Party Claim relates to or arises in connection with any criminal action, (ii) the Third Party Claim seeks an injunction or equitable relief against any Indemnified Party (other than immaterial equitable relief in connection with an award of monetary damages) or (iii) the Indemnifying Party has not acknowledged that such Third Party Claim is subject to indemnification pursuant to this ARTICLE VI. If the Indemnifying Party assumes the defense of a Third Party Claim pursuant to this Section 6.02(b), the Indemnifying Party shall conduct such defense in good faith.

(c) If requested by the Indemnifying Party, the Indemnified Party shall, at the sole cost and expense of the Indemnifying Party, cooperate reasonably with the Indemnifying Party and its counsel in contesting any Third Party Claim which the Indemnifying Party elects to contest, including in connection with the making of any related counterclaim against the person asserting the Third Party Claim or any cross complaint against any person. The Indemnified Party shall have the right to receive copies of all pleadings, notices and communications with respect to any Third Party Claim, other than any privileged communications between the Indemnifying Party and its counsel, and shall be entitled, at its sole cost and expense, to retain separate co-counsel and participate in, but not control, any defense or settlement of any Third Party Claim assumed by the Indemnifying Party pursuant to Section 6.02(b).

(d) In the event of a Third Party Claim for which the Indemnifying Party elects not to assume the defense or fails to make such an election within the 30 days of the Claim Notice, the Indemnified Party may, at its option, defend, settle, compromise or pay such action or claim at the expense of the Indemnifying Party; provided, that any such settlement or compromise shall be permitted hereunder only with the written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

Section 6.03 Other Claims. In the event any Indemnified Party should have a claim against the Indemnifying Party hereunder which does not involve a Third Party Claim, the Indemnified Party shall promptly transmit to the Indemnifying Party a written notice (the “Indemnity Notice”) describing in reasonable detail the nature of the claim, the Indemnified Party’s best estimate of the amount of Losses attributable to such

claim and the basis of the Indemnified Party's request for indemnification under this Agreement; provided, that no failure or delay in providing such notice shall constitute a waiver or otherwise modify the Indemnified Party's right to indemnity hereunder, except to the extent that the Indemnifying Party shall have been materially prejudiced by such failure or delay.

Section 6.04 Limitation on the Company's Liability. Absent fraud, intentional misrepresentation or willful breach on the part of the Company:

(a) the Indemnifying Party shall have no liability to the Indemnified Parties with respect to any breach of any representation or warranty (other than Fundamental Warranties) made by the Company in this Agreement unless the aggregate amount of the Losses suffered or incurred by such Indemnified Parties thereunder exceeds US\$1 million, in which case the Indemnifying Party shall be liable to such Indemnified Parties for the full amount of their Losses from dollar one pursuant to Section 6.01;

(b) the maximum aggregate liabilities of the Indemnifying Party in respect of Losses suffered by the Indemnified Parties with respect to any breach of any representation or warranty (other than Fundamental Warranties) made by the Company in this Agreement shall not in any event be greater than the Purchase Price; and

(c) notwithstanding any other provision contained herein, from and after the Closing, the right to indemnity pursuant to ARTICLE VI shall be the sole and exclusive remedy of any of the Indemnified Party for any claims against the Company arising out of or resulting from this Agreement; provided that the Purchaser shall also be entitled to specific performance or other equitable remedies in any court of competent jurisdiction pursuant to Section 7.13 hereof.

ARTICLE VII **MISCELLANEOUS**

Section 7.01 Survival of the Representations and Warranties.

(a) The Fundamental Warranties shall survive indefinitely or until the latest date permitted by law and the representations contained in Section 4.01(w) shall survive until the expiration of the applicable statute of limitations. All other representations and warranties of the Company contained in this Agreement shall survive Closing until eighteen (18) months after the Closing Date.

(b) Notwithstanding anything to the contrary in the foregoing clauses, (i) any breach of representation or warranty in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the preceding sentences, if notice of the inaccuracy or breach thereof giving rise to such right of indemnity shall have been given to the party against whom such indemnity may be sought in accordance with this Agreement prior to such time and (ii) any breach of representation or warranty in respect of which indemnity may be sought that was caused as a result of fraud or intentional misrepresentation shall survive until the latest date permitted by law.

Section 7.02 Governing Law; Arbitration. This Agreement shall be governed and interpreted in accordance with the laws of Hong Kong. Any dispute arising out of or relating to this Agreement, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration at the Hong Kong International Arbitration Centre in accordance with the Hong Kong International Arbitration Centre Administered Arbitration Rules then in force at the time of commencement of the arbitration. There shall be three arbitrators. The Company shall have the right to appoint one arbitrator, the Purchaser shall have the right to appoint the second arbitrator, and the third arbitrator shall be appointed by the Hong Kong International Arbitration Centre. The language to be used in the arbitration proceedings shall be English. Each of the Parties irrevocably waives any immunity to jurisdiction to which it may be entitled or become entitled (including without limitation sovereign immunity, immunity to pre-award attachment, post-award attachment or otherwise) in any arbitration proceedings and/or enforcement proceedings against it arising out of or based on this Agreement or the transactions contemplated hereby.

Section 7.03 No Third Party Beneficiaries. A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) to enforce any term of this Agreement.

Section 7.04 Acknowledgement. The Purchaser acknowledges that it understands that the Company, in issuing the Convertible Notes to the Purchaser pursuant to this Agreement, is relying upon the exemption from registration provided by Regulation S under the Securities Act.

Section 7.05 Amendment. This Agreement shall not be amended, changed or modified, except by another agreement in writing executed by the Parties hereto.

Section 7.06 Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, each of the Parties and their respective heirs, successors and permitted assigns and legal representatives.

Section 7.07 Assignment. Neither this Agreement nor any of the rights, duties or obligations hereunder may be assigned by the any Party without the express written consent of the other Parties. Any purported assignment in violation of the foregoing sentence shall be null and void. Notwithstanding the foregoing, the Purchaser may assign its rights hereunder to any of its Affiliates, provided, that no such assignment shall relieve the Purchaser of its obligations hereunder.

Section 7.08 Notices. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if (a) in writing and served by personal delivery upon the party for whom it is intended; or (b) if delivered by certified mail, registered mail or courier service, return-receipt received to the party at the address set forth below:

If to Company, at: NIO Inc.
Address: Building 20, No. 56 AnTuo Road, Jiading
District, Shanghai, 201804, People's Republic of
China

Attention: Fang Liu
Email: fang.liu@nio.com

With a copy to: Skadden, Arps, Slate, Meagher & Flom
Address: 42/F, Edinburgh Tower, The Landmark, 15
Queen's Road Central, Hong Kong, Hong Kong
Attention: Z. Julie Gao
Email: Julie.gao@skadden.com

If to Purchaser, at: Huang River Investment Limited
Address: c/o Tencent Holdings Limited
Level 29, Three Pacific Place
1 Queen's Road East
Wanchai, Hong Kong
Attention: Compliance and Transactions Department
Email: legalnotice@tencent.com

With a copy to: Tencent Binhai Towers, No.33 Haitian 2nd
Road, Nanshan District, Shenzhen, P.R.China
518054 Attention: Mergers and Acquisitions
Department Email: PD_Support@tencent.com

Latham & Watkins
Address: 18th Floor, One Exchange Square, 8
Connaught Place, Central, Hong Kong
Attention: Ji Liu
Email: ji.liu@lw.com

Any Party may change its address for purposes of this Section 7.08 by giving the other Parties hereto written notice of the new address in the manner set forth above. For the avoidance of doubt, only notice delivered to the address and person of the parties to this Agreement shall constitute effective notice to such party for the purposes of this Agreement.

Section 7.09 Entire Agreement. This Agreement and the other Transaction Agreements including the schedules and exhibits hereto and thereto constitutes the entire understanding and agreement between the Parties with respect to the matters covered hereby and thereby, and all prior agreements and understandings, oral or in writing, if any, between the Parties with respect to the matters covered hereby and thereby are merged and superseded by this Agreement and the other Transaction Agreements.

Section 7.10 Severability. If any provisions of this Agreement shall be adjudicated to be illegal, invalid or unenforceable in any action or proceeding whether in its entirety or in any portion, then such provision shall be deemed amended, if possible, or deleted, as the case may be, from the Agreement in order to render the remainder of the Agreement and any provision thereof both valid and enforceable, and all other provisions hereof shall be given effect separately therefrom and shall not be affected thereby.

Section 7.11 Fees and Expenses. The Company will reimburse the Purchaser all expenses incurred in connection with the negotiation, preparation and execution of this Agreement and other Transaction Agreements and the transactions contemplated hereby and thereby, including fees and expenses of attorneys, accountants, consultants and financial advisors.

Section 7.12 Confidentiality.

(a) Each Party shall keep confidential any non-public material or information with respect to the business, technology, financial conditions, and other aspects of the other Parties which it is aware of, or have access to, in signing or performing this Agreement (including written or non-written information, hereinafter the “Confidential Information”). Confidential Information shall not include any information that is (a) previously known on a non-confidential basis by the receiving Party, (b) in the public domain through no fault of such receiving Party, its Affiliates or its or its Affiliates’ officers, directors or employees, (c) received from a party other than the Company or the Company’s representatives or agents, so long as such party was not, to the knowledge of the receiving party, subject to a duty of confidentiality to the Company or (d) developed independently by the receiving Party without reference to confidential information of the disclosing Party. No Party shall disclose such Confidential Information to any third Party. Either Party may use the Confidential Information only for the purpose of, and to the extent necessary for performing this Agreement; and shall not use such Confidential Information for any other purposes. The Parties hereby agree, for the purpose of this Section 7.12, that the existence and terms and conditions of this Agreement and schedule hereof shall be deemed as Confidential Information.

(b) Notwithstanding any other provisions in this Section 7.12, if any Party believes in good faith that any announcement or notice must be prepared or published pursuant to applicable laws (including any rules or regulations of any securities exchange or valid legal process) or information is otherwise required to be disclosed to any Governmental Authority, such Party may, in accordance with its understanding of the applicable laws, make the required disclosure in the manner it deems in compliance with the requirements of applicable laws; provided, that, the Party who is required to make such disclosure shall, to the extent permitted by law and so far as it is practicable, provide the other Parties with prompt notice of such requirement and cooperate with the other Parties at such other Parties’ request and at the requesting Party’s cost, to enable such other Parties to seek an appropriate protection order or remedy. In addition, each Party may disclose, after giving prior notice to the other Parties to the extent practicable under the circumstances and subject to any practicable arrangements to protect confidentiality, Confidential Information to the extent required under judicial or regulatory process or in connection with any judicial process regarding any legal action, suit or proceeding arising out of or relating to this Agreement or any Transaction Agreement; provided that, the Party who is required to make such disclosure shall, to the extent permitted by law and so far as it is practicable, at the other Parties’ request and at the requesting Party’s cost, cooperate with the other Parties to enable such other Parties to seek an appropriate protection order or remedy.

(c) Each Party may disclose the Confidential Information only to its Affiliates and its and its Affiliates’ officers, directors, employees, agents and

representatives on a need-to-know basis in the performance of the Transaction Agreements; provided that, such Party shall ensure such persons strictly abide by the confidentiality obligations hereunder.

(d) Without the prior written consent of the Purchaser (regardless of whether or not the Purchaser is then a shareholder of the Company), the Company shall not, and shall cause its Affiliates not to, (i) use in advertising, publicity, announcements, or otherwise, the name of the Purchaser or any Affiliate of the Purchaser, either alone or in combination with any company name, trade name, trademark, service mark, domain name, device, design, symbol or any abbreviation, contraction or simulation thereof owned or used by the Purchaser or any of its Affiliates, or (ii) represent, directly or indirectly, that any product or services provided by the Company or any of its Affiliates has been approved or endorsed by the Purchaser or any of its Affiliates.

(e) The confidentiality obligations of each Party hereunder shall survive the termination of this Agreement. Each Party shall continue to abide by the confidentiality clause hereof and perform the obligation of confidentiality it undertakes until the other Party approves release of that obligation or until a breach of the confidentiality clause hereof will no longer result in any prejudice to the other Party.

Section 7.13 Specific Performance. The Parties agree that irreparable damage would occur in the event any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or equity.

Section 7.14 Termination.

(a) This Agreement shall automatically terminate as between the Company and the Purchaser upon the earliest to occur of:

(i) the written consent of each of the Company and the Purchaser;

(ii) the delivery of written notice to terminate by either the Company or the Purchaser if Closing shall not have occurred by three (3) months after the date of this Agreement; provided, however, that such right to terminate this Agreement under this Section 7.14(a)(ii) shall not be available to any party whose failure to fulfill any obligation under this Agreement shall have been the principal cause of, or shall have resulted in, the failure of Closing to occur on or prior to such date; or

(iii) by the Company or the Purchaser in the event that any Governmental Authority shall have issued a judgment or taken any other action restraining, enjoining or otherwise prohibiting the transactions contemplated by the Transaction Agreements and such judgment or other action shall have become final and non-appealable.

(b) Upon the termination of this Agreement, this Agreement will have no further force or effect, except for the provisions of Section 7.02, Section 7.08 and Section 7.12 hereof, which shall survive any termination under this Section 7.14; provided.

that neither the Company nor the Purchaser shall be relieved or released from any liabilities or damages arising out of (i) fraud or (ii) any breach of this Agreement prior to such termination.

Section 7.15 Headings. The headings of the various articles and sections of this Agreement are inserted merely for the purpose of convenience and do not expressly or by implication limit, define or extend the specific terms of the section so designated.

Section 7.16 Execution in Counterparts. For the convenience of the Parties and to facilitate execution, this Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument. Signatures in the form of facsimile or electronically imaged "PDF" shall be deemed to be original signatures for all purposes hereunder.

Section 7.17 Public Disclosure. Without limiting any other provision of this Agreement, both the Purchaser and the Company shall consult and agree with each other on the terms and content of a joint press release with respect to the execution of this Agreement and any other Transaction Agreements and the transactions contemplated hereby and thereby and no press release shall be issued by any Party hereto without the prior written consent of the other Parties. Thereafter, neither the Company nor the Purchaser, nor any of their respective Affiliates, shall issue any press release or other public announcement or communication (to the extent not previously publicly disclosed or made in accordance with this Agreement or any other Transaction Agreements) with respect to the transactions contemplated hereby or thereby without the prior written consent of the other parties (such consent not to be unreasonably withheld, conditioned or delayed), except to the extent a party's counsel deems such disclosure necessary or desirable in order to comply with any law or the regulations or policies of any securities exchange or other similar regulatory body (in which case the disclosing party shall give the other parties notice as promptly as is reasonably practicable of any required disclosure to the extent permitted by applicable law), shall limit such disclosure to the information such counsel advises is required to comply with such law or regulations, and if reasonably practicable, shall consult with the other party regarding such disclosure and give good faith consideration to any suggested changes to such disclosure from the other party. Notwithstanding anything to the contrary in this Section 7.17, the Purchaser and the Company may make public statements in response to specific questions by the press, analysts, investors or those attending industry conferences or financial analyst conference calls, so long as any such statements are not materially inconsistent with previous press releases, public disclosures or public statements made by the Company or the Purchaser and do not reveal material, non-public information regarding the other Parties or the transactions contemplated by this Agreement.

Section 7.18 Waiver. No waiver of any provision of this Agreement shall be effective unless set forth in a written instrument signed by the Party waiving such provision. No failure or delay by a Party in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of the same preclude any further exercise thereof or the exercise of any other right, power or remedy.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written.

NIO INC.

By: /s/ Bin Li

Name: Bin Li

Title: Chairman and Chief Executive Officer

[Signature Page to Convertible Notes Subscription Agreement]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written.

HUANG RIVER INVESTMENT LIMITED

By: /s/ Ma Huateng
Name: Ma Huateng
Title: Authorized Signatory

[Signature Page to Convertible Notes Subscription Agreement]

Exhibit A

Form of 2020 Convertible Note

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (AS AMENDED, THE "SECURITIES ACT") OR UNDER THE SECURITIES LAWS OF ANY OTHER JURISDICTIONS. THESE SECURITIES MAY NOT BE TRANSFERRED, SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED: (A) IN THE ABSENCE OF (1) AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (2) AN EXEMPTION OR QUALIFICATION UNDER APPLICABLE SECURITIES LAWS, AND (B) UNLESS IN COMPLIANCE WITH THE CONVERTIBLE NOTES SUBSCRIPTION AGREEMENT BETWEEN THE COMPANY AND HUANG RIVER INVESTMENT LIMITED, DATED SEPTEMBER 4, 2019 (THE "SUBSCRIPTION AGREEMENT"). ANY ATTEMPT TO TRANSFER, SELL, PLEDGE OR HYPOTHECATE THIS SECURITY IN VIOLATION OF THESE RESTRICTIONS OR ANY OTHER RESTRICTIONS SET FORTH IN THE SUBSCRIPTION AGREEMENT SHALL BE VOID.

CONVERTIBLE SENIOR NOTE

US\$50,000,000

September ____, 2019

Subject to the terms and conditions of this Convertible Senior Note due 2020 (the "Note"), for good and valuable consideration received, NIO Inc., an exempted company incorporated with limited liability under the laws of the Cayman Islands (the "Company"), promises to pay to the order of Huang River Investment Limited, a company incorporated under the laws of the British Virgin Islands (such party and any other permitted transferee, the "Holder"), the principal amount of US\$50,000,000, plus other amounts payable provided below, on []¹ (the "Maturity Date"), or such earlier date as may be otherwise provided herein, unless the outstanding principal is settled in accordance with Article 3 of the Note.

The Note is issued pursuant to, and in accordance with, the Convertible Notes Subscription Agreement, dated September 4, 2019 (the "Subscription Agreement"), between the Company and the Holder and is subject to the provisions thereof. Unless the context requires otherwise, capitalized terms used herein shall have the meaning set forth in Article 1 of this Note.

The following is a statement of the rights of the Holder of the Note and the terms and conditions to which the Note is subject, and to which the Holder hereof, by the acceptance of the Note, agrees:

1. DEFINITIONS

"ADS" means an American Depositary Share, each of which represents one Class A Share as of the date of this Note.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person; provided, that

¹ NTD: The 360th day of the Issue Date .

none of the Company, nor any of its Subsidiaries shall be considered an Affiliate of the Purchaser. For purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” have correlative meanings.

“Board of Directors” means the board of directors of the Company or a committee of such board duly authorized to act for it hereunder.

“Business Day” means any day other than a Saturday, Sunday or another day on which commercial banks in the People’s Republic of China (the “PRC” or “China”, which for the purpose of this Agreement shall exclude Hong Kong SAR, Macau SAR and Taiwan), Hong Kong SAR or New York are required or authorized by law or executive order to be closed.

“Capital Stock” means for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity.

“Class A Shares” means Class A ordinary shares, par value US\$0.00025 per share, in the share capital of the Company.

“Class B Shares” means the Class B ordinary shares, par value US\$0.00025 per share, in the share capital of the Company.

“Class C Shares” means the Class C ordinary shares, par value US\$0.00025 per share, in the share capital of the Company.

“Clause A Distribution” shall have the meaning ascribed to such term in Section 4.1(c).

“Clause B Distribution” shall have the meaning ascribed to such term in Section 4.1(c).

“Clause C Distribution” shall have the meaning ascribed to such term in Section 4.1(c).

“close of business” means 5:00 p.m. (New York City time).

“Common Equity” of any Person means ordinary share capital or Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

“Company” shall have the meaning ascribed to such term in the Preamble.

“Control” (including the terms “Controlled by” and “under common Control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of

the board of directors or similar body governing the affairs of such Person or securities that represent a majority of the outstanding voting securities of such Person.

“Conversion Date” shall have the meaning ascribed to such term in Section 3.3. “Conversion Notice” shall have the meaning ascribed to such term in Section 3.3.

“Conversion Period” shall mean the period starting from (and including) the fifteenth (15th) Business Day immediately preceding the Maturity Date and prior to the close of business on the second Business Day immediately preceding the Maturity Date.

“Conversion Rate” shall have the meaning ascribed to such term in Section 3.2.

“Current Market Price” means, in respect of an ADS at a particular date, the volume-weighted average of the Last Reported Sale Prices for one ADS (carrying full entitlement to dividend) for the thirty (30) consecutive Trading Days ending on the Trading Day immediately preceding such date, provided that if at any time during the said thirty (30) Trading Day period the ADSs shall have been quoted ex-dividend and during some other part of that period the ADSs shall have been quoted cum-dividend then:

- (a) if the ADSs (or the Class A Ordinary Shares) to be issued in such circumstances do not rank for the dividend in question, the quotations on the dates on which the ADSs shall have been quoted cum-dividend shall for the purpose of this definition be deemed to be the amount thereof reduced by an amount equal to the amount of that dividend per ADS; or
- (b) if the ADSs (or the Class A Ordinary Shares) to be issued in such circumstances rank for the dividend in question, the quotations on the dates on which the ADSs shall have been quoted ex-dividend shall for the purpose of this definition be deemed to be the amount thereof increased by such similar amount;

and provided further that if the ADSs on each of the said thirty (30) Trading Days have been quoted cum-dividend in respect of a dividend which has been declared or announced but the ADSs or the Ordinary Shares to be issued do not rank for that dividend, the quotations on each of such dates shall for the purpose of this definition be deemed to be the amount thereof reduced by an amount equal to the amount of that dividend per ADS.

“Default” means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

“Defaulted Amounts” means any amounts on this Note (including, without limitation, the Repurchase Price, principal and interest) that are payable but are not punctually paid or duly provided for.

“Distributed Property” shall have the meaning ascribed to such term in Section 4.1(c). “EoD Notice” shall have the meaning ascribed to such term in Section 2.5(a)

“EoD Repurchase Price” shall have the meaning ascribed to such term in Section 2.5(a).

“Event of Default” shall have the meaning ascribed to such term in Section 2.4.

“Ex-Dividend Date” means the first date on which the Class A Shares, ADSs representing Class A Shares (or other applicable security), trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of the Class A Shares, ADSs representing Class A Shares (or other applicable security) on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

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

“Expiring Rights” means any rights, options or warrants to purchase Class A Shares or ADSs that expire on or prior to the Maturity Date.

“Fundamental Change” shall be deemed to have occurred if any of the following occurs after the Note is originally issued:

- (a) (A) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act, other than the Company, its Subsidiaries (together with the Company, the “Company Group”), the employee benefit plans of the Company and its Subsidiaries and any of the Permitted Holders, has become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of (i) the Company’s Common Equity (including Common Equity held in the form of ADSs) representing more than 50% of the voting power of the Company’s Common Equity or (ii) more than 50% of the outstanding Class A Shares (including Class A Shares held in the form of ADSs); or (B) the Permitted Holders (together with any of their respective Affiliates) have become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of Class A Shares (including Class A Shares held in the form of ADSs) representing, in the aggregate, more than 65% of the outstanding Class A Shares (including Class A Shares held in the form of ADSs);
 - (b) the consummation of (A) any recapitalization, reclassification or change of the Class A Shares or the ADSs (other than changes resulting from a subdivision or combination) as a result of which the Class A Shares or the ADSs would be converted into, or exchanged for, stock, other securities, other property or assets; (B) any share exchange, consolidation or merger of the Company, or any similar transaction, pursuant to which the Class A Shares or the ADSs will be converted into cash, securities or other property; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company Group, taken as a whole, to any Person other than one of the Company’s wholly-owned Subsidiaries; provided, however, that a transaction described in clause (B) in which the holders of all classes of the Company’s Common Equity immediately prior to such transaction own, directly or indirectly, more than
-

50% of all classes of Common Equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions vis-a-vis each other as such ownership immediately prior to such transaction shall not be a Fundamental Change pursuant to this clause (b);

- (c) the shareholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company;
- (d) the ADSs (or other Common Equity or ADSs in respect of the Common Equity underlying the Note) cease to be listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors); or
- (e) any change in or amendment to the laws, regulations and rules of the PRC or the official interpretation or official application thereof (a “change in law”) that results in (A) the Company Group (as in existence immediately subsequent to such change in law), taken as a whole, being legally prohibited from operating substantially all of the business operations conducted by the Company Group (as in existence immediately prior to such change in law) as of the last date of the period described in the Company’s consolidated financial statements for the most recent fiscal quarter and (B) the Company being unable to continue to derive substantially all of the economic benefits from the business operations conducted by the Company Group (as in existence immediately prior to such change in law) in the same manner as reflected in the Company’s consolidated financial statements for the most recent fiscal quarter,

provided, however, that a transaction or event described in clause (b) above shall not constitute a Fundamental Change if at least 90% of the consideration received or to be received by holders of the ADSs, excluding cash payments for any fractional Class A Shares and cash payments made in connection with dissenters’ appraisal rights, in connection with such transaction or event consists of shares of Common Equity or ADSs or depository receipts in respect of Common Equity that are listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors) or will be so listed or quoted when issued or exchanged in connection with such transaction or event and as a result of such transaction or event, the Note becomes convertible into such consideration, excluding cash payments for any fractional Class A Shares and cash payments made in connection with dissenters’ appraisal rights.

“Fundamental Change Repurchase Date” shall have the meaning ascribed to such term in Section 5.2(a).

“Fundamental Change Repurchase Notice” shall have the meaning ascribed to such term in Section 5.2(b).

“Fundamental Change Repurchase Price” shall have the meaning ascribed to such term in Section 5.2(a).

“Fundamental Change Company Notice” shall have the meaning ascribed to such term in Section 5.2(d).

“GAAP” means the generally accepted accounting principles in the United States.

“Governmental Authority” means any federal, national, foreign, supranational, state, provincial, local, municipal or other political subdivision or other government, governmental, regulatory or administrative authority, agency, board, bureau, department, instrumentality or commission or any court, tribunal, judicial or arbitral body of competent jurisdiction or stock exchange.

“Holder” shall have the meaning ascribed to such term in the Preamble. “Issue Date” means September [] , 2019.

“Last Reported Sale Price” of the Class A Shares on any date shall be calculated as (i) the closing sale price per ADS (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the ADSs are traded divided by (ii) the applicable number of Class A Shares then represented by one ADS. If the ADSs are not listed for trading on a U.S. national or regional securities exchange on the relevant date, the “Last Reported Sale Price” shall be (i) the last quoted bid price for the ADSs in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization divided by (ii) the applicable number of Class A Shares then represented by one ADS. If the ADSs are not so quoted, the “Last Reported Sale Price” shall be (i) the average of the midpoint of the last bid and ask prices for the ADSs on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose divided by (ii) the applicable number of Class A Shares then represented by one ADS.

“Law” means any statute, law, ordinance, regulation, rule, code, order, judgment, writ, injunction, decree or requirement of law (including common law) enacted, issued, promulgated, enforced or entered by a Governmental Authority.

“Maturity Date” shall have the meaning ascribed to such term in the Preamble.

“Maturity Repurchase Price” shall have the meaning ascribed to such term in Section 5.1.

“Merger Event” shall have the meaning ascribed to such term in Section 4.3. “Note” shall have the meaning ascribed to such term in the Preamble.

“Officer” means, with respect to the Company, the Chairman, President, the Chief Executive Officer, the Secretary, any Executive or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title “Vice President”).

“Officer’s Certificate”, when used with respect to the Company, means a certificate that is delivered to the Holder and that is signed by the principal executive, financial

or accounting officer of the Company who has been duly authorized to sign such certificate. To the extent applicable, each such certificate shall include (a) a statement that the person making such certificate is familiar with the requested action and the Note; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statement contained in such certificate is based; (c) a statement that, in the judgment of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed judgment as to whether or not such action is permitted by the Note; and (d) a statement as to whether or not, in the judgment of such person, such action is permitted by the Note, if and to the extent required by the provisions of the Note.

“open of business” means 9:00 a.m. (New York City time).

“Ordinary Shares” means collectively the Class A Shares, the Class B Shares and the Class C Shares.

“Permitted Holders” means Mr. Bin Li and Tencent Holdings Limited, together with any other respective “person” or “group” subject to aggregation of ordinary share capital of the Company (including ordinary share capital held in the form of ADSs) with any of the aforementioned person and entity under Section 13(d) of the Exchange Act.

“Person” means any individual, partnership, corporation, association, joint stock company, trust, joint venture, limited liability company, organization, entity or Governmental Authority.

“Record Date” means, with respect to any dividend, distribution or other transaction or event in which the holders of the Class A Shares (directly or in the form of ADSs) (or other applicable security) have the right to receive any cash, securities or other property or in which the Class A Shares (directly or in the form of ADSs) (or such other security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of security holders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors, statute, contract or otherwise).

“Reference Price” means the higher of (i) US\$2.98 per Class A Share, subject to the same adjustment to the Conversion Rate pursuant to this Note and (ii) the Current Market Price, in each case on the date of announcement of the issuance referred to under the provisions in Section 4.1.

“Reference Property” and “unit of Reference Property” have the meanings ascribed thereto in Section 4.3.

“Relevant Securities” shall have the meaning ascribed to such term in Section 4.1(f).

“Repurchase Price” means any of the EoD Repurchase Price, the Fundamental Change Repurchase Price and the Maturity Repurchase Price, as applicable.

“Significant Subsidiary” means a Subsidiary of the Company that meets the definition of “significant subsidiary” in Article 1, Rule 1-02 of Regulation S-X under the Exchange Act.

“Spin-Off” shall have the meaning ascribed to such term in Section 4.1(c).

“Subscription Agreement” shall have the meaning ascribed to such term in the Preamble.

“Subsidiary” of any Person means any corporation, partnership, limited liability company, joint stock company, joint venture or other organization or entity, whether incorporated or unincorporated, which is Controlled by such Person and, for the avoidance of doubt, the Subsidiaries of any Person shall include any variable interest entity over which such Person or any of its Subsidiaries effects Control pursuant to contractual arrangements and which is consolidated with such Person in accordance with GAAP applicable to such Person.

“Successor Company” shall have the meaning ascribed to such term in Section 7.1(a).

“Trading Day” means a day on which (i) trading in the ADSs (or other security for which a closing sale price must be determined) generally occurs on The NASDAQ Global Market or, if the ADSs (or such other security) are not then listed on The NASDAQ Global Market, on the principal other U.S. national or regional securities exchange on which the ADSs (or such other security) are then listed or, if the ADSs (or such other security) are not then listed on a U.S. national or regional securities exchange, on the principal other market on which the ADSs (or such other security) are then traded and (ii) a Last Reported Sale Price with respect to the ADSs (or closing sale price for such other security) is available on such securities exchange or market; provided that if the ADSs (or such other security) are not so listed or traded, “Trading Day” means a Business Day.

“Transaction Documents” means the Note, the Subscription Agreement, the Convertible Senior Notes due 2022 and each of the other agreements and documents entered into or delivered by the Company, the Holder or their respective Affiliates in connection with the transactions contemplated by the Subscription Agreement.

“Trigger Event” shall have the meaning ascribed to such term in Section 4.1(c). “U.S.” means United States.

“US\$” or “\$” means the United States dollar, the lawful currency of the United States of America.

“Valuation Period” shall have the meaning ascribed to such term in Section 4.1(c).

2. INTEREST; PAYMENTS; DEFAULTS

2.1 Interest Rate. The principal amount outstanding under the Note shall not bear any interest, except for any interest on the Defaulted Amounts in accordance with Section 2.6.

2.2 Payment. All amounts payable on or in respect of the Note or the indebtedness evidenced hereby shall be paid to the Holder in U.S. dollars, in immediately available funds on the date that any principal (or interest, in accordance with Section 2.6) or any Repurchase Price is due and payable hereunder. The Company shall make such principal (or interest, in accordance with Section 2.6) or such payment of Repurchase

Price to the Holder by wire transfer of immediately available funds for the account of the Holder or any of its Affiliates as may be designated by the Holder in writing from time to time; provided that any change to such accounts shall be notified in writing to the Company at least two (2) Business Days prior to the relevant payment date. If any such payment date or the Maturity Date falls on a day that is not a Business Day, the required payment will be made on the next succeeding Business Day and no interest on such payment will accrue in respect of the delay.

- 2.3 Seniority. The Note ranks (a) senior in right of payment to any of the Company's present and future indebtedness that is expressly subordinated in right of payment to the Note, (b) equal in right of payment to any of the Company's present and future indebtedness and other liabilities of the Company that are not so subordinated, (c) junior in right of payment to any of the Company's secured indebtedness to the extent of the value of the assets securing such indebtedness and (d) structurally junior to all indebtedness incurred by the Company's Subsidiaries and their other liabilities (including trade payables).
- 2.4 Events of Default. For purposes of the Note, an "Event of Default" shall be deemed to have occurred if any of the following events occurs, whatever the reason or cause for such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any Governmental Authority or otherwise:
- (a) Failure to Pay. The Company defaults in the payment of principal of the Note when due and payable on the Maturity Date or upon declaration of acceleration, or the Company defaults in the payment of any Repurchase Price upon any required repurchase, in each case in accordance with the terms hereof;
 - (b) Breach of Conversion Obligation. The Company fails to comply with its obligation to convert all or a portion of the Note in accordance with Article 3 upon Holder's exercise of its conversion rights and such failure continues for a period of five (5) Business Days;
 - (c) Breach of Article 7. The Company fails to comply with its obligations under Article 7;
 - (d) Breach of Other Obligations. The Company fails for sixty (60) days after written notice from the Holder has been received by the Company to comply with any of its other agreements contained in any Transaction Document to which the Company is a party;
 - (e) Cross Default. Any default by the Company or any Subsidiary of the Company with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of US\$50 million (or the foreign currency equivalent thereof) in the aggregate of the Company and/or any such Subsidiary, whether such indebtedness now exists or shall hereafter be created (A) resulting in such indebtedness becoming or being declared due and payable or (B) constituting a failure to pay the principal or
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interest of any such debt when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise;

- (f) Adverse Judgment. A final judgment for the payment of US\$50 million (or the foreign currency equivalent thereof) or more (excluding any amounts covered by insurance) is rendered against the Company or any Subsidiary of the Company, which judgment is not paid, bonded or otherwise discharged or stayed within sixty (60) days after the earlier of (i) the date on which the right to appeal thereof has expired if no such appeal has commenced and (ii) the date on which all rights to appeal have been extinguished;
- (g) Trading Suspension. The ADSs (or other Common Equity or ADSs in respect of the Common Equity underlying the Note) have been suspended from trading on any of The New York Stock Exchange, The NASDAQ Global Select market or The NASDAQ Global Market (or any of their respective successors) for a period of ninety (90) consecutive trading days or for more than one hundred and eighty (180) trading days in any twelve (12)-month period;
- (h) Bankruptcy. The Company, any Significant Subsidiary or any other Subsidiaries which in the aggregate constitute a “significant subsidiary” as defined in rule 1-02(w) of Regulation S-X under the Exchange Act shall commence a voluntary case or other proceeding seeking liquidation, winding-up, reorganization or other relief with respect to the Company, such Significant Subsidiary or such other Subsidiaries or its or their debts under any bankruptcy, liquidation, insolvency or other similar Law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company, such Significant Subsidiary or such other Subsidiaries or all or substantially all of its or their property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its or their debts as they become due; or
- (i) Involuntary Proceedings. An involuntary case or other proceeding shall be commenced against the Company, any Significant Subsidiary or any other Subsidiaries which in the aggregate constitute a “significant subsidiary” as defined in rule 1-02(w) of Regulation S-X under the Exchange Act seeking liquidation, winding-up, reorganization or other relief with respect to the Company, such Significant Subsidiary or such other Subsidiaries or its or their debts under any bankruptcy, liquidation, insolvency or other similar Law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company, such Significant Subsidiary or such other Subsidiaries or all or substantially all of its or their property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) consecutive days.

2.5 Consequences of Event of Default.

- (a) If one or more Events of Default shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be
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voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any Governmental Authority), then,

- (i) in each and every such case (other than an Event of Default specified in Section 2.4(h) or Section 2.4(i)), unless the principal of the Note shall have already become due and payable, the Holder may by notice in writing to the Company (the “EoD Notice”) to require the Company to repurchase for cash all of the Note or any portion thereof on the fifth (5th) Business Day after the date of the EoD Notice at a repurchase price (the “EoD Repurchase Price”) equal to (A) 100% of the principal amount thereof, plus (B) a premium equal to the aggregate interest that would have accrued on such principal amount over the period starting from (and including) the date of the Issue Date and ending on (and including) the date when the EoD Repurchase Price is made in full, if the Note were to bear interest at a rate of 2.0% per annum, accrued daily and computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of actual days elapsed over a 30-day month, and plus (C) all other amounts due and payable on or in respect of the Note (including any accrued and unpaid interest on the Defaulted Amounts pursuant to Section 2.6), if any; or
 - (ii) if an Event of Default specified in Section 2.4(h) or Section 2.4(i) occurs and is continuing, the Company shall promptly repurchase for cash all of the Note at a repurchase price equal to the EoD Repurchase Price without any action on the part of the Holder.
- (b) Section 2.5(a), however, is subject to the conditions that if, at any time after the outstanding principal of the Note shall have been so declared due and payable, and before any arbitral award for the payment of the monies due shall have been obtained or entered as hereinafter provided, the Company has paid or deposited with the Holder a sum sufficient to pay the outstanding principal of and any other amounts due and payable on the Note that shall have become due otherwise than by acceleration (with interest on the Defaulted Amounts), and if (1) rescission would not conflict with any such arbitral award and (2) any and all existing Events of Default under the Note, other than the nonpayment of the principal of and any other amounts due and payable on the Note that shall have become due solely by such acceleration, shall have been cured or waived, then and in every such case the Holder, by written notice to the Company, may waive all Default or Events of Default with respect to the Note and rescind and annul such declaration and its consequences and such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of the Note; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent Default or Event of Default, or shall impair any right consequent thereon. Notwithstanding anything to the contrary herein, no such waiver or rescission and annulment shall extend to or shall affect any Default or Event of Default resulting from (i) the nonpayment of the principal of, or any other amounts due and payable on, the Note or (ii) a failure to pay or deliver, as the case may be, the consideration due upon conversion of the Note.
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2.6 Defaulted Amounts. Any Defaulted Amounts shall accrue interest at a rate equal to three percent (3.0%) per annum accrued daily during the period from (and including) such relevant payment date and ending on (and including) the date on which such Defaulted Amounts and such interest thereon are fully paid, and such Defaulted Amounts together with such interest thereon pursuant to this Section 2.6 shall be paid by the Company to the Holder by wire transfer of immediately available funds pursuant to the procedures set forth in Section 2.2.

3. CONVERSION

3.1 Conversion by Holder. Subject to and upon compliance with the provisions of this Article 3, the Holder shall have the right, at the Holder's option, to convert all or any portion (if the portion to be converted is US\$1,000 principal amount or an integral thereof) of the Note to the Company's fully paid Class A Shares at the applicable Conversion Rate at any time during the Conversion Period.

3.2 Conversion Price; Conversion Rate. Subject to adjustments as provided in Article 4, the initial conversion price shall be equal to US\$2.98 per Class A Share, representing an initial conversion rate of 335.5705 Class A Shares (the "Conversion Rate") per US\$1,000 principal amount of the Note.

3.3 Conversion Procedure; Settlement Upon Conversion.

(a) This Note shall be deemed to have been converted immediately prior to the close of business on the date (the "Conversion Date") that is the Maturity Date, provided that the Holder has delivered a duly completed irrevocable written notice to the Company (the "Conversion Notice") to the Company during the Conversion Period. Within five (5) Business Days after the delivery of the Note and the Conversion Notice to the Company, the Company shall (i) take all actions and execute all documents necessary to effect the issuance of the full number of Class A Shares to which the Holder shall be entitled in satisfaction of any conversion pursuant to Section 3.1, (ii) deliver to the Holder certificate(s) representing the number of Class A Shares delivered upon each such conversion, (iii) deliver to the Holder a certified copy of the register of members of the Company, reflecting the Holder's ownership of the Class A Shares delivered upon each such conversion, and (iv) cancel the Note. No Conversion Notice may be delivered and the Note may not be surrendered by a Holder for conversion thereof if the Holder has also delivered a Fundamental Change Repurchase Notice to the Company in respect of the Note and not validly withdrawn such Fundamental Change Repurchase Notice in accordance with Article 5.

(b) [Reserved]

(c) If the Holder submits the Note for conversion, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the delivery of the Class A Shares upon such conversion of the Note, unless the tax is due because the Holder requests such Class A Shares to be issued in a name other than the Holder's name, in which case (i) if in the name of any Person which is an Affiliate of the Holder, the Company shall pay that tax or (ii) if in the name of any other Person, the Holder shall pay that tax. The Company shall

pay the relevant fees for issuance of the Class A Shares and shall pay the relevant depository's fees for any future conversion of the issued Class A Shares into the ADSs.

- (d) Except as provided in Section 4.1, no adjustment shall be made for dividends on any Class A Shares delivered upon any conversion of this Note as provided in this Article 3.
- (e) Without prejudice to the Holder's right to receive the interest in accordance with Section 3.3(h), the Company's settlement of each conversion pursuant to this Article 3 shall be deemed to satisfy in full its obligation to pay the principal amount of the Note converted.
- (f) The Holder in whose name the certificate for any Class A Shares delivered upon conversion is registered shall be treated as a holder of record of such Class A Shares as of the close of business on the relevant Conversion Date. Upon a conversion of the entire outstanding amount of the Note, the Holder shall no longer be a holder of the Note surrendered for conversion.
- (g) The Company shall not issue any fractional Class A Share upon conversion of the Note and shall instead pay cash in lieu of any fractional Class A Share deliverable upon conversion based on the Last Reported Sale Price of the Class A Shares on the relevant Conversion Date.
- (h) Nothing in this Article 3 shall prejudice the Holder's entitlement to receive interest on any of the Defaulted Amounts in accordance with Section 2.6.

3.4 Without prejudice to any other provision in this Note, the Holder may elect to convert all or any portion (if the portion to be converted is US\$1,000 principal amount or an integral thereof) of the Note to ADSs (each representing one Class A Share) at the applicable Conversion Rate at any time during the Conversion Period and the provisions in this Article 3 shall apply *mutatis mutandis*; provided that, the Company shall pay (A) any documentary, stamp or similar issue or transfer tax due on the delivery of such ADSs upon conversion of the Note (or the issuance of the underlying Class A Shares), unless the tax is due because the Holder requests such ADSs to be issued in a name other than the Holder's name, in which case (i) if in the name of any Person which is an Affiliate of the Holder, the Company shall pay that tax or (ii) if in the name of any other Person, the Holder shall pay that tax; and (B) the depository's fees for issuance of such ADSs.

4. ADJUSTMENTS

4.1 Adjustment of Conversion Rate. If the number of Class A Shares represented by the ADSs is changed, after the date of this Note, for any reason other than one or more of the events described in this Section 4.1, the Company shall make an appropriate adjustment to the Conversion Rate such that the number of Class A Shares represented by the ADSs upon which any conversion of this Note is based remains the same.

Notwithstanding the adjustment provisions described in this Section 4.1, if the Company distributes to holders of the Class A Shares any cash, rights, options,

warrants, shares of capital stock or similar equity interest, evidences of indebtedness or other assets or property of the Company (but excluding Expiring Rights) and a corresponding distribution is not made to holders of the ADSs, but, instead, the ADSs shall represent, in addition to Class A Shares, such cash, rights, options, warrants, shares of Capital Stock or similar equity interest, evidences of indebtedness or other assets or property of the Company, then an adjustment to the Conversion Rate described in this Section 4.1 shall not be made until and unless a corresponding distribution (if any) is made to holders of the ADSs, and such adjustment to the Conversion Rate shall be based on the distribution made to the holders of the ADSs and not on the distribution made to the holders of the Class A Shares. However, in the event that the Company issues or distributes to all holders of the Class A Shares any Expiring Rights, notwithstanding the immediately preceding sentence, the Company shall adjust the Conversion Rate pursuant to Section 4.1(b) (in the case of in-the-money Expiring Rights entitling holders of the Class A Shares for a period of not more than 45 calendar days after the announcement date of such issuance to subscribe for or purchase Class A Shares or ADSs) or Section 4.1(c) (in the case of all other Expiring Rights).

For the avoidance of doubt, if any event described in this Section 4.1 results in a change to the number of Class A Shares represented by the ADSs, then such change shall be deemed to satisfy the Company's obligation to effect the relevant adjustment to the Conversion Rate on account of such event to the extent such change produces the same economic result as the adjustment to the Conversion Rate that would otherwise have been on account of such event.

Subject to the foregoing, the Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs, except that the Company shall not make any adjustments to the Conversion Rate if the Holder participates (other than in the case of a share split or share combination), at the same time and upon the same terms as holders of the Class A Shares and solely as a result of holding the Note, in any of the transactions described in this Section 4.1, without having to convert the Note, as if it held a number of Class A Shares equal to the Conversion Rate, multiplied by the principal amount of the Note held by the Holder.

- (a) If the Company exclusively issues Class A Shares as a dividend or distribution on the Class A Shares, or if the Company effects a share split or share combination, the Conversion Rate shall be adjusted based on the following formula:

$$CR1 = CR_0 \times \frac{OS1}{OS_0}$$

where,

CR0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such dividend or distribution, or immediately prior to the close of business on the effective date of such share split or share combination, as applicable;

CR1 = the Conversion Rate in effect immediately after the close of business on such Record Date or immediately after the close of business on such effective date, as applicable;

OS0 = the number of Class A Shares outstanding immediately prior to the close of business on such Record Date or immediately prior to the close of business on such effective date, as applicable; and

OS1 = the number of Class A Shares outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

Any adjustment made under this Section 4.1(a) shall become effective immediately after the close of business on the Record Date for such dividend or distribution, or immediately after the open of business on the effective date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this Section 4.1(a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

- (b) If the Company issues to all or substantially all holders of the Class A Shares (directly in or in the form of ADSs) any rights, options or warrants entitling them, for a period of not more than 45 calendar days after the announcement date of such issuance, to subscribe for or purchase Class A Shares (directly or in the form of ADSs) at a price per Class A Share that is less than the average of the Last Reported Sale Prices of the Class A Shares, for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate shall be increased based on the following formula:

$$CR1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such issuance;

CR1 = the Conversion Rate in effect immediately after the close of business on such Record Date;

OS0 = the number of Class A Shares outstanding immediately prior to the close of business on such Record Date;

X = the total number of Class A Shares (directly or in the form of ADSs) deliverable pursuant to such rights, options or warrants; and

Y = the number of Class A Shares equal to (i) the aggregate price payable to exercise such rights, options or warrants, divided by (ii) the average of the

Last Reported Sale Prices of the Class A Shares over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

Any increase made under this Section 4.1(b) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the close of business on the Record Date for the Class A Shares (directly or in the form of ADSs), as applicable, for such issuance. To the extent that Class A Shares or ADSs are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of Class A Shares actually delivered (directly or in the form of ADSs). If such rights, options or warrants are not so issued, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such the Record Date for such issuance had not occurred.

For purposes of this Section 4.1(b), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase Class A Shares (directly or in the form of ADSs) at a price per Class A Share that is less than such average of the Last Reported Sale Prices of the Class A Shares, for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement for such issuance, and in determining the aggregate offering price of such Class A Shares (directly or in the form of ADSs), there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors acting in good faith.

- (c) If the Company distributes shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire its Capital Stock or other securities, to all or substantially all holders of the Class A Shares (directly or in the form of ADSs), excluding (i) dividends, distributions or issuances as to which an adjustment was effected pursuant to Section 4.1(a) or Section 4.1(b), (ii) dividends or distributions paid exclusively in cash as to which an adjustment was effected pursuant to Section 4.1(d), and (iii) Spin-Offs as to which the provisions set forth below in this Section 4.1(c) shall apply (any of such shares of Capital Stock, evidences of indebtedness, other assets or property or rights, options or warrants to acquire Capital Stock or other securities of the Company, the “Distributed Property”), then the Conversion Rate shall be increased based on the following formula:

$$CR1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such distribution;

CR1 = the Conversion Rate in effect immediately after the close of business on such Record Date;

SP0 = the average of the Last Reported Sale Prices of the Class A Shares over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined by the Board of Directors acting in good faith) of the Distributed Property with respect to each outstanding Class A Share (directly or in the form of ADSs) on the Record Date for such distribution.

Any increase made under the portion of this Section 4.1(c) above shall become effective immediately after the close of business on the Record Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such distribution had not been declared. Notwithstanding the foregoing, if “FMV” (as defined above) is equal to or greater than “SP0” (as defined above), in lieu of the foregoing increase, the Holder shall receive, in respect of each US\$1,000 principal amount thereof, at the same time and upon the same terms as holders of the Class A Shares receive the Distributed Property, the amount and kind of Distributed Property the Holder would have received if the Holder owned a number of Class A Shares equal to the Conversion Rate in effect on the Record Date for the distribution.

With respect to an adjustment pursuant to this Section 4.1(c) where there has been a payment of a dividend or other distribution on the Class A Shares (directly or in the form of ADSs) of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a “Spin-Off”), the Conversion Rate shall be increased based on the following formula:

$$CR1 = CR_0 \times \frac{FMV + MP_0}{MP_0}$$

where,

CR0 = the Conversion Rate in effect immediately prior to the end of the Valuation Period;

CR1 = the Conversion Rate in effect immediately after the end of the Valuation Period;

FMV0 = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Class A Shares (directly or in the form of ADSs) applicable to one Class A Share (determined by reference to the definition of Last Reported Sale Price as if references therein to the ADSs were to such Capital Stock or similar equity interest) over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the "Valuation Period"); and

MP0 = the average of the Last Reported Sale Prices of the Class A Shares over the Valuation Period.

The adjustment to the Conversion Rate under the preceding paragraph shall occur on the last Trading Day of the Valuation Period; provided that in respect of any conversion during the Valuation Period, references in the portion of this Section 4.1(c) related to Spin-Offs to 10 Trading Days shall be deemed to be replaced with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date of such Spin-Off to, and including, the Conversion Date in determining the Conversion Rate.

For purposes of this Section 4.1(c) (and subject in all respect to Section 4.1(f)), rights, options or warrants distributed by the Company to all holders of the Class A Shares (directly or in the form of ADSs) entitling them to subscribe for or purchase shares of the Company's Capital Stock, including Class A Shares (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("Trigger Event"): (i) are deemed to be transferred with such Class A Shares (directly or in the form of ADSs); (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Class A Shares (directly or in the form of ADSs), shall be deemed not to have been distributed for purposes of this Section 4.1(c) (and no adjustment to the Conversion Rate under this Section 4.1(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 4.1(c). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Note, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 4.1(c) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x)

the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per Class A Share redemption or purchase price received by a holder or holders of Class A Shares (directly or in the form of ADSs) with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Class A Shares (directly or in the form of ADSs) as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of Section 4.1(a), Section 4.1(b) and this Section 4.1(c), any dividend or distribution to which this Section 4.1(c) is applicable that also includes one or both of:

- (A) a dividend or distribution of Class A Shares (directly or in the form of ADSs) to which Section 4.1(a) is applicable (the “Clause A Distribution”); or
 - (B) a dividend or distribution of rights, options or warrants to which Section 4.1(b) is applicable (the “Clause B Distribution”), then (1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 4.1(c) is applicable (the “Clause C Distribution”) and any Conversion Rate adjustment required by this Section 4.1(c) with respect to such Clause C Distribution shall then be made, and (2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by Section 4.1(a) and Section 4.1(b) with respect thereto shall then be made, except that, if determined by the Company (I) the “Record Date” of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Record Date of the Clause C Distribution and (II) any Class A Shares (directly or in the form of ADSs) included in the Clause A Distribution or Clause B Distribution shall be deemed not to be “outstanding immediately prior to the close of business on such Record Date or immediately after the open of business on such effective date, as applicable” within the meaning of Section 4.1(a) or “outstanding immediately prior to the close of business on such Record Date” within the meaning of Section 4.1(b).
- (d) If any cash dividend or distribution is made to all or substantially all holders of the Class A Shares (directly or in the form of ADSs), the Conversion Rate shall be adjusted based on the following formula:

$$CR1 = CRa \times \frac{Spa}{SPa - C}$$

where,

CR₀ = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such dividend or distribution;

CR₁ = the Conversion Rate in effect immediately after the close of business on such Record Date;

SP₀ = the Last Reported Sale Price of the Class A Shares on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

C = the amount in cash per Class A Share the Company distributes to all or substantially all holders of the Class A Shares (directly or in the form of ADSs).

Any increase pursuant to this Section 4.1(d) shall become effective immediately after the close of business on the Record Date for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors determines not to make or pay such dividend or distribution, to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP₀" (as defined above), in lieu of the foregoing increase, the Holder shall receive, for each US\$1,000 principal amount of the Note, at the same time and upon the same terms as holders of the Class A Shares (directly or in the form of ADSs), the amount of cash that the Holder would have received if the Holder owned a number of Class A Shares equal to the Conversion Rate on the Record Date for such cash dividend or distribution.

- (e) If the Company or any of its Subsidiaries make a payment in respect of a tender or exchange offer for the Class A Shares (directly or in the form of ADSs), to the extent that the cash and value of any other consideration included in the payment per Class A Share exceeds the average of the Last Reported Sale Prices of the Class A Shares over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + \square OS_1 \times}{OS_0 \times SP}$$

where,

CR₀ = the Conversion Rate in effect immediately prior to the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

CR1 = the Conversion Rate in effect immediately after the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors acting in good faith) paid or payable for Class A Shares (directly or in the form of ADSs) purchased in such tender or exchange offer;

OS0 = the number of Class A Shares outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase of all Class A Shares (directly or in the form of ADSs) accepted for purchase or exchange in such tender or exchange offer);

OS1 = the number of Class A Shares outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all Class A Shares (directly or in the form of ADSs) accepted for purchase or exchange in such tender or exchange offer); and

SP = the average of the Last Reported Sale Prices of the Class A Shares over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires.

The adjustment to the Conversion Rate under this Section 4.1(e) shall occur at the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires; provided that in respect of any conversion within the 10 Trading Days immediately following, and including, the expiration date of any tender or exchange offer, references in this Section 4.1(e) with respect to 10 Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the expiration date of such tender or exchange offer to, and including, the Conversion Date in determining the Conversion Rate. No adjustment to the Conversion Rate under this Section 4.1(e) shall be made if such adjustment would result in a decrease in the Conversion Rate. In the event that the Company or one of the Company's Subsidiaries is obligated to purchase Class A Shares (directly or in the form of ADSs) pursuant to any such tender offer or exchange offer, but the Company or such Subsidiary is permanently prevented by applicable Law from effecting any such purchases, or all such purchases are rescinded, then the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender offer or exchange offer had not been made.

- (f) If and whenever the Company shall issue any Ordinary Shares or ADSs (other than any issuance pursuant to this Note or on the exercise of any other rights, existing as of the Issue Date, of conversion into, or exchange or subscription for, Ordinary Shares or ADSs) or issue or grant options, warrants or other rights to purchase, subscribe, convert into, exercise or exchange for Ordinary Shares or ADSs (the "Relevant Securities"), which for the purposes of this definition only excludes any Ordinary Shares, ADSs, option, warrant or other rights to purchase, subscribe, convert into, exercise or exchange for Ordinary
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Shares or ADSs issued or granted in accordance with any employee incentive plan of the Company), in each case at a consideration per ADS (on an as-converted and as-exercised basis and, in the case of any issuance of Ordinary Shares, such issue price per Ordinary Share multiplied by the applicable number of Ordinary Shares then represented by each ADS) which is less than the Reference Price, the Conversion Rate shall be adjusted based on the following formula:

$$CR1 = CR_0 \times \frac{A + B}{C}$$

where:

CR0 = the Conversion Rate in effect immediately prior to the date of issue of the Relevant Securities;

CR1 = the Conversion Rate in effect as from the date of issue of the Relevant Securities;

A = the number of Ordinary Shares in issue immediately before the issue of the Relevant Securities;

B = the number of Ordinary Shares which the aggregate consideration receivable for the issue of the Relevant Securities would purchase at the price equal to (x) Reference Price, multiplied by (y) the applicable number of Ordinary Shares then represented by each ADS; and

C = the number of Ordinary Shares in issue immediately after the issue of the Relevant Securities, provided that references to the number of Ordinary Shares in the above formula shall include all the Ordinary Shares to be issued assuming that all options, warrants or other rights to purchase, subscribe, convert into, exercise or exchange for Ordinary Shares or ADSs are exercised in full at the initial exercise price on the date of issue of such options, warrants or other rights.

- (g) Except as stated herein, the Company shall not adjust the Conversion Rate for the issuance of Class A Shares or ADSs or any securities convertible into or exchangeable for Class A Shares or ADSs or the right to purchase Class A Shares or ADSs or such convertible or exchangeable securities.
 - (h) In addition to those adjustments required by subsections (a), (b), (c), (d), (e) and (f) of this Section 4.1, and to the extent permitted by applicable Law and subject to the applicable rules of The NASDAQ Global Market and any other securities exchange on which any of the Company's securities are then listed, the Company from time to time may increase the Conversion Rate by any amount for a period of at least 20 Business Days if the Board of Directors determines that such increase would be in the Company's best interest, and the Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of the Class A
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Shares or the ADSs or rights to purchase Class A Shares or ADSs in connection with a dividend or

distribution of Class A Shares or ADSs (or rights to acquire Class A Shares or ADSs) or similar event.

- (i) Notwithstanding anything to the contrary in this Section 4.1, the Conversion Rate shall not be adjusted:
 - (i) upon the issuance of any Class A Shares or ADSs pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in Class A Shares or ADSs under any plan;
 - (ii) upon the issuance of any Class A Shares or ADSs or options or rights to purchase those Class A Shares or ADSs pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of the Company's Subsidiaries;
 - (iii) upon the issuance of any Class A Shares or ADSs pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) of this subsection and outstanding as of the date this Note was first issued;
 - (iv) solely for a change in the par value of the Class A Shares or ADSs; or
 - (v) for accrued and unpaid interest, if any.
- (j) All calculations and other determinations under this Section 4.1 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000) of a Class A Shares.
- (k) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to the Holder.
- (l) For purposes of this Article 4, the number of Class A Shares at any time outstanding shall not include Class A Shares held in the treasury of the Company (directly or in the form of ADSs) so long as the Company does not pay any dividend or make any distribution on Class A Shares held in the treasury of the Company (directly or in the form of ADSs), but shall include Class A Shares issuable in respect of scrip certificates issued in lieu of fractions of Class A Shares.
- (m) For purposes of this Section 4.1, the "effective date" means the first date on which the ADSs trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

4.2 Adjustments of Prices. Whenever any provision of this Note requires the Company to calculate the Last Reported Sale Prices over a span of multiple days, the Board of Directors shall make appropriate adjustments to each to account for any adjustment to

the Conversion Rate that becomes effective pursuant to Section 4.1, or any event requiring an adjustment to the Conversion Rate pursuant to Section 4.1 where the Record Date, effective date or expiration date, as the case may be, of the event occurs, at any time during the period when such Last Reported Sale Prices are to be calculated.

4.3 Effect of Recapitalizations, Reclassifications and Changes of the Class A Shares.

- (a) In the case of:
- (i) any recapitalization, reclassification or change of the Class A Shares (other than changes resulting from a subdivision or combination),
 - (ii) any consolidation, merger, combination or similar transaction involving the Company,
 - (iii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and the Company's Subsidiaries substantially as an entirety; or
 - (iv) any statutory share exchange, in each case, as a result of which the Class A Shares (directly or in the form of ADSs) would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a "Merger Event"), then, prior to or at the effective time of such Merger Event, the Company or the successor or purchasing Person, as the case may be, shall execute an amendment to this Note providing that, at and after the effective time of such Merger Event, the right to convert the Note shall be changed into a right to convert the Note into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of Class A Shares equal to the Conversion Rate immediately prior to such Merger Event would have owned or been entitled to receive (the "Reference Property", with each "unit of Reference Property" meaning the kind and amount of Reference Property that a holder of one Class A Share is entitled to receive) upon such Merger Event; provided, however, that at and after the effective time of the Merger Event the number of Class A Shares otherwise deliverable upon any conversion of the Note in accordance with Article 3 shall instead be deliverable in the amount and type of Reference Property that a holder of that number of Class A Shares would have been entitled to receive in such Merger Event.

If the Merger Event causes the Class A Shares (directly or in the form of ADSs) to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of holder election), then (i) the Reference Property into which the Note will be convertible shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Class A Shares (directly or in the form of ADSs) that affirmatively make such an election, and (ii) the unit of Reference Property for purposes of the immediately preceding paragraph shall refer to the consideration referred to in clause (i) attributable

to one Class A Shares. The Company shall provide written notice to the Holder of such weighted average as soon as practicable after such determination is made.

Such amendment described in the second immediately preceding paragraph shall provide for anti-dilution and other adjustments that shall be as nearly equivalent as is practicable to the adjustments provided for in this Article 4 (it being understood that no such adjustments shall be required with respect to any portion of the Reference Property that does not consist of shares of Common Equity (however evidenced) or depositary receipts in respect thereof). If, in the case of any Merger Event, the Reference Property includes shares of stock, securities or other property or assets (including cash or any combination thereof) of a Person other than the Company or the successor or purchasing Person, as the case may be, in such Merger Event, then such other Person shall also execute such amendment, and such amendment shall contain such additional provisions to protect the interests of the Holder, including the rights of the Holder to require the Company to repurchase this Note upon a Fundamental Change pursuant to Article 5 as the Board of Directors shall reasonably consider necessary by reason of the foregoing.

- (b) None of the foregoing provisions shall affect the right of the Holder to convert this Note into Class A Shares as set forth in Article 3 prior to the effective date of such Merger Event.
- (c) The above provisions of this Section 4.3 shall similarly apply to successive Merger Events.

4.4 No Adjustment. Notwithstanding anything herein to the contrary, no adjustment under this Article 4 shall be required to be made to the Conversion Rate if the Company receives written notice from the Holder that no such adjustment is required.

4.5 Certain Covenants.

- (a) The Company covenants that all Class A Shares delivered upon any conversion of this Note will be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.
 - (b) The Company covenants that if any Class A Shares to be provided for the purpose of any conversion of this Note require registration with or approval of any Governmental Authority under any Law before such Class A Shares may be validly issued upon conversion, the Company will, to the extent then permitted by applicable Law, secure such registration or approval, as the case may be.
 - (c) The Company further covenants to take all actions and obtain all approvals and registrations required with respect to any conversion of this Note into Class A Shares, and shall reserve for issuance an adequate number of Class A Shares, such that Class A Shares can be delivered in accordance with the terms of this Note upon any conversion hereunder. In addition, the Company further covenants to provide the Holder with a reasonably detailed description of the
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mechanics for the delivery of Class A Shares upon any conversion of this Note upon request.

- (d) The parties hereto acknowledge and agree that the Holder may only resell the Note, the Class A Shares delivered upon conversion of all or any portion of the Note pursuant to an effective registration statement or an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and other applicable securities Laws.

4.6 Notice for Certain Actions. In case of any (a) action by the Company or one of its Subsidiaries that would require an adjustment in the Conversion Rate pursuant to Section 4.1, (b) Merger Event or (c) voluntary or involuntary dissolution, liquidation or winding-up of the Company or any of its Subsidiaries, then, in each case (unless notice of such event is otherwise required pursuant to another provision of this Note), the Company shall deliver a written notice to the Holder, as promptly as possible but in any event at least 20 days prior to the applicable date hereinafter specified, stating (i) the date on which a record is to be taken for the purpose of such action by the Company or one of its Subsidiaries or, if a record is not to be taken, the date as of which the holders of Class A Shares, of record are to be determined for the purposes of such action by the Company or one of its Subsidiaries, or (ii) the date on which such Merger Event, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Class A Shares, of record shall be entitled to exchange their Class A Shares, for securities or other property deliverable upon such Merger Event, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such action by the Company or one of its Subsidiaries, dissolution, liquidation or winding-up unless otherwise provided for pursuant to any applicable Laws, the constitutional documents of the Company or any such Subsidiaries or any agreement or document to which the Company or any such Subsidiaries is a party; provided that nothing herein shall adversely affect any right, claim or other remedies, at law or contract, of the Holder arising as a result of or in connection with such failure or defect.

4.7 Termination of Depository Receipt Program. If the Class A Shares cease to be represented by ADSs issued under a depository receipt program sponsored by the Company, all references in this Note to the ADSs shall be deemed to have been replaced by a reference to the number of Class A Shares (and other property, if any) represented by the ADSs on the last day on which the ADSs represented the Class A Shares and as if the Class A Shares and the other property had been distributed to holders of the ADSs on that day. In addition, all references to the Last Reported Sale Price of the ADSs will be deemed to refer to the Last Reported Sale Price of the Class A Shares, and other appropriate adjustments, including adjustments to the Conversion Rate, will be made to reflect such change. In making such adjustments, where currency translations between U.S. dollars and any other currency are required, the exchange rate in effect on the date of determination will apply.

5. REPURCHASE

5.1 Repurchase on Maturity Date. Unless previously repurchased or surrendered and converted, the Company shall, without any action on the part of the Holder, redeem this Note in whole on the Maturity Date at a price (the "Maturity Repurchase Price")

equal to (A) the outstanding principal amount, plus (B) a premium which shall be equal to 2.0% of the outstanding principal amount, and plus (C) all other amounts due and payable on or in respect of the Note (including any accrued and unpaid interest on the Defaulted Amounts), if any.

5.2 Repurchase on Fundamental Change.

- (a) If a Fundamental Change occurs at any time, the Holder shall have the right, at its option, to require the Company to repurchase for cash all of the Note or any portion thereof on the date (the “Fundamental Change Repurchase Date”) notified in writing by the Company that is not less than twenty (20) Business Days and not more than thirty-five (35) Business Days following the date of the Fundamental Change Company Notice (as defined below) at a repurchase price (the “Fundamental Change Repurchase Price”) equal to (A) 100% of the principal amount (or such portion thereof, as the case may be), plus (B) a premium equal to the aggregate interest that would have accrued on such principal amount (or such portion thereof, as the case may be) over the period starting from (and including) the date of the Issue Date and ending on (and including) the Fundamental Change Repurchase Date, if the Note were to bear interest at a rate of 2.0% per annum, accrued daily and computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of actual days elapsed over a 30-day month, and plus (C) all other amounts due and payable on or in respect of the Note (including any accrued and unpaid interest on the Defaulted Amounts), if any.
 - (b) Repurchase of the Note under this Section 5.2 shall be made, at the option of the Holder thereof, upon: (i) delivery by the Holder to the Company of a duly completed notice (the “Fundamental Change Repurchase Notice”), in the form attached hereto as Exhibit A, on or before the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date; and (ii) delivery of the Note to the Company at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements for transfer), such delivery being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor. Each Fundamental Change Repurchase Notice shall state the portion of the principal amount of the Note to be repurchased.
 - (c) Notwithstanding anything herein to the contrary, the Holder shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date by delivery of a written notice of withdrawal to the Company in accordance with Section 5.5.
 - (d) On or before the twentieth (20th) calendar day after the occurrence of the effective date of a Fundamental Change, the Company shall provide to the Holder a written notice (the “Fundamental Change Company Notice”) of the occurrence of the effective date of the Fundamental Change and of the repurchase right at the option of the Holder arising as a result thereof. Each Fundamental Change Company Notice shall specify:
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- (i) the events causing the Fundamental Change;
- (ii) the date of the Fundamental Change;
- (iii) the last date on which the Holder may exercise the repurchase right pursuant to this Section 5.2;
- (iv) the Fundamental Change Repurchase Price;
- (v) the Fundamental Change Repurchase Date;
- (vi) if applicable, the Conversion Rate and any adjustments to the Conversion Rate;
- (vii) that the Note may be converted only if any Fundamental Change Repurchase Notice that has been delivered by the Holder has been withdrawn in accordance with the terms of this Note; and
- (viii) the procedures in accordance with the terms of this Note that the Holder must follow to require the Company to repurchase the Note.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holder's repurchase rights or affect the validity of the proceedings for the repurchase of the Note pursuant to this Section 5.2.

5.3 [Reserved]

5.4 No Repurchase in the Event of Acceleration. Notwithstanding the foregoing, the Note may not be repurchased by the Company on any date at the option of the Holder upon a Fundamental Change if the principal amount of the Note has been accelerated, and such acceleration has not been rescinded, on or prior to such date (except in the case of an acceleration resulting from a default by the Company in the payment of the Fundamental Change Repurchase Price with respect to the Note).

5.5 Withdrawal of Fundamental Change Repurchase Notice. A Fundamental Change Repurchase Notice may be withdrawn (in whole or in part) by means of a duly completed written notice of withdrawal delivered to the Company in accordance with this Section 5.5 at any time prior to the close of business on the second Business Day immediately preceding the relevant Fundamental Change Repurchase Date, specifying (a) the principal amount of the Note with respect to which such notice of withdrawal is being submitted and (b) the principal amount, if any, of the Note that remains subject to the original Fundamental Change Repurchase Notice.

5.6 Payment of Fundamental Change Repurchase Price.

- (a) On or prior to 10:00 a.m., New York time, on one Business Day prior to the relevant Fundamental Change Repurchase Date, the Company shall set aside, segregate and hold in trust for the benefit of the Holder an amount of money sufficient to repurchase the applicable portion of the Note to be repurchased at the Fundamental Change Repurchase Price. Payment for the applicable portion of the Note surrendered for repurchase (and not withdrawn in accordance with Section 5.5) will be made in accordance with Section 2.2 on the later of (i)
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such Fundamental Change Repurchase Date, provided the Holder has satisfied the conditions in this Article 5; and (ii) the time of delivery of the applicable portion of the Note by the Holder to the Company in the manner required by Section 5.2.

- (b) If by 10:00 a.m., New York time, on one Business Day prior to the relevant Fundamental Change Repurchase Date, the Company holds money sufficient to make payment on the applicable portion of the Note to be repurchased on such date, then, with respect to the applicable portion of the Note that has been properly surrendered for repurchase and not validly withdrawn in accordance with Section 5.5, on such Fundamental Change Repurchase Date, (i) such portion of the Note will cease to be outstanding, (ii) interest will cease to accrue on such portion of the Note and (iii) in the event the entire outstanding amount of the Note is surrendered by the Holder to be repurchased, all other rights of the Holder will terminate (other than the right to receive the Fundamental Change Repurchase Price).
- (c) Upon the surrender of the Note that is to be repurchased in part pursuant to this Article 5, the Company shall execute and deliver to the Holder a new Note in an authorized denomination equal in principal amount to the unreurchased portion of the Note.

5.7 **Covenant to Comply with Applicable Law upon Repurchase of the Note.** In connection with any repurchase offer, the Company will, if required, comply with all federal and state securities laws in connection with any offer by the Company to repurchase the Note so as to permit the rights and obligations under this Article 5 to be exercised in the time and in the manner specified in this Article 5.

6. COVENANTS

- 6.1 **Payment.** The Company covenants and agrees that it will cause to be paid the principal of, and any other amounts due and payable on, the Note or any Repurchase Price at the respective times and in accordance with the terms hereof.
 - 6.2 **Existence.** Subject to Article 7, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.
 - 6.3 **No Withholding.** All payments and deliveries made by, or on behalf of, the Company or any successor to the Company under or with respect to this Note, including, but not limited to, payments of principal (including, if applicable, the Fundamental Change Repurchase Price), payments of interest and deliveries of Class A Shares (together with payments of cash for any fractional Class A Share) upon any conversion of the Note, shall be made without withholding or deduction for, or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied by or within any jurisdiction in which the Company or any successor to the Company is, for tax purposes, organized or resident or doing business or through which payment is made or deemed made (or any political subdivision or taxing authority thereof or therein), unless such withholding or deduction is required by Law or by regulation or governmental policy having the force of law.
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- 6.4 Stay, Extension and Usury Laws. The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other Law that would prohibit or forgive the Company from paying all or any portion of the principal of or any other amounts due and payable on the Note or any Repurchase Price as contemplated herein, wherever enacted, now or at any time hereafter in force, or that may affect the covenants or the performance of the Note; and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such Law, and covenants that it will not, by resort to any such Law, hinder, delay or impede the execution of any power herein granted to the Holder, but will suffer and permit the execution of every such power as though no such Law had been enacted.
- 6.5 Compliance Certificates; Statements as to Defaults. The Company shall deliver to the Holder within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 31, 2019) and within 14 days of a written request made by the Holder a certificate executed by an executive officer of the Company stating that a review has been conducted of the Company's activities under this Note and whether the Company has fulfilled its obligations hereunder, and whether such officer thereof have knowledge of any Default by the Company that occurred during the previous year that is then continuing and, if so, specifying each such Default and the nature thereof. The Company shall deliver to the Holder, as soon as possible, and in any event within 30 days after the Company becomes aware of the occurrence of any Default if such Default is then continuing, an Officer's Certificate setting forth the details of such Default, its status and the action that the Company is taking or proposing to take in respect thereof.
- 6.6 Further Instruments and Acts. Upon request of the Holder, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Note.
- 6.7 New Note Instruments. Upon request of the Holder for the Note to be broken down into a number of note instruments of smaller principal amounts, the Company shall issue additional note instruments of such smaller principal amounts without charge within three (3) Business Days after the date of such request, provided that the existing note instrument of this Note shall be returned by the Holder to the Company for cancellation.
- 6.8 Replacement of Note. Upon the loss, theft, destruction or mutilation of this Note (and in the case of loss, theft or destruction, of indemnity from the Holder reasonably satisfactory to the Company, or in the case of mutilation, upon surrender and cancellation thereof), the Company shall at its own expense within five (5) Business Days execute and deliver to the Holder, in lieu thereof, a new Note, dated and bearing interest from the date hereof.
- 7. CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE**
- 7.1 Company May Consolidate, Etc. on Certain Terms. Subject to the provisions of Section 7.2, the Company shall not consolidate with, merge with or into, or sell, convey, transfer or lease all or substantially all of its properties and assets to another Person unless:
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- (a) the resulting, surviving or transferee Person (the “**Successor Company**”), if not the Company, shall be a corporation, organized and existing under the laws of the United States of America, any State thereof, the District of Columbia, the Cayman Islands, the British Virgin Islands, Bermuda or Hong Kong and the Successor Company (if not the Company) shall expressly assume all of the obligations of the Company under the Note and the Subscription Agreement; and
- (b) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing under this Note.

For purposes of this Section 7.1, the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of one or more Subsidiaries of the Company to another Person, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Company on a consolidated basis, shall be deemed to be the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of the Company to another Person.

- 7.2 **Successor Corporation to Be Substituted.** In case of any such consolidation, merger, sale, conveyance, transfer or lease and upon the assumption by the Successor Company of the due and punctual payment of the principal of and any other amounts due and payable on the Note and any Repurchase Price, the due and punctual delivery or payment, as the case may be, of any consideration due upon conversion of the Note and the due and punctual performance of all of the covenants and conditions of the Note to be performed by the Company, in each case in accordance with the terms hereof, such Successor Company (if not the Company) shall succeed to and, except in the case of a lease of all or substantially all of the Company’s properties and assets, shall be substituted for the Company, with the same effect as if it had been named herein as the party of the first part. In the event of any such consolidation, merger, sale, conveyance or transfer (but not in the case of a lease), upon compliance with this Article 7 the Person named as the “Company” in the first paragraph of the Note (or any successor that shall thereafter have become such in the manner prescribed in this Article 7) may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Note and from its obligations under the Note.
- 7.3 No consolidation, merger, sale, conveyance, transfer or lease shall be effective unless any such consolidation, merger, sale, conveyance, transfer or lease and any such assumption has complied with the provisions of this Article 7.

8. CANCELLATION

After all amounts at any time owing on the Note have been paid in full or upon the conversion of the Note in full pursuant to Article 3, the Note shall be surrendered to the Company for cancellation and shall not be reissued.

9. NO REDEMPTION OR PREPAYMENT

This Note shall not be redeemable or pre-paid by the Company prior to the Maturity Date, and no sinking fund is provided for this Note.

10. MISCELLANEOUS

- 10.1 Termination of Rights. All rights under this Note shall terminate when (a) all amounts at any time owing on the Note have been paid in full or (ii) the Note is converted in full pursuant to the terms set forth in Article 3.
- 10.2 Provisions Binding on Company's Successors. All the covenants, stipulations, promises and agreements of the Company contained in the Note shall bind its successors and assigns whether so expressed or not.
- 10.3 Official Acts by Successor Company. Any act or proceeding by any provision of the Note authorized or required to be done or performed by any board, committee or Officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation or other entity that shall at the time be the lawful sole successor of the Company.
- 10.4 Amendments and Waivers; Notice. The amendment or waiver of any term of the Note shall be subject to the written consent of the Holder and the Company. The provision of notice shall be made pursuant to the terms of the Subscription Agreement.
- 10.5 Transfer Restrictions.

- (a) The Holder covenants that the Note and/or the Class A Shares issuable upon conversion of the Note will only be disposed of pursuant to an effective registration statement under, and in compliance with the requirements of, the Securities Act or pursuant to an available exemption from the registration requirements of the Securities Act, and in compliance with any applicable state securities laws. In connection with any transfer of Notes and/or the Class A Shares issuable upon conversion of the Note other than pursuant to an effective registration statement or Rule 144 promulgated under the Securities Act ("Rule 144"), the Company may require the transferor to provide to the Company an opinion of counsel selected by the transferor, the form and substance of which opinion shall be reasonably acceptable to the Company with respect to transactions of a similar nature, to the effect that such transfer does not require registration under the Securities Act.
- (b) The Holder agrees to the imprinting, until no longer required by this Section 10.5, of the following legend on any certificate evidencing any of the Note or the Class A Shares issuable upon conversion of the Note:

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER ANY OTHER SECURITIES LAWS. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND OTHER APPLICABLE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

The legend set forth above shall be removed and the Company shall issue a certificate without such legend to the holder of the Note or the Class A Shares

issuable upon conversion of the Note if, unless otherwise required by state securities laws, (i) such securities are registered for resale under the Securities Act and are transferred to a Holder pursuant to a registration statement that is effective at the time of such transfer, (ii) in connection with a sale, assignment or other transfer, such Holder provides the Company with an opinion of counsel, the form and substance of which opinion shall be reasonably acceptable to the Company with respect to transactions of a similar nature, that the sale, assignment or transfer of the securities may be made without registration under the applicable requirements of the Securities Act or (iii) such Holder provides the Company with reasonable assurance that the securities can be sold, assigned or transferred pursuant to Rule 144 or have been sold under Rule 144.

- (c) Notwithstanding anything to the contrary herein, transfers of this Note shall be registered upon registration books maintained for such purpose by or on behalf of the Company. Prior to presentation of this Note for registration of transfer, the Company shall treat the registered holder hereof as the owner and holder of this Note for the purpose of receiving all payments of principal of and any other amounts due and payable on the Note and any Repurchase Price and for all other purposes whatsoever. This provision is intended to be a book entry system as defined in Treasury Regulations Section 5f.103-1(c) and shall be interpreted consistently therewith.

10.6 No Third Party Beneficiary. A person who is not a party to this Note shall have no right under the Contracts (Rights of Third Parties) Ordinance (Chapter 623) to enforce any of its terms.

10.7 Governing Law.

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF HONG KONG WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

10.8 Arbitration.

- (a) Any dispute, controversy, difference or claim arising out of or relating to this Note, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre ("HKIAC") under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted.
 - (b) The law of this arbitration clause shall be Hong Kong law.
 - (c) The seat of arbitration shall be Hong Kong.
 - (d) The number of arbitrators shall be three. The arbitrators shall be appointed in accordance with the HKIAC rules. The arbitration proceedings shall be conducted in English.
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- (e) It shall not be incompatible with this arbitration agreement for any party to seek interim or conservatory relief from courts of competent jurisdiction before the constitution of the arbitral tribunal.

- 10.9 Force Majeure. In no event shall the Holder be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Holder shall use reasonable efforts to resume performance as soon as practicable under the circumstances.
- 10.10 Calculations. Except as otherwise provided herein, the Company shall be responsible for making all calculations called for under the Note. These calculations include, but are not limited to, determinations of the Last Reported Sale Prices, accrued interest payable on the Note, if any, and the Conversion Rate of the Note. The Company shall make all these calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on the Holder. The Company shall provide a schedule of its calculations to the Holder.
- 10.11 Delays or Omissions. No delay or failure by any party to insist on the strict performance of any provision of the Note, or to exercise any power, right or remedy, will be deemed a waiver or impairment of such performance, power, right or remedy or of any other provision of the Note, nor shall it be construed to be a waiver of any breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring.
- 10.12 Interpretation. If any claim is made by a party relating to any conflict, omission or ambiguity in the provisions of the Note, no presumption or burden of proof or persuasion will be implied because the Note was prepared by or at the request of any party or its counsel.

[The remainder of this page has been deliberately left blank]

IN WITNESS WHEREOF, the Company has caused the Note to be issued on the date first above written.

COMPANY:

NIO Inc.

By: _____

Name:

Title:

Exhibit A

[FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE]

To: [Name of Company]

The undersigned Holder of this Note hereby acknowledges receipt of a notice from NIO Inc. (the "Company") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to pay to the Holder in accordance with Section 5.2 of this Note the entire principal amount of this Note, or the portion thereof below designated, and the premium amount below calculated in accordance with Section 5.2(a)(B).

Principal amount to be repaid (if less than all): US\$

Premium: US\$

Dated:

[NAME OF HOLDER]

By:

Name:

Capacity:



Exhibit B

Form of 2022 Convertible Note

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (AS AMENDED, THE “SECURITIES ACT”) OR UNDER THE SECURITIES LAWS OF ANY OTHER JURISDICTIONS. THESE SECURITIES MAY NOT BE TRANSFERRED, SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED: (A) IN THE ABSENCE OF (1) AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (2) AN EXEMPTION OR QUALIFICATION UNDER APPLICABLE SECURITIES LAWS, AND (B) UNLESS IN COMPLIANCE WITH THE CONVERTIBLE NOTES SUBSCRIPTION AGREEMENT BETWEEN THE COMPANY AND HUANG RIVER INVESTMENT LIMITED, DATED SEPTEMBER 4, 2019 (THE “SUBSCRIPTION AGREEMENT”). ANY ATTEMPT TO TRANSFER, SELL, PLEDGE OR HYPOTHECATE THIS SECURITY IN VIOLATION OF THESE RESTRICTIONS OR ANY OTHER RESTRICTIONS SET FORTH IN THE SUBSCRIPTION AGREEMENT SHALL BE VOID.

CONVERTIBLE SENIOR NOTE

US\$50,000,000

September ____, 2019

Subject to the terms and conditions of this Convertible Senior Note due 2022 (the “Note”), for good and valuable consideration received, NIO Inc., an exempted company incorporated with limited liability under the laws of the Cayman Islands (the “Company”), promises to pay to the order of Huang River Investment Limited, a company incorporated under the laws of the British Virgin Islands (such party and any other permitted transferee, the “Holder”), the principal amount of US\$50,000,000, plus other amounts payable provided below, on []¹ (the “Maturity Date”), or such earlier date as may be otherwise provided herein, unless the outstanding principal is settled in accordance with Article 3 of the Note.

The Note is issued pursuant to, and in accordance with, the Convertible Notes Subscription Agreement, dated September 4, 2019 (the “Subscription Agreement”), between the Company and the Holder and is subject to the provisions thereof. Unless the context requires otherwise, capitalized terms used herein shall have the meaning set forth in Article 1 of this Note.

The following is a statement of the rights of the Holder of the Note and the terms and conditions to which the Note is subject, and to which the Holder hereof, by the acceptance of the Note, agrees:

1. DEFINITIONS

“ADS” means an American Depositary Share, each of which represents one Class A Share as of the date of this Note.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person; provided, that

¹ NTD: the 3rd anniversary of the Issue Date.

none of the Company, nor any of its Subsidiaries shall be considered an Affiliate of the Purchaser. For purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” have correlative meanings.

“Board of Directors” means the board of directors of the Company or a committee of such board duly authorized to act for it hereunder.

“Business Day” means any day other than a Saturday, Sunday or another day on which commercial banks in the People’s Republic of China (the “PRC” or “China”, which for the purpose of this Agreement shall exclude Hong Kong SAR, Macau SAR and Taiwan), Hong Kong SAR or New York are required or authorized by law or executive order to be closed.

“Capital Stock” means for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity.

“Class A Shares” means Class A ordinary shares, par value US\$0.00025 per share, in the share capital of the Company.

“Class B Shares” means the Class B ordinary shares, par value US\$0.00025 per share, in the share capital of the Company.

“Class C Shares” means the Class C ordinary shares, par value US\$0.00025 per share, in the share capital of the Company.

“Clause A Distribution” shall have the meaning ascribed to such term in Section 4.1(c).

“Clause B Distribution” shall have the meaning ascribed to such term in Section 4.1(c).

“Clause C Distribution” shall have the meaning ascribed to such term in Section 4.1(c).

“close of business” means 5:00 p.m. (New York City time).

“Common Equity” of any Person means ordinary share capital or Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

“Company” shall have the meaning ascribed to such term in the Preamble.

“Control” (including the terms “Controlled by” and “under common Control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of

the board of directors or similar body governing the affairs of such Person or securities that represent a majority of the outstanding voting securities of such Person.

“Conversion Date” shall have the meaning ascribed to such term in Section 3.3. “Conversion Notice” shall have the meaning ascribed to such term in Section 3.3.

“Conversion Period” shall mean the period starting from (and including the first anniversary of the Issue Date and prior to the close of business on the second Business Day immediately preceding the Maturity Date.

“Conversion Rate” shall have the meaning ascribed to such term in Section 3.2.

“Current Market Price” means, in respect of an ADS at a particular date, the volume-weighted average of the Last Reported Sale Prices for one ADS (carrying full entitlement to dividend) for the thirty (30) consecutive Trading Days ending on the Trading Day immediately preceding such date, provided that if at any time during the said thirty (30) Trading Day period the ADSs shall have been quoted ex-dividend and during some other part of that period the ADSs shall have been quoted cum-dividend then:

- (a) if the ADSs (or the Class A Ordinary Shares) to be issued in such circumstances do not rank for the dividend in question, the quotations on the dates on which the ADSs shall have been quoted cum-dividend shall for the purpose of this definition be deemed to be the amount thereof reduced by an amount equal to the amount of that dividend per ADS; or
- (b) if the ADSs (or the Class A Ordinary Shares) to be issued in such circumstances rank for the dividend in question, the quotations on the dates on which the ADSs shall have been quoted ex-dividend shall for the purpose of this definition be deemed to be the amount thereof increased by such similar amount; and provided further that if the ADSs on each of the said thirty (30) Trading Days have been quoted cum-dividend in respect of a dividend which has been declared or announced but the ADSs or the Ordinary Shares to be issued do not rank for that dividend, the quotations on each of such dates shall for the purpose of this definition be deemed to be the amount thereof reduced by an amount equal to the amount of that dividend per ADS.

“Default” means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

“Defaulted Amounts” means any amounts on this Note (including, without limitation, the Repurchase Price, principal and interest) that are payable but are not punctually paid or duly provided for.

“Distributed Property” shall have the meaning ascribed to such term in Section 4.1(c).

“Early Repurchase Date” shall have the meaning ascribed to such term in Section 5.3(a).

“Early Repurchase Notice” shall have the meaning ascribed to such term in Section 5.3(a).

“Early Repurchase Price” shall have the meaning ascribed to such term in Section 5.3(a).

“EoD Notice” shall have the meaning ascribed to such term in Section 2.5(a)

“EoD Repurchase Price” shall have the meaning ascribed to such term in Section 2.5(a).

“Event of Default” shall have the meaning ascribed to such term in Section 2.4.

“Ex-Dividend Date” means the first date on which the Class A Shares, ADSs representing Class A Shares (or other applicable security), trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of the Class A Shares, ADSs representing Class A Shares (or other applicable security) on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

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

“Expiring Rights” means any rights, options or warrants to purchase Class A Shares or ADSs that expire on or prior to the Maturity Date.

“Fundamental Change” shall be deemed to have occurred if any of the following occurs after the Note is originally issued:

- (a) (A) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act, other than the Company, its Subsidiaries (together with the Company, the “Company Group”), the employee benefit plans of the Company and its Subsidiaries and any of the Permitted Holders, has become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of (i) the Company’s Common Equity (including Common Equity held in the form of ADSs) representing more than 50% of the voting power of the Company’s Common Equity or (ii) more than 50% of the outstanding Class A Shares (including Class A Shares held in the form of ADSs); or (B) the Permitted Holders (together with any of their respective Affiliates) have become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of Class A Shares (including Class A Shares held in the form of ADSs) representing, in the aggregate, more than 65% of the outstanding Class A Shares (including Class A Shares held in the form of ADSs);
 - (b) the consummation of (A) any recapitalization, reclassification or change of the Class A Shares or the ADSs (other than changes resulting from a subdivision or combination) as a result of which the Class A Shares or the ADSs would be converted into, or exchanged for, stock, other securities, other property or assets; (B) any share exchange, consolidation or merger of the Company, or
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any similar transaction, pursuant to which the Class A Shares or the ADSs will be converted into cash, securities or other property; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company Group, taken as a whole, to any Person other than one of the Company's wholly-owned Subsidiaries; provided, however, that a transaction described in clause (B) in which the holders of all classes of the Company's Common Equity immediately prior to such transaction own, directly or indirectly, more than 50% of all classes of Common Equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions vis-a-vis each other as such ownership immediately prior to such transaction shall not be a Fundamental Change pursuant to this clause (b);

- (c) the shareholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company;
- (d) the ADSs (or other Common Equity or ADSs in respect of the Common Equity underlying the Note) cease to be listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors); or
- (e) any change in or amendment to the laws, regulations and rules of the PRC or the official interpretation or official application thereof (a "change in law") that results in (A) the Company Group (as in existence immediately subsequent to such change in law), taken as a whole, being legally prohibited from operating substantially all of the business operations conducted by the Company Group (as in existence immediately prior to such change in law) as of the last date of the period described in the Company's consolidated financial statements for the most recent fiscal quarter and (B) the Company being unable to continue to derive substantially all of the economic benefits from the business operations conducted by the Company Group (as in existence immediately prior to such change in law) in the same manner as reflected in the Company's consolidated financial statements for the most recent fiscal quarter, provided, however, that a transaction or event described in clause (b) above shall not constitute a Fundamental Change if at least 90% of the consideration received or to be received by holders of the ADSs, excluding cash payments for any fractional Class A Shares and cash payments made in connection with dissenters' appraisal rights, in connection with such transaction or event consists of shares of Common Equity or ADSs or depositary receipts in respect of Common Equity that are listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors) or will be so listed or quoted when issued or exchanged in connection with such transaction or event and as a result of such transaction or event, the Note becomes convertible into such consideration, excluding cash payments for any fractional Class A Shares and cash payments made in connection with dissenters' appraisal rights.

"Fundamental Change Repurchase Date" shall have the meaning ascribed to such term in Section 5.2(a).

“Fundamental Change Repurchase Notice” shall have the meaning ascribed to such term in Section 5.2(b).

“Fundamental Change Repurchase Price” shall have the meaning ascribed to such term in Section 5.2(a).

“Fundamental Change Company Notice” shall have the meaning ascribed to such term in Section 5.2(d).

“GAAP” means the generally accepted accounting principles in the United States.

“Governmental Authority” means any federal, national, foreign, supranational, state, provincial, local, municipal or other political subdivision or other government, governmental, regulatory or administrative authority, agency, board, bureau, department, instrumentality or commission or any court, tribunal, judicial or arbitral body of competent jurisdiction or stock exchange.

“Holder” shall have the meaning ascribed to such term in the Preamble. “Issue Date” means September [] , 2019.

“Last Reported Sale Price” of the Class A Shares on any date shall be calculated as (i) the closing sale price per ADS (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the ADSs are traded divided by (ii) the applicable number of Class A Shares then represented by one ADS. If the ADSs are not listed for trading on a U.S. national or regional securities exchange on the relevant date, the “Last Reported Sale Price” shall be (i) the last quoted bid price for the ADSs in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization divided by (ii) the applicable number of Class A Shares then represented by one ADS. If the ADSs are not so quoted, the “Last Reported Sale Price” shall be (i) the average of the midpoint of the last bid and ask prices for the ADSs on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose divided by (ii) the applicable number of Class A Shares then represented by one ADS.

“Law” means any statute, law, ordinance, regulation, rule, code, order, judgment, writ, injunction, decree or requirement of law (including common law) enacted, issued, promulgated, enforced or entered by a Governmental Authority.

“Maturity Date” shall have the meaning ascribed to such term in the Preamble.

“Maturity Repurchase Price” shall have the meaning ascribed to such term in Section 5.1.

“Merger Event” shall have the meaning ascribed to such term in Section 4.3. “Note” shall have the meaning ascribed to such term in the Preamble.

“Officer” means, with respect to the Company, the Chairman, President, the Chief Executive Officer, the Secretary, any Executive or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title “Vice President”).

“Officer’s Certificate”, when used with respect to the Company, means a certificate that is delivered to the Holder and that is signed by the principal executive, financial or accounting officer of the Company who has been duly authorized to sign such certificate. To the extent applicable, each such certificate shall include (a) a statement that the person making such certificate is familiar with the requested action and the Note; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statement contained in such certificate is based; (c) a statement that, in the judgment of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed judgment as to whether or not such action is permitted by the Note; and (d) a statement as to whether or not, in the judgment of such person, such action is permitted by the Note, if and to the extent required by the provisions of the Note.

“open of business” means 9:00 a.m. (New York City time).

“Ordinary Shares” means collectively the Class A Shares, the Class B Shares and the Class C Shares.

“Permitted Holders” means Mr. Bin Li and Tencent Holdings Limited, together with any other respective “person” or “group” subject to aggregation of ordinary share capital of the Company (including ordinary share capital held in the form of ADSs) with any of the aforementioned person and entity under Section 13(d) of the Exchange Act.

“Person” means any individual, partnership, corporation, association, joint stock company, trust, joint venture, limited liability company, organization, entity or Governmental Authority.

“Record Date” means, with respect to any dividend, distribution or other transaction or event in which the holders of the Class A Shares (directly or in the form of ADSs) (or other applicable security) have the right to receive any cash, securities or other property or in which the Class A Shares (directly or in the form of ADSs) (or such other security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of security holders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors, statute, contract or otherwise).

“Reference Price” means the higher of (i) US\$3.12 per Class A Share, subject to the same adjustment to the Conversion Rate pursuant to this Note and (ii) the Current Market Price, in each case on the date of announcement of the issuance referred to under the provisions in Section 4.1.

“Reference Property” and “unit of Reference Property” have the meanings ascribed thereto in Section 4.3.

“Relevant Securities” shall have the meaning ascribed to such term in Section 4.1(f).

“Repurchase Price” means any of the Early Repurchase Price, the EoD Repurchase Price, the Fundamental Change Repurchase Price and the Maturity Repurchase Price, as applicable.

“Significant Subsidiary” means a Subsidiary of the Company that meets the definition of “significant subsidiary” in Article 1, Rule 1-02 of Regulation S-X under the Exchange Act.

“Spin-Off” shall have the meaning ascribed to such term in Section 4.1(c).

“Subscription Agreement” shall have the meaning ascribed to such term in the Preamble.

“Subsidiary” of any Person means any corporation, partnership, limited liability company, joint stock company, joint venture or other organization or entity, whether incorporated or unincorporated, which is Controlled by such Person and, for the avoidance of doubt, the Subsidiaries of any Person shall include any variable interest entity over which such Person or any of its Subsidiaries effects Control pursuant to contractual arrangements and which is consolidated with such Person in accordance with GAAP applicable to such Person.

“Successor Company” shall have the meaning ascribed to such term in Section 7.1(a).

“Trading Day” means a day on which (i) trading in the ADSs (or other security for which a closing sale price must be determined) generally occurs on The NASDAQ Global Market or, if the ADSs (or such other security) are not then listed on The NASDAQ Global Market, on the principal other U.S. national or regional securities exchange on which the ADSs (or such other security) are then listed or, if the ADSs (or such other security) are not then listed on a U.S. national or regional securities exchange, on the principal other market on which the ADSs (or such other security) are then traded and (ii) a Last Reported Sale Price with respect to the ADSs (or closing sale price for such other security) is available on such securities exchange or market; provided that if the ADSs (or such other security) are not so listed or traded, “Trading Day” means a Business Day.

“Transaction Documents” means the Note, the Subscription Agreement, the Convertible Senior Notes due 2020 and each of the other agreements and documents entered into or delivered by the Company, the Holder or their respective Affiliates in connection with the transactions contemplated by the Subscription Agreement.

“Trigger Event” shall have the meaning ascribed to such term in Section 4.1(c). “U.S.” means United States.

“US\$” or “\$” means the United States dollar, the lawful currency of the United States of America.

“Valuation Period” shall have the meaning ascribed to such term in Section 4.1(c).

2. INTEREST; PAYMENTS; DEFAULTS

- 2.1 Interest Rate. The principal amount outstanding under the Note shall not bear any interest, except for any interest on the Defaulted Amounts in accordance with Section 2.6.
- 2.2 Payment. All amounts payable on or in respect of the Note or the indebtedness evidenced hereby shall be paid to the Holder in U.S. dollars, in immediately available funds on the date that any principal (or interest, in accordance with Section 2.6) or any Repurchase Price is due and payable hereunder. The Company shall make such principal (or interest, in accordance with Section 2.6) or such payment of Repurchase Price to the Holder by wire transfer of immediately available funds for the account of the Holder or any of its Affiliates as may be designated by the Holder in writing from time to time; provided that any change to such accounts shall be notified in writing to the Company at least two (2) Business Days prior to the relevant payment date. If any such payment date or the Maturity Date falls on a day that is not a Business Day, the required payment will be made on the next succeeding Business Day and no interest on such payment will accrue in respect of the delay.
- 2.3 Seniority. The Note ranks (a) senior in right of payment to any of the Company's present and future indebtedness that is expressly subordinated in right of payment to the Note, (b) equal in right of payment to any of the Company's present and future indebtedness and other liabilities of the Company that are not so subordinated, (c) junior in right of payment to any of the Company's secured indebtedness to the extent of the value of the assets securing such indebtedness and (d) structurally junior to all indebtedness incurred by the Company's Subsidiaries and their other liabilities (including trade payables).
- 2.4 Events of Default. For purposes of the Note, an "Event of Default" shall be deemed to have occurred if any of the following events occurs, whatever the reason or cause for such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any Governmental Authority or otherwise:
- (a) Failure to Pay. The Company defaults in the payment of principal of the Note when due and payable on the Maturity Date or upon declaration of acceleration, or the Company defaults in the payment of any Repurchase Price upon any required repurchase, in each case in accordance with the terms hereof;
 - (b) Breach of Conversion Obligation. The Company fails to comply with its obligation to convert all or a portion of the Note in accordance with Article 3 upon Holder's exercise of its conversion rights and such failure continues for a period of five (5) Business Days;
 - (c) Breach of Article 7. The Company fails to comply with its obligations under Article 7;
 - (d) Breach of Other Obligations. The Company fails for sixty (60) days after written notice from the Holder has been received by the Company to comply with any of its other agreements contained in any Transaction Document to which the Company is a party;
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- (e) Cross Default. Any default by the Company or any Subsidiary of the Company with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of US\$50 million (or the foreign currency equivalent thereof) in the aggregate of the Company and/or any such Subsidiary, whether such indebtedness now exists or shall hereafter be created (A) resulting in such indebtedness becoming or being declared due and payable or (B) constituting a failure to pay the principal or interest of any such debt when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise;
 - (f) Adverse Judgment. A final judgment for the payment of US\$50 million (or the foreign currency equivalent thereof) or more (excluding any amounts covered by insurance) is rendered against the Company or any Subsidiary of the Company, which judgment is not paid, bonded or otherwise discharged or stayed within sixty (60) days after the earlier of (i) the date on which the right to appeal thereof has expired if no such appeal has commenced and (ii) the date on which all rights to appeal have been extinguished;
 - (g) Trading Suspension. The ADSs (or other Common Equity or ADSs in respect of the Common Equity underlying the Note) have been suspended from trading on any of The New York Stock Exchange, The NASDAQ Global Select market or The NASDAQ Global Market (or any of their respective successors) for a period of ninety (90) consecutive trading days or for more than one hundred and eighty (180) trading days in any twelve (12)-month period;
 - (h) Bankruptcy. The Company, any Significant Subsidiary or any other Subsidiaries which in the aggregate constitute a “significant subsidiary” as defined in rule 1-02(w) of Regulation S-X under the Exchange Act shall commence a voluntary case or other proceeding seeking liquidation, winding-up, reorganization or other relief with respect to the Company, such Significant Subsidiary or such other Subsidiaries or its or their debts under any bankruptcy, liquidation, insolvency or other similar Law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company, such Significant Subsidiary or such other Subsidiaries or all or substantially all of its or their property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its or their debts as they become due; or
 - (i) Involuntary Proceedings. An involuntary case or other proceeding shall be commenced against the Company, any Significant Subsidiary or any other Subsidiaries which in the aggregate constitute a “significant subsidiary” as defined in rule 1-02(w) of Regulation S-X under the Exchange Act seeking liquidation, winding-up, reorganization or other relief with respect to the Company, such Significant Subsidiary or such other Subsidiaries or its or their debts under any bankruptcy, liquidation, insolvency or other similar Law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company, such Significant
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Subsidiary or such other Subsidiaries or all or substantially all of its or their property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) consecutive days.

2.5 Consequences of Event of Default.

- (a) If one or more Events of Default shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any Governmental Authority), then,
- (i) in each and every such case (other than an Event of Default specified in Section 2.4(h) or Section 2.4(i)), unless the principal of the Note shall have already become due and payable, the Holder may by notice in writing to the Company (the “EoD Notice”) to require the Company to repurchase for cash all of the Note or any portion thereof on the fifth (5th) Business Day after the date of the EoD Notice at a repurchase price (the “EoD Repurchase Price”) equal to (A) 100% of the principal amount thereof, plus (B) a premium equal to the aggregate interest that would have accrued on such principal amount over the period starting from (and including) the date of the Issue Date and ending on (and including) the date when the EoD Repurchase Price is made in full, if the Note were to bear interest at a rate of 2.0% per annum, accrued daily and computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of actual days elapsed over a 30-day month, and plus (C) all other amounts due and payable on or in respect of the Note (including any accrued and unpaid interest on the Defaulted Amounts pursuant to Section 2.6), if any; or
- (ii) if an Event of Default specified in Section 2.4(h) or Section 2.4(i) occurs and is continuing, the Company shall promptly repurchase for cash all of the Note at a repurchase price equal to the EoD Repurchase Price without any action on the part of the Holder.
- (b) Section 2.5(a), however, is subject to the conditions that if, at any time after the outstanding principal of the Note shall have been so declared due and payable, and before any arbitral award for the payment of the monies due shall have been obtained or entered as hereinafter provided, the Company has paid or deposited with the Holder a sum sufficient to pay the outstanding principal of and any other amounts due and payable on the Note that shall have become due otherwise than by acceleration (with interest on the Defaulted Amounts), and if (1) rescission would not conflict with any such arbitral award and (2) any and all existing Events of Default under the Note, other than the nonpayment of the principal of and any other amounts due and payable on the Note that shall have become due solely by such acceleration, shall have been cured or waived, then and in every such case the Holder, by written notice to the Company, may waive all Default or Events of Default with respect to the Note and rescind and annul such declaration and its consequences and such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of the Note; but no such
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waiver or rescission and annulment shall extend to or shall affect any subsequent Default or Event of Default, or shall impair any right consequent thereon. Notwithstanding anything to the contrary herein, no such waiver or rescission and annulment shall extend to or shall affect any Default or Event of Default resulting from (i) the nonpayment of the principal of, or any other amounts due and payable on, the Note or (ii) a failure to pay or deliver, as the case may be, the consideration due upon conversion of the Note.

- 2.6 Defaulted Amounts. Any Defaulted Amounts shall accrue interest at a rate equal to three percent (3.0%) per annum accrued daily during the period from (and including) such relevant payment date and ending on (and including) the date on which such Defaulted Amounts and such interest thereon are fully paid, and such Defaulted Amounts together with such interest thereon pursuant to this Section 2.6 shall be paid by the Company to the Holder by wire transfer of immediately available funds pursuant to the procedures set forth in Section 2.2.

3. CONVERSION

- 3.1 Conversion by Holder. Subject to and upon compliance with the provisions of this Article 3, the Holder shall have the right, at the Holder's option, to convert all or any portion (if the portion to be converted is US\$1,000 principal amount or an integral thereof) of the Note to the Company's fully paid Class A Shares at the applicable Conversion Rate at any time during the Conversion Period.
- 3.2 Conversion Price; Conversion Rate. Subject to adjustments as provided in Article 4, the initial conversion price shall be equal to US\$3.12 per Class A Share, representing an initial conversion rate of 320.5128 Class A Shares (the "Conversion Rate") per US\$1,000 principal amount of the Note.
- 3.3 Conversion Procedure; Settlement Upon Conversion.
- (a) Subject to Section 3.3(b), this Note shall be deemed to have been converted immediately prior to the close of business on the date (the "Conversion Date") that the Holder has delivered a duly completed irrevocable written notice to the Company (the "Conversion Notice") and the Note for cancellation to the Company. Within five (5) Business Days after the delivery of the Note and the Conversion Notice to the Company, the Company shall (i) take all actions and execute all documents necessary to effect the issuance of the full number of Class A Shares to which the Holder shall be entitled in satisfaction of any conversion pursuant to Section 3.1, (ii) deliver to the Holder certificate(s) representing the number of Class A Shares delivered upon each such conversion, (iii) deliver to the Holder a certified copy of the register of members of the Company, reflecting the Holder's ownership of the Class A Shares delivered upon each such conversion, and (iv) subject to Section 3.3(b), cancel the Note. No Conversion Notice may be delivered and the Note may not be surrendered by a Holder for conversion thereof if the Holder has also delivered a Fundamental Change Repurchase Notice to the Company in respect of the Note and not validly withdrawn such Fundamental Change Repurchase Notice in accordance with Article 5.
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- (b) In the event the Holder surrenders this Note pursuant to Section 3.3(a) for partial conversion, the Company shall, in addition to cancelling the Note upon such surrender, execute and deliver to the Holder a new note denominated in U.S. dollars and in an aggregate principal amount equal to the unconverted portion of the surrendered Note, without payment of any service charge by the Holder.
- (c) If the Holder submits the Note for conversion, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the delivery of the Class A Shares upon such conversion of the Note, unless the tax is due because the Holder requests such Class A Shares to be issued in a name other than the Holder's name, in which case (i) if in the name of any Person which is an Affiliate of the Holder, the Company shall pay that tax or (ii) if in the name of any other Person, the Holder shall pay that tax. The Company shall pay the relevant fees for issuance of the Class A Shares and shall pay the relevant depository's fees for any future conversion of the issued Class A Shares into the ADSs.
- (d) Except as provided in Section 4.1, no adjustment shall be made for dividends on any Class A Shares delivered upon any conversion of this Note as provided in this Article 3.
- (e) Without prejudice to the Holder's right to receive the interest in accordance with Section 3.3(h), the Company's settlement of each conversion pursuant to this Article 3 shall be deemed to satisfy in full its obligation to pay the principal amount of the Note converted.
- (f) The Holder in whose name the certificate for any Class A Shares delivered upon conversion is registered shall be treated as a holder of record of such Class A Shares as of the close of business on the relevant Conversion Date. Upon a conversion of the entire outstanding amount of the Note, the Holder shall no longer be a holder of the Note surrendered for conversion.
- (g) The Company shall not issue any fractional Class A Share upon conversion of the Note and shall instead pay cash in lieu of any fractional Class A Share deliverable upon conversion based on the Last Reported Sale Price of the Class A Shares on the relevant Conversion Date.
- (h) Nothing in this Article 3 shall prejudice the Holder's entitlement to receive interest on any of the Defaulted Amounts in accordance with Section 2.6.

3.4 Without prejudice to any other provision in this Note, the Holder may elect to convert all or any portion (if the portion to be converted is US\$1,000 principal amount or an integral thereof) of the Note to ADSs (each representing one Class A Share) at the applicable Conversion Rate at any time during the Conversion Period and the provisions in this Article 3 shall apply *mutatis mutandis*; provided that, the Company shall pay (A) any documentary, stamp or similar issue or transfer tax due on the delivery of such ADSs upon conversion of the Note (or the issuance of the underlying Class A Shares), unless the tax is due because the Holder requests such ADSs to be issued in a name other than the Holder's name, in which case (i) if in the name of any Person which is an Affiliate of the Holder, the Company shall pay that tax or (ii) if in

the name of any other Person, the Holder shall pay that tax; and (B) the depositary's fees for issuance of such ADSs.

4. ADJUSTMENTS

- 4.1 Adjustment of Conversion Rate. If the number of Class A Shares represented by the ADSs is changed, after the date of this Note, for any reason other than one or more of the events described in this Section 4.1, the Company shall make an appropriate adjustment to the Conversion Rate such that the number of Class A Shares represented by the ADSs upon which any conversion of this Note is based remains the same.

Notwithstanding the adjustment provisions described in this Section 4.1, if the Company distributes to holders of the Class A Shares any cash, rights, options, warrants, shares of capital stock or similar equity interest, evidences of indebtedness or other assets or property of the Company (but excluding Expiring Rights) and a corresponding distribution is not made to holders of the ADSs, but, instead, the ADSs shall represent, in addition to Class A Shares, such cash, rights, options, warrants, shares of Capital Stock or similar equity interest, evidences of indebtedness or other assets or property of the Company, then an adjustment to the Conversion Rate described in this Section 4.1 shall not be made until and unless a corresponding distribution (if any) is made to holders of the ADSs, and such adjustment to the Conversion Rate shall be based on the distribution made to the holders of the ADSs and not on the distribution made to the holders of the Class A Shares. However, in the event that the Company issues or distributes to all holders of the Class A Shares any Expiring Rights, notwithstanding the immediately preceding sentence, the Company shall adjust the Conversion Rate pursuant to Section 4.1(b) (in the case of in-the-money Expiring Rights entitling holders of the Class A Shares for a period of not more than 45 calendar days after the announcement date of such issuance to subscribe for or purchase Class A Shares or ADSs) or Section 4.1(c) (in the case of all other Expiring Rights).

For the avoidance of doubt, if any event described in this Section 4.1 results in a change to the number of Class A Shares represented by the ADSs, then such change shall be deemed to satisfy the Company's obligation to effect the relevant adjustment to the Conversion Rate on account of such event to the extent such change produces the same economic result as the adjustment to the Conversion Rate that would otherwise have been on account of such event.

Subject to the foregoing, the Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs, except that the Company shall not make any adjustments to the Conversion Rate if the Holder participates (other than in the case of a share split or share combination), at the same time and upon the same terms as holders of the Class A Shares and solely as a result of holding the Note, in any of the transactions described in this Section 4.1, without having to convert the Note, as if it held a number of Class A Shares equal to the Conversion Rate, multiplied by the principal amount of the Note held by the Holder.

- (a) If the Company exclusively issues Class A Shares as a dividend or distribution on the Class A Shares, or if the Company effects a share split or share
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combination, the Conversion Rate shall be adjusted based on the following formula:

$$CR1 = CR_0 \times \frac{OS1}{OS_0}$$

where,

CR0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such dividend or distribution, or immediately prior to the close of business on the effective date of such share split or share combination, as applicable;

CR1 = the Conversion Rate in effect immediately after the close of business on such Record Date or immediately after the close of business on such effective date, as applicable;

OS0 = the number of Class A Shares outstanding immediately prior to the close of business on such Record Date or immediately prior to the close of business on such effective date, as applicable; and

OS1 = the number of Class A Shares outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

Any adjustment made under this Section 4.1(a) shall become effective immediately after the close of business on the Record Date for such dividend or distribution, or immediately after the open of business on the effective date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this Section 4.1(a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

- (b) If the Company issues to all or substantially all holders of the Class A Shares (directly in or in the form of ADSs) any rights, options or warrants entitling them, for a period of not more than 45 calendar days after the announcement date of such issuance, to subscribe for or purchase Class A Shares (directly or in the form of ADSs) at a price per Class A Share that is less than the average of the Last Reported Sale Prices of the Class A Shares, for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate shall be increased based on the following formula:

$$CR1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such issuance;

CR1 = the Conversion Rate in effect immediately after the close of business on such Record Date;

OS0 = the number of Class A Shares outstanding immediately prior to the close of business on such Record Date;

X = the total number of Class A Shares (directly or in the form of ADSs) deliverable pursuant to such rights, options or warrants; and

Y = the number of Class A Shares equal to (i) the aggregate price payable to exercise such rights, options or warrants, divided by (ii) the average of the Last Reported Sale Prices of the Class A Shares over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

Any increase made under this Section 4.1(b) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the close of business on the Record Date for the Class A Shares (directly or in the form of ADSs), as applicable, for such issuance. To the extent that Class A Shares or ADSs are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of Class A Shares actually delivered (directly or in the form of ADSs). If such rights, options or warrants are not so issued, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such the Record Date for such issuance had not occurred.

For purposes of this Section 4.1(b), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase Class A Shares (directly or in the form of ADSs) at a price per Class A Share that is less than such average of the Last Reported Sale Prices of the Class A Shares, for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement for such issuance, and in determining the aggregate offering price of such Class A Shares (directly or in the form of ADSs), there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors acting in good faith.

- (c) If the Company distributes shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire its Capital Stock or other securities, to all or substantially
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all holders of the Class A Shares (directly or in the form of ADSs), excluding (i) dividends, distributions or issuances as to which an adjustment was effected pursuant to Section 4.1(a) or Section 4.1(b), (ii) dividends or distributions paid exclusively in cash as to which an adjustment was effected pursuant to Section 4.1(d), and (iii) Spin-Offs as to which the provisions set forth below in this Section 4.1(c) shall apply (any of such shares of Capital Stock, evidences of indebtedness, other assets or property or rights, options or warrants to acquire Capital Stock or other securities of the Company, the "Distributed Property"), then the Conversion Rate shall be increased based on the following formula:

$$CR1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such distribution;

CR1 = the Conversion Rate in effect immediately after the close of business on such Record Date;

SP0 = the average of the Last Reported Sale Prices of the Class A Shares over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined by the Board of Directors acting in good faith) of the Distributed Property with respect to each outstanding Class A Share (directly or in the form of ADSs) on the Record Date for such distribution.

Any increase made under the portion of this Section 4.1(c) above shall become effective immediately after the close of business on the Record Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such distribution had not been declared. Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than "SP0" (as defined above), in lieu of the foregoing increase, the Holder shall receive, in respect of each US\$1,000 principal amount thereof, at the same time and upon the same terms as holders of the Class A Shares receive the Distributed Property, the amount and kind of Distributed Property the Holder would have received if the Holder owned a number of Class A Shares equal to the Conversion Rate in effect on the Record Date for the distribution.

With respect to an adjustment pursuant to this Section 4.1(c) where there has been a payment of a dividend or other distribution on the Class A Shares (directly or in the form of ADSs) of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, that are, or, when issued, will be, listed or admitted for

trading on a U.S. national securities exchange (a “Spin-Off”), the Conversion Rate shall be increased based on the following formula:

$$CR1 = CR_0 \times \frac{FMV + MP_0}{MP_0}$$

where,

CR₀ = the Conversion Rate in effect immediately prior to the end of the Valuation Period;

CR₁ = the Conversion Rate in effect immediately after the end of the Valuation Period;

FMV₀ = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Class A Shares (directly or in the form of ADSs) applicable to one Class A Share (determined by reference to the definition of Last Reported Sale Price as if references therein to the ADSs were to such Capital Stock or similar equity interest) over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the “Valuation Period”); and

MP₀ = the average of the Last Reported Sale Prices of the Class A Shares over the Valuation Period.

The adjustment to the Conversion Rate under the preceding paragraph shall occur on the last Trading Day of the Valuation Period; provided that in respect of any conversion during the Valuation Period, references in the portion of this Section 4.1(c) related to Spin-Offs to 10 Trading Days shall be deemed to be replaced with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date of such Spin-Off to, and including, the Conversion Date in determining the Conversion Rate.

For purposes of this Section 4.1(c) (and subject in all respect to Section 4.1(f)), rights, options or warrants distributed by the Company to all holders of the Class A Shares (directly or in the form of ADSs) entitling them to subscribe for or purchase shares of the Company’s Capital Stock, including Class A Shares (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events (“Trigger Event”): (i) are deemed to be transferred with such Class A Shares (directly or in the form of ADSs); (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Class A Shares (directly or in the form of ADSs), shall be deemed not to have been distributed for purposes of this Section 4.1(c) (and no adjustment to the Conversion Rate under this Section 4.1(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 4.1(c). If any such right, option or warrant, including any such existing rights, options or warrants

distributed prior to the date of this Note, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 4.1(c) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per Class A Share redemption or purchase price received by a holder or holders of Class A Shares (directly or in the form of ADSs) with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Class A Shares (directly or in the form of ADSs) as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of Section 4.1(a), Section 4.1(b) and this Section 4.1(c), any dividend or distribution to which this Section 4.1(c) is applicable that also includes one or both of:

- (A) a dividend or distribution of Class A Shares (directly or in the form of ADSs) to which Section 4.1(a) is applicable (the “Clause A Distribution”); or
 - (B) a dividend or distribution of rights, options or warrants to which Section 4.1(b) is applicable (the “Clause B Distribution”), then (1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 4.1(c) is applicable (the “Clause C Distribution”) and any Conversion Rate adjustment required by this Section 4.1(c) with respect to such Clause C Distribution shall then be made, and (2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by Section 4.1(a) and Section 4.1(b) with respect thereto shall then be made, except that, if determined by the Company (I) the “Record Date” of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Record Date of the Clause C Distribution and (II) any Class A Shares (directly or in
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the form of ADSs) included in the Clause A Distribution or Clause B Distribution shall be deemed not to be “outstanding immediately prior to the close of business on such Record Date or immediately after the open of business on such effective date, as applicable” within the meaning of Section 4.1(a) or “outstanding immediately prior to the close of business on such Record Date” within the meaning of Section 4.1(b).

- (d) If any cash dividend or distribution is made to all or substantially all holders of the Class A Shares (directly or in the form of ADSs), the Conversion Rate shall be adjusted based on the following formula:

$$CR1 = CRa \times \frac{SPa}{SPa - C}$$

where,

CR0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such dividend or distribution;

CR1 = the Conversion Rate in effect immediately after the close of business on such Record Date;

SP0 = the Last Reported Sale Price of the Class A Shares on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

C = the amount in cash per Class A Share the Company distributes to all or substantially all holders of the Class A Shares (directly or in the form of ADSs).

Any increase pursuant to this Section 4.1(d) shall become effective immediately after the close of business on the Record Date for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors determines not to make or pay such dividend or distribution, to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if “C” (as defined above) is equal to or greater than “SP0” (as defined above), in lieu of the foregoing increase, the Holder shall receive, for each US\$1,000 principal amount of the Note, at the same time and upon the same terms as holders of the Class A Shares (directly or in the form of ADSs), the amount of cash that the Holder would have received if the Holder owned a number of Class A Shares equal to the Conversion Rate on the Record Date for such cash dividend or distribution.

- (e) If the Company or any of its Subsidiaries make a payment in respect of a tender or exchange offer for the Class A Shares (directly or in the form of ADSs), to the extent that the cash and value of any other consideration included in the payment per Class A Share exceeds the average of the Last
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Reported Sale Prices of the Class A Shares over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + OS_1 \times SP}{OS_0 \times SP}$$

where,

CR₀ = the Conversion Rate in effect immediately prior to the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

CR₁ = the Conversion Rate in effect immediately after the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors acting in good faith) paid or payable for Class A Shares (directly or in the form of ADSs) purchased in such tender or exchange offer;

OS₀ = the number of Class A Shares outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase of all Class A Shares (directly or in the form of ADSs) accepted for purchase or exchange in such tender or exchange offer);

OS₁ = the number of Class A Shares outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all Class A Shares (directly or in the form of ADSs) accepted for purchase or exchange in such tender or exchange offer); and

SP = the average of the Last Reported Sale Prices of the Class A Shares over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires.

The adjustment to the Conversion Rate under this Section 4.1(e) shall occur at the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires; provided that in respect of any conversion within the 10 Trading Days immediately following, and including, the expiration date of any tender or exchange offer, references in this Section 4.1(e) with respect to 10 Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the expiration date of such tender or exchange offer to, and including, the Conversion Date in determining the Conversion Rate. No adjustment to the Conversion Rate under this Section 4.1(e) shall be made if such adjustment would result in a decrease in the Conversion Rate. In the event that the

Company or one of the Company's Subsidiaries is obligated to purchase Class A Shares (directly or in the form of ADSs) pursuant to any such tender offer or exchange offer, but the Company or such Subsidiary is permanently prevented by applicable Law from effecting any such purchases, or all such purchases are rescinded, then the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender offer or exchange offer had not been made.

- (f) If and whenever the Company shall issue any Ordinary Shares or ADSs (other than any issuance pursuant to this Note or on the exercise of any other rights, existing as of the Issue Date, of conversion into, or exchange or subscription for, Ordinary Shares or ADSs) or issue or grant options, warrants or other rights to purchase, subscribe, convert into, exercise or exchange for Ordinary Shares or ADSs (the "Relevant Securities", which for the purposes of this definition only excludes any Ordinary Shares, ADSs, option, warrant or other rights to purchase, subscribe, convert into, exercise or exchange for Ordinary Shares or ADSs issued or granted in accordance with any employee incentive plan of the Company), in each case at a consideration per ADS (on an as-converted and as-exercised basis and, in the case of any issuance of Ordinary Shares, such issue price per Ordinary Share multiplied by the applicable number of Ordinary Shares then represented by each ADS) which is less than the Reference Price, the Conversion Rate shall be adjusted based on the following formula:

$$CR1 = CR_0 \times \frac{A + B}{C}$$

where:

CR0 = the Conversion Rate in effect immediately prior to the date of issue of the Relevant Securities;

CR1 = the Conversion Rate in effect as from the date of issue of the Relevant Securities;

A = the number of Ordinary Shares in issue immediately before the issue of the Relevant Securities;

B = the number of Ordinary Shares which the aggregate consideration receivable for the issue of the Relevant Securities would purchase at the price equal to (x) Reference Price, multiplied by (y) the applicable number of Ordinary Shares then represented by each ADS; and

C = the number of Ordinary Shares in issue immediately after the issue of the Relevant Securities, provided that references to the number of Ordinary Shares in the above formula shall include all the Ordinary Shares to be issued assuming that all options, warrants or other rights to purchase, subscribe, convert into, exercise or exchange for Ordinary Shares or ADSs are exercised in full at the initial exercise price on the date of issue of such options, warrants or other rights.

- (g) Except as stated herein, the Company shall not adjust the Conversion Rate for the issuance of Class A Shares or ADSs or any securities convertible into or exchangeable for Class A Shares or ADSs or the right to purchase Class A Shares or ADSs or such convertible or exchangeable securities.
 - (h) In addition to those adjustments required by subsections (a), (b), (c), (d), (e) and (f) of this Section 4.1, and to the extent permitted by applicable Law and subject to the applicable rules of The NASDAQ Global Market and any other securities exchange on which any of the Company's securities are then listed, the Company from time to time may increase the Conversion Rate by any amount for a period of at least 20 Business Days if the Board of Directors determines that such increase would be in the Company's best interest, and the Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of the Class A Shares or the ADSs or rights to purchase Class A Shares or ADSs in connection with a dividend or distribution of Class A Shares or ADSs (or rights to acquire Class A Shares or ADSs) or similar event.
 - (i) Notwithstanding anything to the contrary in this Section 4.1, the Conversion Rate shall not be adjusted:
 - (i) upon the issuance of any Class A Shares or ADSs pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in Class A Shares or ADSs under any plan;
 - (ii) upon the issuance of any Class A Shares or ADSs or options or rights to purchase those Class A Shares or ADSs pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of the Company's Subsidiaries;
 - (iii) upon the issuance of any Class A Shares or ADSs pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) of this subsection and outstanding as of the date this Note was first issued;
 - (iv) solely for a change in the par value of the Class A Shares or ADSs; or
 - (v) for accrued and unpaid interest, if any.
 - (j) All calculations and other determinations under this Section 4.1 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000) of a Class A Shares.
 - (k) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to the Holder.
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- (l) For purposes of this Article 4, the number of Class A Shares at any time outstanding shall not include Class A Shares held in the treasury of the Company (directly or in the form of ADSs) so long as the Company does not pay any dividend or make any distribution on Class A Shares held in the treasury of the Company (directly or in the form of ADSs), but shall include Class A Shares issuable in respect of scrip certificates issued in lieu of fractions of Class A Shares.
- (m) For purposes of this Section 4.1, the “effective date” means the first date on which the ADSs trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

4.2 Adjustments of Prices. Whenever any provision of this Note requires the Company to calculate the Last Reported Sale Prices over a span of multiple days, the Board of Directors shall make appropriate adjustments to each to account for any adjustment to the Conversion Rate that becomes effective pursuant to Section 4.1, or any event requiring an adjustment to the Conversion Rate pursuant to Section 4.1 where the Record Date, effective date or expiration date, as the case may be, of the event occurs, at any time during the period when such Last Reported Sale Prices are to be calculated.

4.3 Effect of Recapitalizations, Reclassifications and Changes of the Class A Shares.

- (a) In the case of:
 - (i) any recapitalization, reclassification or change of the Class A Shares (other than changes resulting from a subdivision or combination),
 - (ii) any consolidation, merger, combination or similar transaction involving the Company,
 - (iii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and the Company’s Subsidiaries substantially as an entirety; or
 - (iv) any statutory share exchange, in each case, as a result of which the Class A Shares (directly or in the form of ADSs) would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a “Merger Event”), then, prior to or at the effective time of such Merger Event, the Company or the successor or purchasing Person, as the case may be, shall execute an amendment to this Note providing that, at and after the effective time of such Merger Event, the right to convert the Note shall be changed into a right to convert the Note into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of Class A Shares equal to the Conversion Rate immediately prior to such Merger Event would have owned or been entitled to receive (the “Reference Property”, with each “unit of Reference Property” meaning the kind and amount of Reference Property that
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a holder of one Class A Share is entitled to receive) upon such Merger Event; provided, however, that at and after the effective time of the Merger Event the number of Class A Shares otherwise deliverable upon any conversion of the Note in accordance with Article 3 shall instead be deliverable in the amount and type of Reference Property that a holder of that number of Class A Shares would have been entitled to receive in such Merger Event.

If the Merger Event causes the Class A Shares (directly or in the form of ADSs) to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of holder election), then (i) the Reference Property into which the Note will be convertible shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Class A Shares (directly or in the form of ADSs) that affirmatively make such an election, and (ii) the unit of Reference Property for purposes of the immediately preceding paragraph shall refer to the consideration referred to in clause (i) attributable to one Class A Shares. The Company shall provide written notice to the Holder of such weighted average as soon as practicable after such determination is made.

Such amendment described in the second immediately preceding paragraph shall provide for anti-dilution and other adjustments that shall be as nearly equivalent as is practicable to the adjustments provided for in this Article 4 (it being understood that no such adjustments shall be required with respect to any portion of the Reference Property that does not consist of shares of Common Equity (however evidenced) or depositary receipts in respect thereof). If, in the case of any Merger Event, the Reference Property includes shares of stock, securities or other property or assets (including cash or any combination thereof) of a Person other than the Company or the successor or purchasing Person, as the case may be, in such Merger Event, then such other Person shall also execute such amendment, and such amendment shall contain such additional provisions to protect the interests of the Holder, including the rights of the Holder to require the Company to repurchase this Note upon a Fundamental Change pursuant to Article 5 as the Board of Directors shall reasonably consider necessary by reason of the foregoing.

- (b) None of the foregoing provisions shall affect the right of the Holder to convert this Note into Class A Shares as set forth in Article 3 prior to the effective date of such Merger Event.
- (c) The above provisions of this Section 4.3 shall similarly apply to successive Merger Events.

4.4 No Adjustment. Notwithstanding anything herein to the contrary, no adjustment under this Article 4 shall be required to be made to the Conversion Rate if the Company receives written notice from the Holder that no such adjustment is required.

4.5 Certain Covenants.

- (a) The Company covenants that all Class A Shares delivered upon any conversion of this Note will be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.
- (b) The Company covenants that if any Class A Shares to be provided for the purpose of any conversion of this Note require registration with or approval of any Governmental Authority under any Law before such Class A Shares may be validly issued upon conversion, the Company will, to the extent then permitted by applicable Law, secure such registration or approval, as the case may be.
- (c) The Company further covenants to take all actions and obtain all approvals and registrations required with respect to any conversion of this Note into Class A Shares, and shall reserve for issuance an adequate number of Class A Shares, such that Class A Shares can be delivered in accordance with the terms of this Note upon any conversion hereunder. In addition, the Company further covenants to provide the Holder with a reasonably detailed description of the mechanics for the delivery of Class A Shares upon any conversion of this Note upon request.
- (d) The parties hereto acknowledge and agree that the Holder may only resell the Note, the Class A Shares delivered upon conversion of all or any portion of the Note pursuant to an effective registration statement or an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and other applicable securities Laws.

4.6 Notice for Certain Actions. In case of any (a) action by the Company or one of its Subsidiaries that would require an adjustment in the Conversion Rate pursuant to Section 4.1, (b) Merger Event or (c) voluntary or involuntary dissolution, liquidation or winding-up of the Company or any of its Subsidiaries, then, in each case (unless notice of such event is otherwise required pursuant to another provision of this Note), the Company shall deliver a written notice to the Holder, as promptly as possible but in any event at least 20 days prior to the applicable date hereinafter specified, stating (i) the date on which a record is to be taken for the purpose of such action by the Company or one of its Subsidiaries or, if a record is not to be taken, the date as of which the holders of Class A Shares, of record are to be determined for the purposes of such action by the Company or one of its Subsidiaries, or (ii) the date on which such Merger Event, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Class A Shares, of record shall be entitled to exchange their Class A Shares, for securities or other property deliverable upon such Merger Event, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such action by the Company or one of its Subsidiaries, dissolution, liquidation or winding-up unless otherwise provided for pursuant to any applicable Laws, the constitutional documents of the Company or any such Subsidiaries or any agreement or document to which the Company or any such Subsidiaries is a party; provided that nothing herein shall adversely affect any right, claim or other remedies, at law or contract, of the Holder arising as a result of or in connection with such failure or defect.

- 4.7 Termination of Depository Receipt Program. If the Class A Shares cease to be represented by ADSs issued under a depository receipt program sponsored by the Company, all references in this Note to the ADSs shall be deemed to have been replaced by a reference to the number of Class A Shares (and other property, if any) represented by the ADSs on the last day on which the ADSs represented the Class A Shares and as if the Class A Shares and the other property had been distributed to holders of the ADSs on that day. In addition, all references to the Last Reported Sale Price of the ADSs will be deemed to refer to the Last Reported Sale Price of the Class A Shares, and other appropriate adjustments, including adjustments to the Conversion Rate, will be made to reflect such change. In making such adjustments, where currency translations between U.S. dollars and any other currency are required, the exchange rate in effect on the date of determination will apply.

5. REPURCHASE

- 5.1 Repurchase on Maturity Date. Unless previously repurchased or surrendered and converted, the Company shall, without any action on the part of the Holder, redeem this Note in whole on the Maturity Date at a price (the “Maturity Repurchase Price”) equal to (A) the outstanding principal amount, plus (B) a premium which shall be equal to 6.0% of the outstanding principal amount, and plus (C) all other amounts due and payable on or in respect of the Note (including any accrued and unpaid interest on the Defaulted Amounts), if any.
- 5.2 Repurchase on Fundamental Change.
- (a) If a Fundamental Change occurs at any time, the Holder shall have the right, at its option, to require the Company to repurchase for cash all of the Note or any portion thereof on the date (the “Fundamental Change Repurchase Date”) notified in writing by the Company that is not less than twenty (20) Business Days and not more than thirty-five (35) Business Days following the date of the Fundamental Change Company Notice (as defined below) at a repurchase price (the “Fundamental Change Repurchase Price”) equal to (A) 100% of the principal amount (or such portion thereof, as the case may be), plus (B) a premium equal to the aggregate interest that would have accrued on such principal amount (or such portion thereof, as the case may be) over the period starting from (and including) the date of the Issue Date and ending on (and including) the Fundamental Change Repurchase Date, if the Note were to bear interest at a rate of 2.0% per annum, accrued daily and computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of actual days elapsed over a 30-day month, and plus (C) all other amounts due and payable on or in respect of the Note (including any accrued and unpaid interest on the Defaulted Amounts), if any.
- (b) Repurchase of the Note under this Section 5.2 shall be made, at the option of the Holder thereof, upon: (i) delivery by the Holder to the Company of a duly completed notice (the “Fundamental Change Repurchase Notice”), in the form attached hereto as Exhibit A, on or before the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date; and (ii) delivery of the Note to the Company at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements for transfer), such delivery being a condition to receipt by the
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Holder of the Fundamental Change Repurchase Price therefor. Each Fundamental Change Repurchase Notice shall state the portion of the principal amount of the Note to be repurchased.

- (c) Notwithstanding anything herein to the contrary, the Holder shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date by delivery of a written notice of withdrawal to the Company in accordance with Section 5.5.
- (d) On or before the twentieth (20th) calendar day after the occurrence of the effective date of a Fundamental Change, the Company shall provide to the Holder a written notice (the "Fundamental Change Company Notice") of the occurrence of the effective date of the Fundamental Change and of the repurchase right at the option of the Holder arising as a result thereof. Each Fundamental Change Company Notice shall specify:
 - (i) the events causing the Fundamental Change;
 - (ii) the date of the Fundamental Change;
 - (iii) the last date on which the Holder may exercise the repurchase right pursuant to this Section 5.2;
 - (iv) the Fundamental Change Repurchase Price;
 - (v) the Fundamental Change Repurchase Date;
 - (vi) if applicable, the Conversion Rate and any adjustments to the Conversion Rate;
 - (vii) that the Note may be converted only if any Fundamental Change Repurchase Notice that has been delivered by the Holder has been withdrawn in accordance with the terms of this Note; and
 - (viii) the procedures in accordance with the terms of this Note that the Holder must follow to require the Company to repurchase the Note.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holder's repurchase rights or affect the validity of the proceedings for the repurchase of the Note pursuant to this Section 5.2.

5.3 Early Repurchase at the option of the Holder.

- (a) The Holder shall have the right, at its option, to require the Company to repurchase for cash all of the Note or any portion thereof on February 1, 2022 (the "Early Repurchase Date"), by delivering a duly completed notice in writing to the Company (the "Early Repurchase Notice"), in the form attached hereto as Exhibit B, during the period starting from the open of business that is twenty (20) Business Days prior to the Early Repurchase Date until the close of business on the second Business Day immediately preceding the Early
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Repurchase Date, at a repurchase price (the “Early Repurchase Price”) equal to (A) 100% of the principal amount (or such portion thereof, as the case may be), plus (B) a premium equal to the aggregate interest that would have accrued on such principal amount (or such portion thereof, as the case may be) over the period starting from (and including) the date of the Issue Date and ending on (and including) the date when the Early Repurchase Date, if the Note were to bear interest at a rate of 2.0% per annum, accrued daily and computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of actual days elapsed over a 30-day month; and (C) all other amounts due and payable on or in respect of the Note (including any accrued and unpaid interest on the Defaulted Amounts), if any.

- (b) The Holder shall deliver of the Note to the Company at any time after delivery of the Early Repurchase Notice, such delivery being a condition to receipt by the Holder of the Early Repurchase Price therefor. The Early Repurchase Notice shall state the portion of the principal amount of the Note to be repurchased.
- (c) Notwithstanding anything herein to the contrary, the Holder shall have the right to withdraw, in whole or in part, such Early Repurchase Notice at any time prior to the close of business on the second Business Day immediately preceding the Early Repurchase Date by delivery of a written notice of withdrawal to the Company in accordance with Section 5.5.

5.4 No Repurchase in the Event of Acceleration. Notwithstanding the foregoing, the Note may not be repurchased by the Company on any date at the option of the Holder upon a Fundamental Change or on the Early Repurchase Date (as the case may be) if the principal amount of the Note has been accelerated, and such acceleration has not been rescinded, on or prior to such date (except in the case of an acceleration resulting from a default by the Company in the payment of the Fundamental Change Repurchase Price or the Early Repurchase Price (as the case may be) with respect to the Note).

5.5 Withdrawal of Fundamental Change Repurchase Notice or Early Repurchase Notice. A Fundamental Change Repurchase Notice or an Early Repurchase Notice (as the case may be) may be withdrawn (in whole or in part) by means of a duly completed written notice of withdrawal delivered to the Company in accordance with this Section 5.5 at any time prior to the close of business on the second Business Day immediately preceding the relevant Fundamental Change Repurchase Date or the Early Repurchase Date (as the case may be), specifying (a) the principal amount of the Note with respect to which such notice of withdrawal is being submitted and (b) the principal amount, if any, of the Note that remains subject to the original Fundamental Change Repurchase Notice or the original Early Repurchase Notice (as the case may be).

5.6 Payment of Fundamental Change Repurchase Price or Early Repurchase Price.

- (a) On or prior to 10:00 a.m., New York time, on one Business Day prior to the relevant Fundamental Change Repurchase Date or the Early Repurchase Date (as the case may be), the Company shall set aside, segregate and hold in trust for the benefit of the Holder an amount of money sufficient to repurchase the applicable portion of the Note to be repurchased at the Fundamental Change



Repurchase Price or the Early Repurchase Price (as the case may be). Payment for the applicable portion of the Note surrendered for repurchase (and not withdrawn in accordance with Section 5.5) will be made in accordance with Section 2.2 on the later of (i) such Fundamental Change Repurchase Date or the Early Repurchase Date (as the case may be), provided the Holder has satisfied the conditions in this Article 5; and (ii) the time of delivery of the applicable portion of the Note by the Holder to the Company in the manner required by Section 5.2 or Section 5.3 (as the case may be).

- (b) If by 10:00 a.m., New York time, on one Business Day prior to the relevant Fundamental Change Repurchase Date or the Early Repurchase Date (as the case may be), the Company holds money sufficient to make payment on the applicable portion of the Note to be repurchased on such date, then, with respect to the applicable portion of the Note that has been properly surrendered for repurchase and not validly withdrawn in accordance with Section 5.5, on such Fundamental Change Repurchase Date or the Early Repurchase Date (as the case may be), (i) such portion of the Note will cease to be outstanding, (ii) interest will cease to accrue on such portion of the Note and (iii) in the event the entire outstanding amount of the Note is surrendered by the Holder to be repurchased, all other rights of the Holder will terminate (other than the right to receive the Fundamental Change Repurchase Price or the Early Repurchase Price (as the case may be)).
- (c) Upon the surrender of the Note that is to be repurchased in part pursuant to this Article 5, the Company shall execute and deliver to the Holder a new Note in an authorized denomination equal in principal amount to the unreurchased portion of the Note.

5.7 **Covenant to Comply with Applicable Law upon Repurchase of the Note.** In connection with any repurchase offer, the Company will, if required, comply with all federal and state securities laws in connection with any offer by the Company to repurchase the Note so as to permit the rights and obligations under this Article 5 to be exercised in the time and in the manner specified in this Article 5.

6. COVENANTS

- 6.1 **Payment.** The Company covenants and agrees that it will cause to be paid the principal of, and any other amounts due and payable on, the Note or any Repurchase Price at the respective times and in accordance with the terms hereof.
 - 6.2 **Existence.** Subject to Article 7, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.
 - 6.3 **No Withholding.** All payments and deliveries made by, or on behalf of, the Company or any successor to the Company under or with respect to this Note, including, but not limited to, payments of principal (including, if applicable, the Fundamental Change Repurchase Price), payments of interest and deliveries of Class A Shares (together with payments of cash for any fractional Class A Share) upon any conversion of the Note, shall be made without withholding or deduction for, or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied by or within any jurisdiction in which the Company or any
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successor to the Company is, for tax purposes, organized or resident or doing business or through which payment is made or deemed made (or any political subdivision or taxing authority thereof or therein), unless such withholding or deduction is required by Law or by regulation or governmental policy having the force of law.

- 6.4 Stay, Extension and Usury Laws. The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other Law that would prohibit or forgive the Company from paying all or any portion of the principal of or any other amounts due and payable on the Note or any Repurchase Price as contemplated herein, wherever enacted, now or at any time hereafter in force, or that may affect the covenants or the performance of the Note; and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such Law, and covenants that it will not, by resort to any such Law, hinder, delay or impede the execution of any power herein granted to the Holder, but will suffer and permit the execution of every such power as though no such Law had been enacted.
- 6.5 Compliance Certificates; Statements as to Defaults. The Company shall deliver to the Holder within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 31, 2019) and within 14 days of a written request made by the Holder a certificate executed by an executive officer of the Company stating that a review has been conducted of the Company's activities under this Note and whether the Company has fulfilled its obligations hereunder, and whether such officer thereof have knowledge of any Default by the Company that occurred during the previous year that is then continuing and, if so, specifying each such Default and the nature thereof. The Company shall deliver to the Holder, as soon as possible, and in any event within 30 days after the Company becomes aware of the occurrence of any Default if such Default is then continuing, an Officer's Certificate setting forth the details of such Default, its status and the action that the Company is taking or proposing to take in respect thereof.
- 6.6 Further Instruments and Acts. Upon request of the Holder, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Note.
- 6.7 New Note Instruments. Upon request of the Holder for the Note to be broken down into a number of note instruments of smaller principal amounts, the Company shall issue additional note instruments of such smaller principal amounts without charge within three (3) Business Days after the date of such request, provided that the existing note instrument of this Note shall be returned by the Holder to the Company for cancellation.
- 6.8 Replacement of Note. Upon the loss, theft, destruction or mutilation of this Note (and in the case of loss, theft or destruction, of indemnity from the Holder reasonably satisfactory to the Company, or in the case of mutilation, upon surrender and cancellation thereof), the Company shall at its own expense within five (5) Business Days execute and deliver to the Holder, in lieu thereof, a new Note, dated and bearing interest from the date hereof.
- 7. CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE**
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- 7.1 Company May Consolidate, Etc. on Certain Terms. Subject to the provisions of Section 7.2, the Company shall not consolidate with, merge with or into, or sell, convey, transfer or lease all or substantially all of its properties and assets to another Person unless:
- (a) the resulting, surviving or transferee Person (the “Successor Company”), if not the Company, shall be a corporation, organized and existing under the laws of the United States of America, any State thereof, the District of Columbia, the Cayman Islands, the British Virgin Islands, Bermuda or Hong Kong and the Successor Company (if not the Company) shall expressly assume all of the obligations of the Company under the Note and the Subscription Agreement; and
 - (b) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing under this Note.

For purposes of this Section 7.1, the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of one or more Subsidiaries of the Company to another Person, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Company on a consolidated basis, shall be deemed to be the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of the Company to another Person.

- 7.2 Successor Corporation to Be Substituted. In case of any such consolidation, merger, sale, conveyance, transfer or lease and upon the assumption by the Successor Company of the due and punctual payment of the principal of and any other amounts due and payable on the Note and any Repurchase Price, the due and punctual delivery or payment, as the case may be, of any consideration due upon conversion of the Note and the due and punctual performance of all of the covenants and conditions of the Note to be performed by the Company, in each case in accordance with the terms hereof, such Successor Company (if not the Company) shall succeed to and, except in the case of a lease of all or substantially all of the Company’s properties and assets, shall be substituted for the Company, with the same effect as if it had been named herein as the party of the first part. In the event of any such consolidation, merger, sale, conveyance or transfer (but not in the case of a lease), upon compliance with this Article 7 the Person named as the “Company” in the first paragraph of the Note (or any successor that shall thereafter have become such in the manner prescribed in this Article 7) may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Note and from its obligations under the Note.
- 7.3 No consolidation, merger, sale, conveyance, transfer or lease shall be effective unless any such consolidation, merger, sale, conveyance, transfer or lease and any such assumption has complied with the provisions of this Article 7.

8. CANCELLATION

After all amounts at any time owing on the Note have been paid in full or upon the conversion of the Note in full pursuant to Article 3, the Note shall be surrendered to the Company for cancellation and shall not be reissued.

9. NO REDEMPTION OR PREPAYMENT

This Note shall not be redeemable or pre-paid by the Company prior to the Maturity Date, and no sinking fund is provided for this Note.

10. MISCELLANEOUS

10.1 Termination of Rights. All rights under this Note shall terminate when (a) all amounts at any time owing on the Note have been paid in full or (ii) the Note is converted in full pursuant to the terms set forth in Article 3.

10.2 Provisions Binding on Company's Successors. All the covenants, stipulations, promises and agreements of the Company contained in the Note shall bind its successors and assigns whether so expressed or not.

10.3 Official Acts by Successor Company. Any act or proceeding by any provision of the Note authorized or required to be done or performed by any board, committee or Officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation or other entity that shall at the time be the lawful sole successor of the Company.

10.4 Amendments and Waivers; Notice. The amendment or waiver of any term of the Note shall be subject to the written consent of the Holder and the Company. The provision of notice shall be made pursuant to the terms of the Subscription Agreement.

10.5 Transfer Restrictions.

(a) The Holder covenants that the Note and/or the Class A Shares issuable upon conversion of the Note will only be disposed of pursuant to an effective registration statement under, and in compliance with the requirements of, the Securities Act or pursuant to an available exemption from the registration requirements of the Securities Act, and in compliance with any applicable state securities laws. In connection with any transfer of Notes and/or the Class A Shares issuable upon conversion of the Note other than pursuant to an effective registration statement or Rule 144 promulgated under the Securities Act ("Rule 144"), the Company may require the transferor to provide to the Company an opinion of counsel selected by the transferor, the form and substance of which opinion shall be reasonably acceptable to the Company with respect to transactions of a similar nature, to the effect that such transfer does not require registration under the Securities Act.

(b) The Holder agrees to the imprinting, until no longer required by this Section 10.5, of the following legend on any certificate evidencing any of the Note or the Class A Shares issuable upon conversion of the Note:

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER ANY OTHER SECURITIES LAWS. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE

SECURITIES ACT AND OTHER APPLICABLE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

The legend set forth above shall be removed and the Company shall issue a certificate without such legend to the holder of the Note or the Class A Shares issuable upon conversion of the Note if, unless otherwise required by state securities laws, (i) such securities are registered for resale under the Securities Act and are transferred to a Holder pursuant to a registration statement that is effective at the time of such transfer, (ii) in connection with a sale, assignment or other transfer, such Holder provides the Company with an opinion of counsel, the form and substance of which opinion shall be reasonably acceptable to the Company with respect to transactions of a similar nature, that the sale, assignment or transfer of the securities may be made without registration under the applicable requirements of the Securities Act or (iii) such Holder provides the Company with reasonable assurance that the securities can be sold, assigned or transferred pursuant to Rule 144 or have been sold under Rule 144.

- (c) Notwithstanding anything to the contrary herein, transfers of this Note shall be registered upon registration books maintained for such purpose by or on behalf of the Company. Prior to presentation of this Note for registration of transfer, the Company shall treat the registered holder hereof as the owner and holder of this Note for the purpose of receiving all payments of principal of and any other amounts due and payable on the Note and any Repurchase Price and for all other purposes whatsoever. This provision is intended to be a book entry system as defined in Treasury Regulations Section 5f.103-1(c) and shall be interpreted consistently therewith.

10.6 No Third Party Beneficiary. A person who is not a party to this Note shall have no right under the Contracts (Rights of Third Parties) Ordinance (Chapter 623) to enforce any of its terms.

10.7 Governing Law.

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF HONG KONG WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

10.8 Arbitration.

- (a) Any dispute, controversy, difference or claim arising out of or relating to this Note, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre ("HKIAC") under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted.
 - (b) The law of this arbitration clause shall be Hong Kong law.
 - (c) The seat of arbitration shall be Hong Kong.
-

- (d) The number of arbitrators shall be three. The arbitrators shall be appointed in accordance with the HKIAC rules. The arbitration proceedings shall be conducted in English.
 - (e) It shall not be incompatible with this arbitration agreement for any party to seek interim or conservatory relief from courts of competent jurisdiction before the constitution of the arbitral tribunal.
- 10.9 Force Majeure. In no event shall the Holder be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Holder shall use reasonable efforts to resume performance as soon as practicable under the circumstances.
- 10.10 Calculations. Except as otherwise provided herein, the Company shall be responsible for making all calculations called for under the Note. These calculations include, but are not limited to, determinations of the Last Reported Sale Prices, accrued interest payable on the Note, if any, and the Conversion Rate of the Note. The Company shall make all these calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on the Holder. The Company shall provide a schedule of its calculations to the Holder.
- 10.11 Delays or Omissions. No delay or failure by any party to insist on the strict performance of any provision of the Note, or to exercise any power, right or remedy, will be deemed a waiver or impairment of such performance, power, right or remedy or of any other provision of the Note, nor shall it be construed to be a waiver of any breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring.
- 10.12 Interpretation. If any claim is made by a party relating to any conflict, omission or ambiguity in the provisions of the Note, no presumption or burden of proof or persuasion will be implied because the Note was prepared by or at the request of any party or its counsel.

[The remainder of this page has been deliberately left blank]

IN WITNESS WHEREOF, the Company has caused the Note to be issued on the date first above written.

COMPANY:

NIO Inc.

By: _____

Name:

Title:

Exhibit A

[FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE]

To: [Name of Company]

The undersigned Holder of this Note hereby acknowledges receipt of a notice from NIO Inc. (the "Company") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to pay to the Holder in accordance with Section 5.2 of this Note the entire principal amount of this Note, or the portion thereof below designated, and the premium amount below calculated in accordance with Section 5.2(a)(B).

Principal amount to be repaid (if less than all): US\$

Premium: US\$

Dated:

[NAME OF HOLDER]

By:

Name:

Capacity:

Exhibit B

[FORM OF EARLY REPURCHASE NOTICE]

To: [Name of Company]

The undersigned Holder of this Note hereby requests and instructs NIO Inc. (the "Company") to pay to the Holder in accordance with Section 5.3 of this Note the entire principal amount of this Note, or the portion thereof below designated, and the premium below amount calculated in accordance with Section 5.3(a)(B).

Principal amount to be repaid (if less than all): US\$

Premium: US\$

Dated:

[NAME OF HOLDER]

By:

Name:

Capacity:

CONVERTIBLE NOTES SUBSCRIPTION AGREEMENT

dated as of September 4, 2019

between

NIO INC.

and

SERENE VIEW LIMITED

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CONVERTIBLE NOTES SUBSCRIPTION AGREEMENT

CONVERTIBLE NOTES SUBSCRIPTION AGREEMENT (this "Agreement"), dated as of September 4, 2019, is entered into by and between (i) NIO INC., an exempted company with limited liability organized and existing under the laws of the Cayman Islands (the "Company"), and Serene View Limited, a company limited by shares incorporated under the laws of the British Virgin Islands (the "Purchaser").

RECITALS

WHEREAS, the Purchaser desires to subscribe for and purchase, and the Company desires to issue and sell, certain Convertible Notes pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements set forth herein, as well as other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each of the Parties hereto, intending to be legally bound, agrees as follows:

ARTICLE I DEFINITION AND INTERPRETATION

Section 1.01 Definition, Interpretation and Rules of Construction

(a) As used in this Agreement, the following terms have the following meanings:

"ADSs" means the American depository shares of the Company, each representing one (1) Class A Share of the Company as of the date hereof.

"ADRs" means the American depository receipts issued by the relevant depository evidencing the ADSs.

"Affiliate" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person; provided, that none of the Company, nor any of its Subsidiaries shall be considered an Affiliate of the Purchaser. For purposes of this definition, "control" when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have correlative meanings.

"Applicable Law" means, with respect to any Person, any transnational, domestic or foreign, state or local law (statutory, common or otherwise), constitution, treaty, convention, ordinance, code, rule, regulation, order, injunction, judgment, decree, ruling or other similar requirement enacted, adopted, promulgated or applied by a Governmental Authority that is binding upon or applicable to such Person, as amended unless expressly specified otherwise.

“Business Day” means any day other than a Saturday, Sunday or another day on which commercial banks in the People’s Republic of China (the “PRC” or “China”, which for the purpose of this Agreement shall exclude Hong Kong SAR, Macau SAR and Taiwan), Hong Kong SAR or New York are required or authorized by law or executive order to be closed.

“Class A Shares” means Class A ordinary shares, par value US\$0.00025 per share, in the share capital of the Company.

“Class B Shares” means the Class B ordinary shares, par value US\$0.00025 per share, in the share capital of the Company.

“Class C Shares” means the Class C ordinary shares, par value US\$0.00025 per share, in the share capital of the Company.

“Company SEC Documents” means all registration statements, proxy statements and other statements, reports, schedules, forms and other documents required to be filed or furnished by the Company with the SEC pursuant to the Exchange Act and the Securities Act and all exhibits included therein and financial statements, notes and schedules thereto and documents incorporated by reference therein, in each case, filed or furnished with the SEC.

“Company Securities” means (i) Ordinary Shares, (ii) securities convertible into or exchangeable for Ordinary Shares, (iii) any options, warrants or other rights to acquire Ordinary Shares (including any awards under the Employee Stock Incentive Plans) and (iv) any depository receipts or similar instruments issued in respect of Ordinary Shares.

“Condition” means any condition to any Party’s obligation to effect the Closing as set forth in ARTICLE III, and collectively, the “Conditions”.

“Employee Benefit Plan” means any written plan, program, policy, contract or other arrangement providing for severance, termination pay, deferred compensation, performance awards, share or share-related awards, housing funds, insurance arrangements, fringe benefits, perquisites, superannuation funds retirement benefits, pension schemes or other employee benefits, that is maintained, contributed to or required to be contributed to by the Company or any of its Subsidiaries for the benefit of any current or former employee, director, officer or independent contractor of the Company or any of its Subsidiaries, or with respect to which the Company or any of its Subsidiaries has or would reasonably expect to have any liability or obligation, other than, in each case, one that is sponsored and maintained by a Governmental Authority;

“Environment” means land (including, without limitation, surface land, sub-surface strata and natural and man-made structures), water (including, without limitation, coastal and inland waters, surface waters, ground waters and water in drains and sewers), and air.

“Environmental Law” means all Applicable Laws in relation to (i) pollution or contamination of the Environment; (ii) the production, storage, use, transport, disposal, release or discharge of hazardous substances; (iii) the exposure of any person or

other living organism to hazardous substances; or (iv) the creation of any noise, vibration or other material adverse impact on the Environment.

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

“Fundamental Warranties” means any representations and warranties of the Company contained in Section 4.01(a) to Section 4.01(f) and Section 4.01(i).

“GAAP” means generally accepted accounting principles in the United States.

“Material Adverse Effect” with respect to a party means any event, fact, circumstance or occurrence that, individually or in the aggregate with any other events, facts, circumstances or occurrences, results in or would reasonably be expected to result in a material adverse change in or a material adverse effect on (i) the financial condition, assets, liabilities, results of operations, business or operations of such party and its Subsidiaries taken as a whole, or (ii) the ability of such party to consummate the transactions contemplated by the Transaction Agreements and to timely perform its obligations hereunder and thereunder, except to the extent that any such material adverse effect results from (a) changes in generally accepted accounting principles that are generally applicable to comparable companies (to the extent not materially disproportionately affecting such party and its Subsidiaries), (b) changes in general economic and market conditions and capital market conditions or changes affecting any of the industries in which such party and its Subsidiaries operate generally (in each case to the extent not materially disproportionately affecting such party and its Subsidiaries), (c) the announcement or disclosure of this Agreement or any other Transaction Agreement or the consummation of the transactions hereunder or thereunder, or any act or omission required or specifically permitted by this Agreement and/or any other Transaction Agreement; (d) any pandemic, earthquake, typhoon, tornado or other natural disaster or similar force majeure event, (e) in the case of the Company, any failure to meet any internal or public projections, forecasts, or guidance, or (f) in the case of the Company, any change in the Company’s stock price or trading volume, in and of itself; provided, however, that the underlying causes giving rise to or contributing to any such change or failure under sub-clause (e) or (f) shall not be excluded in determining whether a Material Adverse Effect has occurred except to the extent such underlying causes are otherwise excluded pursuant to any of sub-clauses (a) through (d).

“Ordinary Shares” means, collectively, the Class A Shares, the Class B Shares and the Class C Shares.

“Parties” means, collectively, the Company and the Purchaser.

“Person” means an individual, corporation, partnership, limited liability company, association, trust or other entity or organization.

“Sarbanes-Oxley Act” means the Sarbanes-Oxley Act of 2002, as amended.

“SEC” means the Securities and Exchange Commission of the United States of America or any other federal agency at the time administering the Securities Act.

“Securities Act” means the Securities Act of 1933, as amended, and all of the rules and regulations promulgated thereunder.

“Shareholders’ Agreement” means Fifth Amended and Restated Shareholders’ Agreement, dated November 10, 2017, by and among the Company and the parties listed therein.

“Subsidiary” of a party means any organization or entity, whether incorporated or unincorporated, which is controlled by such party and, for the avoidance of doubt, the Subsidiaries of a party shall include any variable interest entity over which such party or any of its Subsidiaries effects control pursuant to contractual arrangements and which is consolidated with such party in accordance with generally accepted accounting principles applicable to such party and any Subsidiaries of such variable interest entity.

Significant Subsidiaries has the meaning given to it in Article 1, Rule 1-02 of Regulation S-X under the U.S. Securities Exchange Act of 1934, as amended.

“Transaction Agreements” means, collectively, this Agreement and each of the Convertible Notes and each of the other agreements and documents entered into or delivered by the parties hereto or their respective Affiliates in connection with the transactions contemplated by this Agreement.

“Underlying ADSs” means the ADSs issuable upon conversion and registration with the SEC in accordance with the Shareholders’ Agreement.

(b) Each of the following terms is defined in the Section set forth opposite such term:

<u>Term</u>	<u>Section</u>
“ <u>2020 Convertible Note</u> ”	2.01
“ <u>2022 Convertible Note</u> ”	2.01
“ <u>Agreement</u> ”	Preamble
“ <u>Bankruptcy and Equity Exception</u> ”	4.01(b)
“ <u>Claim Notice</u> ”	6.02(a)
“ <u>Closing</u> ”	2.02(a)
“ <u>Closing Date</u> ”	2.02(a)
“ <u>Company</u> ”	Preamble
“ <u>Confidential Information</u> ”	7.11(a)
“ <u>Control Contracts</u> ”	4.01(aa)
“ <u>Convertible Notes</u> ”	2.01
“ <u>Conversion Shares</u> ”	2.01
“ <u>Encumbrances</u> ”	4.01(d)
“ <u>ESOP</u> ”	4.01(i)
“ <u>EU</u> ”	4.01(ee)
“ <u>Recognized Investment Agreement</u> ”	3.02(h)

<u>Term</u>	<u>Section</u>
" <u>Recognized Investor</u> "	3.02(h)
" <u>Governmental Authority</u> "	3.01(a)
"HMT"	4.01(ee)
" <u>Indemnifying Party</u> "	6.01
" <u>Indemnified Party</u> "	6.01
" <u>Indemnity Notice</u> "	6.03
" <u>Intellectual Property</u> "	4.01(u)
" <u>Losses</u> "	6.01
" <u>Material Contracts</u> "	4.01(r)
" <u>NDRC</u> "	4.01(cc)
" <u>NDRC Circular</u> "	4.01(cc)
" <u>OFAC</u> "	4.01(ee)
" <u>Permits</u> "	4.01(g)
" <u>Purchase Price</u> "	2.01
" <u>Purchaser</u> "	Preamble
" <u>Returns</u> "	4.01(w)
" <u>Sanctions</u> "	4.01(ee)
" <u>Tax</u> "	4.01(r)
" <u>Third Party Claim</u> "	6.02(a)
" <u>UNSC</u> "	4.01(ee)

(c) In this Agreement, except to the extent otherwise provided or that the context otherwise requires:

(i) The words "Party" and "Parties" shall be construed to mean a party or the parties to this Agreement, and any reference to a party to this Agreement or any other agreement or document contemplated hereby shall include such party's successors and permitted assigns.

(ii) When a reference is made in this Agreement to an Article, Section, Exhibit, Schedule or clause, such reference is to an Article, Section, Exhibit, Schedule or clause of this Agreement.

(iii) The headings for this Agreement are for reference purposes only and do not affect in any way the meaning or interpretation of this Agreement.

(iv) Whenever the words "include," "includes" or "including" are used in this Agreement, they are deemed to be followed by the words "without limitation."

(v) The words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement.

(vi) All terms defined in this Agreement have the defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein.

(vii) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms.

(viii) The use of “or” is not intended to be exclusive unless expressly indicated otherwise.

(ix) The term “\$” means United States Dollars.

(x) The word “will” shall be construed to have the same meaning and effect as the word “shall.”

(xi) References to “law,” “laws” or to a particular statute or law shall be deemed also to include any and all Applicable Law.

(xii) A reference to any legislation or to any provision of any legislation shall include any modification, amendment, re-enactment thereof, any legislative provision substituted therefor and all rules, regulations and statutory instruments issued or related to such legislation.

(xiii) References herein to any gender include the other gender.

(xiv) The Parties hereto have each participated in the negotiation and drafting of this Agreement and if any ambiguity or question of interpretation should arise, this Agreement shall be construed as if drafted jointly by the Parties hereto and no presumption or burden of proof shall arise favoring or burdening any Party by virtue of the authorship of any of the provisions in this Agreement or any interim drafts thereof.

ARTICLE II

PURCHASE AND SALE; CLOSING

Section 2.01 Issuance, Sale and Purchase of the Convertible Notes.

Upon the terms and subject to the conditions of this Agreement, at Closing (as defined below), the Purchaser hereby agrees to subscribe for and purchase, and the Company hereby agrees to issue and sell to the Purchaser (i) Convertible Senior Note due 2020 with the principal amount of US\$50,000,000, in the form attached hereto as Exhibit A (the “2020 Convertible Note”), and (ii) Convertible Senior Note due 2022 with the principal amount of US\$50,000,000, in the form attached hereto as Exhibit B (the “2022 Convertible Note”, together with the 2020 Convertible Note, the “Convertible Notes”), each convertible into certain number of Class A Shares of the Company or ADSs at the option of the holder or holders of such Convertible Notes (the “Conversion Shares”) on, and subject to, the terms and conditions set forth in the Convertible Notes, for an aggregate purchase price of US\$100,000,000 (the “Purchase Price”).

Section 2.02 Closing.

(a) Closing. Subject to satisfaction or, to the extent permissible, waiver by the Party or Parties entitled to the benefit of the relevant Conditions, of all the Conditions (other than Conditions that by their nature are to be satisfied at Closing, but

subject to the satisfaction or, to the extent permissible, waiver of those Conditions at Closing), the closing of the sale and purchase of the Convertible Notes pursuant to this Section 2.02(a) (the “Closing”) shall take place remotely by electronic means on the third (3rd) Business Day after the date on which the Conditions (other than the Conditions that by their nature are to be satisfied at Closing, but subject to the satisfaction or, to the extent permissible, waiver of those Conditions at the Closing) are satisfied, or any other earlier time before such date as may be agreed by the Purchaser and the Company (the “Closing Date”).

(b) Payment and Delivery. At Closing,

(i) the Purchaser shall arrange for electronic funds transfer in immediately available funds of the Purchase Price in U.S. dollars to such bank account designated in writing by the Company to the Purchaser on the date of this Agreement; and

(ii) the Company shall deliver

(1) the duly executed 2020 Convertible Note dated as of the Closing Date and issued in the name of the Purchaser;

(2) the duly executed 2022 Convertible Note dated as of the Closing Date and issued in the name of the Purchaser;

(3) copies of the Recognized Investment Agreement referred to in Section 3.02(h);

(4) copies of all the written consents and waivers referred to in Section 3.02(i); and

(5) copies of the certificate referred to in Section 3.02(j).

(c) Restrictive Legend. Each certificate representing any Ordinary Shares received by the Purchaser after conversion of the Convertible Notes on, and subject to, the terms and conditions set forth in the applicable Convertible Notes shall be endorsed with the following legend:

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (AS AMENDED, THE “SECURITIES ACT”) OR UNDER THE SECURITIES LAWS OF ANY OTHER JURISDICTIONS. THESE SECURITIES MAY NOT BE TRANSFERRED, SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED: (A) IN THE ABSENCE OF (1) AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (2) AN EXEMPTION OR QUALIFICATION UNDER APPLICABLE SECURITIES LAWS, AND (B) UNLESS IN COMPLIANCE WITH THE CONVERTIBLE NOTES SUBSCRIPTION AGREEMENT BETWEEN THE COMPANY AND SERENE VIEW LIMITED, DATED SEPTEMBER 4, 2019 (THE “SUBSCRIPTION AGREEMENT”). ANY ATTEMPT TO TRANSFER, SELL,

ARTICLE III
CONDITIONS TO CLOSING

Section 3.01 Conditions to Obligations of Both Parties.

(a) No United States or non-United States federal, national, supranational, state, provincial, local or similar government, governmental, regulatory or administrative authority, branch, agency or commission or any court, tribunal, or arbitral or judicial body (including any grand jury) (each, a “Governmental Authority”) shall have enacted, issued, promulgated, enforced or entered any law, rule, regulation, judgment, injunction, order or decree (in each case, whether temporary, preliminary or permanent) that is in effect and restrains, enjoins, prevents, prohibits or otherwise makes illegal the consummation of the transactions contemplated by the Transaction Agreements.

(b) No action, suit, proceeding or investigation shall have been instituted or threatened by a Governmental Authority or any third party that seeks to restrain, enjoin, prevent, prohibit or otherwise make illegal the consummation of the transactions contemplated by the Transaction Agreements.

Section 3.02 Conditions to Obligations of Purchaser. The obligations of the Purchaser to subscribe for, purchase and pay for the Convertible Notes as contemplated by this Agreement are subject to the satisfaction, on or before the Closing Date, of the following conditions, any of which may be waived in writing by the Purchaser in its sole discretion:

(a) The Fundamental Warranties shall have been true and correct in all respects on the date of this Agreement and true and accurate on and as of the Closing Date as though such representations and warranties were made on and as of the Closing Date (except for representations and warranties that expressly speak as of a specific date, in which case on and as of such specified date). Other representations and warranties of the Company contained in Section 4.01 of this Agreement shall have been true and correct on the date of this Agreement, and true and correct in all material respects (or, if qualified by materiality or Material Adverse Effect, true and correct in all respects) on and as of the Closing Date as though such representations and warranties were made on and as of the Closing Date (except for representations and warranties that expressly speak as of a specified date, in which case on and as of such specified date).

(b) The Company shall have performed and complied with all, and not be in breach or default in under any agreements, covenants, conditions and obligations contained in this Agreement that are required to be performed or complied with on or before the Closing Date in all material aspects.

(c) There shall have been no Material Adverse Effect with respect to the Company.

(d) All corporate and other actions required to be taken by the Company in connection with the issuance and sale of the Convertible Notes and the Company's execution, delivery and performance of this Agreement and the other Transaction Agreements and the transactions contemplated hereby and thereby shall have been completed.

(e) The Purchaser shall have received an opinion, dated the Closing Date, of Maples and Calder (Hong Kong) LLP, Cayman counsel to the Company, in form and substance to the satisfaction of the Purchaser.

(f) No stop order or suspension of trading shall have been imposed by The New York Stock Exchange, the SEC or any other Governmental Authority with respect to the public trading of the ADSs.

(g) The Company shall have duly executed and delivered or shall have caused to be duly executed and delivered each Transaction Agreement to which it is a party to the Purchaser at or prior to Closing.

(h) The Company and certain Person or Persons that are not Affiliate of the Company or the Purchaser (the "Recognized Investor") as consented to by the Purchaser shall have entered into the Investment Agreement (the "Recognized Investment Agreement") in connection with certain investment in the Company or a Subsidiary of the Company by the Recognized Investor, in form and substance to the satisfaction of the Purchaser; and the Recognized Investment Agreement shall have been in full force and effect and not terminated by any parties thereto.

(i) All consents required to be obtained by the Company in connection with the issuance and sale of the Convertible Notes and the Company's execution, delivery and performance of this Agreement and the other Transaction Agreements and the transactions contemplated hereby and thereby shall have been obtained.

(j) The Purchaser shall have received a certificate signed by a director of the Company confirming the satisfaction of Sections 3.02 (a) to (i), above.

Section 3.03 Conditions to Obligations of the Company. The obligation of the Company to issue and sell the Convertible Notes to the Purchaser as contemplated by this Agreement are subject to the satisfaction, on or before the Closing Date, of each of the following conditions, any of which may be waived in writing by the Company in its sole discretion:

(a) The representations and warranties of the Purchaser contained in Section 4.02 of this Agreement shall have been true and correct in all material respects (or, if qualified by materiality or Material Adverse Effect, true and correct in all respects) on the date of this Agreement and on and as of the Closing Date as though such representations and warranties were made on and as of the Closing Date; provided that each representation and warranty of the Purchaser contained in Sections 4.02(a) to 4.02(c) of this Agreement shall have been true and correct in all respects on the date of this Agreement and on and as of the Closing Date as though such representations and warranties were made on and as of the Closing Date.

(b) The Purchaser shall have performed and complied with all, and not be in breach or default under any, agreements, covenants, conditions and obligations contained in this Agreement that are required to be performed or complied with on or before the Closing Date.

(c) The Purchaser shall have duly executed and delivered each Transaction Agreement to which it is a party to the Company at or prior to Closing.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES

Section 4.01 Representations and Warranties of the Company. The Company hereby represents and warrants to the Purchaser, as of the date hereof and as of the Closing Date that, except as set forth in the Company SEC Documents:

(a) Due Formation. The Company is an exempted company, duly incorporated, validly existing and in good standing under the laws of the Cayman Islands. Each of the Company and the Company's Subsidiaries is duly formed, validly existing and in good standing in the jurisdiction of its organization. Each of the Company and the Subsidiaries has all requisite power and authority to carry on its business as it is currently being conducted.

(b) Authority; Valid Agreement. The Company has all requisite legal power and authority to execute, deliver and perform its obligations under the Transaction Agreements to which it is a party and each other agreement, certificate, document and instrument to be executed by the Company pursuant to this Agreement and each other Transaction Agreement. The execution, delivery and performance by the Company of this Agreement and each other Transaction Agreement to which it is a party and the performance by the Company of its obligations hereunder and thereunder have been duly authorized by all necessary corporate action on the part of the Company. This Agreement has been, and each other Transaction Agreements to which it is a party will be duly executed and delivered by the Company and, assuming due authorization, execution and delivery by the Purchaser, constitutes (or, when executed and delivered in accordance herewith will constitute) a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as enforcement may be limited by general principles of equity, whether applied in a court of law or a court of equity, and by applicable bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar law affecting creditors' rights and remedies generally (the "Bankruptcy and Equity Exception"). Without limiting the generality of the foregoing, as of Closing, no approval by the shareholders of the Company is required in connection with this Agreement or other Transaction Agreements, the performance by the Company of its obligations hereunder or thereunder, or the consummation by the Company of the transactions contemplated hereby or thereby, except for those that have been obtained, waived or exempted at or prior to Closing.

(c) Convertible Notes. Each of 2020 Convertible Note and 2022 Convertible Note, when issued and delivered by the Company, will constitute direct, unconditional, unsecured and unsubordinated obligations of the Company and will at all times rank *pari passu* with all other present and future unconditional and

unsubordinated obligations of the Company (other than those preferred by Applicable Law that are mandatory and of general application).

(d) Conversion Shares. The Conversion Shares have been duly and validly authorized for issuance by the Company and, when issued and delivered by the Company to the Purchaser in accordance with the terms of each of the 2020 Convertible Note and 2022 Convertible Note will be (i) duly and validly issued, fully paid and non-assessable, and rank *pari passu* with, and carry the same rights in all aspects as, the other Class A Shares then in issue, (ii) entitled to all dividends and other distributions declared, paid or made thereon, and (iii) free and clear of any pledge, mortgage, security interest, encumbrance, lien, charge, assessment, right of first refusal, right of pre-emption, third party right or interest, claim or restriction of any kind or nature, except for restrictions arising under the Securities Act or as disclosed in the Company SEC Documents or created by virtue of the transactions under this Agreement (collectively, the “Encumbrances”). Upon entry of the Purchaser into the register of members of the Company as the legal owner of the Conversion Shares, the Company will transfer to the Purchaser good and valid title to the Conversion Shares, free and clear of any Encumbrances.

(e) Non-contravention. None of the execution and the delivery of this Agreement and other Transaction Agreements, nor the consummation of the transactions contemplated hereby or thereby, will (i) violate any provision of the organizational documents of the Company, (ii) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental entity or court to which the Company is subject, or (iii) conflict with, result in a breach of, constitute a default under, result in the acceleration of or creation of any Encumbrances under, or create in any party the right to accelerate, terminate, modify, or cancel, any agreement, contract, lease, license, instrument, or other arrangement to which the Company or any of its Subsidiaries is a party or by which the Company or any of its Subsidiaries is bound or to which any of the Company’s or any of its Subsidiaries’ assets are subject, except, in the case of (ii) and (iii) above, for such conflicts, breach, defaults, rights or violations, which would not reasonably be expected to result in a Material Adverse Effect. There is no action, suit or proceeding, pending or, to the knowledge of the Company, threatened against the Company that questions the validity of the Transaction Agreements or the right of the Company to enter into this Agreement or to consummate the transactions contemplated hereby or thereby.

(f) Consents and Approvals. None of the execution and delivery by the Company of this Agreement or any Transaction Agreement, nor the consummation by the Company of any of the transactions contemplated hereby or thereby, nor the performance by the Company of this Agreement or other Transaction Agreements in accordance with their respective terms requires the consent, approval, order or authorization of, or registration with, or the giving notice to, any governmental or public body or authority or any third party, except such as have been or will have been obtained, made or given on or prior to the Closing Date and except for any filing or notification required to be made with the SEC or the New York Stock Exchange regarding the issuance of the Convertible Notes or the Conversion Shares.

(g) Compliance with Laws. The business of the Company and its Subsidiaries is not being conducted, and has not been conducted at any time during

the three years prior to the date hereof, in violation of any applicable law (including, without limitation, the U.S. Foreign Corrupt Practices Act, the UK Bribery Act 2010, the PRC anti-bribery laws, the Bank Secrecy Act, as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) and the applicable anti-money laundering statutes of jurisdictions where the Company and its Subsidiaries conduct business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental or regulatory agency, in each case as supplemented, amended, re-enacted or replaced from time to time) or government order applicable to the Company in any material respect. Except as disclosed in the Company SEC Documents, the Company and each of its Subsidiaries have all permits, licenses, authorizations, consents, orders and approvals in material respects (collectively, “Permits”) that are required in order to carry on their business as presently conducted. Except as disclosed in the Company SEC Documents, all such Permits are in full force and effect and, to the knowledge of the Company, no suspension or cancellation of any of them is threatened. The Company has complied with the applicable listing and corporate governance rules and regulations of the New York Stock Exchange in all material respects. The Company and its Subsidiaries have taken no action designed to, or reasonably likely to have the effect of, delisting the ADSs from the New York Stock Exchange. There are no proceedings pending or, to the Company’s knowledge, threatened against the Company relating to the continued listing of the ADSs on the New York Stock Exchange and the Company has not received any notification that the SEC or the New York Stock Exchange is contemplating suspending or terminating such listing (or the applicable registration under the Exchange Act related thereto).

(h) Information. All information which has been provided by or on behalf of the Company or its authorized representatives to the Purchaser, its advisers or agents in the course of the due diligence conducted by the Purchaser and the negotiation leading to this Agreement and the other Transaction Agreements is true, complete and accurate.

(i) Capitalization.

(i) The authorized share capital of the Company consists of 4,000,000,000 Ordinary Shares, of which 832,665,477 Class A Shares (including 120,264,378 Class A Shares that have been reserved under the 2015 Stock Incentive Plan, 2016 Stock Incentive Plan, 2017 Stock Incentive Plan and 2018 Share Incentive Plan of the Company as disclosed in the Company SEC Documents (altogether, the “ESOP”), 132,030,222 Class B Shares and 148,500,000 Class C Shares are issued and outstanding as of the date hereof. All of the Company’s issued and outstanding Ordinary Shares are fully paid and non-assessable. As of the date of this Agreement, 8,201,639 Class A Shares have been authorized and reserved and available for issuance pursuant to the ESOP. Except as disclosed in the Company SEC Documents, the Company has no outstanding bonds, debentures, notes or other obligations, the holders of which have been granted the right to vote (or which are convertible into or exercisable for securities having the right to vote) with the shareholders of the Company on any matter. All issued and outstanding Ordinary Shares have been duly authorized

and validly issued and are fully paid and non-assessable, are free of preemptive rights, were issued in compliance with applicable U.S. and other applicable securities laws and were not issued in violation of any preemptive right, resale right, right of first refusal, or similar right and the ADSs have been duly listed and admitted and authorized for trading on the New York Stock Exchange.

(ii) Except as set forth above in this Section 4.01(i), there are no outstanding (A) shares of capital stock or voting securities of the Company, (B) securities of the Company convertible into or exchangeable for shares of capital stock or voting securities of the Company or (C) preemptive or other outstanding rights, options, warrants, conversion rights, “phantom” stock rights, stock appreciation rights, redemption rights, repurchase rights, agreements, arrangements, calls, commitments or rights of any kind that obligate the Company to issue or sell any shares of capital stock or other securities of the Company or any securities or obligations convertible or exchangeable into or exercisable for, or giving any person a right to subscribe for or acquire, any securities of the Company, and no securities or obligations evidencing such rights are authorized, issued or outstanding.

(iii) Except as disclosed in the Company SEC Documents, to the knowledge of the Company, there are no registration rights, rights of first offer, rights of first refusal, tag-along rights with respect to the securities of the Company or any Subsidiary of the Company that have been granted to any Person.

(iv) All outstanding shares of capital stock or other securities or ownership interests of the Subsidiaries are duly authorized, validly issued, fully paid and non-assessable and all such shares or other securities or ownership interests in any Subsidiary of the Company (except for any Subsidiary which is a variable interest entity over which the Company or any of its Subsidiaries effects control pursuant to the Control Contracts) are owned, directly or indirectly, by the Company free and clear of any Encumbrance.

(j) SEC Matters. The Company has filed or furnished, as applicable, on a timely basis, all registration statements, proxy statements and other documents required to be filed or furnished by it with the SEC, including the Company SEC Documents. None of the Subsidiaries is required to file periodic reports with the SEC pursuant to the Exchange Act. As of their respective effective dates (in the case of the Company SEC Documents that are registration statements filed pursuant to the requirements of the Securities Act) and as of their respective SEC filing dates (in the case of all other Company SEC Documents), or in each case, if amended prior to the date hereof, as of the date of the last such amendment: (A) each of the Company SEC Documents complied in all material respects with the applicable requirements of the Securities Act or the Exchange Act and the Sarbanes-Oxley Act of 2002, as amended, and any rules and regulations promulgated thereunder applicable to the Company SEC Documents (as the case may be) and (B) none of the Company SEC Documents contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(k) Financial Statements.

(i) The financial statements (including any related notes) contained in the Company SEC Documents: (A) complied as to form in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto, (B) were prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby (except (a) as may be otherwise specifically provided in such financial statements or the notes thereto, or (b) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed to summary statements) and (C) fairly present in all material respects the consolidated financial position of the Company and the Subsidiaries as of the respective dates thereof and the consolidated results of operations and cash flows of the Company and its Subsidiaries for the periods covered thereby (other than as may have corrected or clarified in a subsequent Company SEC Document), in each case except as disclosed therein and as permitted under the Exchange Act.

(ii) Neither the Company nor any of its Subsidiaries is a party to, nor has any commitment to become a party to, any joint venture, off-balance sheet partnership or any similar contract, agreement, arrangement or undertaking (including any contract, agreement, arrangement or undertaking relating to any transaction or relationship between or among one or more of the Company and/or any of its Subsidiaries, on the one hand, and any unconsolidated Affiliate, including any structured finance, special purpose or limited purpose entity or Person, on the other hand), or any “off-balance sheet arrangements” (as defined in Item 303(a) of Regulation S-K promulgated by the SEC), where the result, purpose or intended effect of such contract, agreement, arrangement or undertaking is to avoid disclosure of any material transaction involving, or material liabilities of, the Company or any of the Subsidiaries in the Company’s or such Subsidiary’s published financial statements or other Company SEC Documents.

(iii) PricewaterhouseCoopers Zhong Tian LLP, who have certified certain financial statements of the Company, are independent public accountants as required by the Securities Act and the rules and regulations of the SEC thereunder and are independent in accordance with the requirements of the U.S. Public Company Accounting Oversight Board.

(l) Internal Control and Procedures. The Company has established and maintains a system of internal control over financial reporting (as defined in Rule 13a-15 or 15d-15, as applicable, under the Exchange Act) sufficient to provide reasonable assurance regarding the reliability of financial reporting, including policies and procedures that (A) mandate the maintenance of records that in reasonable detail accurately and fairly reflect the material transactions and dispositions of the assets of the Company, (B) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures of the Company are being made only in accordance with appropriate authorizations of management and the board of directors of the Company and (C) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of the assets of the Company. Save as

disclosed in the Company SEC Documents, there are no material weaknesses or significant deficiencies in the Company's internal controls. The Company's auditors and the audit committee of the board of directors of the Company have not been advised of any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting. Since December 31, 2014, there has been no change in the Company's internal control over financial reporting that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting, except for the implementation of certain measures to address the material weakness in the Company's internal control over financial reporting that has been disclosed in the Company SEC Documents.

(m) No Undisclosed Liabilities. There are no liabilities of the Company or any Subsidiary of any kind, whether accrued, contingent, absolute, determined, determinable or otherwise, and there is no existing condition, situation or set of circumstances which could reasonably be expected to result in such a liability, other than: (i) liabilities reflected on, reserved against, or disclosed in the Company's unaudited consolidated balance sheet as of December 31, 2018, (ii) liabilities incurred since December 31, 2018 in the ordinary course of business consistent with past practices, (iii) any other undisclosed liabilities that are not material to the Company and its Subsidiaries on a consolidated basis, and (iv) any liabilities incurred as a result of the Company's performing the transactions contemplated by any Transaction Agreement. There are no unconsolidated Subsidiaries of the Company or any off-balance sheet arrangements of any type (including any off-balance sheet arrangement required to be disclosed pursuant to Item 303(a)(4) of Regulation S-K promulgated under the Securities Act) that have not been so described in the Company SEC Documents nor any obligations to enter into any such arrangements.

(n) Investment Company. The Company is not and, after giving effect to the offering and sale of the Convertible Notes, the consummation of the offering and the application of the proceeds hereof, will not be an "investment company," as such term is defined in the U.S. Investment Company Act of 1940, as amended.

(o) No Registration. Assuming the accuracy of the representations and warranties set forth in Section 4.02 of this Agreement, it is not necessary in connection with the issuance and sale of each of the 2020 Convertible Note and the 2022 Convertible Note (and, when issued, the Conversion Shares) to register each of the 2020 Convertible Note and the 2022 Convertible Note (and, when issued, the Conversion Shares) under the Securities Act or to qualify or register them under applicable U.S. state securities laws. No directed selling efforts (as defined in Rule 902 of Regulation S under the Securities Act) have been made by any of the Company, any of its Affiliates or any person acting on its behalf with respect to any Convertible Notes; and none of such Persons has taken any actions that would result in the sale of any of the Convertible Notes to the Purchaser under this Agreement requiring registration under the Securities Act; and the Company is a "foreign issuer" (as defined in Regulation S).

(p) Brokers. The Company has not dealt with any broker, finder, commission agent, placement agent or arranger in connection with the sale of the Convertible Notes, and the Company is not under any obligation to pay any broker's fee or commission in connection with the sale of the Convertible Notes.

(q) Absence of Changes. Since December 31, 2018, the Company and its Subsidiaries have conducted their business in the ordinary course of business consistent with past practice and there has not been

(i) any declaration, setting aside or payment of any dividend or other distribution with respect to any securities of the Company or any of its Subsidiaries (except for dividends or other distributions by any Subsidiary to the Company or to any of the Company's wholly owned Subsidiaries);

(ii) any issuances or sales of shares of capital stock or other securities or obligations convertible or exchangeable into or exercisable for, or giving any person a right to subscribe for or acquire, any securities of the Company or any of its Subsidiaries or any redemption, share splits, reclassifications, share dividends, share combinations or other recapitalizations of any such securities other than pursuant to any Employee Benefit Plan effective as at the date of this Agreement;

(iii) any amendment to the constitutional documents of the Company;

(iv) any redemption or repurchase of any equity securities of the Company; or

(v) any entry into any contract, agreement, instrument or other document in respect of any of the foregoing.

(r) Contracts. The Company has filed as exhibits to the Company SEC Documents all contracts, agreements and instruments (including all amendments thereto) to which the Company or any of its Subsidiaries is a party or by which it is bound and which is material to the business of the Company and its Subsidiaries, taken as a whole, and are required to be filed as an exhibit to the Company SEC Documents pursuant to Item 601(b)(4) or Item 601(b)(10) of Regulation S-K promulgated by the SEC (the "Material Contracts"). Each Material Contract is in full force and effect and, to the knowledge of the Company, enforceable against the counterparties of the Company or the Subsidiaries party thereto, except for the contracts and agreements that have already expired pursuant to the terms therein (which for the avoidance of doubt excludes those contracts or agreements that had been terminated by the other party thereto for cause). The Company and its Subsidiaries and, to the knowledge of the Company, each other party thereto, are not in default under, or in breach or violation of, any Material Contract, in all material respects. To the Company's knowledge, no event, fact or circumstance has occurred that will have or is reasonably expected to have a material adverse impact on the renewal or extension of any Material Contract.

(s) Litigation. Except as disclosed in the Company SEC Documents and to the knowledge of the Company, any officer and director of the Company or any of its Subsidiaries in their capacities as such, there are no pending or threatened material actions, claims, demands, investigations, examinations, indictments, litigations, suits or other criminal, civil or administrative or investigative proceedings

before or by any Governmental Authority or by any other person against the Company or any of its Subsidiaries or any proceedings that seek to restrain or enjoin the consummation of the transactions under the Transaction Agreements.

(t) Ownership of Assets. The Company and its Subsidiaries have good and marketable title to, or in the case of leased property and assets, have valid leasehold interests in, all property and assets (whether real, personal, tangible or intangible) reflected on the Company's consolidated unaudited balance sheet as of December 31, 2018 or acquired thereafter, except for properties and assets sold since such date in the ordinary course of business consistent with past practices and except where the failure to have such good and marketable title or valid leasehold interests would not have a Material Adverse Effect.

(u) Intellectual Property. All registered or unregistered, (i) patents, patentable inventions and other patent rights (including any divisions, continuations, continuations-in-part, reissues, reexaminations and interferences thereof); (ii) trademarks, service marks, trade dress, trade names, taglines, brand names, logos and corporate names and all goodwill related thereto; (iii) copyrights, mask works and designs; (iv) trade secrets, know-how, inventions, processes, procedures, databases, confidential business information and other proprietary information and rights; (v) computer software programs, including all source code, object code, specifications, designs and documentation related thereto; and (vi) domain names, Internet addresses and other computer identifiers, in each case that is material to the business of the Company or any of its Subsidiaries as currently being conducted (the "Intellectual Property") is either (a) owned by the Company or one or more of its Subsidiaries or (b) is used by the Company or one or more of its Subsidiaries pursuant to a valid license. To the knowledge of the Company, there are no material infringements or other material violations of any Intellectual Property owned by the Company or any of its Subsidiaries by any third party. The Company and its Subsidiaries have taken all necessary actions to maintain and protect each item of Intellectual Property. The conduct of the business of the Company and its Subsidiaries does not infringe or otherwise violate any intellectual property or other proprietary rights of any other person in material respects, and there is no action pending or, to the knowledge of the Company, threatened alleging any such infringement or violation or challenging the Company's or any of its Subsidiaries' rights in or to any Intellectual Property which, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

(v) Employment Matters.

(i) Neither the Company nor any of its Significant Subsidiaries is a party to or bound by any collective bargaining agreement or other labor union contract applicable to persons employed by the Company or any of its Significant Subsidiaries. There are no unfair labor practice complaints pending, or to the knowledge of the Company, threatened, against the Company or any of its Significant Subsidiaries before any Governmental Authority. Each of the Company and its Subsidiaries complies with all Applicable Laws relating to employment and employment practices (including without limitation, terms and conditions of employment, termination of employment, mandatory severance benefits, pension programs, social insurance programs, employee health and safety, equal employment, employment of veterans and the handicapped, and

prohibition of discrimination) in all material aspects. There is no material claim with respect to payment of wages, salary, overtime pay, withholding individual income taxes, social security fund or housing fund that has been asserted and is now pending or, to the knowledge of the Company, threatened before any Governmental Authority with respect to any persons currently or formerly employed by the Company or any of its Significant Subsidiaries.

(ii) Each Employee Benefit Plan is in compliance in all material respects with its terms and the requirements of all Applicable Laws. All employer and employee contributions to each Employee Benefit Plan required by the terms of such Employee Benefit Plan or by the Applicable Laws have been made, or, if applicable, accrued in accordance with normal accounting practices and in compliance in all material respects with its terms and the requirements of all Applicable Laws. Each Employee Benefit Plan required to be registered has been registered and has been maintained in good standing with applicable Governmental Authorities.

(w) Tax Status. Except as disclosed in the Company SEC Documents, the Company and each of its Subsidiaries (i) has made or filed in the appropriate jurisdictions all material foreign, federal and state income and all other tax returns required to be filed or maintained in connection with the calculation, determination, assessment or collection of any and all federal, state, local, foreign and other taxes, levies, fees, imposts, duties, governmental fees and charges of whatever kind (including any interest, penalties or additions to the tax imposed in connection therewith or with respect thereto) (each a "Tax"), including all amended returns required as a result of examination adjustments made by any Governmental Authority responsible for the imposition of any Tax (collectively, the "Returns"), and such Returns are true, correct and complete in all material respects, and (ii) has paid all material Taxes and other governmental assessments and charges shown or determined to be due on such Returns, except those being contested or will be contested in good faith. Except as disclosed in the Company SEC Documents, neither the Company nor any of its Subsidiaries has received notice regarding unpaid foreign, federal and state income in any amount or any Taxes in any material amount claimed to be due by the taxing authority of any jurisdiction, and the Company is not aware of any reasonable basis for such claim. No Returns filed by or on behalf of the Company or any of its Subsidiaries with respect to material Taxes are currently being audited, and neither the Company nor any of its Subsidiaries has received notice of any such audit.

(x) Tax Election. No Tax elections under the income tax laws of the United States have been made with respect to the Company or any of its Subsidiaries. None of the Company or any of its Subsidiaries is, or is at risk of being or becoming, classified as a "passive foreign investment company" or a "controlled foreign corporation" for United States federal income tax purposes.

(y) Solvency. Both before and after giving effect to the transactions contemplated by this Agreement and other Transaction Agreements, each of the Company and its Subsidiaries (i) will be solvent (in that both the fair value of its assets will not be less than the sum of its debts and that the present fair saleable value of its assets will not be less than the amount required to pay its probable liability on its recourse debts as they mature or become due) and (ii) will have adequate capital and

liquidity with which to engage in the their businesses as currently conducted and as described in the Company SEC Documents.

(z) Transactions with Affiliates and Employees. All related party transactions required to be disclosed under applicable rules of the New York Stock Exchange or the applicable securities law have been accurately described in the Company SEC Documents in all material respects. Any such related party transaction was entered into on terms and conditions no less favorable to the Company or its applicable Subsidiary than those applicable in comparable transactions between independent parties acting at arm's length.

(aa) Variable Interest Entities. The Company controls its variable interest entities, Beijing Wo Mai Wo Pai Auction Co., Ltd. and Beijing Secoo Trading Limited, through a series of contractual arrangements ("Control Contracts"), and there is no enforceable agreement or understanding to rescind, amend or change the nature of such captive structure or the terms of the Control Contracts.

(bb) Environment. Each of the Company and its Subsidiaries (i) has at all times complied and are presently in compliance with all applicable Environmental Laws in all material respects; (ii) has not received any notice, demand, claim, letter or request for information, relating to any alleged violation of Environmental Law, or otherwise identifies an environmental concern, health and safety concern or any other concern relating to the security and protection of people, property, flora and fauna relating thereto; (iii) possesses all approvals, consents or authorizations required under Environmental Laws for its business as presently conducted and there are no circumstances that could reasonably be expected to result in any such approvals, consents or authorizations being revoked, terminated, revised, amended or not renewed in the ordinary course of its business. There has been no incident of any occupational disease incurred by any employees of the Company or any of its Subsidiaries due to harmful factors present in their working environment or the nature of their work, and there are no other circumstances or conditions. There are no costs or liabilities associated with Environmental Laws (including, without limitation, any capital or operating expenditures required for clean-up, closure of properties or compliance with Environmental Laws or any permit, license or approval, any related constraints on operating activities and any potential liabilities to third parties) which would, singly or in the aggregate, have a Material Adverse Effect.

(cc) NDRC. The Company (through a PRC Subsidiary) obtained an enterprise foreign debt registration certificate dated January 21, 2019 with a validity period of one year (the "Registration Certificate") from the National Development and Reform Commission ("NDRC"). Such registration has not been withdrawn and is not subject to any condition which has not been fulfilled or performed, except for the filing by such PRC Subsidiary with NDRC of the requisite information and documents in relation to the issue and sale of the 2022 Convertible Note within ten (10) business days in the PRC after the date of issuance of the 2022 Convertible Note in accordance with the Circular on Promoting the Reform of the Administrative System on the Issuance by Enterprises of Foreign Debt Filings and Registrations (国家发展改革委关于推进企业发行外债备案登记制管理改革的通知(发改外资[2015]2044号)) (the "NDRC Circular").

(dd) Use of Proceeds. The application of the net proceeds from the issue and sale of the Convertible Notes will not (i) contravene any provision of any current and applicable laws or the current constituent documents of the Company or any of its Subsidiaries, (ii) contravene the terms or provisions of, or constitute a default under, any material indenture, mortgage, deed of trust, loan agreement, note, lease or other agreement or instrument currently binding upon the Company or any of its Subsidiaries, or (iii) contravene or violate the terms or provisions of any order or decree of any government entity having jurisdiction over the Company or any Subsidiary.

(ee) Sanctions.

(i) None of the Company, any of its Subsidiaries, or any director or officer thereof, or, to the Company's knowledge, any agent, affiliate, employee or other representative of the Company or any of its Subsidiaries, is a Person that is, or is owned or controlled by one or more Persons that are: (A) the subject of any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC"), the U.S. Department of State, the United Nations Security Council ("UNSC"), the European Union ("EU") (including under Council Regulation (EC) No. 194/2008), Her Majesty's Treasury ("HMT"), the State Secretariat for Economic Affairs, or other relevant sanctions authority (collectively, "Sanctions"), or engaged in any activities sanctionable under the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, the Iran Sanctions Act, the Iran Threat Reduction and Syria Human Rights Act, or any applicable executive order, or (B) located, organized or resident in a country or territory that is the subject of Sanctions (including, without limitation, Crimea, Cuba, Iran, North Korea and Syria).

(ii) The Company will not, directly or indirectly, use the proceeds of the offering received by the Company, or lend, contribute or otherwise make available such proceeds to any Subsidiary, Affiliate, joint venture partner or other Person: (A) to fund or facilitate any activities or business of or with any Person or in any country or territory that, at the time of such funding or facilitation, is the subject of Sanctions; or (B) in any other manner that will result in a violation of Sanctions by any Person (including any Person participating in the offering, whether as underwriter, advisor, investor or otherwise).

(iii) For the past 5 years, the Company and its Subsidiaries have not knowingly engaged in, are not now knowingly engaged in, and will not knowingly engage in, any dealings or transactions with any Person, or in any country or territory, that at the time of the dealing or transaction is or was the subject of Sanctions.

(ff) No Stamp Duty. Except as disclosed in the Company SEC Documents, no stamp, documentary, issuance, registration, transfer, withholding, capital gains, income or other taxes or duties are payable by or on behalf of the Purchasers, the Company or any of its Subsidiaries in the Cayman Islands, the PRC, any other jurisdiction in which the Company is organized, incorporated, engaged in business for tax purposes or is otherwise resident for tax purposes, any jurisdiction from or through which a payment is made by or on behalf of the Company or any political subdivision thereof or therein having the authority to tax, in connection with (i) the execution,

delivery or consummation of, or consummation of the transactions contemplated by, this Agreement, the 2020 Convertible Note or the 2022 Convertible Note, (ii) the creation, allotment and issuance of the Ordinary Shares represented by the Underlying ADSs to be issued upon conversion of the Conversion Shares, (iii) the deposit with the Depository of the Ordinary Shares represented by the Underlying ADSs by the Company against the issuance of ADRs evidencing the Underlying ADSs, (iv) the issuance and delivery of the Underlying ADSs, when issued by the Company upon conversion of the Conversion Shares, (v) the issuance, sale and delivery of the Conversion Shares to or for the accounts of the Purchaser, or (vi) the resale and delivery of the Conversion Shares by the Purchaser in the manner contemplated herein.

(gg) Labor disputes. No material labor dispute with the employees of the Company or any of its Subsidiaries exists, except as described in the Company SEC Documents, or, to the knowledge of the Company, is imminent; and, to the Company's knowledge, there is no existing, threatened or imminent labor disturbance by the employees of any of its principal suppliers, manufacturers or contractors that could have a Material Adverse Effect.

(hh) Insurance. The Company and each of its Subsidiaries are insured by insurers of recognized financial responsibility against such losses and risks and in such amounts as the Company believes are prudent and customary in the businesses in which they are engaged; neither the Company nor any of its Subsidiaries has been refused any insurance coverage sought or applied for; and neither the Company nor any of its Subsidiaries has any reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business at a cost that would not have a Material Adverse Effect, except in each case as described in the Company SEC Documents.

(ii) No Side Agreement. None of the Company nor any of its Subsidiaries has entered into any side agreement, side letter or any other agreements or documents or consummated any transactions of which true and accurate copies of such agreements or documents, or materials related to such transactions have not been provided to the Purchaser.

Section 4.02 Representations and Warranties of the Purchaser. The Purchaser hereby represents and warrants to the Company as of the date hereof and as of Closing, as follows:

(a) Due Formation. The Purchaser is duly formed, validly existing and in good standing in the jurisdiction of its organization. The Purchaser has all requisite power and authority to carry on its business as it is currently being conducted.

(b) Authority. The Purchaser has full power and authority to enter into, execute and deliver this Agreement and other Transaction Agreements to which it is to become a party and each other agreement, certificate, document and instrument to be executed and delivered by the Purchaser pursuant to this Agreement and each other Transaction Agreement and to perform its obligations hereunder and thereunder. The execution and delivery by the Purchaser of this Agreement and each

other Transaction Agreement to which it is or is to become a party and the performance by the Purchaser of its obligations hereunder and thereunder have been duly authorized by all requisite actions on its part.

(c) Valid Agreement. This Agreement has been, and each other Transaction Agreement to which it is to become a party will be, duly executed and delivered by the Purchaser and, assuming the due authorization, execution and delivery by the Company, constitutes (or, when executed and delivered in accordance herewith will constitute), the legal, valid and binding obligation of the Purchaser, enforceable against the Purchaser in accordance with its terms, subject to the Bankruptcy and Equity Exception and except as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies.

(d) Non-contravention. None of the execution and the delivery of this Agreement or any other Transaction Agreement, nor the consummation of the transactions contemplated hereby or thereby, by the Purchaser will violate any provision of the organizational documents of the Purchaser or violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any government, governmental entity or court to which the Purchaser is subject.

(e) Consents and Approvals. None of the execution and delivery by the Purchaser of this Agreement and the Transaction Agreements to which the Purchaser is to become a Party, nor the consummation by the Purchaser of any of the transactions contemplated hereby or thereby, nor the performance by the Purchaser of this Agreements or any such Transaction Agreement in accordance with its terms requires the consent, approval, order or authorization of, or registration with, or the giving notice to, any governmental or public body or authority or any third party, except such as have been or will have been obtained, made or given at or prior to Closing.

(f) Status and Investment Intent.

(i) Experience. The Purchaser has sufficient knowledge and experience in financial and business matters so as to be capable of evaluating the merits and risks of its investment in the relevant Convertible Notes. The Purchaser is capable of bearing the economic risks of such investment, including a complete loss of its investment.

(ii) Purchase Entirely for Own Account. The Purchaser is acquiring the Convertible Notes pursuant to this Agreement for investment for its own account for investment purposes only and not with the view to, or with any intention of, resale, distribution or other disposition thereof in a manner that would violate the registration requirements of the Securities Act.

(iii) Restricted Securities. The Purchaser acknowledges that the Convertible Notes are “restricted securities” that have not been registered under the Securities Act or any applicable state securities law. The Purchaser further acknowledges that, absent an effective registration under the Securities Act, the Securities may only be offered, sold or otherwise transferred (x) to the Company, (y) outside the United States in accordance with Rule 904 of

Regulation S under the Securities Act, or (z) pursuant to an exemption from registration under the Securities Act.

(iv) Not a U.S. Person. The Purchaser is either (i) not a “U.S. person” as defined in Rule 902 of Regulation S, or (ii) an “accredited investor” within the meaning of Rule 501(a) under Regulation D of the Securities Act.

ARTICLE V COVENANTS

Section 5.01 Conduct of Business of the Company. From the date hereof until the Closing Date,

(a) the Company shall, and the Company shall cause each of its Subsidiaries to (i) conduct its business and operations in the ordinary course of business consistent with past practice, and (ii) not take any action, or omit to take any action, that would reasonably be expected to make any of its representations and warranties in this Agreement untrue such that the Condition set out in Section 3.02(a) would not be satisfied at the Closing Date;

(b) the Company shall (i) take all actions necessary to continue the listing and trading of its ADSs on the New York Stock Exchange and shall comply with the Company’s reporting, filing and other obligations under the rules of the New York Stock Exchange, and (ii) file with the New York Stock Exchange a supplemental listing application in respect of the Conversion Shares, when issued and delivered in the manner contemplated by the applicable Convertible Notes; and

(c) the Company shall promptly notify the Purchaser of any event, condition or circumstance occurring prior to the Closing Date that would constitute a breach of any terms and conditions contained in this Agreement.

Section 5.02 FPI Status. Without limiting the generality of the foregoing, the Company shall promptly after the date hereof and reasonably prior to Closing take all necessary or desirable actions required to duly and validly rely on the exemption for foreign private issuers from applicable rules and regulations of the New York Stock Exchange with respect to corporate governance to rely on “home country practice” in connection with the transactions contemplated hereunder (including an exemption from any New York Stock Exchange rules that would otherwise require seeking shareholder approval in respect of such transactions), including without limitation, to the extent necessary, making disclosures, notices and filings to or with the SEC and New York Stock Exchange and obtaining an adequate opinion of counsel in respect of the home country practice exemption. The Company will use commercially reasonable efforts to continue the listing and trading of its ADSs on New York Stock Exchange and, in accordance, therewith, will use commercially reasonable efforts to comply in all respects with the Company’s reporting, filing and other obligations under the bylaws or rules of such market or exchange, as applicable.

Section 5.03 Further Assurances. From the date of this Agreement until Closing, the Parties shall each use their respective reasonable best efforts to fulfill or

obtain the fulfillment of the conditions precedent to the consummation of the transactions contemplated hereby and by the Transaction Agreements.

Section 5.04 No Contract. Without limiting the generality of the foregoing, the Company agrees that from the date hereof until the Closing Date, it shall not make (or otherwise enter into any contract with respect to) (x) any material change in any method of accounting or accounting practice by the Company or any of its Subsidiaries; (y) any declaration, setting aside or payment of any dividend or other distribution with respect to any securities of the Company or any of its Subsidiaries (except for dividends or other distributions by any Subsidiary to the Company or to any of the Company's Subsidiaries) or (z) any redemption, repurchase or other acquisition of any share capital of the Company or any of its Subsidiaries, except in each case for the avoidance of doubt as contemplated by the Transaction Agreements.

Section 5.05 Reservation of Shares. The Company shall ensure that it has sufficient number of duly authorized Ordinary Shares to comply with its obligations to issue the Conversion Shares pursuant to the terms of each of the 2020 Convertible Note and the 2022 Convertible Note.

Section 5.06 No Integrated Offering. The Company shall not, and shall cause its Affiliates and any Person acting on its or their behalf not to, directly or indirectly, make any offers or sales of any security or solicit any offers to buy any security, under circumstances that would require registration of the issuance of any of the Convertible Notes (and, when issued, the Conversion Shares) under the Securities Act whether through integration with prior offerings or otherwise.

Section 5.07 Use of Proceeds. The Company undertakes to reserve and dedicate the proceeds from the issue and sale of the Convertible Notes solely for capital expenditure and/or other working capital purpose in connection with the Company's daily operations, and/or any other purposes as approved by the Purchaser from time to time.

ARTICLE VI INDEMNIFICATION

Section 6.01 Indemnification. From and after the Closing Date and subject to Section 6.04, the Company (the "Indemnifying Party"), shall indemnify and hold the Purchaser, its Affiliates and their respective directors, officers, agents, successors and assigns (collectively, the "Indemnified Party") harmless from and against any losses, claims, damages, liabilities, judgments, fines, obligations, expenses and liabilities, including but not limited to any investigative, legal and other expenses incurred and any Taxes or levies that may be payable by reason of the indemnification of any indemnifiable loss hereunder (collectively, "Losses") by any Indemnified Party as a result of or arising out of: (i) breach of any representation or warranty of the Indemnifying Party contained in the Transaction Agreements; (ii) violation or nonperformance, partial or total, of any covenant or agreement of the Indemnifying Party contained in the Transaction Agreements; or (iii) any failure of the Indemnifying Party to comply with Applicable Laws in relation to Taxes to the extent required in connection with the transactions contemplated by this Agreement or any other Transaction Agreement and/or any conversion of the Convertible Notes. In calculating the amount of

any Losses of an Indemnified Party hereunder, there shall be subtracted the amount of any insurance proceeds and third-party payments received by the Indemnified Party with respect to such Losses, if any.

Section 6.02 Third Party Claims.

(a) If any third party shall notify any Indemnified Party in writing with respect to any matter involving a claim by such third party (a "Third Party Claim") which such Indemnified Party believes would give rise to a claim for indemnification against the Indemnifying Party under this ARTICLE VI, then the Indemnified Party shall promptly following receipt of notice of such claim (i) notify the Indemnifying Party thereof in writing and (ii) transmit to the Indemnifying Party a written notice ("Claim Notice") describing in reasonable detail the nature of the Third Party Claim, a copy of all papers served with respect to such claim (if any), and the basis of the Indemnified Party's request for indemnification under this Agreement. Notwithstanding the foregoing, no failure or delay in providing such notice shall constitute a waiver or otherwise modify the Indemnified Party's right to indemnity hereunder, except to the extent that the Indemnifying Party shall have been materially prejudiced by such failure or delay.

(b) Upon receipt of a Claim Notice with respect to a Third Party Claim, the Indemnifying Party shall have the right to assume the defense of any Third Party Claim by, within 30 days of receipt of the Claim Notice, notifying the Indemnified Party in writing that the Indemnifying Party elects to assume the defense of such Third Party Claim, and upon delivery of such notice by the Indemnifying Party, the Indemnifying Party shall have the right to fully control and settle the proceeding; provided, that, any such settlement or compromise shall be permitted hereunder only with the written consent of the Indemnified Party. Notwithstanding the foregoing, the Indemnifying Party shall not be entitled to assume the defense of any Third Party Claim if (i) the Third Party Claim relates to or arises in connection with any criminal action, (ii) the Third Party Claim seeks an injunction or equitable relief against any Indemnified Party (other than immaterial equitable relief in connection with an award of monetary damages) or (iii) the Indemnifying Party has not acknowledged that such Third Party Claim is subject to indemnification pursuant to this ARTICLE VI. If the Indemnifying Party assumes the defense of a Third Party Claim pursuant to this Section 6.02(b), the Indemnifying Party shall conduct such defense in good faith.

(c) If requested by the Indemnifying Party, the Indemnified Party shall, at the sole cost and expense of the Indemnifying Party, cooperate reasonably with the Indemnifying Party and its counsel in contesting any Third Party Claim which the Indemnifying Party elects to contest, including in connection with the making of any related counterclaim against the person asserting the Third Party Claim or any cross complaint against any person. The Indemnified Party shall have the right to receive copies of all pleadings, notices and communications with respect to any Third Party Claim, other than any privileged communications between the Indemnifying Party and its counsel, and shall be entitled, at its sole cost and expense, to retain separate co-counsel and participate in, but not control, any defense or settlement of any Third Party Claim assumed by the Indemnifying Party pursuant to Section 6.02(b).

(d) In the event of a Third Party Claim for which the Indemnifying Party elects not to assume the defense or fails to make such an election within the 30 days of the Claim Notice, the Indemnified Party may, at its option, defend, settle, compromise or pay such action or claim at the expense of the Indemnifying Party; provided, that any such settlement or compromise shall be permitted hereunder only with the written consent of the Indemnifying Party, which consent shall not be unreasonably withheld or delayed.

Section 6.03 Other Claims. In the event any Indemnified Party should have a claim against the Indemnifying Party hereunder which does not involve a Third Party Claim, the Indemnified Party shall promptly transmit to the Indemnifying Party a written notice (the "Indemnity Notice") describing in reasonable detail the nature of the claim, the Indemnified Party's best estimate of the amount of Losses attributable to such claim and the basis of the Indemnified Party's request for indemnification under this Agreement; provided, that no failure or delay in providing such notice shall constitute a waiver or otherwise modify the Indemnified Party's right to indemnity hereunder, except to the extent that the Indemnifying Party shall have been materially prejudiced by such failure or delay.

Section 6.04 Limitation on the Company's Liability. Absent fraud, intentional misrepresentation or willful breach on the part of the Company:

(a) the Indemnifying Party shall have no liability to the Indemnified Parties with respect to any breach of any representation or warranty (other than Fundamental Warranties) made by the Company in this Agreement unless the aggregate amount of the Losses suffered or incurred by such Indemnified Parties thereunder exceeds US\$1 million, in which case the Indemnifying Party shall be liable to such Indemnified Parties for the full amount of their Losses from dollar one pursuant to Section 6.01;

(b) the maximum aggregate liabilities of the Indemnifying Party in respect of Losses suffered by the Indemnified Parties with respect to any breach of any representation or warranty (other than Fundamental Warranties) made by the Company in this Agreement shall not in any event be greater than the Purchase Price; and

(c) notwithstanding any other provision contained herein, from and after the Closing, the right to indemnity pursuant to ARTICLE VI shall be the sole and exclusive remedy of any of the Indemnified Party for any claims against the Company arising out of or resulting from this Agreement; provided that the Purchaser shall also be entitled to specific performance or other equitable remedies in any court of competent jurisdiction pursuant to Section 7.13 hereof.

ARTICLE VII MISCELLANEOUS

Section 7.01 Survival of the Representations and Warranties.

(a) The Fundamental Warranties shall survive indefinitely or until the latest date permitted by law and the representations contained in Section 4.01(w) shall survive until the expiration of the applicable statute of limitations. All other

representations and warranties of the Company contained in this Agreement shall survive Closing until eighteen (18) months after the Closing Date.

(b) Notwithstanding anything to the contrary in the foregoing clauses, (i) any breach of representation or warranty in respect of which indemnity may be sought under this Agreement shall survive the time at which it would otherwise terminate pursuant to the preceding sentences, if notice of the inaccuracy or breach thereof giving rise to such right of indemnity shall have been given to the party against whom such indemnity may be sought in accordance with this Agreement prior to such time and (ii) any breach of representation or warranty in respect of which indemnity may be sought that was caused as a result of fraud or intentional misrepresentation shall survive until the latest date permitted by law.

Section 7.02 Governing Law; Arbitration. This Agreement shall be governed and interpreted in accordance with the laws of Hong Kong. Any dispute arising out of or relating to this Agreement, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration at the Hong Kong International Arbitration Centre in accordance with the Hong Kong International Arbitration Centre Administered Arbitration Rules then in force at the time of commencement of the arbitration. There shall be three arbitrators. The Company shall have the right to appoint one arbitrator, the Purchaser shall have the right to appoint the second arbitrator, and the third arbitrator shall be appointed by the Hong Kong International Arbitration Centre. The language to be used in the arbitration proceedings shall be English. Each of the Parties irrevocably waives any immunity to jurisdiction to which it may be entitled or become entitled (including without limitation sovereign immunity, immunity to pre-award attachment, post-award attachment or otherwise) in any arbitration proceedings and/or enforcement proceedings against it arising out of or based on this Agreement or the transactions contemplated hereby.

Section 7.03 No Third Party Beneficiaries. A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Ordinance (Cap. 623) to enforce any term of this Agreement.

Section 7.04 Acknowledgement. The Purchaser acknowledges that it understands that the Company, in issuing the Convertible Notes to the Purchaser pursuant to this Agreement, is relying upon the exemption from registration provided by Regulation S under the Securities Act.

Section 7.05 Amendment. This Agreement shall not be amended, changed or modified, except by another agreement in writing executed by the Parties hereto.

Section 7.06 Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, each of the Parties and their respective heirs, successors and permitted assigns and legal representatives.

Section 7.07 Assignment. Neither this Agreement nor any of the rights, duties or obligations hereunder may be assigned by the any Party without the express written consent of the other Parties. Any purported assignment in violation of the foregoing sentence shall be null and void. Notwithstanding the foregoing, the Purchaser

may assign its rights hereunder to any of its Affiliates, provided, that no such assignment shall relieve the Purchaser of its obligations hereunder.

Section 7.08 Notices. All notices, requests, demands, and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if (a) in writing and served by personal delivery upon the party for whom it is intended; or (b) if delivered by certified mail, registered mail or courier service, return-receipt received to the party at the address set forth below:

If to Company, at:	NIO Inc. Address: Building 20, No. 56 AnTuo Road, Jiading District, Shanghai, 201804, People's Republic of China Attention: Fang Liu Email: fang.liu@nio.com
With a copy to:	Skadden, Arps, Slate, Meagher & Flom Address: 42/F, Edinburgh Tower, The Landmark, 15 Queen's Road Central, Hong Kong, Hong Kong Attention: Z. Julie Gao Email: Julie.gao@skadden.com
If to Purchaser, at:	Serene View Limited Address: 6th Floor, Office Building 3 of New Century Hotel, No. 6 of Capital Stadium South Road, Haidian District, Beijing, PRC Attention: Mr. Bin Li Email: william.li@nio.com

Any Party may change its address for purposes of this Section 7.08 by giving the other Parties hereto written notice of the new address in the manner set forth above. For the avoidance of doubt, only notice delivered to the address and person of the parties to this Agreement shall constitute effective notice to such party for the purposes of this Agreement.

Section 7.09 Entire Agreement. This Agreement and the other Transaction Agreements including the schedules and exhibits hereto and thereto constitutes the entire understanding and agreement between the Parties with respect to the matters covered hereby and thereby, and all prior agreements and understandings, oral or in writing, if any, between the Parties with respect to the matters covered hereby and thereby are merged and superseded by this Agreement and the other Transaction Agreements.

Section 7.10 Severability. If any provisions of this Agreement shall be adjudicated to be illegal, invalid or unenforceable in any action or proceeding whether in its entirety or in any portion, then such provision shall be deemed amended, if possible, or deleted, as the case may be, from the Agreement in order to render the remainder of the Agreement and any provision thereof both valid and enforceable, and all other provisions hereof shall be given effect separately therefrom and shall not be affected thereby.

Section 7.11 Fees and Expenses. The Company will reimburse the Purchaser all expenses incurred in connection with the negotiation, preparation and execution of this Agreement and other Transaction Agreements and the transactions contemplated hereby and thereby, including fees and expenses of attorneys, accountants, consultants and financial advisors.

Section 7.12 Confidentiality.

(a) Each Party shall keep confidential any non-public material or information with respect to the business, technology, financial conditions, and other aspects of the other Parties which it is aware of, or have access to, in signing or performing this Agreement (including written or non-written information, hereinafter the “Confidential Information”). Confidential Information shall not include any information that is (a) previously known on a non-confidential basis by the receiving Party, (b) in the public domain through no fault of such receiving Party, its Affiliates or its or its Affiliates’ officers, directors or employees, (c) received from a party other than the Company or the Company’s representatives or agents, so long as such party was not, to the knowledge of the receiving party, subject to a duty of confidentiality to the Company or (d) developed independently by the receiving Party without reference to confidential information of the disclosing Party. No Party shall disclose such Confidential Information to any third Party. Either Party may use the Confidential Information only for the purpose of, and to the extent necessary for performing this Agreement; and shall not use such Confidential Information for any other purposes. The Parties hereby agree, for the purpose of this Section 7.12, that the existence and terms and conditions of this Agreement and schedule hereof shall be deemed as Confidential Information.

(b) Notwithstanding any other provisions in this Section 7.12, if any Party believes in good faith that any announcement or notice must be prepared or published pursuant to applicable laws (including any rules or regulations of any securities exchange or valid legal process) or information is otherwise required to be disclosed to any Governmental Authority, such Party may, in accordance with its understanding of the applicable laws, make the required disclosure in the manner it deems in compliance with the requirements of applicable laws; provided, that, the Party who is required to make such disclosure shall, to the extent permitted by law and so far as it is practicable, provide the other Parties with prompt notice of such requirement and cooperate with the other Parties at such other Parties’ request and at the requesting Party’s cost, to enable such other Parties to seek an appropriate protection order or remedy. In addition, each Party may disclose, after giving prior notice to the other Parties to the extent practicable under the circumstances and subject to any practicable arrangements to protect confidentiality, Confidential Information to the extent required under judicial or regulatory process or in connection with any judicial process regarding any legal action, suit or proceeding arising out of or relating to this Agreement or any Transaction Agreement; provided that, the Party who is required to make such disclosure shall, to the extent permitted by law and so far as it is practicable, at the other Parties’ request and at the requesting Party’s cost, cooperate with the other Parties to enable such other Parties to seek an appropriate protection order or remedy.

(c) Each Party may disclose the Confidential Information only to its Affiliates and its and its Affiliates’ officers, directors, employees, agents and representatives on a need-to-know basis in the performance of the Transaction

Agreements; provided that, such Party shall ensure such persons strictly abide by the confidentiality obligations hereunder.

(d) Without the prior written consent of the Purchaser (regardless of whether or not the Purchaser is then a shareholder of the Company), the Company shall not, and shall cause its Affiliates not to, (i) use in advertising, publicity, announcements, or otherwise, the name of the Purchaser or any Affiliate of the Purchaser, either alone or in combination with any company name, trade name, trademark, service mark, domain name, device, design, symbol or any abbreviation, contraction or simulation thereof owned or used by the Purchaser or any of its Affiliates, or (ii) represent, directly or indirectly, that any product or services provided by the Company or any of its Affiliates has been approved or endorsed by the Purchaser or any of its Affiliates.

(e) The confidentiality obligations of each Party hereunder shall survive the termination of this Agreement. Each Party shall continue to abide by the confidentiality clause hereof and perform the obligation of confidentiality it undertakes until the other Party approves release of that obligation or until a breach of the confidentiality clause hereof will no longer result in any prejudice to the other Party.

Section 7.13 Specific Performance. The Parties agree that irreparable damage would occur in the event any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or equity.

Section 7.14 Termination.

(a) This Agreement shall automatically terminate as between the Company and the Purchaser upon the earliest to occur of:

(i) the written consent of each of the Company and the Purchaser;

(ii) the delivery of written notice to terminate by either the Company or the Purchaser if Closing shall not have occurred by three (3) months after the date of this Agreement; provided, however, that such right to terminate this Agreement under this Section 7.14(a)(ii) shall not be available to any party whose failure to fulfill any obligation under this Agreement shall have been the principal cause of, or shall have resulted in, the failure of Closing to occur on or prior to such date; or

(iii) by the Company or the Purchaser in the event that any Governmental Authority shall have issued a judgment or taken any other action restraining, enjoining or otherwise prohibiting the transactions contemplated by the Transaction Agreements and such judgment or other action shall have become final and non-appealable.

(b) Upon the termination of this Agreement, this Agreement will have no further force or effect, except for the provisions of Section 7.02, Section 7.08 and Section 7.12 hereof, which shall survive any termination under this Section 7.14;

provided, that neither the Company nor the Purchaser shall be relieved or released from any liabilities or damages arising out of (i) fraud or (ii) any breach of this Agreement prior to such termination.

Section 7.15 Headings. The headings of the various articles and sections of this Agreement are inserted merely for the purpose of convenience and do not expressly or by implication limit, define or extend the specific terms of the section so designated.

Section 7.16 Execution in Counterparts. For the convenience of the Parties and to facilitate execution, this Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument. Signatures in the form of facsimile or electronically imaged "PDF" shall be deemed to be original signatures for all purposes hereunder.

Section 7.17 Public Disclosure. Without limiting any other provision of this Agreement, both the Purchaser and the Company shall consult and agree with each other on the terms and content of a joint press release with respect to the execution of this Agreement and any other Transaction Agreements and the transactions contemplated hereby and thereby and no press release shall be issued by any Party hereto without the prior written consent of the other Parties. Thereafter, neither the Company nor the Purchaser, nor any of their respective Affiliates, shall issue any press release or other public announcement or communication (to the extent not previously publicly disclosed or made in accordance with this Agreement or any other Transaction Agreements) with respect to the transactions contemplated hereby or thereby without the prior written consent of the other parties (such consent not to be unreasonably withheld, conditioned or delayed), except to the extent a party's counsel deems such disclosure necessary or desirable in order to comply with any law or the regulations or policies of any securities exchange or other similar regulatory body (in which case the disclosing party shall give the other parties notice as promptly as is reasonably practicable of any required disclosure to the extent permitted by applicable law), shall limit such disclosure to the information such counsel advises is required to comply with such law or regulations, and if reasonably practicable, shall consult with the other party regarding such disclosure and give good faith consideration to any suggested changes to such disclosure from the other party. Notwithstanding anything to the contrary in this Section 7.17, the Purchaser and the Company may make public statements in response to specific questions by the press, analysts, investors or those attending industry conferences or financial analyst conference calls, so long as any such statements are not materially inconsistent with previous press releases, public disclosures or public statements made by the Company or the Purchaser and do not reveal material, non-public information regarding the other Parties or the transactions contemplated by this Agreement.

Section 7.18 Waiver. No waiver of any provision of this Agreement shall be effective unless set forth in a written instrument signed by the Party waiving such provision. No failure or delay by a Party in exercising any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of the same preclude any further exercise thereof or the exercise of any other right, power or remedy.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written.

NIO INC.

By: /s/ Bin Li
Name: Bin Li
Title: Chairman and Chief Executive Officer

[Signature Page to Convertible Notes Subscription Agreement (Mr. Li)]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written.

SERENE VIEW LIMITED

By: /s/ Bin Li
Name: Bin Li
Title: Authorized Signatory

[Signature Page to Convertible Notes Subscription Agreement (Mr. Li)]

Exhibit A

Form of 2020 Convertible Note

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (AS AMENDED, THE “SECURITIES ACT”) OR UNDER THE SECURITIES LAWS OF ANY OTHER JURISDICTIONS. THESE SECURITIES MAY NOT BE TRANSFERRED, SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED: (A) IN THE ABSENCE OF (1) AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (2) AN EXEMPTION OR QUALIFICATION UNDER APPLICABLE SECURITIES LAWS, AND (B) UNLESS IN COMPLIANCE WITH THE CONVERTIBLE NOTES SUBSCRIPTION AGREEMENT BETWEEN THE COMPANY AND SERENE VIEW LIMITED, DATED SEPTEMBER 4, 2019 (THE “SUBSCRIPTION AGREEMENT”). ANY ATTEMPT TO TRANSFER, SELL, PLEDGE OR HYPOTHECATE THIS SECURITY IN VIOLATION OF THESE RESTRICTIONS OR ANY OTHER RESTRICTIONS SET FORTH IN THE SUBSCRIPTION AGREEMENT SHALL BE VOID.

CONVERTIBLE SENIOR NOTE

US\$50,000,000

[], 2019

Subject to the terms and conditions of this Convertible Senior Note due 2020 (the “Note”), for good and valuable consideration received, NIO Inc., an exempted company incorporated with limited liability under the laws of the Cayman Islands (the “Company”), promises to pay to the order of Serene View Limited, a company incorporated under the laws of the British Virgin Islands (such party and any other permitted transferee, the “Holder”), the principal amount of US\$50,000,000, plus other amounts payable provided below, on []¹ (the “Maturity Date”), or such earlier date as may be otherwise provided herein, unless the outstanding principal is settled in accordance with Article 3 of the Note.

The Note is issued pursuant to, and in accordance with, the Convertible Notes Subscription Agreement, dated September 4, 2019 (the “Subscription Agreement”), between the Company and the Holder and is subject to the provisions thereof. Unless the context requires otherwise, capitalized terms used herein shall have the meaning set forth in Article 1 of this Note.

The following is a statement of the rights of the Holder of the Note and the terms and conditions to which the Note is subject, and to which the Holder hereof, by the acceptance of the Note, agrees:

1. DEFINITIONS

“ADS” means an American Depositary Share, each of which represents one Class A Share as of the date of this Note.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person; provided, that

¹ NTD: The 360th day of the Issue Date .

none of the Company, nor any of its Subsidiaries shall be considered an Affiliate of the Purchaser. For purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” have correlative meanings.

“Board of Directors” means the board of directors of the Company or a committee of such board duly authorized to act for it hereunder.

“Business Day” means any day other than a Saturday, Sunday or another day on which commercial banks in the People’s Republic of China (the “PRC” or “China”, which for the purpose of this Agreement shall exclude Hong Kong SAR, Macau SAR and Taiwan), Hong Kong SAR or New York are required or authorized by law or executive order to be closed.

“Capital Stock” means for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity.

“Class A Shares” means Class A ordinary shares, par value US\$0.00025 per share, in the share capital of the Company.

“Class B Shares” means the Class B ordinary shares, par value US\$0.00025 per share, in the share capital of the Company.

“Class C Shares” means the Class C ordinary shares, par value US\$0.00025 per share, in the share capital of the Company.

“Clause A Distribution” shall have the meaning ascribed to such term in Section 4.1(c).

“Clause B Distribution” shall have the meaning ascribed to such term in Section 4.1(c).

“Clause C Distribution” shall have the meaning ascribed to such term in Section 4.1(c).

“close of business” means 5:00 p.m. (New York City time).

“Common Equity” of any Person means ordinary share capital or Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

“Company” shall have the meaning ascribed to such term in the Preamble.

“Control” (including the terms “Controlled by” and “under common Control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of

the board of directors or similar body governing the affairs of such Person or securities that represent a majority of the outstanding voting securities of such Person.

“Conversion Date” shall have the meaning ascribed to such term in Section 3.3.

“Conversion Notice” shall have the meaning ascribed to such term in Section 3.3.

“Conversion Period” shall mean the period starting from (and including) the fifteenth (15th) Business Day immediately preceding the Maturity Date and prior to the close of business on the second Business Day immediately preceding the Maturity Date.

“Conversion Rate” shall have the meaning ascribed to such term in Section 3.2.

“Current Market Price” means, in respect of an ADS at a particular date, the volume-weighted average of the Last Reported Sale Prices for one ADS (carrying full entitlement to dividend) for the thirty (30) consecutive Trading Days ending on the Trading Day immediately preceding such date, provided that if at any time during the said thirty (30) Trading Day period the ADSs shall have been quoted ex-dividend and during some other part of that period the ADSs shall have been quoted cum-dividend then:

- (a) if the ADSs (or the Class A Ordinary Shares) to be issued in such circumstances do not rank for the dividend in question, the quotations on the dates on which the ADSs shall have been quoted cum-dividend shall for the purpose of this definition be deemed to be the amount thereof reduced by an amount equal to the amount of that dividend per ADS; or
- (b) if the ADSs (or the Class A Ordinary Shares) to be issued in such circumstances rank for the dividend in question, the quotations on the dates on which the ADSs shall have been quoted ex-dividend shall for the purpose of this definition be deemed to be the amount thereof increased by such similar amount;

and provided further that if the ADSs on each of the said thirty (30) Trading Days have been quoted cum-dividend in respect of a dividend which has been declared or announced but the ADSs or the Ordinary Shares to be issued do not rank for that dividend, the quotations on each of such dates shall for the purpose of this definition be deemed to be the amount thereof reduced by an amount equal to the amount of that dividend per ADS.

“Default” means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

“Defaulted Amounts” means any amounts on this Note (including, without limitation, the Repurchase Price, principal and interest) that are payable but are not punctually paid or duly provided for.

“Distributed Property” shall have the meaning ascribed to such term in Section 4.1(c).

“EoD Notice” shall have the meaning ascribed to such term in Section 2.5(a)

“EoD Repurchase Price” shall have the meaning ascribed to such term in Section 2.5(a).

“Event of Default” shall have the meaning ascribed to such term in Section 2.4.

“Ex-Dividend Date” means the first date on which the Class A Shares, ADSs representing Class A Shares (or other applicable security), trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of the Class A Shares, ADSs representing Class A Shares (or other applicable security) on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

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

“Expiring Rights” means any rights, options or warrants to purchase Class A Shares or ADSs that expire on or prior to the Maturity Date.

“Fundamental Change” shall be deemed to have occurred if any of the following occurs after the Note is originally issued:

- (a) (A) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act, other than the Company, its Subsidiaries (together with the Company, the “Company Group”), the employee benefit plans of the Company and its Subsidiaries and any of the Permitted Holders, has become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of (i) the Company’s Common Equity (including Common Equity held in the form of ADSs) representing more than 50% of the voting power of the Company’s Common Equity or (ii) more than 50% of the outstanding Class A Shares (including Class A Shares held in the form of ADSs); or (B) the Permitted Holders (together with any of their respective Affiliates) have become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of Class A Shares (including Class A Shares held in the form of ADSs) representing, in the aggregate, more than 65% of the outstanding Class A Shares (including Class A Shares held in the form of ADSs);
 - (b) the consummation of (A) any recapitalization, reclassification or change of the Class A Shares or the ADSs (other than changes resulting from a subdivision or combination) as a result of which the Class A Shares or the ADSs would be converted into, or exchanged for, stock, other securities, other property or assets; (B) any share exchange, consolidation or merger of the Company, or any similar transaction, pursuant to which the Class A Shares or the ADSs will be converted into cash, securities or other property; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company Group, taken as a whole, to any Person other than one of the Company’s wholly-owned Subsidiaries; provided, however, that a transaction described in clause (B) in which the holders of all classes of the Company’s Common Equity immediately prior to such transaction own, directly or indirectly, more than
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50% of all classes of Common Equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions vis-a-vis each other as such ownership immediately prior to such transaction shall not be a Fundamental Change pursuant to this clause (b);

- (c) the shareholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company;
- (d) the ADSs (or other Common Equity or ADSs in respect of the Common Equity underlying the Note) cease to be listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors); or
- (e) any change in or amendment to the laws, regulations and rules of the PRC or the official interpretation or official application thereof (a “change in law”) that results in (A) the Company Group (as in existence immediately subsequent to such change in law), taken as a whole, being legally prohibited from operating substantially all of the business operations conducted by the Company Group (as in existence immediately prior to such change in law) as of the last date of the period described in the Company’s consolidated financial statements for the most recent fiscal quarter and (B) the Company being unable to continue to derive substantially all of the economic benefits from the business operations conducted by the Company Group (as in existence immediately prior to such change in law) in the same manner as reflected in the Company’s consolidated financial statements for the most recent fiscal quarter,

provided, however, that a transaction or event described in clause (b) above shall not constitute a Fundamental Change if at least 90% of the consideration received or to be received by holders of the ADSs, excluding cash payments for any fractional Class A Shares and cash payments made in connection with dissenters’ appraisal rights, in connection with such transaction or event consists of shares of Common Equity or ADSs or depositary receipts in respect of Common Equity that are listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors) or will be so listed or quoted when issued or exchanged in connection with such transaction or event and as a result of such transaction or event, the Note becomes convertible into such consideration, excluding cash payments for any fractional Class A Shares and cash payments made in connection with dissenters’ appraisal rights.

“Fundamental Change Repurchase Date” shall have the meaning ascribed to such term in Section 5.2(a).

“Fundamental Change Repurchase Notice” shall have the meaning ascribed to such term in Section 5.2(b).

“Fundamental Change Repurchase Price” shall have the meaning ascribed to such term in Section 5.2(a).

“Fundamental Change Company Notice” shall have the meaning ascribed to such term in Section 5.2(d).

“GAAP” means the generally accepted accounting principles in the United States.

“Governmental Authority” means any federal, national, foreign, supranational, state, provincial, local, municipal or other political subdivision or other government, governmental, regulatory or administrative authority, agency, board, bureau, department, instrumentality or commission or any court, tribunal, judicial or arbitral body of competent jurisdiction or stock exchange.

“Holder” shall have the meaning ascribed to such term in the Preamble.

“Issue Date” means [], 2019.

“Last Reported Sale Price” of the Class A Shares on any date shall be calculated as (i) the closing sale price per ADS (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the ADSs are traded divided by (ii) the applicable number of Class A Shares then represented by one ADS. If the ADSs are not listed for trading on a U.S. national or regional securities exchange on the relevant date, the “Last Reported Sale Price” shall be (i) the last quoted bid price for the ADSs in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization divided by (ii) the applicable number of Class A Shares then represented by one ADS. If the ADSs are not so quoted, the “Last Reported Sale Price” shall be (i) the average of the midpoint of the last bid and ask prices for the ADSs on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose divided by (ii) the applicable number of Class A Shares then represented by one ADS.

“Law” means any statute, law, ordinance, regulation, rule, code, order, judgment, writ, injunction, decree or requirement of law (including common law) enacted, issued, promulgated, enforced or entered by a Governmental Authority.

“Maturity Date” shall have the meaning ascribed to such term in the Preamble.

“Maturity Repurchase Price” shall have the meaning ascribed to such term in Section 5.1.

“Merger Event” shall have the meaning ascribed to such term in Section 4.3.

“Note” shall have the meaning ascribed to such term in the Preamble.

“Officer” means, with respect to the Company, the Chairman, President, the Chief Executive Officer, the Secretary, any Executive or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title “Vice President”).

“Officer’s Certificate”, when used with respect to the Company, means a certificate that is delivered to the Holder and that is signed by the principal executive, financial

or accounting officer of the Company who has been duly authorized to sign such certificate. To the extent applicable, each such certificate shall include (a) a statement that the person making such certificate is familiar with the requested action and the Note; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statement contained in such certificate is based; (c) a statement that, in the judgment of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed judgment as to whether or not such action is permitted by the Note; and (d) a statement as to whether or not, in the judgment of such person, such action is permitted by the Note, if and to the extent required by the provisions of the Note.

“open of business” means 9:00 a.m. (New York City time).

“Ordinary Shares” means collectively the Class A Shares, the Class B Shares and the Class C Shares.

“Permitted Holders” means Mr. Bin Li and Tencent Holdings Limited, together with any other respective “person” or “group” subject to aggregation of ordinary share capital of the Company (including ordinary share capital held in the form of ADSs) with any of the aforementioned person and entity under Section 13(d) of the Exchange Act.

“Person” means any individual, partnership, corporation, association, joint stock company, trust, joint venture, limited liability company, organization, entity or Governmental Authority.

“Record Date” means, with respect to any dividend, distribution or other transaction or event in which the holders of the Class A Shares (directly or in the form of ADSs) (or other applicable security) have the right to receive any cash, securities or other property or in which the Class A Shares (directly or in the form of ADSs) (or such other security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of security holders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors, statute, contract or otherwise).

“Reference Price” means the higher of (i) US\$2.98 per Class A Share, subject to the same adjustment to the Conversion Rate pursuant to this Note and (ii) the Current Market Price, in each case on the date of announcement of the issuance referred to under the provisions in Section 4.1.

“Reference Property” and “unit of Reference Property” have the meanings ascribed thereto in Section 4.3.

“Relevant Securities” shall have the meaning ascribed to such term in Section 4.1(f).

“Repurchase Price” means any of the EoD Repurchase Price, the Fundamental Change Repurchase Price and the Maturity Repurchase Price, as applicable.

“Significant Subsidiary” means a Subsidiary of the Company that meets the definition of “significant subsidiary” in Article 1, Rule 1-02 of Regulation S-X under the Exchange Act.

“Spin-Off” shall have the meaning ascribed to such term in Section 4.1(c).

“Subscription Agreement” shall have the meaning ascribed to such term in the Preamble.

“Subsidiary” of any Person means any corporation, partnership, limited liability company, joint stock company, joint venture or other organization or entity, whether incorporated or unincorporated, which is Controlled by such Person and, for the avoidance of doubt, the Subsidiaries of any Person shall include any variable interest entity over which such Person or any of its Subsidiaries effects Control pursuant to contractual arrangements and which is consolidated with such Person in accordance with GAAP applicable to such Person.

“Successor Company” shall have the meaning ascribed to such term in Section 7.1(a).

“Trading Day” means a day on which (i) trading in the ADSs (or other security for which a closing sale price must be determined) generally occurs on The NASDAQ Global Market or, if the ADSs (or such other security) are not then listed on The NASDAQ Global Market, on the principal other U.S. national or regional securities exchange on which the ADSs (or such other security) are then listed or, if the ADSs (or such other security) are not then listed on a U.S. national or regional securities exchange, on the principal other market on which the ADSs (or such other security) are then traded and (ii) a Last Reported Sale Price with respect to the ADSs (or closing sale price for such other security) is available on such securities exchange or market; provided that if the ADSs (or such other security) are not so listed or traded, “Trading Day” means a Business Day.

“Transaction Documents” means the Note, the Subscription Agreement, the Convertible Senior Notes due 2022 and each of the other agreements and documents entered into or delivered by the Company, the Holder or their respective Affiliates in connection with the transactions contemplated by the Subscription Agreement.

“Trigger Event” shall have the meaning ascribed to such term in Section 4.1(c).

“U.S.” means United States.

“US\$” or “\$” means the United States dollar, the lawful currency of the United States of America.

“Valuation Period” shall have the meaning ascribed to such term in Section 4.1(c).

2. INTEREST; PAYMENTS; DEFAULTS

- 2.1 Interest Rate. The principal amount outstanding under the Note shall not bear any interest, except for any interest on the Defaulted Amounts in accordance with Section 2.6.
- 2.2 Payment. All amounts payable on or in respect of the Note or the indebtedness evidenced hereby shall be paid to the Holder in U.S. dollars, in immediately available funds on the date that any principal (or interest, in accordance with Section 2.6) or any Repurchase Price is due and payable hereunder. The Company shall make such principal (or interest, in accordance with Section 2.6) or such payment of Repurchase
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Price to the Holder by wire transfer of immediately available funds for the account of the Holder or any of its Affiliates as may be designated by the Holder in writing from time to time; provided that any change to such accounts shall be notified in writing to the Company at least two (2) Business Days prior to the relevant payment date. If any such payment date or the Maturity Date falls on a day that is not a Business Day, the required payment will be made on the next succeeding Business Day and no interest on such payment will accrue in respect of the delay.

- 2.3 Seniority. The Note ranks (a) senior in right of payment to any of the Company's present and future indebtedness that is expressly subordinated in right of payment to the Note, (b) equal in right of payment to any of the Company's present and future indebtedness and other liabilities of the Company that are not so subordinated, (c) junior in right of payment to any of the Company's secured indebtedness to the extent of the value of the assets securing such indebtedness and (d) structurally junior to all indebtedness incurred by the Company's Subsidiaries and their other liabilities (including trade payables).
- 2.4 Events of Default. For purposes of the Note, an "Event of Default" shall be deemed to have occurred if any of the following events occurs, whatever the reason or cause for such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any Governmental Authority or otherwise:
- (a) Failure to Pay. The Company defaults in the payment of principal of the Note when due and payable on the Maturity Date or upon declaration of acceleration, or the Company defaults in the payment of any Repurchase Price upon any required repurchase, in each case in accordance with the terms hereof;
 - (b) Breach of Conversion Obligation. The Company fails to comply with its obligation to convert all or a portion of the Note in accordance with Article 3 upon Holder's exercise of its conversion rights and such failure continues for a period of five (5) Business Days;
 - (c) Breach of Article 7. The Company fails to comply with its obligations under Article 7;
 - (d) Breach of Other Obligations. The Company fails for sixty (60) days after written notice from the Holder has been received by the Company to comply with any of its other agreements contained in any Transaction Document to which the Company is a party;
 - (e) Cross Default. Any default by the Company or any Subsidiary of the Company with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of US\$50 million (or the foreign currency equivalent thereof) in the aggregate of the Company and/or any such Subsidiary, whether such indebtedness now exists or shall hereafter be created (A) resulting in such indebtedness becoming or being declared due and payable or (B) constituting a failure to pay the principal or
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interest of any such debt when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise;

- (f) **Adverse Judgment.** A final judgment for the payment of US\$50 million (or the foreign currency equivalent thereof) or more (excluding any amounts covered by insurance) is rendered against the Company or any Subsidiary of the Company, which judgment is not paid, bonded or otherwise discharged or stayed within sixty (60) days after the earlier of (i) the date on which the right to appeal thereof has expired if no such appeal has commenced and (ii) the date on which all rights to appeal have been extinguished;
- (g) **Trading Suspension.** The ADSs (or other Common Equity or ADSs in respect of the Common Equity underlying the Note) have been suspended from trading on any of The New York Stock Exchange, The NASDAQ Global Select market or The NASDAQ Global Market (or any of their respective successors) for a period of ninety (90) consecutive trading days or for more than one hundred and eighty (180) trading days in any twelve (12)-month period;
- (h) **Bankruptcy.** The Company, any Significant Subsidiary or any other Subsidiaries which in the aggregate constitute a “significant subsidiary” as defined in rule 1-02(w) of Regulation S-X under the Exchange Act shall commence a voluntary case or other proceeding seeking liquidation, winding-up, reorganization or other relief with respect to the Company, such Significant Subsidiary or such other Subsidiaries or its or their debts under any bankruptcy, liquidation, insolvency or other similar Law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company, such Significant Subsidiary or such other Subsidiaries or all or substantially all of its or their property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its or their debts as they become due; or
- (i) **Involuntary Proceedings.** An involuntary case or other proceeding shall be commenced against the Company, any Significant Subsidiary or any other Subsidiaries which in the aggregate constitute a “significant subsidiary” as defined in rule 1-02(w) of Regulation S-X under the Exchange Act seeking liquidation, winding-up, reorganization or other relief with respect to the Company, such Significant Subsidiary or such other Subsidiaries or its or their debts under any bankruptcy, liquidation, insolvency or other similar Law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company, such Significant Subsidiary or such other Subsidiaries or all or substantially all of its or their property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) consecutive days.

2.5 Consequences of Event of Default.

- (a) If one or more Events of Default shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be
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voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any Governmental Authority), then,

- (i) in each and every such case (other than an Event of Default specified in Section 2.4(h) or Section 2.4(i)), unless the principal of the Note shall have already become due and payable, the Holder may by notice in writing to the Company (the "EoD Notice") to require the Company to repurchase for cash all of the Note or any portion thereof on the fifth (5th) Business Day after the date of the EoD Notice at a repurchase price (the "EoD Repurchase Price") equal to (A) 100% of the principal amount thereof, plus (B) a premium equal to the aggregate interest that would have accrued on such principal amount over the period starting from (and including) the date of the Issue Date and ending on (and including) the date when the EoD Repurchase Price is made in full, if the Note were to bear interest at a rate of 2.0% per annum, accrued daily and computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of actual days elapsed over a 30-day month, and plus (C) all other amounts due and payable on or in respect of the Note (including any accrued and unpaid interest on the Defaulted Amounts pursuant to Section 2.6), if any; or
 - (ii) if an Event of Default specified in Section 2.4(h) or Section 2.4(i) occurs and is continuing, the Company shall promptly repurchase for cash all of the Note at a repurchase price equal to the EoD Repurchase Price without any action on the part of the Holder.
- (b) Section 2.5(a), however, is subject to the conditions that if, at any time after the outstanding principal of the Note shall have been so declared due and payable, and before any arbitral award for the payment of the monies due shall have been obtained or entered as hereinafter provided, the Company has paid or deposited with the Holder a sum sufficient to pay the outstanding principal of and any other amounts due and payable on the Note that shall have become due otherwise than by acceleration (with interest on the Defaulted Amounts), and if (1) rescission would not conflict with any such arbitral award and (2) any and all existing Events of Default under the Note, other than the nonpayment of the principal of and any other amounts due and payable on the Note that shall have become due solely by such acceleration, shall have been cured or waived, then and in every such case the Holder, by written notice to the Company, may waive all Default or Events of Default with respect to the Note and rescind and annul such declaration and its consequences and such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of the Note; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent Default or Event of Default, or shall impair any right consequent thereon. Notwithstanding anything to the contrary herein, no such waiver or rescission and annulment shall extend to or shall affect any Default or Event of Default resulting from (i) the nonpayment of the principal of, or any other amounts due and payable on, the Note or (ii) a failure to pay or deliver, as the case may be, the consideration due upon conversion of the Note.
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2.6 Defaulted Amounts. Any Defaulted Amounts shall accrue interest at a rate equal to three percent (3.0%) per annum accrued daily during the period from (and including) such relevant payment date and ending on (and including) the date on which such Defaulted Amounts and such interest thereon are fully paid, and such Defaulted Amounts together with such interest thereon pursuant to this Section 2.6 shall be paid by the Company to the Holder by wire transfer of immediately available funds pursuant to the procedures set forth in Section 2.2.

3. CONVERSION

3.1 Conversion by Holder. Subject to and upon compliance with the provisions of this Article 3, the Holder shall have the right, at the Holder's option, to convert all or any portion (if the portion to be converted is US\$1,000 principal amount or an integral thereof) of the Note to the Company's fully paid Class A Shares at the applicable Conversion Rate at any time during the Conversion Period.

3.2 Conversion Price; Conversion Rate. Subject to adjustments as provided in Article 4, the initial conversion price shall be equal to US\$2.98 per Class A Share, representing an initial conversion rate of 335.5705 Class A Shares (the "Conversion Rate") per US\$1,000 principal amount of the Note.

3.3 Conversion Procedure; Settlement Upon Conversion.

(a) This Note shall be deemed to have been converted immediately prior to the close of business on the date (the "Conversion Date") that is the Maturity Date, provided that the Holder has delivered a duly completed irrevocable written notice to the Company (the "Conversion Notice") to the Company during the Conversion Period. Within five (5) Business Days after the delivery of the Note and the Conversion Notice to the Company, the Company shall (i) take all actions and execute all documents necessary to effect the issuance of the full number of Class A Shares to which the Holder shall be entitled in satisfaction of any conversion pursuant to Section 3.1, (ii) deliver to the Holder certificate(s) representing the number of Class A Shares delivered upon each such conversion, (iii) deliver to the Holder a certified copy of the register of members of the Company, reflecting the Holder's ownership of the Class A Shares delivered upon each such conversion, and (iv) cancel the Note. No Conversion Notice may be delivered and the Note may not be surrendered by a Holder for conversion thereof if the Holder has also delivered a Fundamental Change Repurchase Notice to the Company in respect of the Note and not validly withdrawn such Fundamental Change Repurchase Notice in accordance with Article 5.

(b) [Reserved]

(c) If the Holder submits the Note for conversion, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the delivery of the Class A Shares upon such conversion of the Note, unless the tax is due because the Holder requests such Class A Shares to be issued in a name other than the Holder's name, in which case (i) if in the name of any Person which is an Affiliate of the Holder, the Company shall pay that tax or (ii) if in the name of any other Person, the Holder shall pay that tax. The Company shall

pay the relevant fees for issuance of the Class A Shares and shall pay the relevant depository's fees for any future conversion of the issued Class A Shares into the ADSs.

- (d) Except as provided in Section 4.1, no adjustment shall be made for dividends on any Class A Shares delivered upon any conversion of this Note as provided in this Article 3.
- (e) Without prejudice to the Holder's right to receive the interest in accordance with Section 3.3(h), the Company's settlement of each conversion pursuant to this Article 3 shall be deemed to satisfy in full its obligation to pay the principal amount of the Note converted.
- (f) The Holder in whose name the certificate for any Class A Shares delivered upon conversion is registered shall be treated as a holder of record of such Class A Shares as of the close of business on the relevant Conversion Date. Upon a conversion of the entire outstanding amount of the Note, the Holder shall no longer be a holder of the Note surrendered for conversion.
- (g) The Company shall not issue any fractional Class A Share upon conversion of the Note and shall instead pay cash in lieu of any fractional Class A Share deliverable upon conversion based on the Last Reported Sale Price of the Class A Shares on the relevant Conversion Date.
- (h) Nothing in this Article 3 shall prejudice the Holder's entitlement to receive interest on any of the Defaulted Amounts in accordance with Section 2.6.

3.4 Without prejudice to any other provision in this Note, the Holder may elect to convert all or any portion (if the portion to be converted is US\$1,000 principal amount or an integral thereof) of the Note to ADSs (each representing one Class A Share) at the applicable Conversion Rate at any time during the Conversion Period and the provisions in this Article 3 shall apply *mutatis mutandis*; provided that, the Company shall pay (A) any documentary, stamp or similar issue or transfer tax due on the delivery of such ADSs upon conversion of the Note (or the issuance of the underlying Class A Shares), unless the tax is due because the Holder requests such ADSs to be issued in a name other than the Holder's name, in which case (i) if in the name of any Person which is an Affiliate of the Holder, the Company shall pay that tax or (ii) if in the name of any other Person, the Holder shall pay that tax; and (B) the depository's fees for issuance of such ADSs.

4. ADJUSTMENTS

4.1 Adjustment of Conversion Rate. If the number of Class A Shares represented by the ADSs is changed, after the date of this Note, for any reason other than one or more of the events described in this Section 4.1, the Company shall make an appropriate adjustment to the Conversion Rate such that the number of Class A Shares represented by the ADSs upon which any conversion of this Note is based remains the same.

Notwithstanding the adjustment provisions described in this Section 4.1, if the Company distributes to holders of the Class A Shares any cash, rights, options,

warrants, shares of capital stock or similar equity interest, evidences of indebtedness or other assets or property of the Company (but excluding Expiring Rights) and a corresponding distribution is not made to holders of the ADSs, but, instead, the ADSs shall represent, in addition to Class A Shares, such cash, rights, options, warrants, shares of Capital Stock or similar equity interest, evidences of indebtedness or other assets or property of the Company, then an adjustment to the Conversion Rate described in this Section 4.1 shall not be made until and unless a corresponding distribution (if any) is made to holders of the ADSs, and such adjustment to the Conversion Rate shall be based on the distribution made to the holders of the ADSs and not on the distribution made to the holders of the Class A Shares. However, in the event that the Company issues or distributes to all holders of the Class A Shares any Expiring Rights, notwithstanding the immediately preceding sentence, the Company shall adjust the Conversion Rate pursuant to Section 4.1(b) (in the case of in-the-money Expiring Rights entitling holders of the Class A Shares for a period of not more than 45 calendar days after the announcement date of such issuance to subscribe for or purchase Class A Shares or ADSs) or Section 4.1(c) (in the case of all other Expiring Rights).

For the avoidance of doubt, if any event described in this Section 4.1 results in a change to the number of Class A Shares represented by the ADSs, then such change shall be deemed to satisfy the Company's obligation to effect the relevant adjustment to the Conversion Rate on account of such event to the extent such change produces the same economic result as the adjustment to the Conversion Rate that would otherwise have been on account of such event.

Subject to the foregoing, the Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs, except that the Company shall not make any adjustments to the Conversion Rate if the Holder participates (other than in the case of a share split or share combination), at the same time and upon the same terms as holders of the Class A Shares and solely as a result of holding the Note, in any of the transactions described in this Section 4.1, without having to convert the Note, as if it held a number of Class A Shares equal to the Conversion Rate, multiplied by the principal amount of the Note held by the Holder.

- (a) If the Company exclusively issues Class A Shares as a dividend or distribution on the Class A Shares, or if the Company effects a share split or share combination, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where,

CR₀ = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such dividend or distribution, or immediately prior to the close of business on the effective date of such share split or share combination, as applicable;

CR1 = the Conversion Rate in effect immediately after the close of business on such Record Date or immediately after the close of business on such effective date, as applicable;

OS0 = the number of Class A Shares outstanding immediately prior to the close of business on such Record Date or immediately prior to the close of business on such effective date, as applicable; and

OS1 = the number of Class A Shares outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

Any adjustment made under this Section 4.1(a) shall become effective immediately after the close of business on the Record Date for such dividend or distribution, or immediately after the open of business on the effective date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this Section 4.1(a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

- (b) If the Company issues to all or substantially all holders of the Class A Shares (directly in or in the form of ADSs) any rights, options or warrants entitling them, for a period of not more than 45 calendar days after the announcement date of such issuance, to subscribe for or purchase Class A Shares (directly or in the form of ADSs) at a price per Class A Share that is less than the average of the Last Reported Sale Prices of the Class A Shares, for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate shall be increased based on the following formula:

$$CR1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such issuance;

CR1 = the Conversion Rate in effect immediately after the close of business on such Record Date;

OS0 = the number of Class A Shares outstanding immediately prior to the close of business on such Record Date;

X = the total number of Class A Shares (directly or in the form of ADSs) deliverable pursuant to such rights, options or warrants; and

Y = the number of Class A Shares equal to (i) the aggregate price payable to exercise such rights, options or warrants, divided by (ii) the average of the

Last Reported Sale Prices of the Class A Shares over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

Any increase made under this Section 4.1(b) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the close of business on the Record Date for the Class A Shares (directly or in the form of ADSs), as applicable, for such issuance. To the extent that Class A Shares or ADSs are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of Class A Shares actually delivered (directly or in the form of ADSs). If such rights, options or warrants are not so issued, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such the Record Date for such issuance had not occurred.

For purposes of this Section 4.1(b), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase Class A Shares (directly or in the form of ADSs) at a price per Class A Share that is less than such average of the Last Reported Sale Prices of the Class A Shares, for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement for such issuance, and in determining the aggregate offering price of such Class A Shares (directly or in the form of ADSs), there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors acting in good faith.

- (c) If the Company distributes shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire its Capital Stock or other securities, to all or substantially all holders of the Class A Shares (directly or in the form of ADSs), excluding (i) dividends, distributions or issuances as to which an adjustment was effected pursuant to Section 4.1(a) or Section 4.1(b), (ii) dividends or distributions paid exclusively in cash as to which an adjustment was effected pursuant to Section 4.1(d), and (iii) Spin-Offs as to which the provisions set forth below in this Section 4.1(c) shall apply (any of such shares of Capital Stock, evidences of indebtedness, other assets or property or rights, options or warrants to acquire Capital Stock or other securities of the Company, the "Distributed Property"), then the Conversion Rate shall be increased based on the following formula:

$$CR1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such distribution;

CR1 = the Conversion Rate in effect immediately after the close of business on such Record Date;

SP0 = the average of the Last Reported Sale Prices of the Class A Shares over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined by the Board of Directors acting in good faith) of the Distributed Property with respect to each outstanding Class A Share (directly or in the form of ADSs) on the Record Date for such distribution.

Any increase made under the portion of this Section 4.1(c) above shall become effective immediately after the close of business on the Record Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such distribution had not been declared. Notwithstanding the foregoing, if “FMV” (as defined above) is equal to or greater than “SP0” (as defined above), in lieu of the foregoing increase, the Holder shall receive, in respect of each US\$1,000 principal amount thereof, at the same time and upon the same terms as holders of the Class A Shares receive the Distributed Property, the amount and kind of Distributed Property the Holder would have received if the Holder owned a number of Class A Shares equal to the Conversion Rate in effect on the Record Date for the distribution.

With respect to an adjustment pursuant to this Section 4.1(c) where there has been a payment of a dividend or other distribution on the Class A Shares (directly or in the form of ADSs) of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a “Spin-Off”), the Conversion Rate shall be increased based on the following formula:

$$CR1 = CR_0 \times \frac{FMV + MP_0}{MP_0}$$

where,

CR0 = the Conversion Rate in effect immediately prior to the end of the Valuation Period;

CR1 = the Conversion Rate in effect immediately after the end of the Valuation Period;

FMV0 = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Class A Shares (directly or in the form of ADSs) applicable to one Class A Share (determined by reference to the definition of Last Reported Sale Price as if references therein to the ADSs were to such Capital Stock or similar equity interest) over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the "Valuation Period"); and

MP0 = the average of the Last Reported Sale Prices of the Class A Shares over the Valuation Period.

The adjustment to the Conversion Rate under the preceding paragraph shall occur on the last Trading Day of the Valuation Period; provided that in respect of any conversion during the Valuation Period, references in the portion of this Section 4.1(c) related to Spin-Offs to 10 Trading Days shall be deemed to be replaced with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date of such Spin-Off to, and including, the Conversion Date in determining the Conversion Rate.

For purposes of this Section 4.1(c) (and subject in all respect to Section 4.1(f)), rights, options or warrants distributed by the Company to all holders of the Class A Shares (directly or in the form of ADSs) entitling them to subscribe for or purchase shares of the Company's Capital Stock, including Class A Shares (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events ("Trigger Event"): (i) are deemed to be transferred with such Class A Shares (directly or in the form of ADSs); (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Class A Shares (directly or in the form of ADSs), shall be deemed not to have been distributed for purposes of this Section 4.1(c) (and no adjustment to the Conversion Rate under this Section 4.1(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 4.1(c). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Note, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 4.1(c) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x)

the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per Class A Share redemption or purchase price received by a holder or holders of Class A Shares (directly or in the form of ADSs) with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Class A Shares (directly or in the form of ADSs) as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of Section 4.1(a), Section 4.1(b) and this Section 4.1(c), any dividend or distribution to which this Section 4.1(c) is applicable that also includes one or both of:

- (A) a dividend or distribution of Class A Shares (directly or in the form of ADSs) to which Section 4.1(a) is applicable (the "Clause A Distribution"); or
- (B) a dividend or distribution of rights, options or warrants to which Section 4.1(b) is applicable (the "Clause B Distribution"),

then (1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 4.1(c) is applicable (the "Clause C Distribution") and any Conversion Rate adjustment required by this Section 4.1(c) with respect to such Clause C Distribution shall then be made, and (2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by Section 4.1(a) and Section 4.1(b) with respect thereto shall then be made, except that, if determined by the Company (I) the "Record Date" of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Record Date of the Clause C Distribution and (II) any Class A Shares (directly or in the form of ADSs) included in the Clause A Distribution or Clause B Distribution shall be deemed not to be "outstanding immediately prior to the close of business on such Record Date or immediately after the open of business on such effective date, as applicable" within the meaning of Section 4.1(a) or "outstanding immediately prior to the close of business on such Record Date" within the meaning of Section 4.1(b).

- (d) If any cash dividend or distribution is made to all or substantially all holders of the Class A Shares (directly or in the form of ADSs), the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such dividend or distribution;

CR1 = the Conversion Rate in effect immediately after the close of business on such Record Date;

SP0 = the Last Reported Sale Price of the Class A Shares on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

C = the amount in cash per Class A Share the Company distributes to all or substantially all holders of the Class A Shares (directly or in the form of ADSs).

Any increase pursuant to this Section 4.1(d) shall become effective immediately after the close of business on the Record Date for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors determines not to make or pay such dividend or distribution, to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if "C" (as defined above) is equal to or greater than "SP0" (as defined above), in lieu of the foregoing increase, the Holder shall receive, for each US\$1,000 principal amount of the Note, at the same time and upon the same terms as holders of the Class A Shares (directly or in the form of ADSs), the amount of cash that the Holder would have received if the Holder owned a number of Class A Shares equal to the Conversion Rate on the Record Date for such cash dividend or distribution.

- (e) If the Company or any of its Subsidiaries make a payment in respect of a tender or exchange offer for the Class A Shares (directly or in the form of ADSs), to the extent that the cash and value of any other consideration included in the payment per Class A Share exceeds the average of the Last Reported Sale Prices of the Class A Shares over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires, the Conversion Rate shall be increased based on the following formula:

$$CR1 = CR_0 \times \frac{AC + (OS1 \times SP)}{OS_0 \times SP}$$

where,

CR0 = the Conversion Rate in effect immediately prior to the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

CR1 = the Conversion Rate in effect immediately after the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors acting in good faith) paid or payable for Class A Shares (directly or in the form of ADSs) purchased in such tender or exchange offer;

OS0 = the number of Class A Shares outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase of all Class A Shares (directly or in the form of ADSs) accepted for purchase or exchange in such tender or exchange offer);

OS1 = the number of Class A Shares outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all Class A Shares (directly or in the form of ADSs) accepted for purchase or exchange in such tender or exchange offer); and

SP = the average of the Last Reported Sale Prices of the Class A Shares over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires.

The adjustment to the Conversion Rate under this Section 4.1(e) shall occur at the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires; provided that in respect of any conversion within the 10 Trading Days immediately following, and including, the expiration date of any tender or exchange offer, references in this Section 4.1(e) with respect to 10 Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the expiration date of such tender or exchange offer to, and including, the Conversion Date in determining the Conversion Rate. No adjustment to the Conversion Rate under this Section 4.1(e) shall be made if such adjustment would result in a decrease in the Conversion Rate. In the event that the Company or one of the Company's Subsidiaries is obligated to purchase Class A Shares (directly or in the form of ADSs) pursuant to any such tender offer or exchange offer, but the Company or such Subsidiary is permanently prevented by applicable Law from effecting any such purchases, or all such purchases are rescinded, then the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender offer or exchange offer had not been made.

- (f) If and whenever the Company shall issue any Ordinary Shares or ADSs (other than any issuance pursuant to this Note or on the exercise of any other rights, existing as of the Issue Date, of conversion into, or exchange or subscription for, Ordinary Shares or ADSs) or issue or grant options, warrants or other rights to purchase, subscribe, convert into, exercise or exchange for Ordinary Shares or ADSs (the "Relevant Securities"), which for the purposes of this definition only excludes any Ordinary Shares, ADSs, option, warrant or other rights to purchase, subscribe, convert into, exercise or exchange for Ordinary
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Shares or ADSs issued or granted in accordance with any employee incentive plan of the Company), in each case at a consideration per ADS (on an as-converted and as-exercised basis and, in the case of any issuance of Ordinary Shares, such issue price per Ordinary Share multiplied by the applicable number of Ordinary Shares then represented by each ADS) which is less than the Reference Price, the Conversion Rate shall be adjusted based on the following formula:

$$CR1 = CR_0 \times \frac{A + B}{C}$$

where:

CR0 = the Conversion Rate in effect immediately prior to the date of issue of the Relevant Securities;

CR1 = the Conversion Rate in effect as from the date of issue of the Relevant Securities;

A = the number of Ordinary Shares in issue immediately before the issue of the Relevant Securities;

B = the number of Ordinary Shares which the aggregate consideration receivable for the issue of the Relevant Securities would purchase at the price equal to (x) Reference Price, multiplied by (y) the applicable number of Ordinary Shares then represented by each ADS; and

C = the number of Ordinary Shares in issue immediately after the issue of the Relevant Securities,

provided that references to the number of Ordinary Shares in the above formula shall include all the Ordinary Shares to be issued assuming that all options, warrants or other rights to purchase, subscribe, convert into, exercise or exchange for Ordinary Shares or ADSs are exercised in full at the initial exercise price on the date of issue of such options, warrants or other rights.

- (g) Except as stated herein, the Company shall not adjust the Conversion Rate for the issuance of Class A Shares or ADSs or any securities convertible into or exchangeable for Class A Shares or ADSs or the right to purchase Class A Shares or ADSs or such convertible or exchangeable securities.
 - (h) In addition to those adjustments required by subsections (a), (b), (c), (d), (e) and (f) of this Section 4.1, and to the extent permitted by applicable Law and subject to the applicable rules of The NASDAQ Global Market and any other securities exchange on which any of the Company's securities are then listed, the Company from time to time may increase the Conversion Rate by any amount for a period of at least 20 Business Days if the Board of Directors determines that such increase would be in the Company's best interest, and the Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of the Class A Shares or the ADSs or rights to purchase Class A Shares or ADSs in connection with a dividend or
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distribution of Class A Shares or ADSs (or rights to acquire Class A Shares or ADSs) or similar event.

- (i) Notwithstanding anything to the contrary in this Section 4.1, the Conversion Rate shall not be adjusted:
 - (i) upon the issuance of any Class A Shares or ADSs pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in Class A Shares or ADSs under any plan;
 - (ii) upon the issuance of any Class A Shares or ADSs or options or rights to purchase those Class A Shares or ADSs pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of the Company's Subsidiaries;
 - (iii) upon the issuance of any Class A Shares or ADSs pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) of this subsection and outstanding as of the date this Note was first issued;
 - (iv) solely for a change in the par value of the Class A Shares or ADSs; or
 - (v) for accrued and unpaid interest, if any.
- (j) All calculations and other determinations under this Section 4.1 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000) of a Class A Shares.
- (k) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to the Holder.
- (l) For purposes of this Article 4, the number of Class A Shares at any time outstanding shall not include Class A Shares held in the treasury of the Company (directly or in the form of ADSs) so long as the Company does not pay any dividend or make any distribution on Class A Shares held in the treasury of the Company (directly or in the form of ADSs), but shall include Class A Shares issuable in respect of scrip certificates issued in lieu of fractions of Class A Shares.
- (m) For purposes of this Section 4.1, the "effective date" means the first date on which the ADSs trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

4.2 Adjustments of Prices. Whenever any provision of this Note requires the Company to calculate the Last Reported Sale Prices over a span of multiple days, the Board of Directors shall make appropriate adjustments to each to account for any adjustment to

the Conversion Rate that becomes effective pursuant to Section 4.1, or any event requiring an adjustment to the Conversion Rate pursuant to Section 4.1 where the Record Date, effective date or expiration date, as the case may be, of the event occurs, at any time during the period when such Last Reported Sale Prices are to be calculated.

4.3 Effect of Recapitalizations, Reclassifications and Changes of the Class A Shares.

(a) In the case of:

- (i) any recapitalization, reclassification or change of the Class A Shares (other than changes resulting from a subdivision or combination),
- (ii) any consolidation, merger, combination or similar transaction involving the Company,
- (iii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and the Company's Subsidiaries substantially as an entirety; or
- (iv) any statutory share exchange,

in each case, as a result of which the Class A Shares (directly or in the form of ADSs) would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a "Merger Event"), then, prior to or at the effective time of such Merger Event, the Company or the successor or purchasing Person, as the case may be, shall execute an amendment to this Note providing that, at and after the effective time of such Merger Event, the right to convert the Note shall be changed into a right to convert the Note into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of Class A Shares equal to the Conversion Rate immediately prior to such Merger Event would have owned or been entitled to receive (the "Reference Property", with each "unit of Reference Property" meaning the kind and amount of Reference Property that a holder of one Class A Share is entitled to receive) upon such Merger Event; provided, however, that at and after the effective time of the Merger Event the number of Class A Shares otherwise deliverable upon any conversion of the Note in accordance with Article 3 shall instead be deliverable in the amount and type of Reference Property that a holder of that number of Class A Shares would have been entitled to receive in such Merger Event.

If the Merger Event causes the Class A Shares (directly or in the form of ADSs) to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of holder election), then (i) the Reference Property into which the Note will be convertible shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Class A Shares (directly or in the form of ADSs) that affirmatively make such an election, and (ii) the unit of Reference Property for purposes of the immediately preceding paragraph shall refer to the consideration referred to in clause (i) attributable

to one Class A Shares. The Company shall provide written notice to the Holder of such weighted average as soon as practicable after such determination is made.

Such amendment described in the second immediately preceding paragraph shall provide for anti-dilution and other adjustments that shall be as nearly equivalent as is practicable to the adjustments provided for in this Article 4 (it being understood that no such adjustments shall be required with respect to any portion of the Reference Property that does not consist of shares of Common Equity (however evidenced) or depositary receipts in respect thereof). If, in the case of any Merger Event, the Reference Property includes shares of stock, securities or other property or assets (including cash or any combination thereof) of a Person other than the Company or the successor or purchasing Person, as the case may be, in such Merger Event, then such other Person shall also execute such amendment, and such amendment shall contain such additional provisions to protect the interests of the Holder, including the rights of the Holder to require the Company to repurchase this Note upon a Fundamental Change pursuant to Article 5 as the Board of Directors shall reasonably consider necessary by reason of the foregoing.

- (b) None of the foregoing provisions shall affect the right of the Holder to convert this Note into Class A Shares as set forth in Article 3 prior to the effective date of such Merger Event.
- (c) The above provisions of this Section 4.3 shall similarly apply to successive Merger Events.

4.4 No Adjustment. Notwithstanding anything herein to the contrary, no adjustment under this Article 4 shall be required to be made to the Conversion Rate if the Company receives written notice from the Holder that no such adjustment is required.

4.5 Certain Covenants.

- (a) The Company covenants that all Class A Shares delivered upon any conversion of this Note will be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.
 - (b) The Company covenants that if any Class A Shares to be provided for the purpose of any conversion of this Note require registration with or approval of any Governmental Authority under any Law before such Class A Shares may be validly issued upon conversion, the Company will, to the extent then permitted by applicable Law, secure such registration or approval, as the case may be.
 - (c) The Company further covenants to take all actions and obtain all approvals and registrations required with respect to any conversion of this Note into Class A Shares, and shall reserve for issuance an adequate number of Class A Shares, such that Class A Shares can be delivered in accordance with the terms of this Note upon any conversion hereunder. In addition, the Company further covenants to provide the Holder with a reasonably detailed description of the
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mechanics for the delivery of Class A Shares upon any conversion of this Note upon request.

- (d) The parties hereto acknowledge and agree that the Holder may only resell the Note, the Class A Shares delivered upon conversion of all or any portion of the Note pursuant to an effective registration statement or an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and other applicable securities Laws.

4.6 Notice for Certain Actions. In case of any (a) action by the Company or one of its Subsidiaries that would require an adjustment in the Conversion Rate pursuant to Section 4.1, (b) Merger Event or (c) voluntary or involuntary dissolution, liquidation or winding-up of the Company or any of its Subsidiaries, then, in each case (unless notice of such event is otherwise required pursuant to another provision of this Note), the Company shall deliver a written notice to the Holder, as promptly as possible but in any event at least 20 days prior to the applicable date hereinafter specified, stating (i) the date on which a record is to be taken for the purpose of such action by the Company or one of its Subsidiaries or, if a record is not to be taken, the date as of which the holders of Class A Shares, of record are to be determined for the purposes of such action by the Company or one of its Subsidiaries, or (ii) the date on which such Merger Event, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Class A Shares, of record shall be entitled to exchange their Class A Shares, for securities or other property deliverable upon such Merger Event, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such action by the Company or one of its Subsidiaries, dissolution, liquidation or winding-up unless otherwise provided for pursuant to any applicable Laws, the constitutional documents of the Company or any such Subsidiaries or any agreement or document to which the Company or any such Subsidiaries is a party; provided that nothing herein shall adversely affect any right, claim or other remedies, at law or contract, of the Holder arising as a result of or in connection with such failure or defect.

4.7 Termination of Depository Receipt Program. If the Class A Shares cease to be represented by ADSs issued under a depository receipt program sponsored by the Company, all references in this Note to the ADSs shall be deemed to have been replaced by a reference to the number of Class A Shares (and other property, if any) represented by the ADSs on the last day on which the ADSs represented the Class A Shares and as if the Class A Shares and the other property had been distributed to holders of the ADSs on that day. In addition, all references to the Last Reported Sale Price of the ADSs will be deemed to refer to the Last Reported Sale Price of the Class A Shares, and other appropriate adjustments, including adjustments to the Conversion Rate, will be made to reflect such change. In making such adjustments, where currency translations between U.S. dollars and any other currency are required, the exchange rate in effect on the date of determination will apply.

5. REPURCHASE

5.1 Repurchase on Maturity Date. Unless previously repurchased or surrendered and converted, the Company shall, without any action on the part of the Holder, redeem this Note in whole on the Maturity Date at a price (the "Maturity Repurchase Price")

equal to (A) the outstanding principal amount, plus (B) a premium which shall be equal to 2.0% of the outstanding principal amount, and plus (C) all other amounts due and payable on or in respect of the Note (including any accrued and unpaid interest on the Defaulted Amounts), if any.

5.2 Repurchase on Fundamental Change.

- (a) If a Fundamental Change occurs at any time, the Holder shall have the right, at its option, to require the Company to repurchase for cash all of the Note or any portion thereof on the date (the "Fundamental Change Repurchase Date") notified in writing by the Company that is not less than twenty (20) Business Days and not more than thirty-five (35) Business Days following the date of the Fundamental Change Company Notice (as defined below) at a repurchase price (the "Fundamental Change Repurchase Price") equal to (A) 100% of the principal amount (or such portion thereof, as the case may be), plus (B) a premium equal to the aggregate interest that would have accrued on such principal amount (or such portion thereof, as the case may be) over the period starting from (and including) the date of the Issue Date and ending on (and including) the Fundamental Change Repurchase Date, if the Note were to bear interest at a rate of 2.0% per annum, accrued daily and computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of actual days elapsed over a 30-day month, and plus (C) all other amounts due and payable on or in respect of the Note (including any accrued and unpaid interest on the Defaulted Amounts), if any.
 - (b) Repurchase of the Note under this Section 5.2 shall be made, at the option of the Holder thereof, upon: (i) delivery by the Holder to the Company of a duly completed notice (the "Fundamental Change Repurchase Notice"), in the form attached hereto as Exhibit A, on or before the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date; and (ii) delivery of the Note to the Company at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements for transfer), such delivery being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor. Each Fundamental Change Repurchase Notice shall state the portion of the principal amount of the Note to be repurchased.
 - (c) Notwithstanding anything herein to the contrary, the Holder shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date by delivery of a written notice of withdrawal to the Company in accordance with Section 5.5.
 - (d) On or before the twentieth (20th) calendar day after the occurrence of the effective date of a Fundamental Change, the Company shall provide to the Holder a written notice (the "Fundamental Change Company Notice") of the occurrence of the effective date of the Fundamental Change and of the repurchase right at the option of the Holder arising as a result thereof. Each Fundamental Change Company Notice shall specify:
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- (i) the events causing the Fundamental Change;
- (ii) the date of the Fundamental Change;
- (iii) the last date on which the Holder may exercise the repurchase right pursuant to this Section 5.2;
- (iv) the Fundamental Change Repurchase Price;
- (v) the Fundamental Change Repurchase Date;
- (vi) if applicable, the Conversion Rate and any adjustments to the Conversion Rate;
- (vii) that the Note may be converted only if any Fundamental Change Repurchase Notice that has been delivered by the Holder has been withdrawn in accordance with the terms of this Note; and
- (viii) the procedures in accordance with the terms of this Note that the Holder must follow to require the Company to repurchase the Note.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holder's repurchase rights or affect the validity of the proceedings for the repurchase of the Note pursuant to this Section 5.2.

5.3 [Reserved]

5.4 No Repurchase in the Event of Acceleration. Notwithstanding the foregoing, the Note may not be repurchased by the Company on any date at the option of the Holder upon a Fundamental Change if the principal amount of the Note has been accelerated, and such acceleration has not been rescinded, on or prior to such date (except in the case of an acceleration resulting from a default by the Company in the payment of the Fundamental Change Repurchase Price with respect to the Note).

5.5 Withdrawal of Fundamental Change Repurchase Notice. A Fundamental Change Repurchase Notice may be withdrawn (in whole or in part) by means of a duly completed written notice of withdrawal delivered to the Company in accordance with this Section 5.5 at any time prior to the close of business on the second Business Day immediately preceding the relevant Fundamental Change Repurchase Date, specifying (a) the principal amount of the Note with respect to which such notice of withdrawal is being submitted and (b) the principal amount, if any, of the Note that remains subject to the original Fundamental Change Repurchase Notice.

5.6 Payment of Fundamental Change Repurchase Price.

- (a) On or prior to 10:00 a.m., New York time, on one Business Day prior to the relevant Fundamental Change Repurchase Date, the Company shall set aside, segregate and hold in trust for the benefit of the Holder an amount of money sufficient to repurchase the applicable portion of the Note to be repurchased at the Fundamental Change Repurchase Price. Payment for the applicable portion of the Note surrendered for repurchase (and not withdrawn in accordance with Section 5.5) will be made in accordance with Section 2.2 on the later of (i)
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such Fundamental Change Repurchase Date, provided the Holder has satisfied the conditions in this Article 5; and (ii) the time of delivery of the applicable portion of the Note by the Holder to the Company in the manner required by Section 5.2.

- (b) If by 10:00 a.m., New York time, on one Business Day prior to the relevant Fundamental Change Repurchase Date, the Company holds money sufficient to make payment on the applicable portion of the Note to be repurchased on such date, then, with respect to the applicable portion of the Note that has been properly surrendered for repurchase and not validly withdrawn in accordance with Section 5.5, on such Fundamental Change Repurchase Date, (i) such portion of the Note will cease to be outstanding, (ii) interest will cease to accrue on such portion of the Note and (iii) in the event the entire outstanding amount of the Note is surrendered by the Holder to be repurchased, all other rights of the Holder will terminate (other than the right to receive the Fundamental Change Repurchase Price).
- (c) Upon the surrender of the Note that is to be repurchased in part pursuant to this Article 5, the Company shall execute and deliver to the Holder a new Note in an authorized denomination equal in principal amount to the unreurchased portion of the Note.

5.7 **Covenant to Comply with Applicable Law upon Repurchase of the Note.** In connection with any repurchase offer, the Company will, if required, comply with all federal and state securities laws in connection with any offer by the Company to repurchase the Note so as to permit the rights and obligations under this Article 5 to be exercised in the time and in the manner specified in this Article 5.

6. COVENANTS

6.1 **Payment.** The Company covenants and agrees that it will cause to be paid the principal of, and any other amounts due and payable on, the Note or any Repurchase Price at the respective times and in accordance with the terms hereof.

6.2 **Existence.** Subject to Article 7, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.

6.3 **No Withholding.** All payments and deliveries made by, or on behalf of, the Company or any successor to the Company under or with respect to this Note, including, but not limited to, payments of principal (including, if applicable, the Fundamental Change Repurchase Price), payments of interest and deliveries of Class A Shares (together with payments of cash for any fractional Class A Share) upon any conversion of the Note, shall be made without withholding or deduction for, or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied by or within any jurisdiction in which the Company or any successor to the Company is, for tax purposes, organized or resident or doing business or through which payment is made or deemed made (or any political subdivision or taxing authority thereof or therein), unless such withholding or deduction is required by Law or by regulation or governmental policy having the force of law.

- 6.4 Stay, Extension and Usury Laws. The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other Law that would prohibit or forgive the Company from paying all or any portion of the principal of or any other amounts due and payable on the Note or any Repurchase Price as contemplated herein, wherever enacted, now or at any time hereafter in force, or that may affect the covenants or the performance of the Note; and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such Law, and covenants that it will not, by resort to any such Law, hinder, delay or impede the execution of any power herein granted to the Holder, but will suffer and permit the execution of every such power as though no such Law had been enacted.
- 6.5 Compliance Certificates; Statements as to Defaults. The Company shall deliver to the Holder within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 31, 2019) and within 14 days of a written request made by the Holder a certificate executed by an executive officer of the Company stating that a review has been conducted of the Company's activities under this Note and whether the Company has fulfilled its obligations hereunder, and whether such officer thereof have knowledge of any Default by the Company that occurred during the previous year that is then continuing and, if so, specifying each such Default and the nature thereof. The Company shall deliver to the Holder, as soon as possible, and in any event within 30 days after the Company becomes aware of the occurrence of any Default if such Default is then continuing, an Officer's Certificate setting forth the details of such Default, its status and the action that the Company is taking or proposing to take in respect thereof.
- 6.6 Further Instruments and Acts. Upon request of the Holder, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Note.
- 6.7 New Note Instruments. Upon request of the Holder for the Note to be broken down into a number of note instruments of smaller principal amounts, the Company shall issue additional note instruments of such smaller principal amounts without charge within three (3) Business Days after the date of such request, provided that the existing note instrument of this Note shall be returned by the Holder to the Company for cancellation.
- 6.8 Replacement of Note. Upon the loss, theft, destruction or mutilation of this Note (and in the case of loss, theft or destruction, of indemnity from the Holder reasonably satisfactory to the Company, or in the case of mutilation, upon surrender and cancellation thereof), the Company shall at its own expense within five (5) Business Days execute and deliver to the Holder, in lieu thereof, a new Note, dated and bearing interest from the date hereof.

7. CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

- 7.1 Company May Consolidate, Etc. on Certain Terms. Subject to the provisions of Section 7.2, the Company shall not consolidate with, merge with or into, or sell, convey, transfer or lease all or substantially all of its properties and assets to another Person unless:
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- (a) the resulting, surviving or transferee Person (the “Successor Company”), if not the Company, shall be a corporation, organized and existing under the laws of the United States of America, any State thereof, the District of Columbia, the Cayman Islands, the British Virgin Islands, Bermuda or Hong Kong and the Successor Company (if not the Company) shall expressly assume all of the obligations of the Company under the Note and the Subscription Agreement; and
- (b) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing under this Note.

For purposes of this Section 7.1, the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of one or more Subsidiaries of the Company to another Person, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Company on a consolidated basis, shall be deemed to be the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of the Company to another Person.

7.2 **Successor Corporation to Be Substituted.** In case of any such consolidation, merger, sale, conveyance, transfer or lease and upon the assumption by the Successor Company of the due and punctual payment of the principal of and any other amounts due and payable on the Note and any Repurchase Price, the due and punctual delivery or payment, as the case may be, of any consideration due upon conversion of the Note and the due and punctual performance of all of the covenants and conditions of the Note to be performed by the Company, in each case in accordance with the terms hereof, such Successor Company (if not the Company) shall succeed to and, except in the case of a lease of all or substantially all of the Company’s properties and assets, shall be substituted for the Company, with the same effect as if it had been named herein as the party of the first part. In the event of any such consolidation, merger, sale, conveyance or transfer (but not in the case of a lease), upon compliance with this Article 7 the Person named as the “Company” in the first paragraph of the Note (or any successor that shall thereafter have become such in the manner prescribed in this Article 7) may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Note and from its obligations under the Note.

7.3 No consolidation, merger, sale, conveyance, transfer or lease shall be effective unless any such consolidation, merger, sale, conveyance, transfer or lease and any such assumption has complied with the provisions of this Article 7.

8. CANCELLATION

After all amounts at any time owing on the Note have been paid in full or upon the conversion of the Note in full pursuant to Article 3, the Note shall be surrendered to the Company for cancellation and shall not be reissued.

9. NO REDEMPTION OR PREPAYMENT

This Note shall not be redeemable or pre-paid by the Company prior to the Maturity Date, and no sinking fund is provided for this Note.

10. MISCELLANEOUS

- 10.1 Termination of Rights. All rights under this Note shall terminate when (a) all amounts at any time owing on the Note have been paid in full or (ii) the Note is converted in full pursuant to the terms set forth in Article 3.
- 10.2 Provisions Binding on Company's Successors. All the covenants, stipulations, promises and agreements of the Company contained in the Note shall bind its successors and assigns whether so expressed or not.
- 10.3 Official Acts by Successor Company. Any act or proceeding by any provision of the Note authorized or required to be done or performed by any board, committee or Officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation or other entity that shall at the time be the lawful sole successor of the Company.
- 10.4 Amendments and Waivers; Notice. The amendment or waiver of any term of the Note shall be subject to the written consent of the Holder and the Company. The provision of notice shall be made pursuant to the terms of the Subscription Agreement.
- 10.5 Transfer Restrictions.

- (a) The Holder covenants that the Note and/or the Class A Shares issuable upon conversion of the Note will only be disposed of pursuant to an effective registration statement under, and in compliance with the requirements of, the Securities Act or pursuant to an available exemption from the registration requirements of the Securities Act, and in compliance with any applicable state securities laws. In connection with any transfer of Notes and/or the Class A Shares issuable upon conversion of the Note other than pursuant to an effective registration statement or Rule 144 promulgated under the Securities Act ("Rule 144"), the Company may require the transferor to provide to the Company an opinion of counsel selected by the transferor, the form and substance of which opinion shall be reasonably acceptable to the Company with respect to transactions of a similar nature, to the effect that such transfer does not require registration under the Securities Act.
- (b) The Holder agrees to the imprinting, until no longer required by this Section 10.5, of the following legend on any certificate evidencing any of the Note or the Class A Shares issuable upon conversion of the Note:

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER ANY OTHER SECURITIES LAWS. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT AND OTHER APPLICABLE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

The legend set forth above shall be removed and the Company shall issue a certificate without such legend to the holder of the Note or the Class A Shares

issuable upon conversion of the Note if, unless otherwise required by state securities laws, (i) such securities are registered for resale under the Securities Act and are transferred to a Holder pursuant to a registration statement that is effective at the time of such transfer, (ii) in connection with a sale, assignment or other transfer, such Holder provides the Company with an opinion of counsel, the form and substance of which opinion shall be reasonably acceptable to the Company with respect to transactions of a similar nature, that the sale, assignment or transfer of the securities may be made without registration under the applicable requirements of the Securities Act or (iii) such Holder provides the Company with reasonable assurance that the securities can be sold, assigned or transferred pursuant to Rule 144 or have been sold under Rule 144.

- (c) Notwithstanding anything to the contrary herein, transfers of this Note shall be registered upon registration books maintained for such purpose by or on behalf of the Company. Prior to presentation of this Note for registration of transfer, the Company shall treat the registered holder hereof as the owner and holder of this Note for the purpose of receiving all payments of principal of and any other amounts due and payable on the Note and any Repurchase Price and for all other purposes whatsoever. This provision is intended to be a book entry system as defined in Treasury Regulations Section 5f.103-1(c) and shall be interpreted consistently therewith.

10.6 No Third Party Beneficiary. A person who is not a party to this Note shall have no right under the Contracts (Rights of Third Parties) Ordinance (Chapter 623) to enforce any of its terms.

10.7 Governing Law.

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF HONG KONG WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

10.8 Arbitration.

- (a) Any dispute, controversy, difference or claim arising out of or relating to this Note, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre ("HKIAC") under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted.
- (b) The law of this arbitration clause shall be Hong Kong law.
- (c) The seat of arbitration shall be Hong Kong.
- (d) The number of arbitrators shall be three. The arbitrators shall be appointed in accordance with the HKIAC rules. The arbitration proceedings shall be conducted in English.
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(e) It shall not be incompatible with this arbitration agreement for any party to seek interim or conservatory relief from courts of competent jurisdiction before the constitution of the arbitral tribunal.

- 10.9 Force Majeure. In no event shall the Holder be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Holder shall use reasonable efforts to resume performance as soon as practicable under the circumstances.
- 10.10 Calculations. Except as otherwise provided herein, the Company shall be responsible for making all calculations called for under the Note. These calculations include, but are not limited to, determinations of the Last Reported Sale Prices, accrued interest payable on the Note, if any, and the Conversion Rate of the Note. The Company shall make all these calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on the Holder. The Company shall provide a schedule of its calculations to the Holder.
- 10.11 Delays or Omissions. No delay or failure by any party to insist on the strict performance of any provision of the Note, or to exercise any power, right or remedy, will be deemed a waiver or impairment of such performance, power, right or remedy or of any other provision of the Note, nor shall it be construed to be a waiver of any breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring.
- 10.12 Interpretation. If any claim is made by a party relating to any conflict, omission or ambiguity in the provisions of the Note, no presumption or burden of proof or persuasion will be implied because the Note was prepared by or at the request of any party or its counsel.

[The remainder of this page has been deliberately left blank]

IN WITNESS WHEREOF, the Company has caused the Note to be issued on the date first above written.

COMPANY:

NIO Inc.

By: _____

Name:

Title:

Exhibit A

[FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE]

To: [Name of Company]

The undersigned Holder of this Note hereby acknowledges receipt of a notice from NIO Inc. (the "Company") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to pay to the Holder in accordance with Section 5.2 of this Note the entire principal amount of this Note, or the portion thereof below designated, and the premium amount below calculated in accordance with Section 5.2(a)(B).

Principal amount to be repaid (if less than all): US\$ _____

Premium: US\$ _____

Dated:

[NAME OF HOLDER]

By:

Name:

Capacity:

Exhibit B

Form of 2022 Convertible Note

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 (AS AMENDED, THE “SECURITIES ACT”) OR UNDER THE SECURITIES LAWS OF ANY OTHER JURISDICTIONS. THESE SECURITIES MAY NOT BE TRANSFERRED, SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED: (A) IN THE ABSENCE OF (1) AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (2) AN EXEMPTION OR QUALIFICATION UNDER APPLICABLE SECURITIES LAWS, AND (B) UNLESS IN COMPLIANCE WITH THE CONVERTIBLE NOTES SUBSCRIPTION AGREEMENT BETWEEN THE COMPANY AND SERENE VIEW LIMITED, DATED SEPTEMBER 4, 2019 (THE “SUBSCRIPTION AGREEMENT”). ANY ATTEMPT TO TRANSFER, SELL, PLEDGE OR HYPOTHECATE THIS SECURITY IN VIOLATION OF THESE RESTRICTIONS OR ANY OTHER RESTRICTIONS SET FORTH IN THE SUBSCRIPTION AGREEMENT SHALL BE VOID.

CONVERTIBLE SENIOR NOTE

US\$50,000,000

[], 2019

Subject to the terms and conditions of this Convertible Senior Note due 2022 (the “Note”), for good and valuable consideration received, NIO Inc., an exempted company incorporated with limited liability under the laws of the Cayman Islands (the “Company”), promises to pay to the order of Serene View Limited, a company incorporated under the laws of the British Virgin Islands (such party and any other permitted transferee, the “Holder”), the principal amount of US\$50,000,000, plus other amounts payable provided below, on []¹ (the “Maturity Date”), or such earlier date as may be otherwise provided herein, unless the outstanding principal is settled in accordance with Article 3 of the Note.

The Note is issued pursuant to, and in accordance with, the Convertible Notes Subscription Agreement, dated September 4, 2019 (the “Subscription Agreement”), between the Company and the Holder and is subject to the provisions thereof. Unless the context requires otherwise, capitalized terms used herein shall have the meaning set forth in Article 1 of this Note.

The following is a statement of the rights of the Holder of the Note and the terms and conditions to which the Note is subject, and to which the Holder hereof, by the acceptance of the Note, agrees:

1. DEFINITIONS

“ADS” means an American Depositary Share, each of which represents one Class A Share as of the date of this Note.

“Affiliate” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person; provided, that

¹ NTD: the 3rd anniversary of the Issue Date.

none of the Company, nor any of its Subsidiaries shall be considered an Affiliate of the Purchaser. For purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” have correlative meanings.

“Board of Directors” means the board of directors of the Company or a committee of such board duly authorized to act for it hereunder.

“Business Day” means any day other than a Saturday, Sunday or another day on which commercial banks in the People’s Republic of China (the “PRC” or “China”, which for the purpose of this Agreement shall exclude Hong Kong SAR, Macau SAR and Taiwan), Hong Kong SAR or New York are required or authorized by law or executive order to be closed.

“Capital Stock” means for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity.

“Class A Shares” means Class A ordinary shares, par value US\$0.00025 per share, in the share capital of the Company.

“Class B Shares” means the Class B ordinary shares, par value US\$0.00025 per share, in the share capital of the Company.

“Class C Shares” means the Class C ordinary shares, par value US\$0.00025 per share, in the share capital of the Company.

“Clause A Distribution” shall have the meaning ascribed to such term in Section 4.1(c).

“Clause B Distribution” shall have the meaning ascribed to such term in Section 4.1(c).

“Clause C Distribution” shall have the meaning ascribed to such term in Section 4.1(c).

“close of business” means 5:00 p.m. (New York City time).

“Common Equity” of any Person means ordinary share capital or Capital Stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

“Company” shall have the meaning ascribed to such term in the Preamble.

“Control” (including the terms “Controlled by” and “under common Control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, as trustee or executor, by contract or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of

the board of directors or similar body governing the affairs of such Person or securities that represent a majority of the outstanding voting securities of such Person.

“Conversion Date” shall have the meaning ascribed to such term in Section 3.3.

“Conversion Notice” shall have the meaning ascribed to such term in Section 3.3.

“Conversion Period” shall mean the period starting from (and including the first anniversary of the Issue Date and prior to the close of business on the second Business Day immediately preceding the Maturity Date.

“Conversion Rate” shall have the meaning ascribed to such term in Section 3.2.

“Current Market Price” means, in respect of an ADS at a particular date, the volume-weighted average of the Last Reported Sale Prices for one ADS (carrying full entitlement to dividend) for the thirty (30) consecutive Trading Days ending on the Trading Day immediately preceding such date, provided that if at any time during the said thirty (30) Trading Day period the ADSs shall have been quoted ex-dividend and during some other part of that period the ADSs shall have been quoted cum-dividend then:

- (a) if the ADSs (or the Class A Ordinary Shares) to be issued in such circumstances do not rank for the dividend in question, the quotations on the dates on which the ADSs shall have been quoted cum-dividend shall for the purpose of this definition be deemed to be the amount thereof reduced by an amount equal to the amount of that dividend per ADS; or
- (b) if the ADSs (or the Class A Ordinary Shares) to be issued in such circumstances rank for the dividend in question, the quotations on the dates on which the ADSs shall have been quoted ex-dividend shall for the purpose of this definition be deemed to be the amount thereof increased by such similar amount;

and provided further that if the ADSs on each of the said thirty (30) Trading Days have been quoted cum-dividend in respect of a dividend which has been declared or announced but the ADSs or the Ordinary Shares to be issued do not rank for that dividend, the quotations on each of such dates shall for the purpose of this definition be deemed to be the amount thereof reduced by an amount equal to the amount of that dividend per ADS.

“Default” means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

“Defaulted Amounts” means any amounts on this Note (including, without limitation, the Repurchase Price, principal and interest) that are payable but are not punctually paid or duly provided for.

“Distributed Property” shall have the meaning ascribed to such term in Section 4.1(c).

“Early Repurchase Date” shall have the meaning ascribed to such term in Section 5.3(a).

“Early Repurchase Notice” shall have the meaning ascribed to such term in Section 5.3(a).

“Early Repurchase Price” shall have the meaning ascribed to such term in Section 5.3(a).

“EoD Notice” shall have the meaning ascribed to such term in Section 2.5(a)

“EoD Repurchase Price” shall have the meaning ascribed to such term in Section 2.5(a).

“Event of Default” shall have the meaning ascribed to such term in Section 2.4.

“Ex-Dividend Date” means the first date on which the Class A Shares, ADSs representing Class A Shares (or other applicable security), trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of the Class A Shares, ADSs representing Class A Shares (or other applicable security) on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

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

“Expiring Rights” means any rights, options or warrants to purchase Class A Shares or ADSs that expire on or prior to the Maturity Date.

“Fundamental Change” shall be deemed to have occurred if any of the following occurs after the Note is originally issued:

- (a) (A) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act, other than the Company, its Subsidiaries (together with the Company, the “Company Group”), the employee benefit plans of the Company and its Subsidiaries and any of the Permitted Holders, has become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of (i) the Company’s Common Equity (including Common Equity held in the form of ADSs) representing more than 50% of the voting power of the Company’s Common Equity or (ii) more than 50% of the outstanding Class A Shares (including Class A Shares held in the form of ADSs); or (B) the Permitted Holders (together with any of their respective Affiliates) have become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of Class A Shares (including Class A Shares held in the form of ADSs) representing, in the aggregate, more than 65% of the outstanding Class A Shares (including Class A Shares held in the form of ADSs);
 - (b) the consummation of (A) any recapitalization, reclassification or change of the Class A Shares or the ADSs (other than changes resulting from a subdivision or combination) as a result of which the Class A Shares or the ADSs would be converted into, or exchanged for, stock, other securities, other property or assets; (B) any share exchange, consolidation or merger of the Company, or
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any similar transaction, pursuant to which the Class A Shares or the ADSs will be converted into cash, securities or other property; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company Group, taken as a whole, to any Person other than one of the Company's wholly-owned Subsidiaries; provided, however, that a transaction described in clause (B) in which the holders of all classes of the Company's Common Equity immediately prior to such transaction own, directly or indirectly, more than 50% of all classes of Common Equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions vis-a-vis each other as such ownership immediately prior to such transaction shall not be a Fundamental Change pursuant to this clause (b);

- (c) the shareholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company;
- (d) the ADSs (or other Common Equity or ADSs in respect of the Common Equity underlying the Note) cease to be listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors); or
- (e) any change in or amendment to the laws, regulations and rules of the PRC or the official interpretation or official application thereof (a "change in law") that results in (A) the Company Group (as in existence immediately subsequent to such change in law), taken as a whole, being legally prohibited from operating substantially all of the business operations conducted by the Company Group (as in existence immediately prior to such change in law) as of the last date of the period described in the Company's consolidated financial statements for the most recent fiscal quarter and (B) the Company being unable to continue to derive substantially all of the economic benefits from the business operations conducted by the Company Group (as in existence immediately prior to such change in law) in the same manner as reflected in the Company's consolidated financial statements for the most recent fiscal quarter,

provided, however, that a transaction or event described in clause (b) above shall not constitute a Fundamental Change if at least 90% of the consideration received or to be received by holders of the ADSs, excluding cash payments for any fractional Class A Shares and cash payments made in connection with dissenters' appraisal rights, in connection with such transaction or event consists of shares of Common Equity or ADSs or depositary receipts in respect of Common Equity that are listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors) or will be so listed or quoted when issued or exchanged in connection with such transaction or event and as a result of such transaction or event, the Note becomes convertible into such consideration, excluding cash payments for any fractional Class A Shares and cash payments made in connection with dissenters' appraisal rights.

"Fundamental Change Repurchase Date" shall have the meaning ascribed to such term in Section 5.2(a).

“Fundamental Change Repurchase Notice” shall have the meaning ascribed to such term in Section 5.2(b).

“Fundamental Change Repurchase Price” shall have the meaning ascribed to such term in Section 5.2(a).

“Fundamental Change Company Notice” shall have the meaning ascribed to such term in Section 5.2(d).

“GAAP” means the generally accepted accounting principles in the United States.

“Governmental Authority” means any federal, national, foreign, supranational, state, provincial, local, municipal or other political subdivision or other government, governmental, regulatory or administrative authority, agency, board, bureau, department, instrumentality or commission or any court, tribunal, judicial or arbitral body of competent jurisdiction or stock exchange.

“Holder” shall have the meaning ascribed to such term in the Preamble.

“Issue Date” means [], 2019.

“Last Reported Sale Price” of the Class A Shares on any date shall be calculated as (i) the closing sale price per ADS (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the ADSs are traded divided by (ii) the applicable number of Class A Shares then represented by one ADS. If the ADSs are not listed for trading on a U.S. national or regional securities exchange on the relevant date, the “Last Reported Sale Price” shall be (i) the last quoted bid price for the ADSs in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization divided by (ii) the applicable number of Class A Shares then represented by one ADS. If the ADSs are not so quoted, the “Last Reported Sale Price” shall be (i) the average of the midpoint of the last bid and ask prices for the ADSs on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose divided by (ii) the applicable number of Class A Shares then represented by one ADS.

“Law” means any statute, law, ordinance, regulation, rule, code, order, judgment, writ, injunction, decree or requirement of law (including common law) enacted, issued, promulgated, enforced or entered by a Governmental Authority.

“Maturity Date” shall have the meaning ascribed to such term in the Preamble.

“Maturity Repurchase Price” shall have the meaning ascribed to such term in Section 5.1.

“Merger Event” shall have the meaning ascribed to such term in Section 4.3.

“Note” shall have the meaning ascribed to such term in the Preamble.

“Officer” means, with respect to the Company, the Chairman, President, the Chief Executive Officer, the Secretary, any Executive or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title “Vice President”).

“Officer’s Certificate”, when used with respect to the Company, means a certificate that is delivered to the Holder and that is signed by the principal executive, financial or accounting officer of the Company who has been duly authorized to sign such certificate. To the extent applicable, each such certificate shall include (a) a statement that the person making such certificate is familiar with the requested action and the Note; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statement contained in such certificate is based; (c) a statement that, in the judgment of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed judgment as to whether or not such action is permitted by the Note; and (d) a statement as to whether or not, in the judgment of such person, such action is permitted by the Note, if and to the extent required by the provisions of the Note.

“open of business” means 9:00 a.m. (New York City time).

“Ordinary Shares” means collectively the Class A Shares, the Class B Shares and the Class C Shares.

“Permitted Holders” means Mr. Bin Li and Tencent Holdings Limited, together with any other respective “person” or “group” subject to aggregation of ordinary share capital of the Company (including ordinary share capital held in the form of ADSs) with any of the aforementioned person and entity under Section 13(d) of the Exchange Act.

“Person” means any individual, partnership, corporation, association, joint stock company, trust, joint venture, limited liability company, organization, entity or Governmental Authority.

“Record Date” means, with respect to any dividend, distribution or other transaction or event in which the holders of the Class A Shares (directly or in the form of ADSs) (or other applicable security) have the right to receive any cash, securities or other property or in which the Class A Shares (directly or in the form of ADSs) (or such other security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of security holders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors, statute, contract or otherwise).

“Reference Price” means the higher of (i) US\$3.12 per Class A Share, subject to the same adjustment to the Conversion Rate pursuant to this Note and (ii) the Current Market Price, in each case on the date of announcement of the issuance referred to under the provisions in Section 4.1.

“Reference Property” and “unit of Reference Property” have the meanings ascribed thereto in Section 4.3.

“Relevant Securities” shall have the meaning ascribed to such term in Section 4.1(f).

“Repurchase Price” means any of the Early Repurchase Price, the EoD Repurchase Price, the Fundamental Change Repurchase Price and the Maturity Repurchase Price, as applicable.

“Significant Subsidiary” means a Subsidiary of the Company that meets the definition of “significant subsidiary” in Article 1, Rule 1-02 of Regulation S-X under the Exchange Act.

“Spin-Off” shall have the meaning ascribed to such term in Section 4.1(c).

“Subscription Agreement” shall have the meaning ascribed to such term in the Preamble.

“Subsidiary” of any Person means any corporation, partnership, limited liability company, joint stock company, joint venture or other organization or entity, whether incorporated or unincorporated, which is Controlled by such Person and, for the avoidance of doubt, the Subsidiaries of any Person shall include any variable interest entity over which such Person or any of its Subsidiaries effects Control pursuant to contractual arrangements and which is consolidated with such Person in accordance with GAAP applicable to such Person.

“Successor Company” shall have the meaning ascribed to such term in Section 7.1(a).

“Trading Day” means a day on which (i) trading in the ADSs (or other security for which a closing sale price must be determined) generally occurs on The NASDAQ Global Market or, if the ADSs (or such other security) are not then listed on The NASDAQ Global Market, on the principal other U.S. national or regional securities exchange on which the ADSs (or such other security) are then listed or, if the ADSs (or such other security) are not then listed on a U.S. national or regional securities exchange, on the principal other market on which the ADSs (or such other security) are then traded and (ii) a Last Reported Sale Price with respect to the ADSs (or closing sale price for such other security) is available on such securities exchange or market; provided that if the ADSs (or such other security) are not so listed or traded, “Trading Day” means a Business Day.

“Transaction Documents” means the Note, the Subscription Agreement, the Convertible Senior Notes due 2020 and each of the other agreements and documents entered into or delivered by the Company, the Holder or their respective Affiliates in connection with the transactions contemplated by the Subscription Agreement.

“Trigger Event” shall have the meaning ascribed to such term in Section 4.1(c).

“U.S.” means United States.

“US\$” or “\$” means the United States dollar, the lawful currency of the United States of America.

“Valuation Period” shall have the meaning ascribed to such term in Section 4.1(c).

2. INTEREST; PAYMENTS; DEFAULTS

- 2.1 Interest Rate. The principal amount outstanding under the Note shall not bear any interest, except for any interest on the Defaulted Amounts in accordance with Section 2.6.
- 2.2 Payment. All amounts payable on or in respect of the Note or the indebtedness evidenced hereby shall be paid to the Holder in U.S. dollars, in immediately available funds on the date that any principal (or interest, in accordance with Section 2.6) or any Repurchase Price is due and payable hereunder. The Company shall make such principal (or interest, in accordance with Section 2.6) or such payment of Repurchase Price to the Holder by wire transfer of immediately available funds for the account of the Holder or any of its Affiliates as may be designated by the Holder in writing from time to time; provided that any change to such accounts shall be notified in writing to the Company at least two (2) Business Days prior to the relevant payment date. If any such payment date or the Maturity Date falls on a day that is not a Business Day, the required payment will be made on the next succeeding Business Day and no interest on such payment will accrue in respect of the delay.
- 2.3 Seniority. The Note ranks (a) senior in right of payment to any of the Company's present and future indebtedness that is expressly subordinated in right of payment to the Note, (b) equal in right of payment to any of the Company's present and future indebtedness and other liabilities of the Company that are not so subordinated, (c) junior in right of payment to any of the Company's secured indebtedness to the extent of the value of the assets securing such indebtedness and (d) structurally junior to all indebtedness incurred by the Company's Subsidiaries and their other liabilities (including trade payables).
- 2.4 Events of Default. For purposes of the Note, an "Event of Default" shall be deemed to have occurred if any of the following events occurs, whatever the reason or cause for such Event of Default and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any Governmental Authority or otherwise:
- (a) Failure to Pay. The Company defaults in the payment of principal of the Note when due and payable on the Maturity Date or upon declaration of acceleration, or the Company defaults in the payment of any Repurchase Price upon any required repurchase, in each case in accordance with the terms hereof;
 - (b) Breach of Conversion Obligation. The Company fails to comply with its obligation to convert all or a portion of the Note in accordance with Article 3 upon Holder's exercise of its conversion rights and such failure continues for a period of five (5) Business Days;
 - (c) Breach of Article 7. The Company fails to comply with its obligations under Article 7;
 - (d) Breach of Other Obligations. The Company fails for sixty (60) days after written notice from the Holder has been received by the Company to comply with any of its other agreements contained in any Transaction Document to which the Company is a party;
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- (e) Cross Default. Any default by the Company or any Subsidiary of the Company with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of US\$50 million (or the foreign currency equivalent thereof) in the aggregate of the Company and/or any such Subsidiary, whether such indebtedness now exists or shall hereafter be created (A) resulting in such indebtedness becoming or being declared due and payable or (B) constituting a failure to pay the principal or interest of any such debt when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise;
 - (f) Adverse Judgment. A final judgment for the payment of US\$50 million (or the foreign currency equivalent thereof) or more (excluding any amounts covered by insurance) is rendered against the Company or any Subsidiary of the Company, which judgment is not paid, bonded or otherwise discharged or stayed within sixty (60) days after the earlier of (i) the date on which the right to appeal thereof has expired if no such appeal has commenced and (ii) the date on which all rights to appeal have been extinguished;
 - (g) Trading Suspension. The ADSs (or other Common Equity or ADSs in respect of the Common Equity underlying the Note) have been suspended from trading on any of The New York Stock Exchange, The NASDAQ Global Select market or The NASDAQ Global Market (or any of their respective successors) for a period of ninety (90) consecutive trading days or for more than one hundred and eighty (180) trading days in any twelve (12)-month period;
 - (h) Bankruptcy. The Company, any Significant Subsidiary or any other Subsidiaries which in the aggregate constitute a “significant subsidiary” as defined in rule 1-02(w) of Regulation S-X under the Exchange Act shall commence a voluntary case or other proceeding seeking liquidation, winding-up, reorganization or other relief with respect to the Company, such Significant Subsidiary or such other Subsidiaries or its or their debts under any bankruptcy, liquidation, insolvency or other similar Law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company, such Significant Subsidiary or such other Subsidiaries or all or substantially all of its or their property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its or their debts as they become due; or
 - (i) Involuntary Proceedings. An involuntary case or other proceeding shall be commenced against the Company, any Significant Subsidiary or any other Subsidiaries which in the aggregate constitute a “significant subsidiary” as defined in rule 1-02(w) of Regulation S-X under the Exchange Act seeking liquidation, winding-up, reorganization or other relief with respect to the Company, such Significant Subsidiary or such other Subsidiaries or its or their debts under any bankruptcy, liquidation, insolvency or other similar Law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company, such Significant
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Subsidiary or such other Subsidiaries or all or substantially all of its or their property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of sixty (60) consecutive days.

2.5 Consequences of Event of Default.

- (a) If one or more Events of Default shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any Governmental Authority), then,
- (i) in each and every such case (other than an Event of Default specified in Section 2.4(h) or Section 2.4(i)), unless the principal of the Note shall have already become due and payable, the Holder may by notice in writing to the Company (the “EoD Notice”) to require the Company to repurchase for cash all of the Note or any portion thereof on the fifth (5th) Business Day after the date of the EoD Notice at a repurchase price (the “EoD Repurchase Price”) equal to (A) 100% of the principal amount thereof, plus (B) a premium equal to the aggregate interest that would have accrued on such principal amount over the period starting from (and including) the date of the Issue Date and ending on (and including) the date when the EoD Repurchase Price is made in full, if the Note were to bear interest at a rate of 2.0% per annum, accrued daily and computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of actual days elapsed over a 30-day month, and plus (C) all other amounts due and payable on or in respect of the Note (including any accrued and unpaid interest on the Defaulted Amounts pursuant to Section 2.6), if any; or
- (ii) if an Event of Default specified in Section 2.4(h) or Section 2.4(i) occurs and is continuing, the Company shall promptly repurchase for cash all of the Note at a repurchase price equal to the EoD Repurchase Price without any action on the part of the Holder.
- (b) Section 2.5(a), however, is subject to the conditions that if, at any time after the outstanding principal of the Note shall have been so declared due and payable, and before any arbitral award for the payment of the monies due shall have been obtained or entered as hereinafter provided, the Company has paid or deposited with the Holder a sum sufficient to pay the outstanding principal of and any other amounts due and payable on the Note that shall have become due otherwise than by acceleration (with interest on the Defaulted Amounts), and if (1) rescission would not conflict with any such arbitral award and (2) any and all existing Events of Default under the Note, other than the nonpayment of the principal of and any other amounts due and payable on the Note that shall have become due solely by such acceleration, shall have been cured or waived, then and in every such case the Holder, by written notice to the Company, may waive all Default or Events of Default with respect to the Note and rescind and annul such declaration and its consequences and such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of the Note; but no such
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waiver or rescission and annulment shall extend to or shall affect any subsequent Default or Event of Default, or shall impair any right consequent thereon. Notwithstanding anything to the contrary herein, no such waiver or rescission and annulment shall extend to or shall affect any Default or Event of Default resulting from (i) the nonpayment of the principal of, or any other amounts due and payable on, the Note or (ii) a failure to pay or deliver, as the case may be, the consideration due upon conversion of the Note.

2.6 Defaulted Amounts. Any Defaulted Amounts shall accrue interest at a rate equal to three percent (3.0%) per annum accrued daily during the period from (and including) such relevant payment date and ending on (and including) the date on which such Defaulted Amounts and such interest thereon are fully paid, and such Defaulted Amounts together with such interest thereon pursuant to this Section 2.6 shall be paid by the Company to the Holder by wire transfer of immediately available funds pursuant to the procedures set forth in Section 2.2.

3. CONVERSION

3.1 Conversion by Holder. Subject to and upon compliance with the provisions of this Article 3, the Holder shall have the right, at the Holder's option, to convert all or any portion (if the portion to be converted is US\$1,000 principal amount or an integral thereof) of the Note to the Company's fully paid Class A Shares at the applicable Conversion Rate at any time during the Conversion Period.

3.2 Conversion Price; Conversion Rate. Subject to adjustments as provided in Article 4, the initial conversion price shall be equal to US\$3.12 per Class A Share, representing an initial conversion rate of 320.5128 Class A Shares (the "Conversion Rate") per US\$1,000 principal amount of the Note.

3.3 Conversion Procedure; Settlement Upon Conversion.

- (a) Subject to Section 3.3(b), this Note shall be deemed to have been converted immediately prior to the close of business on the date (the "Conversion Date") that the Holder has delivered a duly completed irrevocable written notice to the Company (the "Conversion Notice") and the Note for cancellation to the Company. Within five (5) Business Days after the delivery of the Note and the Conversion Notice to the Company, the Company shall (i) take all actions and execute all documents necessary to effect the issuance of the full number of Class A Shares to which the Holder shall be entitled in satisfaction of any conversion pursuant to Section 3.1, (ii) deliver to the Holder certificate(s) representing the number of Class A Shares delivered upon each such conversion, (iii) deliver to the Holder a certified copy of the register of members of the Company, reflecting the Holder's ownership of the Class A Shares delivered upon each such conversion, and (iv) subject to Section 3.3(b), cancel the Note. No Conversion Notice may be delivered and the Note may not be surrendered by a Holder for conversion thereof if the Holder has also delivered a Fundamental Change Repurchase Notice to the Company in respect of the Note and not validly withdrawn such Fundamental Change Repurchase Notice in accordance with Article 5.
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- (b) In the event the Holder surrenders this Note pursuant to Section 3.3(a) for partial conversion, the Company shall, in addition to cancelling the Note upon such surrender, execute and deliver to the Holder a new note denominated in U.S. dollars and in an aggregate principal amount equal to the unconverted portion of the surrendered Note, without payment of any service charge by the Holder.
- (c) If the Holder submits the Note for conversion, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the delivery of the Class A Shares upon such conversion of the Note, unless the tax is due because the Holder requests such Class A Shares to be issued in a name other than the Holder's name, in which case (i) if in the name of any Person which is an Affiliate of the Holder, the Company shall pay that tax or (ii) if in the name of any other Person, the Holder shall pay that tax. The Company shall pay the relevant fees for issuance of the Class A Shares and shall pay the relevant depository's fees for any future conversion of the issued Class A Shares into the ADSs.
- (d) Except as provided in Section 4.1, no adjustment shall be made for dividends on any Class A Shares delivered upon any conversion of this Note as provided in this Article 3.
- (e) Without prejudice to the Holder's right to receive the interest in accordance with Section 3.3(h), the Company's settlement of each conversion pursuant to this Article 3 shall be deemed to satisfy in full its obligation to pay the principal amount of the Note converted.
- (f) The Holder in whose name the certificate for any Class A Shares delivered upon conversion is registered shall be treated as a holder of record of such Class A Shares as of the close of business on the relevant Conversion Date. Upon a conversion of the entire outstanding amount of the Note, the Holder shall no longer be a holder of the Note surrendered for conversion.
- (g) The Company shall not issue any fractional Class A Share upon conversion of the Note and shall instead pay cash in lieu of any fractional Class A Share deliverable upon conversion based on the Last Reported Sale Price of the Class A Shares on the relevant Conversion Date.
- (h) Nothing in this Article 3 shall prejudice the Holder's entitlement to receive interest on any of the Defaulted Amounts in accordance with Section 2.6.

3.4 Without prejudice to any other provision in this Note, the Holder may elect to convert all or any portion (if the portion to be converted is US\$1,000 principal amount or an integral thereof) of the Note to ADSs (each representing one Class A Share) at the applicable Conversion Rate at any time during the Conversion Period and the provisions in this Article 3 shall apply *mutatis mutandis*; provided that, the Company shall pay (A) any documentary, stamp or similar issue or transfer tax due on the delivery of such ADSs upon conversion of the Note (or the issuance of the underlying Class A Shares), unless the tax is due because the Holder requests such ADSs to be issued in a name other than the Holder's name, in which case (i) if in the name of any Person which is an Affiliate of the Holder, the Company shall pay that tax or (ii) if in

the name of any other Person, the Holder shall pay that tax; and (B) the depositary's fees for issuance of such ADSs.

4. ADJUSTMENTS

- 4.1 Adjustment of Conversion Rate. If the number of Class A Shares represented by the ADSs is changed, after the date of this Note, for any reason other than one or more of the events described in this Section 4.1, the Company shall make an appropriate adjustment to the Conversion Rate such that the number of Class A Shares represented by the ADSs upon which any conversion of this Note is based remains the same.

Notwithstanding the adjustment provisions described in this Section 4.1, if the Company distributes to holders of the Class A Shares any cash, rights, options, warrants, shares of capital stock or similar equity interest, evidences of indebtedness or other assets or property of the Company (but excluding Expiring Rights) and a corresponding distribution is not made to holders of the ADSs, but, instead, the ADSs shall represent, in addition to Class A Shares, such cash, rights, options, warrants, shares of Capital Stock or similar equity interest, evidences of indebtedness or other assets or property of the Company, then an adjustment to the Conversion Rate described in this Section 4.1 shall not be made until and unless a corresponding distribution (if any) is made to holders of the ADSs, and such adjustment to the Conversion Rate shall be based on the distribution made to the holders of the ADSs and not on the distribution made to the holders of the Class A Shares. However, in the event that the Company issues or distributes to all holders of the Class A Shares any Expiring Rights, notwithstanding the immediately preceding sentence, the Company shall adjust the Conversion Rate pursuant to Section 4.1(b) (in the case of in-the-money Expiring Rights entitling holders of the Class A Shares for a period of not more than 45 calendar days after the announcement date of such issuance to subscribe for or purchase Class A Shares or ADSs) or Section 4.1(c) (in the case of all other Expiring Rights).

For the avoidance of doubt, if any event described in this Section 4.1 results in a change to the number of Class A Shares represented by the ADSs, then such change shall be deemed to satisfy the Company's obligation to effect the relevant adjustment to the Conversion Rate on account of such event to the extent such change produces the same economic result as the adjustment to the Conversion Rate that would otherwise have been on account of such event.

Subject to the foregoing, the Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs, except that the Company shall not make any adjustments to the Conversion Rate if the Holder participates (other than in the case of a share split or share combination), at the same time and upon the same terms as holders of the Class A Shares and solely as a result of holding the Note, in any of the transactions described in this Section 4.1, without having to convert the Note, as if it held a number of Class A Shares equal to the Conversion Rate, multiplied by the principal amount of the Note held by the Holder.

- (a) If the Company exclusively issues Class A Shares as a dividend or distribution on the Class A Shares, or if the Company effects a share split or share
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combination, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where,

CR0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such dividend or distribution, or immediately prior to the close of business on the effective date of such share split or share combination, as applicable;

CR1 = the Conversion Rate in effect immediately after the close of business on such Record Date or immediately after the close of business on such effective date, as applicable;

OS0 = the number of Class A Shares outstanding immediately prior to the close of business on such Record Date or immediately prior to the close of business on such effective date, as applicable; and

OS1 = the number of Class A Shares outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

Any adjustment made under this Section 4.1(a) shall become effective immediately after the close of business on the Record Date for such dividend or distribution, or immediately after the open of business on the effective date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this Section 4.1(a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

- (b) If the Company issues to all or substantially all holders of the Class A Shares (directly in or in the form of ADSs) any rights, options or warrants entitling them, for a period of not more than 45 calendar days after the announcement date of such issuance, to subscribe for or purchase Class A Shares (directly or in the form of ADSs) at a price per Class A Share that is less than the average of the Last Reported Sale Prices of the Class A Shares, for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such issuance;

CR1 = the Conversion Rate in effect immediately after the close of business on such Record Date;

OS0 = the number of Class A Shares outstanding immediately prior to the close of business on such Record Date;

X = the total number of Class A Shares (directly or in the form of ADSs) deliverable pursuant to such rights, options or warrants; and

Y = the number of Class A Shares equal to (i) the aggregate price payable to exercise such rights, options or warrants, divided by (ii) the average of the Last Reported Sale Prices of the Class A Shares over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants.

Any increase made under this Section 4.1(b) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the close of business on the Record Date for the Class A Shares (directly or in the form of ADSs), as applicable, for such issuance. To the extent that Class A Shares or ADSs are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of Class A Shares actually delivered (directly or in the form of ADSs). If such rights, options or warrants are not so issued, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such the Record Date for such issuance had not occurred.

For purposes of this Section 4.1(b), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase Class A Shares (directly or in the form of ADSs) at a price per Class A Share that is less than such average of the Last Reported Sale Prices of the Class A Shares, for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement for such issuance, and in determining the aggregate offering price of such Class A Shares (directly or in the form of ADSs), there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors acting in good faith.

- (c) If the Company distributes shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire its Capital Stock or other securities, to all or substantially
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all holders of the Class A Shares (directly or in the form of ADSs), excluding (i) dividends, distributions or issuances as to which an adjustment was effected pursuant to Section 4.1(a) or Section 4.1(b), (ii) dividends or distributions paid exclusively in cash as to which an adjustment was effected pursuant to Section 4.1(d), and (iii) Spin-Offs as to which the provisions set forth below in this Section 4.1(c) shall apply (any of such shares of Capital Stock, evidences of indebtedness, other assets or property or rights, options or warrants to acquire Capital Stock or other securities of the Company, the “Distributed Property”), then the Conversion Rate shall be increased based on the following formula:

$$CR1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such distribution;

CR1 = the Conversion Rate in effect immediately after the close of business on such Record Date;

SP0 = the average of the Last Reported Sale Prices of the Class A Shares over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined by the Board of Directors acting in good faith) of the Distributed Property with respect to each outstanding Class A Share (directly or in the form of ADSs) on the Record Date for such distribution.

Any increase made under the portion of this Section 4.1(c) above shall become effective immediately after the close of business on the Record Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such distribution had not been declared. Notwithstanding the foregoing, if “FMV” (as defined above) is equal to or greater than “SP0” (as defined above), in lieu of the foregoing increase, the Holder shall receive, in respect of each US\$1,000 principal amount thereof, at the same time and upon the same terms as holders of the Class A Shares receive the Distributed Property, the amount and kind of Distributed Property the Holder would have received if the Holder owned a number of Class A Shares equal to the Conversion Rate in effect on the Record Date for the distribution.

With respect to an adjustment pursuant to this Section 4.1(c) where there has been a payment of a dividend or other distribution on the Class A Shares (directly or in the form of ADSs) of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, that are, or, when issued, will be, listed or admitted for

trading on a U.S. national securities exchange (a “Spin-Off”), the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV + MP_0}{MP_0}$$

where,

CR0 = the Conversion Rate in effect immediately prior to the end of the Valuation Period;

CR1 = the Conversion Rate in effect immediately after the end of the Valuation Period;

FMV0 = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Class A Shares (directly or in the form of ADSs) applicable to one Class A Share (determined by reference to the definition of Last Reported Sale Price as if references therein to the ADSs were to such Capital Stock or similar equity interest) over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the “Valuation Period”); and

MP0 = the average of the Last Reported Sale Prices of the Class A Shares over the Valuation Period.

The adjustment to the Conversion Rate under the preceding paragraph shall occur on the last Trading Day of the Valuation Period; provided that in respect of any conversion during the Valuation Period, references in the portion of this Section 4.1(c) related to Spin-Offs to 10 Trading Days shall be deemed to be replaced with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date of such Spin-Off to, and including, the Conversion Date in determining the Conversion Rate.

For purposes of this Section 4.1(c) (and subject in all respect to Section 4.1(f)), rights, options or warrants distributed by the Company to all holders of the Class A Shares (directly or in the form of ADSs) entitling them to subscribe for or purchase shares of the Company’s Capital Stock, including Class A Shares (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events (“Trigger Event”): (i) are deemed to be transferred with such Class A Shares (directly or in the form of ADSs); (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Class A Shares (directly or in the form of ADSs), shall be deemed not to have been distributed for purposes of this Section 4.1(c) (and no adjustment to the Conversion Rate under this Section 4.1(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 4.1(c). If any such right, option or warrant, including any such existing rights, options or warrants

distributed prior to the date of this Note, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 4.1(c) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per Class A Share redemption or purchase price received by a holder or holders of Class A Shares (directly or in the form of ADSs) with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Class A Shares (directly or in the form of ADSs) as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of Section 4.1(a), Section 4.1(b) and this Section 4.1(c), any dividend or distribution to which this Section 4.1(c) is applicable that also includes one or both of:

- (A) a dividend or distribution of Class A Shares (directly or in the form of ADSs) to which Section 4.1(a) is applicable (the "Clause A Distribution"); or
- (B) a dividend or distribution of rights, options or warrants to which Section 4.1(b) is applicable (the "Clause B Distribution"),

then (1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 4.1(c) is applicable (the "Clause C Distribution") and any Conversion Rate adjustment required by this Section 4.1(c) with respect to such Clause C Distribution shall then be made, and (2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by Section 4.1(a) and Section 4.1(b) with respect thereto shall then be made, except that, if determined by the Company (I) the "Record Date" of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Record Date of the Clause C Distribution and (II) any Class A Shares (directly or in

the form of ADSs) included in the Clause A Distribution or Clause B Distribution shall be deemed not to be “outstanding immediately prior to the close of business on such Record Date or immediately after the open of business on such effective date, as applicable” within the meaning of Section 4.1(a) or “outstanding immediately prior to the close of business on such Record Date” within the meaning of Section 4.1(b).

- (d) If any cash dividend or distribution is made to all or substantially all holders of the Class A Shares (directly or in the form of ADSs), the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such dividend or distribution;

CR1 = the Conversion Rate in effect immediately after the close of business on such Record Date;

SP0 = the Last Reported Sale Price of the Class A Shares on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

C = the amount in cash per Class A Share the Company distributes to all or substantially all holders of the Class A Shares (directly or in the form of ADSs).

Any increase pursuant to this Section 4.1(d) shall become effective immediately after the close of business on the Record Date for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors determines not to make or pay such dividend or distribution, to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if “C” (as defined above) is equal to or greater than “SP0” (as defined above), in lieu of the foregoing increase, the Holder shall receive, for each US\$1,000 principal amount of the Note, at the same time and upon the same terms as holders of the Class A Shares (directly or in the form of ADSs), the amount of cash that the Holder would have received if the Holder owned a number of Class A Shares equal to the Conversion Rate on the Record Date for such cash dividend or distribution.

- (e) If the Company or any of its Subsidiaries make a payment in respect of a tender or exchange offer for the Class A Shares (directly or in the form of ADSs), to the extent that the cash and value of any other consideration included in the payment per Class A Share exceeds the average of the Last
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Reported Sale Prices of the Class A Shares over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (OS_1 \times SP)}{OS_0 \times SP}$$

where,

CR₀ = the Conversion Rate in effect immediately prior to the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

CR₁ = the Conversion Rate in effect immediately after the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors acting in good faith) paid or payable for Class A Shares (directly or in the form of ADSs) purchased in such tender or exchange offer;

OS₀ = the number of Class A Shares outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase of all Class A Shares (directly or in the form of ADSs) accepted for purchase or exchange in such tender or exchange offer);

OS₁ = the number of Class A Shares outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all Class A Shares (directly or in the form of ADSs) accepted for purchase or exchange in such tender or exchange offer); and

SP = the average of the Last Reported Sale Prices of the Class A Shares over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires.

The adjustment to the Conversion Rate under this Section 4.1(e) shall occur at the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires; provided that in respect of any conversion within the 10 Trading Days immediately following, and including, the expiration date of any tender or exchange offer, references in this Section 4.1(e) with respect to 10 Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the expiration date of such tender or exchange offer to, and including, the Conversion Date in determining the Conversion Rate. No adjustment to the Conversion Rate under this Section 4.1(e) shall be made if such adjustment would result in a decrease in the Conversion Rate. In the event that the

Company or one of the Company's Subsidiaries is obligated to purchase Class A Shares (directly or in the form of ADSs) pursuant to any such tender offer or exchange offer, but the Company or such Subsidiary is permanently prevented by applicable Law from effecting any such purchases, or all such purchases are rescinded, then the Conversion Rate shall again be adjusted to be the Conversion Rate that would then be in effect if such tender offer or exchange offer had not been made.

- (f) If and whenever the Company shall issue any Ordinary Shares or ADSs (other than any issuance pursuant to this Note or on the exercise of any other rights, existing as of the Issue Date, of conversion into, or exchange or subscription for, Ordinary Shares or ADSs) or issue or grant options, warrants or other rights to purchase, subscribe, convert into, exercise or exchange for Ordinary Shares or ADSs (the "Relevant Securities", which for the purposes of this definition only excludes any Ordinary Shares, ADSs, option, warrant or other rights to purchase, subscribe, convert into, exercise or exchange for Ordinary Shares or ADSs issued or granted in accordance with any employee incentive plan of the Company), in each case at a consideration per ADS (on an as-converted and as-exercised basis and, in the case of any issuance of Ordinary Shares, such issue price per Ordinary Share multiplied by the applicable number of Ordinary Shares then represented by each ADS) which is less than the Reference Price, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{A + B}{C}$$

where:

CR₀ = the Conversion Rate in effect immediately prior to the date of issue of the Relevant Securities;

CR₁ = the Conversion Rate in effect as from the date of issue of the Relevant Securities;

A = the number of Ordinary Shares in issue immediately before the issue of the Relevant Securities;

B = the number of Ordinary Shares which the aggregate consideration receivable for the issue of the Relevant Securities would purchase at the price equal to (x) Reference Price, multiplied by (y) the applicable number of Ordinary Shares then represented by each ADS; and

C = the number of Ordinary Shares in issue immediately after the issue of the Relevant Securities,

provided that references to the number of Ordinary Shares in the above formula shall include all the Ordinary Shares to be issued assuming that all options, warrants or other rights to purchase, subscribe, convert into, exercise or exchange for Ordinary Shares or ADSs are exercised in full at the initial exercise price on the date of issue of such options, warrants or other rights.

- (g) Except as stated herein, the Company shall not adjust the Conversion Rate for the issuance of Class A Shares or ADSs or any securities convertible into or exchangeable for Class A Shares or ADSs or the right to purchase Class A Shares or ADSs or such convertible or exchangeable securities.
 - (h) In addition to those adjustments required by subsections (a), (b), (c), (d), (e) and (f) of this Section 4.1, and to the extent permitted by applicable Law and subject to the applicable rules of The NASDAQ Global Market and any other securities exchange on which any of the Company's securities are then listed, the Company from time to time may increase the Conversion Rate by any amount for a period of at least 20 Business Days if the Board of Directors determines that such increase would be in the Company's best interest, and the Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of the Class A Shares or the ADSs or rights to purchase Class A Shares or ADSs in connection with a dividend or distribution of Class A Shares or ADSs (or rights to acquire Class A Shares or ADSs) or similar event.
 - (i) Notwithstanding anything to the contrary in this Section 4.1, the Conversion Rate shall not be adjusted:
 - (i) upon the issuance of any Class A Shares or ADSs pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in Class A Shares or ADSs under any plan;
 - (ii) upon the issuance of any Class A Shares or ADSs or options or rights to purchase those Class A Shares or ADSs pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of the Company's Subsidiaries;
 - (iii) upon the issuance of any Class A Shares or ADSs pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) of this subsection and outstanding as of the date this Note was first issued;
 - (iv) solely for a change in the par value of the Class A Shares or ADSs; or
 - (v) for accrued and unpaid interest, if any.
 - (j) All calculations and other determinations under this Section 4.1 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000) of a Class A Shares.
 - (k) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to the Holder.
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- (l) For purposes of this Article 4, the number of Class A Shares at any time outstanding shall not include Class A Shares held in the treasury of the Company (directly or in the form of ADSs) so long as the Company does not pay any dividend or make any distribution on Class A Shares held in the treasury of the Company (directly or in the form of ADSs), but shall include Class A Shares issuable in respect of scrip certificates issued in lieu of fractions of Class A Shares.
- (m) For purposes of this Section 4.1, the “effective date” means the first date on which the ADSs trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

4.2 Adjustments of Prices. Whenever any provision of this Note requires the Company to calculate the Last Reported Sale Prices over a span of multiple days, the Board of Directors shall make appropriate adjustments to each to account for any adjustment to the Conversion Rate that becomes effective pursuant to Section 4.1, or any event requiring an adjustment to the Conversion Rate pursuant to Section 4.1 where the Record Date, effective date or expiration date, as the case may be, of the event occurs, at any time during the period when such Last Reported Sale Prices are to be calculated.

4.3 Effect of Recapitalizations, Reclassifications and Changes of the Class A Shares.

- (a) In the case of:
 - (i) any recapitalization, reclassification or change of the Class A Shares (other than changes resulting from a subdivision or combination),
 - (ii) any consolidation, merger, combination or similar transaction involving the Company,
 - (iii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and the Company’s Subsidiaries substantially as an entirety; or
 - (iv) any statutory share exchange,

in each case, as a result of which the Class A Shares (directly or in the form of ADSs) would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a “Merger Event”), then, prior to or at the effective time of such Merger Event, the Company or the successor or purchasing Person, as the case may be, shall execute an amendment to this Note providing that, at and after the effective time of such Merger Event, the right to convert the Note shall be changed into a right to convert the Note into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of Class A Shares equal to the Conversion Rate immediately prior to such Merger Event would have owned or been entitled to receive (the “Reference Property”, with each “unit of Reference Property” meaning the kind and amount of Reference Property that

a holder of one Class A Share is entitled to receive) upon such Merger Event; provided, however, that at and after the effective time of the Merger Event the number of Class A Shares otherwise deliverable upon any conversion of the Note in accordance with Article 3 shall instead be deliverable in the amount and type of Reference Property that a holder of that number of Class A Shares would have been entitled to receive in such Merger Event.

If the Merger Event causes the Class A Shares (directly or in the form of ADSs) to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of holder election), then (i) the Reference Property into which the Note will be convertible shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Class A Shares (directly or in the form of ADSs) that affirmatively make such an election, and (ii) the unit of Reference Property for purposes of the immediately preceding paragraph shall refer to the consideration referred to in clause (i) attributable to one Class A Shares. The Company shall provide written notice to the Holder of such weighted average as soon as practicable after such determination is made.

Such amendment described in the second immediately preceding paragraph shall provide for anti-dilution and other adjustments that shall be as nearly equivalent as is practicable to the adjustments provided for in this Article 4 (it being understood that no such adjustments shall be required with respect to any portion of the Reference Property that does not consist of shares of Common Equity (however evidenced) or depositary receipts in respect thereof). If, in the case of any Merger Event, the Reference Property includes shares of stock, securities or other property or assets (including cash or any combination thereof) of a Person other than the Company or the successor or purchasing Person, as the case may be, in such Merger Event, then such other Person shall also execute such amendment, and such amendment shall contain such additional provisions to protect the interests of the Holder, including the rights of the Holder to require the Company to repurchase this Note upon a Fundamental Change pursuant to Article 5 as the Board of Directors shall reasonably consider necessary by reason of the foregoing.

- (b) None of the foregoing provisions shall affect the right of the Holder to convert this Note into Class A Shares as set forth in Article 3 prior to the effective date of such Merger Event.
- (c) The above provisions of this Section 4.3 shall similarly apply to successive Merger Events.

4.4 No Adjustment. Notwithstanding anything herein to the contrary, no adjustment under this Article 4 shall be required to be made to the Conversion Rate if the Company receives written notice from the Holder that no such adjustment is required.

4.5 Certain Covenants.

- (a) The Company covenants that all Class A Shares delivered upon any conversion of this Note will be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.
- (b) The Company covenants that if any Class A Shares to be provided for the purpose of any conversion of this Note require registration with or approval of any Governmental Authority under any Law before such Class A Shares may be validly issued upon conversion, the Company will, to the extent then permitted by applicable Law, secure such registration or approval, as the case may be.
- (c) The Company further covenants to take all actions and obtain all approvals and registrations required with respect to any conversion of this Note into Class A Shares, and shall reserve for issuance an adequate number of Class A Shares, such that Class A Shares can be delivered in accordance with the terms of this Note upon any conversion hereunder. In addition, the Company further covenants to provide the Holder with a reasonably detailed description of the mechanics for the delivery of Class A Shares upon any conversion of this Note upon request.
- (d) The parties hereto acknowledge and agree that the Holder may only resell the Note, the Class A Shares delivered upon conversion of all or any portion of the Note pursuant to an effective registration statement or an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and other applicable securities Laws.

4.6 Notice for Certain Actions. In case of any (a) action by the Company or one of its Subsidiaries that would require an adjustment in the Conversion Rate pursuant to Section 4.1, (b) Merger Event or (c) voluntary or involuntary dissolution, liquidation or winding-up of the Company or any of its Subsidiaries, then, in each case (unless notice of such event is otherwise required pursuant to another provision of this Note), the Company shall deliver a written notice to the Holder, as promptly as possible but in any event at least 20 days prior to the applicable date hereinafter specified, stating (i) the date on which a record is to be taken for the purpose of such action by the Company or one of its Subsidiaries or, if a record is not to be taken, the date as of which the holders of Class A Shares, of record are to be determined for the purposes of such action by the Company or one of its Subsidiaries, or (ii) the date on which such Merger Event, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Class A Shares, of record shall be entitled to exchange their Class A Shares, for securities or other property deliverable upon such Merger Event, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such action by the Company or one of its Subsidiaries, dissolution, liquidation or winding-up unless otherwise provided for pursuant to any applicable Laws, the constitutional documents of the Company or any such Subsidiaries or any agreement or document to which the Company or any such Subsidiaries is a party; provided that nothing herein shall adversely affect any right, claim or other remedies, at law or contract, of the Holder arising as a result of or in connection with such failure or defect.

4.7 Termination of Depository Receipt Program. If the Class A Shares cease to be represented by ADSs issued under a depository receipt program sponsored by the Company, all references in this Note to the ADSs shall be deemed to have been replaced by a reference to the number of Class A Shares (and other property, if any) represented by the ADSs on the last day on which the ADSs represented the Class A Shares and as if the Class A Shares and the other property had been distributed to holders of the ADSs on that day. In addition, all references to the Last Reported Sale Price of the ADSs will be deemed to refer to the Last Reported Sale Price of the Class A Shares, and other appropriate adjustments, including adjustments to the Conversion Rate, will be made to reflect such change. In making such adjustments, where currency translations between U.S. dollars and any other currency are required, the exchange rate in effect on the date of determination will apply.

5. REPURCHASE

5.1 Repurchase on Maturity Date. Unless previously repurchased or surrendered and converted, the Company shall, without any action on the part of the Holder, redeem this Note in whole on the Maturity Date at a price (the “Maturity Repurchase Price”) equal to (A) the outstanding principal amount, plus (B) a premium which shall be equal to 6.0% of the outstanding principal amount, and plus (C) all other amounts due and payable on or in respect of the Note (including any accrued and unpaid interest on the Defaulted Amounts), if any.

5.2 Repurchase on Fundamental Change.

- (a) If a Fundamental Change occurs at any time, the Holder shall have the right, at its option, to require the Company to repurchase for cash all of the Note or any portion thereof on the date (the “Fundamental Change Repurchase Date”) notified in writing by the Company that is not less than twenty (20) Business Days and not more than thirty-five (35) Business Days following the date of the Fundamental Change Company Notice (as defined below) at a repurchase price (the “Fundamental Change Repurchase Price”) equal to (A) 100% of the principal amount (or such portion thereof, as the case may be), plus (B) a premium equal to the aggregate interest that would have accrued on such principal amount (or such portion thereof, as the case may be) over the period starting from (and including) the date of the Issue Date and ending on (and including) the Fundamental Change Repurchase Date, if the Note were to bear interest at a rate of 2.0% per annum, accrued daily and computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of actual days elapsed over a 30-day month, and plus (C) all other amounts due and payable on or in respect of the Note (including any accrued and unpaid interest on the Defaulted Amounts), if any.
 - (b) Repurchase of the Note under this Section 5.2 shall be made, at the option of the Holder thereof, upon: (i) delivery by the Holder to the Company of a duly completed notice (the “Fundamental Change Repurchase Notice”), in the form attached hereto as Exhibit A, on or before the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date; and (ii) delivery of the Note to the Company at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements for transfer), such delivery being a condition to receipt by the
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Holder of the Fundamental Change Repurchase Price therefor. Each Fundamental Change Repurchase Notice shall state the portion of the principal amount of the Note to be repurchased.

- (c) Notwithstanding anything herein to the contrary, the Holder shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date by delivery of a written notice of withdrawal to the Company in accordance with Section 5.5.
- (d) On or before the twentieth (20th) calendar day after the occurrence of the effective date of a Fundamental Change, the Company shall provide to the Holder a written notice (the "Fundamental Change Company Notice") of the occurrence of the effective date of the Fundamental Change and of the repurchase right at the option of the Holder arising as a result thereof. Each Fundamental Change Company Notice shall specify:
 - (i) the events causing the Fundamental Change;
 - (ii) the date of the Fundamental Change;
 - (iii) the last date on which the Holder may exercise the repurchase right pursuant to this Section 5.2;
 - (iv) the Fundamental Change Repurchase Price;
 - (v) the Fundamental Change Repurchase Date;
 - (vi) if applicable, the Conversion Rate and any adjustments to the Conversion Rate;
 - (vii) that the Note may be converted only if any Fundamental Change Repurchase Notice that has been delivered by the Holder has been withdrawn in accordance with the terms of this Note; and
 - (viii) the procedures in accordance with the terms of this Note that the Holder must follow to require the Company to repurchase the Note.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holder's repurchase rights or affect the validity of the proceedings for the repurchase of the Note pursuant to this Section 5.2.

5.3 Early Repurchase at the option of the Holder.

- (a) The Holder shall have the right, at its option, to require the Company to repurchase for cash all of the Note or any portion thereof on February 1, 2022 (the "Early Repurchase Date"), by delivering a duly completed notice in writing to the Company (the "Early Repurchase Notice"), in the form attached hereto as Exhibit B, during the period starting from the open of business that is twenty (20) Business Days prior to the Early Repurchase Date until the close of business on the second Business Day immediately preceding the Early
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Repurchase Date, at a repurchase price (the “Early Repurchase Price”) equal to (A) 100% of the principal amount (or such portion thereof, as the case may be), plus (B) a premium equal to the aggregate interest that would have accrued on such principal amount (or such portion thereof, as the case may be) over the period starting from (and including) the date of the Issue Date and ending on (and including) the date when the Early Repurchase Date, if the Note were to bear interest at a rate of 2.0% per annum, accrued daily and computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of actual days elapsed over a 30-day month; and (C) all other amounts due and payable on or in respect of the Note (including any accrued and unpaid interest on the Defaulted Amounts), if any.

- (b) The Holder shall deliver of the Note to the Company at any time after delivery of the Early Repurchase Notice, such delivery being a condition to receipt by the Holder of the Early Repurchase Price therefor. The Early Repurchase Notice shall state the portion of the principal amount of the Note to be repurchased.
- (c) Notwithstanding anything herein to the contrary, the Holder shall have the right to withdraw, in whole or in part, such Early Repurchase Notice at any time prior to the close of business on the second Business Day immediately preceding the Early Repurchase Date by delivery of a written notice of withdrawal to the Company in accordance with Section 5.5.

5.4 No Repurchase in the Event of Acceleration. Notwithstanding the foregoing, the Note may not be repurchased by the Company on any date at the option of the Holder upon a Fundamental Change or on the Early Repurchase Date (as the case may be) if the principal amount of the Note has been accelerated, and such acceleration has not been rescinded, on or prior to such date (except in the case of an acceleration resulting from a default by the Company in the payment of the Fundamental Change Repurchase Price or the Early Repurchase Price (as the case may be) with respect to the Note).

5.5 Withdrawal of Fundamental Change Repurchase Notice or Early Repurchase Notice. A Fundamental Change Repurchase Notice or an Early Repurchase Notice (as the case may be) may be withdrawn (in whole or in part) by means of a duly completed written notice of withdrawal delivered to the Company in accordance with this Section 5.5 at any time prior to the close of business on the second Business Day immediately preceding the relevant Fundamental Change Repurchase Date or the Early Repurchase Date (as the case may be), specifying (a) the principal amount of the Note with respect to which such notice of withdrawal is being submitted and (b) the principal amount, if any, of the Note that remains subject to the original Fundamental Change Repurchase Notice or the original Early Repurchase Notice (as the case may be).

5.6 Payment of Fundamental Change Repurchase Price or Early Repurchase Price.

- (a) On or prior to 10:00 a.m., New York time, on one Business Day prior to the relevant Fundamental Change Repurchase Date or the Early Repurchase Date (as the case may be), the Company shall set aside, segregate and hold in trust for the benefit of the Holder an amount of money sufficient to repurchase the applicable portion of the Note to be repurchased at the Fundamental Change



Repurchase Price or the Early Repurchase Price (as the case may be). Payment for the applicable portion of the Note surrendered for repurchase (and not withdrawn in accordance with Section 5.5) will be made in accordance with Section 2.2 on the later of (i) such Fundamental Change Repurchase Date or the Early Repurchase Date (as the case may be), provided the Holder has satisfied the conditions in this Article 5; and (ii) the time of delivery of the applicable portion of the Note by the Holder to the Company in the manner required by Section 5.2 or Section 5.3 (as the case may be).

- (b) If by 10:00 a.m., New York time, on one Business Day prior to the relevant Fundamental Change Repurchase Date or the Early Repurchase Date (as the case may be), the Company holds money sufficient to make payment on the applicable portion of the Note to be repurchased on such date, then, with respect to the applicable portion of the Note that has been properly surrendered for repurchase and not validly withdrawn in accordance with Section 5.5, on such Fundamental Change Repurchase Date or the Early Repurchase Date (as the case may be), (i) such portion of the Note will cease to be outstanding, (ii) interest will cease to accrue on such portion of the Note and (iii) in the event the entire outstanding amount of the Note is surrendered by the Holder to be repurchased, all other rights of the Holder will terminate (other than the right to receive the Fundamental Change Repurchase Price or the Early Repurchase Price (as the case may be)).
- (c) Upon the surrender of the Note that is to be repurchased in part pursuant to this Article 5, the Company shall execute and deliver to the Holder a new Note in an authorized denomination equal in principal amount to the unreurchased portion of the Note.

5.7 Covenant to Comply with Applicable Law upon Repurchase of the Note. In connection with any repurchase offer, the Company will, if required, comply with all federal and state securities laws in connection with any offer by the Company to repurchase the Note so as to permit the rights and obligations under this Article 5 to be exercised in the time and in the manner specified in this Article 5.

6. COVENANTS

- 6.1 Payment. The Company covenants and agrees that it will cause to be paid the principal of, and any other amounts due and payable on, the Note or any Repurchase Price at the respective times and in accordance with the terms hereof.
 - 6.2 Existence. Subject to Article 7, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence.
 - 6.3 No Withholding. All payments and deliveries made by, or on behalf of, the Company or any successor to the Company under or with respect to this Note, including, but not limited to, payments of principal (including, if applicable, the Fundamental Change Repurchase Price), payments of interest and deliveries of Class A Shares (together with payments of cash for any fractional Class A Share) upon any conversion of the Note, shall be made without withholding or deduction for, or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied by or within any jurisdiction in which the Company or any
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successor to the Company is, for tax purposes, organized or resident or doing business or through which payment is made or deemed made (or any political subdivision or taxing authority thereof or therein), unless such withholding or deduction is required by Law or by regulation or governmental policy having the force of law.

- 6.4 Stay, Extension and Usury Laws. The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other Law that would prohibit or forgive the Company from paying all or any portion of the principal of or any other amounts due and payable on the Note or any Repurchase Price as contemplated herein, wherever enacted, now or at any time hereafter in force, or that may affect the covenants or the performance of the Note; and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such Law, and covenants that it will not, by resort to any such Law, hinder, delay or impede the execution of any power herein granted to the Holder, but will suffer and permit the execution of every such power as though no such Law had been enacted.
- 6.5 Compliance Certificates; Statements as to Defaults. The Company shall deliver to the Holder within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 31, 2019) and within 14 days of a written request made by the Holder a certificate executed by an executive officer of the Company stating that a review has been conducted of the Company's activities under this Note and whether the Company has fulfilled its obligations hereunder, and whether such officer thereof have knowledge of any Default by the Company that occurred during the previous year that is then continuing and, if so, specifying each such Default and the nature thereof. The Company shall deliver to the Holder, as soon as possible, and in any event within 30 days after the Company becomes aware of the occurrence of any Default if such Default is then continuing, an Officer's Certificate setting forth the details of such Default, its status and the action that the Company is taking or proposing to take in respect thereof.
- 6.6 Further Instruments and Acts. Upon request of the Holder, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Note.
- 6.7 New Note Instruments. Upon request of the Holder for the Note to be broken down into a number of note instruments of smaller principal amounts, the Company shall issue additional note instruments of such smaller principal amounts without charge within three (3) Business Days after the date of such request, provided that the existing note instrument of this Note shall be returned by the Holder to the Company for cancellation.
- 6.8 Replacement of Note. Upon the loss, theft, destruction or mutilation of this Note (and in the case of loss, theft or destruction, of indemnity from the Holder reasonably satisfactory to the Company, or in the case of mutilation, upon surrender and cancellation thereof), the Company shall at its own expense within five (5) Business Days execute and deliver to the Holder, in lieu thereof, a new Note, dated and bearing interest from the date hereof.
7. **CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE**
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- 7.1 Company May Consolidate, Etc. on Certain Terms. Subject to the provisions of Section 7.2, the Company shall not consolidate with, merge with or into, or sell, convey, transfer or lease all or substantially all of its properties and assets to another Person unless:
- (a) the resulting, surviving or transferee Person (the “Successor Company”), if not the Company, shall be a corporation, organized and existing under the laws of the United States of America, any State thereof, the District of Columbia, the Cayman Islands, the British Virgin Islands, Bermuda or Hong Kong and the Successor Company (if not the Company) shall expressly assume all of the obligations of the Company under the Note and the Subscription Agreement; and
 - (b) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing under this Note.

For purposes of this Section 7.1, the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of one or more Subsidiaries of the Company to another Person, which properties and assets, if held by the Company instead of such Subsidiaries, would constitute all or substantially all of the properties and assets of the Company on a consolidated basis, shall be deemed to be the sale, conveyance, transfer or lease of all or substantially all of the properties and assets of the Company to another Person.

- 7.2 Successor Corporation to Be Substituted. In case of any such consolidation, merger, sale, conveyance, transfer or lease and upon the assumption by the Successor Company of the due and punctual payment of the principal of and any other amounts due and payable on the Note and any Repurchase Price, the due and punctual delivery or payment, as the case may be, of any consideration due upon conversion of the Note and the due and punctual performance of all of the covenants and conditions of the Note to be performed by the Company, in each case in accordance with the terms hereof, such Successor Company (if not the Company) shall succeed to and, except in the case of a lease of all or substantially all of the Company’s properties and assets, shall be substituted for the Company, with the same effect as if it had been named herein as the party of the first part. In the event of any such consolidation, merger, sale, conveyance or transfer (but not in the case of a lease), upon compliance with this Article 7 the Person named as the “Company” in the first paragraph of the Note (or any successor that shall thereafter have become such in the manner prescribed in this Article 7) may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Note and from its obligations under the Note.
- 7.3 No consolidation, merger, sale, conveyance, transfer or lease shall be effective unless any such consolidation, merger, sale, conveyance, transfer or lease and any such assumption has complied with the provisions of this Article 7.

8. CANCELLATION

After all amounts at any time owing on the Note have been paid in full or upon the conversion of the Note in full pursuant to Article 3, the Note shall be surrendered to the Company for cancellation and shall not be reissued.

9. NO REDEMPTION OR PREPAYMENT

This Note shall not be redeemable or pre-paid by the Company prior to the Maturity Date, and no sinking fund is provided for this Note.

10. MISCELLANEOUS

10.1 Termination of Rights. All rights under this Note shall terminate when (a) all amounts at any time owing on the Note have been paid in full or (ii) the Note is converted in full pursuant to the terms set forth in Article 3.

10.2 Provisions Binding on Company's Successors. All the covenants, stipulations, promises and agreements of the Company contained in the Note shall bind its successors and assigns whether so expressed or not.

10.3 Official Acts by Successor Company. Any act or proceeding by any provision of the Note authorized or required to be done or performed by any board, committee or Officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation or other entity that shall at the time be the lawful sole successor of the Company.

10.4 Amendments and Waivers; Notice. The amendment or waiver of any term of the Note shall be subject to the written consent of the Holder and the Company. The provision of notice shall be made pursuant to the terms of the Subscription Agreement.

10.5 Transfer Restrictions.

(a) The Holder covenants that the Note and/or the Class A Shares issuable upon conversion of the Note will only be disposed of pursuant to an effective registration statement under, and in compliance with the requirements of, the Securities Act or pursuant to an available exemption from the registration requirements of the Securities Act, and in compliance with any applicable state securities laws. In connection with any transfer of Notes and/or the Class A Shares issuable upon conversion of the Note other than pursuant to an effective registration statement or Rule 144 promulgated under the Securities Act ("Rule 144"), the Company may require the transferor to provide to the Company an opinion of counsel selected by the transferor, the form and substance of which opinion shall be reasonably acceptable to the Company with respect to transactions of a similar nature, to the effect that such transfer does not require registration under the Securities Act.

(b) The Holder agrees to the imprinting, until no longer required by this Section 10.5, of the following legend on any certificate evidencing any of the Note or the Class A Shares issuable upon conversion of the Note:

THESE SECURITIES HAVE NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR UNDER ANY OTHER SECURITIES LAWS. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE

SECURITIES ACT AND OTHER APPLICABLE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM.

The legend set forth above shall be removed and the Company shall issue a certificate without such legend to the holder of the Note or the Class A Shares issuable upon conversion of the Note if, unless otherwise required by state securities laws, (i) such securities are registered for resale under the Securities Act and are transferred to a Holder pursuant to a registration statement that is effective at the time of such transfer, (ii) in connection with a sale, assignment or other transfer, such Holder provides the Company with an opinion of counsel, the form and substance of which opinion shall be reasonably acceptable to the Company with respect to transactions of a similar nature, that the sale, assignment or transfer of the securities may be made without registration under the applicable requirements of the Securities Act or (iii) such Holder provides the Company with reasonable assurance that the securities can be sold, assigned or transferred pursuant to Rule 144 or have been sold under Rule 144.

- (c) Notwithstanding anything to the contrary herein, transfers of this Note shall be registered upon registration books maintained for such purpose by or on behalf of the Company. Prior to presentation of this Note for registration of transfer, the Company shall treat the registered holder hereof as the owner and holder of this Note for the purpose of receiving all payments of principal of and any other amounts due and payable on the Note and any Repurchase Price and for all other purposes whatsoever. This provision is intended to be a book entry system as defined in Treasury Regulations Section 5f.103-1(c) and shall be interpreted consistently therewith.

10.6 No Third Party Beneficiary. A person who is not a party to this Note shall have no right under the Contracts (Rights of Third Parties) Ordinance (Chapter 623) to enforce any of its terms.

10.7 Governing Law.

THIS NOTE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF HONG KONG WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.

10.8 Arbitration.

- (a) Any dispute, controversy, difference or claim arising out of or relating to this Note, including the existence, validity, interpretation, performance, breach or termination thereof or any dispute regarding non-contractual obligations arising out of or relating to it shall be referred to and finally resolved by arbitration administered by the Hong Kong International Arbitration Centre ("HKIAC") under the HKIAC Administered Arbitration Rules in force when the Notice of Arbitration is submitted.
- (b) The law of this arbitration clause shall be Hong Kong law.
- (c) The seat of arbitration shall be Hong Kong.
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(d) The number of arbitrators shall be three. The arbitrators shall be appointed in accordance with the HKIAC rules. The arbitration proceedings shall be conducted in English.

(e) It shall not be incompatible with this arbitration agreement for any party to seek interim or conservatory relief from courts of competent jurisdiction before the constitution of the arbitral tribunal.

10.9 Force Majeure. In no event shall the Holder be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Holder shall use reasonable efforts to resume performance as soon as practicable under the circumstances.

10.10 Calculations. Except as otherwise provided herein, the Company shall be responsible for making all calculations called for under the Note. These calculations include, but are not limited to, determinations of the Last Reported Sale Prices, accrued interest payable on the Note, if any, and the Conversion Rate of the Note. The Company shall make all these calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on the Holder. The Company shall provide a schedule of its calculations to the Holder.

10.11 Delays or Omissions. No delay or failure by any party to insist on the strict performance of any provision of the Note, or to exercise any power, right or remedy, will be deemed a waiver or impairment of such performance, power, right or remedy or of any other provision of the Note, nor shall it be construed to be a waiver of any breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring.

10.12 Interpretation. If any claim is made by a party relating to any conflict, omission or ambiguity in the provisions of the Note, no presumption or burden of proof or persuasion will be implied because the Note was prepared by or at the request of any party or its counsel.

[The remainder of this page has been deliberately left blank]

IN WITNESS WHEREOF, the Company has caused the Note to be issued on the date first above written.

COMPANY:

NIO Inc.

By: _____

Name:

Title:

Exhibit A

[FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE]

To: [Name of Company]

The undersigned Holder of this Note hereby acknowledges receipt of a notice from NIO Inc. (the "Company") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to pay to the Holder in accordance with Section 5.2 of this Note the entire principal amount of this Note, or the portion thereof below designated, and the premium amount below calculated in accordance with Section 5.2(a)(B).

Principal amount to be repaid (if less than all): US\$ _____

Premium: US\$ _____

Dated:

[NAME OF HOLDER]

By:

Name:

Capacity:

Exhibit B

[FORM OF EARLY REPURCHASE NOTICE]

To: [Name of Company]

The undersigned Holder of this Note hereby requests and instructs NIO Inc. (the "Company") to pay to the Holder in accordance with Section 5.3 of this Note the entire principal amount of this Note, or the portion thereof below designated, and the premium below amount calculated in accordance with Section 5.3(a)(B).

Principal amount to be repaid (if less than all): US\$ _____

Premium: US\$ _____

Dated:

[NAME OF HOLDER]

By:

Name:

Capacity:

NIO Inc.

and

The Bank of New York Mellon, London Branch as Trustee

and

The Bank of New York Mellon, London Branch, as Paying Agent and Conversion Agent

and

The Bank of New York Mellon SA/NV, Luxembourg Branch, as Registrar and Transfer Agent

INDENTURE

dated as of February 10, 2020

US\$70,000,000 0% CONVERTIBLE SENIOR NOTES DUE 2021

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INDENTURE dated as of February 10, 2020 between NIO INC., a Cayman Islands exempted company, PO Box 309, Umland House, Grand Cayman, KY1-1104, Cayman Islands, as issuer (the “**Company**,” as more fully set forth in Section 1.01), THE BANK OF NEW YORK MELLON, LONDON BRANCH, a banking organization organized and existing under the laws of the State of New York with limited liability and operating through its branch in London at One Canada Square, London E14 5AL, United Kingdom, as trustee (the “**Trustee**”), as paying agent (the “**Paying Agent**”) and as conversion agent (the “**Conversion Agent**”) (as more fully set forth in Section 1.01) and THE BANK OF NEW YORK MELLON, SA/NV, LUXEMBOURG BRANCH, operating through its branch in Luxembourg at Vertigo Building – Polaris, 2-4 rue Eugène Ruppert, L-2453 Luxembourg as registrar (the “**Registrar**”) and as transfer agent (the “**Transfer Agent**”) (as more fully set forth in Section 1.01).

WITNESSETH:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issuance of its 0% Convertible Senior Notes due 2021 (the “**Notes**”), offered and sold outside the United States pursuant to Regulation S in an aggregate principal amount not to exceed US\$70,000,000, and in order to provide the terms and conditions upon which the Notes are to be authenticated, issued and delivered, the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, the Form of Note, the certificate of authentication to be borne by each Note, the Form of Notice of Conversion, the Form of Fundamental Change Repurchase Notice and the Form of Assignment and Transfer to be borne by the Notes are to be substantially in the forms hereinafter provided; and

WHEREAS, all acts and things necessary to make the Notes, when executed by the Company and authenticated and delivered by the Note Registrar, as in this Indenture provided, the valid, binding and legal obligations of the Company, and this Indenture a valid agreement according to its terms, have been done and performed, and the execution of this Indenture and the issuance hereunder of the Notes have in all respects been duly authorized.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That in order to declare the terms and conditions upon which the Notes are, and are to be, authenticated, issued and delivered, and in consideration of the premises and of the purchase and acceptance of the Notes by the Holders thereof, the Company covenants and agrees with the Trustee for the equal and proportionate benefit of the respective Holders from time to time of the Notes (except as otherwise provided below), as follows:

ARTICLE 1
DEFINITIONS

Section 1.01 *Definitions*. The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. The words “herein,” “hereof,” “hereunder,” and words of similar import

refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article include the plural as well as the singular.

“**Additional Amounts**” shall have the meaning specified in Section 4.07(a).

“**ADS**” means an American Depositary Share issued pursuant to the Deposit Agreement representing one Ordinary Share of the Company as of the date of this Indenture, and deposited with the ADS Custodian.

“**ADS Custodian**” means Deutsche Bank AG, Hong Kong Branch, with respect to the ADSs delivered pursuant to the Deposit Agreement or any successor entity thereto.

“**ADS Depository**” means Deutsche Bank Trust Company Americas, as depository for the ADSs.

“**Affiliate**” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control,” when used with respect to any specified Person means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Agents**” means the Paying Agent, the Transfer Agent, the Note Registrar and the Conversion Agent.

“**applicable taxes**” shall have the meaning specified in Section 4.07(a).

“**Bail-in Legislation**” means in relation to a member state of the European Economic Area which has implemented, or which at any time implements, the BRRD, the relevant implementing law, regulation, rule or requirement as described in the EU Bail-in Legislation Schedule from time to time.

“**Bail-in Powers**” means any Write-down and Conversion Powers as defined in the EU Bail-in Legislation Schedule, in relation to the relevant Bail-in Legislation. “**BNY Mellon Group**” shall have the meaning specified in Section 7.02.

“**Board of Directors**” means the board of directors of the Company or a committee of such board duly authorized to act for it hereunder.

“**Board Resolution**” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors, and to be in full force and effect on the date of such certification, and delivered to the Trustee.

“**BRRD**” means Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

“**BRRD Liability**” means a liability in respect of which the relevant Write Down and Conversion Powers in the applicable Bail-in Legislation may be exercised.

“**Business Day**” means, with respect to any Note, each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in the State of New York, or the Cayman Islands are authorized or obligated by law or executive order to close.

“**Capital Stock**” means, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity.

“**Clause A Distribution**” shall have the meaning specified in Section 14.04(c).

“**Clause B Distribution**” shall have the meaning specified in Section 14.04(c).

“**Clause C Distribution**” shall have the meaning specified in Section 14.04(c).

“**Clearstream**” means Clearstream Banking S.A.

“**close of business**” means 5:00 p.m. (New York City time).

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended.

“**Commission**” means the U.S. Securities and Exchange Commission.

“**Common Depository**” means the common depository acting on behalf of Euroclear and Clearstream.

“**Common Equity**” of any Person means ordinary share capital or common stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

“**Company**” shall have the meaning specified in the first paragraph of this Indenture, and subject to the provisions of Article 11, shall include its successors and assigns.

“**Company Order**” means a written order of the Company, signed by an Officer of the Company and delivered to the Trustee and/or Note Registrar, as applicable.

“**Consolidated Affiliated Entity**” means, with respect to any Person, any corporation, association or other entity which is or is required to be consolidated with such Person under Accounting Standards Codification subtopic 810-10, Consolidation: Overall (including any changes, amendments or supplements thereto) or, if such person prepares its financial statements in accordance with accounting principles other than the accounting principles generally accepted in the United States of America, the equivalent of Accounting Standards Codification subtopic 810-10, Consolidation: Overall under such accounting principles.

“**Conversion Agent**” shall have the meaning specified in Section 4.02.

“**Conversion Date**” shall have the meaning specified in Section 14.02(c).

“**Conversion Obligation**” shall have the meaning specified in Section 14.01.

“**Conversion Rate**” shall have the meaning specified in Section 14.01.

“**Corporate Trust Office**” means the corporate trust office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at The Bank of New York Mellon, London Branch, One Canada Square, London E14 5AL, United Kingdom, Attention: Corporate Trust Administration – Project Camel (NIO Inc.), Fax: +44 1202 689660, and shall include a reference to The Bank of New York Mellon, Hong Kong Branch, Level 26, Three Pacific Place, 1 Queen’s Road East, Hong Kong, Attention: Global Corporate Trust – NIO Inc., Facsimile No.: +852 2295 3283, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the corporate trust office of any successor trustee (or such other address as such successor trustee may designate from time to time by notice to the Holders and the Company).

“**Current Market Price**” means, in respect of an ADS at a particular date, the volume-weighted average of the Last Reported Sale Prices for one ADS (carrying full entitlement to dividend) for the thirty (30) consecutive Trading Days ending on the Trading Day immediately preceding such date, *provided* that if at any time during the said thirty (30) Trading Day period the ADSs shall have been quoted ex-dividend and during some other part of that period the ADSs shall have been quoted cum-dividend then:

(a) if the ADSs (or the Class A Ordinary Shares) to be issued in such circumstances do not rank for the dividend in question, the quotations on the dates on which the ADSs shall have been quoted cum-dividend shall for the purpose of this definition be deemed to be the amount thereof reduced by an amount equal to the amount of that dividend per ADS; or

(b) if the ADSs (or the Class A Ordinary Shares) to be issued in such circumstances rank for the dividend in question, the quotations on the dates on which the ADSs shall have been quoted ex-dividend shall for the purpose of this definition be deemed to be the amount thereof increased by such similar amount;

and *provided further* that if the ADSs on each of the said thirty (30) Trading Days have been quoted cum-dividend in respect of a dividend which has been declared or announced but the ADSs or the Ordinary Shares to be issued do not rank for that dividend, the quotations on each of such dates shall for the purpose of this definition be deemed to be the amount thereof reduced by an amount equal to the amount of that dividend per ADS.

“**Default**” means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

“**Defaulted Amounts**” means any amounts on any Note (including, without limitation, the Fundamental Change Repurchase Price, principal, premium and interest) that are payable but are not punctually paid or duly provided for.

“**Deposit Agreement**” means the deposit agreement dated as of September 11, 2018 by and among the Company, the ADS Depository and the holders and beneficial owners of the ADSs delivered thereunder or, if amended or supplemented as provided therein, as so amended or supplemented.

“**Distributed Property**” shall have the meaning specified in Section 14.04(c).

“**Distribution Compliance Period Termination Date**” shall have the meaning specified in Section 2.05(c).

“**EU Bail-in Legislation Schedule**” means the document described as such, then in effect, and published by the Loan Market Association (or any successor person) from time to time at <http://www.lma.eu.com/pages.aspx?p=499>.

“**Euroclear**” means Euroclear Bank SA/NV.

“**Event of Default**” shall have the meaning specified in Section 6.01.

“**Ex-Dividend Date**” means the first date on which the ADSs trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of the ADSs on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

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

“**Expiring Rights**” means any rights, options or warrants to purchase Ordinary Shares or ADSs that expire on or prior to the Maturity Date.

“**FATCA**” shall have the meaning specified in Section 4.07(a)(i)(D).

“**Form of Assignment and Transfer**” shall mean the “Form of Assignment and Transfer” attached as Attachment 3 to the Form of Note attached hereto as Exhibit A.

“**Form of Fundamental Change Repurchase Notice**” shall mean the “Form of Fundamental Change Repurchase Notice” attached as Attachment 2 to the Form of Note attached hereto as Exhibit A.

“**Form of Notice of Conversion**” shall mean the “Form of Notice of Conversion” attached as Attachment 1 to the Form of Note attached hereto as Exhibit A.

“**Fractional ADS**” shall have the meaning specified in Section 14.02(a).

“**Fundamental Change**” shall be deemed to have occurred at the time after the Notes are originally issued if any of the following occurs:

(a) (A) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act, other than the Company, its Subsidiaries, the employee benefit plans of the Company and its Subsidiaries and any of the Permitted Holders, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of (i) the Company’s Common Equity (including Common Equity held in the form of ADSs) representing more than 50% of the voting power of the Company’s Common Equity or (ii) more than 50% of the outstanding Ordinary Shares (including Ordinary Shares held in the form of ADSs); or (B) the Permitted Holders (together with any of their respective Affiliates) have become the direct or indirect “beneficial owners,” as defined in Rule 13d-3 under the Exchange Act, of Ordinary Shares (including Ordinary Shares held in the form of ADSs) representing, in the aggregate, more than 65% of the outstanding Ordinary Shares (including Ordinary Shares held in the form of ADSs), based on any Schedule TO or any schedule, form or report under the Exchange Act disclosing the same filed by any one or more of the Permitted Holders;

(b) the consummation of (A) any recapitalization, reclassification or change of the Ordinary Shares or the ADSs (other than changes resulting from a subdivision or combination) as a result of which the Ordinary Shares or the ADSs would be converted into, or exchanged for, stock, other securities, other property or assets; (B) any share exchange, consolidation or merger of the Company, or any similar transaction, pursuant to which the Ordinary Shares or the ADSs will be converted into cash, securities or other property; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries and Consolidated Affiliated Entities, taken as a whole, to any Person other than one of the Company’s wholly-owned Subsidiaries; provided, however, that a transaction described in clause (B) in which the holders of all classes of the Company’s Common Equity immediately prior to such transaction own, directly or indirectly, more than 50% of all classes of Common Equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions vis-a-vis each other as such ownership immediately prior to such transaction shall not be a Fundamental Change pursuant to this clause (b);

(c) the shareholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company;

(d) the ADSs (or other Common Equity or ADSs in respect of Common Equity underlying the Notes) cease to be listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors); or

(e) any change in or amendment to the laws, regulations and rules of the People's Republic of China or the official interpretation or official application thereof (a "**Change in Law**") that results in (x) the Company, its Subsidiaries and its Consolidated Affiliated Entities (collectively, the "**Company Group**") (as in existence immediately subsequent to such Change in Law), as a whole, being legally prohibited from operating substantially all of the business operations conducted by the Company Group (as in existence immediately prior to such Change in Law) as of the last date of the period described in the Company's consolidated financial statements for the most recent fiscal quarter and (y) the Company's being unable to continue to derive substantially all of the economic benefits from the business operations conducted by the Company Group (as in existence immediately prior to such Change in Law) in the same manner as reflected in the Company's consolidated financial statements for the most recent fiscal quarter;

provided, however, that a transaction or event described in clause (b) above shall not constitute a Fundamental Change, if at least 90% of the consideration received or to be received by holders of the ADSs, excluding cash payments for Fractional ADSs, in connection with such transaction or event consists of shares of Common Equity or ADSs in respect of Common Equity that are listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors) or will be so listed or quoted when issued or exchanged in connection with such transaction or event and as a result of such transaction or event, the Notes become convertible into such consideration, excluding cash payments for Fractional ADSs and cash payments made in connection with dissenters' appraisal rights.

"**Fundamental Change Company Notice**" shall have the meaning specified in Section 15.02(c).

"**Fundamental Change Repurchase Date**" shall have the meaning specified in Section 15.02(a).

"**Fundamental Change Repurchase Notice**" shall have the meaning specified in Section 15.02(b)(i).

"**Fundamental Change Repurchase Price**" shall have the meaning specified in Section 15.02(a).

"**Global Note**" shall have the meaning specified in Section 2.05(b).

"**Holder**," shall mean any Person in whose name at the time a particular Note is registered on the Note Register provided that, for the purposes of Section 6.01(f) and Section 6.04 only, "**Holder**" shall include a beneficial owner of any Note who has validly made a request that its beneficial interest therein be issued as a Physical Note, and thereafter the Company failed to execute, or the Registrar failed to authenticate and deliver, a Physical Note to that beneficial owner in accordance with Section 2.05(c) within 10 Business Days of the beneficial owner's request.

“**Indenture**” means this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented.

“**Last Reported Sale Price**” of the ADSs on any date means the closing sale price per ADS (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the ADSs are traded. If the ADSs are not listed for trading on a U.S. national or regional securities exchange on the relevant date, the “Last Reported Sale Price” shall be the last quoted bid price for the ADSs in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization. If the ADSs are not so quoted, the “Last Reported Sale Price” shall be the average of the mid-point of the last bid and ask prices for the ADSs on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

“**Maturity Date**” means February 4, 2021.

“**Merger Event**” shall have the meaning specified in Section 14.07(a).

“**Note**” or “**Notes**” shall have the meaning specified in the first paragraph of the recitals of this Indenture.

“**Note Register**” shall have the meaning specified in Section 2.05(a).

“**Note Registrar**” shall have the meaning specified in Section 2.05(a).

“**Notice of Conversion**” shall have the meaning specified in Section 14.02(b).

“**Officer**” means, with respect to the Company, the President, the Chief Executive Officer, the Chief Financial Officer the Treasurer, the Secretary, any Executive or Senior Vice President or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title “Vice President”).

“**Officers’ Certificate**,” when used with respect to the Company, means a certificate that is delivered to the Trustee and that is signed by (a) two Officers of the Company or (b) one Officer of the Company and one of any Assistant Treasurer, any Assistant Secretary or General Counsel or the Controller of the Company. Each such certificate shall include the statements provided for in Section 17.06 if and to the extent required by the provisions of such Section. One of the Officers giving an Officers’ Certificate pursuant to Section 4.09 shall be the principal executive, financial or accounting officer of the Company.

“**open of business**” means 9:00 a.m. (New York City time).

“**Opinion of Counsel**” means an opinion in writing signed by legal counsel and in a form reasonably acceptable to the Trustee, who may be counsel to the Company, or other counsel acceptable to the Trustee, that is delivered to the Trustee. Each such opinion shall include the

statements provided for in Section 17.06 if and to the extent required by the provisions of such Section 17.06.

“**Ordinary Shares**” means Class A ordinary shares of the Company, par value US\$0.00025 per share, at the date of this Indenture, subject to Section 14.07.

“**outstanding**,” when used with reference to Notes, shall, subject to the provisions of Section 8.04, mean, as of any particular time, all Notes authenticated and delivered by the Note Registrar under this Indenture, except:

- (a) Notes theretofore canceled by the Note Registrar or accepted by the Note Registrar for cancellation;
- (b) Notes, or portions thereof, that have become due and payable and in respect of which monies in the necessary amount shall have been deposited with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent);
- (c) Notes that have been paid pursuant to Section 2.06 or Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 2.06 unless proof satisfactory to the Trustee is presented that any such Notes are held by protected purchasers in due course;
- (d) Notes converted pursuant to Article 14 and required to be cancelled pursuant to Section 2.08; and
- (e) Notes repurchased by the Company pursuant to the third sentence of Section 2.10.

“**Paying Agent**” shall have the meaning specified in Section 4.02.

“**Permitted Holders**” means Mr. Bin Li and Tencent Holdings Limited, together with any other respective “person” or “group” subject to aggregation with respect to the Ordinary Shares (including Ordinary Shares held in the form of ADSs) with any of the aforementioned person and entity under Section 13(d) of the Exchange Act.

“**Person**” means an individual, a corporation, a limited liability company, an association, a partnership, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

“**Physical Notes**” means permanent certificated Notes in registered form issued in denominations of US\$1,000 principal amount and multiples thereof.

“**PRC**” means the People's Republic of China and, for the purposes for this Indenture, shall exclude Hong Kong SAR, Macau SAR and Taiwan.

“**Predecessor Note**” of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 2.06 in lieu of or in exchange for a mutilated, lost, destroyed or stolen Note shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note that it replaces.

“**Qualified Equity Financing**” means a bona fide issuance of equity securities of the Company for fundraising purposes after the date of this Indenture or to the Maturity Date, excluding any of the following: (i) ADSs issued upon conversion of any Note or any convertible securities then outstanding, (ii) Ordinary Shares (directly or in the form of ADSs) issued upon share split, share dividend or any subdivision of Ordinary Shares (directly or in the form of ADSs), (iii) Ordinary Shares (directly or in the form of ADSs) (or options or warrants therefor) issued to officers, directors, employees and consultants of the Company or issued to the trustee, general partner or other entity that is to hold the Ordinary Shares (directly or in the form of ADSs), in each case pursuant to a duly approved employee equity incentive plan, and (iv) shares of the Company issued pursuant to any bona fide acquisition, on arms-length terms, of interests in or assets of another corporation or entity by the Company as duly approved by the Board of Directors.

“**Qualified Equity Financing Conversion Date**” shall have the meaning specified in Section 14.02(c).

“**Qualified Equity Financing Conversion Rate**” means the conversion rate equal to US\$1,000 *divided by* the per-share issuance price applicable to the new issuance of equity securities of the Company in the Qualified Equity Financing (subject to adjustment as set forth in this Indenture).

“**Record Date**” means, with respect to any dividend, distribution or other transaction or event in which the holders of the Ordinary Shares (directly or in the form of ADSs) (or other applicable security) have the right to receive any cash, securities or other property or in which the Ordinary Shares (directly or in the form of ADSs) (or such other security) are exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of security holders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors, statute, contract or otherwise).

“**Reference Price**” means the higher of (i) US\$3.07 per Class A Share, subject to the same adjustment to the Conversion Rate pursuant to this Indenture and (ii) the Current Market Price, in each case on the date of announcement of the issuance referred to under the provisions in Section 14.04(f).

“**Reference Property**” shall have the meaning specified in Section 14.07(a).

“**Regulation S**” means Regulation S under the Securities Act or any successor to such regulation.

“**Relevant Jurisdiction**” shall have the meaning specified in Section 4.07(a).

“**Relevant Resolution Authority**” means the resolution authority with the ability to exercise any Bail-in Powers in relation to The Bank of New York Mellon SA/NV, Luxembourg Branch.

“**Relevant Taxing Jurisdiction**” shall have the meaning specified in Section 4.07(a).

“**Responsible Officer**” means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such Person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“**Rule 144**” means Rule 144 as promulgated under the Securities Act.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“**Significant Subsidiary**” means a Subsidiary of the Company that meets the definition of “significant subsidiary” in Article 1, Rule 1-02 of Regulation S-X under the Exchange Act. Each of the Company’s Consolidated Affiliated Entities will be deemed to be a “subsidiary” for purposes of the definition of “significant subsidiary” in Article 1, Rule 1-02 of Regulation S-X.

“**Specified Portion**” means such portion of the Notes that upon conversion by a Holder will result in a number of ADSs (assuming delivery of the maximum number of ADSs due upon conversion that do not represent a fractional ADS) to be delivered to such Holder to equal to (x) seventy five percent (75%), fifty percent (50%) or twenty five percent (25%) *multiplied by* (y) the number of ADSs calculated as (i) the aggregate principal amount of the Notes issued on the date of this Indenture *divided by* (ii) US\$1,000 and *multiplied by* (A) the Conversion Rate (in the case of conversion of the Notes pursuant to Section 14.01(a)) or (B) the Qualified Equity Financing Conversion Rate (in the case of conversion of the Notes pursuant to Section 14.01(b)), in each case, in effect immediately prior to the close of business on the relevant Conversion Date or the Qualified Equity Financing Conversion Date (as the case may be).

“**Spin-Off**” shall have the meaning specified in Section 14.04(c).

“**Subsidiary**” means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

“**Successor Company**” shall have the meaning specified in Section 11.01(a).

“**Trading Day**” means a day on which (i) trading in the ADSs (or other security for which a closing sale price must be determined) generally occurs on the New York Stock Exchange or, if the ADSs (or such other security) are not then listed on the New York Stock Exchange, on the principal other U.S. national or regional securities exchange on which the ADSs (or such other security) are then listed or, if the ADSs (or such other security) are not then listed on a U.S. national or regional securities exchange, on the principal other market on which the ADSs (or such other security) are then traded and (ii) a Last Reported Sale Price for the ADSs (or closing sale price for such other security) is available on such securities exchange or market; *provided* that if the ADSs (or such other security) are not so listed or traded, “Trading Day” means a Business Day.

“**transfer**” shall have the meaning specified in Section 2.05(c) and Section 2.05(e), as applicable.

“**Transfer Agent**” shall have the meaning specified in Section 4.02.

“**Trigger Event**” shall have the meaning specified in Section 14.04(c).

“**Trust Indenture Act**” means the Trust Indenture Act of 1939, as amended, as it was in force at the date of execution of this Indenture; *provided, however*, that in the event the Trust Indenture Act of 1939 is amended after the date hereof, the term “Trust Indenture Act” shall mean, to the extent required by such amendment, the Trust Indenture Act of 1939, as so amended.

“**Trustee**” means the Person named as the “Trustee” in the first paragraph of this Indenture until a successor trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean or include each Person who is then a Trustee hereunder.

“**unit of Reference Property**” shall have the meaning specified in Section 14.07(a).

“**U.S. Person**” shall have the meaning as such term is defined under Regulation S.

“**Valuation Period**” shall have the meaning specified in Section 14.04(c).

ARTICLE 2 ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.01 *Designation and Amount*. The Notes shall be designated as the “0% Convertible Senior Notes due 2021.” The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is limited to US\$70,000,000, except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes pursuant to Section 2.05, Section 2.06, Section 2.07, Section 10.04, Section 14.02 and Section 15.04.

Section 2.02 *Form of Notes*. The Notes and the Note Registrar’s certificate of authentication to be borne by such Notes shall be substantially in the respective forms set forth in

Exhibit A, the terms and provisions of which shall constitute, and are hereby expressly incorporated in and made a part of this Indenture. To the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

Any Global Note may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Indenture as may be required by the Common Depositary, or as may be required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange or automated quotation system upon which the Notes may be listed or traded or designated for issuance or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Notes are subject.

Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends or endorsements as the Officers executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, or to conform to usage or to indicate any special limitations or restrictions to which any particular Notes are subject.

Each Global Note shall represent such principal amount of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect redemptions, repurchases, cancellations, conversions, transfers or exchanges permitted hereby. Any endorsement of the Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Note Registrar in such manner and upon instructions given by the Holder of such Notes in accordance with this Indenture. Payment of principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) of the Global Note shall be made to the Holder of such Note on the date of payment, unless a record date or other means of determining Holders eligible to receive payment is provided for herein.

Section 2.03 *Date and Denomination of Notes; No Regular Interest; Payments of Defaulted Amounts.* (a) The Notes shall be issuable in registered form without coupons in denominations of US\$1,000 principal amount and integral multiples thereof. Each Note shall be dated the date of its authentication and shall not bear regular interest, and the principal amount of the Notes will not accrete.

(b) [RESERVED]

(c) Any Defaulted Amounts shall forthwith cease to be payable to the Holder on the relevant payment date but shall accrue interest per annum at the rate of three percent per annum, subject to the enforceability thereof under applicable law, from, and including, such relevant

payment date, and such Defaulted Amounts together with such interest thereon shall be paid by the Company, at its election in each case, as provided in clause (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Amounts to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on a special record date for the payment of such Defaulted Amounts, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of the Defaulted Amounts proposed to be paid on each Note and the date of the proposed payment (which shall be not less than 25 days after the receipt by the Trustee of such notice, unless the Trustee in its sole discretion shall consent to an earlier date), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Amounts or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Amounts as in this clause provided. Thereupon the Company shall fix a special record date for the payment of such Defaulted Amounts which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment, and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Company shall promptly notify the Trustee in writing of such special record date and the Trustee, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Amounts and the special record date therefor to be mailed, first-class postage prepaid (at the Company's expense), to each Holder at its address as it appears in the Note Register, not less than 10 days prior to such special record date. Notice of the proposed payment of such Defaulted Amounts and the special record date therefor having been so mailed, such Defaulted Amounts shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on such special record date and shall no longer be payable pursuant to the following clause (ii) of this Section 2.03(c).

(ii) The Company may make payment of any Defaulted Amounts in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, and upon such notice as may be required by such exchange or automated quotation system, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Section 2.04 *Execution, Authentication and Delivery of Notes.* The Notes shall be signed in the name and on behalf of the Company by the manual or facsimile signature of its Chief Executive Officer, President, Chief Financial Officer, Treasurer, Secretary or any of its Executive or Senior Vice Presidents. With the delivery of this Indenture, the Company is furnishing, and from time to time thereafter may furnish, a certificate substantially in the form of Exhibit B (an "**Authorization Certificate**") identifying and certifying the incumbency and specimen (and/or facsimile) signatures of its active authorized Officers. Until the Trustee receives a subsequent Authorization Certificate, the Trustee shall be entitled to conclusively rely

on the last Authorization Certificate delivered to it for purposes of determining the relevant authorized Officers. Typographical and other minor errors or defects in any signature shall not affect the validity or enforceability of any Note which has been duly authenticated and delivered by the Note Registrar.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes executed by the Company to the Note Registrar for authentication, together with a Company Order for the authentication and delivery of such Notes, and the Note Registrar in accordance with such Company Order shall authenticate and deliver such Notes, without any further action by the Company hereunder.

The Company Order shall specify the amount of Notes to be authenticated, the date on which the original issuance of such Notes is to be authenticated, the date on which the principal of such Notes will be payable and other terms relating to such Notes. The Note Registrar shall thereupon authenticate and deliver said Notes to or upon the written order of the Company (as set forth in such Company Order).

The Note Registrar shall have the right to decline to authenticate and deliver any Notes under this Section (a) unless and until it receives from the Company a Company Order instructing it to so authenticate and deliver such Notes and, if requested by the Note Registrar, an Officers' Certificate and an Opinion of Counsel in accordance with Section 17.06 hereof; (b) if the Note Registrar determines that such action may not lawfully be taken; or (c) if the Note Registrar determines that such action would expose the Note Registrar to personal liability, unless indemnity and/or security and/or pre-funding satisfactory to the Note Registrar against such liability is provided to the Note Registrar.

Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the form of Note attached as Exhibit A hereto, executed manually or by facsimile by an authorized officer of the Note Registrar, shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Note Registrar upon any Note executed by the Company shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture.

In case any Officer of the Company who shall have signed any of the Notes shall cease to be such Officer before the Notes so signed shall have been authenticated and delivered by the Note Registrar, or disposed of by the Company, such Notes nevertheless may be authenticated and delivered or disposed of as though the Person who signed such Notes had not ceased to be such Officer of the Company; and any Note may be signed on behalf of the Company by such Persons as, at the actual date of the execution of such Note, shall be the Officers of the Company, although at the date of the execution of this Indenture any such Person was not such an Officer.

Section 2.05 *Exchange and Registration of Transfer of Notes; Restrictions on Transfer; Common Depositary.* (a) The Company shall cause to be kept at the Corporate Trust Office a register (the register maintained in such office or in any other office or agency of the Company

designated pursuant to Section 4.02, the “**Note Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. Such register shall be in written form or in any form capable of being converted into written form within a reasonable period of time. The Bank of New York Mellon SA/NV, Luxembourg Branch is hereby initially appointed the “**Note Registrar**” and “**Transfer Agent**” for the purpose of registering Notes and transfers of Notes as herein provided. The Company may appoint one or more co-Note Registrars in accordance with Section 4.02.

Prior to the Distribution Compliance Period Termination Date, upon surrender for registration of transfer of any Note to the Note Registrar or any co-Note Registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.05(c), the Company shall execute, and the Note Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture. Following the Distribution Compliance Period Termination Date, upon surrender for registration of transfer of any Note to the Note Registrar or any co-Note Registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.05, the Company shall execute, and the Note Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and not bearing the restrictive legends required by the second paragraph of Section 2.05(c).

Prior to the Distribution Compliance Period Termination Date, Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at any such office or agency maintained by the Company pursuant to Section 4.02. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Note Registrar shall authenticate and deliver, the Notes that the Holder making the exchange is entitled to receive, bearing registration numbers not contemporaneously outstanding. Following the Distribution Compliance Period Termination Date, Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount but not bearing the restrictive legend required by the second paragraph of Section 2.05(c), upon surrender of the Notes to be exchanged at any such office or agency maintained by the Company pursuant to Section 4.02. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Note Registrar shall authenticate and deliver, the Notes that the Holder making the exchange is entitled to receive, bearing registration numbers not contemporaneously outstanding.

All Notes presented or surrendered for registration of transfer or for exchange, repurchase or conversion shall (if so required by the Company, the Trustee, the Note Registrar or any co-Note Registrar) be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and duly executed, by the Holder thereof or its attorney-in-fact duly authorized in writing.

No service charge shall be imposed by the Company, the Transfer Agent, the Note Registrar, any co-Note Registrar or the Paying Agent for any exchange or registration of transfer of Notes, but the Company may require a Holder to pay a sum sufficient to cover any

documentary, stamp, issue, transfer or similar tax required in connection therewith as a result of the name of the Holder of new Notes issued upon such exchange or registration of transfer being different from the name of the Holder of the old Notes surrendered for exchange or registration of transfer. The Company shall pay the ADS Depository's fees for issuance of the ADSs.

None of the Company, the Trustee, the Note Registrar or any co-Note Registrar shall be required to exchange or register a transfer of (i) any Notes surrendered for conversion or, if a portion of any Note is surrendered for conversion, such portion thereof surrendered for conversion or (ii) any Notes, or a portion of any Note, surrendered for repurchase (and not withdrawn) in accordance with Article 15.

All Notes issued upon any registration of transfer or exchange of Notes in accordance with this Indenture shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture as the Notes surrendered upon such registration of transfer or exchange.

The Trustee shall have no responsibility or obligation to any direct or indirect participant or any other Person with respect to the accuracy of the books or records, or the acts or omissions, of the Common Depository or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any direct or indirect participant or other Person (other than the Common Depository and any other registered Holder of Notes) of any notice or the payment of any amount, under or with respect to such Notes. All notices and communications to be given to the Holders and all payments to be made to Holders under the Notes shall be given or made only to or upon the order of the registered Holders (which shall be the Common Depository or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through the Common Depository subject to the customary procedures of Euroclear and Clearstream. The Trustee may rely and shall be fully protected in relying upon information furnished by the Common Depository with respect to its direct or indirect participants.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among direct or indirect participants in any Global Note) other than to require delivery of such certificates as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(b) So long as the Notes are eligible for book-entry settlement with Euroclear and Clearstream, unless otherwise required by law, subject to the fourth paragraph from the end of Section 2.05(c) all Notes shall be represented by one or more Notes in global form (each, a "**Global Note**") registered in the name of the Common Depository or its nominee. The transfer and exchange of beneficial interests in a Global Note that does not involve the issuance of a Physical Note shall be effected through the Common Depository in accordance with this Indenture (including the restrictions on transfer set forth herein) and the procedures of Euroclear and Clearstream.

(c) Every Note that bears or is required under this Section 2.05(c) to bear the legend set forth in this Section 2.05(c) shall, until no longer required by this Section 2.05(c), be subject to the restrictions on transfer set forth in this Section 2.05(c) (including the legends set forth below), unless such restrictions on transfer shall be eliminated or otherwise waived by written consent of the Company, and the Holder of each such Note, by such Holder's acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in this Section 2.05(c), the term "transfer" encompasses any sale, pledge, transfer or other disposition whatsoever of any such Note.

Until the date (the "Distribution Compliance Period Termination Date") that is 40 days after the date hereof, any certificate evidencing a Note (and all securities issued in exchange therefor or substitution thereof) shall bear a legend in substantially the following form (unless such Notes have been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or unless otherwise agreed by the Company in writing, with notice thereof to the Trustee):

THIS SECURITY AND THE ORDINARY SHARES REPRESENTED THEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") AND PRIOR TO THE DATE THAT IS 40 DAYS AFTER THE DATE HEREOF, MAY NOT BE OFFERED, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, A U.S. PERSON (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT) EXCEPT PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOTE SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS 40 DAYS AFTER THE DATE HEREOF, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS NOT A U.S. PERSON AND IS LOCATED OUTSIDE THE UNITED STATES (WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT AND THAT IT AND ANY SUCH ACCOUNT IS NOT AN AFFILIATE OF NIO INC. (THE "COMPANY"), AND

(2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE, HYPOTHECATE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS 40 DAYS AFTER THE DATE HEREOF, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) TO A NON-U.S. PERSON IN AN OFFSHORE TRANSACTION MEETING THE REQUIREMENTS OF RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

Any certificate evidencing a Note (and all securities issued in exchange therefor or substitution thereof) shall bear a legend in substantially the following form (unless otherwise agreed by the Company in writing, with notice thereof to the Trustee):

PRIOR TO AUGUST 10, 2020, NO BENEFICIAL OWNER THAT PURCHASED A BENEFICIAL INTEREST IN THIS SECURITY UPON THE ORIGINAL ISSUANCE THEREOF MAY OFFER, SELL, PLEDGE, HYPOTHECATE OR OTHERWISE TRANSFER SUCH BENEFICIAL INTEREST EXCEPT IN ACCORDANCE WITH THE CONVERTIBLE NOTE SUBSCRIPTION AGREEMENT BETWEEN NIO INC. AND THE PURCHASER NAMED THEREIN, DATED FEBRUARY 6, 2020 (THE "SUBSCRIPTION AGREEMENT"). ANY ATTEMPT BY SUCH BENEFICIAL OWNER TO OFFER, SELL, PLEDGE, HYPOTHECATE OR OTHERWISE TRANSFER SUCH BENEFICIAL INTEREST IN VIOLATION OF THIS RESTRICTION SHALL BE VOID.

No transfer of any Note prior to the Distribution Compliance Period Termination Date will be registered by the Note Registrar unless the applicable box on the Form of Assignment and Transfer has been checked.

The Company shall promptly notify the Trustee and the ADS Depository in writing upon the occurrence of the Distribution Compliance Period Termination Date and after a registration statement, if any, with respect to the Notes has been declared effective under the Securities Act.

Notwithstanding any other provisions of this Indenture (other than the provisions set forth in this Section 2.05(c)), a Global Note may not be transferred as a whole or in part except (i) by the Common Depository to a nominee of the Common Depository or by a nominee of the Common Depository to the Common Depository or another nominee of the Common Depository or by the Common Depository or any such nominee to a successor Common Depository or a nominee of such successor Common Depository and (ii) for transfers of portions of a Global Note in certificated form made upon request of a member of, or a participant in, the Common Depository (for itself or on behalf of a beneficial owner) by written notice given to the Trustee by or on behalf of the Common Depository in accordance with customary procedures of Euroclear and Clearstream and in compliance with this Section 2.05(c).

Initially, each Global Note shall be delivered by or on behalf of the Trustee to, and registered in the name of, the Common Depository or its nominee for the accounts of Euroclear and Clearstream.

If (i) the Common Depository notifies the Company at any time that the Common Depository is unwilling or unable to continue as depository for the Global Notes and a successor depository is not appointed within 90 days, (ii) either Euroclear or Clearstream, or a successor clearing system is closed for business for a continuous period of 14 days (other than by reason of holidays, statutory or otherwise) or announces an intention to permanently cease business or does in fact do so, or (iii) an Event of Default with respect to the Notes has occurred and is continuing and a beneficial owner of any Note requests that its beneficial interest therein be issued as a Physical Note, the Company shall execute, and the Note Registrar, upon receipt of an Officers' Certificate and a Company Order for the authentication and delivery of Notes, shall authenticate and deliver (x) in the case of clause (iii), a Physical Note to such beneficial owner in a principal amount equal to the principal amount of such Note corresponding to such beneficial owner's beneficial interest and (y) in the case of clause (i) or (ii), Physical Notes to each beneficial owner of the related Global Notes (or a portion thereof) in an aggregate principal amount equal to the aggregate principal amount of such Global Notes in exchange for such Global Notes, and upon delivery of the Global Notes to the Note Registrar such Global Notes shall be canceled.

Physical Notes issued in exchange for all or a part of the Global Note pursuant to this Section 2.05(c) shall be registered in such names and in such authorized denominations as the Common Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Note Registrar in writing. Upon execution and authentication, the Note Registrar shall deliver such Physical Notes to the Persons in whose names such Physical Notes are so registered.

At such time as all interests in a Global Note have been converted, canceled, repurchased, redeemed or transferred, such Global Note shall be, upon receipt thereof, canceled by the Note Registrar in accordance with standing procedures and existing instructions of the Common Depository. At any time prior to such cancellation, if any interest in a Global Note is exchanged for Physical Notes, converted, canceled, repurchased, redeemed or transferred to a transferee who receives Physical Notes therefor or any Physical Note is exchanged or transferred for part of such Global Note, the principal amount of such Global Note shall, in accordance with the standing procedures and existing instructions of the Common Depository, be appropriately reduced or increased, as the case may be, and an endorsement shall be made on such Global Note, by the Note Registrar, to reflect such reduction or increase.

None of the Company, the Trustee, the Paying Agent, any agent of the Company or any agent of the Trustee shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Note or maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

(d) [RESERVED]

(e) Any Note that is repurchased or owned by any Affiliate of the Company may not be resold by such Affiliate unless registered under the Securities Act or resold pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act in a transaction that results in such Note no longer being a “restricted security” (as defined under Rule 144 under the Securities Act). The Company shall cause any Note that is repurchased or owned by it to be surrendered to the Note Registrar for cancellation in accordance with Section 2.08.

Section 2.06 *Mutilated, Destroyed, Lost or Stolen Notes.* In case any Note shall become mutilated or be destroyed, lost or stolen, the Company in its discretion may execute, and upon receipt of a Company Order, the Note Registrar shall authenticate and deliver, a new Note, bearing a registration number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case the applicant for a substituted Note shall furnish to the Company and to the Note Registrar such security and/or indemnity as may be required by them to save each of them harmless from any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company and to the Note Registrar evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

The Note Registrar may authenticate any such substituted Note and deliver the same upon the receipt of such security and/or indemnity as the Note Registrar and the Company may require. No service charge shall be imposed by the Company, the Transfer Agent, the Note Registrar, any co-Note Registrar or the Paying Agent upon the issuance of any substitute Note, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp, issue, transfer or similar tax required in connection therewith as a result of the name of the Holder of the new substitute Note being different from the name of the Holder of the old Note that became mutilated or was destroyed, lost or stolen. In case any Note that has matured or is about to mature or has been surrendered for repurchase (and not withdrawn) in accordance with Article 15 or is about to be converted in accordance with Article 14 shall become mutilated or be destroyed, lost or stolen, the Company may, in its sole discretion, instead of issuing a substitute Note, pay or authorize the payment of or convert or authorize the conversion of the same (without surrender thereof except in the case of a mutilated Note), as the case may be, if the applicant for such payment or conversion shall furnish to the Company and to the Trustee such security and/or indemnity as may be required by them to save each of them harmless for any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, evidence satisfactory to the Company, and the Trustee evidence of their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

Every substitute Note issued pursuant to the provisions of this Section 2.06 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement, payment,

redemption, conversion or repurchase of mutilated, destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement, payment, redemption, conversion or repurchase of negotiable instruments or other securities without their surrender.

Section 2.07 *Temporary Notes*. Pending the preparation of Physical Notes, the Company may execute and the Note Registrar shall, upon receipt of a Company Order, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the Physical Notes but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be executed by the Company and authenticated by the Note Registrar upon the same conditions and in substantially the same manner, and with the same effect, as the Physical Notes. Without unreasonable delay, the Company shall execute and deliver to the Note Registrar Physical Notes (other than any Global Note) and thereupon any or all temporary Notes (other than any Global Note) may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 4.02 and the Note Registrar shall upon receipt of a Company Order authenticate and deliver in exchange for such temporary Notes an equal aggregate principal amount of Physical Notes. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Physical Notes authenticated and delivered hereunder.

Section 2.08 *Cancellation of Notes Paid, Converted, Etc.* The Company shall cause all Notes surrendered for the purpose of payment, repurchase, redemption, registration of transfer or exchange or conversion, if surrendered to any Person other than the Note Registrar (including any of the Company's agents, Subsidiaries or Affiliates), to be delivered and surrendered to the Note Registrar for cancellation. All Notes delivered to the Note Registrar shall be canceled promptly by it, and no Notes shall be authenticated in exchange thereof except as expressly permitted by any of the provisions of this Indenture. The Note Registrar shall dispose of canceled Notes in accordance with its customary procedures and, after such disposition, shall deliver a certificate of such cancellation and disposition to the Company, at the Company's written request in a Company Order.

Section 2.09 *Common Code and ISIN Numbers*. The Company in issuing the Notes may use "Common Code" or "ISIN" numbers (if then generally in use), and, if so, the Trustee shall use "Common Code" or "ISIN" numbers in all notices issued to Holders as a convenience to such Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or on such notice and that reliance may be placed only on the other identification numbers printed on the Notes. The Company shall promptly notify the Trustee in writing of any change in the "Common Code" or "ISIN" numbers.

Section 2.10 [RESERVED]

ARTICLE 3
SATISFACTION AND DISCHARGE

Section 3.01 *Satisfaction and Discharge.* This Indenture shall upon request of the Company contained in an Officers' Certificate cease to be of further effect, and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when (a) (i) all Notes theretofore authenticated and delivered (other than (x) Notes which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.06 and (y) Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 4.04(d)) have been delivered to the Note Registrar for cancellation; or (ii) the Company has deposited with the Paying Agent or delivered to Holders, as applicable, after the Notes have become due and payable, whether on the Maturity Date, any Fundamental Change Repurchase Date, upon conversion or otherwise, cash or cash and ADSs (solely to satisfy the Company's Conversion Obligation, if applicable), sufficient to pay all of the outstanding Notes and all other sums due and payable under this Indenture by the Company; and (b) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with. Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 7.06 shall survive.

ARTICLE 4
PARTICULAR COVENANTS OF THE COMPANY

Section 4.01 *Payment of Principal and Premium.* (a) The Company covenants and agrees that it will cause to be paid the principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) of each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes.

(b) The Company covenants and agrees that it will cause to be paid a premium equal to (i) in the case of any payment of principal to be made on the Maturity Date or pursuant to Section 6.02, 2.0% of the outstanding principal amount of the Notes, or (ii) in the case of any payment of principal to be made on a Fundamental Change Repurchase Date, the aggregate interest that would have accrued on the outstanding principal amount of the Notes to be repurchased (or such portion thereof, as the case may be) over the period starting from (and including) the original date of issuance of the Notes and ending on (and including) the Fundamental Change Repurchase Date, if the Notes were to bear interest at a rate of 2.0% per annum (accruing daily and computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of actual days elapsed in a 30-day month). For the avoidance of doubt, any reference in this Indenture of the Notes in any context to the principal shall be deemed to include, without duplication, the premium contemplated by this Section 4.01(b) to the extent that, in such context, such premium is, was or would be payable pursuant to this Section 4.01(b).

Section 4.02 *Maintenance of Office or Agency.* The Company will maintain in the Borough of Manhattan, The City of New York, an office or agency (which will be the Corporate Trust Office initially) where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase (“**Paying Agent**”) or for conversion (“**Conversion Agent**”) and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office, *provided, however*, that the legal service of process against the Company shall in no circumstance be made at an office or agency of the Trustee.

The Company may also from time to time designate as co-Note Registrars one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan, The City of New York, for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. The terms “**Paying Agent**” and “**Conversion Agent**” include any such additional or other offices or agencies, as applicable.

The Company hereby initially designates (i) The Bank of New York Mellon, London Branch as the Paying Agent and Conversion Agent and the Corporate Trust Office and the office or agency of The Bank of New York Mellon in the Borough of Manhattan, The City of New York, each shall be considered as one such office or agency of the Company for each of the aforesaid purposes; and (ii) The Bank of New York Mellon SA/NV, Luxembourg Branch of Vertigo Building – Polaris, 2-4 rue Eugène Ruppert, L-2453 Luxembourg as the Note Registrar and Transfer Agent.

Section 4.03 *Appointments to Fill Vacancies in Trustee’s Office.* The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 7.09, a trustee, so that there shall at all times be a trustee hereunder.

Section 4.04 *Provisions as to Paying Agent.* (a) If the Company shall appoint a Paying Agent other than the Trustee, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 4.04:

(i) that it will hold all sums held by it as such agent for the payment of the principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) of the Notes for the benefit of the Holders of the Notes;

(ii) that it will give the Trustee prompt notice of any failure by the Company to make any payment of the principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) of the Notes when the same shall be due and payable; and

(iii) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held.

The Company shall, on or before each due date of the principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) of the Notes, deposit with the Paying Agent a sum sufficient to pay such principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of any failure to take such action; *provided* that such deposit must be received by the Paying Agent by 10:00 a.m., New York City time, one Business Day prior to the relevant due date. The Paying Agent shall not be bound to make any payment until it has received, in immediately available and cleared funds, an amount which shall be sufficient to pay, as applicable, the aggregate amount of principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) of the Notes when such principal shall become due and payable. The Paying Agent shall not be responsible or liable for any delay in making the payment if it does not receive funds before 10:00 a.m. one Business Day prior to the payment date. The Company shall use reasonable efforts to procure that, before 10:00 a.m., New York City time, on the second Business Day before each payment date, the bank effecting payment for it has confirmed by facsimile to the Paying Agent the payment instructions relating to such payment.

(b) If the Company shall act as its own Paying Agent, it will, on or before each due date of the principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) of the Notes, set aside, segregate and hold in trust for the benefit of the Holders of the Notes a sum sufficient to pay such principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) so becoming due and will promptly notify the Trustee in writing of any failure to take such action and of any failure by the Company to make any payment of the principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) of the Notes when the same shall become due and payable. Upon an Event of Default under Section 6.01(i) or Section 6.01(j) hereof, the Trustee shall automatically become the Paying Agent.

(c) Anything in this Section 4.04 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay, cause to be paid or deliver to the Trustee all sums or amounts held by the Company in trust or by any Paying Agent as required by this Section 4.04, such sums or amounts to be held by the Trustee upon the trusts herein contained and upon such payment or delivery by the Company or any Paying Agent to the Trustee, the Company or such Paying Agent shall be released from all further liability but only with respect to such sums or amounts.

(d) Any money and ADSs deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) of any Note (or, in the case of ADSs, in satisfaction of the Conversion Obligation) and remaining unclaimed for two years after such principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) has become due and payable or such Conversion Obligation has become due shall be paid or delivered, as the case may be, to the Company on request of the

Company contained in an Officers' Certificate, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such money and ADSs, and all liability of the Company as trustee thereof, shall thereupon cease; *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment or delivery, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in The Borough of Manhattan, The City of New York, notice that such money and ADSs remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money and ADSs then remaining will be repaid or delivered to the Company.

Section 4.05 *Existence*. Subject to Article 11, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence. The Company shall promptly provide the Trustee with written notice of any change to its name, jurisdiction of incorporation or change to its corporate organization.

Section 4.06 [RESERVED]

Section 4.07 *Additional Amounts*. (a) All payments and deliveries made by, or on behalf of, the Company or any successor to the Company under or with respect to this Indenture and the Notes, including, but not limited to, payments of principal (including, if applicable, the Fundamental Change Repurchase Price), premium, if any, payments of interest, if any, and deliveries of ADSs or any other consideration due on conversion of a Note (together with payments of cash for any Fractional ADS or other consideration) upon conversion of the Notes, shall be made without withholding, deduction or reduction for any other collection at source for, or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied (including any penalties and interest related thereto) ("**applicable taxes**") by or within any jurisdiction in which the Company or any successor to the Company is, for tax purposes, incorporated, organized or resident or doing business (each, as applicable, a "**Relevant Taxing Jurisdiction**") or through which payment is made or deemed made (together with each Relevant Taxing Jurisdiction, a "**Relevant Jurisdiction**," and in each case, any political subdivision or taxing authority thereof or therein) unless such withholding, deduction or reduction is required by law or by regulation or governmental policy having the force of law. In the event that any such withholding, deduction or reduction is so required, the Company or any successor to the Company shall pay or deliver to each Holder such additional amounts of cash, ADSs or other consideration, as applicable ("**Additional Amounts**") as may be necessary to ensure that the net amount received by the beneficial owner of the Notes after such withholding, deduction or reduction (and after deducting any taxes on the Additional Amounts) shall equal the amounts that would have been received by such beneficial owner had no such withholding, deduction or reduction been required; *provided* that no Additional Amounts shall be payable:

- (i) for or on account of:

(A) any applicable taxes that would not have been imposed but for:

(1) the existence of any present or former connection between the relevant Holder or beneficial owner of such Note and the Relevant Jurisdiction, other than merely acquiring or holding such Note, receiving ADSs (together with the payment of cash for any Fractional ADS) or other consideration upon conversion of such Note or the receipt of payments or the exercise or enforcement of rights thereunder, including, without limitation, such Holder or beneficial owner being or having been a national, domiciliary or resident of such Relevant Jurisdiction or treated as a resident thereof or being or having been physically present or engaged in a trade or business therein or having had a permanent establishment therein;

(2) the presentation of such Note (in cases in which presentation is required) more than 30 days after the later of the date on which the payment of the principal of (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) and interest on, such Note or the delivery of ADSs (together with payment of cash for any Fractional ADS) upon conversion of such Note became due and payable pursuant to the terms thereof or was made or duly provided for;

(3) the failure of the Holder or beneficial owner to comply with a timely written request from the Company or any successor of the Company, addressed to the Holder, to the extent such Holder or beneficial owner is legally entitled, to provide certification, information, documents or other evidence concerning such Holder's or beneficial owner's nationality, residence, identity or connection with the Relevant Taxing Jurisdiction, or to make any declaration or satisfy any other reporting requirement relating to such matters, if and to the extent that due and timely compliance with such request is required by statute, regulation or administrative practice of the Relevant Jurisdiction in order to reduce or eliminate any withholding or deduction as to which Additional Amounts would have otherwise been payable to such Holder or beneficial owner; or

(4) the presentation of such Note (in cases in which presentation is required) for payment in the Relevant Jurisdiction, unless such Note could not have been presented for payment elsewhere;

(B) any estate, inheritance, gift, sale, transfer, personal property or similar applicable tax or any excise or similar taxes imposed with respect to a transfer;

(C) any applicable tax that is payable otherwise than by withholding, deduction or reduction for any other collection at source from payments or deliveries under or with respect to the Notes;

(D) any applicable tax required to be withheld or deducted under Sections 1471 to 1474 of the Code (or any amended or successor versions of such Sections) (“**FATCA**”), any regulations or other official guidance thereunder, any intergovernmental agreement or agreement pursuant to Section 1471(b)(1) of the Code entered into in connection with FATCA, or any law, regulation or other official guidance enacted in any jurisdiction implementing FATCA or an intergovernmental agreement; or

(E) any combination of applicable taxes referred to in the preceding clauses (A), (B), (C) or (D); or

(ii) with respect to any payment of the principal of (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder), and interest on, such Note or the delivery of ADSs (together with payment of cash for any Fractional ADS) upon conversion of such Note to a Holder, if the Holder is a fiduciary, partnership or person other than the sole beneficial owner of that payment to the extent that such payment would be required to be included in the income under the laws of the Relevant Jurisdiction, for tax purposes, of a beneficiary or settlor with respect to the fiduciary, a partner or member of that partnership or a beneficial owner who would not have been entitled to such Additional Amounts had that beneficiary, settlor, partner, member or beneficial owner been the Holder thereof.

(b) If the Company or its successor becomes obligated to pay Additional Amounts with respect to any payment or delivery under or with respect to the Notes, the Company or its successor shall deliver to the Trustee and the Paying Agent, if other than the Trustee, on a date that is at least 30 days prior to the date of that payment or delivery (unless the obligation to pay Additional Amounts arises after the 30th day prior to that payment date, in which case the Company or its successor shall notify the Trustee and the Paying Agent promptly thereafter) an Officers’ Certificate stating the fact that Additional Amounts will be payable and the amount estimated to be so payable. The Officers’ Certificate must also set forth any other information reasonably necessary to enable the Paying Agent or the Conversion Agent, as the case may be, to pay Additional Amounts to Holders on the relevant payment date. The Trustee and the Paying Agent shall be entitled to rely solely on such Officers’ Certificate as conclusive proof that such payments are necessary. The Company or its successor shall provide the Trustee and the Paying Agent with documentation reasonably satisfactory to the Trustee evidencing the payment of Additional Amounts.

(c) The Company or its successor shall make all withholdings and deductions required by law and shall remit the full amount deducted or withheld to the relevant tax authority in accordance with applicable law. Upon request, the Company or its successor shall provide to the Trustee an official receipt or, if official receipts are not obtainable, an Officers’ Certificate evidencing the payment of any applicable taxes so deducted or withheld. Copies of those receipts

or other documentation, as the case may be, shall be made available by the Trustee to the Holders of the Notes upon written request.

(d) Any reference in this Indenture or the Notes in any context to the delivery of ADSs (together with payment of cash for any Fractional ADS) or other consideration upon conversion of any Note or the payment of principal of (including the Fundamental Change Repurchase Price, if applicable) and any premium or interest, if any, on any Note or any other amount payable with respect to such Note, shall be deemed to include payment of Additional Amounts to the extent that, in such context, Additional Amounts are, were or would be payable with respect to that amount pursuant to this Section 4.07.

(e) Notwithstanding any other provisions, the Company or its successor, the Trustee and the Paying Agent shall be entitled to make any withholding or deduction pursuant to FATCA.

(f) If the Company or its successor is required to make any deduction or withholding from any payments or deliveries with respect to the Notes, it will deliver to the Trustee official tax receipts evidencing the remittance to the relevant tax authorities of the amounts so withheld or deducted.

(g) The foregoing obligations shall survive termination or discharge of this Indenture.

Section 4.08 *Stay, Extension and Usury Laws.* The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law that would prohibit or forgive the Company from paying all or any portion of the principal of or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or that may affect the covenants or the performance of this Indenture; and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 4.09 *Compliance Certificate; Statements as to Defaults.* The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 31, 2019) an Officers' Certificate stating that a review has been conducted of the Company's activities under this Indenture and the Company has fulfilled its obligations hereunder, and whether the authorized Officers thereof have knowledge of any Default by the Company that occurred during the previous year that is then continuing and, if so, specifying each such Default and the nature thereof.

In addition, the Company shall deliver to the Trustee, as soon as possible, and in any event within 30 days after the Company becomes aware of the occurrence of any Default if such Default is then continuing, an Officers' Certificate setting forth the details of such Default, its status and the action that the Company is taking or proposing to take in respect thereof. The Trustee shall have no responsibility to take any steps to ascertain whether any Event of Default

or Default has occurred, and until (i) a Responsible Officer of the Trustee has received an Officers' Certificate regarding such an occurrence, or (ii) the Trustee has received written notice at the Corporate Trust Office from the Holders of at least 25% in aggregate principal amount of the Notes then outstanding regarding such an occurrence, the Trustee is entitled to assume, without liability, that no Event of Default or Default has occurred.

Section 4.10 *Further Instruments and Acts*. The Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

ARTICLE 5
LISTS OF HOLDERS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 5.01 *Lists of Holders*. The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee, semi-annually, not more than 15 days after July 26, 2020, and January 26, 2021, and at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably require of the names and addresses of the Holders as of a date not more than 15 days (or such other date as the Trustee may reasonably request in order to so provide any such notices) prior to the time such information is furnished, except that no such list need be furnished so long as the Bank of New York Mellon SA/NV, Luxembourg Branch is acting as Note Registrar.

Section 5.02 *Preservation and Disclosure of Lists*. The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders contained in the most recent list furnished to it as provided in Section 5.01 or maintained by the Trustee in its capacity as Note Registrar, if so acting. The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01 *Events of Default*. The following events shall be "**Events of Default**" with respect to the Notes:

- (a) [RESERVED]
- (b) default in the payment of principal of any Note when due and payable on the Maturity Date, upon any required repurchase, upon declaration of acceleration or otherwise (including, for the avoidance, the Fundamental Change Repurchase Price, if applicable, any premium due to the Holders hereunder and Additional Amounts, if any);
- (c) failure by the Company to comply with its obligation to convert the Notes in accordance with this Indenture upon exercise of a Holder's conversion right and such failure continues for a period of five Business Days;

- (d) failure by the Company to issue a Fundamental Change Company Notice in accordance with Section 15.02(c) when due and such failure continues for a period of five Business Days;
- (e) failure by the Company to comply with its obligations under Article 11;
- (f) failure by the Company for 60 days after written notice from the Trustee or by the Trustee at the request of the Holders of at least 25% in aggregate principal amount of the Notes then outstanding has been received by the Company, or after written notice from the Holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 8.04 has been received by the Company (which notice is to be copied to the Trustee in writing), to comply with any of its other agreements or obligations contained in the Notes or this Indenture;
- (g) default by the Company or any Significant Subsidiary of the Company with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of US\$50 million (or the foreign currency equivalent thereof) in the aggregate of the Company and/or any such Significant Subsidiary, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable or (ii) constituting a failure to pay the principal or interest of any such debt when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise;
- (h) a final judgment for the payment of US\$50 million (or the foreign currency equivalent thereof) or more (excluding any amounts covered by insurance) rendered against the Company or any Significant Subsidiary of the Company, which judgment is not paid, bonded or otherwise discharged or stayed within 60 days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (ii) the date on which all rights to appeal have been extinguished;
- (i) the Company or any Significant Subsidiary shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Company or any such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any such Significant Subsidiary or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due;
- (j) an involuntary case or other proceeding shall be commenced against the Company or any Significant Subsidiary seeking liquidation, reorganization or other relief with respect to the Company or such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or such Significant Subsidiary or

any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 30 consecutive days; or

(k) the ADSs (or other Common Equity or ADSs in respect of the Common Equity underlying the Note) have been suspended from trading on any of The New York Stock Exchange, The NASDAQ Global Select market or The NASDAQ Global Market (or any of their respective successors) for a period of ninety (90) consecutive trading days or for more than one hundred and eighty (180) trading days in any twelve (12)-month period.

Section 6.02 *Acceleration; Rescission and Annulment.* If one or more Events of Default shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), then, and in each and every such case (other than an Event of Default specified in Section 6.01(i) or Section 6.01(j) with respect to the Company or any of its Significant Subsidiaries), unless the principal of all of the Notes shall have already become due and payable, the Trustee may by notice in writing to the Company, or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 8.04, by notice in writing to the Company and to the Trustee may, and the Trustee at the request of such Holders shall (subject to being indemnified and/or secured and/or pre-funded to its satisfaction), declare 100% of the principal of all the Notes to be due and payable immediately, and upon any such declaration the same shall become and shall automatically be immediately due and payable, notwithstanding anything contained in this Indenture or in the Notes to the contrary. If an Event of Default specified in Section 6.01(i) or Section 6.01(j) with respect to the Company or any of its Significant Subsidiaries occurs and is continuing, 100% of the principal of all Notes shall become and shall automatically be immediately due and payable without any action on the part of the Trustee. If an Event of Default occurs and is continuing, all agents of the Company appointed under this Indenture will be required to act on the direction of the Trustee.

The immediately preceding paragraph, however, is subject to the conditions that if, at any time after the principal of the Notes shall have been so declared due and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay the principal of any and all Notes that shall have become due otherwise than by acceleration (with interest on any overdue principal at the rate of three percent per annum) and amounts due to the Trustee pursuant to Section 7.06, and if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (2) any and all existing Events of Default under this Indenture, other than the nonpayment of the principal of Notes that shall have become due solely by such acceleration, shall have been cured or waived pursuant to Section 6.09, then and in every such case (except as provided in the immediately succeeding sentence) the Holders of a majority in aggregate principal amount of the Notes then outstanding, by written notice to the Company and to the Trustee, may waive all Defaults or Events of Default with respect to the Notes and rescind and annul such declaration and its consequences and such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver or rescission and annulment

shall extend to or shall affect any subsequent Default or Event of Default, or shall impair any right consequent thereon. Notwithstanding anything to the contrary herein, no such waiver or rescission and annulment shall extend to or shall affect any Default or Event of Default resulting from (i) the nonpayment of the principal of any Notes, (ii) a failure to repurchase any Notes when required or (iii) a failure to pay or deliver, as the case may be, the consideration due upon conversion of the Notes.

Section 6.03 [RESERVED]

Section 6.04 *Payments of Notes on Default; Suit Therefor.* If an Event of Default described in clause (a) or (b) of Section 6.01 shall have occurred, the Company shall, upon demand of the Trustee acting in its own discretion or at the request of Holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 8.04 and subject to indemnity and/or security and/or pre-funding satisfactory to the Trustee, or upon demand of the Holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 8.04 (which demand is to be in writing, copied to the Trustee in writing), pay to the Trustee, for the benefit of the Holders of the Notes, the whole amount then due and payable on the Notes for principal (including, for the avoidance of doubt, the Fundamental Change Repurchase Price, if applicable and any premium payable hereunder), with interest on any overdue principal at the rate of three percent per annum, and, in addition thereto, such further amount as shall be sufficient to cover any amounts due to the Trustee under Section 7.06. If the Company shall fail to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Notes, wherever situated.

In the event there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Notes under Title 11 of the United States Code, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequester or similar official shall have been appointed for or taken possession of the Company or such other obligor, the property of the Company or such other obligor, or in the event of any other judicial proceedings relative to the Company or such other obligor upon the Notes, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 6.04, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal and accrued and unpaid interest, if any, in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents and to take such other actions as it may deem necessary or advisable in order to have the claims of the Trustee (including any claim for the compensation, properly incurred expenses, properly incurred disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceedings relative to the Company or any

other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due to the Trustee under Section 7.06; and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Holders to make such payments to the Trustee, as administrative expenses, and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for compensation, properly incurred expenses, advances and properly incurred disbursements, including agents and counsel fees and expenses, and including any other amounts due to the Trustee under Section 7.06, incurred by it up to the date of such distribution. To the extent that such payment of compensation, properly incurred expenses, advances and properly incurred disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property that the Holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting such Holder or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name or as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the compensation, properly incurred expenses, properly incurred disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Notes.

In any proceedings brought by the Trustee (and in any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Notes, and it shall not be necessary to make any Holders of the Notes parties to any such proceedings.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of any waiver pursuant to Section 6.09 or any rescission and annulment pursuant to Section 6.02 or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Holders, and the Trustee shall, subject to any determination in such proceeding, be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the Holders, and the Trustee shall continue as though no such proceeding had been instituted.

Section 6.05 *Application of Monies Collected by Trustee.* Any monies collected by the Trustee pursuant to this Article 6 with respect to the Notes shall be applied in the following

order, at the date or dates fixed by the Trustee for the distribution of such monies, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

First, to the payment of all amounts due the Trustee, including to its agents and counsel, under Section 7.06 and any payments due to the Paying Agent, the Transfer Agent, the Conversion Agent and the Note Registrar;

Second, in case the principal of the outstanding Notes shall not have become due and be unpaid, to the payment of interest on the Notes in default in the order of the date due of the payments of such interest, with interest (to the extent that such interest is payable pursuant to the Indenture and has been collected by the Trustee) upon such overdue payments at the rate per annum borne by the Notes at such time (including, without duplication, any additional interest on such overdue payments pursuant to Section 6.04), such payments to be made ratably to the Persons entitled thereto;

Third, in case the principal of the outstanding Notes shall have become due, by declaration or otherwise, and be unpaid to the payment of the whole amount (including, if applicable, the payment of the Fundamental Change Repurchase Price and any cash due upon conversion) then owing and unpaid upon the Notes for principal and interest, if any, with interest on the overdue principal and, to the extent that such interest has been collected by the Trustee, upon overdue installments of interest at the rate of three percent per annum, and in case such monies shall be insufficient to pay in full the whole amounts so due and unpaid upon the Notes, then to the payment of such principal (including, if applicable, the Fundamental Change Repurchase Price, any premium due to the Holders hereunder and the cash due upon conversion) and interest without preference or priority of principal over interest, or of interest over principal or of any installment of interest over any other installment of interest, or of any Note over any other Note, ratably to the aggregate of such principal (including, if applicable, the Fundamental Change Repurchase Price); and

Fourth, to the payment of the remainder, if any, to the Company.

Section 6.06 *Proceedings by Holders*. Except to enforce the right to receive payment of principal (including, if applicable, the Fundamental Change Repurchase Price and premium due to the Holders hereunder) or interest when due, or the right to receive payment or delivery of the consideration due upon conversion, no Holder of any Note shall have any right by virtue of or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, unless:

(a) such Holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as herein provided;

(b) Holders of at least 25% in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder;

(c) such Holders shall have offered to the Trustee such security and/or indemnity and/or pre-funding satisfactory to it against any loss, liability or expense to be incurred therein or thereby;

(d) the Trustee for 30 days after its receipt of such notice, request and offer of security and/or indemnity and/or pre-funding, shall have neglected or refused to institute any such action, suit or proceeding; and

(e) no direction that, in the opinion of the Trustee, is inconsistent with such written request shall have been given to the Trustee by the Holders of a majority of the aggregate principal amount of the Notes then outstanding within such 30-day period pursuant to Section 6.09,

it being understood and intended, and being expressly covenanted by the taker and Holder of every Note with every other taker and Holder and the Trustee that no one or more Holders shall have any right in any manner whatever by virtue of or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other Holder, or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders (except as otherwise provided herein). For the protection and enforcement of this Section 6.06, each and every Holder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision of this Indenture and any provision of any Note, the right of any Holder to receive payment or delivery, as the case may be, of (x) the principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) of, and (y) the consideration due upon conversion of, such Note, on or after the respective due dates expressed or provided for in such Note or in this Indenture, or to institute suit for the enforcement of any such payment or delivery, as the case may be, on or after such respective dates against the Company shall not be impaired or affected without the consent of such Holder.

Section 6.07 *Proceedings by Trustee.* In case of an Event of Default, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as are necessary to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 6.08 *Remedies Cumulative and Continuing.* Except as provided in the last paragraph of Section 2.06, all powers and remedies given by this Article 6 to the Trustee or to

the Holders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the Holders of the Notes, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any Holder of any of the Notes to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Default or Event of Default or any acquiescence therein; and, subject to the provisions of Section 6.06, every power and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders.

Section 6.09 *Direction of Proceedings and Waiver of Defaults by Majority of Holders.* The Holders of a majority of the aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to Notes; *provided, however,* that (a) such direction shall not be in conflict with any rule of law or with this Indenture, and (b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. The Trustee may refuse to follow any direction that would involve the Trustee in personal liability, or if it is not provided with security and/or indemnity and/or pre-funding to its satisfaction, or that the Trustee determines is unduly prejudicial to the rights of any other Holder. In addition, the Trustee will not be required to expend its own funds under any circumstances. The Holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 may on behalf of the Holders of all of the Notes waive any past Default or Event of Default hereunder and its consequences except (i) a default in the payment of the principal (including, if applicable, the Fundamental Change Repurchase Price) of the Notes when due that has not been cured pursuant to the provisions of Section 6.02, (ii) a failure by the Company to pay or deliver, or cause to be delivered, as the case may be, the consideration due upon conversion of the Notes or (iii) a default in respect of a covenant or provision hereof which under Article 10 cannot be modified or amended without the consent of each Holder of an outstanding Note affected. Upon any such waiver the Company, the Trustee and the Holders of the Notes shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. Whenever any Default or Event of Default hereunder shall have been waived as permitted by this Section 6.09, said Default or Event of Default shall for all purposes of the Notes and this Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

Section 6.10 *Notice of Defaults and Events of Default.* If a Default or Event of Default occurs and is continuing and is notified in writing to the Trustee, the Trustee shall, within 90 days after the occurrence and continuance of such Default or Event of Default, mail to all Holders (at the Company's expense) as the names and addresses of such Holders appear upon the Note Register, notice of all Defaults so notified in writing, unless such Defaults shall have been cured or waived before the giving of such notice; *provided* that the Trustee shall not be deemed to have knowledge of any occurrence of a Default or Event unless it has received written notice.

Except in the case of a Default in the payment of the principal of (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) any of the Notes or a Default in the payment or delivery of the consideration due upon conversion, the Trustee shall be protected in withholding such notice if and so long as the Trustee's board of directors, a Responsible Officer, an executive committee or a committee of Responsible Officers of the Trustee (in its sole discretion) in good faith determines that the withholding of such notice is in the interests of the Holders.

Section 6.11 *Undertaking to Pay Costs.* All parties to this Indenture agree, and each Holder of any Note by its acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess costs, including attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided* that the provisions of this Section 6.11 (to the extent permitted by law) shall not apply to any suit instituted by or against the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Notes at the time outstanding determined in accordance with Section 8.04, or to any suit instituted by any Holder for the enforcement of the payment of the principal of any Note (including, but not limited to, the Fundamental Change Repurchase Price with respect to the Notes being repurchased as provided in this Indenture) on or after the due date expressed or provided for in such Note or to any suit for the enforcement of the right to convert any Note in accordance with the provisions of Article 14.

ARTICLE 7 CONCERNING THE TRUSTEE

Section 7.01 *Duties and Responsibilities of Trustee.* The Trustee, prior to the occurrence of an Event of Default and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations will be read into the Indenture against the Trustee. In case an Event of Default, of which the Trustee has actual written notice, has occurred that has not been cured or waived the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs; *provided* that if an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity and/or security and/or pre-funding satisfactory to it against the costs, liabilities or expenses that might be incurred by it in compliance with such request or direction.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct, except that:

(a) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of gross negligence and willful misconduct on the part of the Trustee, as proven in a final decision of a court of competent jurisdiction, the Trustee may conclusively and without liability rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions that by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts, statements, opinions or conclusions stated therein);

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Responsible Officers of the Trustee, unless it shall be proved in a final decision in a court of competent jurisdiction that the Trustee was grossly negligent in ascertaining the pertinent facts;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority of the aggregate principal amount of the Notes at the time outstanding determined as provided in Section 8.04 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(d) whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section;

(e) the Trustee shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any Paying Agent or any records maintained by any co-Note Registrar with respect to the Notes;

(f) if any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively and without liability rely on its failure to receive such notice as reason to act as if no such event occurred;

(g) [RESERVED]

(h) the rights, immunities, privileges, disclaimers from liability and protections (including the right to compensation and indemnity) afforded to the Trustee pursuant to this Article 7 shall also be afforded to such Note Registrar, Paying Agent, Conversion Agent or Transfer Agent;

(i) the Trustee shall have no duty to inquire, no duty to determine and no duty to monitor as to the performance of the Company's covenants in this Indenture or the financial performance of the Company; the Trustee shall be entitled to assume, until it has received written notice in accordance with this Indenture, that the Company is properly performing its duties hereunder;

(j) the Trustee shall be under no obligation to enforce any of the provisions of this Indenture unless it is instructed by Holders of at least 25% of the aggregate principal amount of outstanding Notes and is provided with security and/or indemnity and/or pre-funding satisfactory to it;

(k) the Trustee will be under no obligation to exercise any of its rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity and/or security and/or pre-funding satisfactory to it against any costs, expenses and liabilities that might be incurred by it in compliance with such requests or direction.

(l) before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel prepared and delivered at the cost of the Company conforming to Section 17.06 and the Trustee and the Agents may rely conclusively on such certificate or opinion and will not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel;

(m) in connection with the exercise by it of its trusts, powers, authorities or discretions (including, without limitation, any modification, waiver, authorization or determination), the Trustee shall have regard to the general interests of the Holders as a class but shall not have regard to any interests arising from circumstances particular to individual Holders (whatever their number) and in particular, but without limitation, shall not have regard to the consequences of the exercise of its trusts, powers, authorities or discretions for individual Holders (whatever their number) resulting from their being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any country, state or territory; and

(n) the Trustee is not obliged to do or omit to do anything which in its reasonable opinion, would or may be illegal or would constitute a breach of any fiduciary duty or duty of confidentiality, or any law, rule, regulation, or any decree, order or judgment of any court, or practice, request, direction, notice, announcement or similar action (whether or not having the force of law) of any relevant government, government agency, regulatory authority, stock exchange or self-regulatory organization to which the Trustee is subject. The Trustee may

without liability to do anything which is, in its reasonable opinion, necessary to comply with any such law, directive or regulations.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

Section 7.02 *Reliance on Documents, Opinions, Etc.* Except as otherwise provided in Section 7.01:

(a) the Trustee may conclusively and without liability rely and shall be fully protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, Note, coupon or other paper or document (whether in its original or facsimile form) believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officers' Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;

(c) the Trustee may consult with counsel and require an Opinion of Counsel and any advice of such counsel or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;

(d) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation;

(e) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, delegates, custodians, nominees or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, delegate, representative, custodian, nominee or attorney appointed by it with due care hereunder;

(f) the permissive rights of the Trustee enumerated herein shall not be construed as duties;

(g) under no circumstances and notwithstanding any contrary provision included herein, neither the Trustee, the Paying Agent, the Conversion Agent nor the Note Registrar shall be responsible or liable for special, indirect, punitive, or consequential damages or loss of any

kind whatsoever (including, but not limited to, loss of profit) irrespective of whether any of them have been advised of the likelihood of such loss or damage and regardless of the form of action; this provision shall remain in full force and effect notwithstanding the discharge of the Notes, the termination of this Indenture or the resignation, replacement or removal of the Trustee, the Paying Agent, the Conversion Agent and the Note Registrar;

(h) the Trustee, the Paying Agent, the Conversion Agent and the Note Registrar may refrain from taking any action in any jurisdiction if the taking of such action in that jurisdiction would, in its opinion based upon legal advice in the relevant jurisdiction, be contrary to any law of that jurisdiction or, to the extent applicable, of New York; furthermore, the Trustee may also refrain from taking such action if it would otherwise render it liable to any person in that jurisdiction or New York or if, in its opinion based on such legal advice, it would not have the power to do the relevant thing in that jurisdiction by virtue of any applicable law in that jurisdiction or in New York or if it is determined by any court or other competent authority in that jurisdiction that it does not have such power;

(i) the Company understands that The Bank of New York Mellon Corporation is a global financial organization that operates in and provides services and products to clients through its affiliates, branches, representative offices and/or subsidiaries located in multiple jurisdictions (collectively, the “**BNY Mellon Group**” and each a “**BNY Mellon Entity**”). The BNY Mellon Group may: (i) use and/or centralize in one or more BNY Mellon Entity in connection with its performance of the functions, duties and services provided and any other obligations under this Indenture and/or the Notes and in certain other activities (the “**Centralized Functions**”), including, without limitation, audit, accounting, tax, administration, risk management, credit, legal, compliance, operation, sales and marketing, product communication, relationship management, information technology, records and data storage, performance measurement, data aggregation and the compilation and analysis of information and data regarding the Company (which, for purposes of this sub-Section 7.02(i), includes the name and business contact information for the employees and representatives of the Company and any personal data) and the accounts established pursuant to the transactions contemplated in this Indenture and/or the Notes (“**Client Information**”); and (ii) use third party service providers to store, maintain and process Client Information (“**Outsourced Functions**”). Notwithstanding anything to the contrary contained elsewhere in this Indenture and/or the Notes and solely in connection with the Centralized Functions and/or Outsourced Functions, the Company consents to the: (i) collection, use and storage of, and authorizes the BNY Mellon Group to collect, use and store, Client Information within and outside of any jurisdiction, including without limitation Australia, the European Economic Area, Hong Kong, the PRC, Japan, Singapore, India, the British Virgin Islands and the United States of America; and (ii) disclosure of, and authorizes the BNY Mellon Group to disclose, Client Information to: (A) any other BNY Mellon Entity (and their respective officers, directors and employees); and (B) third-party service providers (but solely in connection with Outsourced Functions) who are required to maintain the confidentiality of Client Information. In addition, the BNY Mellon Group may aggregate Client Information with other data collected and/or calculated by the BNY Mellon Group, and the BNY Mellon Group will own all such aggregated data, provided that the BNY Mellon Group shall not distribute the aggregated data in a format that identifies Client Information with the Company specifically. The Company represents to the BNY Mellon Group that it is authorized to consent

to the foregoing and that the disclosure of Client Information in connection with the Centralized Functions and/or Outsourced Functions does not violate any relevant data protection legislation. The Company also consents to the disclosure of Client Information to governmental, tax, regulatory, law enforcement and other authorities in jurisdictions where the BNY Mellon Group operates and otherwise as required by law, rule, or guideline (including any tax and swap trade data reporting regulations);

(j) the Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder;

(k) the Trustee may request that the Company deliver Officers' Certificates setting forth the names of individuals and their titles and specimen signatures of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificates may be signed by any Person authorized to sign an Officers' Certificate, as the case may be, including any Person specified as so authorized in any such certificate previously delivered and not superseded;

(l) the Trustee shall not be responsible or liable for any action it takes or omits to take in good faith which it reasonably believes to be authorized or within its rights or powers;

(m) the Trustee shall not be responsible or liable for any action taken or omitted by it in good faith at the direction, in accordance with Section 6.09, of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 as to the time, method and place of conducting any proceeding for any remedy available to the Trustee or the exercising of any power conferred by this Indenture; and

(n) the Trustee shall not be responsible or any inaccuracy in the information obtained from the Company or for any inaccuracy or omission in the records which may result from such information or any failure by the Trustee to perform its duties as set forth herein as a result of any inaccuracy or incompleteness of such information.

Section 7.03 *No Responsibility for Recitals, Etc.* The recitals, statements, warranties and representations contained herein and in the Notes (except in the Note Registrar's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the accuracy or correctness of the same or for any failure by the Company or any other party to disclose events that may have occurred and may affect the significance or accuracy of such information, or the execution, legality, effectiveness, adequacy, genuineness, validity, enforceability or admissibility in evidence of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Note Registrar in conformity with the provisions of this Indenture. Notwithstanding the generality of the foregoing, each Holder shall be solely responsible for making its own independent appraisal of, and investigation into, the financial condition, creditworthiness, condition, affairs, status and nature of the Company, and the Trustee

shall not at any time have any responsibility for the same and each Holder shall not rely on the Trustee in respect thereof.

Section 7.04 *Trustee, Paying Agents, Conversion Agents or Note Registrar May Own Notes.* The Trustee, any Paying Agent, any Conversion Agent or Note Registrar, in its individual or any other capacity, may engage in business and contractual relationships with the Company or its Affiliates and may become the owner or pledgee of Notes with the same rights it would have if it were not the Trustee, Paying Agent, Conversion Agent or Note Registrar, and nothing herein shall obligate any of them to account for any profits earned from any business or transactional relationship.

Section 7.05 *Monies to Be Held in Trust.* All monies received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money held by the Trustee in trust or by the Paying Agent hereunder need not be segregated from other funds except to the extent required by law. Neither the Trustee nor the Paying Agent shall be under any liability for interest on any money received by it hereunder.

Section 7.06 *Compensation and Expenses of Trustee.* (a) The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as mutually agreed to in writing between the Trustee and the Company (which sum shall be paid free and clear of deduction and withholding on account of taxation, set-off and counterclaim), and the Company will pay or reimburse the Trustee upon its request for all properly incurred expenses, disbursements and advances properly incurred or made by the Trustee in accordance with any of the provisions of this Indenture in any capacity thereunder (including the compensation and the properly incurred expenses and disbursements of its agents and counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as shall have been caused by its gross negligence or willful misconduct as proven in a final decision in a court of competent jurisdiction. The Company also covenants to indemnify the Trustee (which for the purposes of this Section 7.06 shall be deemed to include its officers, directors, agents and employees) in any capacity under this Indenture (including without limitation as Note Registrar, Transfer Agent, Conversion Agent and Paying Agent) and any other document or transaction entered into in connection herewith, and to hold it harmless against, any loss, claim, damage, liability or expense (whether arising from third party claims or claims by or against the Company) incurred without gross negligence or willful misconduct on the part of the Trustee, its officers, directors, agents or employees, as the case may be, as proven in a final decision of a court of competent jurisdiction, and arising out of or in connection with the acceptance or administration of this Indenture or in any other capacity hereunder, including the costs and expenses of defending themselves against any claim of liability in the process of enforcing this indemnity. The obligations of the Company under this Section 7.06 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall be secured by a senior claim to which the Notes are hereby made subordinate on all money or property held or collected by the Trustee, except, subject to the effect of Section 6.05, funds held in trust herewith for the benefit of the Holders of particular Notes. The Trustee's right to receive payment of any amounts due under this Section 7.06 shall not be subordinate to any other

liability or indebtedness of the Company. The indemnity under this Section 7.06(a) is payable upon demand by the Trustee. The obligation of the Company under this Section 7.06(a) shall survive the satisfaction and discharge of the Notes, the termination or discharge of this Indenture and the resignation, replacement or removal of the Trustee. The indemnification provided in this Section 7.06(a) shall extend to the officers, directors, agents and employees of the Trustee. Subject to Section 7.02(e), any negligence or misconduct of any agent, delegate, attorney or representative, in each case, of the Trustee, shall not affect indemnification of the Trustee.

Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee and its agents incur expenses or render services after an Event of Default specified in Section 6.01(i) or Section 6.01(j) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency or similar laws. If a Default or Event of Default shall have occurred or if the Trustee finds it expedient or necessary or is requested by the Company and/or the Holders to undertake duties which are of an exceptional nature or otherwise outside the scope of the Trustee's normal duties under this Indenture, the Company will pay such additional remuneration as the Company and the Trustee may separately agree in writing.

(b) The Paying Agent, the Conversion Agent and the Note Registrar shall be entitled to the compensation to be agreed upon in writing with the Company for all services rendered by it under this Indenture, and the Company agrees promptly to pay such compensation and to reimburse the Paying Agent, the Conversion Agent and the Note Registrar for its out-of-pocket expenses (including fees and expenses of counsel) properly incurred by it in connection with the services rendered by it under this Indenture. The Company hereby agrees to indemnify the Paying Agent, the Conversion Agent and the Note Registrar and their respective officers, directors, agents and employees and any successors thereto for, and to hold it harmless against, any loss, liability or expense (including fees and expenses of counsel) properly incurred without gross negligence or willful misconduct on its part arising out of or in connection with its acting as the Paying Agent, the Conversion Agent and the Note Registrar hereunder. The obligations of the Company under this paragraph (b) shall survive the payment of the Notes, the termination or discharge of the Indenture and the resignation, replacement or removal of the Paying Agent, the Conversion Agent and the Note Registrar.

Section 7.07 *Officers' Certificate as Evidence.* Except as otherwise provided in Section 7.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee, and such Officers' Certificate shall be full warrant to the Trustee for any action taken or omitted by it under the provisions of this Indenture upon the faith thereof.

Section 7.08 *Eligibility of Trustee.* There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least US\$50,000,000. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of

such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 7.09 *Resignation or Removal of Trustee.* (a) The Trustee may at any time resign by giving 60 days written notice of such resignation to the Company and by mailing notice thereof to the Holders at their addresses as they shall appear on the Note Register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 30 days after the mailing of such notice of resignation to the Holders, the resigning Trustee may appoint a successor trustee on behalf of and at the expense of the Company or it may at the expense of the Company petition any court of competent jurisdiction for the appointment of a successor trustee, or any Holder who has been a bona fide holder of a Note or Notes for at least six months may, subject to the provisions of Section 6.11, on behalf of himself or herself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(i) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.08 and shall fail to resign after written request therefor by the Company or by any such Holder, or

(ii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in either case, the Company may by a Board Resolution remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.11, any Holder who has been a bona fide holder of a Note or Notes for at least six months may, on behalf of himself or herself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The Holders of a majority in aggregate principal amount of the Notes at the time outstanding, as determined in accordance with Section 8.04, may at any time remove the Trustee and nominate a successor trustee that shall be deemed appointed as successor trustee unless within ten days after notice to the Company of such nomination the Company objects thereto, in

which case the Trustee so removed or any Holder, upon the terms and conditions and otherwise as in Section 7.09(a) provided, may petition any court of competent jurisdiction for an appointment of a successor trustee.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 7.09 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.10.

Section 7.10 *Acceptance by Successor Trustee.* Any successor trustee appointed as provided in Section 7.09 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amounts then due to it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a senior claim to which the Notes are hereby made subordinate on all money or property held or collected by such trustee as such, except for funds held in trust for the benefit of Holders of particular Notes, to secure any amounts then due to it pursuant to the provisions of Section 7.06.

No successor trustee shall accept appointment as provided in this Section 7.10 unless at the time of such acceptance such successor trustee shall be eligible under the provisions of Section 7.08.

Upon acceptance of appointment by a successor trustee as provided in this Section 7.10, each of the Company and the successor trustee, at the written direction and at the expense of the Company shall mail or cause to be mailed notice of the succession of such trustee hereunder to the Holders at their addresses as they shall appear on the Note Register. If the Company fails to mail such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Company.

Section 7.11 *Succession by Merger, Etc.* Any corporation or other entity into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee (including the administration of this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto; *provided* that in the case of any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee such corporation or other entity shall be eligible under the provisions of Section 7.08.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor note registrar, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Note Registrar may authenticate such Notes either in the name of any predecessor trustee hereunder or in the name of the successor trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificate of the Note Registrar shall have; *provided, however*, that the right to adopt the certificate of authentication of any predecessor note registrar or to authenticate Notes in the name of any predecessor trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 7.12 *Trustee's Application for Instructions from the Company.* Any application by the Trustee for written instructions from the Company (other than with regard to any action proposed to be taken or omitted to be taken by the Trustee that affects the rights of the Holders of the Notes under this Indenture) may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three Business Days after the date any officer that the Company has indicated to the Trustee should receive such application actually receives such application, unless any such officer shall have consented in writing to any earlier date), unless, prior to taking any such action (or the effective date in the case of any omission), the Trustee shall have received written instructions in accordance with this Indenture in response to such application specifying the action to be taken or omitted.

ARTICLE 8 CONCERNING THE HOLDERS

Section 8.01 *Action by Holders.* Whenever in this Indenture it is provided that the Holders of a specified percentage of the aggregate principal amount of the Notes may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the Holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Holders in person or by agent or proxy appointed in writing, or (b) by the record of the Holders voting in favor thereof at any meeting of Holders duly called and held in accordance with the provisions of Article 9, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Holders. Whenever the Company or the Trustee solicits the taking of any action by the Holders of the Notes, the Company or the Trustee may fix, but shall not be required to, in advance of such solicitation, a date as the record date for determining Holders entitled to take such action. The record date if one is selected shall be not more than fifteen days prior to the date of commencement of solicitation of such action.

Section 8.02 *Proof of Execution by Holders.* Subject to the provisions of Section 7.01, Section 7.02 and Section 9.05, proof of the execution of any instrument by a Holder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the Note Register or by a certificate of the Note Registrar. The record of any Holders' meeting shall be proved in the manner provided in Section 9.06.

Section 8.03 *Who Are Deemed Absolute Owners.* The Company, the Trustee, any Paying Agent, any Conversion Agent and any Note Registrar may deem the Person in whose name a Note shall be registered upon the Note Register to be, and may treat it as, the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Company or any Note Registrar) for the purpose of receiving payment of or on account of the principal of (subject to Section 2.03) such Note, for the purpose of conversion of such Note and for all other purposes; and neither the Company nor the Trustee nor any Paying Agent nor any Conversion Agent nor any Note Registrar shall be affected by any notice to the contrary. All such payments or deliveries so made to any Holder for the time being, or upon its order, shall be valid, and, to the extent of the sums or ADSs so paid or delivered, effectual to satisfy and discharge the liability for monies payable or ADSs deliverable upon any such Note. Notwithstanding anything to the contrary in this Indenture or the Notes following an Event of Default, any Holder of a beneficial interest in a Global Note may directly enforce against the Company, without the consent, solicitation, proxy, authorization or any other action of the Common Depositary or any other Person, such Holder's right to exchange such beneficial interest for a Note in certificated form in accordance with the provisions of this Indenture and such Holder's rights under Article 6 of this Indenture.

Section 8.04 *Company-Owned Notes Disregarded.* In determining whether the Holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, Notes that are owned by the Company, by any Subsidiary or Consolidated Affiliated Entity thereof or by any Affiliate of the Company or any Subsidiary or Consolidated Affiliated Entity thereof shall be disregarded and deemed not to be outstanding for the purpose of any such determination; *provided* that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent, waiver or other action only Notes in respect of which a Responsible Officer is notified in writing shall be so disregarded. Notes so owned that have been pledged in good faith may be regarded as outstanding for the purposes of this Section 8.04 if the pledgee shall establish its right to so act with respect to such Notes and that the pledgee is not the Company, a Subsidiary or Consolidated Affiliated Entity thereof or an Affiliate of the Company or a Subsidiary or Consolidated Affiliated Entity thereof. Within five days of acquisition of the Notes by any of the above described persons or entities or at the request of the Trustee, the Company shall furnish to the Trustee promptly an Officers' Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of any of the above described Persons; and, subject to Section 7.01, the Trustee shall be entitled to accept such Officers' Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

Section 8.05 *Revocation of Consents; Future Holders Bound.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the Holders of the percentage of the aggregate principal amount of the Notes specified in this Indenture in connection with such action, any Holder of a Note that is shown by the evidence to be included in the Notes the Holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Note. Except as aforesaid, any such action taken by the Holder of any Note shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Note and of any Notes issued in exchange or substitution therefor or upon registration of transfer thereof, irrespective of whether any notation in regard thereto is made upon such Note or any Note issued in exchange or substitution therefor or upon registration of transfer thereof.

ARTICLE 9 HOLDERS' MEETINGS

Section 9.01 *Purpose of Meetings.* A meeting of Holders may be called at any time and from time to time pursuant to the provisions of this Article 9 for any of the following purposes:

- (a) to give any notice to the Company or to the Trustee or to give any directions to the Trustee permitted under this Indenture, or to consent to the waiving of any Default or Event of Default hereunder and its consequences, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of Article 6;
- (b) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article 7;
- (c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 10.02; or
- (d) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Notes under any other provision of this Indenture or under applicable law.

Section 9.02 *Call of Meetings by Trustee.* The Trustee may (in its sole discretion and without obligation) at any time call a meeting of Holders to take any action specified in Section 9.01, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Holders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting and the establishment of any record date pursuant to Section 8.01, shall be mailed to Holders of such Notes at their addresses as they shall appear on the Note Register. Such notice shall also be mailed to the Company. Such notices shall be mailed not less than 20 nor more than 90 days prior to the date fixed for the meeting.

Any meeting of Holders shall be valid without notice if the Holders of all Notes then outstanding are present in person or by proxy or if notice is waived before or after the meeting by

the Holders of all Notes then outstanding, and if the Company and the Trustee are either present by duly authorized representatives or have, before or after the meeting, waived notice.

Section 9.03 *Call of Meetings by Company or Holders.* In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% of the aggregate principal amount of the Notes then outstanding, shall have requested the Company to call a meeting of Holders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Company shall not have mailed the notice of such meeting within 20 days after receipt of such request, then the Trustee or such Holders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 9.01, by mailing notice thereof as provided in Section 9.02.

Section 9.04 *Qualifications for Voting.* To be entitled to vote at any meeting of Holders a Person shall (a) be a Holder of one or more Notes on the record date pertaining to such meeting or (b) be a Person appointed by an instrument in writing as proxy by a Holder of one or more Notes on the record date pertaining to such meeting. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 9.05 *Regulations.* Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders, in regard to proof of the holding of Notes and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders as provided in Section 9.03, in which case the Company or the Holders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Holders of a majority in principal amount of the Notes represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of Section 8.04, at any meeting of Holders each Holder or proxyholder shall be entitled to one vote for each US\$1,000 principal amount of Notes held or represented by him or her; *provided, however,* that no vote shall be cast or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Notes held by it or instruments in writing as aforesaid duly designating it as the proxy to vote on behalf of other Holders. Any meeting of Holders duly called pursuant to the provisions of Section 9.02 or Section 9.03 may be adjourned from time to time by the Holders of a majority of the aggregate principal amount of Notes represented at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Minutes shall be made of all resolutions and proceedings at every meeting and, if purporting to be signed by the chairman of that meeting or of the next succeeding meeting of Holders of the Notes, shall be conclusive evidence of the matters in them. Until the contrary is proved every meeting for which minutes have been so made and signed shall be deemed to have been duly convened and held and all resolutions passed or proceedings transacted at it to have been duly passed and transacted.

Section 9.06 *Voting*. The vote upon any resolution submitted to any meeting of Holders shall be by written ballot on which shall be subscribed the signatures of the Holders or of their representatives by proxy and the outstanding principal amount of the Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Section 9.02. The record shall show the principal amount of the Notes voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 9.07 *No Delay of Rights by Meeting*. Nothing contained in this Article 9 shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Holders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders under any of the provisions of this Indenture or of the Notes.

ARTICLE 10 SUPPLEMENTAL INDENTURES

Section 10.01 *Supplemental Indentures Without Consent of Holders*. The Company, when authorized by the resolutions of the Board of Directors, and the Trustee, at the Company's expense and direction, may from time to time and at any time amend or supplement this Indenture or the Notes for one or more of the following purposes:

- (a) to cure any ambiguity, omission, defect or inconsistency;
- (b) to provide for the assumption by a Successor Company of the obligations of the Company under this Indenture and the Notes pursuant to Article 11;
- (c) to add guarantees with respect to the Notes;

- (d) to secure the Notes;
- (e) to add to the covenants or Events of Defaults of the Company for the benefit of the Holders or surrender any right or power conferred upon the Company;
- (f) upon the occurrence of any transaction or event described in Section 14.07(a), to (i) provide that the Notes are convertible into Reference Property, subject to Section 14.02, and (ii) effect the related changes to the terms of the Notes described under Section 14.07(a), in each case, in accordance with Section 14.07;
- (g) to make any change that does not adversely affect the rights of any Holder; or
- (h) comply with the rules of the Euroclear and Clearstream.

Upon the written request of the Company, the Trustee is hereby authorized to join with the Company in the execution of any such amendment or supplement to this Indenture or the Notes, to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to, but may in its discretion, enter into any supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. The Trustee shall seek an Officers' Certificate and an Opinion of Counsel, at the Company's expense, that any such amendment or supplement to this Indenture or the Notes is authorized and permitted by the terms of this Indenture and not contrary to law.

Any amendment or supplement to this Indenture or the Notes authorized by the provisions of this Section 10.01 may be executed by the Company and the Trustee without the consent of the Holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 10.02.

Section 10.02 *Supplemental Indentures with Consent of Holders*. With the consent (evidenced as provided in Article 8) of the Holders of at least a majority of the aggregate principal amount of the Notes then outstanding (determined in accordance with Article 8 and including, without limitation, consents obtained in connection with a repurchase of, or tender or exchange offer for, Notes), the Company, when authorized by the resolutions of the Board of Directors, and the Trustee, at the Company's expense, may from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or any supplemental indenture or of modifying in any manner the rights of the Holders; *provided, however*, that, without the consent of each Holder of an outstanding Note affected, no such supplemental indenture shall:

- (a) reduce the amount of Notes whose Holders must consent to an amendment or waiver;
- (b) reduce the rate of or extend the stated time for payment of interest on any Note;
- (c) reduce the principal of or extend the Maturity Date of any Note;

- (d) make any change that adversely affects the conversion rights of any Notes;
- (e) reduce the Fundamental Change Repurchase Price of any Note or amend or modify in any manner adverse to the Holders the Company's obligation to make such payments, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;
- (f) make any Note payable in a currency other than U.S. dollars;
- (g) change the ranking of the Notes;
- (h) impair the right of any Holder to receive payment of principal and interest (if any) on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Note;
- (i) change the Company's obligation to pay Additional Amounts on any Note; or
- (j) make any change in this Article 10 that requires each Holder's consent or in the waiver provisions in Section 6.02 or Section 6.09.

Upon the written request of the Company, and upon the filing with the Trustee of evidence of the consent of Holders as aforesaid and subject to Section 10.05, the Trustee shall join with the Company in the execution of such supplemental indenture unless (i) the Trustee has not received an Officers' Certificate and an Opinion of Counsel that such supplemental indenture is authorized and permitted by the terms of this Indenture and not contrary to law or (ii) such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

Holders do not need under this Section 10.02 to approve the particular form of any proposed supplemental indenture. It shall be sufficient if such Holders approve the substance thereof. After any supplemental indenture becomes effective under Section 10.01 or Section 10.02, the Company shall mail to the Holders a notice briefly describing such supplemental indenture. However, the failure to give such notice to all the Holders, or any defect in the notice, will not impair or affect the validity of the supplemental indenture.

Section 10.03 *Effect of Supplemental Indentures*. Upon the execution of any supplemental indenture pursuant to the provisions of this Article 10, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the Holders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 10.04 *Notation on Notes*. Notes authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 10 may, at the

Company's expense, bear a notation in form approved by the Note Registrar as to any matter provided for in such supplemental indenture. If the Company or the Trustee shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may, at the Company's expense, be prepared and executed by the Company, authenticated by the Note Registrar upon receipt of a Company Order and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 10.05 *Evidence of Compliance of Supplemental Indenture to Be Furnished Trustee*. In addition to the documents required by Section 17.06, the Trustee shall receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article 10 and is permitted or authorized by this Indenture and is not contrary to law.

ARTICLE 11 CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

Section 11.01 *Company May Consolidate, Etc. on Certain Terms*. Subject to the provisions of Section 11.02, the Company shall not consolidate with, merge with or into, or sell, convey, transfer or lease all or substantially all of the consolidated assets of the Company, its Subsidiaries and its Consolidated Affiliated Entities, taken as a whole, to another Person, unless:

(a) the resulting, surviving or transferee Person (the "**Successor Company**"), if not the Company, shall be a corporation organized and existing under the laws of the Cayman Islands, the British Virgin Islands, Bermuda or Hong Kong and the Successor Company (if not the Company) shall expressly assume, by supplemental indenture all of the obligations of the Company under the Notes and this Indenture (including, for the avoidance of doubt, the obligation to pay Additional Amounts pursuant to Section 4.07);

(b) if the Company will not be the resulting or surviving corporation, the Company shall have, at or prior to the effective date of such transaction, delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that the execution and delivery of the supplemental indenture do not conflict with the requirements set forth in the Indenture and that all conditions precedent to the execution and delivery of such supplemental indenture have been satisfied; and

(c) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing under this Indenture.

For purposes of this Section 11.01, the sale, conveyance, transfer or lease of all or substantially all of the assets of one or more Subsidiaries or Consolidated Affiliated Entities of the Company to another Person, which properties and assets, if held by the Company instead of such Subsidiaries or Consolidated Affiliated Entities, would constitute all or substantially all of the assets of the Company on a consolidated basis, shall be deemed to be the sale, conveyance, transfer or lease of all or substantially all of the consolidated assets of the Company to another Person.

Section 11.02 *Successor Corporation to Be Substituted.* In case of any such consolidation, merger, sale, conveyance, transfer or lease and upon the assumption by the Successor Company, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of all of the Notes (including, for the avoidance of doubt, any Additional Amounts), the due and punctual delivery or payment, as the case may be, of any consideration due upon conversion of the Notes (including, for the avoidance of doubt, any Additional Amounts) and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Company, such Successor Company (if not the Company) shall succeed to and, except in the case of a lease of all or substantially all of the Company's properties and assets, shall be substituted for the Company, with the same effect as if it had been named herein as the party of the first part. Such Successor Company thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Note Registrar; and, upon the order of such Successor Company instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Note Registrar shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the Officers of the Company to the Note Registrar for authentication, and any Notes that such Successor Company thereafter shall cause to be signed and delivered to the Note Registrar for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any such consolidation, merger, sale, conveyance or transfer (but not in the case of a lease), upon compliance with this Article 11 the Person named as the "Company" in the first paragraph of this Indenture (or any successor that shall thereafter have become such in the manner prescribed in this Article 11) may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture and the Notes.

In case of any such consolidation, merger, sale, conveyance, transfer or lease, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

Section 11.03 *Opinion of Counsel to Be Given to Trustee.* No consolidation, merger, sale, conveyance, transfer or lease shall be effective unless the Trustee shall receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale, conveyance, transfer or lease and any such assumption and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, complies with the provisions of this Article 11, that all conditions precedent thereto have been satisfied and that the Notes and such supplemental indenture are the legal, valid and binding obligations of the Successor Company, enforceable against it in accordance with its terms, subject to customary assumptions, qualifications, and exceptions.

ARTICLE 12
IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 12.01 *Indenture and Notes Solely Corporate Obligations.* No recourse for the payment of the principal of any Note, nor for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture or in any Note, nor because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, Officer or director or Subsidiary, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Notes.

ARTICLE 13
INTENTIONALLY OMITTED

ARTICLE 14
CONVERSION OF NOTES

Section 14.01 *Conversion Privilege.* Subject to and upon compliance with the provisions of this Article 14, each Holder of a Note shall have the right, at such Holder's option, (a) to convert all or any Specified Portion of the principal amount of such Note at any time on or after August 10, 2020 and prior to the close of business on the second Business Day immediately preceding the Maturity Date into ADSs at an initial conversion rate of 325.733 ADSs (subject to adjustment as provided in this Article 14, the "**Conversion Rate**") per US\$1,000 principal amount of Notes, or (b) to convert all or any Specified Portion of the principal amount of such Note at any time on or after the completion date of any Qualified Equity Financing and prior to the close of business on the tenth (10th) day immediately following the completion of such Qualified Equity Financing into ADSs at Qualified Equity Financing Conversion Rate per US\$1,000 principal amount of Notes (in each case, subject to the settlement provisions of Section 14.02, the "**Conversion Obligation**"), *provided* that no Holder or beneficial owner of a Note shall have the right to receive ADSs on or prior to the Distribution Compliance Period Termination Date and *further provided* that if a Holder or a beneficial owner is prevented from receiving any ADSs to which it would otherwise be entitled pursuant to this Section 14.01, the Company's obligation to deliver such ADSs shall not be extinguished, and the Company shall deliver such ADSs within one Business Day following the occurrence of the Distribution Compliance Period Termination Date in accordance with the last sentence of Section 14.02(c).

Section 14.02 *Conversion Procedure; Settlement Upon Conversion.*

(a) Upon conversion of any Note, the Company shall cause to be delivered to the converting Holder, in respect of each US\$1,000 principal amount of Notes being converted, a number of ADSs equal to the Conversion Rate or Qualified Equity Financing Conversion Rate (as the case may be) in effect immediately prior to the close of business on the relevant

Conversion Date or the Qualified Equity Financing Conversion Date (as the case may be), together with a cash payment, if applicable, in lieu of any fractional ADSs (“**Fractional ADSs**”) (assuming delivery of the maximum number of ADSs due upon conversion that do not represent a fractional ADS) in accordance with subsection (j) of this Section 14.02, on the third Business Day immediately following the relevant Conversion Date or the Qualified Equity Financing Conversion Date (as the case may be); *provided* that, if a Conversion Date occurs after the Ordinary Shares have been replaced by the Reference Property consisting solely of cash in accordance with Section 14.07, the Company shall cause the consideration due in respect of the conversion to be paid to the converting Holder on the tenth Business Day immediately following the related Conversion Date. For the avoidance of doubt, neither the Trustee nor any Agent shall have any responsibility to deliver ADSs upon conversion of any Note to any person or deal with cash payments in relation to conversions, except for cash payments in lieu of any fractional ADS.

(b) Subject to Section 14.02(e), before any Holder of a Note shall be entitled to convert a Note as set forth above, such Holder shall (i) in the case of a Global Note, comply with the procedures of the Euroclear and Clearstream in effect at that time and complete, manually sign and deliver a duly completed irrevocable notice to the Conversion Agent as set forth in the Form of Notice of Conversion (or a facsimile thereof) (a “**Notice of Conversion**”) and (ii) in the case of a Physical Note (1) complete, manually sign and deliver a duly completed irrevocable Notice of Conversion to the Conversion Agent at the specified office of the Conversion Agent and state in writing therein the principal amount of Notes to be converted and the name or names (with addresses) in which such Holder wishes the certificate or certificates for any ADSs to be delivered upon settlement of the Conversion Obligation to be registered, (2) surrender such Notes, duly endorsed to the Company or in blank (and accompanied by appropriate endorsement and transfer documents), at the specified office of the Conversion Agent and (3) if required, furnish appropriate endorsements and transfer documents. The Trustee (and if different, the Conversion Agent) shall notify the Company of any conversion pursuant to this Article 14 on the Conversion Date for such conversion or the date set forth in clause (ii) of Section 14.01(c), as the case may be. No Notice of Conversion with respect to any Notes may be delivered and no Notes may be surrendered by a Holder for conversion thereof if such Holder has also delivered a Fundamental Change Repurchase Notice to the Company in respect of such Notes and not validly withdrawn such Fundamental Change Repurchase Notice in accordance with Section 15.03. A Notice of Conversion shall be deposited in duplicate at the office of any Conversion Agent on any Business Day from 9:00 a.m. to 3:00 p.m. at the location of the Conversion Agent to which such Notice of Conversion is delivered. Any Notice of Conversion and any Physical Note (if issued) deposited outside the hours specified or on a day that is not a Business Day at the location of the Conversion Agent shall for all purposes be deemed to have been deposited with that Conversion Agent between 9:00 a.m. and 3:00 p.m. on the next Business Day.

If more than one Note shall be surrendered for conversion at one time by the same Holder, the Conversion Obligation with respect to such Notes shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted thereby) so surrendered. None of the Agents of the Trustee shall have any responsibility whatsoever with respect to the issuance and delivery of the ADSs to the converting Holder.

(c) A Note shall be deemed to have been converted (i) in the case of conversion pursuant to Section 14.01(a), immediately prior to the close of business on the date (the “**Conversion Date**”) that the Holder has complied with the requirements set forth in subsection (b) above or (ii) in the case of conversion pursuant to Section 14.01(b), on the tenth (10th) day after the completion of the Qualified Equity Financing (the “**Qualified Equity Financing Conversion Date**”). Notwithstanding clause (ii) in the immediately preceding sentence, the Person in whose name the certificate for any ADSs deliverable upon conversion made pursuant to Section 14.01(b) is to be registered shall be treated as a holder of record, as between the Company and such holder, of such ADSs as of the close of business on the date that the Holder has complied with the requirements set forth in subsection (b) above. The Company shall issue or cause to be issued, and deliver or cause to be delivered to such converting Holder, or such converting Holder’s nominee or nominees, certificates or a book-entry transfer through Euroclear and Clearstream for the full number of ADSs to which such Holder shall be entitled in satisfaction of the Company’s Conversion Obligation.

(d) In case any Note shall be surrendered for partial conversion, the Company shall execute and instruct the Note Registrar who shall authenticate and deliver to or upon the written order of the Holder of the Note so surrendered a new Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Note, without payment of any service charge by the converting Holder but, if required by the Company or Trustee, with payment of a sum sufficient to cover any transfer tax or similar governmental charge required by law or that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such conversion being different from the name of the Holder of the old Notes surrendered for such conversion.

(e) If a Holder submits a Note for conversion, the Company shall pay any documentary, stamp, issue, transfer or similar tax due on the delivery of the ADSs upon conversion of the Notes (or the issuance of the underlying Ordinary Shares), unless the tax is due because the Holder requests such ADSs (or such Ordinary Shares) to be issued in a name other than the Holder’s name, in which case the Holder shall pay that tax. The Conversion Agent may refuse to deliver the certificates representing the ADSs (or the Ordinary Shares) being issued in a name other than the Holder’s name until the Trustee receives a sum sufficient to pay any tax that is due by such Holder in accordance with the immediately preceding sentence. The Company shall pay the ADS Depository’s fees for issuance of the ADSs.

(f) Except as provided in Section 14.04, no adjustment shall be made for dividends on any ADSs delivered upon the conversion of any Note as provided in this Article 14.

(g) Upon the conversion of an interest in a Global Note, the Trustee shall make a notation on such Global Note as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversion of Notes effected through any Conversion Agent other than the Trustee.

(h) Upon conversion, a Holder shall not receive any separate cash payment for accrued and unpaid interest, if any, except as set forth below. The Company’s settlement of the Conversion Obligation shall be deemed to satisfy in full its obligation to pay the principal

amount of the Note and accrued and unpaid interest, if any, to, but not including, the relevant Conversion Date or the Qualified Equity Financing Conversion Date (as the case may be). As a result, accrued and unpaid interest, if any, to, but not including, the relevant Conversion Date or the Qualified Equity Financing Conversion Date (as the case may be) shall be deemed to be paid in full rather than cancelled, extinguished or forfeited.

(i) The Person in whose name the certificate for any ADSs delivered upon conversion is registered shall be treated as a holder of record, as between the Company and such holder, of such ADSs as of the close of business on the relevant Conversion Date. Upon a conversion of Notes, such Person shall no longer be a Holder of such Notes surrendered for conversion.

(j) The Company shall not issue any Fractional ADS upon conversion of the Notes and shall instead pay cash in lieu of any Fractional ADS deliverable upon conversion based on the Last Reported Sale Price of the ADSs on the relevant Conversion Date or the Qualified Equity Financing Conversion Date (as the case may be) (or if such Conversion Date or Qualified Equity Financing Conversion Date is not a Trading Day, the immediately preceding Trading Day).

(k) In accordance with the Deposit Agreement, the Company shall issue to the ADS Custodian such Ordinary Shares required for the issuance of the ADSs upon conversion of the Notes, plus written delivery instructions (if requested by the ADS Depository or the ADS Custodian) for such ADSs, shall deliver such legal opinions and any other information or documentation and any additional forms compliant with the procedures of the Depository Trust Company with respect to such conversion of Notes and shall comply with the Deposit Agreement, as required by the ADS Depository or the ADS Custodian in connection with each issue of Ordinary Shares and issuance and delivery of ADSs. Without prejudice to the generality of the preceding sentence, when issuing Ordinary Shares for purposes of a conversion prior to August 10, 2020 the Company shall confirm in writing to the ADS Depository that the conversion is taking place following and in connection with a Qualified Equity Financing and shall specify in such written confirmation the applicable Qualified Equity Financing Conversion Date.

Section 14.03 [RESERVED]

Section 14.04 *Adjustment of Conversion Rate.* If the number of Ordinary Shares represented by the ADSs is changed, after the date of this Indenture, for any reason other than one or more of the events described in this Section 14.04, the Company shall make an appropriate adjustment to the Conversion Rate and the Qualified Equity Financing Conversion Rate such that the number of Ordinary Shares represented by the ADSs upon which conversion of the Notes is based remains the same.

Notwithstanding the adjustment provisions described in this Section 14.04, if the Company distributes to holders of the Ordinary Shares any cash, rights, options, warrants, shares of Capital Stock or similar equity interest, evidences of indebtedness or other assets or property of the Company (but excluding Expiring Rights) and a corresponding distribution is not made to

holders of the ADSs, but, instead, the ADSs shall represent, in addition to Ordinary Shares, such cash, rights, options, warrants, shares of Capital Stock or similar equity interest, evidences of indebtedness or other assets or property of the Company, then an adjustment to the Conversion Rate described in this Section 14.04 shall not be made until and unless a corresponding distribution (if any) is made to holders of the ADSs, and such adjustment to the Conversion Rate shall be based on the distribution made to the holders of the ADSs and not on the distribution made to the holders of the Ordinary Shares. However, in the event that the Company issues or distributes to all holders of the Ordinary Shares any Expiring Rights, notwithstanding the immediately preceding sentence, the Company shall adjust the Conversion Rate pursuant to Section 14.04(b) (in the case of Expiring Rights entitling holders of the Ordinary Shares for a period of not more than 45 calendar days after the announcement date of such issuance to subscribe for or purchase Ordinary Shares or ADSs) or Section 14.04(c) (in the case of all other Expiring Rights).

For the avoidance of doubt, if any event described in this Section 14.04 results in a change to the number of Ordinary Shares represented by the ADSs, then such a change shall be deemed to satisfy the Company's obligation to effect the relevant adjustment to the Conversion Rate on account of such event to the extent such change produces the same economic result as the adjustment to the Conversion Rate that would otherwise have been made on account of such event.

The Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs, except that the Company shall not make any adjustments to the Conversion Rate if Holders of the Notes participate (other than in the case of a share split or share combination), at the same time and upon the same terms as holders of the ADSs and solely as a result of holding the Notes, in any of the transactions described in this Section 14.04, without having to convert their Notes, as if they held a number of ADSs equal to the Conversion Rate, *multiplied by* the principal amount (expressed in thousands) of Notes held by such Holder. Neither the Trustee nor the Conversion Agent shall have any responsibility to monitor the accuracy of any calculation of any adjustment to the Conversion Rate and the same shall be conclusive and binding on the Holders, absent manifest error. Notice of such adjustment to the Conversion Rate shall be given by the Company promptly to the Holders, the Trustee and the Paying Agent and Conversion Agent and shall be conclusive and binding on the Holders, absent manifest error.

(a) If the Company exclusively issues Ordinary Shares as a dividend or distribution on the Ordinary Shares, or if the Company effects a share split or share combination, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date of such dividend or distribution, or immediately prior to the open

of business on the effective date of such share split or share combination, as applicable;

- CR₁ = the Conversion Rate in effect immediately after the close of business on such Record Date or immediately after the open of business on such effective date, as applicable;
- OS₀ = the number of Ordinary Shares outstanding immediately prior to the close of business on such Record Date or immediately prior to the open of business on such effective date, as applicable; and
- OS₁ = the number of Ordinary Shares outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

Any adjustment made under this Section 14.04(a) shall become effective immediately after the close of business on the Record Date for such dividend or distribution, or immediately after the open of business on the effective date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this Section 14.04(a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) If the Company issues to all or substantially all holders of the Ordinary Shares (directly or in the form of ADSs) any rights, options or warrants entitling them, for a period of not more than 45 calendar days after the announcement date of such issuance, to subscribe for or purchase Ordinary Shares (directly or in the form of ADSs) at a price per Ordinary Share that is less than the average of the Last Reported Sale Prices of the Ordinary Shares or the ADSs, as the case may be (*divided by*, in the case of the ADSs, the number of Ordinary Shares then represented by one ADS), for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

- CR₀ = the Conversion Rate in effect immediately prior to the close of business on the Record Date for the ADSs for such issuance;
- CR₁ = the Conversion Rate in effect immediately after the close of business on such Record Date;
- OS₀ = the number of Ordinary Shares outstanding immediately prior to the close of business on such Record Date;

- X = the total number of Ordinary Shares (directly or in the form of ADSs) deliverable pursuant to such rights, options or warrants; and
- Y = the number of Ordinary Shares equal to (i) the aggregate price payable to exercise such rights, options or warrants, *divided by* (ii) the quotient of (a) the average of the Last Reported Sale Prices of the ADSs over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants *divided by* (b) the number of Ordinary Shares then represented by one ADS.

Any increase made under this Section 14.04(b) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the close of business on the Record Date for the ADSs for such issuance. To the extent that Ordinary Shares or ADSs are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of Ordinary Shares actually delivered (directly or in the form of ADSs). If such rights, options or warrants are not so issued, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such the Record Date for the ADSs for such issuance had not occurred.

For purposes of this Section 14.04(b), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase Ordinary Shares (directly or in the form of ADSs) at a price per Ordinary Share that is less than such average of the Last Reported Sale Prices of the Ordinary Shares or the ADSs, as the case may be (divided by, in the case of the ADSs, the number of Ordinary Shares then represented by one ADS), for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement for such issuance, and in determining the aggregate offering price of such Ordinary Shares or ADSs, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) If the Company distributes shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire its Capital Stock or other securities, to all or substantially all holders of the Ordinary Shares (directly or in the form of ADSs), excluding (i) dividends, distributions or issuances as to which an adjustment was effected pursuant to Section 14.04(a) or Section 14.04(b), (ii) dividends or distributions paid exclusively in cash as to which an adjustment was effected pursuant to Section 14.04(d), and (iii) Spin-Offs as to which the provisions set forth below in this Section 14.04(c) shall apply (any of such shares of Capital Stock, evidences of indebtedness, other assets or property or rights, options or warrants to acquire Capital Stock or other securities of the Company, the “**Distributed Property**”), then the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for the ADSs for such distribution;

CR_1 = the Conversion Rate in effect immediately after the close of business on such Record Date;

SP_0 = the average of the Last Reported Sale Prices of the ADSs (*divided by* the number of Ordinary Shares then represented by one ADS) over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined by the Board of Directors) of the Distributed Property with respect to each outstanding Ordinary Share (directly or in the form of ADSs) on the Record Date for the ADSs for such distribution.

Any increase made under the foregoing portion of this Section 14.04(c) above shall become effective immediately after the close of business on the Record Date for the ADSs for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such distribution had not been declared. Notwithstanding the foregoing, if "FMV" (as defined above) is equal to or greater than "SP₀" (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, in respect of each US\$1,000 principal amount thereof, at the same time and upon the same terms as holders of the ADSs receive the Distributed Property, the amount and kind of Distributed Property such Holder would have received if such Holder owned a number of ADSs equal to the Conversion Rate in effect on the Record Date for the ADSs for the distribution.

With respect to an adjustment pursuant to this Section 14.04(c) where there has been a payment of a dividend or other distribution on the Ordinary Shares (directly or in the form of ADSs) of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a "**Spin-Off**"), the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the last Trading Day of the Valuation Period;

- CR₁ = the Conversion Rate in effect immediately after the close of business on the last Trading Day of the Valuation Period;
- FMV₀ = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Ordinary Shares (directly or in the form of ADSs) applicable to one Ordinary Share (determined by reference to the definition of Last Reported Sale Price as set forth in Section 1.01 as if references therein to the ADSs were to such Capital Stock or similar equity interest) over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the “**Valuation Period**”); and
- MP₀ = the average of the Last Reported Sale Prices of the ADSs (*divided by* the number of Ordinary Shares then represented by one ADS) over the Valuation Period.

The adjustment to the Conversion Rate under the preceding paragraph shall occur immediately after the close of business on the last Trading Day of the Valuation Period; *provided* that in respect of any conversion during the Valuation Period, references in the portion of this Section 14.04(c) related to Spin-Offs to 10 Trading Days shall be deemed to be replaced with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date of such Spin-Off to, and including, the Conversion Date in determining the Conversion Rate.

For purposes of this Section 14.04(c) (and subject in all respect to Section 14.11), rights, options or warrants distributed by the Company to all holders of the Ordinary Shares (directly or in the form of ADSs) entitling them to subscribe for or purchase shares of the Company’s Capital Stock, including Ordinary Shares (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events (“**Trigger Event**”): (i) are deemed to be transferred with such Ordinary Shares (directly or in the form of ADSs); (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Ordinary Shares (directly or in the form of ADSs), shall be deemed not to have been distributed for purposes of this Section 14.04(c) (and no adjustment to the Conversion Rate under this Section 14.04(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 14.04(c). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 14.04(c) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders

thereof, upon such final redemption or purchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per Ordinary Share redemption or purchase price received by a holder or holders of Ordinary Shares (directly or in the form of ADSs) with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Ordinary Shares (directly or in the form of ADSs) as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of Section 14.04(a), Section 14.04(b) and this Section 14.04(c), if any dividend or distribution to which this Section 14.04(c) is applicable also includes one or both of:

(A) a dividend or distribution of Ordinary Shares (directly or in the form of ADSs) to which Section 14.04(a) is applicable (the “**Clause A Distribution**”); or

(B) a dividend or distribution of rights, options or warrants to which Section 14.04(b) is applicable (the “**Clause B Distribution**”),

then (1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 14.04(c) is applicable (the “**Clause C Distribution**”) and any Conversion Rate adjustment required by this Section 14.04(c) with respect to such Clause C Distribution shall then be made, and (2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by Section 14.04(a) and Section 14.04(b) with respect thereto shall then be made, except that, if determined by the Company (I) the “Record Date” of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Record Date of the Clause C Distribution and (II) any Ordinary Shares (directly or in the form of ADSs) included in the Clause A Distribution or Clause B Distribution shall be deemed not to be “outstanding immediately prior to the close of business on such Record Date or immediately after the open of business on such effective date, as applicable” within the meaning of Section 14.04(a) or “outstanding immediately prior to the close of business on such Record Date” within the meaning of Section 14.04(b).

(d) If any cash dividend or distribution is made to all or substantially all holders of the Ordinary Shares (directly or in the form of ADSs), the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

- CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for the ADSs for such dividend or distribution;
- CR_1 = the Conversion Rate in effect immediately after the close of business on such Record Date;
- SP_0 = the Last Reported Sale Price of the ADSs (divided by the number of Ordinary Shares then represented by one ADS) on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and
- C = the amount in cash per Ordinary Share the Company distributes to all or substantially all holders of the Ordinary Shares (directly or in the form of ADSs).

Any increase pursuant to this Section 14.04(d) shall become effective immediately after the close of business on the Record Date for the ADSs for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors determines not to make or pay such dividend or distribution, to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if “C” (as defined above) is equal to or greater than “ SP_0 ” (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, for each US\$1,000 principal amount of Notes, at the same time and upon the same terms as holders of the ADSs, the amount of cash that such Holder would have received if such Holder owned a number of ADSs equal to the Conversion Rate on the Record Date for the ADSs for such cash dividend or distribution.

(e) If the Company or any of its Subsidiaries or Consolidated Affiliated Entities makes a payment in respect of a tender or exchange offer for the Ordinary Shares (directly or in the form of ADSs), to the extent that the cash and value of any other consideration included in the payment per Ordinary Share exceeds the average of the Last Reported Sale Prices of the ADSs (*divided by* the number of Ordinary Shares then represented by one ADS) over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where,

- CR_0 = the Conversion Rate in effect immediately prior to the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

- CR₁ = the Conversion Rate in effect immediately after the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;
- AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for Ordinary Shares or ADSs, as the case may be, purchased in such tender or exchange offer;
- OS₀ = the number of Ordinary Shares outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase of all Ordinary Shares or ADSs, as the case may be, accepted for purchase or exchange in such tender or exchange offer);
- OS₁ = the number of Ordinary Shares outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all Ordinary Shares or ADSs, as the case may be, accepted for purchase or exchange in such tender or exchange offer); and
- SP₁ = the average of the Last Reported Sale Prices of the ADSs (*divided by* the number of Ordinary Shares then represented by one ADS) over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires.

The adjustment to the Conversion Rate under this Section 14.04(e) shall occur at the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires; *provided* that in respect of any conversion within the 10 Trading Days immediately following, and including, the Trading Day next succeeding the expiration date of any tender or exchange offer, references in this Section 14.04(e) with respect to 10 Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the expiration date of such tender or exchange offer to, and including, the Conversion Date in determining the Conversion Rate. For the avoidance of doubt, no adjustment to the Conversion Rate under this Section 14.04(e) shall be made if such adjustment would result in a decrease in the Conversion Rate.

(f) If and whenever the Company shall issue any Ordinary Shares or ADSs (other than any issuance pursuant to the Notes or on the exercise of any other rights, existing as of the date of this Indenture, of conversion into, or exchange or subscription for, Ordinary Shares or ADSs) or issue or grant options, warrants or other rights to purchase, subscribe, convert into, exercise or exchange for Ordinary Shares or ADSs (the “**Relevant Securities**”, which for the purposes of this definition only excludes any Ordinary Shares, ADSs, option, warrant or other rights to purchase, subscribe, convert into, exercise or exchange for Ordinary Shares or ADSs issued or granted in accordance with any employee incentive plan of the Company), in each case at a consideration per ADS (on an as-converted and as-exercised basis and, in the case of any issuance of Ordinary Shares, such issue price per Ordinary Share multiplied by the applicable

number of Ordinary Shares then represented by each ADS) which is less than the Reference Price, the Conversion Rate shall be adjusted based on the following formula:

$$CR1 = CR0 \times \frac{A + B}{C}$$

where:

CR0 = the Conversion Rate in effect immediately prior to the date of issue of the Relevant Securities;

CR1 = the Conversion Rate in effect as from the date of issue of the Relevant Securities;

A = the number of Ordinary Shares in issue immediately before the issue of the Relevant Securities;

B = the number of Ordinary Shares which the aggregate consideration receivable for the issue of the Relevant Securities would purchase at the price equal to (x) Reference Price, multiplied by (y) the applicable number of Ordinary Shares then represented by each ADS; and

C = the number of Ordinary Shares in issue immediately after the issue of the Relevant Securities,

provided that references to the number of Ordinary Shares in the above formula shall include all the Ordinary Shares to be issued assuming that all options, warrants or other rights to purchase, subscribe, convert into, exercise or exchange for Ordinary Shares or ADSs are exercised in full at the initial exercise price on the date of issue of such options, warrants or other rights.

(g) Except as stated herein, the Company shall not adjust the Conversion Rate for the issuance of Ordinary Shares or ADSs or any securities convertible into or exchangeable for Ordinary Shares or ADSs or the right to purchase Ordinary Shares or ADSs or such convertible or exchangeable securities.

(h) In addition to those adjustments required by clauses (a), (b), (c), (d) and (e) of this Section 14.04, and to the extent permitted by applicable law and subject to the applicable rules of the New York Stock Exchange and any other securities exchange on which any of the Company's securities are then listed, the Company from time to time may increase the Conversion Rate by any amount for a period of at least 20 Business Days if the Board of Directors determines that such increase would be in the Company's best interest, and the Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of the Ordinary Shares or the ADSs or rights to purchase Ordinary Shares or ADSs in connection with a dividend or distribution of Ordinary Shares or ADSs (or rights to acquire Ordinary Shares or ADSs) or similar event.

(i) Notwithstanding anything to the contrary in this Article 14, the Conversion Rate shall not be adjusted:

(i) upon the issuance of any Ordinary Shares or ADSs pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in Ordinary Shares or ADSs under any plan;

(ii) upon the issuance of any Ordinary Shares or ADSs or options or rights to purchase those Ordinary Shares or ADSs pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of the Company's Subsidiaries or Consolidated Affiliated Entities;

(iii) upon the issuance of any Ordinary Shares or ADSs pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) of this subsection and outstanding as of the date the Notes were first issued;

(iv) solely for a change in the par value of the Ordinary Shares; or

(v) for accrued and unpaid interest, if any.

(j) All calculations and other determinations under this Article 14 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000) of an ADS.

(k) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee (and the Conversion Agent if not the Trustee) an Officers' Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee shall have received such Officers' Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to each Holder at its last address appearing on the Note Register of this Indenture. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(l) For purposes of this Section 14.04, the number of Ordinary Shares at any time outstanding shall not include Ordinary Shares held in the treasury of the Company (directly or in the form of ADSs) so long as the Company does not pay any dividend or make any distribution on Ordinary Shares held in the treasury of the Company (directly or in the form of ADSs), but shall include Ordinary Shares issuable in respect of scrip certificates issued in lieu of fractions of Ordinary Shares.

(m) For purposes of this Section 14.04, the "effective date" means the first date on which the ADSs trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

Section 14.05 *Adjustments of Prices*. Whenever any provision of this Indenture requires the Company to calculate the Last Reported Sale Prices over a span of multiple days, the Board of Directors shall make appropriate adjustments to each to account for any adjustment to the Conversion Rate that becomes effective pursuant to Section 14.04, or any event requiring an adjustment to the Conversion Rate pursuant to Section 14.04 where the Record Date, effective date or expiration date, as the case may be, of the event occurs, at any time during the period when such Last Reported Sale Prices are to be calculated.

Section 14.06 *Ordinary Shares to Be Fully Paid*. The Company shall provide, free from preemptive rights, out of its authorized but unissued Ordinary Shares or Ordinary Shares held in treasury, a sufficient number of Ordinary Shares that corresponds to the number of ADSs due upon conversion of the Notes from time to time as such Notes are presented for conversion (assuming that at the time of computation of such number of Ordinary Shares, all such Notes would be converted by a single Holder).

Section 14.07 *Effect of Recapitalizations, Reclassifications and Changes of the Ordinary Shares*.

(a) In the case of:

- (i) any recapitalization, reclassification or change of the Ordinary Shares (other than changes resulting from a subdivision or combination),
- (ii) any consolidation, merger, combination or similar transaction involving the Company,
- (iii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and the Company's Subsidiaries and Consolidated Affiliated Entities substantially as an entirety or
- (iv) any statutory share exchange,

in each case, as a result of which the Ordinary Shares would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a "**Merger Event**"), then, prior to or at the effective time of such Merger Event, the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture permitted under Section 10.01(f) providing that, at and after the effective time of such Merger Event, the right to convert each US\$1,000 principal amount of Notes shall be changed into a right to convert such principal amount of Notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of ADSs equal to the Conversion Rate immediately prior to such Merger Event would have owned or been entitled to receive (the "**Reference Property**," with each "**unit of Reference Property**" meaning the kind and amount of Reference Property that a holder of one ADS is entitled to receive) upon such Merger Event; *provided, however*, that at and after the effective time of the Merger Event the number of ADSs otherwise deliverable upon conversion of the Notes in accordance with Section 14.02 shall

instead be deliverable in the amount and type of Reference Property that a holder of that number of ADSs would have been entitled to receive in such Merger Event.

If the Merger Event causes the Ordinary Shares to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of holder election), then (i) the Reference Property into which the Notes will be convertible shall be deemed to be the weighted average of the types and amounts of consideration actually received by the holders of the ADSs and (ii) the unit of Reference Property for purposes of the immediately preceding paragraph shall refer to the consideration referred to in clause (i) attributable to one ADS. The Company shall provide written notice to Holders, the Trustee and the Conversion Agent (if other than the Trustee) of such weighted average as soon as practicable after such determination is made.

Such supplemental indenture described in the second immediately preceding paragraph shall provide for anti-dilution and other adjustments that shall be as nearly equivalent as is practicable to the adjustments provided for in this Article 14 (it being understood that no such adjustments shall be required with respect to any portion of the Reference Property that does not consist of shares of Common Equity (however evidenced) or depository receipts in respect thereof). If, in the case of any Merger Event, the Reference Property includes shares of stock, securities or other property or assets (including cash or any combination thereof) of a Person other than the Company or the successor or purchasing Person, as the case may be, in such Merger Event, then such other Person shall also execute such supplemental indenture, and such supplemental indenture shall contain such additional provisions to protect the interests of the Holders of the Notes, including the right of Holders to require the Company to repurchase their Notes upon a Fundamental Change pursuant to Section 15.02, as the Board of Directors shall reasonably consider necessary by reason of the foregoing.

(b) [RESERVED]

(c) The Company shall not become a party to any Merger Event unless its terms are consistent with this Section 14.07. None of the foregoing provisions shall affect the right of a holder of Notes to convert its Notes into ADSs as set forth in Section 14.01 and Section 14.02 prior to the effective date of such Merger Event.

(d) The above provisions of this Section shall similarly apply to successive Merger Events.

Section 14.08 *Certain Covenants*. (a) The Company covenants that all ADSs delivered upon conversion of Notes, and all Ordinary Shares represented by such ADSs, will be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

(b) The Company covenants that, if any ADSs to be provided for the purpose of conversion of Notes hereunder, or any Ordinary Shares represented by such ADSs, require registration with or approval of any governmental authority under any federal or state law before such ADSs may be validly issued upon conversion, the Company will, to the extent then

permitted by the rules and interpretations of the Commission, secure such registration or approval, as the case may be.

(c) The Company further covenants that if at any time the ADSs shall be listed on any national securities exchange or automated quotation system the Company will list and keep listed, so long as the ADSs shall be so listed on such exchange or automated quotation system, any ADSs deliverable upon conversion of the Notes.

(d) The Company further covenants to take all actions and obtain all approvals and registrations required with respect to the conversion of the Notes into ADSs and the issuance, and deposit into the ADS facility, of the Ordinary Shares represented by such ADSs. The Company also undertakes to maintain, as long as any Notes are outstanding, the effectiveness of a registration statement on Form F-6 relating to the ADSs and an adequate number of ADSs available for issuance thereunder such that ADSs can be delivered in accordance with the terms of this Indenture, the Notes and the Deposit Agreement, upon conversion of the Notes. In addition, the Company further covenants to provide Holders with a reasonably detailed description of the mechanics for the delivery of ADSs upon conversion of Notes as set forth in the Deposit Agreement upon request.

Section 14.09 *Responsibility of Trustee*. The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Holder to determine the Conversion Rate (or any adjustment thereto) or whether any facts exist that may require any adjustment (including any increase) of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any ADSs, or of any securities, property or cash that may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any ADSs or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion, the accuracy or inaccuracy of any mathematical calculation or formulae under this Indenture, whether by the Company or any Person so authorized by the Company for such purpose under this Indenture or the failure by the Company to comply with any of the duties, responsibilities or covenants of the Company contained in this Article. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 14.07 relating either to the kind or amount of ADSs or securities or property (including cash) receivable by Holders upon the conversion of their Notes after any event referred to in such Section 14.07 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 7.01, may accept (without any independent investigation) as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officers' Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto.

Section 14.10 *Notice to Holders Prior to Certain Actions*. In case of any:

- (a) action by the Company or one of its Subsidiaries that would require an adjustment in the Conversion Rate pursuant to Section 14.04 or Section 14.11;
- (b) Merger Event; or
- (c) voluntary or involuntary dissolution, liquidation or winding-up of the Company or any of its Subsidiaries;

then, in each case (unless notice of such event is otherwise required pursuant to another provision of this Indenture), the Company shall cause to be filed with the Trustee and the Conversion Agent (if other than the Trustee) and to be mailed to each Holder at its address appearing on the Note Register, as promptly as possible but in any event at least 20 days prior to the applicable date hereinafter specified, a notice stating (i) the date on which a record is to be taken for the purpose of such action by the Company or one of its Subsidiaries or, if a record is not to be taken, the date as of which the holders of Ordinary Shares or ADSs, as the case may be, of record are to be determined for the purposes of such action by the Company or one of its Subsidiaries, or (ii) the date on which such Merger Event, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Ordinary Shares or ADSs, as the case may be, of record shall be entitled to exchange their Ordinary Shares or ADSs, as the case may be, for securities or other property deliverable upon such Merger Event, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such action by the Company or one of its Subsidiaries, Merger Event, dissolution, liquidation or winding-up.

Section 14.11 *Stockholder Rights Plans*. To the extent that the Company has a rights plan in effect upon conversion of the Notes, each ADS delivered upon such conversion shall be entitled to receive (either directly or in respect of the Ordinary Shares underlying such ADSs) the appropriate number of rights, if any, and the certificates representing the ADSs delivered upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any such stockholder rights plan, as the same may be amended from time to time. However, if, prior to any conversion, the rights have separated from the Ordinary Shares underlying the ADSs in accordance with the provisions of the applicable stockholder rights plan, the Conversion Rate shall be adjusted at the time of separation as if the Company distributed to all or substantially all holders of the Ordinary Shares Distributed Property as provided in Section 14.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 14.12 *Termination of Depositary Receipt Program*. If the Ordinary Shares cease to be represented by American Depositary Shares issued under a depositary receipt program sponsored by the Company, all references in this Indenture to the ADSs shall be deemed to have been replaced by a reference to the number of Ordinary Shares (and other property, if any) represented by the ADSs on the last day on which the ADSs represented the Ordinary Shares and as if the Ordinary Shares and the other property had been distributed to holders of the ADSs on that day. In addition, all references to the Last Reported Sale Price of the ADSs will be deemed to refer to the Last Reported Sale Price of the Ordinary Shares, and other appropriate

adjustments, including adjustments to the Conversion Rate, will be made to reflect such change. In making such adjustments, where currency translations between U.S. dollars and any other currency are required, the exchange rate in effect on the date of determination will apply.

ARTICLE 15
REPURCHASE OF NOTES AT OPTION OF HOLDERS

Section 15.01 [RESERVED]

Section 15.02 *Repurchase at Option of Holders Upon a Fundamental Change.* (a) If a Fundamental Change occurs at any time, each Holder shall have the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes, or any portion thereof that is equal to US\$1,000 or an integral multiple of US\$1,000, on the Business Day (the "**Fundamental Change Repurchase Date**") notified in writing by the Company as set forth in Section 15.02(c) that is not less than 20 Business Days or more than 35 Business Days following the date of the Fundamental Change Company Notice at a repurchase price equal to 100% of the principal amount thereof and any premium payable hereunder (the "**Fundamental Change Repurchase Price**"). The Trustee and the Conversion Agent, Paying Agent or any other agent appointed for such purpose shall have no responsibility to determine the Fundamental Change Repurchase Price.

(b) Repurchases of Notes under this Section 15.02 shall be made, at the option of the Holder thereof, upon:

(i) delivery to the Paying Agent (or other agent appointed for this purpose) by a Holder of a duly completed notice (the "**Fundamental Change Repurchase Notice**") in the form set forth in Attachment 2 to the Form of Note attached hereto as Exhibit A, if the Notes are Physical Notes, or in compliance with the procedures of Euroclear and Clearstream for surrendering interests in global notes, if the Notes are Global Notes, in each case on or before the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date; and

(ii) delivery of the Notes, if the Notes are Physical Notes, to the Trustee at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements for transfer) at the Corporate Trust Office, or book-entry transfer of the Notes, if the Notes are Global Notes, in compliance with the procedures of Euroclear and Clearstream, in each case such delivery being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor.

The Fundamental Change Repurchase Notice in respect of any Notes to be repurchased shall state:

(i) in the case of Physical Notes, the certificate numbers of the Notes to be delivered for repurchase;

(ii) the portion of the principal amount of Notes to be repurchased, which must be US\$1,000 or an integral multiple thereof; and

(iii) that the Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and this Indenture;

provided, however, that if the Notes are Global Notes, the Fundamental Change Repurchase Notice must comply with appropriate procedures of Euroclear and Clearstream.

Notwithstanding anything herein to the contrary, any Holder delivering to the Trustee the Fundamental Change Repurchase Notice contemplated by this Section 15.02 shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date by delivery of a duly completed written notice of withdrawal to the Trustee in accordance with Section 15.03.

The Trustee shall promptly notify the Company of the receipt by it of any Fundamental Change Repurchase Notice or written notice of withdrawal thereof.

(c) On or before the 20th calendar day after the occurrence of the effective date of a Fundamental Change, the Company shall provide to all Holders, the Trustee (and the Conversion Agent, Paying Agent and any other agent appointed for this purpose, in each case, if other than the Trustee) a written notice (the “**Fundamental Change Company Notice**”) of the occurrence of the effective date of the Fundamental Change and of the repurchase right at the option of the Holders arising as a result thereof. In the case of Physical Notes, such notice shall be by first class mail or, in the case of Global Notes, such notice shall be delivered in accordance with the applicable procedures of Euroclear and Clearstream. Simultaneously with providing such notice, the Company shall publish a notice containing the information set forth in the Fundamental Change Company Notice in a newspaper of general circulation in The City of New York or publish such information on the Company’s website or through such other public medium as the Company may use at that time. Each Fundamental Change Company Notice shall specify:

- (i) the events causing the Fundamental Change;
- (ii) the effective date of the Fundamental Change;
- (iii) the last date on which a Holder may exercise the repurchase right pursuant to this Article 15;
- (iv) the Fundamental Change Repurchase Price;
- (v) the Fundamental Change Repurchase Date;
- (vi) the name and address of the Trustee, the Paying Agent, the Conversion Agent or any other agent appointed for repurchase, if applicable;
- (vii) if applicable, the Conversion Rate;

(viii) if applicable, that the Notes with respect to which a Fundamental Change Repurchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Fundamental Change Repurchase Notice in accordance with the terms of this Indenture; and

(ix) the procedures that Holders must follow to require the Company to repurchase their Notes.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 15.02.

At the Company's request, the Trustee shall give such notice in the Company's name and at the Company's expense; *provided, however*, that, in all cases, the text of such Fundamental Change Company Notice shall be prepared by the Company.

(d) Notwithstanding the foregoing, no Notes may be repurchased by the Company on any date at the option of the Holders upon a Fundamental Change if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to such date (except in the case of an acceleration resulting from a default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes). The Trustee will promptly return to the respective Holders thereof any Physical Notes held by it during the acceleration of the Notes (except in the case of an acceleration resulting from a default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes), or any instructions for book-entry transfer of the Notes in compliance with the procedures of Euroclear and Clearstream shall be deemed to have been cancelled, and, upon such return or cancellation, as the case may be, the Fundamental Change Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

Section 15.03 *Withdrawal of Fundamental Change Repurchase Notice.* (a) A Fundamental Change Repurchase Notice may be withdrawn (in whole or in part) by means of a duly completed written notice of withdrawal delivered to the Paying Agent (or other agent appointed for such purpose) in accordance with this Section 15.03 at any time prior to the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date specifying:

(i) the principal amount of the Notes with respect to which such notice of withdrawal is being submitted,

(ii) if Physical Notes have been issued, the certificate number of the Note in respect of which such notice of withdrawal is being submitted, and

(iii) the principal amount, if any, of such Note that remains subject to the original Fundamental Change Repurchase Notice, which portion must be in principal amounts of US\$1,000 or an integral multiple of US\$1,000;

provided, however, that if the Notes are Global Notes, the notice must comply with appropriate procedures of Euroclear and Clearstream.

Section 15.04 *Deposit of Fundamental Change Repurchase Price*. (a) The Company will deposit with the Paying Agent (or any other agent appointed for this purpose by the Company), or if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 4.04) on or prior to 10:00 a.m., New York City time, on the Fundamental Change Repurchase Date an amount of money sufficient to repurchase all of the Notes to be repurchased at the appropriate Fundamental Change Repurchase Price. Subject to receipt of funds and/or Notes by the Paying Agent (or other agent appointed for this purpose by the Company) and the Trustee, as applicable, payment for Notes surrendered for repurchase (and not withdrawn in accordance with Section 15.03) will be made on the later of (i) the Fundamental Change Repurchase Date (*provided* the Holder has satisfied the conditions in Section 15.02) and (ii) the time of book-entry transfer or the delivery of such Note to the Trustee (or other Paying Agent appointed by the Company) by the Holder thereof in the manner required by Section 15.02, as applicable, by mailing checks for the amount payable to the Holders of such Notes entitled thereto as they shall appear in the Note Register; *provided, however*, that payments to the Common Depository shall be made by wire transfer of immediately available funds to the account of the Common Depository or its nominee. The Paying Agent (or other agent appointed for this purpose by the Company) shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Fundamental Change Repurchase Price.

(b) If by 10:00 a.m., New York City time, on the Fundamental Change Repurchase Date, the Paying Agent (or other agent appointed for this purpose by the Company) holds money sufficient to make payment on all the Notes or portions thereof that are to be repurchased on such Fundamental Change Repurchase Date, then, with respect to the Notes that have been properly surrendered for repurchase and not validly withdrawn, on such Fundamental Change Repurchase Date, (i) such Notes will cease to be outstanding and (ii) all other rights of the Holders of such Notes will terminate (other than the right to receive the Fundamental Change Repurchase Price).

(c) Upon surrender of a Note that is to be repurchased in part pursuant to Section 15.02, the Company shall execute and the Note Registrar, upon receipt of a Company Order, shall authenticate and deliver to the Holder a new Note in an authorized denomination equal in principal amount to the unreurchased portion of the Note surrendered.

Section 15.05 *Covenant to Comply with Applicable Laws Upon Repurchase of Notes*. In connection with any repurchase offer, the Company will, if required:

- (a) comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act;
- (b) file a Schedule TO or other required schedule under the Exchange Act; and

(c) otherwise comply with all federal and state securities laws in connection with any offer by the Company to repurchase the Notes;

in each case, so as to permit the rights and obligations under this Article 15 to be exercised in the time and in the manner specified in this Article 15.

ARTICLE 16 BRRD MATTERS

Notwithstanding and to the exclusion of any other term of this Indenture or any other agreements, arrangements, or understanding between The Bank of New York Mellon SA/NV, Luxembourg Branch and each counterparty, each counterparty acknowledges and accepts that a BRRD Liability arising under this Indenture may be subject to the exercise of Bail-in Powers by the Relevant Resolution Authority, and acknowledges, accepts, and agrees to be bound by:

- (a) the effect of the exercise of Bail-in Powers by the Relevant Resolution Authority in relation to any BRRD Liability of The Bank of New York Mellon SA/NV, Luxembourg Branch to each counterparty under this Indenture, that (without limitation) may include and result in any of the following, or some combination thereof:
 - (i) the reduction of all, or a portion, of the BRRD Liability or outstanding amounts due thereon;
 - (ii) the conversion of all, or a portion, of the BRRD Liability into shares, other securities or other obligations of The Bank of New York Mellon SA/NV, Luxembourg Branch or another person, and the issue to or conferral on each counterparty of such shares, securities or obligations;
 - (iii) the cancellation of the BRRD Liability;
 - (iv) the amendment or alteration of any interest, if applicable, thereon, the maturity or the dates on which any payments are due, including by suspending payment for a temporary period;
- (b) the variation of the terms of this Indenture, as deemed necessary by the Relevant Resolution Authority, to give effect to the exercise of Bail-in Powers by the Relevant Resolution Authority.

ARTICLE 17 MISCELLANEOUS PROVISIONS

Section 17.01 *Provisions Binding on Company's Successors*. All the covenants, stipulations, promises and agreements of the Company contained in this Indenture shall bind its successors and assigns whether so expressed or not.

Section 17.02 *Official Acts by Successor Corporation*. Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board,

committee or Officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation or other entity that shall at the time be the lawful sole successor of the Company.

Section 17.03 *Addresses for Notices, Etc.* Any notice or demand that by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders on the Company shall be deemed to have been sufficiently given or made, for all purposes if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed (until another address is filed by the Company with the Trustee) to Building 20, No. 56 AnTuo Road, Jiading District, Shanghai, 201804, People's Republic of China, Facsimile No.: +86 (21) 3913 0192. Any notice, direction, request or demand hereunder to or upon the Trustee shall be given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed to The Bank of New York Mellon, London Branch, One Canada Square, London E14 5AL, United Kingdom, Attention: Corporate Trust Administration – Project Camel (NIO Inc.) Fax: +44 1202 689660, with a copy to The Bank of New York Mellon, Hong Kong Branch, Level 26, Three Pacific Place, 1 Queen's Road East, Hong Kong, Attention: Global Corporate Trust – NIO Inc., Facsimile No.: +852-2295.3283. Any notice, direction, request or demand hereunder to or upon the Registrar and the Transfer Agent shall be given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed to The Bank of New York Mellon SA/NV, Luxembourg Branch, Vertigo Building – Polaris, 2-4 rue Eugène Ruppert, L-2453 Luxembourg, Attention: Project Camel (NIO Inc.), Fax: +(352) 24524204, with a copy to The Bank of New York Mellon, Hong Kong Branch, Level 26, Three Pacific Place, 1 Queen's Road East, Hong Kong, Attention: Global Corporate Trust – NIO Inc., Facsimile No.: +852-2295.3283.

All notices and other communications under this Indenture shall be in writing in English.

So long as and to the extent that the Notes are represented by Global Notes and such Global Notes are held by or on behalf of the Common Depositary, notices to owners of beneficial interests in the Global Notes may be given by delivery of the relevant notice to the Euroclear and Clearstream for communication by it to entitled account holders.

The Company hereby acknowledges that it is fully aware of the risks associated with transmitting instructions via electronic methods (including facsimile), and being aware of these risks, authorizes the Trustee to accept and act upon any instruction sent to it or any Paying Agent, Transfer Agent, Conversion Agent or Note Registrar in the Company's name or in the name of one or more appropriate authorized signers of the Company via electronic methods (including facsimile). The Trustee shall be entitled to rely on Section 7.06 of this Indenture when accepting or acting upon any instructions, communications or documents transmitted by facsimile, and shall not be liable in the event any facsimile transmission is not received, or is mutilated, illegible, interrupted, duplicated, incomplete, unauthorized or delayed for any reason, including (but not limited to) electronic or telecommunications failure.

Furthermore, notwithstanding the above, if any Trustee receives information or instructions delivered by electronic mail, other electronic method or other unsecured method of communication believed by it to be genuine and to have been sent by the proper person or

persons, the Trustee or any Paying Agent, Transfer Agent, Conversion Agent or Note Registrar shall have (i) no duty or obligation to verify or confirm that the person who sent such instructions is in fact a person authorized to give instructions or directions on behalf of the Company and (ii) absent its or their gross negligence or willful misconduct, no liability for any losses, liabilities, costs or expenses incurred or sustained by any holder, the Company or any other person as a result of such reliance on or compliance with such information or instructions.

The Trustee, by notice to the Company, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Holder shall be mailed to it by first class mail, postage prepaid, at its address as it appears on the Note Register and shall be sufficiently given to it if so mailed within the time prescribed.

Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice to Holders by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Section 17.04 *Governing Law; Jurisdiction.* THIS INDENTURE AND EACH NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE AND EACH NOTE, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

The Company irrevocably consents and agrees, for the benefit of the Holders from time to time of the Notes and the Trustee, that any legal action, suit or proceeding against it with respect to obligations, liabilities or any other matter arising out of or in connection with this Indenture or the Notes may be brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and, until amounts due and to become due in respect of the Notes have been paid, hereby irrevocably consents and submits to the non-exclusive jurisdiction of each such court *in personam*, generally and unconditionally with respect to any action, suit or proceeding for itself in respect of its properties, assets and revenues.

The Company irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions, suits or proceedings arising out of or in connection with this Indenture brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

Section 17.05 *Submission to Jurisdiction; Service of Process.* The Company irrevocably appoints Law Debenture Corporate Service Inc. as its authorized agent in the Borough of Manhattan in the City of New York upon which process may be served in any such suit or proceeding, and agrees that service of process upon such agent, and written notice of said service to the Company by the person serving the same to Building 20, No. 56 AnTuo Road, Jiading District, Shanghai, 201804, People's Republic of China, Facsimile No. +86 (21) 3913 0192, shall be deemed in every respect effective service of process upon the Company in any such suit or proceeding. The Company further agrees to take any and all action as may be necessary to maintain such designation and appointment of such agent in full force and effect for a period of five and a half years from the date of this Indenture. If for any reason such agent shall cease to be such agent for service of process, the Company shall forthwith appoint a new agent of recognized standing for service of process in the State of New York and deliver to the Trustee a copy of the new agent's acceptance of that appointment within ten Business Days of such acceptance. Nothing herein shall affect the right of the Trustee, any agent or any Holder to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the Company in any other court of competent jurisdiction. To the extent that the Company has or hereafter may acquire any sovereign or other immunity from jurisdiction of any court or from any legal process with respect to itself or its property, the Company irrevocably waives such immunity in respect of its obligations hereunder or under any Note.

Section 17.06 *Evidence of Compliance with Conditions Precedent; Certificates and Opinions of Counsel to Trustee.* Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall, if requested by the Trustee, furnish to the Trustee an Officers' Certificate stating that such action is permitted by the terms of this Indenture.

Each Officers' Certificate provided for, by or on behalf of the Company in this Indenture and delivered to the Trustee with respect to compliance with this Indenture (other than the Officers' Certificates provided for in Section 4.09) shall include (a) a statement that the person making such certificate is familiar with the requested action and this Indenture; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statement contained in such certificate is based; (c) a statement that, in the judgment of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed judgment as to whether or not such action is permitted by this Indenture; and (d) a statement as to whether or not, in the judgment of such person, such action is permitted by this Indenture.

Notwithstanding anything to the contrary in this Section 17.06, if any provision in this Indenture specifically provides that the Trustee shall or may receive an Opinion of Counsel in connection with any action to be taken by the Trustee or the Company hereunder, the Trustee shall be entitled to, or entitled to request, such Opinion of Counsel.

Section 17.07 *Legal Holidays.* In any case where any Fundamental Change Repurchase Date, Conversion Date, Qualified Equity Financing Conversion Date or Maturity Date is not a Business Day, then any action to be taken on such date need not be taken on such date, but may

be taken on the next succeeding Business Day with the same force and effect as if taken on such date, and no interest shall accrue in respect of the delay.

Section 17.08 *No Security Interest Created.* Nothing in this Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 17.09 *Benefits of Indenture.* Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the Holders, the parties hereto, any Paying Agent, any Conversion Agent, any Note Registrar and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 17.10 *Table of Contents, Headings, Etc.* The table of contents and the titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 17.11 *Execution in Counterparts.* This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 17.12 *Severability.* In the event any provision of this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

Section 17.13 *Waiver of Jury Trial.* EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 17.14 *Force Majeure.* In no event shall the Trustee or the Agents be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee or the Agents, as the case may be, shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 17.15 *Calculations.* Except as otherwise provided herein, the Company shall be responsible for making all calculations called for under the Notes. These calculations include, but are not limited to, determinations of the Last Reported Sale Prices of the ADSs, the

Conversion Rate of the Notes and any adjustments thereto. The Company shall make all these calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on Holders. The Company shall provide a schedule of its calculations to each of the Trustee, the Paying Agent and the Conversion Agent, and each of the Trustee, the Paying Agent and the Conversion Agent is entitled to rely conclusively and without liability upon the accuracy of the Company's calculations without independent verification. The Trustee will forward the Company's calculations to any Holder of Notes upon the prior written request of that Holder at the sole cost and expense of the Company.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the date first above written.

NIO INC.

By: /s/ Steven Feng

Name: Steven Feng

Title: Chief Financial Officer

Signature Page to Indenture

THE BANK OF NEW YORK MELLON, LONDON BRANCH, as
Trustee

By: /s/ Vivian Hui
Name: Vivian Hui
Title: Vice President

Signature Page to Indenture

THE BANK OF NEW YORK MELLON, LONDON BRANCH, as
Paying Agent and Conversion Agent

By: /s/ Vivian Hui
Name: Vivian Hui
Title: Vice President

Signature Page to Indenture

THE BANK OF NEW YORK MELLON SA/NV, LUXEMBOURG
BRANCH, as Registrar and Transfer Agent

By: /s/ Vivian Hui
Name: Vivian Hui
Title: Vice President

Signature Page to Indenture

[FORM OF FACE OF NOTE]

[INCLUDE FOLLOWING LEGEND IF A GLOBAL NOTE]

[THIS IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AN IS REGISTERED IN THE NAME OF THE COMMON DEPOSITARY OR A NOMINEE OF THE COMMON DEPOSITARY, WHICH MAY BE TREATED BY THE COMPANY, THE TRUSTEE AND ANY AGENT THEREOF AS THE OWNER AND HOLDER OF THIS NOTE FOR ALL PURPOSES

UNLESS THIS NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE BANK OF NEW YORK MELLON, LONDON BRANCH AS COMMON DEPOSITARY (THE "COMMON DEPOSITARY") FOR EUROCLEAR BANK SA/NV ("EUROCLEAR") AND CLEARSTREAM BANKING S.A. ("CLEARSTREAM") TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY NOTE ISSUED IS REGISTERED IN THE NAME OF THE COMMON DEPOSITARY OR A NOMINEE THEREOF OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE COMMON DEPOSITARY (AND ANY PAYMENT IS MADE TO COMMON DEPOSITARY OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE COMMON DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, THE COMMON DEPOSITARY, HAS AN INTEREST HEREIN.

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF NIO INC. (THE "COMPANY") OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY DURING THE THREE IMMEDIATELY PRECEDING MONTHS MAY PURCHASE, OTHERWISE ACQUIRE OR OWN THIS NOTE, THE AMERICAN DEPOSITARY SHARES DELIVERABLE UPON CONVERSION HEREOF AND THE ORDINARY SHARES REPRESENTED THEREBY, OR A BENEFICIAL INTEREST HEREIN.]

[INCLUDE FOLLOWING LEGEND IN THE ORIGINALLY ISSUED NOTE AND ANY REPLACEMENT NOTE ISSUED UNTIL THE DISTRIBUTION COMPLIANCE PERIOD TERMINATION DATE]

[THIS SECURITY AND THE ORDINARY SHARES REPRESENTED THEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") AND, PRIOR TO THE DATE THAT IS 40 DAYS AFTER THE DATE HEREOF, MAY NOT BE OFFERED, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, A U.S. PERSON (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT) EXCEPT PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOTE SUBJECT TO, THE

REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS 40 DAYS AFTER THE DATE HEREOF, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS NOT A U.S. PERSON AND IS LOCATED OUTSIDE THE UNITED STATES (WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT AND THAT IT AND ANY SUCH ACCOUNT IS NOT AN AFFILIATE OF NIO INC. (THE "COMPANY"), AND

(2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE, HYPOTHECATE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS 40 DAYS AFTER THE DATE HEREOF, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) TO A NON-U.S. PERSON IN AN OFFSHORE TRANSACTION MEETING THE REQUIREMENTS OF RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.]

PRIOR TO AUGUST 10, 2020, NO BENEFICIAL OWNER THAT PURCHASED A BENEFICIAL INTEREST IN THIS SECURITY UPON THE ORIGINAL ISSUANCE THEREOF MAY OFFER, SELL, PLEDGE, HYPOTHECATE OR OTHERWISE TRANSFER SUCH BENEFICIAL INTEREST EXCEPT IN ACCORDANCE WITH THE CONVERTIBLE NOTE SUBSCRIPTION AGREEMENT BETWEEN NIO INC. AND THE PURCHASER NAMED THEREIN, DATED FEBRUARY 6, 2020 (THE "SUBSCRIPTION AGREEMENT"). ANY ATTEMPT BY SUCH BENEFICIAL OWNER TO OFFER, SELL, PLEDGE, HYPOTHECATE OR OTHERWISE TRANSFER SUCH BENEFICIAL INTEREST IN VIOLATION OF THIS RESTRICTION SHALL BE VOID.

NIO INC.

0% Convertible Senior Note due 2021

No. [_____]

[Initially]¹ US\$_____

ISIN No. XS2117442272

Common Code 211744227

NIO Inc., a company duly organized and validly existing under the laws of the Cayman Islands (the “**Company**,” which term includes any successor company or corporation or other entity under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to [The Bank of New York Depository (Nominees) Limited]² [_____]³, or registered assigns, the principal sum [as set forth in the “Schedule of Exchanges of Notes” attached hereto]⁴ [of US\$[_____]]⁵, which amount, taken together with the principal amounts of all other outstanding Notes, shall not exceed US\$[] in aggregate at any time, in accordance with the rules and procedures of Euroclear and Clearstream, on February 4, 2021 as set forth below.

This Note shall not bear any interest and the principal amount of this Note will not accrete.

Any Defaulted Amounts shall accrue interest per annum at the rate per annum equal to three percent, subject to the enforceability thereof under applicable law, from, and including, the relevant payment date to, but excluding, the date on which such Defaulted Amounts shall have been paid by the Company, at its election, in accordance with Section 2.03(c) of the Indenture.

The Company shall pay or cause the Paying Agent to pay the principal of (including any premium payable) and interest on this Note, so long as such Note is a Global Note, in immediately available funds to the Common Depository or its nominee, as the case may be, as the registered Holder of such Note. As provided in and subject to the provisions of the Indenture, the Company shall pay the principal of any Notes (other than Notes that are Global Notes) at the office or agency designated by the Company for that purpose. The Company has initially designated the Bank of New York Mellon, London Branch as its Paying Agent and Conversion Agent and The Bank of New York Mellon SA/NV, Luxembourg Branch as its Note Registrar and Transfer Agent in respect of the Notes and its agency in the Borough of Manhattan, The City of New York, as a place where Notes may be presented for payment or for registration of transfer.

¹ Include if a Global Note.

² Include if a Global Note.

³ Include if a Physical Note.

⁴ Include if a Global Note.

⁵ Include if a Physical Note.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions giving the Holder of this Note the right to convert this Note into ADSs on the terms and subject to the limitations set forth in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Note, and any claim, controversy or dispute arising under or related to this Note, shall be construed in accordance with and governed by the laws of the State of New York (without regard to the conflicts of laws provisions thereof).

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control and govern.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed manually or by facsimile by the Note Registrar under the Indenture.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed.

NIO INC.

By: _____
Name:
Title:

A-5

Dated:

NOTE REGISTRAR'S CERTIFICATE OF AUTHENTICATION

THE BANK OF NEW YORK MELLON SA/NV, LUXEMBOURG BRANCH
as Note Registrar, certifies that this is one of the Notes described
in the within-named Indenture.

By: _____
Name:
Title:

[FORM OF REVERSE OF NOTE]

NIO INC.
0% Convertible Senior Note due 2021

This Note is one of a duly authorized issue of Notes of the Company, designated as its 0% Convertible Senior Notes due 2021 (the “**Notes**”), limited to the aggregate principal amount of US\$70,000,000, all issued or to be issued under and pursuant to an Indenture dated as of February 10, 2020 (the “**Indenture**”), between the Company and The Bank of New York Mellon, London Branch as trustee (the “**Trustee**”), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties, privileges, disclaimers from liability and immunities thereunder of the Trustee, the Company and the Holders of the Notes. Additional Notes may be issued in an unlimited aggregate principal amount, subject to certain conditions specified in the Indenture.

In the case certain Events of Default, as defined in the Indenture, shall have occurred and be continuing, the principal of, and interest on, all Notes may be declared, by either the Trustee or Holders of at least 25% in aggregate principal amount of Notes then outstanding, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions and certain exceptions set forth in the Indenture. In the case certain Events of Default relating to a bankruptcy (or similar proceeding) with respect to the Company or a Significant Subsidiary of the Company shall have occurred, the principal of, and interest on, all Notes shall automatically become immediately due and payable, as set forth in the Indenture.

Subject to the terms and conditions of the Indenture, the Company will make or cause the Paying Agent to make all payments in respect of the principal amount (and any premium payable) on the Maturity Date and the Fundamental Change Repurchase Price, as the case may be, to the Holder who surrenders a Note to collect such payments in respect of the Note. The Company will pay or cause the Paying Agent to pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

Subject to the terms and conditions of the Indenture, the Company will cause to be paid a premium equal to (i) in the case of any payment of principal to be made on the Maturity Date or pursuant to Section 6.02 of the Indenture, 2.0% of the outstanding principal amount of the Notes, or (ii) in the case of any payment of principal to be made on a Fundamental Change Repurchase Date, the aggregate interest that would have accrued on the outstanding principal amount of the Notes to be repurchased (or such portion thereof, as the case may be) over the period starting from (and including) the original date of issuance of the Notes and ending on (and including) the Fundamental Change Repurchase Date, if the Note were to bear interest at a rate of 2.0% per annum accruing daily and computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of actual days elapsed in a 30-day month.

Subject to the terms and conditions of the Indenture, Additional Amounts will be paid in connection with any payments made and deliveries caused to be made by the Company or any successor to the Company under or with respect to the Indenture and the Notes, including, but not limited to, payments of principal (including, if applicable, the Fundamental Change Repurchase Price), premium, if any, payments of interest and deliveries of ADSs or any other

consideration due on conversion of a Note (together with payments of cash for any Fractional ADS or other consideration) upon conversion of the Notes to ensure that the net amount received by the beneficial owner of the Notes after any applicable withholding, deduction or reduction (and after deducting any taxes on the Additional Amounts) will equal the amounts that would have been received by such beneficial owner had no such withholding, deduction or reduction been required.

The Indenture contains provisions permitting the Company and the Trustee in certain circumstances, without the consent of the Holders of the Notes, and in certain other circumstances, with the consent of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, evidenced as in the Indenture provided, to execute supplemental indentures modifying the terms of the Indenture and the Notes as described therein. It is also provided in the Indenture that, subject to certain exceptions, the Holders of a majority in aggregate principal amount of the Notes at the time outstanding may on behalf of the Holders of all of the Notes waive any past Default or Event of Default under the Indenture and its consequences.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay or cause to be delivered, as the case may be, the principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) of and the consideration due upon conversion of, this Note at the place, at the respective times, at the rate and in the lawful money herein prescribed.

The Notes are issuable in registered form without interest coupons in denominations of US\$1,000 principal amount and integral multiples thereof. At the office or agency of the Company referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations, without payment of any service charge but, if required by the Company or Trustee, with payment of a sum sufficient to cover any transfer or similar tax that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such exchange of Notes being different from the name of the Holder of the old Notes surrendered for such exchange.

The Company may not redeem the Notes prior to the Maturity Date. No sinking fund is provided for the Notes.

Upon the occurrence of a Fundamental Change, the Holder has the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes or any portion thereof (in principal amounts of US\$1,000 or integral multiples thereof) on the Fundamental Change Repurchase Date at a price equal to the Fundamental Change Repurchase Price.

Subject to the provisions of the Indenture, the Holder hereof has the right, at its option, prior to the close of business on the second Business Day immediately preceding the Maturity Date, to convert any Notes or portion thereof that is US\$1,000 principal amount of Notes or an integral multiple thereof, into ADSs at the Conversion Rate specified in the Indenture, as adjusted from time to time as provided in the Indenture.

Terms used in this Note and defined in the Indenture are used herein as therein defined.

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM = as tenants in common

UNIF GIFT MIN ACT = Uniform Gifts to Minors Act

CUST = Custodian

TEN ENT = as tenants by the entirety

JT TEN = joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

[FORM OF NOTICE OF CONVERSION]

To: NIO INC.

THE BANK OF NEW YORK MELLON, LONDON BRANCH, as Conversion Agent

DEUTSCHE BANK TRUST COMPANY AMERICAS, as ADS Depositary

The undersigned registered holder of this Note hereby exercises the option to convert that Note, or the portion thereof (that is US\$1,000 principal amount or an integral multiple thereof) below designated, into ADSs in accordance with the terms of the Indenture referred to in this Note, and directs that any ADSs deliverable upon such conversion, together with any cash payable for any Fractional ADS, and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below. Terms defined in the Deposit Agreement or the Indenture referred to in this Notice are used herein as so defined. If any ADSs or any portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned will pay all documentary, stamp, issue, transfer or similar taxes, if any, in accordance with Section 14.02(d) and Section 14.02(e) of the Indenture. Any amount required to be paid to the undersigned on account of interest accompanies this Notice.

In connection with the conversion of this Note, or the portion hereof below designated, the undersigned acknowledges, represents to and agrees with the Company that the undersigned is not an “affiliate” (as defined in Rule 144 under the Securities Act) of the Company and has not been an “affiliate” (as defined in Rule 144 under the Securities Act) of the Company during the three months immediately preceding the date hereof.

The undersigned hereby instructs the ADS Depositary to register the ADSs in the name of:

1. Name of Beneficial Owner to receive ADSs (English):	
2. Address of Beneficial Owner to receive ADSs (English):	
3. Name of Registered Holder of the Deposited Shares:	
4. Number of Deposited Shares:	
5. Number of ADSs to be issued:	
6. Beneficial Owner’s Tax ID Number:	
7. Contact Name and Tel No/email address:	

The undersigned instructs the Depositary to deliver the ADRs representing the ADSs to the following account:



ADS Receiving Broker (* are mandatory fields):

a) DTC Broker Name*:	
b) DTC Broker's Participant Account with DTC *:	
c) DTC Broker Contact Name:	
d) DTC Broker Contact Tel No/email:	
e) Beneficial Owner's Account # with DTC Broker*:	

OR

e) Local Broker Name (have account with DTC Broker)*:	
Local Broker Sub-Account # with DTC Broker*:	
Local Broker Contact Name:	
Local Broker Contact Tel No/email:	

ADS Delivering Party:

Name:	Deutsche Bank Trust Company Americas DTC Account: #2655
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For any ADS settlement inquiries, please contact DBTCA Broker Desk:

Tel: +1-212-250-9100 (New York) / +44-207-547-6500 (London)

Email: adr@db.com

Dated: _____

Signature(s)

Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if ADSs are to be issued other than to and in the name of the registered holder.

Fill in for registration of ADSs if to be issued other than to and in the name of the registered holder:

(Name)

(Street Address)

(City, State and Zip Code)

Please print name and address

Principal amount to be converted (if less than all):
US\$ _____,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Social Security or Other Taxpayer
Identification Number

[FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE]

To: NIO INC.

THE BANK OF NEW YORK MELLON, LONDON BRANCH, as Trustee

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from NIO Inc. (the "Company") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to pay to the registered holder hereof in accordance with Section 15.02 of the Indenture referred to in this Note the entire principal amount of this Note, or the portion thereof (that is US\$1,000 principal amount or an integral multiple thereof) below designated.

In the case of Physical Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Certificate Number(s): _____

Dated: _____

Signature(s)

Social Security or Other Taxpayer
Identification Number

Principal amount to be repaid (if less than all):
US\$ _____,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

[FORM OF ASSIGNMENT AND TRANSFER]

For value received _____ hereby sell(s), assign(s) and transfer(s) unto _____ (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints _____ attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

In connection with any transfer of the within Note occurring prior to the Distribution Compliance Period Termination Date, as defined in the Indenture governing such Note, the undersigned confirms that such Note is being transferred:

- To NIO Inc. or a subsidiary thereof; or
- Pursuant to a registration statement that has become or been declared effective under the Securities Act of 1933, as amended; or
- To a non-U.S. person in an offshore transaction meeting the requirements of Rule 903 or Rule 904 of Regulation S under the Securities Act of 1933, as amended; or
- Pursuant to an exemption from the registration requirements of the Securities Act.

Dated:

Signature(s)

NOTICE: The signature on the assignment must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.



[FORM OF AUTHORIZATION CERTIFICATE]

I, [Name], [Title], acting on behalf of NIO Inc. (the “**Company**”) hereby certify that:

(A) the persons listed below are (i) authorized Officers of the Company for purposes of the Indenture (the “**Indenture**”) dated as of February 10, 2020 between the Company and The Bank of New York Mellon, London Branch as trustee, in relation to the 0% Convertible Senior Notes due 2021 (the “**Notes**”), (ii) duly elected or appointed, qualified and acting as the holder of the respective office or offices set forth opposite their names and (iii) the duly authorized persons who executed or will execute the Indenture and the Notes issued pursuant to the Indenture by their manual or facsimile signatures and were at the time of such execution, duly elected or appointed, qualified and acting as the holder of the offices set forth opposite their names;

(B) each of the individuals listed below have the authority to receive call backs at the telephone numbers noted below upon request of The Bank of New York Mellon, London Branch in connection with the Notes issued pursuant to the Indenture;

(C) each signature appearing below is the person’s genuine signature; and

(D) attached hereto as Schedule I is a true, correct and complete specimen of the certificates representing the Notes.



IN WITNESS WHEREOF, I have hereunto executed and delivered this certificate on behalf of the Company as of the date indicated.

Dated: _____

[Name]

By: _____

Name:

Title:

SCHEDULE I

<u>Name</u>	<u>Title, Fax No., Email</u>	<u>Signature</u>	<u>Tel No.</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

NIO Inc.

and

The Bank of New York Mellon, London Branch as Trustee

and

The Bank of New York Mellon, London Branch, as Paying Agent and Conversion Agent

and

The Bank of New York Mellon SA/NV, Luxembourg Branch, as Registrar and Transfer Agent

INDENTURE

dated as of February 19, 2020

US\$30,000,000 0% CONVERTIBLE SENIOR NOTES DUE 2021

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INDENTURE dated as of February 19, 2020 between NIO INC., a Cayman Islands exempted company, PO Box 309, Umland House, Grand Cayman, KY1-1104, Cayman Islands, as issuer (the “**Company**,” as more fully set forth in Section 1.01), THE BANK OF NEW YORK MELLON, LONDON BRANCH, a banking organization organized and existing under the laws of the State of New York with limited liability and operating through its branch in London at One Canada Square, London E14 5AL, United Kingdom, as trustee (the “**Trustee**”), as paying agent (the “**Paying Agent**”) and as conversion agent (the “**Conversion Agent**”) (as more fully set forth in Section 1.01) and THE BANK OF NEW YORK MELLON, SA/NV, LUXEMBOURG BRANCH, operating through its branch in Luxembourg at Vertigo Building – Polaris, 2-4 rue Eugène Ruppert, L-2453 Luxembourg as registrar (the “**Registrar**”) and as transfer agent (the “**Transfer Agent**”) (as more fully set forth in Section 1.01).

WITNESSETH:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issuance of its 0% Convertible Senior Notes due 2021 (the “**Notes**”), offered and sold outside the United States pursuant to Regulation S in an aggregate principal amount not to exceed US\$30,000,000, and in order to provide the terms and conditions upon which the Notes are to be authenticated, issued and delivered, the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, the Form of Note, the certificate of authentication to be borne by each Note, the Form of Notice of Conversion, the Form of Fundamental Change Repurchase Notice and the Form of Assignment and Transfer to be borne by the Notes are to be substantially in the forms hereinafter provided; and

WHEREAS, all acts and things necessary to make the Notes, when executed by the Company and authenticated and delivered by the Note Registrar, as in this Indenture provided, the valid, binding and legal obligations of the Company, and this Indenture a valid agreement according to its terms, have been done and performed, and the execution of this Indenture and the issuance hereunder of the Notes have in all respects been duly authorized.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That in order to declare the terms and conditions upon which the Notes are, and are to be, authenticated, issued and delivered, and in consideration of the premises and of the purchase and acceptance of the Notes by the Holders thereof, the Company covenants and agrees with the Trustee for the equal and proportionate benefit of the respective Holders from time to time of the Notes (except as otherwise provided below), as follows:

ARTICLE 1
DEFINITIONS

Section 1.01 *Definitions*. The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. The words “herein,” “hereof,” “hereunder,” and words of similar import

refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article include the plural as well as the singular.

“**Additional Amounts**” shall have the meaning specified in Section 4.07(a).

“**ADS**” means an American Depositary Share issued pursuant to the Deposit Agreement representing one Ordinary Share of the Company as of the date of this Indenture, and deposited with the ADS Custodian.

“**ADS Custodian**” means Deutsche Bank AG, Hong Kong Branch, with respect to the ADSs delivered pursuant to the Deposit Agreement or any successor entity thereto.

“**ADS Depository**” means Deutsche Bank Trust Company Americas, as depository for the ADSs.

“**Affiliate**” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control,” when used with respect to any specified Person means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Agents**” means the Paying Agent, the Transfer Agent, the Note Registrar and the Conversion Agent.

“**applicable taxes**” shall have the meaning specified in Section 4.07(a).

“**Bail-in Legislation**” means in relation to a member state of the European Economic Area which has implemented, or which at any time implements, the BRRD, the relevant implementing law, regulation, rule or requirement as described in the EU Bail-in Legislation Schedule from time to time.

“**Bail-in Powers**” means any Write-down and Conversion Powers as defined in the EU Bail-in Legislation Schedule, in relation to the relevant Bail-in Legislation. “**BNY Mellon Group**” shall have the meaning specified in Section 7.02.

“**Board of Directors**” means the board of directors of the Company or a committee of such board duly authorized to act for it hereunder.

“**Board Resolution**” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors, and to be in full force and effect on the date of such certification, and delivered to the Trustee.

“**BRRD**” means Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

“**BRRD Liability**” means a liability in respect of which the relevant Write Down and Conversion Powers in the applicable Bail-in Legislation may be exercised.

“**Business Day**” means, with respect to any Note, each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in the State of New York, or the Cayman Islands are authorized or obligated by law or executive order to close.

“**Capital Stock**” means, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity.

“**Clause A Distribution**” shall have the meaning specified in Section 14.04(c).

“**Clause B Distribution**” shall have the meaning specified in Section 14.04(c).

“**Clause C Distribution**” shall have the meaning specified in Section 14.04(c).

“**Clearstream**” means Clearstream Banking S.A.

“**close of business**” means 5:00 p.m. (New York City time).

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended.

“**Commission**” means the U.S. Securities and Exchange Commission.

“**Common Depositary**” means the common depositary acting on behalf of Euroclear and Clearstream.

“**Common Equity**” of any Person means ordinary share capital or common stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

“**Company**” shall have the meaning specified in the first paragraph of this Indenture, and subject to the provisions of Article 11, shall include its successors and assigns.

“**Company Order**” means a written order of the Company, signed by an Officer of the Company and delivered to the Trustee and/or Note Registrar, as applicable.

“**Consolidated Affiliated Entity**” means, with respect to any Person, any corporation, association or other entity which is or is required to be consolidated with such Person under Accounting Standards Codification subtopic 810-10, Consolidation: Overall (including any changes, amendments or supplements thereto) or, if such person prepares its financial statements in accordance with accounting principles other than the accounting principles generally accepted in the United States of America, the equivalent of Accounting Standards Codification subtopic 810-10, Consolidation: Overall under such accounting principles.

“**Conversion Agent**” shall have the meaning specified in Section 4.02.

“**Conversion Date**” shall have the meaning specified in Section 14.02(c).

“**Conversion Obligation**” shall have the meaning specified in Section 14.01.

“**Conversion Rate**” shall have the meaning specified in Section 14.01.

“**Corporate Trust Office**” means the corporate trust office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at The Bank of New York Mellon, London Branch, One Canada Square, London E14 5AL, United Kingdom, Attention: Corporate Trust Administration – Project Camel (NIO Inc.), Fax: +44 1202 689660, and shall include a reference to The Bank of New York Mellon, Hong Kong Branch, Level 26, Three Pacific Place, 1 Queen’s Road East, Hong Kong, Attention: Global Corporate Trust – NIO Inc., Facsimile No.: +852 2295 3283, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the corporate trust office of any successor trustee (or such other address as such successor trustee may designate from time to time by notice to the Holders and the Company).

“**Current Market Price**” means, in respect of an ADS at a particular date, the volume-weighted average of the Last Reported Sale Prices for one ADS (carrying full entitlement to dividend) for the thirty (30) consecutive Trading Days ending on the Trading Day immediately preceding such date, *provided* that if at any time during the said thirty (30) Trading Day period the ADSs shall have been quoted ex-dividend and during some other part of that period the ADSs shall have been quoted cum-dividend then:

(a) if the ADSs (or the Class A Ordinary Shares) to be issued in such circumstances do not rank for the dividend in question, the quotations on the dates on which the ADSs shall have been quoted cum-dividend shall for the purpose of this definition be deemed to be the amount thereof reduced by an amount equal to the amount of that dividend per ADS; or

(b) if the ADSs (or the Class A Ordinary Shares) to be issued in such circumstances rank for the dividend in question, the quotations on the dates on which the ADSs shall have been quoted ex-dividend shall for the purpose of this definition be deemed to be the amount thereof increased by such similar amount;

and *provided further* that if the ADSs on each of the said thirty (30) Trading Days have been quoted cum-dividend in respect of a dividend which has been declared or announced but the ADSs or the Ordinary Shares to be issued do not rank for that dividend, the quotations on each of such dates shall for the purpose of this definition be deemed to be the amount thereof reduced by an amount equal to the amount of that dividend per ADS.

“**Default**” means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

“Defaulted Amounts” means any amounts on any Note (including, without limitation, the Fundamental Change Repurchase Price, principal, premium and interest) that are payable but are not punctually paid or duly provided for.

“Deposit Agreement” means the deposit agreement dated as of September 11, 2018 by and among the Company, the ADS Depository and the holders and beneficial owners of the ADSs delivered thereunder or, if amended or supplemented as provided therein, as so amended or supplemented.

“Distributed Property” shall have the meaning specified in Section 14.04(c).

“Distribution Compliance Period Termination Date” shall have the meaning specified in Section 2.05(c).

“EU Bail-in Legislation Schedule” means the document described as such, then in effect, and published by the Loan Market Association (or any successor person) from time to time at <http://www.lma.eu.com/pages.aspx?p=499>.

“Euroclear” means Euroclear Bank SA/NV.

“Event of Default” shall have the meaning specified in Section 6.01.

“Ex-Dividend Date” means the first date on which the ADSs trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of the ADSs on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

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

“Expiring Rights” means any rights, options or warrants to purchase Ordinary Shares or ADSs that expire on or prior to the Maturity Date.

“FATCA” shall have the meaning specified in Section 4.07(a)(i)(D).

“Form of Assignment and Transfer” shall mean the “Form of Assignment and Transfer” attached as Attachment 3 to the Form of Note attached hereto as Exhibit A.

“Form of Fundamental Change Repurchase Notice” shall mean the “Form of Fundamental Change Repurchase Notice” attached as Attachment 2 to the Form of Note attached hereto as Exhibit A.

“Form of Notice of Conversion” shall mean the “Form of Notice of Conversion” attached as Attachment 1 to the Form of Note attached hereto as Exhibit A.

“Fractional ADS” shall have the meaning specified in Section 14.02(a).

“**Fundamental Change**” shall be deemed to have occurred at the time after the Notes are originally issued if any of the following occurs:

(a) (A) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act, other than the Company, its Subsidiaries, the employee benefit plans of the Company and its Subsidiaries and any of the Permitted Holders, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of (i) the Company’s Common Equity (including Common Equity held in the form of ADSs) representing more than 50% of the voting power of the Company’s Common Equity or (ii) more than 50% of the outstanding Ordinary Shares (including Ordinary Shares held in the form of ADSs); or (B) the Permitted Holders (together with any of their respective Affiliates) have become the direct or indirect “beneficial owners,” as defined in Rule 13d-3 under the Exchange Act, of Ordinary Shares (including Ordinary Shares held in the form of ADSs) representing, in the aggregate, more than 65% of the outstanding Ordinary Shares (including Ordinary Shares held in the form of ADSs), based on any Schedule TO or any schedule, form or report under the Exchange Act disclosing the same filed by any one or more of the Permitted Holders;

(b) the consummation of (A) any recapitalization, reclassification or change of the Ordinary Shares or the ADSs (other than changes resulting from a subdivision or combination) as a result of which the Ordinary Shares or the ADSs would be converted into, or exchanged for, stock, other securities, other property or assets; (B) any share exchange, consolidation or merger of the Company, or any similar transaction, pursuant to which the Ordinary Shares or the ADSs will be converted into cash, securities or other property; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries and Consolidated Affiliated Entities, taken as a whole, to any Person other than one of the Company’s wholly-owned Subsidiaries; provided, however, that a transaction described in clause (B) in which the holders of all classes of the Company’s Common Equity immediately prior to such transaction own, directly or indirectly, more than 50% of all classes of Common Equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions vis-a-vis each other as such ownership immediately prior to such transaction shall not be a Fundamental Change pursuant to this clause (b);

(c) the shareholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company;

(d) the ADSs (or other Common Equity or ADSs in respect of Common Equity underlying the Notes) cease to be listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors); or

(e) any change in or amendment to the laws, regulations and rules of the People's Republic of China or the official interpretation or official application thereof (a "**Change in Law**") that results in (x) the Company, its Subsidiaries and its Consolidated Affiliated Entities (collectively, the "**Company Group**") (as in existence immediately subsequent to such Change in Law), as a whole, being legally prohibited from operating substantially all of the business operations conducted by the Company Group (as in existence immediately prior to such Change in Law) as of the last date of the period described in the Company's consolidated financial statements for the most recent fiscal quarter and (y) the Company's being unable to continue to derive substantially all of the economic benefits from the business operations conducted by the Company Group (as in existence immediately prior to such Change in Law) in the same manner as reflected in the Company's consolidated financial statements for the most recent fiscal quarter;

provided, however, that a transaction or event described in clause (b) above shall not constitute a Fundamental Change, if at least 90% of the consideration received or to be received by holders of the ADSs, excluding cash payments for Fractional ADSs, in connection with such transaction or event consists of shares of Common Equity or ADSs in respect of Common Equity that are listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors) or will be so listed or quoted when issued or exchanged in connection with such transaction or event and as a result of such transaction or event, the Notes become convertible into such consideration, excluding cash payments for Fractional ADSs and cash payments made in connection with dissenters' appraisal rights.

"**Fundamental Change Company Notice**" shall have the meaning specified in Section 15.02(c).

"**Fundamental Change Repurchase Date**" shall have the meaning specified in Section 15.02(a).

"**Fundamental Change Repurchase Notice**" shall have the meaning specified in Section 15.02(b)(i).

"**Fundamental Change Repurchase Price**" shall have the meaning specified in Section 15.02(a).

"**Global Note**" shall have the meaning specified in Section 2.05(b).

"**Holder**," shall mean any Person in whose name at the time a particular Note is registered on the Note Register provided that, for the purposes of Section 6.01(f) and Section 6.04 only, "**Holder**" shall include a beneficial owner of any Note who has validly made a request that its beneficial interest therein be issued as a Physical Note, and thereafter the Company failed to execute, or the Registrar failed to authenticate and deliver, a Physical Note to that beneficial owner in accordance with Section 2.05(c) within 10 Business Days of the beneficial owner's request.

“**Indenture**” means this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented.

“**Last Reported Sale Price**” of the ADSs on any date means the closing sale price per ADS (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the ADSs are traded. If the ADSs are not listed for trading on a U.S. national or regional securities exchange on the relevant date, the “Last Reported Sale Price” shall be the last quoted bid price for the ADSs in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization. If the ADSs are not so quoted, the “Last Reported Sale Price” shall be the average of the mid-point of the last bid and ask prices for the ADSs on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

“**Maturity Date**” means February 4, 2021.

“**Merger Event**” shall have the meaning specified in Section 14.07(a).

“**Note**” or “**Notes**” shall have the meaning specified in the first paragraph of the recitals of this Indenture.

“**Note Register**” shall have the meaning specified in Section 2.05(a).

“**Note Registrar**” shall have the meaning specified in Section 2.05(a).

“**Notice of Conversion**” shall have the meaning specified in Section 14.02(b).

“**Officer**” means, with respect to the Company, the President, the Chief Executive Officer, the Chief Financial Officer the Treasurer, the Secretary, any Executive or Senior Vice President or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title “Vice President”).

“**Officers’ Certificate**,” when used with respect to the Company, means a certificate that is delivered to the Trustee and that is signed by (a) two Officers of the Company or (b) one Officer of the Company and one of any Assistant Treasurer, any Assistant Secretary or General Counsel or the Controller of the Company. Each such certificate shall include the statements provided for in Section 17.06 if and to the extent required by the provisions of such Section. One of the Officers giving an Officers’ Certificate pursuant to Section 4.09 shall be the principal executive, financial or accounting officer of the Company.

“**open of business**” means 9:00 a.m. (New York City time).

“**Opinion of Counsel**” means an opinion in writing signed by legal counsel and in a form reasonably acceptable to the Trustee, who may be counsel to the Company, or other counsel acceptable to the Trustee, that is delivered to the Trustee. Each such opinion shall include the

statements provided for in Section 17.06 if and to the extent required by the provisions of such Section 17.06.

“**Ordinary Shares**” means Class A ordinary shares of the Company, par value US\$0.00025 per share, at the date of this Indenture, subject to Section 14.07.

“**outstanding**,” when used with reference to Notes, shall, subject to the provisions of Section 8.04, mean, as of any particular time, all Notes authenticated and delivered by the Note Registrar under this Indenture, except:

- (a) Notes theretofore canceled by the Note Registrar or accepted by the Note Registrar for cancellation;
- (b) Notes, or portions thereof, that have become due and payable and in respect of which monies in the necessary amount shall have been deposited with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent);
- (c) Notes that have been paid pursuant to Section 2.06 or Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 2.06 unless proof satisfactory to the Trustee is presented that any such Notes are held by protected purchasers in due course;
- (d) Notes converted pursuant to Article 14 and required to be cancelled pursuant to Section 2.08; and
- (e) Notes repurchased by the Company pursuant to the third sentence of Section 2.10.

“**Paying Agent**” shall have the meaning specified in Section 4.02.

“**Permitted Holders**” means Mr. Bin Li and Tencent Holdings Limited, together with any other respective “person” or “group” subject to aggregation with respect to the Ordinary Shares (including Ordinary Shares held in the form of ADSs) with any of the aforementioned person and entity under Section 13(d) of the Exchange Act.

“**Person**” means an individual, a corporation, a limited liability company, an association, a partnership, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

“**Physical Notes**” means permanent certificated Notes in registered form issued in denominations of US\$1,000 principal amount and multiples thereof.

“**PRC**” means the People's Republic of China and, for the purposes for this Indenture, shall exclude Hong Kong SAR, Macau SAR and Taiwan.

“**Predecessor Note**” of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 2.06 in lieu of or in exchange for a mutilated, lost, destroyed or stolen Note shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note that it replaces.

“**Qualified Equity Financing**” means a bona fide issuance of equity securities of the Company for fundraising purposes after the date of this Indenture or to the Maturity Date, excluding any of the following: (i) ADSs issued upon conversion of any Note or any convertible securities then outstanding, (ii) Ordinary Shares (directly or in the form of ADSs) issued upon share split, share dividend or any subdivision of Ordinary Shares (directly or in the form of ADSs), (iii) Ordinary Shares (directly or in the form of ADSs) (or options or warrants therefor) issued to officers, directors, employees and consultants of the Company or issued to the trustee, general partner or other entity that is to hold the Ordinary Shares (directly or in the form of ADSs), in each case pursuant to a duly approved employee equity incentive plan, and (iv) shares of the Company issued pursuant to any bona fide acquisition, on arms-length terms, of interests in or assets of another corporation or entity by the Company as duly approved by the Board of Directors.

“**Qualified Equity Financing Conversion Date**” shall have the meaning specified in Section 14.02(e).

“**Qualified Equity Financing Conversion Rate**” means the conversion rate equal to US\$1,000 *divided by* the per-share issuance price applicable to the new issuance of equity securities of the Company in the Qualified Equity Financing (subject to adjustment as set forth in this Indenture).

“**Record Date**” means, with respect to any dividend, distribution or other transaction or event in which the holders of the Ordinary Shares (directly or in the form of ADSs) (or other applicable security) have the right to receive any cash, securities or other property or in which the Ordinary Shares (directly or in the form of ADSs) (or such other security) are exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of security holders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors, statute, contract or otherwise).

“**Reference Price**” means the higher of (i) US\$3.07 per Class A Share, subject to the same adjustment to the Conversion Rate pursuant to this Indenture and (ii) the Current Market Price, in each case on the date of announcement of the issuance referred to under the provisions in Section 14.04(f).

“**Reference Property**” shall have the meaning specified in Section 14.07(a).

“**Regulation S**” means Regulation S under the Securities Act or any successor to such regulation.

“**Relevant Jurisdiction**” shall have the meaning specified in Section 4.07(a).

“**Relevant Resolution Authority**” means the resolution authority with the ability to exercise any Bail-in Powers in relation to The Bank of New York Mellon SA/NV, Luxembourg Branch.

“**Relevant Taxing Jurisdiction**” shall have the meaning specified in Section 4.07(a).

“**Responsible Officer**” means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such Person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“**Rule 144**” means Rule 144 as promulgated under the Securities Act.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“**Significant Subsidiary**” means a Subsidiary of the Company that meets the definition of “significant subsidiary” in Article 1, Rule 1-02 of Regulation S-X under the Exchange Act. Each of the Company’s Consolidated Affiliated Entities will be deemed to be a “subsidiary” for purposes of the definition of “significant subsidiary” in Article 1, Rule 1-02 of Regulation S-X.

“**Specified Portion**” means such portion of the Notes that upon conversion by a Holder will result in a number of ADSs (assuming delivery of the maximum number of ADSs due upon conversion that do not represent a fractional ADS) to be delivered to such Holder to equal to (x) seventy five percent (75%), fifty percent (50%) or twenty five percent (25%) *multiplied by* (y) the number of ADSs calculated as (i) the aggregate principal amount of the Notes issued on the date of this Indenture *divided by* (ii) US\$1,000 and *multiplied by* (A) the Conversion Rate (in the case of conversion of the Notes pursuant to Section 14.01(a)) or (B) the Qualified Equity Financing Conversion Rate (in the case of conversion of the Notes pursuant to Section 14.01(b)), in each case, in effect immediately prior to the close of business on the relevant Conversion Date or the Qualified Equity Financing Conversion Date (as the case may be).

“**Spin-Off**” shall have the meaning specified in Section 14.04(c).

“**Subsidiary**” means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

“**Successor Company**” shall have the meaning specified in Section 11.01(a).

“**Trading Day**” means a day on which (i) trading in the ADSs (or other security for which a closing sale price must be determined) generally occurs on the New York Stock Exchange or, if the ADSs (or such other security) are not then listed on the New York Stock Exchange, on the principal other U.S. national or regional securities exchange on which the ADSs (or such other security) are then listed or, if the ADSs (or such other security) are not then listed on a U.S. national or regional securities exchange, on the principal other market on which the ADSs (or such other security) are then traded and (ii) a Last Reported Sale Price for the ADSs (or closing sale price for such other security) is available on such securities exchange or market; *provided* that if the ADSs (or such other security) are not so listed or traded, “Trading Day” means a Business Day.

“**transfer**” shall have the meaning specified in Section 2.05(c) and Section 2.05(e), as applicable.

“**Transfer Agent**” shall have the meaning specified in Section 4.02.

“**Trigger Event**” shall have the meaning specified in Section 14.04(c).

“**Trust Indenture Act**” means the Trust Indenture Act of 1939, as amended, as it was in force at the date of execution of this Indenture; *provided, however*, that in the event the Trust Indenture Act of 1939 is amended after the date hereof, the term “Trust Indenture Act” shall mean, to the extent required by such amendment, the Trust Indenture Act of 1939, as so amended.

“**Trustee**” means the Person named as the “Trustee” in the first paragraph of this Indenture until a successor trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean or include each Person who is then a Trustee hereunder.

“**unit of Reference Property**” shall have the meaning specified in Section 14.07(a).

“**U.S. Person**” shall have the meaning as such term is defined under Regulation S.

“**Valuation Period**” shall have the meaning specified in Section 14.04(c).

ARTICLE 2 ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.01 *Designation and Amount*. The Notes shall be designated as the “0% Convertible Senior Notes due 2021.” The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is limited to US\$30,000,000, except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes pursuant to Section 2.05, Section 2.06, Section 2.07, Section 10.04, Section 14.02 and Section 15.04.

Section 2.02 *Form of Notes*. The Notes and the Note Registrar’s certificate of authentication to be borne by such Notes shall be substantially in the respective forms set forth in

Exhibit A, the terms and provisions of which shall constitute, and are hereby expressly incorporated in and made a part of this Indenture. To the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

Any Global Note may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Indenture as may be required by the Common Depositary, or as may be required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange or automated quotation system upon which the Notes may be listed or traded or designated for issuance or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Notes are subject.

Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends or endorsements as the Officers executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, or to conform to usage or to indicate any special limitations or restrictions to which any particular Notes are subject.

Each Global Note shall represent such principal amount of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate principal amount of outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect redemptions, repurchases, cancellations, conversions, transfers or exchanges permitted hereby. Any endorsement of the Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Note Registrar in such manner and upon instructions given by the Holder of such Notes in accordance with this Indenture. Payment of principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) of the Global Note shall be made to the Holder of such Note on the date of payment, unless a record date or other means of determining Holders eligible to receive payment is provided for herein.

Section 2.03 *Date and Denomination of Notes; No Regular Interest; Payments of Defaulted Amounts.* (a) The Notes shall be issuable in registered form without coupons in denominations of US\$1,000 principal amount and integral multiples thereof. Each Note shall be dated the date of its authentication and shall not bear regular interest, and the principal amount of the Notes will not accrete.

(b) [RESERVED]

(c) Any Defaulted Amounts shall forthwith cease to be payable to the Holder on the relevant payment date but shall accrue interest per annum at the rate of three percent per annum, subject to the enforceability thereof under applicable law, from, and including, such relevant

payment date, and such Defaulted Amounts together with such interest thereon shall be paid by the Company, at its election in each case, as provided in clause (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Amounts to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on a special record date for the payment of such Defaulted Amounts, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of the Defaulted Amounts proposed to be paid on each Note and the date of the proposed payment (which shall be not less than 25 days after the receipt by the Trustee of such notice, unless the Trustee in its sole discretion shall consent to an earlier date), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Amounts or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Amounts as in this clause provided. Thereupon the Company shall fix a special record date for the payment of such Defaulted Amounts which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment, and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Company shall promptly notify the Trustee in writing of such special record date and the Trustee, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Amounts and the special record date therefor to be mailed, first-class postage prepaid (at the Company's expense), to each Holder at its address as it appears in the Note Register, not less than 10 days prior to such special record date. Notice of the proposed payment of such Defaulted Amounts and the special record date therefor having been so mailed, such Defaulted Amounts shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on such special record date and shall no longer be payable pursuant to the following clause (ii) of this Section 2.03(c).

(ii) The Company may make payment of any Defaulted Amounts in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, and upon such notice as may be required by such exchange or automated quotation system, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Section 2.04 *Execution, Authentication and Delivery of Notes.* The Notes shall be signed in the name and on behalf of the Company by the manual or facsimile signature of its Chief Executive Officer, President, Chief Financial Officer, Treasurer, Secretary or any of its Executive or Senior Vice Presidents. With the delivery of this Indenture, the Company is furnishing, and from time to time thereafter may furnish, a certificate substantially in the form of Exhibit B (an "**Authorization Certificate**") identifying and certifying the incumbency and specimen (and/or facsimile) signatures of its active authorized Officers. Until the Trustee receives a subsequent Authorization Certificate, the Trustee shall be entitled to conclusively rely

on the last Authorization Certificate delivered to it for purposes of determining the relevant authorized Officers. Typographical and other minor errors or defects in any signature shall not affect the validity or enforceability of any Note which has been duly authenticated and delivered by the Note Registrar.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes executed by the Company to the Note Registrar for authentication, together with a Company Order for the authentication and delivery of such Notes, and the Note Registrar in accordance with such Company Order shall authenticate and deliver such Notes, without any further action by the Company hereunder.

The Company Order shall specify the amount of Notes to be authenticated, the date on which the original issuance of such Notes is to be authenticated, the date on which the principal of such Notes will be payable and other terms relating to such Notes. The Note Registrar shall thereupon authenticate and deliver said Notes to or upon the written order of the Company (as set forth in such Company Order).

The Note Registrar shall have the right to decline to authenticate and deliver any Notes under this Section (a) unless and until it receives from the Company a Company Order instructing it to so authenticate and deliver such Notes and, if requested by the Note Registrar, an Officers' Certificate and an Opinion of Counsel in accordance with Section 17.06 hereof; (b) if the Note Registrar determines that such action may not lawfully be taken; or (c) if the Note Registrar determines that such action would expose the Note Registrar to personal liability, unless indemnity and/or security and/or pre-funding satisfactory to the Note Registrar against such liability is provided to the Note Registrar.

Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the form of Note attached as Exhibit A hereto, executed manually or by facsimile by an authorized officer of the Note Registrar, shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Note Registrar upon any Note executed by the Company shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture.

In case any Officer of the Company who shall have signed any of the Notes shall cease to be such Officer before the Notes so signed shall have been authenticated and delivered by the Note Registrar, or disposed of by the Company, such Notes nevertheless may be authenticated and delivered or disposed of as though the Person who signed such Notes had not ceased to be such Officer of the Company; and any Note may be signed on behalf of the Company by such Persons as, at the actual date of the execution of such Note, shall be the Officers of the Company, although at the date of the execution of this Indenture any such Person was not such an Officer.

Section 2.05 *Exchange and Registration of Transfer of Notes; Restrictions on Transfer; Common Depositary.* (a) The Company shall cause to be kept at the Corporate Trust Office a register (the register maintained in such office or in any other office or agency of the Company

designated pursuant to Section 4.02, the “**Note Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. Such register shall be in written form or in any form capable of being converted into written form within a reasonable period of time. The Bank of New York Mellon SA/NV, Luxembourg Branch is hereby initially appointed the “**Note Registrar**” and “**Transfer Agent**” for the purpose of registering Notes and transfers of Notes as herein provided. The Company may appoint one or more co-Note Registrars in accordance with Section 4.02.

Prior to the Distribution Compliance Period Termination Date, upon surrender for registration of transfer of any Note to the Note Registrar or any co-Note Registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.05(c), the Company shall execute, and the Note Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture. Following the Distribution Compliance Period Termination Date, upon surrender for registration of transfer of any Note to the Note Registrar or any co-Note Registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.05, the Company shall execute, and the Note Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and not bearing the restrictive legends required by the second paragraph of Section 2.05(c).

Prior to the Distribution Compliance Period Termination Date, Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at any such office or agency maintained by the Company pursuant to Section 4.02. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Note Registrar shall authenticate and deliver, the Notes that the Holder making the exchange is entitled to receive, bearing registration numbers not contemporaneously outstanding. Following the Distribution Compliance Period Termination Date, Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount but not bearing the restrictive legend required by the second paragraph of Section 2.05(c), upon surrender of the Notes to be exchanged at any such office or agency maintained by the Company pursuant to Section 4.02. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Note Registrar shall authenticate and deliver, the Notes that the Holder making the exchange is entitled to receive, bearing registration numbers not contemporaneously outstanding.

All Notes presented or surrendered for registration of transfer or for exchange, repurchase or conversion shall (if so required by the Company, the Trustee, the Note Registrar or any co-Note Registrar) be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and duly executed, by the Holder thereof or its attorney-in-fact duly authorized in writing.

No service charge shall be imposed by the Company, the Transfer Agent, the Note Registrar, any co-Note Registrar or the Paying Agent for any exchange or registration of transfer of Notes, but the Company may require a Holder to pay a sum sufficient to cover any

documentary, stamp, issue, transfer or similar tax required in connection therewith as a result of the name of the Holder of new Notes issued upon such exchange or registration of transfer being different from the name of the Holder of the old Notes surrendered for exchange or registration of transfer. The Company shall pay the ADS Depository's fees for issuance of the ADSs.

None of the Company, the Trustee, the Note Registrar or any co-Note Registrar shall be required to exchange or register a transfer of (i) any Notes surrendered for conversion or, if a portion of any Note is surrendered for conversion, such portion thereof surrendered for conversion or (ii) any Notes, or a portion of any Note, surrendered for repurchase (and not withdrawn) in accordance with Article 15.

All Notes issued upon any registration of transfer or exchange of Notes in accordance with this Indenture shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture as the Notes surrendered upon such registration of transfer or exchange.

The Trustee shall have no responsibility or obligation to any direct or indirect participant or any other Person with respect to the accuracy of the books or records, or the acts or omissions, of the Common Depository or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any direct or indirect participant or other Person (other than the Common Depository and any other registered Holder of Notes) of any notice or the payment of any amount, under or with respect to such Notes. All notices and communications to be given to the Holders and all payments to be made to Holders under the Notes shall be given or made only to or upon the order of the registered Holders (which shall be the Common Depository or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through the Common Depository subject to the customary procedures of Euroclear and Clearstream. The Trustee may rely and shall be fully protected in relying upon information furnished by the Common Depository with respect to its direct or indirect participants.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among direct or indirect participants in any Global Note) other than to require delivery of such certificates as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(b) So long as the Notes are eligible for book-entry settlement with Euroclear and Clearstream, unless otherwise required by law, subject to the fourth paragraph from the end of Section 2.05(c) all Notes shall be represented by one or more Notes in global form (each, a "**Global Note**") registered in the name of the Common Depository or its nominee. The transfer and exchange of beneficial interests in a Global Note that does not involve the issuance of a Physical Note shall be effected through the Common Depository in accordance with this Indenture (including the restrictions on transfer set forth herein) and the procedures of Euroclear and Clearstream.

(c) Every Note that bears or is required under this Section 2.05(c) to bear the legend set forth in this Section 2.05(c) shall, until no longer required by this Section 2.05(c), be subject to the restrictions on transfer set forth in this Section 2.05(c) (including the legends set forth below), unless such restrictions on transfer shall be eliminated or otherwise waived by written consent of the Company, and the Holder of each such Note, by such Holder's acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in this Section 2.05(c), the term "transfer" encompasses any sale, pledge, transfer or other disposition whatsoever of any such Note.

Until the date (the "Distribution Compliance Period Termination Date") that is 40 days after the date hereof, any certificate evidencing a Note (and all securities issued in exchange therefor or substitution thereof) shall bear a legend in substantially the following form (unless such Notes have been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or unless otherwise agreed by the Company in writing, with notice thereof to the Trustee):

THIS SECURITY AND THE ORDINARY SHARES REPRESENTED THEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") AND PRIOR TO THE DATE THAT IS 40 DAYS AFTER THE DATE HEREOF, MAY NOT BE OFFERED, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, A U.S. PERSON (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT) EXCEPT PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOTE SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS 40 DAYS AFTER THE DATE HEREOF, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS NOT A U.S. PERSON AND IS LOCATED OUTSIDE THE UNITED STATES (WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT AND THAT IT AND ANY SUCH ACCOUNT IS NOT AN AFFILIATE OF NIO INC. (THE "COMPANY"), AND

(2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE, HYPOTHECATE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS 40 DAYS AFTER THE DATE HEREOF, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) TO A NON-U.S. PERSON IN AN OFFSHORE TRANSACTION MEETING THE REQUIREMENTS OF RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

Any certificate evidencing a Note (and all securities issued in exchange therefor or substitution thereof) shall bear a legend in substantially the following form (unless otherwise agreed by the Company in writing, with notice thereof to the Trustee):

PRIOR TO AUGUST 10, 2020, NO BENEFICIAL OWNER THAT PURCHASED A BENEFICIAL INTEREST IN THIS SECURITY UPON THE ORIGINAL ISSUANCE THEREOF MAY OFFER, SELL, PLEDGE, HYPOTHECATE OR OTHERWISE TRANSFER SUCH BENEFICIAL INTEREST EXCEPT IN ACCORDANCE WITH THE CONVERTIBLE NOTE SUBSCRIPTION AGREEMENT BETWEEN NIO INC. AND THE PURCHASER NAMED THEREIN, DATED FEBRUARY 14, 2020 (THE "SUBSCRIPTION AGREEMENT"). ANY ATTEMPT BY SUCH BENEFICIAL OWNER TO OFFER, SELL, PLEDGE, HYPOTHECATE OR OTHERWISE TRANSFER SUCH BENEFICIAL INTEREST IN VIOLATION OF THIS RESTRICTION SHALL BE VOID.

No transfer of any Note prior to the Distribution Compliance Period Termination Date will be registered by the Note Registrar unless the applicable box on the Form of Assignment and Transfer has been checked.

The Company shall promptly notify the Trustee and the ADS Depository in writing upon the occurrence of the Distribution Compliance Period Termination Date and after a registration statement, if any, with respect to the Notes has been declared effective under the Securities Act.

Notwithstanding any other provisions of this Indenture (other than the provisions set forth in this Section 2.05(c)), a Global Note may not be transferred as a whole or in part except (i) by the Common Depository to a nominee of the Common Depository or by a nominee of the Common Depository to the Common Depository or another nominee of the Common Depository or by the Common Depository or any such nominee to a successor Common Depository or a nominee of such successor Common Depository and (ii) for transfers of portions of a Global Note in certificated form made upon request of a member of, or a participant in, the Common Depository (for itself or on behalf of a beneficial owner) by written notice given to the Trustee by or on behalf of the Common Depository in accordance with customary procedures of Euroclear and Clearstream and in compliance with this Section 2.05(c).

Initially, each Global Note shall be delivered by or on behalf of the Trustee to, and registered in the name of, the Common Depository or its nominee for the accounts of Euroclear and Clearstream.

If (i) the Common Depository notifies the Company at any time that the Common Depository is unwilling or unable to continue as depository for the Global Notes and a successor depository is not appointed within 90 days, (ii) either Euroclear or Clearstream, or a successor clearing system is closed for business for a continuous period of 14 days (other than by reason of holidays, statutory or otherwise) or announces an intention to permanently cease business or does in fact do so, or (iii) an Event of Default with respect to the Notes has occurred and is continuing and a beneficial owner of any Note requests that its beneficial interest therein be issued as a Physical Note, the Company shall execute, and the Note Registrar, upon receipt of an Officers' Certificate and a Company Order for the authentication and delivery of Notes, shall authenticate and deliver (x) in the case of clause (iii), a Physical Note to such beneficial owner in a principal amount equal to the principal amount of such Note corresponding to such beneficial owner's beneficial interest and (y) in the case of clause (i) or (ii), Physical Notes to each beneficial owner of the related Global Notes (or a portion thereof) in an aggregate principal amount equal to the aggregate principal amount of such Global Notes in exchange for such Global Notes, and upon delivery of the Global Notes to the Note Registrar such Global Notes shall be canceled.

Physical Notes issued in exchange for all or a part of the Global Note pursuant to this Section 2.05(c) shall be registered in such names and in such authorized denominations as the Common Depository, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Note Registrar in writing. Upon execution and authentication, the Note Registrar shall deliver such Physical Notes to the Persons in whose names such Physical Notes are so registered.

At such time as all interests in a Global Note have been converted, canceled, repurchased, redeemed or transferred, such Global Note shall be, upon receipt thereof, canceled by the Note Registrar in accordance with standing procedures and existing instructions of the Common Depository. At any time prior to such cancellation, if any interest in a Global Note is exchanged for Physical Notes, converted, canceled, repurchased, redeemed or transferred to a transferee who receives Physical Notes therefor or any Physical Note is exchanged or transferred for part of such Global Note, the principal amount of such Global Note shall, in accordance with the standing procedures and existing instructions of the Common Depository, be appropriately reduced or increased, as the case may be, and an endorsement shall be made on such Global Note, by the Note Registrar, to reflect such reduction or increase.

None of the Company, the Trustee, the Paying Agent, any agent of the Company or any agent of the Trustee shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Note or maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

(d) [RESERVED]

(e) Any Note that is repurchased or owned by any Affiliate of the Company may not be resold by such Affiliate unless registered under the Securities Act or resold pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act in a transaction that results in such Note no longer being a “restricted security” (as defined under Rule 144 under the Securities Act). The Company shall cause any Note that is repurchased or owned by it to be surrendered to the Note Registrar for cancellation in accordance with Section 2.08.

Section 2.06 *Mutilated, Destroyed, Lost or Stolen Notes.* In case any Note shall become mutilated or be destroyed, lost or stolen, the Company in its discretion may execute, and upon receipt of a Company Order, the Note Registrar shall authenticate and deliver, a new Note, bearing a registration number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case the applicant for a substituted Note shall furnish to the Company and to the Note Registrar such security and/or indemnity as may be required by them to save each of them harmless from any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company and to the Note Registrar evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

The Note Registrar may authenticate any such substituted Note and deliver the same upon the receipt of such security and/or indemnity as the Note Registrar and the Company may require. No service charge shall be imposed by the Company, the Transfer Agent, the Note Registrar, any co-Note Registrar or the Paying Agent upon the issuance of any substitute Note, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp, issue, transfer or similar tax required in connection therewith as a result of the name of the Holder of the new substitute Note being different from the name of the Holder of the old Note that became mutilated or was destroyed, lost or stolen. In case any Note that has matured or is about to mature or has been surrendered for repurchase (and not withdrawn) in accordance with Article 15 or is about to be converted in accordance with Article 14 shall become mutilated or be destroyed, lost or stolen, the Company may, in its sole discretion, instead of issuing a substitute Note, pay or authorize the payment of or convert or authorize the conversion of the same (without surrender thereof except in the case of a mutilated Note), as the case may be, if the applicant for such payment or conversion shall furnish to the Company and to the Trustee such security and/or indemnity as may be required by them to save each of them harmless for any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, evidence satisfactory to the Company, and the Trustee evidence of their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

Every substitute Note issued pursuant to the provisions of this Section 2.06 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement, payment,

redemption, conversion or repurchase of mutilated, destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement, payment, redemption, conversion or repurchase of negotiable instruments or other securities without their surrender.

Section 2.07 *Temporary Notes*. Pending the preparation of Physical Notes, the Company may execute and the Note Registrar shall, upon receipt of a Company Order, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the Physical Notes but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be executed by the Company and authenticated by the Note Registrar upon the same conditions and in substantially the same manner, and with the same effect, as the Physical Notes. Without unreasonable delay, the Company shall execute and deliver to the Note Registrar Physical Notes (other than any Global Note) and thereupon any or all temporary Notes (other than any Global Note) may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 4.02 and the Note Registrar shall upon receipt of a Company Order authenticate and deliver in exchange for such temporary Notes an equal aggregate principal amount of Physical Notes. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Notes shall in all respects be entitled to the same benefits and subject to the same limitations under this Indenture as Physical Notes authenticated and delivered hereunder.

Section 2.08 *Cancellation of Notes Paid, Converted, Etc.* The Company shall cause all Notes surrendered for the purpose of payment, repurchase, redemption, registration of transfer or exchange or conversion, if surrendered to any Person other than the Note Registrar (including any of the Company's agents, Subsidiaries or Affiliates), to be delivered and surrendered to the Note Registrar for cancellation. All Notes delivered to the Note Registrar shall be canceled promptly by it, and no Notes shall be authenticated in exchange thereof except as expressly permitted by any of the provisions of this Indenture. The Note Registrar shall dispose of canceled Notes in accordance with its customary procedures and, after such disposition, shall deliver a certificate of such cancellation and disposition to the Company, at the Company's written request in a Company Order.

Section 2.09 *Common Code and ISIN Numbers*. The Company in issuing the Notes may use "Common Code" or "ISIN" numbers (if then generally in use), and, if so, the Trustee shall use "Common Code" or "ISIN" numbers in all notices issued to Holders as a convenience to such Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or on such notice and that reliance may be placed only on the other identification numbers printed on the Notes. The Company shall promptly notify the Trustee in writing of any change in the "Common Code" or "ISIN" numbers.

Section 2.10 [RESERVED]

ARTICLE 3
SATISFACTION AND DISCHARGE

Section 3.01 *Satisfaction and Discharge.* This Indenture shall upon request of the Company contained in an Officers' Certificate cease to be of further effect, and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when (a) (i) all Notes theretofore authenticated and delivered (other than (x) Notes which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.06 and (y) Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 4.04(d)) have been delivered to the Note Registrar for cancellation; or (ii) the Company has deposited with the Paying Agent or delivered to Holders, as applicable, after the Notes have become due and payable, whether on the Maturity Date, any Fundamental Change Repurchase Date, upon conversion or otherwise, cash or cash and ADSs (solely to satisfy the Company's Conversion Obligation, if applicable), sufficient to pay all of the outstanding Notes and all other sums due and payable under this Indenture by the Company; and (b) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with. Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 7.06 shall survive.

ARTICLE 4
PARTICULAR COVENANTS OF THE COMPANY

Section 4.01 *Payment of Principal and Premium.* (a) The Company covenants and agrees that it will cause to be paid the principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) of each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes.

(b) The Company covenants and agrees that it will cause to be paid a premium equal to (i) in the case of any payment of principal to be made on the Maturity Date or pursuant to Section 6.02, 2.0% of the outstanding principal amount of the Notes, or (ii) in the case of any payment of principal to be made on a Fundamental Change Repurchase Date, the aggregate interest that would have accrued on the outstanding principal amount of the Notes to be repurchased (or such portion thereof, as the case may be) over the period starting from (and including) the original date of issuance of the Notes and ending on (and including) the Fundamental Change Repurchase Date, if the Notes were to bear interest at a rate of 2.0% per annum (accruing daily and computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of actual days elapsed in a 30-day month). For the avoidance of doubt, any reference in this Indenture of the Notes in any context to the principal shall be deemed to include, without duplication, the premium contemplated by this Section 4.01(b) to the extent that, in such context, such premium is, was or would be payable pursuant to this Section 4.01(b).

Section 4.02 *Maintenance of Office or Agency*. The Company will maintain in the Borough of Manhattan, The City of New York, an office or agency (which will be the Corporate Trust Office initially) where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase (“**Paying Agent**”) or for conversion (“**Conversion Agent**”) and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office, *provided, however*, that the legal service of process against the Company shall in no circumstance be made at an office or agency of the Trustee.

The Company may also from time to time designate as co-Note Registrars one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan, The City of New York, for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. The terms “**Paying Agent**” and “**Conversion Agent**” include any such additional or other offices or agencies, as applicable.

The Company hereby initially designates (i) The Bank of New York Mellon, London Branch as the Paying Agent and Conversion Agent and the Corporate Trust Office and the office or agency of The Bank of New York Mellon in the Borough of Manhattan, The City of New York, each shall be considered as one such office or agency of the Company for each of the aforesaid purposes; and (ii) The Bank of New York Mellon SA/NV, Luxembourg Branch of Vertigo Building – Polaris, 2-4 rue Eugène Ruppert, L-2453 Luxembourg as the Note Registrar and Transfer Agent.

Section 4.03 *Appointments to Fill Vacancies in Trustee’s Office*. The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 7.09, a trustee, so that there shall at all times be a trustee hereunder.

Section 4.04 *Provisions as to Paying Agent*. (a) If the Company shall appoint a Paying Agent other than the Trustee, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 4.04:

- (i) that it will hold all sums held by it as such agent for the payment of the principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) of the Notes for the benefit of the Holders of the Notes;
- (ii) that it will give the Trustee prompt notice of any failure by the Company to make any payment of the principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) of the Notes when the same shall be due and payable; and

(iii) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held.

The Company shall, on or before each due date of the principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) of the Notes, deposit with the Paying Agent a sum sufficient to pay such principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of any failure to take such action; *provided* that such deposit must be received by the Paying Agent by 10:00 a.m., New York City time, one Business Day prior to the relevant due date. The Paying Agent shall not be bound to make any payment until it has received, in immediately available and cleared funds, an amount which shall be sufficient to pay, as applicable, the aggregate amount of principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) of the Notes when such principal shall become due and payable. The Paying Agent shall not be responsible or liable for any delay in making the payment if it does not receive funds before 10:00 a.m. one Business Day prior to the payment date. The Company shall use reasonable efforts to procure that, before 10:00 a.m., New York City time, on the second Business Day before each payment date, the bank effecting payment for it has confirmed by facsimile to the Paying Agent the payment instructions relating to such payment.

(b) If the Company shall act as its own Paying Agent, it will, on or before each due date of the principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) of the Notes, set aside, segregate and hold in trust for the benefit of the Holders of the Notes a sum sufficient to pay such principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) so becoming due and will promptly notify the Trustee in writing of any failure to take such action and of any failure by the Company to make any payment of the principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) of the Notes when the same shall become due and payable. Upon an Event of Default under Section 6.01(i) or Section 6.01(j) hereof, the Trustee shall automatically become the Paying Agent.

(c) Anything in this Section 4.04 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay, cause to be paid or deliver to the Trustee all sums or amounts held by the Company in trust or by any Paying Agent as required by this Section 4.04, such sums or amounts to be held by the Trustee upon the trusts herein contained and upon such payment or delivery by the Company or any Paying Agent to the Trustee, the Company or such Paying Agent shall be released from all further liability but only with respect to such sums or amounts.

(d) Any money and ADSs deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) of any Note (or, in the case of ADSs, in satisfaction of the Conversion Obligation) and remaining unclaimed for two years after such principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) has become due and payable or such Conversion Obligation has become due shall be paid or delivered, as the case may be, to the Company on request of the

Company contained in an Officers' Certificate, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such money and ADSs, and all liability of the Company as trustee thereof, shall thereupon cease; *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment or delivery, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in The Borough of Manhattan, The City of New York, notice that such money and ADSs remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money and ADSs then remaining will be repaid or delivered to the Company.

Section 4.05 *Existence*. Subject to Article 11, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence. The Company shall promptly provide the Trustee with written notice of any change to its name, jurisdiction of incorporation or change to its corporate organization.

Section 4.06 [RESERVED]

Section 4.07 *Additional Amounts*. (a) All payments and deliveries made by, or on behalf of, the Company or any successor to the Company under or with respect to this Indenture and the Notes, including, but not limited to, payments of principal (including, if applicable, the Fundamental Change Repurchase Price), premium, if any, payments of interest, if any, and deliveries of ADSs or any other consideration due on conversion of a Note (together with payments of cash for any Fractional ADS or other consideration) upon conversion of the Notes, shall be made without withholding, deduction or reduction for any other collection at source for, or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied (including any penalties and interest related thereto) ("**applicable taxes**") by or within any jurisdiction in which the Company or any successor to the Company is, for tax purposes, incorporated, organized or resident or doing business (each, as applicable, a "**Relevant Taxing Jurisdiction**") or through which payment is made or deemed made (together with each Relevant Taxing Jurisdiction, a "**Relevant Jurisdiction**," and in each case, any political subdivision or taxing authority thereof or therein) unless such withholding, deduction or reduction is required by law or by regulation or governmental policy having the force of law. In the event that any such withholding, deduction or reduction is so required, the Company or any successor to the Company shall pay or deliver to each Holder such additional amounts of cash, ADSs or other consideration, as applicable ("**Additional Amounts**") as may be necessary to ensure that the net amount received by the beneficial owner of the Notes after such withholding, deduction or reduction (and after deducting any taxes on the Additional Amounts) shall equal the amounts that would have been received by such beneficial owner had no such withholding, deduction or reduction been required; *provided* that no Additional Amounts shall be payable:

- (i) for or on account of:

(A) any applicable taxes that would not have been imposed but for:

(1) the existence of any present or former connection between the relevant Holder or beneficial owner of such Note and the Relevant Jurisdiction, other than merely acquiring or holding such Note, receiving ADSs (together with the payment of cash for any Fractional ADS) or other consideration upon conversion of such Note or the receipt of payments or the exercise or enforcement of rights thereunder, including, without limitation, such Holder or beneficial owner being or having been a national, domiciliary or resident of such Relevant Jurisdiction or treated as a resident thereof or being or having been physically present or engaged in a trade or business therein or having had a permanent establishment therein;

(2) the presentation of such Note (in cases in which presentation is required) more than 30 days after the later of the date on which the payment of the principal of (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) and interest on, such Note or the delivery of ADSs (together with payment of cash for any Fractional ADS) upon conversion of such Note became due and payable pursuant to the terms thereof or was made or duly provided for;

(3) the failure of the Holder or beneficial owner to comply with a timely written request from the Company or any successor of the Company, addressed to the Holder, to the extent such Holder or beneficial owner is legally entitled, to provide certification, information, documents or other evidence concerning such Holder's or beneficial owner's nationality, residence, identity or connection with the Relevant Taxing Jurisdiction, or to make any declaration or satisfy any other reporting requirement relating to such matters, if and to the extent that due and timely compliance with such request is required by statute, regulation or administrative practice of the Relevant Jurisdiction in order to reduce or eliminate any withholding or deduction as to which Additional Amounts would have otherwise been payable to such Holder or beneficial owner; or

(4) the presentation of such Note (in cases in which presentation is required) for payment in the Relevant Jurisdiction, unless such Note could not have been presented for payment elsewhere;

(B) any estate, inheritance, gift, sale, transfer, personal property or similar applicable tax or any excise or similar taxes imposed with respect to a transfer;

(C) any applicable tax that is payable otherwise than by withholding, deduction or reduction for any other collection at source from payments or deliveries under or with respect to the Notes;

(D) any applicable tax required to be withheld or deducted under Sections 1471 to 1474 of the Code (or any amended or successor versions of such Sections) (“**FATCA**”), any regulations or other official guidance thereunder, any intergovernmental agreement or agreement pursuant to Section 1471(b)(1) of the Code entered into in connection with FATCA, or any law, regulation or other official guidance enacted in any jurisdiction implementing FATCA or an intergovernmental agreement; or

(E) any combination of applicable taxes referred to in the preceding clauses (A), (B), (C) or (D); or

(ii) with respect to any payment of the principal of (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder), and interest on, such Note or the delivery of ADSs (together with payment of cash for any Fractional ADS) upon conversion of such Note to a Holder, if the Holder is a fiduciary, partnership or person other than the sole beneficial owner of that payment to the extent that such payment would be required to be included in the income under the laws of the Relevant Jurisdiction, for tax purposes, of a beneficiary or settlor with respect to the fiduciary, a partner or member of that partnership or a beneficial owner who would not have been entitled to such Additional Amounts had that beneficiary, settlor, partner, member or beneficial owner been the Holder thereof.

(b) If the Company or its successor becomes obligated to pay Additional Amounts with respect to any payment or delivery under or with respect to the Notes, the Company or its successor shall deliver to the Trustee and the Paying Agent, if other than the Trustee, on a date that is at least 30 days prior to the date of that payment or delivery (unless the obligation to pay Additional Amounts arises after the 30th day prior to that payment date, in which case the Company or its successor shall notify the Trustee and the Paying Agent promptly thereafter) an Officers’ Certificate stating the fact that Additional Amounts will be payable and the amount estimated to be so payable. The Officers’ Certificate must also set forth any other information reasonably necessary to enable the Paying Agent or the Conversion Agent, as the case may be, to pay Additional Amounts to Holders on the relevant payment date. The Trustee and the Paying Agent shall be entitled to rely solely on such Officers’ Certificate as conclusive proof that such payments are necessary. The Company or its successor shall provide the Trustee and the Paying Agent with documentation reasonably satisfactory to the Trustee evidencing the payment of Additional Amounts.

(c) The Company or its successor shall make all withholdings and deductions required by law and shall remit the full amount deducted or withheld to the relevant tax authority in accordance with applicable law. Upon request, the Company or its successor shall provide to the Trustee an official receipt or, if official receipts are not obtainable, an Officers’ Certificate evidencing the payment of any applicable taxes so deducted or withheld. Copies of those receipts

or other documentation, as the case may be, shall be made available by the Trustee to the Holders of the Notes upon written request.

(d) Any reference in this Indenture or the Notes in any context to the delivery of ADSs (together with payment of cash for any Fractional ADS) or other consideration upon conversion of any Note or the payment of principal of (including the Fundamental Change Repurchase Price, if applicable) and any premium or interest, if any, on any Note or any other amount payable with respect to such Note, shall be deemed to include payment of Additional Amounts to the extent that, in such context, Additional Amounts are, were or would be payable with respect to that amount pursuant to this Section 4.07.

(e) Notwithstanding any other provisions, the Company or its successor, the Trustee and the Paying Agent shall be entitled to make any withholding or deduction pursuant to FATCA.

(f) If the Company or its successor is required to make any deduction or withholding from any payments or deliveries with respect to the Notes, it will deliver to the Trustee official tax receipts evidencing the remittance to the relevant tax authorities of the amounts so withheld or deducted.

(g) The foregoing obligations shall survive termination or discharge of this Indenture.

Section 4.08 *Stay, Extension and Usury Laws.* The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law that would prohibit or forgive the Company from paying all or any portion of the principal of or interest on the Notes as contemplated herein, wherever enacted, now or at any time hereafter in force, or that may affect the covenants or the performance of this Indenture; and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 4.09 *Compliance Certificate; Statements as to Defaults.* The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 31, 2019) an Officers' Certificate stating that a review has been conducted of the Company's activities under this Indenture and the Company has fulfilled its obligations hereunder, and whether the authorized Officers thereof have knowledge of any Default by the Company that occurred during the previous year that is then continuing and, if so, specifying each such Default and the nature thereof.

In addition, the Company shall deliver to the Trustee, as soon as possible, and in any event within 30 days after the Company becomes aware of the occurrence of any Default if such Default is then continuing, an Officers' Certificate setting forth the details of such Default, its status and the action that the Company is taking or proposing to take in respect thereof. The Trustee shall have no responsibility to take any steps to ascertain whether any Event of Default

or Default has occurred, and until (i) a Responsible Officer of the Trustee has received an Officers' Certificate regarding such an occurrence, or (ii) the Trustee has received written notice at the Corporate Trust Office from the Holders of at least 25% in aggregate principal amount of the Notes then outstanding regarding such an occurrence, the Trustee is entitled to assume, without liability, that no Event of Default or Default has occurred.

Section 4.10 *Further Instruments and Acts*. The Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

ARTICLE 5
LISTS OF HOLDERS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 5.01 *Lists of Holders*. The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee, semi-annually, not more than 15 days after July 26, 2020, and January 26, 2021, and at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably require of the names and addresses of the Holders as of a date not more than 15 days (or such other date as the Trustee may reasonably request in order to so provide any such notices) prior to the time such information is furnished, except that no such list need be furnished so long as the Bank of New York Mellon SA/NV, Luxembourg Branch is acting as Note Registrar.

Section 5.02 *Preservation and Disclosure of Lists*. The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders contained in the most recent list furnished to it as provided in Section 5.01 or maintained by the Trustee in its capacity as Note Registrar, if so acting. The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01 *Events of Default*. The following events shall be "**Events of Default**" with respect to the Notes:

- (a) [RESERVED]
- (b) default in the payment of principal of any Note when due and payable on the Maturity Date, upon any required repurchase, upon declaration of acceleration or otherwise (including, for the avoidance, the Fundamental Change Repurchase Price, if applicable, any premium due to the Holders hereunder and Additional Amounts, if any);
- (c) failure by the Company to comply with its obligation to convert the Notes in accordance with this Indenture upon exercise of a Holder's conversion right and such failure continues for a period of five Business Days;

(d) failure by the Company to issue a Fundamental Change Company Notice in accordance with Section 15.02(c) when due and such failure continues for a period of five Business Days;

(e) failure by the Company to comply with its obligations under Article 11;

(f) failure by the Company for 60 days after written notice from the Trustee or by the Trustee at the request of the Holders of at least 25% in aggregate principal amount of the Notes then outstanding has been received by the Company, or after written notice from the Holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 8.04 has been received by the Company (which notice is to be copied to the Trustee in writing), to comply with any of its other agreements or obligations contained in the Notes or this Indenture;

(g) default by the Company or any Significant Subsidiary of the Company with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of US\$50 million (or the foreign currency equivalent thereof) in the aggregate of the Company and/or any such Significant Subsidiary, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable or (ii) constituting a failure to pay the principal or interest of any such debt when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise;

(h) a final judgment for the payment of US\$50 million (or the foreign currency equivalent thereof) or more (excluding any amounts covered by insurance) rendered against the Company or any Significant Subsidiary of the Company, which judgment is not paid, bonded or otherwise discharged or stayed within 60 days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (ii) the date on which all rights to appeal have been extinguished;

(i) the Company or any Significant Subsidiary shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Company or any such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any such Significant Subsidiary or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due;

(j) an involuntary case or other proceeding shall be commenced against the Company or any Significant Subsidiary seeking liquidation, reorganization or other relief with respect to the Company or such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or such Significant Subsidiary or

any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 30 consecutive days; or

(k) the ADSs (or other Common Equity or ADSs in respect of the Common Equity underlying the Note) have been suspended from trading on any of The New York Stock Exchange, The NASDAQ Global Select market or The NASDAQ Global Market (or any of their respective successors) for a period of ninety (90) consecutive trading days or for more than one hundred and eighty (180) trading days in any twelve (12)-month period.

Section 6.02 Acceleration; Rescission and Annulment. If one or more Events of Default shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), then, and in each and every such case (other than an Event of Default specified in Section 6.01(i) or Section 6.01(j) with respect to the Company or any of its Significant Subsidiaries), unless the principal of all of the Notes shall have already become due and payable, the Trustee may by notice in writing to the Company, or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 8.04, by notice in writing to the Company and to the Trustee may, and the Trustee at the request of such Holders shall (subject to being indemnified and/or secured and/or pre-funded to its satisfaction), declare 100% of the principal of all the Notes to be due and payable immediately, and upon any such declaration the same shall become and shall automatically be immediately due and payable, notwithstanding anything contained in this Indenture or in the Notes to the contrary. If an Event of Default specified in Section 6.01(i) or Section 6.01(j) with respect to the Company or any of its Significant Subsidiaries occurs and is continuing, 100% of the principal of all Notes shall become and shall automatically be immediately due and payable without any action on the part of the Trustee. If an Event of Default occurs and is continuing, all agents of the Company appointed under this Indenture will be required to act on the direction of the Trustee.

The immediately preceding paragraph, however, is subject to the conditions that if, at any time after the principal of the Notes shall have been so declared due and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay the principal of any and all Notes that shall have become due otherwise than by acceleration (with interest on any overdue principal at the rate of three percent per annum) and amounts due to the Trustee pursuant to Section 7.06, and if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (2) any and all existing Events of Default under this Indenture, other than the nonpayment of the principal of Notes that shall have become due solely by such acceleration, shall have been cured or waived pursuant to Section 6.09, then and in every such case (except as provided in the immediately succeeding sentence) the Holders of a majority in aggregate principal amount of the Notes then outstanding, by written notice to the Company and to the Trustee, may waive all Defaults or Events of Default with respect to the Notes and rescind and annul such declaration and its consequences and such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver or rescission and annulment

shall extend to or shall affect any subsequent Default or Event of Default, or shall impair any right consequent thereon. Notwithstanding anything to the contrary herein, no such waiver or rescission and annulment shall extend to or shall affect any Default or Event of Default resulting from (i) the nonpayment of the principal of any Notes, (ii) a failure to repurchase any Notes when required or (iii) a failure to pay or deliver, as the case may be, the consideration due upon conversion of the Notes.

Section 6.03 [RESERVED]

Section 6.04 *Payments of Notes on Default; Suit Therefor.* If an Event of Default described in clause (a) or (b) of Section 6.01 shall have occurred, the Company shall, upon demand of the Trustee acting in its own discretion or at the request of Holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 8.04 and subject to indemnity and/or security and/or pre-funding satisfactory to the Trustee, or upon demand of the Holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 8.04 (which demand is to be in writing, copied to the Trustee in writing), pay to the Trustee, for the benefit of the Holders of the Notes, the whole amount then due and payable on the Notes for principal (including, for the avoidance of doubt, the Fundamental Change Repurchase Price, if applicable and any premium payable hereunder), with interest on any overdue principal at the rate of three percent per annum, and, in addition thereto, such further amount as shall be sufficient to cover any amounts due to the Trustee under Section 7.06. If the Company shall fail to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Notes, wherever situated.

In the event there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Notes under Title 11 of the United States Code, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequester or similar official shall have been appointed for or taken possession of the Company or such other obligor, the property of the Company or such other obligor, or in the event of any other judicial proceedings relative to the Company or such other obligor upon the Notes, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 6.04, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal and accrued and unpaid interest, if any, in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents and to take such other actions as it may deem necessary or advisable in order to have the claims of the Trustee (including any claim for the compensation, properly incurred expenses, properly incurred disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceedings relative to the Company or any

other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due to the Trustee under Section 7.06; and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Holders to make such payments to the Trustee, as administrative expenses, and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for compensation, properly incurred expenses, advances and properly incurred disbursements, including agents and counsel fees and expenses, and including any other amounts due to the Trustee under Section 7.06, incurred by it up to the date of such distribution. To the extent that such payment of compensation, properly incurred expenses, advances and properly incurred disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property that the Holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting such Holder or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name or as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the compensation, properly incurred expenses, properly incurred disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Notes.

In any proceedings brought by the Trustee (and in any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Notes, and it shall not be necessary to make any Holders of the Notes parties to any such proceedings.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of any waiver pursuant to Section 6.09 or any rescission and annulment pursuant to Section 6.02 or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Holders, and the Trustee shall, subject to any determination in such proceeding, be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the Holders, and the Trustee shall continue as though no such proceeding had been instituted.

Section 6.05 *Application of Monies Collected by Trustee.* Any monies collected by the Trustee pursuant to this Article 6 with respect to the Notes shall be applied in the following

order, at the date or dates fixed by the Trustee for the distribution of such monies, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

First, to the payment of all amounts due the Trustee, including to its agents and counsel, under Section 7.06 and any payments due to the Paying Agent, the Transfer Agent, the Conversion Agent and the Note Registrar;

Second, in case the principal of the outstanding Notes shall not have become due and be unpaid, to the payment of interest on the Notes in default in the order of the date due of the payments of such interest, with interest (to the extent that such interest is payable pursuant to the Indenture and has been collected by the Trustee) upon such overdue payments at the rate per annum borne by the Notes at such time (including, without duplication, any additional interest on such overdue payments pursuant to Section 6.04), such payments to be made ratably to the Persons entitled thereto;

Third, in case the principal of the outstanding Notes shall have become due, by declaration or otherwise, and be unpaid to the payment of the whole amount (including, if applicable, the payment of the Fundamental Change Repurchase Price and any cash due upon conversion) then owing and unpaid upon the Notes for principal and interest, if any, with interest on the overdue principal and, to the extent that such interest has been collected by the Trustee, upon overdue installments of interest at the rate of three percent per annum, and in case such monies shall be insufficient to pay in full the whole amounts so due and unpaid upon the Notes, then to the payment of such principal (including, if applicable, the Fundamental Change Repurchase Price, any premium due to the Holders hereunder and the cash due upon conversion) and interest without preference or priority of principal over interest, or of interest over principal or of any installment of interest over any other installment of interest, or of any Note over any other Note, ratably to the aggregate of such principal (including, if applicable, the Fundamental Change Repurchase Price); and

Fourth, to the payment of the remainder, if any, to the Company.

Section 6.06 *Proceedings by Holders*. Except to enforce the right to receive payment of principal (including, if applicable, the Fundamental Change Repurchase Price and premium due to the Holders hereunder) or interest when due, or the right to receive payment or delivery of the consideration due upon conversion, no Holder of any Note shall have any right by virtue of or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, unless:

(a) such Holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as herein provided;

(b) Holders of at least 25% in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder;

(c) such Holders shall have offered to the Trustee such security and/or indemnity and/or pre-funding satisfactory to it against any loss, liability or expense to be incurred therein or thereby;

(d) the Trustee for 30 days after its receipt of such notice, request and offer of security and/or indemnity and/or pre-funding, shall have neglected or refused to institute any such action, suit or proceeding; and

(e) no direction that, in the opinion of the Trustee, is inconsistent with such written request shall have been given to the Trustee by the Holders of a majority of the aggregate principal amount of the Notes then outstanding within such 30-day period pursuant to Section 6.09,

it being understood and intended, and being expressly covenanted by the taker and Holder of every Note with every other taker and Holder and the Trustee that no one or more Holders shall have any right in any manner whatever by virtue of or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other Holder, or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders (except as otherwise provided herein). For the protection and enforcement of this Section 6.06, each and every Holder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision of this Indenture and any provision of any Note, the right of any Holder to receive payment or delivery, as the case may be, of (x) the principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) of, and (y) the consideration due upon conversion of, such Note, on or after the respective due dates expressed or provided for in such Note or in this Indenture, or to institute suit for the enforcement of any such payment or delivery, as the case may be, on or after such respective dates against the Company shall not be impaired or affected without the consent of such Holder.

Section 6.07 *Proceedings by Trustee*. In case of an Event of Default, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as are necessary to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 6.08 *Remedies Cumulative and Continuing*. Except as provided in the last paragraph of Section 2.06, all powers and remedies given by this Article 6 to the Trustee or to

the Holders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the Holders of the Notes, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any Holder of any of the Notes to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Default or Event of Default or any acquiescence therein; and, subject to the provisions of Section 6.06, every power and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders.

Section 6.09 *Direction of Proceedings and Waiver of Defaults by Majority of Holders.* The Holders of a majority of the aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to Notes; *provided, however*, that (a) such direction shall not be in conflict with any rule of law or with this Indenture, and (b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. The Trustee may refuse to follow any direction that would involve the Trustee in personal liability, or if it is not provided with security and/or indemnity and/or pre-funding to its satisfaction, or that the Trustee determines is unduly prejudicial to the rights of any other Holder. In addition, the Trustee will not be required to expend its own funds under any circumstances. The Holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 may on behalf of the Holders of all of the Notes waive any past Default or Event of Default hereunder and its consequences except (i) a default in the payment of the principal (including, if applicable, the Fundamental Change Repurchase Price) of the Notes when due that has not been cured pursuant to the provisions of Section 6.02, (ii) a failure by the Company to pay or deliver, or cause to be delivered, as the case may be, the consideration due upon conversion of the Notes or (iii) a default in respect of a covenant or provision hereof which under Article 10 cannot be modified or amended without the consent of each Holder of an outstanding Note affected. Upon any such waiver the Company, the Trustee and the Holders of the Notes shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. Whenever any Default or Event of Default hereunder shall have been waived as permitted by this Section 6.09, said Default or Event of Default shall for all purposes of the Notes and this Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

Section 6.10 *Notice of Defaults and Events of Default.* If a Default or Event of Default occurs and is continuing and is notified in writing to the Trustee, the Trustee shall, within 90 days after the occurrence and continuance of such Default or Event of Default, mail to all Holders (at the Company's expense) as the names and addresses of such Holders appear upon the Note Register, notice of all Defaults so notified in writing, unless such Defaults shall have been cured or waived before the giving of such notice; *provided* that the Trustee shall not be deemed to have knowledge of any occurrence of a Default or Event unless it has received written notice.

Except in the case of a Default in the payment of the principal of (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) any of the Notes or a Default in the payment or delivery of the consideration due upon conversion, the Trustee shall be protected in withholding such notice if and so long as the Trustee's board of directors, a Responsible Officer, an executive committee or a committee of Responsible Officers of the Trustee (in its sole discretion) in good faith determines that the withholding of such notice is in the interests of the Holders.

Section 6.11 *Undertaking to Pay Costs.* All parties to this Indenture agree, and each Holder of any Note by its acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess costs, including attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided* that the provisions of this Section 6.11 (to the extent permitted by law) shall not apply to any suit instituted by or against the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Notes at the time outstanding determined in accordance with Section 8.04, or to any suit instituted by any Holder for the enforcement of the payment of the principal of any Note (including, but not limited to, the Fundamental Change Repurchase Price with respect to the Notes being repurchased as provided in this Indenture) on or after the due date expressed or provided for in such Note or to any suit for the enforcement of the right to convert any Note in accordance with the provisions of Article 14.

ARTICLE 7 CONCERNING THE TRUSTEE

Section 7.01 *Duties and Responsibilities of Trustee.* The Trustee, prior to the occurrence of an Event of Default and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations will be read into the Indenture against the Trustee. In case an Event of Default, of which the Trustee has actual written notice, has occurred that has not been cured or waived the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs; *provided* that if an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity and/or security and/or pre-funding satisfactory to it against the costs, liabilities or expenses that might be incurred by it in compliance with such request or direction.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct, except that:

(a) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of gross negligence and willful misconduct on the part of the Trustee, as proven in a final decision of a court of competent jurisdiction, the Trustee may conclusively and without liability rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions that by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts, statements, opinions or conclusions stated therein);

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Responsible Officers of the Trustee, unless it shall be proved in a final decision in a court of competent jurisdiction that the Trustee was grossly negligent in ascertaining the pertinent facts;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority of the aggregate principal amount of the Notes at the time outstanding determined as provided in Section 8.04 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(d) whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section;

(e) the Trustee shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any Paying Agent or any records maintained by any co-Note Registrar with respect to the Notes;

(f) if any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively and without liability rely on its failure to receive such notice as reason to act as if no such event occurred;

(g) [RESERVED]

(h) the rights, immunities, privileges, disclaimers from liability and protections (including the right to compensation and indemnity) afforded to the Trustee pursuant to this Article 7 shall also be afforded to such Note Registrar, Paying Agent, Conversion Agent or Transfer Agent;

(i) the Trustee shall have no duty to inquire, no duty to determine and no duty to monitor as to the performance of the Company's covenants in this Indenture or the financial performance of the Company; the Trustee shall be entitled to assume, until it has received written notice in accordance with this Indenture, that the Company is properly performing its duties hereunder;

(j) the Trustee shall be under no obligation to enforce any of the provisions of this Indenture unless it is instructed by Holders of at least 25% of the aggregate principal amount of outstanding Notes and is provided with security and/or indemnity and/or pre-funding satisfactory to it;

(k) the Trustee will be under no obligation to exercise any of its rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity and/or security and/or pre-funding satisfactory to it against any costs, expenses and liabilities that might be incurred by it in compliance with such requests or direction.

(l) before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel prepared and delivered at the cost of the Company conforming to Section 17.06 and the Trustee and the Agents may rely conclusively on such certificate or opinion and will not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel;

(m) in connection with the exercise by it of its trusts, powers, authorities or discretions (including, without limitation, any modification, waiver, authorization or determination), the Trustee shall have regard to the general interests of the Holders as a class but shall not have regard to any interests arising from circumstances particular to individual Holders (whatever their number) and in particular, but without limitation, shall not have regard to the consequences of the exercise of its trusts, powers, authorities or discretions for individual Holders (whatever their number) resulting from their being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any country, state or territory; and

(n) the Trustee is not obliged to do or omit to do anything which in its reasonable opinion, would or may be illegal or would constitute a breach of any fiduciary duty or duty of confidentiality, or any law, rule, regulation, or any decree, order or judgment of any court, or practice, request, direction, notice, announcement or similar action (whether or not having the force of law) of any relevant government, government agency, regulatory authority, stock exchange or self-regulatory organization to which the Trustee is subject. The Trustee may

without liability to do anything which is, in its reasonable opinion, necessary to comply with any such law, directive or regulations.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

Section 7.02 *Reliance on Documents, Opinions, Etc.* Except as otherwise provided in Section 7.01:

- (a) the Trustee may conclusively and without liability rely and shall be fully protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, Note, coupon or other paper or document (whether in its original or facsimile form) believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;
- (b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officers' Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;
- (c) the Trustee may consult with counsel and require an Opinion of Counsel and any advice of such counsel or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;
- (d) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation;
- (e) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, delegates, custodians, nominees or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, delegate, representative, custodian, nominee or attorney appointed by it with due care hereunder;
- (f) the permissive rights of the Trustee enumerated herein shall not be construed as duties;
- (g) under no circumstances and notwithstanding any contrary provision included herein, neither the Trustee, the Paying Agent, the Conversion Agent nor the Note Registrar shall be responsible or liable for special, indirect, punitive, or consequential damages or loss of any

kind whatsoever (including, but not limited to, loss of profit) irrespective of whether any of them have been advised of the likelihood of such loss or damage and regardless of the form of action; this provision shall remain in full force and effect notwithstanding the discharge of the Notes, the termination of this Indenture or the resignation, replacement or removal of the Trustee, the Paying Agent, the Conversion Agent and the Note Registrar;

(h) the Trustee, the Paying Agent, the Conversion Agent and the Note Registrar may refrain from taking any action in any jurisdiction if the taking of such action in that jurisdiction would, in its opinion based upon legal advice in the relevant jurisdiction, be contrary to any law of that jurisdiction or, to the extent applicable, of New York; furthermore, the Trustee may also refrain from taking such action if it would otherwise render it liable to any person in that jurisdiction or New York or if, in its opinion based on such legal advice, it would not have the power to do the relevant thing in that jurisdiction by virtue of any applicable law in that jurisdiction or in New York or if it is determined by any court or other competent authority in that jurisdiction that it does not have such power;

(i) the Company understands that The Bank of New York Mellon Corporation is a global financial organization that operates in and provides services and products to clients through its affiliates, branches, representative offices and/or subsidiaries located in multiple jurisdictions (collectively, the “**BNY Mellon Group**” and each a “**BNY Mellon Entity**”). The BNY Mellon Group may: (i) use and/or centralize in one or more BNY Mellon Entity in connection with its performance of the functions, duties and services provided and any other obligations under this Indenture and/or the Notes and in certain other activities (the “**Centralized Functions**”), including, without limitation, audit, accounting, tax, administration, risk management, credit, legal, compliance, operation, sales and marketing, product communication, relationship management, information technology, records and data storage, performance measurement, data aggregation and the compilation and analysis of information and data regarding the Company (which, for purposes of this sub-Section 7.02(i), includes the name and business contact information for the employees and representatives of the Company and any personal data) and the accounts established pursuant to the transactions contemplated in this Indenture and/or the Notes (“**Client Information**”); and (ii) use third party service providers to store, maintain and process Client Information (“**Outsourced Functions**”). Notwithstanding anything to the contrary contained elsewhere in this Indenture and/or the Notes and solely in connection with the Centralized Functions and/or Outsourced Functions, the Company consents to the: (i) collection, use and storage of, and authorizes the BNY Mellon Group to collect, use and store, Client Information within and outside of any jurisdiction, including without limitation Australia, the European Economic Area, Hong Kong, the PRC, Japan, Singapore, India, the British Virgin Islands and the United States of America; and (ii) disclosure of, and authorizes the BNY Mellon Group to disclose, Client Information to: (A) any other BNY Mellon Entity (and their respective officers, directors and employees); and (B) third-party service providers (but solely in connection with Outsourced Functions) who are required to maintain the confidentiality of Client Information. In addition, the BNY Mellon Group may aggregate Client Information with other data collected and/or calculated by the BNY Mellon Group, and the BNY Mellon Group will own all such aggregated data, provided that the BNY Mellon Group shall not distribute the aggregated data in a format that identifies Client Information with the Company specifically. The Company represents to the BNY Mellon Group that it is authorized to consent

to the foregoing and that the disclosure of Client Information in connection with the Centralized Functions and/or Outsourced Functions does not violate any relevant data protection legislation. The Company also consents to the disclosure of Client Information to governmental, tax, regulatory, law enforcement and other authorities in jurisdictions where the BNY Mellon Group operates and otherwise as required by law, rule, or guideline (including any tax and swap trade data reporting regulations);

(j) the Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder;

(k) the Trustee may request that the Company deliver Officers' Certificates setting forth the names of individuals and their titles and specimen signatures of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificates may be signed by any Person authorized to sign an Officers' Certificate, as the case may be, including any Person specified as so authorized in any such certificate previously delivered and not superseded;

(l) the Trustee shall not be responsible or liable for any action it takes or omits to take in good faith which it reasonably believes to be authorized or within its rights or powers;

(m) the Trustee shall not be responsible or liable for any action taken or omitted by it in good faith at the direction, in accordance with Section 6.09, of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 as to the time, method and place of conducting any proceeding for any remedy available to the Trustee or the exercising of any power conferred by this Indenture; and

(n) the Trustee shall not be responsible or any inaccuracy in the information obtained from the Company or for any inaccuracy or omission in the records which may result from such information or any failure by the Trustee to perform its duties as set forth herein as a result of any inaccuracy or incompleteness of such information.

Section 7.03 *No Responsibility for Recitals, Etc.* The recitals, statements, warranties and representations contained herein and in the Notes (except in the Note Registrar's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the accuracy or correctness of the same or for any failure by the Company or any other party to disclose events that may have occurred and may affect the significance or accuracy of such information, or the execution, legality, effectiveness, adequacy, genuineness, validity, enforceability or admissibility in evidence of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Note Registrar in conformity with the provisions of this Indenture. Notwithstanding the generality of the foregoing, each Holder shall be solely responsible for making its own independent appraisal of, and investigation into, the financial condition, creditworthiness, condition, affairs, status and nature of the Company, and the Trustee

shall not at any time have any responsibility for the same and each Holder shall not rely on the Trustee in respect thereof.

Section 7.04 *Trustee, Paying Agents, Conversion Agents or Note Registrar May Own Notes.* The Trustee, any Paying Agent, any Conversion Agent or Note Registrar, in its individual or any other capacity, may engage in business and contractual relationships with the Company or its Affiliates and may become the owner or pledgee of Notes with the same rights it would have if it were not the Trustee, Paying Agent, Conversion Agent or Note Registrar, and nothing herein shall obligate any of them to account for any profits earned from any business or transactional relationship.

Section 7.05 *Monies to Be Held in Trust.* All monies received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money held by the Trustee in trust or by the Paying Agent hereunder need not be segregated from other funds except to the extent required by law. Neither the Trustee nor the Paying Agent shall be under any liability for interest on any money received by it hereunder.

Section 7.06 *Compensation and Expenses of Trustee.* (a) The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as mutually agreed to in writing between the Trustee and the Company (which sum shall be paid free and clear of deduction and withholding on account of taxation, set-off and counterclaim), and the Company will pay or reimburse the Trustee upon its request for all properly incurred expenses, disbursements and advances properly incurred or made by the Trustee in accordance with any of the provisions of this Indenture in any capacity thereunder (including the compensation and the properly incurred expenses and disbursements of its agents and counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as shall have been caused by its gross negligence or willful misconduct as proven in a final decision in a court of competent jurisdiction. The Company also covenants to indemnify the Trustee (which for the purposes of this Section 7.06 shall be deemed to include its officers, directors, agents and employees) in any capacity under this Indenture (including without limitation as Note Registrar, Transfer Agent, Conversion Agent and Paying Agent) and any other document or transaction entered into in connection herewith, and to hold it harmless against, any loss, claim, damage, liability or expense (whether arising from third party claims or claims by or against the Company) incurred without gross negligence or willful misconduct on the part of the Trustee, its officers, directors, agents or employees, as the case may be, as proven in a final decision of a court of competent jurisdiction, and arising out of or in connection with the acceptance or administration of this Indenture or in any other capacity hereunder, including the costs and expenses of defending themselves against any claim of liability in the process of enforcing this indemnity. The obligations of the Company under this Section 7.06 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall be secured by a senior claim to which the Notes are hereby made subordinate on all money or property held or collected by the Trustee, except, subject to the effect of Section 6.05, funds held in trust herewith for the benefit of the Holders of particular Notes. The Trustee's right to receive payment of any amounts due under this Section 7.06 shall not be subordinate to any other

liability or indebtedness of the Company. The indemnity under this Section 7.06(a) is payable upon demand by the Trustee. The obligation of the Company under this Section 7.06(a) shall survive the satisfaction and discharge of the Notes, the termination or discharge of this Indenture and the resignation, replacement or removal of the Trustee. The indemnification provided in this Section 7.06(a) shall extend to the officers, directors, agents and employees of the Trustee. Subject to Section 7.02(e), any negligence or misconduct of any agent, delegate, attorney or representative, in each case, of the Trustee, shall not affect indemnification of the Trustee.

Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee and its agents incur expenses or render services after an Event of Default specified in Section 6.01(i) or Section 6.01(j) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency or similar laws. If a Default or Event of Default shall have occurred or if the Trustee finds it expedient or necessary or is requested by the Company and/or the Holders to undertake duties which are of an exceptional nature or otherwise outside the scope of the Trustee's normal duties under this Indenture, the Company will pay such additional remuneration as the Company and the Trustee may separately agree in writing.

(b) The Paying Agent, the Conversion Agent and the Note Registrar shall be entitled to the compensation to be agreed upon in writing with the Company for all services rendered by it under this Indenture, and the Company agrees promptly to pay such compensation and to reimburse the Paying Agent, the Conversion Agent and the Note Registrar for its out-of-pocket expenses (including fees and expenses of counsel) properly incurred by it in connection with the services rendered by it under this Indenture. The Company hereby agrees to indemnify the Paying Agent, the Conversion Agent and the Note Registrar and their respective officers, directors, agents and employees and any successors thereto for, and to hold it harmless against, any loss, liability or expense (including fees and expenses of counsel) properly incurred without gross negligence or willful misconduct on its part arising out of or in connection with its acting as the Paying Agent, the Conversion Agent and the Note Registrar hereunder. The obligations of the Company under this paragraph (b) shall survive the payment of the Notes, the termination or discharge of the Indenture and the resignation, replacement or removal of the Paying Agent, the Conversion Agent and the Note Registrar.

Section 7.07 *Officers' Certificate as Evidence.* Except as otherwise provided in Section 7.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee, and such Officers' Certificate shall be full warrant to the Trustee for any action taken or omitted by it under the provisions of this Indenture upon the faith thereof.

Section 7.08 *Eligibility of Trustee.* There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least US\$50,000,000. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of

such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 7.09 *Resignation or Removal of Trustee.* (a) The Trustee may at any time resign by giving 60 days written notice of such resignation to the Company and by mailing notice thereof to the Holders at their addresses as they shall appear on the Note Register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 30 days after the mailing of such notice of resignation to the Holders, the resigning Trustee may appoint a successor trustee on behalf of and at the expense of the Company or it may at the expense of the Company petition any court of competent jurisdiction for the appointment of a successor trustee, or any Holder who has been a bona fide holder of a Note or Notes for at least six months may, subject to the provisions of Section 6.11, on behalf of himself or herself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(i) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.08 and shall fail to resign after written request therefor by the Company or by any such Holder, or

(ii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in either case, the Company may by a Board Resolution remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.11, any Holder who has been a bona fide holder of a Note or Notes for at least six months may, on behalf of himself or herself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The Holders of a majority in aggregate principal amount of the Notes at the time outstanding, as determined in accordance with Section 8.04, may at any time remove the Trustee and nominate a successor trustee that shall be deemed appointed as successor trustee unless within ten days after notice to the Company of such nomination the Company objects thereto, in

which case the Trustee so removed or any Holder, upon the terms and conditions and otherwise as in Section 7.09(a) provided, may petition any court of competent jurisdiction for an appointment of a successor trustee.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 7.09 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.10.

Section 7.10 *Acceptance by Successor Trustee.* Any successor trustee appointed as provided in Section 7.09 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amounts then due to it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a senior claim to which the Notes are hereby made subordinate on all money or property held or collected by such trustee as such, except for funds held in trust for the benefit of Holders of particular Notes, to secure any amounts then due to it pursuant to the provisions of Section 7.06.

No successor trustee shall accept appointment as provided in this Section 7.10 unless at the time of such acceptance such successor trustee shall be eligible under the provisions of Section 7.08.

Upon acceptance of appointment by a successor trustee as provided in this Section 7.10, each of the Company and the successor trustee, at the written direction and at the expense of the Company shall mail or cause to be mailed notice of the succession of such trustee hereunder to the Holders at their addresses as they shall appear on the Note Register. If the Company fails to mail such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Company.

Section 7.11 *Succession by Merger; Etc.* Any corporation or other entity into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee (including the administration of this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto; *provided* that in the case of any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee such corporation or other entity shall be eligible under the provisions of Section 7.08.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor note registrar, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Note Registrar may authenticate such Notes either in the name of any predecessor trustee hereunder or in the name of the successor trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificate of the Note Registrar shall have; *provided, however*, that the right to adopt the certificate of authentication of any predecessor note registrar or to authenticate Notes in the name of any predecessor trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 7.12 *Trustee's Application for Instructions from the Company.* Any application by the Trustee for written instructions from the Company (other than with regard to any action proposed to be taken or omitted to be taken by the Trustee that affects the rights of the Holders of the Notes under this Indenture) may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three Business Days after the date any officer that the Company has indicated to the Trustee should receive such application actually receives such application, unless any such officer shall have consented in writing to any earlier date), unless, prior to taking any such action (or the effective date in the case of any omission), the Trustee shall have received written instructions in accordance with this Indenture in response to such application specifying the action to be taken or omitted.

ARTICLE 8 CONCERNING THE HOLDERS

Section 8.01 *Action by Holders.* Whenever in this Indenture it is provided that the Holders of a specified percentage of the aggregate principal amount of the Notes may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the Holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Holders in person or by agent or proxy appointed in writing, or (b) by the record of the Holders voting in favor thereof at any meeting of Holders duly called and held in accordance with the provisions of Article 9, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Holders. Whenever the Company or the Trustee solicits the taking of any action by the Holders of the Notes, the Company or the Trustee may fix, but shall not be required to, in advance of such solicitation, a date as the record date for determining Holders entitled to take such action. The record date if one is selected shall be not more than fifteen days prior to the date of commencement of solicitation of such action.

Section 8.02 *Proof of Execution by Holders.* Subject to the provisions of Section 7.01, Section 7.02 and Section 9.05, proof of the execution of any instrument by a Holder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the Note Register or by a certificate of the Note Registrar. The record of any Holders' meeting shall be proved in the manner provided in Section 9.06.

Section 8.03 *Who Are Deemed Absolute Owners.* The Company, the Trustee, any Paying Agent, any Conversion Agent and any Note Registrar may deem the Person in whose name a Note shall be registered upon the Note Register to be, and may treat it as, the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Company or any Note Registrar) for the purpose of receiving payment of or on account of the principal of (subject to Section 2.03) such Note, for the purpose of conversion of such Note and for all other purposes; and neither the Company nor the Trustee nor any Paying Agent nor any Conversion Agent nor any Note Registrar shall be affected by any notice to the contrary. All such payments or deliveries so made to any Holder for the time being, or upon its order, shall be valid, and, to the extent of the sums or ADSs so paid or delivered, effectual to satisfy and discharge the liability for monies payable or ADSs deliverable upon any such Note. Notwithstanding anything to the contrary in this Indenture or the Notes following an Event of Default, any Holder of a beneficial interest in a Global Note may directly enforce against the Company, without the consent, solicitation, proxy, authorization or any other action of the Common Depositary or any other Person, such Holder's right to exchange such beneficial interest for a Note in certificated form in accordance with the provisions of this Indenture and such Holder's rights under Article 6 of this Indenture.

Section 8.04 *Company-Owned Notes Disregarded.* In determining whether the Holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, Notes that are owned by the Company, by any Subsidiary or Consolidated Affiliated Entity thereof or by any Affiliate of the Company or any Subsidiary or Consolidated Affiliated Entity thereof shall be disregarded and deemed not to be outstanding for the purpose of any such determination; *provided* that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent, waiver or other action only Notes in respect of which a Responsible Officer is notified in writing shall be so disregarded. Notes so owned that have been pledged in good faith may be regarded as outstanding for the purposes of this Section 8.04 if the pledgee shall establish its right to so act with respect to such Notes and that the pledgee is not the Company, a Subsidiary or Consolidated Affiliated Entity thereof or an Affiliate of the Company or a Subsidiary or Consolidated Affiliated Entity thereof. Within five days of acquisition of the Notes by any of the above described persons or entities or at the request of the Trustee, the Company shall furnish to the Trustee promptly an Officers' Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of any of the above described Persons; and, subject to Section 7.01, the Trustee shall be entitled to accept such Officers' Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

Section 8.05 *Revocation of Consents; Future Holders Bound.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the Holders of the percentage of the aggregate principal amount of the Notes specified in this Indenture in connection with such action, any Holder of a Note that is shown by the evidence to be included in the Notes the Holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Note. Except as aforesaid, any such action taken by the Holder of any Note shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Note and of any Notes issued in exchange or substitution therefor or upon registration of transfer thereof, irrespective of whether any notation in regard thereto is made upon such Note or any Note issued in exchange or substitution therefor or upon registration of transfer thereof.

ARTICLE 9 HOLDERS' MEETINGS

Section 9.01 *Purpose of Meetings.* A meeting of Holders may be called at any time and from time to time pursuant to the provisions of this Article 9 for any of the following purposes:

- (a) to give any notice to the Company or to the Trustee or to give any directions to the Trustee permitted under this Indenture, or to consent to the waiving of any Default or Event of Default hereunder and its consequences, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of Article 6;
- (b) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article 7;
- (c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 10.02; or
- (d) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Notes under any other provision of this Indenture or under applicable law.

Section 9.02 *Call of Meetings by Trustee.* The Trustee may (in its sole discretion and without obligation) at any time call a meeting of Holders to take any action specified in Section 9.01, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Holders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting and the establishment of any record date pursuant to Section 8.01, shall be mailed to Holders of such Notes at their addresses as they shall appear on the Note Register. Such notice shall also be mailed to the Company. Such notices shall be mailed not less than 20 nor more than 90 days prior to the date fixed for the meeting.

Any meeting of Holders shall be valid without notice if the Holders of all Notes then outstanding are present in person or by proxy or if notice is waived before or after the meeting by

the Holders of all Notes then outstanding, and if the Company and the Trustee are either present by duly authorized representatives or have, before or after the meeting, waived notice.

Section 9.03 *Call of Meetings by Company or Holders.* In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% of the aggregate principal amount of the Notes then outstanding, shall have requested the Company to call a meeting of Holders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Company shall not have mailed the notice of such meeting within 20 days after receipt of such request, then the Trustee or such Holders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 9.01, by mailing notice thereof as provided in Section 9.02.

Section 9.04 *Qualifications for Voting.* To be entitled to vote at any meeting of Holders a Person shall (a) be a Holder of one or more Notes on the record date pertaining to such meeting or (b) be a Person appointed by an instrument in writing as proxy by a Holder of one or more Notes on the record date pertaining to such meeting. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 9.05 *Regulations.* Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders, in regard to proof of the holding of Notes and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders as provided in Section 9.03, in which case the Company or the Holders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Holders of a majority in principal amount of the Notes represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of Section 8.04, at any meeting of Holders each Holder or proxyholder shall be entitled to one vote for each US\$1,000 principal amount of Notes held or represented by him or her; *provided, however,* that no vote shall be cast or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Notes held by it or instruments in writing as aforesaid duly designating it as the proxy to vote on behalf of other Holders. Any meeting of Holders duly called pursuant to the provisions of Section 9.02 or Section 9.03 may be adjourned from time to time by the Holders of a majority of the aggregate principal amount of Notes represented at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Minutes shall be made of all resolutions and proceedings at every meeting and, if purporting to be signed by the chairman of that meeting or of the next succeeding meeting of Holders of the Notes, shall be conclusive evidence of the matters in them. Until the contrary is proved every meeting for which minutes have been so made and signed shall be deemed to have been duly convened and held and all resolutions passed or proceedings transacted at it to have been duly passed and transacted.

Section 9.06 *Voting*. The vote upon any resolution submitted to any meeting of Holders shall be by written ballot on which shall be subscribed the signatures of the Holders or of their representatives by proxy and the outstanding principal amount of the Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Section 9.02. The record shall show the principal amount of the Notes voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 9.07 *No Delay of Rights by Meeting*. Nothing contained in this Article 9 shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Holders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders under any of the provisions of this Indenture or of the Notes.

ARTICLE 10 SUPPLEMENTAL INDENTURES

Section 10.01 *Supplemental Indentures Without Consent of Holders*. The Company, when authorized by the resolutions of the Board of Directors, and the Trustee, at the Company's expense and direction, may from time to time and at any time amend or supplement this Indenture or the Notes for one or more of the following purposes:

- (a) to cure any ambiguity, omission, defect or inconsistency;
- (b) to provide for the assumption by a Successor Company of the obligations of the Company under this Indenture and the Notes pursuant to Article 11;
- (c) to add guarantees with respect to the Notes;

- (d) to secure the Notes;
- (e) to add to the covenants or Events of Defaults of the Company for the benefit of the Holders or surrender any right or power conferred upon the Company;
- (f) upon the occurrence of any transaction or event described in Section 14.07(a), to (i) provide that the Notes are convertible into Reference Property, subject to Section 14.02, and (ii) effect the related changes to the terms of the Notes described under Section 14.07(a), in each case, in accordance with Section 14.07;
- (g) to make any change that does not adversely affect the rights of any Holder; or
- (h) comply with the rules of the Euroclear and Clearstream.

Upon the written request of the Company, the Trustee is hereby authorized to join with the Company in the execution of any such amendment or supplement to this Indenture or the Notes, to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to, but may in its discretion, enter into any supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. The Trustee shall seek an Officers' Certificate and an Opinion of Counsel, at the Company's expense, that any such amendment or supplement to this Indenture or the Notes is authorized and permitted by the terms of this Indenture and not contrary to law.

Any amendment or supplement to this Indenture or the Notes authorized by the provisions of this Section 10.01 may be executed by the Company and the Trustee without the consent of the Holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 10.02.

Section 10.02 *Supplemental Indentures with Consent of Holders.* With the consent (evidenced as provided in Article 8) of the Holders of at least a majority of the aggregate principal amount of the Notes then outstanding (determined in accordance with Article 8 and including, without limitation, consents obtained in connection with a repurchase of, or tender or exchange offer for, Notes), the Company, when authorized by the resolutions of the Board of Directors, and the Trustee, at the Company's expense, may from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or any supplemental indenture or of modifying in any manner the rights of the Holders; *provided, however,* that, without the consent of each Holder of an outstanding Note affected, no such supplemental indenture shall:

- (a) reduce the amount of Notes whose Holders must consent to an amendment or waiver;
- (b) reduce the rate of or extend the stated time for payment of interest on any Note;
- (c) reduce the principal of or extend the Maturity Date of any Note;

- (d) make any change that adversely affects the conversion rights of any Notes;
- (e) reduce the Fundamental Change Repurchase Price of any Note or amend or modify in any manner adverse to the Holders the Company's obligation to make such payments, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;
- (f) make any Note payable in a currency other than U.S. dollars;
- (g) change the ranking of the Notes;
- (h) impair the right of any Holder to receive payment of principal and interest (if any) on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Note;
- (i) change the Company's obligation to pay Additional Amounts on any Note; or
- (j) make any change in this Article 10 that requires each Holder's consent or in the waiver provisions in Section 6.02 or Section 6.09.

Upon the written request of the Company, and upon the filing with the Trustee of evidence of the consent of Holders as aforesaid and subject to Section 10.05, the Trustee shall join with the Company in the execution of such supplemental indenture unless (i) the Trustee has not received an Officers' Certificate and an Opinion of Counsel that such supplemental indenture is authorized and permitted by the terms of this Indenture and not contrary to law or (ii) such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

Holders do not need under this Section 10.02 to approve the particular form of any proposed supplemental indenture. It shall be sufficient if such Holders approve the substance thereof. After any supplemental indenture becomes effective under Section 10.01 or Section 10.02, the Company shall mail to the Holders a notice briefly describing such supplemental indenture. However, the failure to give such notice to all the Holders, or any defect in the notice, will not impair or affect the validity of the supplemental indenture.

Section 10.03 *Effect of Supplemental Indentures*. Upon the execution of any supplemental indenture pursuant to the provisions of this Article 10, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the Holders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 10.04 *Notation on Notes*. Notes authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 10 may, at the

Company's expense, bear a notation in form approved by the Note Registrar as to any matter provided for in such supplemental indenture. If the Company or the Trustee shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may, at the Company's expense, be prepared and executed by the Company, authenticated by the Note Registrar upon receipt of a Company Order and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 10.05 *Evidence of Compliance of Supplemental Indenture to Be Furnished Trustee.* In addition to the documents required by Section 17.06, the Trustee shall receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article 10 and is permitted or authorized by this Indenture and is not contrary to law.

ARTICLE 11
CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

Section 11.01 *Company May Consolidate, Etc. on Certain Terms.* Subject to the provisions of Section 11.02, the Company shall not consolidate with, merge with or into, or sell, convey, transfer or lease all or substantially all of the consolidated assets of the Company, its Subsidiaries and its Consolidated Affiliated Entities, taken as a whole, to another Person, unless:

- (a) the resulting, surviving or transferee Person (the "**Successor Company**"), if not the Company, shall be a corporation organized and existing under the laws of the Cayman Islands, the British Virgin Islands, Bermuda or Hong Kong and the Successor Company (if not the Company) shall expressly assume, by supplemental indenture all of the obligations of the Company under the Notes and this Indenture (including, for the avoidance of doubt, the obligation to pay Additional Amounts pursuant to Section 4.07);
- (b) if the Company will not be the resulting or surviving corporation, the Company shall have, at or prior to the effective date of such transaction, delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that the execution and delivery of the supplemental indenture do not conflict with the requirements set forth in the Indenture and that all conditions precedent to the execution and delivery of such supplemental indenture have been satisfied; and
- (c) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing under this Indenture.

For purposes of this Section 11.01, the sale, conveyance, transfer or lease of all or substantially all of the assets of one or more Subsidiaries or Consolidated Affiliated Entities of the Company to another Person, which properties and assets, if held by the Company instead of such Subsidiaries or Consolidated Affiliated Entities, would constitute all or substantially all of the assets of the Company on a consolidated basis, shall be deemed to be the sale, conveyance, transfer or lease of all or substantially all of the consolidated assets of the Company to another Person.

Section 11.02 *Successor Corporation to Be Substituted*. In case of any such consolidation, merger, sale, conveyance, transfer or lease and upon the assumption by the Successor Company, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of all of the Notes (including, for the avoidance of doubt, any Additional Amounts), the due and punctual delivery or payment, as the case may be, of any consideration due upon conversion of the Notes (including, for the avoidance of doubt, any Additional Amounts) and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Company, such Successor Company (if not the Company) shall succeed to and, except in the case of a lease of all or substantially all of the Company's properties and assets, shall be substituted for the Company, with the same effect as if it had been named herein as the party of the first part. Such Successor Company thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Note Registrar; and, upon the order of such Successor Company instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Note Registrar shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the Officers of the Company to the Note Registrar for authentication, and any Notes that such Successor Company thereafter shall cause to be signed and delivered to the Note Registrar for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any such consolidation, merger, sale, conveyance or transfer (but not in the case of a lease), upon compliance with this Article 11 the Person named as the "Company" in the first paragraph of this Indenture (or any successor that shall thereafter have become such in the manner prescribed in this Article 11) may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture and the Notes.

In case of any such consolidation, merger, sale, conveyance, transfer or lease, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

Section 11.03 *Opinion of Counsel to Be Given to Trustee*. No consolidation, merger, sale, conveyance, transfer or lease shall be effective unless the Trustee shall receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale, conveyance, transfer or lease and any such assumption and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, complies with the provisions of this Article 11, that all conditions precedent thereto have been satisfied and that the Notes and such supplemental indenture are the legal, valid and binding obligations of the Successor Company, enforceable against it in accordance with its terms, subject to customary assumptions, qualifications, and exceptions.

ARTICLE 12
IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 12.01 *Indenture and Notes Solely Corporate Obligations*. No recourse for the payment of the principal of any Note, nor for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture or in any Note, nor because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, Officer or director or Subsidiary, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Notes.

ARTICLE 13
INTENTIONALLY OMITTED

ARTICLE 14
CONVERSION OF NOTES

Section 14.01 *Conversion Privilege*. Subject to and upon compliance with the provisions of this Article 14, each Holder of a Note shall have the right, at such Holder's option, (a) to convert all or any Specified Portion of the principal amount of such Note at any time on or after August 10, 2020 and prior to the close of business on the second Business Day immediately preceding the Maturity Date into ADSs at an initial conversion rate of 325.733 ADSs (subject to adjustment as provided in this Article 14, the "**Conversion Rate**") per US\$1,000 principal amount of Notes, or (b) to convert all or any Specified Portion of the principal amount of such Note at any time on or after the completion date of any Qualified Equity Financing and prior to the close of business on the tenth (10th) day immediately following the completion of such Qualified Equity Financing into ADSs at Qualified Equity Financing Conversion Rate per US\$1,000 principal amount of Notes (in each case, subject to the settlement provisions of Section 14.02, the "**Conversion Obligation**"), *provided* that no Holder or beneficial owner of a Note shall have the right to receive ADSs on or prior to the Distribution Compliance Period Termination Date and *further provided* that if a Holder or a beneficial owner is prevented from receiving any ADSs to which it would otherwise be entitled pursuant to this Section 14.01, the Company's obligation to deliver such ADSs shall not be extinguished, and the Company shall deliver such ADSs within one Business Day following the occurrence of the Distribution Compliance Period Termination Date in accordance with the last sentence of Section 14.02(c).

Section 14.02 *Conversion Procedure; Settlement Upon Conversion*.

(a) Upon conversion of any Note, the Company shall cause to be delivered to the converting Holder, in respect of each US\$1,000 principal amount of Notes being converted, a number of ADSs equal to the Conversion Rate or Qualified Equity Financing Conversion Rate (as the case may be) in effect immediately prior to the close of business on the relevant

Conversion Date or the Qualified Equity Financing Conversion Date (as the case may be), together with a cash payment, if applicable, in lieu of any fractional ADSs (“**Fractional ADSs**”) (assuming delivery of the maximum number of ADSs due upon conversion that do not represent a fractional ADS) in accordance with subsection (j) of this Section 14.02, on the third Business Day immediately following the relevant Conversion Date or the Qualified Equity Financing Conversion Date (as the case may be); *provided* that, if a Conversion Date occurs after the Ordinary Shares have been replaced by the Reference Property consisting solely of cash in accordance with Section 14.07, the Company shall cause the consideration due in respect of the conversion to be paid to the converting Holder on the tenth Business Day immediately following the related Conversion Date. For the avoidance of doubt, neither the Trustee nor any Agent shall have any responsibility to deliver ADSs upon conversion of any Note to any person or deal with cash payments in relation to conversions, except for cash payments in lieu of any fractional ADS.

(b) Subject to Section 14.02(e), before any Holder of a Note shall be entitled to convert a Note as set forth above, such Holder shall (i) in the case of a Global Note, comply with the procedures of the Euroclear and Clearstream in effect at that time and complete, manually sign and deliver a duly completed irrevocable notice to the Conversion Agent as set forth in the Form of Notice of Conversion (or a facsimile thereof) (a “**Notice of Conversion**”) and (ii) in the case of a Physical Note (1) complete, manually sign and deliver a duly completed irrevocable Notice of Conversion to the Conversion Agent at the specified office of the Conversion Agent and state in writing therein the principal amount of Notes to be converted and the name or names (with addresses) in which such Holder wishes the certificate or certificates for any ADSs to be delivered upon settlement of the Conversion Obligation to be registered, (2) surrender such Notes, duly endorsed to the Company or in blank (and accompanied by appropriate endorsement and transfer documents), at the specified office of the Conversion Agent and (3) if required, furnish appropriate endorsements and transfer documents. The Trustee (and if different, the Conversion Agent) shall notify the Company of any conversion pursuant to this Article 14 on the Conversion Date for such conversion or the date set forth in clause (ii) of Section 14.01(c), as the case may be. No Notice of Conversion with respect to any Notes may be delivered and no Notes may be surrendered by a Holder for conversion thereof if such Holder has also delivered a Fundamental Change Repurchase Notice to the Company in respect of such Notes and not validly withdrawn such Fundamental Change Repurchase Notice in accordance with Section 15.03. A Notice of Conversion shall be deposited in duplicate at the office of any Conversion Agent on any Business Day from 9:00 a.m. to 3:00 p.m. at the location of the Conversion Agent to which such Notice of Conversion is delivered. Any Notice of Conversion and any Physical Note (if issued) deposited outside the hours specified or on a day that is not a Business Day at the location of the Conversion Agent shall for all purposes be deemed to have been deposited with that Conversion Agent between 9:00 a.m. and 3:00 p.m. on the next Business Day.

If more than one Note shall be surrendered for conversion at one time by the same Holder, the Conversion Obligation with respect to such Notes shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted thereby) so surrendered. None of the Agents of the Trustee shall have any responsibility whatsoever with respect to the issuance and delivery of the ADSs to the converting Holder.

(c) A Note shall be deemed to have been converted (i) in the case of conversion pursuant to Section 14.01(a), immediately prior to the close of business on the date (the “**Conversion Date**”) that the Holder has complied with the requirements set forth in subsection (b) above or (ii) in the case of conversion pursuant to Section 14.01(b), on the tenth (10th) day after the completion of the Qualified Equity Financing (the “**Qualified Equity Financing Conversion Date**”). Notwithstanding clause (ii) in the immediately preceding sentence, the Person in whose name the certificate for any ADSs deliverable upon conversion made pursuant to Section 14.01(b) is to be registered shall be treated as a holder of record, as between the Company and such holder, of such ADSs as of the close of business on the date that the Holder has complied with the requirements set forth in subsection (b) above. The Company shall issue or cause to be issued, and deliver or cause to be delivered to such converting Holder, or such converting Holder’s nominee or nominees, certificates or a book-entry transfer through Euroclear and Clearstream for the full number of ADSs to which such Holder shall be entitled in satisfaction of the Company’s Conversion Obligation.

(d) In case any Note shall be surrendered for partial conversion, the Company shall execute and instruct the Note Registrar who shall authenticate and deliver to or upon the written order of the Holder of the Note so surrendered a new Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Note, without payment of any service charge by the converting Holder but, if required by the Company or Trustee, with payment of a sum sufficient to cover any transfer tax or similar governmental charge required by law or that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such conversion being different from the name of the Holder of the old Notes surrendered for such conversion.

(e) If a Holder submits a Note for conversion, the Company shall pay any documentary, stamp, issue, transfer or similar tax due on the delivery of the ADSs upon conversion of the Notes (or the issuance of the underlying Ordinary Shares), unless the tax is due because the Holder requests such ADSs (or such Ordinary Shares) to be issued in a name other than the Holder’s name, in which case the Holder shall pay that tax. The Conversion Agent may refuse to deliver the certificates representing the ADSs (or the Ordinary Shares) being issued in a name other than the Holder’s name until the Trustee receives a sum sufficient to pay any tax that is due by such Holder in accordance with the immediately preceding sentence. The Company shall pay the ADS Depository’s fees for issuance of the ADSs.

(f) Except as provided in Section 14.04, no adjustment shall be made for dividends on any ADSs delivered upon the conversion of any Note as provided in this Article 14.

(g) Upon the conversion of an interest in a Global Note, the Trustee shall make a notation on such Global Note as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversion of Notes effected through any Conversion Agent other than the Trustee.

(h) Upon conversion, a Holder shall not receive any separate cash payment for accrued and unpaid interest, if any, except as set forth below. The Company’s settlement of the Conversion Obligation shall be deemed to satisfy in full its obligation to pay the principal

amount of the Note and accrued and unpaid interest, if any, to, but not including, the relevant Conversion Date or the Qualified Equity Financing Conversion Date (as the case may be). As a result, accrued and unpaid interest, if any, to, but not including, the relevant Conversion Date or the Qualified Equity Financing Conversion Date (as the case may be) shall be deemed to be paid in full rather than cancelled, extinguished or forfeited.

(i) The Person in whose name the certificate for any ADSs delivered upon conversion is registered shall be treated as a holder of record, as between the Company and such holder, of such ADSs as of the close of business on the relevant Conversion Date. Upon a conversion of Notes, such Person shall no longer be a Holder of such Notes surrendered for conversion.

(j) The Company shall not issue any Fractional ADS upon conversion of the Notes and shall instead pay cash in lieu of any Fractional ADS deliverable upon conversion based on the Last Reported Sale Price of the ADSs on the relevant Conversion Date or the Qualified Equity Financing Conversion Date (as the case may be) (or if such Conversion Date or Qualified Equity Financing Conversion Date is not a Trading Day, the immediately preceding Trading Day).

(k) In accordance with the Deposit Agreement, the Company shall issue to the ADS Custodian such Ordinary Shares required for the issuance of the ADSs upon conversion of the Notes, plus written delivery instructions (if requested by the ADS Depository or the ADS Custodian) for such ADSs, shall deliver such legal opinions and any other information or documentation and any additional forms compliant with the procedures of the Depository Trust Company with respect to such conversion of Notes and shall comply with the Deposit Agreement, as required by the ADS Depository or the ADS Custodian in connection with each issue of Ordinary Shares and issuance and delivery of ADSs. Without prejudice to the generality of the preceding sentence, when issuing Ordinary Shares for purposes of a conversion prior to August 10, 2020 the Company shall confirm in writing to the ADS Depository that the conversion is taking place following and in connection with a Qualified Equity Financing and shall specify in such written confirmation the applicable Qualified Equity Financing Conversion Date.

Section 14.03 [RESERVED]

Section 14.04 *Adjustment of Conversion Rate.* If the number of Ordinary Shares represented by the ADSs is changed, after the date of this Indenture, for any reason other than one or more of the events described in this Section 14.04, the Company shall make an appropriate adjustment to the Conversion Rate and the Qualified Equity Financing Conversion Rate such that the number of Ordinary Shares represented by the ADSs upon which conversion of the Notes is based remains the same.

Notwithstanding the adjustment provisions described in this Section 14.04, if the Company distributes to holders of the Ordinary Shares any cash, rights, options, warrants, shares of Capital Stock or similar equity interest, evidences of indebtedness or other assets or property of the Company (but excluding Expiring Rights) and a corresponding distribution is not made to

holders of the ADSs, but, instead, the ADSs shall represent, in addition to Ordinary Shares, such cash, rights, options, warrants, shares of Capital Stock or similar equity interest, evidences of indebtedness or other assets or property of the Company, then an adjustment to the Conversion Rate described in this Section 14.04 shall not be made until and unless a corresponding distribution (if any) is made to holders of the ADSs, and such adjustment to the Conversion Rate shall be based on the distribution made to the holders of the ADSs and not on the distribution made to the holders of the Ordinary Shares. However, in the event that the Company issues or distributes to all holders of the Ordinary Shares any Expiring Rights, notwithstanding the immediately preceding sentence, the Company shall adjust the Conversion Rate pursuant to Section 14.04(b) (in the case of Expiring Rights entitling holders of the Ordinary Shares for a period of not more than 45 calendar days after the announcement date of such issuance to subscribe for or purchase Ordinary Shares or ADSs) or Section 14.04(c) (in the case of all other Expiring Rights).

For the avoidance of doubt, if any event described in this Section 14.04 results in a change to the number of Ordinary Shares represented by the ADSs, then such a change shall be deemed to satisfy the Company's obligation to effect the relevant adjustment to the Conversion Rate on account of such event to the extent such change produces the same economic result as the adjustment to the Conversion Rate that would otherwise have been made on account of such event.

The Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs, except that the Company shall not make any adjustments to the Conversion Rate if Holders of the Notes participate (other than in the case of a share split or share combination), at the same time and upon the same terms as holders of the ADSs and solely as a result of holding the Notes, in any of the transactions described in this Section 14.04, without having to convert their Notes, as if they held a number of ADSs equal to the Conversion Rate, *multiplied by* the principal amount (expressed in thousands) of Notes held by such Holder. Neither the Trustee nor the Conversion Agent shall have any responsibility to monitor the accuracy of any calculation of any adjustment to the Conversion Rate and the same shall be conclusive and binding on the Holders, absent manifest error. Notice of such adjustment to the Conversion Rate shall be given by the Company promptly to the Holders, the Trustee and the Paying Agent and Conversion Agent and shall be conclusive and binding on the Holders, absent manifest error.

(a) If the Company exclusively issues Ordinary Shares as a dividend or distribution on the Ordinary Shares, or if the Company effects a share split or share combination, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where,

CR₀ = the Conversion Rate in effect immediately prior to the close of business on the Record Date of such dividend or distribution, or immediately prior to the open

of business on the effective date of such share split or share combination, as applicable;

- CR₁ = the Conversion Rate in effect immediately after the close of business on such Record Date or immediately after the open of business on such effective date, as applicable;
- OS₀ = the number of Ordinary Shares outstanding immediately prior to the close of business on such Record Date or immediately prior to the open of business on such effective date, as applicable; and
- OS₁ = the number of Ordinary Shares outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

Any adjustment made under this Section 14.04(a) shall become effective immediately after the close of business on the Record Date for such dividend or distribution, or immediately after the open of business on the effective date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this Section 14.04(a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) If the Company issues to all or substantially all holders of the Ordinary Shares (directly or in the form of ADSs) any rights, options or warrants entitling them, for a period of not more than 45 calendar days after the announcement date of such issuance, to subscribe for or purchase Ordinary Shares (directly or in the form of ADSs) at a price per Ordinary Share that is less than the average of the Last Reported Sale Prices of the Ordinary Shares or the ADSs, as the case may be (*divided by*, in the case of the ADSs, the number of Ordinary Shares then represented by one ADS), for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

- CR₀ = the Conversion Rate in effect immediately prior to the close of business on the Record Date for the ADSs for such issuance;
- CR₁ = the Conversion Rate in effect immediately after the close of business on such Record Date;
- OS₀ = the number of Ordinary Shares outstanding immediately prior to the close of business on such Record Date;

- X = the total number of Ordinary Shares (directly or in the form of ADSs) deliverable pursuant to such rights, options or warrants; and
- Y = the number of Ordinary Shares equal to (i) the aggregate price payable to exercise such rights, options or warrants, *divided by* (ii) the quotient of (a) the average of the Last Reported Sale Prices of the ADSs over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants *divided by* (b) the number of Ordinary Shares then represented by one ADS.

Any increase made under this Section 14.04(b) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the close of business on the Record Date for the ADSs for such issuance. To the extent that Ordinary Shares or ADSs are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of Ordinary Shares actually delivered (directly or in the form of ADSs). If such rights, options or warrants are not so issued, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such the Record Date for the ADSs for such issuance had not occurred.

For purposes of this Section 14.04(b), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase Ordinary Shares (directly or in the form of ADSs) at a price per Ordinary Share that is less than such average of the Last Reported Sale Prices of the Ordinary Shares or the ADSs, as the case may be (divided by, in the case of the ADSs, the number of Ordinary Shares then represented by one ADS), for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement for such issuance, and in determining the aggregate offering price of such Ordinary Shares or ADSs, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) If the Company distributes shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire its Capital Stock or other securities, to all or substantially all holders of the Ordinary Shares (directly or in the form of ADSs), excluding (i) dividends, distributions or issuances as to which an adjustment was effected pursuant to Section 14.04(a) or Section 14.04(b), (ii) dividends or distributions paid exclusively in cash as to which an adjustment was effected pursuant to Section 14.04(d), and (iii) Spin-Offs as to which the provisions set forth below in this Section 14.04(c) shall apply (any of such shares of Capital Stock, evidences of indebtedness, other assets or property or rights, options or warrants to acquire Capital Stock or other securities of the Company, the “**Distributed Property**”), then the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for the ADSs for such distribution;

CR_1 = the Conversion Rate in effect immediately after the close of business on such Record Date;

SP_0 = the average of the Last Reported Sale Prices of the ADSs (*divided by* the number of Ordinary Shares then represented by one ADS) over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined by the Board of Directors) of the Distributed Property with respect to each outstanding Ordinary Share (directly or in the form of ADSs) on the Record Date for the ADSs for such distribution.

Any increase made under the foregoing portion of this Section 14.04(c) above shall become effective immediately after the close of business on the Record Date for the ADSs for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such distribution had not been declared. Notwithstanding the foregoing, if “FMV” (as defined above) is equal to or greater than “ SP_0 ” (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, in respect of each US\$1,000 principal amount thereof, at the same time and upon the same terms as holders of the ADSs receive the Distributed Property, the amount and kind of Distributed Property such Holder would have received if such Holder owned a number of ADSs equal to the Conversion Rate in effect on the Record Date for the ADSs for the distribution.

With respect to an adjustment pursuant to this Section 14.04(c) where there has been a payment of a dividend or other distribution on the Ordinary Shares (directly or in the form of ADSs) of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a “**Spin-Off**”), the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the last Trading Day of the Valuation Period;

- CR₁ = the Conversion Rate in effect immediately after the close of business on the last Trading Day of the Valuation Period;
- FMV₀ = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Ordinary Shares (directly or in the form of ADSs) applicable to one Ordinary Share (determined by reference to the definition of Last Reported Sale Price as set forth in Section 1.01 as if references therein to the ADSs were to such Capital Stock or similar equity interest) over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the “Valuation Period”); and
- MP₀ = the average of the Last Reported Sale Prices of the ADSs (*divided by* the number of Ordinary Shares then represented by one ADS) over the Valuation Period.

The adjustment to the Conversion Rate under the preceding paragraph shall occur immediately after the close of business on the last Trading Day of the Valuation Period; *provided* that in respect of any conversion during the Valuation Period, references in the portion of this Section 14.04(c) related to Spin-Offs to 10 Trading Days shall be deemed to be replaced with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date of such Spin-Off to, and including, the Conversion Date in determining the Conversion Rate.

For purposes of this Section 14.04(c) (and subject in all respect to Section 14.11), rights, options or warrants distributed by the Company to all holders of the Ordinary Shares (directly or in the form of ADSs) entitling them to subscribe for or purchase shares of the Company’s Capital Stock, including Ordinary Shares (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events (“**Trigger Event**”): (i) are deemed to be transferred with such Ordinary Shares (directly or in the form of ADSs); (ii) are not exercisable; and (iii) are also issued in respect of future issuances of the Ordinary Shares (directly or in the form of ADSs), shall be deemed not to have been distributed for purposes of this Section 14.04(c) (and no adjustment to the Conversion Rate under this Section 14.04(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 14.04(c). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 14.04(c) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders

thereof, upon such final redemption or purchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per Ordinary Share redemption or purchase price received by a holder or holders of Ordinary Shares (directly or in the form of ADSs) with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Ordinary Shares (directly or in the form of ADSs) as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of Section 14.04(a), Section 14.04(b) and this Section 14.04(c), if any dividend or distribution to which this Section 14.04(c) is applicable also includes one or both of:

(A) a dividend or distribution of Ordinary Shares (directly or in the form of ADSs) to which Section 14.04(a) is applicable (the “**Clause A Distribution**”); or

(B) a dividend or distribution of rights, options or warrants to which Section 14.04(b) is applicable (the “**Clause B Distribution**”),

then (1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 14.04(c) is applicable (the “**Clause C Distribution**”) and any Conversion Rate adjustment required by this Section 14.04(c) with respect to such Clause C Distribution shall then be made, and (2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by Section 14.04(a) and Section 14.04(b) with respect thereto shall then be made, except that, if determined by the Company (I) the “Record Date” of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Record Date of the Clause C Distribution and (II) any Ordinary Shares (directly or in the form of ADSs) included in the Clause A Distribution or Clause B Distribution shall be deemed not to be “outstanding immediately prior to the close of business on such Record Date or immediately after the open of business on such effective date, as applicable” within the meaning of Section 14.04(a) or “outstanding immediately prior to the close of business on such Record Date” within the meaning of Section 14.04(b).

(d) If any cash dividend or distribution is made to all or substantially all holders of the Ordinary Shares (directly or in the form of ADSs), the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

- CR₀ = the Conversion Rate in effect immediately prior to the close of business on the Record Date for the ADSs for such dividend or distribution;
- CR₁ = the Conversion Rate in effect immediately after the close of business on such Record Date;
- SP₀ = the Last Reported Sale Price of the ADSs (divided by the number of Ordinary Shares then represented by one ADS) on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and
- C = the amount in cash per Ordinary Share the Company distributes to all or substantially all holders of the Ordinary Shares (directly or in the form of ADSs).

Any increase pursuant to this Section 14.04(d) shall become effective immediately after the close of business on the Record Date for the ADSs for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors determines not to make or pay such dividend or distribution, to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if “C” (as defined above) is equal to or greater than “SP₀” (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, for each US\$1,000 principal amount of Notes, at the same time and upon the same terms as holders of the ADSs, the amount of cash that such Holder would have received if such Holder owned a number of ADSs equal to the Conversion Rate on the Record Date for the ADSs for such cash dividend or distribution.

(e) If the Company or any of its Subsidiaries or Consolidated Affiliated Entities makes a payment in respect of a tender or exchange offer for the Ordinary Shares (directly or in the form of ADSs), to the extent that the cash and value of any other consideration included in the payment per Ordinary Share exceeds the average of the Last Reported Sale Prices of the ADSs (*divided by* the number of Ordinary Shares then represented by one ADS) over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where,

- CR₀ = the Conversion Rate in effect immediately prior to the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

- CR₁ = the Conversion Rate in effect immediately after the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;
- AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for Ordinary Shares or ADSs, as the case may be, purchased in such tender or exchange offer;
- OS₀ = the number of Ordinary Shares outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase of all Ordinary Shares or ADSs, as the case may be, accepted for purchase or exchange in such tender or exchange offer);
- OS₁ = the number of Ordinary Shares outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all Ordinary Shares or ADSs, as the case may be, accepted for purchase or exchange in such tender or exchange offer); and
- SP₁ = the average of the Last Reported Sale Prices of the ADSs (*divided by* the number of Ordinary Shares then represented by one ADS) over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires.

The adjustment to the Conversion Rate under this Section 14.04(e) shall occur at the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires; *provided* that in respect of any conversion within the 10 Trading Days immediately following, and including, the Trading Day next succeeding the expiration date of any tender or exchange offer, references in this Section 14.04(e) with respect to 10 Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the expiration date of such tender or exchange offer to, and including, the Conversion Date in determining the Conversion Rate. For the avoidance of doubt, no adjustment to the Conversion Rate under this Section 14.04(e) shall be made if such adjustment would result in a decrease in the Conversion Rate.

(f) If and whenever the Company shall issue any Ordinary Shares or ADSs (other than any issuance pursuant to the Notes or on the exercise of any other rights, existing as of the date of this Indenture, of conversion into, or exchange or subscription for, Ordinary Shares or ADSs) or issue or grant options, warrants or other rights to purchase, subscribe, convert into, exercise or exchange for Ordinary Shares or ADSs (the “**Relevant Securities**”, which for the purposes of this definition only excludes any Ordinary Shares, ADSs, option, warrant or other rights to purchase, subscribe, convert into, exercise or exchange for Ordinary Shares or ADSs issued or granted in accordance with any employee incentive plan of the Company), in each case at a consideration per ADS (on an as-converted and as-exercised basis and, in the case of any issuance of Ordinary Shares, such issue price per Ordinary Share multiplied by the applicable

number of Ordinary Shares then represented by each ADS) which is less than the Reference Price, the Conversion Rate shall be adjusted based on the following formula:

$$CR1 = CR0 \times \frac{A + B}{C}$$

where:

CR0 = the Conversion Rate in effect immediately prior to the date of issue of the Relevant Securities;

CR1 = the Conversion Rate in effect as from the date of issue of the Relevant Securities;

A = the number of Ordinary Shares in issue immediately before the issue of the Relevant Securities;

B = the number of Ordinary Shares which the aggregate consideration receivable for the issue of the Relevant Securities would purchase at the price equal to (x) Reference Price, multiplied by (y) the applicable number of Ordinary Shares then represented by each ADS; and

C = the number of Ordinary Shares in issue immediately after the issue of the Relevant Securities,

provided that references to the number of Ordinary Shares in the above formula shall include all the Ordinary Shares to be issued assuming that all options, warrants or other rights to purchase, subscribe, convert into, exercise or exchange for Ordinary Shares or ADSs are exercised in full at the initial exercise price on the date of issue of such options, warrants or other rights.

(g) Except as stated herein, the Company shall not adjust the Conversion Rate for the issuance of Ordinary Shares or ADSs or any securities convertible into or exchangeable for Ordinary Shares or ADSs or the right to purchase Ordinary Shares or ADSs or such convertible or exchangeable securities.

(h) In addition to those adjustments required by clauses (a), (b), (c), (d) and (e) of this Section 14.04, and to the extent permitted by applicable law and subject to the applicable rules of the New York Stock Exchange and any other securities exchange on which any of the Company's securities are then listed, the Company from time to time may increase the Conversion Rate by any amount for a period of at least 20 Business Days if the Board of Directors determines that such increase would be in the Company's best interest, and the Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of the Ordinary Shares or the ADSs or rights to purchase Ordinary Shares or ADSs in connection with a dividend or distribution of Ordinary Shares or ADSs (or rights to acquire Ordinary Shares or ADSs) or similar event.

(i) Notwithstanding anything to the contrary in this Article 14, the Conversion Rate shall not be adjusted:

(i) upon the issuance of any Ordinary Shares or ADSs pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in Ordinary Shares or ADSs under any plan;

(ii) upon the issuance of any Ordinary Shares or ADSs or options or rights to purchase those Ordinary Shares or ADSs pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of the Company's Subsidiaries or Consolidated Affiliated Entities;

(iii) upon the issuance of any Ordinary Shares or ADSs pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) of this subsection and outstanding as of the date the Notes were first issued;

(iv) solely for a change in the par value of the Ordinary Shares; or

(v) for accrued and unpaid interest, if any.

(j) All calculations and other determinations under this Article 14 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000) of an ADS.

(k) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee (and the Conversion Agent if not the Trustee) an Officers' Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee shall have received such Officers' Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to each Holder at its last address appearing on the Note Register of this Indenture. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(l) For purposes of this Section 14.04, the number of Ordinary Shares at any time outstanding shall not include Ordinary Shares held in the treasury of the Company (directly or in the form of ADSs) so long as the Company does not pay any dividend or make any distribution on Ordinary Shares held in the treasury of the Company (directly or in the form of ADSs), but shall include Ordinary Shares issuable in respect of scrip certificates issued in lieu of fractions of Ordinary Shares.

(m) For purposes of this Section 14.04, the "effective date" means the first date on which the ADSs trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

Section 14.05 *Adjustments of Prices*. Whenever any provision of this Indenture requires the Company to calculate the Last Reported Sale Prices over a span of multiple days, the Board of Directors shall make appropriate adjustments to each to account for any adjustment to the Conversion Rate that becomes effective pursuant to Section 14.04, or any event requiring an adjustment to the Conversion Rate pursuant to Section 14.04 where the Record Date, effective date or expiration date, as the case may be, of the event occurs, at any time during the period when such Last Reported Sale Prices are to be calculated.

Section 14.06 *Ordinary Shares to Be Fully Paid*. The Company shall provide, free from preemptive rights, out of its authorized but unissued Ordinary Shares or Ordinary Shares held in treasury, a sufficient number of Ordinary Shares that corresponds to the number of ADSs due upon conversion of the Notes from time to time as such Notes are presented for conversion (assuming that at the time of computation of such number of Ordinary Shares, all such Notes would be converted by a single Holder).

Section 14.07 *Effect of Recapitalizations, Reclassifications and Changes of the Ordinary Shares*.

(a) In the case of:

- (i) any recapitalization, reclassification or change of the Ordinary Shares (other than changes resulting from a subdivision or combination),
- (ii) any consolidation, merger, combination or similar transaction involving the Company,
- (iii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and the Company's Subsidiaries and Consolidated Affiliated Entities substantially as an entirety or
- (iv) any statutory share exchange,

in each case, as a result of which the Ordinary Shares would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a "**Merger Event**"), then, prior to or at the effective time of such Merger Event, the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture permitted under Section 10.01(f) providing that, at and after the effective time of such Merger Event, the right to convert each US\$1,000 principal amount of Notes shall be changed into a right to convert such principal amount of Notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of ADSs equal to the Conversion Rate immediately prior to such Merger Event would have owned or been entitled to receive (the "**Reference Property**," with each "**unit of Reference Property**" meaning the kind and amount of Reference Property that a holder of one ADS is entitled to receive) upon such Merger Event; *provided, however*, that at and after the effective time of the Merger Event the number of ADSs otherwise deliverable upon conversion of the Notes in accordance with Section 14.02 shall

instead be deliverable in the amount and type of Reference Property that a holder of that number of ADSs would have been entitled to receive in such Merger Event.

If the Merger Event causes the Ordinary Shares to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of holder election), then (i) the Reference Property into which the Notes will be convertible shall be deemed to be the weighted average of the types and amounts of consideration actually received by the holders of the ADSs and (ii) the unit of Reference Property for purposes of the immediately preceding paragraph shall refer to the consideration referred to in clause (i) attributable to one ADS. The Company shall provide written notice to Holders, the Trustee and the Conversion Agent (if other than the Trustee) of such weighted average as soon as practicable after such determination is made.

Such supplemental indenture described in the second immediately preceding paragraph shall provide for anti-dilution and other adjustments that shall be as nearly equivalent as is practicable to the adjustments provided for in this Article 14 (it being understood that no such adjustments shall be required with respect to any portion of the Reference Property that does not consist of shares of Common Equity (however evidenced) or depositary receipts in respect thereof). If, in the case of any Merger Event, the Reference Property includes shares of stock, securities or other property or assets (including cash or any combination thereof) of a Person other than the Company or the successor or purchasing Person, as the case may be, in such Merger Event, then such other Person shall also execute such supplemental indenture, and such supplemental indenture shall contain such additional provisions to protect the interests of the Holders of the Notes, including the right of Holders to require the Company to repurchase their Notes upon a Fundamental Change pursuant to Section 15.02, as the Board of Directors shall reasonably consider necessary by reason of the foregoing.

(b) [RESERVED]

(c) The Company shall not become a party to any Merger Event unless its terms are consistent with this Section 14.07. None of the foregoing provisions shall affect the right of a holder of Notes to convert its Notes into ADSs as set forth in Section 14.01 and Section 14.02 prior to the effective date of such Merger Event.

(d) The above provisions of this Section shall similarly apply to successive Merger Events.

Section 14.08 *Certain Covenants.* (a) The Company covenants that all ADSs delivered upon conversion of Notes, and all Ordinary Shares represented by such ADSs, will be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

(b) The Company covenants that, if any ADSs to be provided for the purpose of conversion of Notes hereunder, or any Ordinary Shares represented by such ADSs, require registration with or approval of any governmental authority under any federal or state law before such ADSs may be validly issued upon conversion, the Company will, to the extent then

permitted by the rules and interpretations of the Commission, secure such registration or approval, as the case may be.

(c) The Company further covenants that if at any time the ADSs shall be listed on any national securities exchange or automated quotation system the Company will list and keep listed, so long as the ADSs shall be so listed on such exchange or automated quotation system, any ADSs deliverable upon conversion of the Notes.

(d) The Company further covenants to take all actions and obtain all approvals and registrations required with respect to the conversion of the Notes into ADSs and the issuance, and deposit into the ADS facility, of the Ordinary Shares represented by such ADSs. The Company also undertakes to maintain, as long as any Notes are outstanding, the effectiveness of a registration statement on Form F-6 relating to the ADSs and an adequate number of ADSs available for issuance thereunder such that ADSs can be delivered in accordance with the terms of this Indenture, the Notes and the Deposit Agreement, upon conversion of the Notes. In addition, the Company further covenants to provide Holders with a reasonably detailed description of the mechanics for the delivery of ADSs upon conversion of Notes as set forth in the Deposit Agreement upon request.

Section 14.09 *Responsibility of Trustee*. The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Holder to determine the Conversion Rate (or any adjustment thereto) or whether any facts exist that may require any adjustment (including any increase) of the Conversion Rate, or with respect to the nature or extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any ADSs, or of any securities, property or cash that may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any ADSs or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion, the accuracy or inaccuracy of any mathematical calculation or formulae under this Indenture, whether by the Company or any Person so authorized by the Company for such purpose under this Indenture or the failure by the Company to comply with any of the duties, responsibilities or covenants of the Company contained in this Article. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 14.07 relating either to the kind or amount of ADSs or securities or property (including cash) receivable by Holders upon the conversion of their Notes after any event referred to in such Section 14.07 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 7.01, may accept (without any independent investigation) as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officers' Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto.

Section 14.10 *Notice to Holders Prior to Certain Actions*. In case of any:

- (a) action by the Company or one of its Subsidiaries that would require an adjustment in the Conversion Rate pursuant to Section 14.04 or Section 14.11;
- (b) Merger Event; or
- (c) voluntary or involuntary dissolution, liquidation or winding-up of the Company or any of its Subsidiaries;

then, in each case (unless notice of such event is otherwise required pursuant to another provision of this Indenture), the Company shall cause to be filed with the Trustee and the Conversion Agent (if other than the Trustee) and to be mailed to each Holder at its address appearing on the Note Register, as promptly as possible but in any event at least 20 days prior to the applicable date hereinafter specified, a notice stating (i) the date on which a record is to be taken for the purpose of such action by the Company or one of its Subsidiaries or, if a record is not to be taken, the date as of which the holders of Ordinary Shares or ADSs, as the case may be, of record are to be determined for the purposes of such action by the Company or one of its Subsidiaries, or (ii) the date on which such Merger Event, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Ordinary Shares or ADSs, as the case may be, of record shall be entitled to exchange their Ordinary Shares or ADSs, as the case may be, for securities or other property deliverable upon such Merger Event, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such action by the Company or one of its Subsidiaries, Merger Event, dissolution, liquidation or winding-up.

Section 14.11 *Stockholder Rights Plans*. To the extent that the Company has a rights plan in effect upon conversion of the Notes, each ADS delivered upon such conversion shall be entitled to receive (either directly or in respect of the Ordinary Shares underlying such ADSs) the appropriate number of rights, if any, and the certificates representing the ADSs delivered upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any such stockholder rights plan, as the same may be amended from time to time. However, if, prior to any conversion, the rights have separated from the Ordinary Shares underlying the ADSs in accordance with the provisions of the applicable stockholder rights plan, the Conversion Rate shall be adjusted at the time of separation as if the Company distributed to all or substantially all holders of the Ordinary Shares Distributed Property as provided in Section 14.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 14.12 *Termination of Depositary Receipt Program*. If the Ordinary Shares cease to be represented by American Depositary Shares issued under a depositary receipt program sponsored by the Company, all references in this Indenture to the ADSs shall be deemed to have been replaced by a reference to the number of Ordinary Shares (and other property, if any) represented by the ADSs on the last day on which the ADSs represented the Ordinary Shares and as if the Ordinary Shares and the other property had been distributed to holders of the ADSs on that day. In addition, all references to the Last Reported Sale Price of the ADSs will be deemed to refer to the Last Reported Sale Price of the Ordinary Shares, and other appropriate

adjustments, including adjustments to the Conversion Rate, will be made to reflect such change. In making such adjustments, where currency translations between U.S. dollars and any other currency are required, the exchange rate in effect on the date of determination will apply.

ARTICLE 15
REPURCHASE OF NOTES AT OPTION OF HOLDERS

Section 15.01 [RESERVED]

Section 15.02 *Repurchase at Option of Holders Upon a Fundamental Change.* (a) If a Fundamental Change occurs at any time, each Holder shall have the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes, or any portion thereof that is equal to US\$1,000 or an integral multiple of US\$1,000, on the Business Day (the "**Fundamental Change Repurchase Date**") notified in writing by the Company as set forth in Section 15.02(c) that is not less than 20 Business Days or more than 35 Business Days following the date of the Fundamental Change Company Notice at a repurchase price equal to 100% of the principal amount thereof and any premium payable hereunder (the "**Fundamental Change Repurchase Price**"). The Trustee and the Conversion Agent, Paying Agent or any other agent appointed for such purpose shall have no responsibility to determine the Fundamental Change Repurchase Price.

(b) Repurchases of Notes under this Section 15.02 shall be made, at the option of the Holder thereof, upon:

(i) delivery to the Paying Agent (or other agent appointed for this purpose) by a Holder of a duly completed notice (the "**Fundamental Change Repurchase Notice**") in the form set forth in Attachment 2 to the Form of Note attached hereto as Exhibit A, if the Notes are Physical Notes, or in compliance with the procedures of Euroclear and Clearstream for surrendering interests in global notes, if the Notes are Global Notes, in each case on or before the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date; and

(ii) delivery of the Notes, if the Notes are Physical Notes, to the Trustee at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements for transfer) at the Corporate Trust Office, or book-entry transfer of the Notes, if the Notes are Global Notes, in compliance with the procedures of Euroclear and Clearstream, in each case such delivery being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor.

The Fundamental Change Repurchase Notice in respect of any Notes to be repurchased shall state:

- (i) in the case of Physical Notes, the certificate numbers of the Notes to be delivered for repurchase;
- (ii) the portion of the principal amount of Notes to be repurchased, which must be US\$1,000 or an integral multiple thereof; and

(iii) that the Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and this Indenture;

provided, however, that if the Notes are Global Notes, the Fundamental Change Repurchase Notice must comply with appropriate procedures of Euroclear and Clearstream.

Notwithstanding anything herein to the contrary, any Holder delivering to the Trustee the Fundamental Change Repurchase Notice contemplated by this Section 15.02 shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date by delivery of a duly completed written notice of withdrawal to the Trustee in accordance with Section 15.03.

The Trustee shall promptly notify the Company of the receipt by it of any Fundamental Change Repurchase Notice or written notice of withdrawal thereof.

(c) On or before the 20th calendar day after the occurrence of the effective date of a Fundamental Change, the Company shall provide to all Holders, the Trustee (and the Conversion Agent, Paying Agent and any other agent appointed for this purpose, in each case, if other than the Trustee) a written notice (the “**Fundamental Change Company Notice**”) of the occurrence of the effective date of the Fundamental Change and of the repurchase right at the option of the Holders arising as a result thereof. In the case of Physical Notes, such notice shall be by first class mail or, in the case of Global Notes, such notice shall be delivered in accordance with the applicable procedures of Euroclear and Clearstream. Simultaneously with providing such notice, the Company shall publish a notice containing the information set forth in the Fundamental Change Company Notice in a newspaper of general circulation in The City of New York or publish such information on the Company’s website or through such other public medium as the Company may use at that time. Each Fundamental Change Company Notice shall specify:

- (i) the events causing the Fundamental Change;
- (ii) the effective date of the Fundamental Change;
- (iii) the last date on which a Holder may exercise the repurchase right pursuant to this Article 15;
- (iv) the Fundamental Change Repurchase Price;
- (v) the Fundamental Change Repurchase Date;
- (vi) the name and address of the Trustee, the Paying Agent, the Conversion Agent or any other agent appointed for repurchase, if applicable;
- (vii) if applicable, the Conversion Rate;

(viii) if applicable, that the Notes with respect to which a Fundamental Change Repurchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Fundamental Change Repurchase Notice in accordance with the terms of this Indenture; and

(ix) the procedures that Holders must follow to require the Company to repurchase their Notes.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 15.02.

At the Company's request, the Trustee shall give such notice in the Company's name and at the Company's expense; *provided, however,* that, in all cases, the text of such Fundamental Change Company Notice shall be prepared by the Company.

(d) Notwithstanding the foregoing, no Notes may be repurchased by the Company on any date at the option of the Holders upon a Fundamental Change if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to such date (except in the case of an acceleration resulting from a default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes). The Trustee will promptly return to the respective Holders thereof any Physical Notes held by it during the acceleration of the Notes (except in the case of an acceleration resulting from a default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes), or any instructions for book-entry transfer of the Notes in compliance with the procedures of Euroclear and Clearstream shall be deemed to have been cancelled, and, upon such return or cancellation, as the case may be, the Fundamental Change Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

Section 15.03 *Withdrawal of Fundamental Change Repurchase Notice.* (a) A Fundamental Change Repurchase Notice may be withdrawn (in whole or in part) by means of a duly completed written notice of withdrawal delivered to the Paying Agent (or other agent appointed for such purpose) in accordance with this Section 15.03 at any time prior to the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date specifying:

(i) the principal amount of the Notes with respect to which such notice of withdrawal is being submitted,

(ii) if Physical Notes have been issued, the certificate number of the Note in respect of which such notice of withdrawal is being submitted, and

(iii) the principal amount, if any, of such Note that remains subject to the original Fundamental Change Repurchase Notice, which portion must be in principal amounts of US\$1,000 or an integral multiple of US\$1,000;

provided, however, that if the Notes are Global Notes, the notice must comply with appropriate procedures of Euroclear and Clearstream.

Section 15.04 *Deposit of Fundamental Change Repurchase Price*. (a) The Company will deposit with the Paying Agent (or any other agent appointed for this purpose by the Company), or if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 4.04) on or prior to 10:00 a.m., New York City time, on the Fundamental Change Repurchase Date an amount of money sufficient to repurchase all of the Notes to be repurchased at the appropriate Fundamental Change Repurchase Price. Subject to receipt of funds and/or Notes by the Paying Agent (or other agent appointed for this purpose by the Company) and the Trustee, as applicable, payment for Notes surrendered for repurchase (and not withdrawn in accordance with Section 15.03) will be made on the later of (i) the Fundamental Change Repurchase Date (*provided* the Holder has satisfied the conditions in Section 15.02) and (ii) the time of book-entry transfer or the delivery of such Note to the Trustee (or other Paying Agent appointed by the Company) by the Holder thereof in the manner required by Section 15.02, as applicable, by mailing checks for the amount payable to the Holders of such Notes entitled thereto as they shall appear in the Note Register; *provided, however*, that payments to the Common Depositary shall be made by wire transfer of immediately available funds to the account of the Common Depositary or its nominee. The Paying Agent (or other agent appointed for this purpose by the Company) shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Fundamental Change Repurchase Price.

(b) If by 10:00 a.m., New York City time, on the Fundamental Change Repurchase Date, the Paying Agent (or other agent appointed for this purpose by the Company) holds money sufficient to make payment on all the Notes or portions thereof that are to be repurchased on such Fundamental Change Repurchase Date, then, with respect to the Notes that have been properly surrendered for repurchase and not validly withdrawn, on such Fundamental Change Repurchase Date, (i) such Notes will cease to be outstanding and (ii) all other rights of the Holders of such Notes will terminate (other than the right to receive the Fundamental Change Repurchase Price).

(c) Upon surrender of a Note that is to be repurchased in part pursuant to Section 15.02, the Company shall execute and the Note Registrar, upon receipt of a Company Order, shall authenticate and deliver to the Holder a new Note in an authorized denomination equal in principal amount to the unreurchased portion of the Note surrendered.

Section 15.05 *Covenant to Comply with Applicable Laws Upon Repurchase of Notes*. In connection with any repurchase offer, the Company will, if required:

- (a) comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act;
- (b) file a Schedule TO or other required schedule under the Exchange Act; and

(c) otherwise comply with all federal and state securities laws in connection with any offer by the Company to repurchase the Notes;

in each case, so as to permit the rights and obligations under this Article 15 to be exercised in the time and in the manner specified in this Article 15.

ARTICLE 16 BRRD MATTERS

Notwithstanding and to the exclusion of any other term of this Indenture or any other agreements, arrangements, or understanding between The Bank of New York Mellon SA/NV, Luxembourg Branch and each counterparty, each counterparty acknowledges and accepts that a BRRD Liability arising under this Indenture may be subject to the exercise of Bail-in Powers by the Relevant Resolution Authority, and acknowledges, accepts, and agrees to be bound by:

- (a) the effect of the exercise of Bail-in Powers by the Relevant Resolution Authority in relation to any BRRD Liability of The Bank of New York Mellon SA/NV, Luxembourg Branch to each counterparty under this Indenture, that (without limitation) may include and result in any of the following, or some combination thereof:
 - (i) the reduction of all, or a portion, of the BRRD Liability or outstanding amounts due thereon;
 - (ii) the conversion of all, or a portion, of the BRRD Liability into shares, other securities or other obligations of The Bank of New York Mellon SA/NV, Luxembourg Branch or another person, and the issue to or conferral on each counterparty of such shares, securities or obligations;
 - (iii) the cancellation of the BRRD Liability;
 - (iv) the amendment or alteration of any interest, if applicable, thereon, the maturity or the dates on which any payments are due, including by suspending payment for a temporary period;
- (b) the variation of the terms of this Indenture, as deemed necessary by the Relevant Resolution Authority, to give effect to the exercise of Bail-in Powers by the Relevant Resolution Authority.

ARTICLE 17 MISCELLANEOUS PROVISIONS

Section 17.01 *Provisions Binding on Company's Successors*. All the covenants, stipulations, promises and agreements of the Company contained in this Indenture shall bind its successors and assigns whether so expressed or not.

Section 17.02 *Official Acts by Successor Corporation*. Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board,

committee or Officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation or other entity that shall at the time be the lawful sole successor of the Company.

Section 17.03 *Addresses for Notices, Etc.* Any notice or demand that by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders on the Company shall be deemed to have been sufficiently given or made, for all purposes if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed (until another address is filed by the Company with the Trustee) to Building 20, No. 56 AnTuo Road, Jiading District, Shanghai, 201804, People's Republic of China, Facsimile No.: +86 (21) 3913 0192. Any notice, direction, request or demand hereunder to or upon the Trustee shall be given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed to The Bank of New York Mellon, London Branch, One Canada Square, London E14 5AL, United Kingdom, Attention: Corporate Trust Administration – Project Camel (NIO Inc.) Fax: +44 1202 689660, with a copy to The Bank of New York Mellon, Hong Kong Branch, Level 26, Three Pacific Place, 1 Queen's Road East, Hong Kong, Attention: Global Corporate Trust – NIO Inc., Facsimile No.: +852-2295.3283. Any notice, direction, request or demand hereunder to or upon the Registrar and the Transfer Agent shall be given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed to The Bank of New York Mellon SA/NV, Luxembourg Branch, Vertigo Building – Polaris, 2-4 rue Eugène Ruppert, L-2453 Luxembourg, Attention: Project Camel (NIO Inc.), Fax: +(352) 24524204, with a copy to The Bank of New York Mellon, Hong Kong Branch, Level 26, Three Pacific Place, 1 Queen's Road East, Hong Kong, Attention: Global Corporate Trust – NIO Inc., Facsimile No.: +852-2295.3283.

All notices and other communications under this Indenture shall be in writing in English.

So long as and to the extent that the Notes are represented by Global Notes and such Global Notes are held by or on behalf of the Common Depositary, notices to owners of beneficial interests in the Global Notes may be given by delivery of the relevant notice to the Euroclear and Clearstream for communication by it to entitled account holders.

The Company hereby acknowledges that it is fully aware of the risks associated with transmitting instructions via electronic methods (including facsimile), and being aware of these risks, authorizes the Trustee to accept and act upon any instruction sent to it or any Paying Agent, Transfer Agent, Conversion Agent or Note Registrar in the Company's name or in the name of one or more appropriate authorized signers of the Company via electronic methods (including facsimile). The Trustee shall be entitled to rely on Section 7.06 of this Indenture when accepting or acting upon any instructions, communications or documents transmitted by facsimile, and shall not be liable in the event any facsimile transmission is not received, or is mutilated, illegible, interrupted, duplicated, incomplete, unauthorized or delayed for any reason, including (but not limited to) electronic or telecommunications failure.

Furthermore, notwithstanding the above, if any Trustee receives information or instructions delivered by electronic mail, other electronic method or other unsecured method of communication believed by it to be genuine and to have been sent by the proper person or

persons, the Trustee or any Paying Agent, Transfer Agent, Conversion Agent or Note Registrar shall have (i) no duty or obligation to verify or confirm that the person who sent such instructions is in fact a person authorized to give instructions or directions on behalf of the Company and (ii) absent its or their gross negligence or willful misconduct, no liability for any losses, liabilities, costs or expenses incurred or sustained by any holder, the Company or any other person as a result of such reliance on or compliance with such information or instructions.

The Trustee, by notice to the Company, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Holder shall be mailed to it by first class mail, postage prepaid, at its address as it appears on the Note Register and shall be sufficiently given to it if so mailed within the time prescribed.

Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice to Holders by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Section 17.04 *Governing Law; Jurisdiction.* THIS INDENTURE AND EACH NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO THIS INDENTURE AND EACH NOTE, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

The Company irrevocably consents and agrees, for the benefit of the Holders from time to time of the Notes and the Trustee, that any legal action, suit or proceeding against it with respect to obligations, liabilities or any other matter arising out of or in connection with this Indenture or the Notes may be brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and, until amounts due and to become due in respect of the Notes have been paid, hereby irrevocably consents and submits to the non-exclusive jurisdiction of each such court *in personam*, generally and unconditionally with respect to any action, suit or proceeding for itself in respect of its properties, assets and revenues.

The Company irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions, suits or proceedings arising out of or in connection with this Indenture brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

Section 17.05 *Submission to Jurisdiction; Service of Process*. The Company irrevocably appoints Law Debenture Corporate Service Inc. as its authorized agent in the Borough of Manhattan in the City of New York upon which process may be served in any such suit or proceeding, and agrees that service of process upon such agent, and written notice of said service to the Company by the person serving the same to Building 20, No. 56 AnTuo Road, Jiading District, Shanghai, 201804, People's Republic of China, Facsimile No. +86 (21) 3913 0192, shall be deemed in every respect effective service of process upon the Company in any such suit or proceeding. The Company further agrees to take any and all action as may be necessary to maintain such designation and appointment of such agent in full force and effect for a period of five and a half years from the date of this Indenture. If for any reason such agent shall cease to be such agent for service of process, the Company shall forthwith appoint a new agent of recognized standing for service of process in the State of New York and deliver to the Trustee a copy of the new agent's acceptance of that appointment within ten Business Days of such acceptance. Nothing herein shall affect the right of the Trustee, any agent or any Holder to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the Company in any other court of competent jurisdiction. To the extent that the Company has or hereafter may acquire any sovereign or other immunity from jurisdiction of any court or from any legal process with respect to itself or its property, the Company irrevocably waives such immunity in respect of its obligations hereunder or under any Note.

Section 17.06 *Evidence of Compliance with Conditions Precedent; Certificates and Opinions of Counsel to Trustee*. Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall, if requested by the Trustee, furnish to the Trustee an Officers' Certificate stating that such action is permitted by the terms of this Indenture.

Each Officers' Certificate provided for, by or on behalf of the Company in this Indenture and delivered to the Trustee with respect to compliance with this Indenture (other than the Officers' Certificates provided for in Section 4.09) shall include (a) a statement that the person making such certificate is familiar with the requested action and this Indenture; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statement contained in such certificate is based; (c) a statement that, in the judgment of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed judgment as to whether or not such action is permitted by this Indenture; and (d) a statement as to whether or not, in the judgment of such person, such action is permitted by this Indenture.

Notwithstanding anything to the contrary in this Section 17.06, if any provision in this Indenture specifically provides that the Trustee shall or may receive an Opinion of Counsel in connection with any action to be taken by the Trustee or the Company hereunder, the Trustee shall be entitled to, or entitled to request, such Opinion of Counsel.

Section 17.07 *Legal Holidays*. In any case where any Fundamental Change Repurchase Date, Conversion Date, Qualified Equity Financing Conversion Date or Maturity Date is not a Business Day, then any action to be taken on such date need not be taken on such date, but may

be taken on the next succeeding Business Day with the same force and effect as if taken on such date, and no interest shall accrue in respect of the delay.

Section 17.08 *No Security Interest Created.* Nothing in this Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 17.09 *Benefits of Indenture.* Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the Holders, the parties hereto, any Paying Agent, any Conversion Agent, any Note Registrar and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 17.10 *Table of Contents, Headings, Etc.* The table of contents and the titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 17.11 *Execution in Counterparts.* This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 17.12 *Severability.* In the event any provision of this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

Section 17.13 *Waiver of Jury Trial.* EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 17.14 *Force Majeure.* In no event shall the Trustee or the Agents be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee or the Agents, as the case may be, shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 17.15 *Calculations.* Except as otherwise provided herein, the Company shall be responsible for making all calculations called for under the Notes. These calculations include, but are not limited to, determinations of the Last Reported Sale Prices of the ADSs, the

Conversion Rate of the Notes and any adjustments thereto. The Company shall make all these calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on Holders. The Company shall provide a schedule of its calculations to each of the Trustee, the Paying Agent and the Conversion Agent, and each of the Trustee, the Paying Agent and the Conversion Agent is entitled to rely conclusively and without liability upon the accuracy of the Company's calculations without independent verification. The Trustee will forward the Company's calculations to any Holder of Notes upon the prior written request of that Holder at the sole cost and expense of the Company.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the date first above written.

NIO INC.

By: /s/ Steven Feng

Name: Steven Feng

Title: Chief Financial Officer

Signature Page to Indenture

THE BANK OF NEW YORK MELLON, LONDON BRANCH, as
Trustee

By: /s/ Vivian Hui

Name: Vivian Hui

Title: Vice President

Signature Page to Indenture

THE BANK OF NEW YORK MELLON, LONDON BRANCH, as
Paying Agent and Conversion Agent

By: /s/ Vivian Hui
Name: Vivian Hui
Title: Vice President

Signature Page to Indenture

THE BANK OF NEW YORK MELLON SA/NV, LUXEMBOURG
BRANCH, as Registrar and Transfer Agent

By: /s/ Vivian Hui

Name: Vivian Hui

Title: Vice President

Signature Page to Indenture

[FORM OF FACE OF NOTE]

[INCLUDE FOLLOWING LEGEND IF A GLOBAL NOTE]

[THIS IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AN IS REGISTERED IN THE NAME OF THE COMMON DEPOSITARY OR A NOMINEE OF THE COMMON DEPOSITARY, WHICH MAY BE TREATED BY THE COMPANY, THE TRUSTEE AND ANY AGENT THEREOF AS THE OWNER AND HOLDER OF THIS NOTE FOR ALL PURPOSES

UNLESS THIS NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE BANK OF NEW YORK MELLON, LONDON BRANCH AS COMMON DEPOSITARY (THE "COMMON DEPOSITARY") FOR EUROCLEAR BANK SA/NV ("EUROCLEAR") AND CLEARSTREAM BANKING S.A. ("CLEARSTREAM") TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY NOTE ISSUED IS REGISTERED IN THE NAME OF THE COMMON DEPOSITARY OR A NOMINEE THEREOF OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE COMMON DEPOSITARY (AND ANY PAYMENT IS MADE TO COMMON DEPOSITARY OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE COMMON DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, THE COMMON DEPOSITARY, HAS AN INTEREST HEREIN.

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF NIO INC. (THE "COMPANY") OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY DURING THE THREE IMMEDIATELY PRECEDING MONTHS MAY PURCHASE, OTHERWISE ACQUIRE OR OWN THIS NOTE, THE AMERICAN DEPOSITARY SHARES DELIVERABLE UPON CONVERSION HEREOF AND THE ORDINARY SHARES REPRESENTED THEREBY, OR A BENEFICIAL INTEREST HEREIN.]

[INCLUDE FOLLOWING LEGEND IN THE ORIGINALLY ISSUED NOTE AND ANY REPLACEMENT NOTE ISSUED UNTIL THE DISTRIBUTION COMPLIANCE PERIOD TERMINATION DATE]

[THIS SECURITY AND THE ORDINARY SHARES REPRESENTED THEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") AND, PRIOR TO THE DATE THAT IS 40 DAYS AFTER THE DATE HEREOF, MAY NOT BE OFFERED, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, A U.S. PERSON (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT) EXCEPT PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOTE SUBJECT TO, THE

REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS 40 DAYS AFTER THE DATE HEREOF, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS NOT A U.S. PERSON AND IS LOCATED OUTSIDE THE UNITED STATES (WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT AND THAT IT AND ANY SUCH ACCOUNT IS NOT AN AFFILIATE OF NIO INC. (THE "COMPANY"), AND

(2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE, HYPOTHECATE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS 40 DAYS AFTER THE DATE HEREOF, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) TO A NON-U.S. PERSON IN AN OFFSHORE TRANSACTION MEETING THE REQUIREMENTS OF RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.]

PRIOR TO AUGUST 10, 2020, NO BENEFICIAL OWNER THAT PURCHASED A BENEFICIAL INTEREST IN THIS SECURITY UPON THE ORIGINAL ISSUANCE THEREOF MAY OFFER, SELL, PLEDGE, HYPOTHECATE OR OTHERWISE TRANSFER SUCH BENEFICIAL INTEREST EXCEPT IN ACCORDANCE WITH THE CONVERTIBLE NOTE SUBSCRIPTION AGREEMENT BETWEEN NIO INC. AND THE PURCHASER NAMED THEREIN, DATED FEBRUARY 14, 2020 (THE "SUBSCRIPTION AGREEMENT"). ANY ATTEMPT BY SUCH BENEFICIAL OWNER TO OFFER, SELL, PLEDGE, HYPOTHECATE OR OTHERWISE TRANSFER SUCH BENEFICIAL INTEREST IN VIOLATION OF THIS RESTRICTION SHALL BE VOID.

0% Convertible Senior Note due 2021

No. [_____]

[Initially]¹ US\$ _____

ISIN No. XS2123241676

Common Code 212324167

NIO Inc., a company duly organized and validly existing under the laws of the Cayman Islands (the “**Company**,” which term includes any successor company or corporation or other entity under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to [The Bank of New York Depository (Nominees) Limited]² [_____]³, or registered assigns, the principal sum [as set forth in the “Schedule of Exchanges of Notes” attached hereto]⁴ [of US\$[_____]]⁵, which amount, taken together with the principal amounts of all other outstanding Notes, shall not exceed US\$30,000,000 in aggregate at any time, in accordance with the rules and procedures of Euroclear and Clearstream, on February 4, 2021 as set forth below.

This Note shall not bear any interest and the principal amount of this Note will not accrete.

Any Defaulted Amounts shall accrue interest per annum at the rate per annum equal to three percent, subject to the enforceability thereof under applicable law, from, and including, the relevant payment date to, but excluding, the date on which such Defaulted Amounts shall have been paid by the Company, at its election, in accordance with Section 2.03(c) of the Indenture.

The Company shall pay or cause the Paying Agent to pay the principal of (including any premium payable) and interest on this Note, so long as such Note is a Global Note, in immediately available funds to the Common Depository or its nominee, as the case may be, as the registered Holder of such Note. As provided in and subject to the provisions of the Indenture, the Company shall pay the principal of any Notes (other than Notes that are Global Notes) at the office or agency designated by the Company for that purpose. The Company has initially designated the Bank of New York Mellon, London Branch as its Paying Agent and Conversion Agent and The Bank of New York Mellon SA/NV, Luxembourg Branch as its Note Registrar and Transfer Agent in respect of the Notes and its agency in the Borough of Manhattan, The City of New York, as a place where Notes may be presented for payment or for registration of transfer.

¹ Include if a Global Note.

² Include if a Global Note.

³ Include if a Physical Note.

⁴ Include if a Global Note.

⁵ Include if a Physical Note.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions giving the Holder of this Note the right to convert this Note into ADSs on the terms and subject to the limitations set forth in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Note, and any claim, controversy or dispute arising under or related to this Note, shall be construed in accordance with and governed by the laws of the State of New York (without regard to the conflicts of laws provisions thereof).

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control and govern.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed manually or by facsimile by the Note Registrar under the Indenture.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed.

NIO INC.

By: _____
Name:
Title:

A-5

Dated:

NOTE REGISTRAR'S CERTIFICATE OF AUTHENTICATION

THE BANK OF NEW YORK MELLON SA/NV, LUXEMBOURG BRANCH
as Note Registrar, certifies that this is one of the Notes described
in the within-named Indenture.

By: _____

Name:

Title:

NIO INC.
0% Convertible Senior Note due 2021

This Note is one of a duly authorized issue of Notes of the Company, designated as its 0% Convertible Senior Notes due 2021 (the “**Notes**”), limited to the aggregate principal amount of US\$30,000,000, all issued or to be issued under and pursuant to an Indenture dated as of February 19, 2020 (the “**Indenture**”), between the Company and The Bank of New York Mellon, London Branch as trustee (the “**Trustee**”), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties, privileges, disclaimers from liability and immunities thereunder of the Trustee, the Company and the Holders of the Notes. Additional Notes may be issued in an unlimited aggregate principal amount, subject to certain conditions specified in the Indenture.

In the case certain Events of Default, as defined in the Indenture, shall have occurred and be continuing, the principal of, and interest on, all Notes may be declared, by either the Trustee or Holders of at least 25% in aggregate principal amount of Notes then outstanding, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions and certain exceptions set forth in the Indenture. In the case certain Events of Default relating to a bankruptcy (or similar proceeding) with respect to the Company or a Significant Subsidiary of the Company shall have occurred, the principal of, and interest on, all Notes shall automatically become immediately due and payable, as set forth in the Indenture.

Subject to the terms and conditions of the Indenture, the Company will make or cause the Paying Agent to make all payments in respect of the principal amount (and any premium payable) on the Maturity Date and the Fundamental Change Repurchase Price, as the case may be, to the Holder who surrenders a Note to collect such payments in respect of the Note. The Company will pay or cause the Paying Agent to pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

Subject to the terms and conditions of the Indenture, the Company will cause to be paid a premium equal to (i) in the case of any payment of principal to be made on the Maturity Date or pursuant to Section 6.02 of the Indenture, 2.0% of the outstanding principal amount of the Notes, or (ii) in the case of any payment of principal to be made on a Fundamental Change Repurchase Date, the aggregate interest that would have accrued on the outstanding principal amount of the Notes to be repurchased (or such portion thereof, as the case may be) over the period starting from (and including) the original date of issuance of the Notes and ending on (and including) the Fundamental Change Repurchase Date, if the Note were to bear interest at a rate of 2.0% per annum accruing daily and computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of actual days elapsed in a 30-day month.

Subject to the terms and conditions of the Indenture, Additional Amounts will be paid in connection with any payments made and deliveries caused to be made by the Company or any successor to the Company under or with respect to the Indenture and the Notes, including, but not limited to, payments of principal (including, if applicable, the Fundamental Change Repurchase Price), premium, if any, payments of interest and deliveries of ADSs or any other

consideration due on conversion of a Note (together with payments of cash for any Fractional ADS or other consideration) upon conversion of the Notes to ensure that the net amount received by the beneficial owner of the Notes after any applicable withholding, deduction or reduction (and after deducting any taxes on the Additional Amounts) will equal the amounts that would have been received by such beneficial owner had no such withholding, deduction or reduction been required.

The Indenture contains provisions permitting the Company and the Trustee in certain circumstances, without the consent of the Holders of the Notes, and in certain other circumstances, with the consent of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, evidenced as in the Indenture provided, to execute supplemental indentures modifying the terms of the Indenture and the Notes as described therein. It is also provided in the Indenture that, subject to certain exceptions, the Holders of a majority in aggregate principal amount of the Notes at the time outstanding may on behalf of the Holders of all of the Notes waive any past Default or Event of Default under the Indenture and its consequences.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay or cause to be delivered, as the case may be, the principal (including the Fundamental Change Repurchase Price, if applicable, and any premium payable hereunder) of and the consideration due upon conversion of, this Note at the place, at the respective times, at the rate and in the lawful money herein prescribed.

The Notes are issuable in registered form without interest coupons in denominations of US\$1,000 principal amount and integral multiples thereof. At the office or agency of the Company referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations, without payment of any service charge but, if required by the Company or Trustee, with payment of a sum sufficient to cover any transfer or similar tax that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such exchange of Notes being different from the name of the Holder of the old Notes surrendered for such exchange.

The Company may not redeem the Notes prior to the Maturity Date. No sinking fund is provided for the Notes.

Upon the occurrence of a Fundamental Change, the Holder has the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes or any portion thereof (in principal amounts of US\$1,000 or integral multiples thereof) on the Fundamental Change Repurchase Date at a price equal to the Fundamental Change Repurchase Price.

Subject to the provisions of the Indenture, the Holder hereof has the right, at its option, prior to the close of business on the second Business Day immediately preceding the Maturity Date, to convert any Notes or portion thereof that is US\$1,000 principal amount of Notes or an integral multiple thereof, into ADSs at the Conversion Rate specified in the Indenture, as adjusted from time to time as provided in the Indenture.

Terms used in this Note and defined in the Indenture are used herein as therein defined.

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM = as tenants in common

UNIF GIFT MIN ACT = Uniform Gifts to Minors Act

CUST = Custodian

TEN ENT = as tenants by the entireties

JT TEN = joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

[FORM OF NOTICE OF CONVERSION]

To: NIO INC.

THE BANK OF NEW YORK MELLON, LONDON BRANCH, as Conversion Agent

DEUTSCHE BANK TRUST COMPANY AMERICAS, as ADS Depositary

The undersigned registered holder of this Note (ISIN No. XS2123241676; Common Code 212324167) hereby exercises the option to convert that Note, or the portion thereof (that is US\$1,000 principal amount or an integral multiple thereof) below designated, into ADSs in accordance with the terms of the Indenture referred to in this Note, and directs that any ADSs deliverable upon such conversion, together with any cash payable for any Fractional ADS, and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below. Terms defined in the Deposit Agreement or the Indenture referred to in this Notice are used herein as so defined. If any ADSs or any portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned will pay all documentary, stamp, issue, transfer or similar taxes, if any, in accordance with Section 14.02(d) and Section 14.02(e) of the Indenture. Any amount required to be paid to the undersigned on account of interest accompanies this Notice.

In connection with the conversion of this Note, or the portion hereof below designated, the undersigned acknowledges, represents to and agrees with the Company that the undersigned is not an "affiliate" (as defined in Rule 144 under the Securities Act) of the Company and has not been an "affiliate" (as defined in Rule 144 under the Securities Act) of the Company during the three months immediately preceding the date hereof.

The undersigned hereby instructs the ADS Depositary to register the ADSs in the name of:

1. Name of Beneficial Owner to receive ADSs (English):	
2. Address of Beneficial Owner to receive ADSs (English):	
3. Name of Registered Holder of the Deposited Shares:	
4. Number of Deposited Shares:	
5. Number of ADSs to be issued:	
6. Beneficial Owner's Tax ID Number:	
7. Contact Name and Tel No/email address:	

The undersigned instructs the Depositary to deliver the ADRs representing the ADSs to the following account:

ADS Receiving Broker (* are mandatory fields):

a) DTC Broker Name*:	
b) DTC Broker's Participant Account with DTC *:	
c) DTC Broker Contact Name:	
d) DTC Broker Contact Tel No/email:	
e) Beneficial Owner's Account # with DTC Broker*:	

OR

e) Local Broker Name (have account with DTC Broker)*:	
Local Broker Sub-Account # with DTC Broker*:	
Local Broker Contact Name:	
Local Broker Contact Tel No/email:	

ADS Delivering Party:

Name:	Deutsche Bank Trust Company Americas DTC Account: #2655
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For any ADS settlement inquiries, please contact DBTCA Broker Desk:

Tel: +1-212-250-9100 (New York) / +44-207-547-6500 (London)

Email: adr@db.com

Dated: _____

Signature(s)

Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if ADSs are to be issued other than to and in the name of the registered holder.

Fill in for registration of ADSs if to be issued other than to and in the name of the registered holder:

(Name)

(Street Address)

(City, State and Zip Code)

Please print name and address

Principal amount to be converted (if less than all):
US\$ _____,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Social Security or Other Taxpayer
Identification Number

[FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE]

To: NIO INC.

THE BANK OF NEW YORK MELLON, LONDON BRANCH, as Trustee

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from NIO Inc. (the “**Company**”) as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to pay to the registered holder hereof in accordance with Section 15.02 of the Indenture referred to in this Note the entire principal amount of this Note, or the portion thereof (that is US\$1,000 principal amount or an integral multiple thereof) below designated.

In the case of Physical Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Certificate Number(s): _____

Dated: _____

Signature(s)

 Social Security or Other Taxpayer
 Identification Number

Principal amount to be repaid (if less than all):
 US\$ _____,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

[FORM OF ASSIGNMENT AND TRANSFER]

For value received _____ hereby sell(s), assign(s) and transfer(s) unto _____ (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints _____ attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

In connection with any transfer of the within Note occurring prior to the Distribution Compliance Period Termination Date, as defined in the Indenture governing such Note, the undersigned confirms that such Note is being transferred:

- To NIO Inc. or a subsidiary thereof; or
- Pursuant to a registration statement that has become or been declared effective under the Securities Act of 1933, as amended; or
- To a non-U.S. person in an offshore transaction meeting the requirements of Rule 903 or Rule 904 of Regulation S under the Securities Act of 1933, as amended; or
- Pursuant to an exemption from the registration requirements of the Securities Act.

Dated: _____

Signature(s)

NOTICE: The signature on the assignment must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.



[FORM OF AUTHORIZATION CERTIFICATE]

I, [Name], [Title], acting on behalf of NIO Inc. (the “**Company**”) hereby certify that:

(A) the persons listed below are (i) authorized Officers of the Company for purposes of the Indenture (the “**Indenture**”) dated as of February 19, 2020 between the Company and The Bank of New York Mellon, London Branch as trustee, in relation to the 0% Convertible Senior Notes due 2021 (the “**Notes**”), (ii) duly elected or appointed, qualified and acting as the holder of the respective office or offices set forth opposite their names and (iii) the duly authorized persons who executed or will execute the Indenture and the Notes issued pursuant to the Indenture by their manual or facsimile signatures and were at the time of such execution, duly elected or appointed, qualified and acting as the holder of the offices set forth opposite their names;

(B) each of the individuals listed below have the authority to receive call backs at the telephone numbers noted below upon request of The Bank of New York Mellon, London Branch in connection with the Notes issued pursuant to the Indenture;

(C) each signature appearing below is the person’s genuine signature; and

(D) attached hereto as Schedule I is a true, correct and complete specimen of the certificates representing the Notes.



IN WITNESS WHEREOF, I have hereunto executed and delivered this certificate on behalf of the Company as of the date indicated.

Dated: _____

[Name]

By: _____

Name:

Title:

SCHEDULE I

<u>Name</u>	<u>Title, Fax No., Email</u>	<u>Signature</u>	<u>Tel No.</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

NIO Inc.

and

The Bank of New York Mellon, London Branch as Trustee

and

The Bank of New York Mellon, London Branch, as Paying Agent and Conversion Agent

and

The Bank of New York Mellon SA/NV, Luxembourg Branch, as Registrar and Transfer Agent

INDENTURE

dated as of March 11, 2020

US\$235,000,000 0% CONVERTIBLE SENIOR NOTES DUE 2021

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INDENTURE dated as of March 11, 2020 between NIO INC., a Cayman Islands exempted company, PO Box 309, Umland House, Grand Cayman, KY1-1104, Cayman Islands, as issuer (the “**Company**,” as more fully set forth in Section 1.01), THE BANK OF NEW YORK MELLON, LONDON BRANCH, a banking organization organized and existing under the laws of the State of New York with limited liability and operating through its branch in London at One Canada Square, London E14 5AL, United Kingdom, as trustee (the “**Trustee**”), as paying agent (the “**Paying Agent**”) and as conversion agent (the “**Conversion Agent**”) (as more fully set forth in Section 1.01) and THE BANK OF NEW YORK MELLON, SA/NV, LUXEMBOURG BRANCH, operating through its branch in Luxembourg at Vertigo Building – Polaris, 2-4 rue Eugène Ruppert, L-2453 Luxembourg as registrar (the “**Registrar**”) and as transfer agent (the “**Transfer Agent**”) (as more fully set forth in Section 1.01).

WITNESSETH:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issuance of its 0% Convertible Senior Notes due 2021 (the “**Notes**”), offered and sold outside the United States pursuant to Regulation S in an aggregate principal amount not to exceed US\$235,000,000, subject to Section 2.10, and in order to provide the terms and conditions upon which the Notes are to be authenticated, issued and delivered, the Company has duly authorized the execution and delivery of this Indenture; and

WHEREAS, the Form of Note, the certificate of authentication to be borne by each Note, the Form of Notice of Conversion, the Form of Fundamental Change Repurchase Notice and the Form of Assignment and Transfer to be borne by the Notes are to be substantially in the forms hereinafter provided; and

WHEREAS, all acts and things necessary to make the Notes, when executed by the Company and authenticated and delivered by the Note Registrar, as in this Indenture provided, the valid, binding and legal obligations of the Company, and this Indenture a valid agreement according to its terms, have been done and performed, and the execution of this Indenture and the issuance hereunder of the Notes have in all respects been duly authorized.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

That in order to declare the terms and conditions upon which the Notes are, and are to be, authenticated, issued and delivered, and in consideration of the premises and of the purchase and acceptance of the Notes by the Holders thereof, the Company covenants and agrees with the Trustee for the equal and proportionate benefit of the respective Holders from time to time of the Notes (except as otherwise provided below), as follows:

ARTICLE 1
DEFINITIONS

Section 1.01 *Definitions*. The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. The words “herein,” “hereof,” “hereunder,” and words of similar import

refer to this Indenture as a whole and not to any particular Article, Section or other subdivision. The terms defined in this Article include the plural as well as the singular.

“**Additional Amounts**” shall have the meaning specified in Section 4.07(a).

“**ADS**” means an American Depositary Share issued pursuant to the Deposit Agreement representing one Ordinary Share of the Company as of the date of this Indenture, and deposited with the ADS Custodian.

“**ADS Custodian**” means Deutsche Bank AG, Hong Kong Branch, with respect to the ADSs delivered pursuant to the Deposit Agreement or any successor entity thereto.

“**ADS Depository**” means Deutsche Bank Trust Company Americas, as depository for the ADSs.

“**Affiliate**” of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, “control,” when used with respect to any specified Person means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Agents**” means the Paying Agent, the Transfer Agent, the Note Registrar and the Conversion Agent.

“**applicable taxes**” shall have the meaning specified in Section 4.07(a).

“**Bail-in Legislation**” means in relation to a member state of the European Economic Area which has implemented, or which at any time implements, the BRRD, the relevant implementing law, regulation, rule or requirement as described in the EU Bail-in Legislation Schedule from time to time.

“**Bail-in Powers**” means any Write-down and Conversion Powers as defined in the EU Bail-in Legislation Schedule, in relation to the relevant Bail-in Legislation. “**BNY Mellon Group**” shall have the meaning specified in Section 7.02.

“**Board of Directors**” means the board of directors of the Company or a committee of such board duly authorized to act for it hereunder.

“**Board Resolution**” means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors, and to be in full force and effect on the date of such certification, and delivered to the Trustee.

“**BRRD**” means Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms.

“**BRRD Liability**” means a liability in respect of which the relevant Write Down and Conversion Powers in the applicable Bail-in Legislation may be exercised.

“**Business Day**” means, with respect to any Note, each Monday, Tuesday, Wednesday, Thursday and Friday that is not a day on which banking institutions in the State of New York, or the Cayman Islands are authorized or obligated by law or executive order to close.

“**Capital Stock**” means, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity.

“**Clause A Distribution**” shall have the meaning specified in Section 14.04(c).

“**Clause B Distribution**” shall have the meaning specified in Section 14.04(c).

“**Clause C Distribution**” shall have the meaning specified in Section 14.04(c).

“**Clearstream**” means Clearstream Banking S.A.

“**close of business**” means 5:00 p.m. (New York City time).

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended.

“**Commission**” means the U.S. Securities and Exchange Commission.

“**Common Depository**” means the common depository acting on behalf of Euroclear and Clearstream.

“**Common Equity**” of any Person means ordinary share capital or common stock of such Person that is generally entitled (a) to vote in the election of directors of such Person or (b) if such Person is not a corporation, to vote or otherwise participate in the selection of the governing body, partners, managers or others that will control the management or policies of such Person.

“**Company**” shall have the meaning specified in the first paragraph of this Indenture, and subject to the provisions of Article 11, shall include its successors and assigns.

“**Company Order**” means a written order of the Company, signed by an Officer of the Company and delivered to the Trustee and/or Note Registrar, as applicable.

“**Consolidated Affiliated Entity**” means, with respect to any Person, any corporation, association or other entity which is or is required to be consolidated with such Person under Accounting Standards Codification subtopic 810-10, Consolidation: Overall (including any changes, amendments or supplements thereto) or, if such person prepares its financial statements in accordance with accounting principles other than the accounting principles generally accepted in the United States of America, the equivalent of Accounting Standards Codification subtopic 810-10, Consolidation: Overall under such accounting principles.

“**Conversion Agent**” shall have the meaning specified in Section 4.02.

“**Conversion Date**” shall have the meaning specified in Section 14.02(c).

“**Conversion Obligation**” shall have the meaning specified in Section 14.01.

“**Conversion Rate**” shall have the meaning specified in Section 14.01.

“**Corporate Trust Office**” means the corporate trust office of the Trustee at which at any time its corporate trust business shall be administered, which office at the date hereof is located at The Bank of New York Mellon, London Branch, One Canada Square, London E14 5AL, United Kingdom, Attention: Corporate Trust Administration – Project Camel III (NIO Inc.), Fax: +44 1202 689660, and shall include a reference to The Bank of New York Mellon, Hong Kong Branch, Level 26, Three Pacific Place, 1 Queen’s Road East, Hong Kong, Attention: Global Corporate Trust – NIO Inc., Facsimile No.: +852 2295 3283, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the corporate trust office of any successor trustee (or such other address as such successor trustee may designate from time to time by notice to the Holders and the Company).

“**Current Market Price**” means, in respect of an ADS at a particular date, the volume-weighted average of the Last Reported Sale Prices for one ADS (carrying full entitlement to dividend) for the thirty (30) consecutive Trading Days ending on the Trading Day immediately preceding such date, *provided* that if at any time during the said thirty (30) Trading Day period the ADSs shall have been quoted ex-dividend and during some other part of that period the ADSs shall have been quoted cum-dividend then:

(a) if the ADSs (or the Class A Ordinary Shares) to be issued in such circumstances do not rank for the dividend in question, the quotations on the dates on which the ADSs shall have been quoted cum-dividend shall for the purpose of this definition be deemed to be the amount thereof reduced by an amount equal to the amount of that dividend per ADS; or

(b) if the ADSs (or the Class A Ordinary Shares) to be issued in such circumstances rank for the dividend in question, the quotations on the dates on which the ADSs shall have been quoted ex-dividend shall for the purpose of this definition be deemed to be the amount thereof increased by such similar amount.

“**Default**” means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

“**Defaulted Amounts**” means any amounts on any Note (including, without limitation, the Fundamental Change Repurchase Price, principal, premium and interest) that are payable but are not punctually paid or duly provided for.

“**Deposit Agreement**” means the deposit agreement dated as of September 11, 2018 by and among the Company, the ADS Depository and the holders and beneficial owners of the

ADSs delivered thereunder or, if amended or supplemented as provided therein, as so amended or supplemented.

“**Distributed Property**” shall have the meaning specified in Section 14.04(c).

“**Distribution Compliance Period Termination Date**” shall have the meaning specified in Section 2.05(c).

“**EU Bail-in Legislation Schedule**” means the document described as such, then in effect, and published by the Loan Market Association (or any successor person) from time to time at <http://www.lma.eu.com/pages.aspx?p=499>.

“**Euroclear**” means Euroclear Bank SA/NV.

“**Event of Default**” shall have the meaning specified in Section 6.01.

“**Ex-Dividend Date**” means the first date on which the ADSs trade on the applicable exchange or in the applicable market, regular way, without the right to receive the issuance, dividend or distribution in question, from the Company or, if applicable, from the seller of the ADSs on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

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

“**Expiring Rights**” means any rights, options or warrants to purchase Ordinary Shares or ADSs that expire on or prior to the Maturity Date.

“**FATCA**” shall have the meaning specified in Section 4.07(a)(i)(D).

“**Form of Assignment and Transfer**” shall mean the “Form of Assignment and Transfer” attached as Attachment 3 to the Form of Note attached hereto as Exhibit A.

“**Form of Fundamental Change Repurchase Notice**” shall mean the “Form of Fundamental Change Repurchase Notice” attached as Attachment 2 to the Form of Note attached hereto as Exhibit A.

“**Form of Notice of Conversion**” shall mean the “Form of Notice of Conversion” attached as Attachment 1 to the Form of Note attached hereto as Exhibit A.

“**Fractional ADS**” shall have the meaning specified in Section 14.02(a).

“**Fundamental Change**” shall be deemed to have occurred at the time after the Notes are originally issued if any of the following occurs:

(a) (A) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act, other than the Company, its Subsidiaries, the employee benefit plans of

the Company and its Subsidiaries and any of the Permitted Holders, files a Schedule TO or any schedule, form or report under the Exchange Act disclosing that such person or group has become the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of (i) the Company’s Common Equity (including Common Equity held in the form of ADSs) representing more than 50% of the voting power of the Company’s Common Equity or (ii) more than 50% of the outstanding Ordinary Shares (including Ordinary Shares held in the form of ADSs); or (B) the Permitted Holders (together with any of their respective Affiliates) have become the direct or indirect “beneficial owners,” as defined in Rule 13d-3 under the Exchange Act, of Ordinary Shares (including Ordinary Shares held in the form of ADSs) representing, in the aggregate, more than 65% of the outstanding Ordinary Shares (including Ordinary Shares held in the form of ADSs), based on any Schedule TO or any schedule, form or report under the Exchange Act disclosing the same filed by any one or more of the Permitted Holders;

(b) the consummation of (A) any recapitalization, reclassification or change of the Ordinary Shares or the ADSs (other than changes resulting from a subdivision or combination) as a result of which the Ordinary Shares or the ADSs would be converted into, or exchanged for, stock, other securities, other property or assets; (B) any share exchange, consolidation or merger of the Company, or any similar transaction, pursuant to which the Ordinary Shares or the ADSs will be converted into cash, securities or other property; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its Subsidiaries and Consolidated Affiliated Entities, taken as a whole, to any Person other than one of the Company’s wholly-owned Subsidiaries; provided, however, that a transaction described in clause (B) in which the holders of all classes of the Company’s Common Equity immediately prior to such transaction own, directly or indirectly, more than 50% of all classes of Common Equity of the continuing or surviving corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions vis-a-vis each other as such ownership immediately prior to such transaction shall not be a Fundamental Change pursuant to this clause (b);

(c) the shareholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company;

(d) the ADSs (or other Common Equity or ADSs in respect of Common Equity underlying the Notes) cease to be listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors); or

(e) any change in or amendment to the laws, regulations and rules of the People’s Republic of China or the official interpretation or official application thereof (a “**Change in Law**”) that results in (x) the Company, its Subsidiaries and its Consolidated Affiliated Entities (collectively, the “**Company Group**”) (as in existence immediately subsequent to such Change in Law), as a whole, being legally prohibited from operating substantially all of the business operations conducted by the Company Group (as in

existence immediately prior to such Change in Law) as of the last date of the period described in the Company's consolidated financial statements for the most recent fiscal quarter and (y) the Company's being unable to continue to derive substantially all of the economic benefits from the business operations conducted by the Company Group (as in existence immediately prior to such Change in Law) in the same manner as reflected in the Company's consolidated financial statements for the most recent fiscal quarter;

provided, however, that a transaction or event described in clause (b) above shall not constitute a Fundamental Change, if at least 90% of the consideration received or to be received by holders of the ADSs, excluding cash payments for Fractional ADSs, in connection with such transaction or event consists of shares of Common Equity or ADSs in respect of Common Equity that are listed or quoted on any of The New York Stock Exchange, The NASDAQ Global Select Market or The NASDAQ Global Market (or any of their respective successors) or will be so listed or quoted when issued or exchanged in connection with such transaction or event that would otherwise constitute a Fundamental Change under clause (b) of the definition thereof and as a result of such transaction or event, the Notes become convertible into such consideration, excluding cash payments for Fractional ADSs and cash payments made in connection with dissenters' appraisal rights; and *provided further* that an event that is not considered a Fundamental Change pursuant to this proviso shall not be a Fundamental Change solely because such event could also be subject to clause (a) above.

"Fundamental Change Company Notice" shall have the meaning specified in Section 15.02(c).

"Fundamental Change Repurchase Date" shall have the meaning specified in Section 15.02(a).

"Fundamental Change Repurchase Notice" shall have the meaning specified in Section 15.02(b)(i).

"Fundamental Change Repurchase Price" shall have the meaning specified in Section 15.02(a).

"Global Note" shall have the meaning specified in Section 2.05(b).

"Holder," as applied to any Note, or other similar terms (but excluding the term "beneficial holder"), shall mean any Person in whose name at the time a particular Note is registered on the Note Register.

"Indenture" means this instrument as originally executed or, if amended or supplemented as herein provided, as so amended or supplemented.

"Last Reported Sale Price" of the ADSs on any date means the closing sale price per ADS (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on that date as reported in composite transactions for the principal U.S. national or regional securities exchange on which the ADSs are traded. If the ADSs are not listed for trading on a U.S. national or

regional securities exchange on the relevant date, the “Last Reported Sale Price” shall be the last quoted bid price for the ADSs in the over-the-counter market on the relevant date as reported by OTC Markets Group Inc. or a similar organization. If the ADSs are not so quoted, the “Last Reported Sale Price” shall be the average of the mid-point of the last bid and ask prices for the ADSs on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

“**Maturity Date**” means March 5, 2021.

“**Merger Event**” shall have the meaning specified in Section 14.07(a).

“**Note**” or “**Notes**” shall have the meaning specified in the first paragraph of the recitals of this Indenture.

“**Note Register**” shall have the meaning specified in Section 2.05(a).

“**Note Registrar**” shall have the meaning specified in Section 2.05(a).

“**Notice of Conversion**” shall have the meaning specified in Section 14.02(b).

“**Officer**” means, with respect to the Company, the President, the Chief Executive Officer, the Chief Financial Officer the Treasurer, the Secretary, any Executive or Senior Vice President or any Vice President (whether or not designated by a number or numbers or word or words added before or after the title “Vice President”).

“**Officers’ Certificate**,” when used with respect to the Company, means a certificate that is delivered to the Trustee and that is signed by (a) two Officers of the Company or (b) one Officer of the Company and one of any Assistant Treasurer, any Assistant Secretary or General Counsel or the Controller of the Company. Each such certificate shall include the statements provided for in Section 17.06 if and to the extent required by the provisions of such Section. One of the Officers giving an Officers’ Certificate pursuant to Section 4.09 shall be the principal executive, financial or accounting officer of the Company.

“**open of business**” means 9:00 a.m. (New York City time).

“**Opinion of Counsel**” means an opinion in writing signed by legal counsel and in a form reasonably acceptable to the Trustee, who may be counsel to the Company, or other counsel acceptable to the Trustee, that is delivered to the Trustee. Each such opinion shall include the statements provided for in Section 17.06 if and to the extent required by the provisions of such Section 17.06.

“**Ordinary Shares**” means Class A ordinary shares of the Company, par value US\$0.00025 per share, at the date of this Indenture, subject to Section 14.07.

“**outstanding**,” when used with reference to Notes, shall, subject to the provisions of Section 8.04, mean, as of any particular time, all Notes authenticated and delivered by the Note Registrar under this Indenture, except:

- (a) Notes theretofore canceled by the Note Registrar or accepted by the Note Registrar for cancellation;
- (b) Notes, or portions thereof, that have become due and payable and in respect of which monies in the necessary amount shall have been deposited with the Trustee or with any Paying Agent (other than the Company) or shall have been set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent);
- (c) Notes that have been paid pursuant to Section 2.06 or Notes in lieu of which, or in substitution for which, other Notes shall have been authenticated and delivered pursuant to the terms of Section 2.06 unless proof satisfactory to the Trustee is presented that any such Notes are held by protected purchasers in due course;
- (d) Notes converted pursuant to Article 14 and required to be cancelled pursuant to Section 2.08; and
- (e) Notes repurchased by the Company pursuant to the third sentence of Section 2.10.

“**Paying Agent**” shall have the meaning specified in Section 4.02.

“**Permitted Holders**” means Mr. Bin Li and Tencent Holdings Limited, together with any other respective “person” or “group” subject to aggregation with respect to the Ordinary Shares (including Ordinary Shares held in the form of ADSs) with any of the aforementioned person and entity under Section 13(d) of the Exchange Act.

“**Person**” means an individual, a corporation, a limited liability company, an association, a partnership, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

“**Physical Notes**” means permanent certificated Notes in registered form issued in denominations of US\$1,000 principal amount and multiples thereof.

“**PRC**” means the People's Republic of China and, for the purposes for this Indenture, shall exclude Hong Kong SAR, Macau SAR and Taiwan.

“**Predecessor Note**” of any particular Note means every previous Note evidencing all or a portion of the same debt as that evidenced by such particular Note; and, for the purposes of this definition, any Note authenticated and delivered under Section 2.06 in lieu of or in exchange for a mutilated, lost, destroyed or stolen Note shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Note that it replaces.

“**Qualified Equity Financing**” means a bona fide issuance of equity securities of the Company for fundraising purposes after the date of this Indenture through September 5, 2020, excluding any of the following: (i) ADSs issued upon conversion of any Note or any convertible securities then outstanding, (ii) Ordinary Shares (directly or in the form of ADSs) issued upon

share split, share dividend or any subdivision of Ordinary Shares (directly or in the form of ADSs), (iii) Ordinary Shares (directly or in the form of ADSs) (or options or warrants therefor) issued to officers, directors, employees and consultants of the Company or issued to the trustee, general partner or other entity that is to hold the Ordinary Shares (directly or in the form of ADSs), in each case pursuant to a duly approved employee equity incentive plan, and (iv) shares of the Company issued pursuant to any bona fide acquisition, on arms-length terms, of interests in or assets of another corporation or entity by the Company as duly approved by the Board of Directors.

“**Qualified Equity Financing Conversion Rate**” means the conversion rate equal to US\$1,000 *divided by* the per-share issuance price applicable to the new issuance of equity securities of the Company in the Qualified Equity Financing.

“**Record Date**” means, with respect to any dividend, distribution or other transaction or event in which the holders of the Ordinary Shares (directly or in the form of ADSs) (or other applicable security) have the right to receive any cash, securities or other property or in which the Ordinary Shares (directly or in the form of ADSs) (or such other security) are exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of security holders entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors, statute, contract or otherwise).

“**Reference Price**” means the higher of (i) US\$3.50 per Class A Share, subject to the same adjustment to the Conversion Rate pursuant to this Indenture and (ii) the Current Market Price, in each case on the date of announcement of the issuance referred to under the provisions in Section 14.04(f).

“**Reference Property**” shall have the meaning specified in Section 14.07(a).

“**Regulation S**” means Regulation S under the Securities Act or any successor to such regulation.

“**Relevant Jurisdiction**” shall have the meaning specified in Section 4.07(a).

“**Relevant Resolution Authority**” means the resolution authority with the ability to exercise any Bail-in Powers in relation to The Bank of New York Mellon SA/NV, Luxembourg Branch.

“**Relevant Taxing Jurisdiction**” shall have the meaning specified in Section 4.07(a).

“**Responsible Officer**” means, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such Person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

“**Rule 144**” means Rule 144 as promulgated under the Securities Act.

“**Securities Act**” means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

“**Significant Subsidiary**” means a Subsidiary of the Company that meets the definition of “significant subsidiary” in Article 1, Rule 1-02 of Regulation S-X under the Exchange Act. Each of the Company’s Consolidated Affiliated Entities will be deemed to be a “subsidiary” for purposes of the definition of “significant subsidiary” in Article 1, Rule 1-02 of Regulation S-X.

“**Spin-Off**” shall have the meaning specified in Section 14.04(c).

“**Subsidiary**” means, with respect to any Person, any corporation, association, partnership or other business entity of which more than 50% of the total voting power of shares of Capital Stock or other interests (including partnership interests) entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, general partners or trustees thereof is at the time owned or controlled, directly or indirectly, by (i) such Person; (ii) such Person and one or more Subsidiaries of such Person; or (iii) one or more Subsidiaries of such Person.

“**Successor Company**” shall have the meaning specified in Section 11.01(a).

“**Trading Day**” means a day on which (i) trading in the ADSs (or other security for which a closing sale price must be determined) generally occurs on the New York Stock Exchange or, if the ADSs (or such other security) are not then listed on the New York Stock Exchange, on the principal other U.S. national or regional securities exchange on which the ADSs (or such other security) are then listed or, if the ADSs (or such other security) are not then listed on a U.S. national or regional securities exchange, on the principal other market on which the ADSs (or such other security) are then traded and (ii) a Last Reported Sale Price for the ADSs (or closing sale price for such other security) is available on such securities exchange or market; *provided* that if the ADSs (or such other security) are not so listed or traded, “Trading Day” means a Business Day.

“**transfer**” shall have the meaning specified in Section 2.05(c) and Section 2.05(e), as applicable.

“**Transfer Agent**” shall have the meaning specified in Section 4.02.

“**Trigger Event**” shall have the meaning specified in Section 14.04(c).

“**Trust Indenture Act**” means the Trust Indenture Act of 1939, as amended, as it was in force at the date of execution of this Indenture; *provided, however*, that in the event the Trust Indenture Act of 1939 is amended after the date hereof, the term “Trust Indenture Act” shall mean, to the extent required by such amendment, the Trust Indenture Act of 1939, as so amended.

“**Trustee**” means the Person named as the “Trustee” in the first paragraph of this Indenture until a successor trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter “Trustee” shall mean or include each Person who is then a Trustee hereunder.

“**unit of Reference Property**” shall have the meaning specified in Section 14.07(a).

“**U.S. Person**” shall have the meaning as such term is defined under Regulation S.

“**Valuation Period**” shall have the meaning specified in Section 14.04(c).

ARTICLE 2
ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.01 *Designation and Amount*. The Notes shall be designated as the “0% Convertible Senior Notes due 2021.” The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is limited to US\$235,000,000, subject to Section 2.10 and except for Notes authenticated and delivered upon registration or transfer of, or in exchange for, or in lieu of other Notes pursuant to Section 2.05, Section 2.06, Section 2.07, Section 10.04, Section 14.02 and Section 15.04.

Section 2.02 *Form of Notes*. The Notes and the Note Registrar’s certificate of authentication to be borne by such Notes shall be substantially in the respective forms set forth in Exhibit A, the terms and provisions of which shall constitute, and are hereby expressly incorporated in and made a part of this Indenture. To the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

Any Global Note may be endorsed with or have incorporated in the text thereof such legends or recitals or changes not inconsistent with the provisions of this Indenture as may be required by the Common Depositary, or as may be required to comply with any applicable law or any regulation thereunder or with the rules and regulations of any securities exchange or automated quotation system upon which the Notes may be listed or traded or designated for issuance or to conform with any usage with respect thereto, or to indicate any special limitations or restrictions to which any particular Notes are subject.

Any of the Notes may have such letters, numbers or other marks of identification and such notations, legends or endorsements as the Officers executing the same may approve (execution thereof to be conclusive evidence of such approval) and as are not inconsistent with the provisions of this Indenture, or as may be required to comply with any law or with any rule or regulation made pursuant thereto or with any rule or regulation of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, or to conform to usage or to indicate any special limitations or restrictions to which any particular Notes are subject.

Each Global Note shall represent such principal amount of the outstanding Notes as shall be specified therein and shall provide that it shall represent the aggregate principal amount of

outstanding Notes from time to time endorsed thereon and that the aggregate principal amount of outstanding Notes represented thereby may from time to time be increased or reduced to reflect redemptions, repurchases, cancellations, conversions, transfers or exchanges permitted hereby. Any endorsement of the Global Note to reflect the amount of any increase or decrease in the amount of outstanding Notes represented thereby shall be made by the Trustee or the Note Registrar in such manner and upon instructions given by the Holder of such Notes in accordance with this Indenture. Payment of principal (including the Fundamental Change Repurchase Price, if applicable) of the Global Note shall be made to the Holder of such Note on the date of payment, unless a record date or other means of determining Holders eligible to receive payment is provided for herein.

Section 2.03 *Date and Denomination of Notes; No Regular Interest; Payments of Defaulted Amounts.* (a) The Notes shall be issuable in registered form without coupons in denominations of US\$1,000 principal amount and integral multiples thereof. Each Note shall be dated the date of its authentication and shall not bear regular interest, and the principal amount of the Notes will not accrete.

(b) [RESERVED]

(c) Any Defaulted Amounts shall forthwith cease to be payable to the Holder on the relevant payment date but shall accrue interest per annum at the rate of three percent per annum, subject to the enforceability thereof under applicable law, from, and including, such relevant payment date, and such Defaulted Amounts together with such interest thereon shall be paid by the Company, at its election in each case, as provided in clause (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Amounts to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on a special record date for the payment of such Defaulted Amounts, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of the Defaulted Amounts proposed to be paid on each Note and the date of the proposed payment (which shall be not less than 25 days after the receipt by the Trustee of such notice, unless the Trustee in its sole discretion shall consent to an earlier date), and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount to be paid in respect of such Defaulted Amounts or shall make arrangements satisfactory to the Trustee for such deposit on or prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Amounts as in this clause provided. Thereupon the Company shall fix a special record date for the payment of such Defaulted Amounts which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment, and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Company shall promptly notify the Trustee in writing of such special record date and the Trustee, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Amounts and the special record date therefor to be mailed, first-class postage prepaid (at the Company's expense), to each Holder at its address as it appears in the Note Register, not less than 10 days prior to such special record date. Notice of the

proposed payment of such Defaulted Amounts and the special record date therefor having been so mailed, such Defaulted Amounts shall be paid to the Persons in whose names the Notes (or their respective Predecessor Notes) are registered at the close of business on such special record date and shall no longer be payable pursuant to the following clause (ii) of this Section 2.03(c).

(ii) The Company may make payment of any Defaulted Amounts in any other lawful manner not inconsistent with the requirements of any securities exchange or automated quotation system on which the Notes may be listed or designated for issuance, and upon such notice as may be required by such exchange or automated quotation system, if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee.

Section 2.04 *Execution, Authentication and Delivery of Notes.* The Notes shall be signed in the name and on behalf of the Company by the manual or facsimile signature of its Chief Executive Officer, President, Chief Financial Officer, Treasurer, Secretary or any of its Executive or Senior Vice Presidents. With the delivery of this Indenture, the Company is furnishing, and from time to time thereafter may furnish, a certificate substantially in the form of Exhibit B (an “**Authorization Certificate**”) identifying and certifying the incumbency and specimen (and/or facsimile) signatures of its active authorized Officers. Until the Trustee receives a subsequent Authorization Certificate, the Trustee shall be entitled to conclusively rely on the last Authorization Certificate delivered to it for purposes of determining the relevant authorized Officers. Typographical and other minor errors or defects in any signature shall not affect the validity or enforceability of any Note which has been duly authenticated and delivered by the Note Registrar.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Notes executed by the Company to the Note Registrar for authentication, together with a Company Order for the authentication and delivery of such Notes, and the Note Registrar in accordance with such Company Order shall authenticate and deliver such Notes, without any further action by the Company hereunder.

The Company Order shall specify the amount of Notes to be authenticated, the date on which the original issuance of such Notes is to be authenticated, the date on which the principal of such Notes will be payable and other terms relating to such Notes. The Note Registrar shall thereupon authenticate and deliver said Notes to or upon the written order of the Company (as set forth in such Company Order).

The Note Registrar shall have the right to decline to authenticate and deliver any Notes under this Section (a) unless and until it receives from the Company a Company Order instructing it to so authenticate and deliver such Notes and, if requested by the Note Registrar, an Officers’ Certificate and an Opinion of Counsel in accordance with Section 17.06 hereof; (b) if the Note Registrar determines that such action may not lawfully be taken; or (c) if the Note Registrar determines that such action would expose the Note Registrar to personal liability,

unless indemnity and/or security and/or pre-funding satisfactory to the Note Registrar against such liability is provided to the Note Registrar.

Only such Notes as shall bear thereon a certificate of authentication substantially in the form set forth on the form of Note attached as Exhibit A hereto, executed manually or by facsimile by an authorized officer of the Note Registrar, shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Note Registrar upon any Note executed by the Company shall be conclusive evidence that the Note so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture.

In case any Officer of the Company who shall have signed any of the Notes shall cease to be such Officer before the Notes so signed shall have been authenticated and delivered by the Note Registrar, or disposed of by the Company, such Notes nevertheless may be authenticated and delivered or disposed of as though the Person who signed such Notes had not ceased to be such Officer of the Company; and any Note may be signed on behalf of the Company by such Persons as, at the actual date of the execution of such Note, shall be the Officers of the Company, although at the date of the execution of this Indenture any such Person was not such an Officer.

Section 2.05 *Exchange and Registration of Transfer of Notes; Restrictions on Transfer; Common Depositary.* (a) The Company shall cause to be kept at the Corporate Trust Office a register (the register maintained in such office or in any other office or agency of the Company designated pursuant to Section 4.02, the “**Note Register**”) in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Notes and of transfers of Notes. Such register shall be in written form or in any form capable of being converted into written form within a reasonable period of time. The Bank of New York Mellon SA/NV, Luxembourg Branch is hereby initially appointed the “**Note Registrar**” and “**Transfer Agent**” for the purpose of registering Notes and transfers of Notes as herein provided. The Company may appoint one or more co-Note Registrars in accordance with Section 4.02.

Prior to the Distribution Compliance Period Termination Date, upon surrender for registration of transfer of any Note to the Note Registrar or any co-Note Registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.05(c), the Company shall execute, and the Note Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture. Following the Distribution Compliance Period Termination Date, upon surrender for registration of transfer of any Note to the Note Registrar or any co-Note Registrar, and satisfaction of the requirements for such transfer set forth in this Section 2.05, the Company shall execute, and the Note Registrar shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Notes of any authorized denominations and of a like aggregate principal amount and not bearing the restrictive legends required by the second paragraph of Section 2.05(c).

Prior to the Distribution Compliance Period Termination Date, Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount, upon surrender of the Notes to be exchanged at any such office or agency maintained by the Company pursuant to Section 4.02. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Note Registrar shall authenticate and deliver, the Notes that the Holder making the exchange is entitled to receive, bearing such restrictive legends as may be required by this Indenture. Following the Distribution Compliance Period Termination Date, Notes may be exchanged for other Notes of any authorized denominations and of a like aggregate principal amount but not bearing the restrictive legend required by the second paragraph of Section 2.05(c), upon surrender of the Notes to be exchanged at any such office or agency maintained by the Company pursuant to Section 4.02. Whenever any Notes are so surrendered for exchange, the Company shall execute, and the Note Registrar shall authenticate and deliver, the Notes that the Holder making the exchange is entitled to receive and not bearing the restrictive legends required by the second paragraph of Section 2.05(c).

All Notes presented or surrendered for registration of transfer or for exchange, repurchase or conversion shall (if so required by the Company, the Trustee, the Note Registrar or any co-Note Registrar) be duly endorsed, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and duly executed, by the Holder thereof or its attorney-in-fact duly authorized in writing.

No service charge shall be imposed by the Company, the Transfer Agent, the Note Registrar, any co-Note Registrar or the Paying Agent for any exchange or registration of transfer of Notes, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp, issue, transfer or similar tax required in connection therewith as a result of the name of the Holder of new Notes issued upon such exchange or registration of transfer being different from the name of the Holder of the old Notes surrendered for exchange or registration of transfer. The Company shall pay the ADS Depository's fees for issuance of the ADSs.

None of the Company, the Trustee, the Note Registrar or any co-Note Registrar shall be required to exchange or register a transfer of (i) any Notes surrendered for conversion or, if a portion of any Note is surrendered for conversion, such portion thereof surrendered for conversion or (ii) any Notes, or a portion of any Note, surrendered for repurchase (and not withdrawn) in accordance with Article 15.

All Notes issued upon any registration of transfer or exchange of Notes in accordance with this Indenture shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture as the Notes surrendered upon such registration of transfer or exchange.

The Trustee shall have no responsibility or obligation to any direct or indirect participant or any other Person with respect to the accuracy of the books or records, or the acts or omissions, of the Common Depository or its nominee or of any participant or member thereof, with respect to any ownership interest in the Notes or with respect to the delivery to any direct or indirect participant or other Person (other than the Common Depository and any other registered Holder of Notes) of any notice or the payment of any amount, under or with respect to such Notes. All

notices and communications to be given to the Holders and all payments to be made to Holders under the Notes shall be given or made only to or upon the order of the registered Holders (which shall be the Common Depositary or its nominee in the case of a Global Note). The rights of beneficial owners in any Global Note shall be exercised only through the Common Depositary subject to the customary procedures of Euroclear and Clearstream. The Trustee may rely and shall be fully protected in relying upon information furnished by the Common Depositary with respect to its direct or indirect participants.

The Trustee shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Indenture or under applicable law with respect to any transfer of any interest in any Note (including any transfers between or among direct or indirect participants in any Global Note) other than to require delivery of such certificates as are expressly required by, and to do so if and when expressly required by, the terms of this Indenture, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(b) So long as the Notes are eligible for book-entry settlement with Euroclear and Clearstream, unless otherwise required by law, subject to the fourth paragraph from the end of Section 2.05(c) all Notes shall be represented by one or more Notes in global form (each, a “**Global Note**”) registered in the name of the Common Depositary or its nominee. The transfer and exchange of beneficial interests in a Global Note that does not involve the issuance of a Physical Note shall be effected through the Common Depositary in accordance with this Indenture (including the restrictions on transfer set forth herein) and the procedures of Euroclear and Clearstream.

(c) Every Note that bears or is required under this Section 2.05(c) to bear the legend set forth in this Section 2.05(c) shall, until no longer required by this Section 2.05(c), be subject to the restrictions on transfer set forth in this Section 2.05(c) (including the legends set forth below), unless such restrictions on transfer shall be eliminated or otherwise waived by written consent of the Company, and the Holder of each such Note, by such Holder’s acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in this Section 2.05(c), the term “**transfer**” encompasses any sale, pledge, transfer or other disposition whatsoever of any such Note.

Until the date (the “**Distribution Compliance Period Termination Date**”) that is 40 days after the date hereof, any certificate evidencing a Note (and all securities issued in exchange therefor or substitution thereof) shall bear a legend in substantially the following form (unless such Notes have been transferred pursuant to a registration statement that has become or been declared effective under the Securities Act and that continues to be effective at the time of such transfer, or unless otherwise agreed by the Company in writing, with notice thereof to the Trustee):

THIS SECURITY AND THE ORDINARY SHARES REPRESENTED THEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”) AND PRIOR TO THE DATE THAT IS 40 DAYS AFTER THE DATE HEREOF, MAY NOT BE OFFERED, SOLD, PLEDGED,

HYPOTHECATED OR OTHERWISE TRANSFERRED WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, A U.S. PERSON (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT) EXCEPT PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOTE SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS 40 DAYS AFTER THE DATE HEREOF, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS NOT A U.S. PERSON AND IS LOCATED OUTSIDE THE UNITED STATES (WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT AND THAT IT AND ANY SUCH ACCOUNT IS NOT AN AFFILIATE OF NIO INC. (THE "COMPANY"), AND

(2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE, HYPOTHECATE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS 40 DAYS AFTER THE DATE HEREOF, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) TO A NON-U.S. PERSON IN AN OFFSHORE TRANSACTION MEETING THE REQUIREMENTS OF RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

Any certificate evidencing a Note (and all securities issued in exchange therefor or substitution thereof) shall bear a legend in substantially the following form (unless otherwise agreed by the Company in writing, with notice thereof to the Trustee):

PRIOR TO SEPTEMBER 5, 2020, NO BENEFICIAL OWNER THAT PURCHASED A BENEFICIAL INTEREST IN THIS SECURITY UPON THE ORIGINAL ISSUANCE THEREOF MAY OFFER, SELL, PLEDGE, HYPOTHECATE OR OTHERWISE TRANSFER SUCH BENEFICIAL INTEREST EXCEPT IN ACCORDANCE WITH THE CONVERTIBLE

NOTE SUBSCRIPTION AGREEMENTS BETWEEN NIO INC. AND THE RELEVANT PURCHASERS NAMED THEREIN, DATED MARCH 5, 2020. ANY ATTEMPT BY SUCH BENEFICIAL OWNER TO OFFER, SELL, PLEDGE, HYPOTHECATE OR OTHERWISE TRANSFER SUCH BENEFICIAL INTEREST IN VIOLATION OF THIS RESTRICTION SHALL BE VOID.

No transfer of any Note prior to the Distribution Compliance Period Termination Date will be registered by the Note Registrar unless the applicable box on the Form of Assignment and Transfer has been checked.

The Company shall promptly notify the Trustee and the ADS Depository in writing upon the occurrence of the Distribution Compliance Period Termination Date and after a registration statement, if any, with respect to the Notes has been declared effective under the Securities Act.

Notwithstanding any other provisions of this Indenture (other than the provisions set forth in this Section 2.05(c)), a Global Note may not be transferred as a whole or in part except (i) by the Common Depository to a nominee of the Common Depository or by a nominee of the Common Depository to the Common Depository or another nominee of the Common Depository or by the Common Depository or any such nominee to a successor Common Depository or a nominee of such successor Common Depository and (ii) for transfers of portions of a Global Note in certificated form made upon request of a member of, or a participant in, the Common Depository (for itself or on behalf of a beneficial owner) by written notice given to the Trustee by or on behalf of the Common Depository in accordance with customary procedures of Euroclear and Clearstream and in compliance with this Section 2.05(c).

Initially, each Global Note shall be delivered by or on behalf of the Trustee to, and registered in the name of, the Common Depository or its nominee for the accounts of Euroclear and Clearstream.

If (i) the Common Depository notifies the Company at any time that the Common Depository is unwilling or unable to continue as depository for the Global Notes and a successor depository is not appointed within 90 days, (ii) either Euroclear or Clearstream, or a successor clearing system is closed for business for a continuous period of 14 days (other than by reason of holidays, statutory or otherwise) or announces an intention to permanently cease business or does in fact do so, or (iii) an Event of Default with respect to the Notes has occurred and is continuing and a beneficial owner of any Note requests that its beneficial interest therein be issued as a Physical Note, the Company shall execute, and the Note Registrar, upon receipt of an Officers' Certificate and a Company Order for the authentication and delivery of Notes, shall authenticate and deliver (x) in the case of clause (iii), a Physical Note to such beneficial owner in a principal amount equal to the principal amount of such Note corresponding to such beneficial owner's beneficial interest and (y) in the case of clause (i) or (ii), Physical Notes to each beneficial owner of the related Global Notes (or a portion thereof) in an aggregate principal amount equal to the aggregate principal amount of such Global Notes in exchange for such Global Notes, and upon delivery of the Global Notes to the Note Registrar such Global Notes shall be canceled.

Physical Notes issued in exchange for all or a part of the Global Note pursuant to this Section 2.05(c) shall be registered in such names and in such authorized denominations as the Common Depositary, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Note Registrar in writing. Upon execution and authentication, the Note Registrar shall deliver such Physical Notes to the Persons in whose names such Physical Notes are so registered.

At such time as all interests in a Global Note have been converted, canceled, repurchased, redeemed or transferred, such Global Note shall be, upon receipt thereof, canceled by the Note Registrar in accordance with standing procedures and existing instructions of the Common Depositary. At any time prior to such cancellation, if any interest in a Global Note is exchanged for Physical Notes, converted, canceled, repurchased, redeemed or transferred to a transferee who receives Physical Notes therefor or any Physical Note is exchanged or transferred for part of such Global Note, the principal amount of such Global Note shall, in accordance with the standing procedures and existing instructions of the Common Depositary, be appropriately reduced or increased, as the case may be, and an endorsement shall be made on such Global Note, by the Note Registrar, to reflect such reduction or increase.

None of the Company, the Trustee, the Paying Agent, any agent of the Company or any agent of the Trustee shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Note or maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

(d) [RESERVED]

(e) Any Note that is repurchased or owned by any Affiliate of the Company may not be resold by such Affiliate unless registered under the Securities Act or resold pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act in a transaction that results in such Note no longer being a "restricted security" (as defined under Rule 144 under the Securities Act). The Company shall cause any Note that is repurchased or owned by it to be surrendered to the Note Registrar for cancellation in accordance with Section 2.08.

Section 2.06 *Mutilated, Destroyed, Lost or Stolen Notes*. In case any Note shall become mutilated or be destroyed, lost or stolen, the Company in its discretion may execute, and upon receipt of a Company Order, the Note Registrar shall authenticate and deliver, a new Note, bearing a registration number not contemporaneously outstanding, in exchange and substitution for the mutilated Note, or in lieu of and in substitution for the Note so destroyed, lost or stolen. In every case the applicant for a substituted Note shall furnish to the Company and to the Note Registrar such security and/or indemnity as may be required by them to save each of them harmless from any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company and to the Note Registrar evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

The Note Registrar may authenticate any such substituted Note and deliver the same upon the receipt of such security and/or indemnity as the Note Registrar and the Company may require. No service charge shall be imposed by the Company, the Transfer Agent, the Note Registrar, any co-Note Registrar or the Paying Agent upon the issuance of any substitute Note, but the Company may require a Holder to pay a sum sufficient to cover any documentary, stamp, issue, transfer or similar tax required in connection therewith as a result of the name of the Holder of the new substitute Note being different from the name of the Holder of the old Note that became mutilated or was destroyed, lost or stolen. In case any Note that has matured or is about to mature or has been surrendered for repurchase (and not withdrawn) in accordance with Article 15 or is about to be converted in accordance with Article 14 shall become mutilated or be destroyed, lost or stolen, the Company may, in its sole discretion, instead of issuing a substitute Note, pay or authorize the payment of or convert or authorize the conversion of the same (without surrender thereof except in the case of a mutilated Note), as the case may be, if the applicant for such payment or conversion shall furnish to the Company and to the Trustee such security and/or indemnity as may be required by them to save each of them harmless for any loss, liability, cost or expense caused by or connected with such substitution, and, in every case of destruction, loss or theft, evidence satisfactory to the Company, and the Trustee evidence of their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

Every substitute Note issued pursuant to the provisions of this Section 2.06 by virtue of the fact that any Note is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Note shall be found at any time, and shall be entitled to all the benefits of (but shall be subject to all the limitations set forth in) this Indenture equally and proportionately with any and all other Notes duly issued hereunder. To the extent permitted by law, all Notes shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement, payment, redemption, conversion or repurchase of mutilated, destroyed, lost or stolen Notes and shall preclude any and all other rights or remedies notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement, payment, redemption, conversion or repurchase of negotiable instruments or other securities without their surrender.

Section 2.07 *Temporary Notes.* Pending the preparation of Physical Notes, the Company may execute and the Note Registrar shall, upon receipt of a Company Order, authenticate and deliver temporary Notes (printed or lithographed). Temporary Notes shall be issuable in any authorized denomination, and substantially in the form of the Physical Notes but with such omissions, insertions and variations as may be appropriate for temporary Notes, all as may be determined by the Company. Every such temporary Note shall be executed by the Company and authenticated by the Note Registrar upon the same conditions and in substantially the same manner, and with the same effect, as the Physical Notes. Without unreasonable delay, the Company shall execute and deliver to the Note Registrar Physical Notes (other than any Global Note) and thereupon any or all temporary Notes (other than any Global Note) may be surrendered in exchange therefor, at each office or agency maintained by the Company pursuant to Section 4.02 and the Note Registrar shall upon receipt of a Company Order authenticate and deliver in exchange for such temporary Notes an equal aggregate principal amount of Physical Notes. Such exchange shall be made by the Company at its own expense and without any charge therefor. Until so exchanged, the temporary Notes shall in all respects be entitled to the same

benefits and subject to the same limitations under this Indenture as Physical Notes authenticated and delivered hereunder.

Section 2.08 *Cancellation of Notes Paid, Converted, Etc.* The Company shall cause all Notes surrendered for the purpose of payment, repurchase, redemption, registration of transfer or exchange or conversion, if surrendered to any Person other than the Note Registrar (including any of the Company's agents, Subsidiaries or Affiliates), to be delivered and surrendered to the Note Registrar for cancellation. All Notes delivered to the Note Registrar shall be canceled promptly by it, and no Notes shall be authenticated in exchange thereof except as expressly permitted by any of the provisions of this Indenture. The Note Registrar shall dispose of canceled Notes in accordance with its customary procedures and, after such disposition, shall deliver a certificate of such cancellation and disposition to the Company, at the Company's written request in a Company Order.

Section 2.09 *Common Code and ISIN Numbers.* The Company in issuing the Notes may use "Common Code" or "ISIN" numbers (if then generally in use), and, if so, the Trustee shall use "Common Code" or "ISIN" numbers in all notices issued to Holders as a convenience to such Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Notes or on such notice and that reliance may be placed only on the other identification numbers printed on the Notes. The Company shall promptly notify the Trustee in writing of any change in the "Common Code" or "ISIN" numbers.

Section 2.10 *Additional Notes; Repurchases.* The Company may, without the consent of the Holders and notwithstanding Section 2.01, reopen this Indenture and issue additional Notes hereunder with the same terms as the Notes initially issued hereunder (except for any differences in the issue price, the issue date and interest accrued, if any, and, if applicable, restrictions on transfer in respect of such additional Notes) in an unlimited aggregate principal amount; *provided* that if and for as long as any such additional Notes are not fungible with the Notes initially issued hereunder for U.S. federal income tax or securities law purposes, such additional Notes shall have a separate ISIN number from the Notes. Prior to the issuance of any such additional Notes, the Company shall deliver to the Trustee a Company Order, an Officers' Certificate and an Opinion of Counsel, such Officers' Certificate and Opinion of Counsel to cover such matters, in addition to those required by Section 17.06, as the Trustee shall reasonably request. In addition, the Company may, to the extent permitted by law, and directly or indirectly (regardless of whether such Notes are surrendered to the Company), repurchase Notes in the open market or otherwise, whether by the Company or through its Subsidiaries or through a private or public tender or exchange offer or through counterparties to private agreements. The Company shall cause any Notes so repurchased to be surrendered to the Note Registrar for cancellation in accordance with Section 2.08 and upon receipt of a Company Order, the Note Registrar shall cancel all Notes so surrendered and such Notes shall no longer be considered outstanding under this Indenture upon their cancellation. The Company may also enter into cash-settled swaps or other derivatives with respect to the Notes. For the avoidance of doubt, any Notes underlying such cash-settled swaps or other derivatives shall not be required to be surrendered to the Note Registrar for cancellation in accordance with Section 2.08 and will

continue to be considered outstanding for purposes of this Indenture, subject to the provisions of Section 8.04.

ARTICLE 3
SATISFACTION AND DISCHARGE

Section 3.01 *Satisfaction and Discharge*. This Indenture shall upon request of the Company contained in an Officers' Certificate cease to be of further effect, and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when (a) (i) all Notes theretofore authenticated and delivered (other than (x) Notes which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 2.06 and (y) Notes for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 4.04(d)) have been delivered to the Note Registrar for cancellation; or (ii) the Company has deposited with the Paying Agent or delivered to Holders, as applicable, after the Notes have become due and payable, whether on the Maturity Date, any Fundamental Change Repurchase Date, upon conversion or otherwise, cash or cash and ADSs (solely to satisfy the Company's Conversion Obligation, if applicable), sufficient to pay all of the outstanding Notes and all other sums due and payable under this Indenture by the Company; and (b) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with. Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 7.06 shall survive.

ARTICLE 4
PARTICULAR COVENANTS OF THE COMPANY

Section 4.01 *Payment of Principal and Premium*. (a) The Company covenants and agrees that it will cause to be paid the principal (including the Fundamental Change Repurchase Price, if applicable) of each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes.

(b) The Company covenants and agrees that it will cause to be paid a premium equal to (i) in the case of any payment of principal to be made on the Maturity Date or pursuant to Section 6.02, 2.0% of the outstanding principal amount of the Notes, or (ii) in the case of any payment of principal to be made on a Fundamental Change Repurchase Date, the aggregate interest that would have accrued on the outstanding principal amount of the Notes to be repurchased (or such portion thereof, as the case may be) over the period starting from (and including) the original date of issuance of the Notes and ending on (and including) the Fundamental Change Repurchase Date, if the Notes were to bear interest at a rate of 2.0% per annum (accruing daily and computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of actual days elapsed in a 30-day month). For the avoidance of doubt, any reference in this Indenture or the Notes in any context to the principal shall be deemed to include, without duplication (and assuming such premium is not separately

referenced), the premium contemplated by this Section 4.01(b) to the extent that, in such context, such premium is, was or would be payable pursuant to this Section 4.01(b).

Section 4.02 *Maintenance of Office or Agency.* The Company will maintain in the Borough of Manhattan, The City of New York, an office or agency (which will be the Corporate Trust Office initially) where the Notes may be surrendered for registration of transfer or exchange or for presentation for payment or repurchase (“**Paying Agent**”) or for conversion (“**Conversion Agent**”) and where notices and demands to or upon the Company in respect of the Notes and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office, *provided, however,* that the legal service of process against the Company shall in no circumstance be made at an office or agency of the Trustee.

The Company may also from time to time designate as co-Note Registrars one or more other offices or agencies where the Notes may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the Borough of Manhattan, The City of New York, for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency. The terms “**Paying Agent**” and “**Conversion Agent**” include any such additional or other offices or agencies, as applicable.

The Company hereby initially designates (i) The Bank of New York Mellon, London Branch as the Paying Agent and Conversion Agent and the Corporate Trust Office and the office or agency of The Bank of New York Mellon in the Borough of Manhattan, The City of New York, each shall be considered as one such office or agency of the Company for each of the aforesaid purposes; and (ii) The Bank of New York Mellon SA/NV, Luxembourg Branch of Vertigo Building – Polaris, 2-4 rue Eugène Ruppert, L-2453 Luxembourg as the Note Registrar and Transfer Agent.

Section 4.03 *Appointments to Fill Vacancies in Trustee’s Office.* The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 7.09, a trustee, so that there shall at all times be a trustee hereunder.

Section 4.04 *Provisions as to Paying Agent.* (a) If the Company shall appoint a Paying Agent other than the Trustee, the Company will cause such Paying Agent to execute and deliver to the Trustee an instrument in which such agent shall agree with the Trustee, subject to the provisions of this Section 4.04:

- (i) that it will hold all sums held by it as such agent for the payment of the principal (including the Fundamental Change Repurchase Price, if applicable) of the Notes, and accrued and unpaid interest on Defaulted Amounts (if any), for the benefit of the Holders of the Notes;

(ii) that it will give the Trustee prompt notice of any failure by the Company to make any payment of the principal (including the Fundamental Change Repurchase Price, if applicable) of the Notes, and accrued and unpaid interest on Defaulted Amounts (if any), when the same shall be due and payable; and

(iii) that at any time during the continuance of an Event of Default, upon request of the Trustee, it will forthwith pay to the Trustee all sums so held.

The Company shall, on or before each due date of the principal (including the Fundamental Change Repurchase Price, if applicable) of the Notes or accrued and unpaid interest on Defaulted Amounts (if any), deposit with the Paying Agent a sum sufficient to pay such principal (including the Fundamental Change Repurchase Price, if applicable) or accrued and unpaid interest on Defaulted Amounts (if any) and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of any failure to take such action; *provided* that such deposit must be received by the Paying Agent by 10:00 a.m., New York City time, one Business Day prior to the relevant due date. The Paying Agent shall not be bound to make any payment until it has received, in immediately available and cleared funds, an amount which shall be sufficient to pay, as applicable, the aggregate amount of principal (including the Fundamental Change Repurchase Price, if applicable) of the Notes or accrued and unpaid interest on Defaulted Amounts (if any) when such principal or interest on Defaulted Amounts shall become due and payable. The Paying Agent shall not be responsible or liable for any delay in making the payment if it does not receive funds before 10:00 a.m. one Business Day prior to the payment date. The Company shall use reasonable efforts to procure that, before 10:00 a.m., New York City time, on the second Business Day before each payment date, the bank effecting payment for it has confirmed by facsimile to the Paying Agent the payment instructions relating to such payment.

(b) If the Company shall act as its own Paying Agent, it will, on or before each due date of the principal (including the Fundamental Change Repurchase Price, if applicable) of the Notes and accrued and unpaid interest on Defaulted Amounts (if any), set aside, segregate and hold in trust for the benefit of the Holders of the Notes a sum sufficient to pay such principal (including the Fundamental Change Repurchase Price, if applicable) and accrued and unpaid interest on Defaulted Amounts so becoming due and will promptly notify the Trustee in writing of any failure to take such action and of any failure by the Company to make any payment of the principal (including the Fundamental Change Repurchase Price, if applicable) of the Notes or accrued and unpaid interest on Defaulted Amounts (if any) when the same shall become due and payable. Upon an Event of Default under Section 6.01(i) or Section 6.01(j) hereof, the Trustee shall automatically become the Paying Agent.

(c) Anything in this Section 4.04 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture, or for any other reason, pay, cause to be paid or deliver to the Trustee all sums or amounts held by the Company in trust or by any Paying Agent as required by this Section 4.04, such sums or amounts to be held by the Trustee upon the trusts herein contained and upon such payment or delivery by the Company or any Paying Agent to the Trustee, the Company or such Paying Agent shall be released from all further liability but only with respect to such sums or amounts.

(d) Any money and ADSs deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of principal (including the Fundamental Change Repurchase Price, if applicable) of any Note (or, in the case of ADSs, in satisfaction of the Conversion Obligation), and accrued and unpaid interest on Defaulted Amounts (if any), and remaining unclaimed for two years after such principal (including the Fundamental Change Repurchase Price, if applicable) or interest on Defaulted Amounts has become due and payable or such Conversion Obligation has become due shall be paid or delivered, as the case may be, to the Company on request of the Company contained in an Officers' Certificate, or (if then held by the Company) shall be discharged from such trust; and the Holder of such Note shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such money and ADSs, and all liability of the Company as trustee thereof, shall thereupon cease; *provided, however*, that the Trustee or such Paying Agent, before being required to make any such repayment or delivery, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in The Borough of Manhattan, The City of New York, notice that such money and ADSs remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such publication, any unclaimed balance of such money and ADSs then remaining will be repaid or delivered to the Company.

Section 4.05 *Existence*. Subject to Article 11, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence. The Company shall promptly provide the Trustee with written notice of any change to its name, jurisdiction of incorporation or change to its corporate organization.

Section 4.06 [RESERVED]

Section 4.07 *Additional Amounts*. (a) All payments and deliveries made by, or on behalf of, the Company or any successor to the Company under or with respect to this Indenture and the Notes, including, but not limited to, payments of principal (including, if applicable, the Fundamental Change Repurchase Price), premium, if any, payments of interest, if any, and deliveries of ADSs or any other consideration due on conversion of a Note (together with payments of cash for any Fractional ADS or other consideration) upon conversion of the Notes, shall be made without withholding, deduction or reduction for any other collection at source for, or on account of, any present or future taxes, duties, assessments or governmental charges of whatever nature imposed or levied (including any penalties and interest related thereto) ("**applicable taxes**") by or within any jurisdiction in which the Company or any successor to the Company is, for tax purposes, incorporated, organized or resident or doing business (each, as applicable, a "**Relevant Taxing Jurisdiction**") or through which payment is made or deemed made (together with each Relevant Taxing Jurisdiction, a "**Relevant Jurisdiction**," and in each case, any political subdivision or taxing authority thereof or therein) unless such withholding, deduction or reduction is required by law or by regulation or governmental policy having the force of law. In the event that any such withholding, deduction or reduction is so required, the Company or any successor to the Company shall pay or deliver to each Holder such additional amounts of cash, ADSs or other consideration, as applicable ("**Additional Amounts**") as may be necessary to ensure that the net amount received by the beneficial owner of the Notes after such

withholding, deduction or reduction (and after deducting any taxes on the Additional Amounts) shall equal the amounts that would have been received by such beneficial owner had no such withholding, deduction or reduction been required; *provided* that no Additional Amounts shall be payable:

(i) for or on account of:

(A) any applicable taxes that would not have been imposed but for:

(1) the existence of any present or former connection between the relevant Holder or beneficial owner of such Note and the Relevant Jurisdiction, other than merely acquiring or holding such Note, receiving ADSs (together with the payment of cash for any Fractional ADS) or other consideration upon conversion of such Note or the receipt of payments or the exercise or enforcement of rights thereunder, including, without limitation, such Holder or beneficial owner being or having been a national, domiciliary or resident of such Relevant Jurisdiction or treated as a resident thereof or being or having been physically present or engaged in a trade or business therein or having had a permanent establishment therein;

(2) the presentation of such Note (in cases in which presentation is required) more than 30 days after the later of the date on which the payment of the principal of (including the Fundamental Change Repurchase Price, if applicable) and interest (if any) on, such Note or the delivery of ADSs (together with payment of cash for any Fractional ADS) upon conversion of such Note became due and payable pursuant to the terms thereof or was made or duly provided for;

(3) the failure of the Holder or beneficial owner to comply with a timely written request from the Company or any successor of the Company, addressed to the Holder, to the extent such Holder or beneficial owner is legally entitled, to provide certification, information, documents or other evidence concerning such Holder's or beneficial owner's nationality, residence, identity or connection with the Relevant Taxing Jurisdiction, or to make any declaration or satisfy any other reporting requirement relating to such matters, if and to the extent that due and timely compliance with such request is required by statute, regulation or administrative practice of the Relevant Jurisdiction in order to reduce or eliminate any withholding or deduction as to which Additional Amounts would have otherwise been payable to such Holder or beneficial owner; or

(4) the presentation of such Note (in cases in which presentation is required) for payment in the Relevant Jurisdiction, unless such Note could not have been presented for payment elsewhere;

(B) any estate, inheritance, gift, sale, transfer, personal property or similar applicable tax or any excise or similar taxes imposed with respect to a transfer;

(C) any applicable tax that is payable otherwise than by withholding, deduction or reduction for any other collection at source from payments or deliveries under or with respect to the Notes;

(D) any applicable tax required to be withheld or deducted under Sections 1471 to 1474 of the Code (or any amended or successor versions of such Sections) (“**FATCA**”), any regulations or other official guidance thereunder, any intergovernmental agreement or agreement pursuant to Section 1471(b)(1) of the Code entered into in connection with FATCA, or any law, regulation or other official guidance enacted in any jurisdiction implementing FATCA or an intergovernmental agreement; or

(E) any combination of applicable taxes referred to in the preceding clauses (A), (B), (C) or (D); or

(ii) with respect to any payment of the principal of (including the Fundamental Change Repurchase Price, if applicable), and interest (if any) on, such Note or the delivery of ADSs (together with payment of cash for any Fractional ADS) upon conversion of such Note to a Holder, if the Holder is a fiduciary, partnership or person other than the sole beneficial owner of that payment to the extent that such payment would be required to be included in the income under the laws of the Relevant Jurisdiction, for tax purposes, of a beneficiary or settlor with respect to the fiduciary, a partner or member of that partnership or a beneficial owner who would not have been entitled to such Additional Amounts had that beneficiary, settlor, partner, member or beneficial owner been the Holder thereof.

(b) If the Company or its successor becomes obligated to pay Additional Amounts with respect to any payment or delivery under or with respect to the Notes, the Company or its successor shall deliver to the Trustee and the Paying Agent, if other than the Trustee, on a date that is at least 30 days prior to the date of that payment or delivery (unless the obligation to pay Additional Amounts arises after the 30th day prior to that payment date, in which case the Company or its successor shall notify the Trustee and the Paying Agent promptly thereafter) an Officers’ Certificate stating the fact that Additional Amounts will be payable and the amount estimated to be so payable. The Officers’ Certificate must also set forth any other information reasonably necessary to enable the Paying Agent or the Conversion Agent, as the case may be, to pay Additional Amounts to Holders on the relevant payment date. The Trustee and the Paying Agent shall be entitled to rely solely on such Officers’ Certificate as conclusive proof that such payments are necessary. The Company or its successor shall provide the Trustee and the Paying Agent with documentation reasonably satisfactory to the Trustee evidencing the payment of Additional Amounts.

(c) The Company or its successor shall make all withholdings and deductions required by law and shall remit the full amount deducted or withheld to the relevant tax authority in accordance with applicable law. Upon request, the Company or its successor shall provide to the Trustee an official receipt or, if official receipts are not obtainable, an Officers' Certificate evidencing the payment of any applicable taxes so deducted or withheld. Copies of those receipts or other documentation, as the case may be, shall be made available by the Trustee to the Holders of the Notes upon written request.

(d) Any reference in this Indenture or the Notes in any context to the delivery of ADSs (together with payment of cash for any Fractional ADS) or other consideration upon conversion of any Note or the payment of principal of (including the Fundamental Change Repurchase Price, if applicable) and any premium or interest, if any, on any Note or any other amount payable with respect to such Note, shall be deemed to include payment of Additional Amounts to the extent that, in such context, Additional Amounts are, were or would be payable with respect to that amount pursuant to this Section 4.07.

(e) Notwithstanding any other provisions, the Company or its successor, the Trustee and the Paying Agent shall be entitled to make any withholding or deduction pursuant to FATCA.

(f) If the Company or its successor is required to make any deduction or withholding from any payments or deliveries with respect to the Notes, it will deliver to the Trustee official tax receipts evidencing the remittance to the relevant tax authorities of the amounts so withheld or deducted.

(g) The foregoing obligations shall survive termination or discharge of this Indenture.

Section 4.08 *Stay, Extension and Usury Laws.* The Company covenants (to the extent that it may lawfully do so) that it shall not at any time insist upon, plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay, extension or usury law or other law that would prohibit or forgive the Company from paying all or any portion of the principal of on the Notes or interest as contemplated herein, wherever enacted, now or at any time hereafter in force, or that may affect the covenants or the performance of this Indenture; and the Company (to the extent it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not, by resort to any such law, hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

Section 4.09 *Compliance Certificate; Statements as to Defaults.* The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 31, 2019) an Officers' Certificate stating that a review has been conducted of the Company's activities under this Indenture and the Company has fulfilled its obligations hereunder, and whether the authorized Officers thereof have knowledge of any Default by the Company that occurred during the previous year that is then continuing and, if so, specifying each such Default and the nature thereof.

In addition, the Company shall deliver to the Trustee, as soon as possible, and in any event within 30 days after the Company becomes aware of the occurrence of any Default if such Default is then continuing, an Officers' Certificate setting forth the details of such Default, its status and the action that the Company is taking or proposing to take in respect thereof. The Trustee shall have no responsibility to take any steps to ascertain whether any Event of Default or Default has occurred, and until (i) a Responsible Officer of the Trustee has received an Officers' Certificate regarding such an occurrence, or (ii) the Trustee has received written notice at the Corporate Trust Office from the Holders of at least 25% in aggregate principal amount of the Notes then outstanding regarding such an occurrence, the Trustee is entitled to assume, without liability, that no Event of Default or Default has occurred.

Section 4.10 *Further Instruments and Acts*. The Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

ARTICLE 5
LISTS OF HOLDERS AND REPORTS BY THE COMPANY AND THE TRUSTEE

Section 5.01 *Lists of Holders*. The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee, semi-annually, not more than 15 days after July 26, 2020, and January 26, 2021, and at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request (or such lesser time as the Trustee may reasonably request in order to enable it to timely provide any notice to be provided by it hereunder), a list in such form as the Trustee may reasonably require of the names and addresses of the Holders as of a date not more than 15 days (or such other date as the Trustee may reasonably request in order to so provide any such notices) prior to the time such information is furnished, except that no such list need be furnished so long as the Bank of New York Mellon SA/NV, Luxembourg Branch is acting as Note Registrar.

Section 5.02 *Preservation and Disclosure of Lists*. The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders contained in the most recent list furnished to it as provided in Section 5.01 or maintained by the Trustee in its capacity as Note Registrar, if so acting. The Trustee may destroy any list furnished to it as provided in Section 5.01 upon receipt of a new list so furnished.

ARTICLE 6
DEFAULTS AND REMEDIES

Section 6.01 *Events of Default*. The following events shall be "**Events of Default**" with respect to the Notes:

(a) default in any payment of interest on Defaulted Amounts or Additional Amounts, if any, on any Note when due and payable and the default continues for a period of 30 days;

(b) default in the payment of principal of any Note when due and payable on the Maturity Date, upon any required repurchase, upon declaration of acceleration or otherwise

(including, for the avoidance, the Fundamental Change Repurchase Price, if applicable, any premium due to the Holders hereunder and Additional Amounts, if any);

(c) failure by the Company to comply with its obligation to convert the Notes in accordance with this Indenture upon exercise of a Holder's conversion right and such failure continues for a period of five Business Days;

(d) failure by the Company to issue a Fundamental Change Company Notice in accordance with Section 15.02(c) when due and such failure continues for a period of five Business Days;

(e) failure by the Company to comply with its obligations under Article 11;

(f) failure by the Company for 60 days after written notice from the Trustee or by the Trustee at the request of the Holders of at least 25% in aggregate principal amount of the Notes then outstanding has been received by the Company to comply with any of its other agreements contained in the Notes or this Indenture;

(g) default by the Company or any Significant Subsidiary of the Company with respect to any mortgage, agreement or other instrument under which there may be outstanding, or by which there may be secured or evidenced, any indebtedness for money borrowed in excess of US\$50 million (or the foreign currency equivalent thereof) in the aggregate of the Company and/or any such Significant Subsidiary, whether such indebtedness now exists or shall hereafter be created (i) resulting in such indebtedness becoming or being declared due and payable or (ii) constituting a failure to pay the principal or interest of any such debt when due and payable at its stated maturity, upon required repurchase, upon declaration of acceleration or otherwise;

(h) a final judgment for the payment of US\$50 million (or the foreign currency equivalent thereof) or more (excluding any amounts covered by insurance) rendered against the Company or any Significant Subsidiary of the Company, which judgment is not paid, bonded or otherwise discharged or stayed within 60 days after (i) the date on which the right to appeal thereof has expired if no such appeal has commenced, or (ii) the date on which all rights to appeal have been extinguished;

(i) the Company or any Significant Subsidiary shall commence a voluntary case or other proceeding seeking liquidation, reorganization or other relief with respect to the Company or any such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or any such Significant Subsidiary or any substantial part of its property, or shall consent to any such relief or to the appointment of or taking possession by any such official in an involuntary case or other proceeding commenced against it, or shall make a general assignment for the benefit of creditors, or shall fail generally to pay its debts as they become due;

(j) an involuntary case or other proceeding shall be commenced against the Company or any Significant Subsidiary seeking liquidation, reorganization or other relief with respect to

the Company or such Significant Subsidiary or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the Company or such Significant Subsidiary or any substantial part of its property, and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 30 consecutive days; or

(k) the ADSs (or other Common Equity or ADSs in respect of the Common Equity underlying the Note) have been suspended from trading on any of The New York Stock Exchange, The NASDAQ Global Select market or The NASDAQ Global Market (or any of their respective successors) for a period of ninety (90) consecutive trading days or for more than one hundred and eighty (180) trading days in any twelve (12)-month period.

Section 6.02 *Acceleration; Rescission and Annulment.* If one or more Events of Default shall have occurred and be continuing (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), then, and in each and every such case (other than an Event of Default specified in Section 6.01(i) or Section 6.01(j) with respect to the Company or any of its Significant Subsidiaries), unless the principal of all of the Notes shall have already become due and payable, the Trustee may by notice in writing to the Company, or the Holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 8.04, by notice in writing to the Company and to the Trustee may, and the Trustee at the request of such Holders shall (subject to being indemnified and/or secured and/or pre-funded to its satisfaction), declare 100% of the principal of all the Notes to be due and payable immediately, and upon any such declaration the same shall become and shall automatically be immediately due and payable, notwithstanding anything contained in this Indenture or in the Notes to the contrary. If an Event of Default specified in Section 6.01(i) or Section 6.01(j) with respect to the Company or any of its Significant Subsidiaries occurs and is continuing, 100% of the principal of all Notes shall become and shall automatically be immediately due and payable without any action on the part of the Trustee. If an Event of Default occurs and is continuing, all agents of the Company appointed under this Indenture will be required to act on the direction of the Trustee.

The immediately preceding paragraph, however, is subject to the conditions that if, at any time after the principal of the Notes shall have been so declared due and payable, and before any judgment or decree for the payment of the monies due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay the principal of any and all Notes that shall have become due otherwise than by acceleration (with interest on any overdue principal at the rate of three percent per annum) and amounts due to the Trustee pursuant to Section 7.06, and if (1) rescission would not conflict with any judgment or decree of a court of competent jurisdiction and (2) any and all existing Events of Default under this Indenture, other than the nonpayment of the principal of Notes that shall have become due solely by such acceleration, shall have been cured or waived pursuant to Section 6.09, then and in every such case (except as provided in the immediately succeeding sentence) the Holders of a majority in aggregate principal amount of the Notes then outstanding, by written notice to the Company and to the Trustee, may waive all Defaults or Events of Default with

respect to the Notes and rescind and annul such declaration and its consequences and such Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver or rescission and annulment shall extend to or shall affect any subsequent Default or Event of Default, or shall impair any right consequent thereon. Notwithstanding anything to the contrary herein, no such waiver or rescission and annulment shall extend to or shall affect any Default or Event of Default resulting from (i) the nonpayment of the principal of any Notes, (ii) a failure to repurchase any Notes when required or (iii) a failure to pay or deliver, as the case may be, the consideration due upon conversion of the Notes.

Section 6.03 [RESERVED]

Section 6.04 *Payments of Notes on Default; Suit Therefor.* If an Event of Default described in clause (a) or (b) of Section 6.01 shall have occurred, the Company shall, upon demand of the Trustee acting in its own discretion or at the request of Holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 8.04 and subject to indemnity and/or security and/or pre-funding satisfactory to the Trustee, or upon demand of the Holders of at least 25% in aggregate principal amount of the Notes then outstanding determined in accordance with Section 8.04 (which demand is to be in writing, copied to the Trustee in writing), pay to the Trustee, for the benefit of the Holders of the Notes, the whole amount then due and payable on the Notes for principal (including, for the avoidance of doubt, the Fundamental Change Repurchase Price, if applicable), with interest on any overdue principal at the rate of three percent per annum, and, in addition thereto, such further amount as shall be sufficient to cover any amounts due to the Trustee under Section 7.06. If the Company shall fail to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, may prosecute such proceeding to judgment or final decree and may enforce the same against the Company or any other obligor upon the Notes and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Notes, wherever situated.

In the event there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Notes under Title 11 of the United States Code, or any other applicable law, or in case a receiver, assignee or trustee in bankruptcy or reorganization, liquidator, sequester or similar official shall have been appointed for or taken possession of the Company or such other obligor, the property of the Company or such other obligor, or in the event of any other judicial proceedings relative to the Company or such other obligor upon the Notes, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Notes shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand pursuant to the provisions of this Section 6.04, shall be entitled and empowered, by intervention in such proceedings or otherwise, to file and prove a claim or claims for the whole amount of principal and accrued and unpaid interest on Defaulted Amounts, if any, in respect of the Notes, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents and to take such other actions as it may deem necessary or advisable in order to have the claims of the Trustee (including any claim for the

compensation, properly incurred expenses, properly incurred disbursements and advances of the Trustee, its agents and counsel) and of the Holders allowed in such judicial proceedings relative to the Company or any other obligor on the Notes, its or their creditors, or its or their property, and to collect and receive any monies or other property payable or deliverable on any such claims, and to distribute the same after the deduction of any amounts due to the Trustee under Section 7.06; and any receiver, assignee or trustee in bankruptcy or reorganization, liquidator, custodian or similar official is hereby authorized by each of the Holders to make such payments to the Trustee, as administrative expenses, and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due to it for compensation, properly incurred expenses, advances and properly incurred disbursements, including agents and counsel fees and expenses, and including any other amounts due to the Trustee under Section 7.06, incurred by it up to the date of such distribution. To the extent that such payment of compensation, properly incurred expenses, advances and properly incurred disbursements out of the estate in any such proceedings shall be denied for any reason, payment of the same shall be secured by a lien on, and shall be paid out of, any and all distributions, dividends, monies, securities and other property that the Holders of the Notes may be entitled to receive in such proceedings, whether in liquidation or under any plan of reorganization or arrangement or otherwise.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting such Holder or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

All rights of action and of asserting claims under this Indenture, or under any of the Notes, may be enforced by the Trustee without the possession of any of the Notes, or the production thereof at any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name or as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of the compensation, properly incurred expenses, properly incurred disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders of the Notes.

In any proceedings brought by the Trustee (and in any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party) the Trustee shall be held to represent all the Holders of the Notes, and it shall not be necessary to make any Holders of the Notes parties to any such proceedings.

In case the Trustee shall have proceeded to enforce any right under this Indenture and such proceedings shall have been discontinued or abandoned because of any waiver pursuant to Section 6.09 or any rescission and annulment pursuant to Section 6.02 or for any other reason or shall have been determined adversely to the Trustee, then and in every such case the Company, the Holders, and the Trustee shall, subject to any determination in such proceeding, be restored respectively to their several positions and rights hereunder, and all rights, remedies and powers of the Company, the Holders, and the Trustee shall continue as though no such proceeding had been instituted.

Section 6.05 *Application of Monies Collected by Trustee.* Any monies collected by the Trustee pursuant to this Article 6 with respect to the Notes shall be applied in the following order, at the date or dates fixed by the Trustee for the distribution of such monies, upon presentation of the several Notes, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

First, to the payment of all amounts due the Trustee, including to its agents and counsel, under Section 7.06 and any payments due to the Paying Agent, the Transfer Agent, the Conversion Agent and the Note Registrar;

Second, in case the principal of the outstanding Notes shall not have become due and be unpaid, to the payment of interest on the Notes in default in the order of the date due of the payments of such interest, with interest (to the extent that such interest is payable pursuant to the Indenture and has been collected by the Trustee) upon such overdue payments at the rate per annum borne by the Notes at such time (including, without duplication, any additional interest on such overdue payments pursuant to Section 6.04), such payments to be made ratably to the Persons entitled thereto;

Third, in case the principal of the outstanding Notes shall have become due, by declaration or otherwise, and be unpaid to the payment of the whole amount (including, if applicable, the payment of the Fundamental Change Repurchase Price and any cash due upon conversion) then owing and unpaid upon the Notes for principal and interest, if any, with interest on the overdue principal and, to the extent that such interest is payable pursuant to this Indenture and has been collected by the Trustee, upon overdue installments of interest at the rate of three percent per annum, and in case such monies shall be insufficient to pay in full the whole amounts so due and unpaid upon the Notes, then to the payment of such principal (including, if applicable, the Fundamental Change Repurchase Price, any premium due to the Holders hereunder and the cash due upon conversion) and interest without preference or priority of principal over interest, or of interest over principal or of any installment of interest over any other installment of interest, or of any Note over any other Note, ratably to the aggregate of such principal (including, if applicable, the Fundamental Change Repurchase Price) and accrued and unpaid interest; and

Fourth, to the payment of the remainder, if any, to the Company.

Section 6.06 *Proceedings by Holders.* Except to enforce the right to receive payment of principal (including, if applicable, the Fundamental Change Repurchase Price and premium due to the Holders hereunder) or interest (if any) when due, or the right to receive payment or delivery of the consideration due upon conversion, no Holder of any Note shall have any right by virtue of or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law upon or under or with respect to this Indenture, or for the appointment of a receiver, trustee, liquidator, custodian or other similar official, or for any other remedy hereunder, unless:

(a) such Holder previously shall have given to the Trustee written notice of an Event of Default and of the continuance thereof, as herein provided;

(b) Holders of at least 25% in aggregate principal amount of the Notes then outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder;

(c) such Holders shall have offered to the Trustee such security and/or indemnity and/or pre-funding satisfactory to it against any loss, liability or expense to be incurred therein or thereby;

(d) the Trustee for 30 days after its receipt of such notice, request and offer of security and/or indemnity and/or pre-funding, shall have neglected or refused to institute any such action, suit or proceeding; and

(e) no direction that, in the opinion of the Trustee, is inconsistent with such written request shall have been given to the Trustee by the Holders of a majority of the aggregate principal amount of the Notes then outstanding within such 30-day period pursuant to Section 6.09,

it being understood and intended, and being expressly covenanted by the taker and Holder of every Note with every other taker and Holder and the Trustee that no one or more Holders shall have any right in any manner whatever by virtue of or by availing of any provision of this Indenture to affect, disturb or prejudice the rights of any other Holder, or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders (except as otherwise provided herein). For the protection and enforcement of this Section 6.06, each and every Holder and the Trustee shall be entitled to such relief as can be given either at law or in equity.

Notwithstanding any other provision of this Indenture and any provision of any Note, the right of any Holder to receive payment or delivery, as the case may be, of (x) the principal (including the Fundamental Change Repurchase Price, if applicable) of, and (y) the consideration due upon conversion of, such Note, on or after the respective due dates expressed or provided for in such Note or in this Indenture, or to institute suit for the enforcement of any such payment or delivery, as the case may be, on or after such respective dates against the Company shall not be impaired or affected without the consent of such Holder.

Section 6.07 *Proceedings by Trustee.* In case of an Event of Default, the Trustee may in its discretion proceed to protect and enforce the rights vested in it by this Indenture by such appropriate judicial proceedings as are necessary to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

Section 6.08 *Remedies Cumulative and Continuing.* Except as provided in the last paragraph of Section 2.06, all powers and remedies given by this Article 6 to the Trustee or to the Holders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any

thereof or of any other powers and remedies available to the Trustee or the Holders of the Notes, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any Holder of any of the Notes to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power, or shall be construed to be a waiver of any such Default or Event of Default or any acquiescence therein; and, subject to the provisions of Section 6.06, every power and remedy given by this Article 6 or by law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders.

Section 6.09 *Direction of Proceedings and Waiver of Defaults by Majority of Holders.* The Holders of a majority of the aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee with respect to Notes; *provided, however,* that (a) such direction shall not be in conflict with any rule of law or with this Indenture, and (b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction. The Trustee may refuse to follow any direction that would involve the Trustee in personal liability, or if it is not provided with security and/or indemnity and/or pre-funding to its satisfaction, or that the Trustee determines is unduly prejudicial to the rights of any other Holder. In addition, the Trustee will not be required to expend its own funds under any circumstances. The Holders of a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 may on behalf of the Holders of all of the Notes waive any past Default or Event of Default hereunder and its consequences except (i) a default in the payment of accrued and unpaid interest on Defaulted Amounts, or the principal (including, if applicable, the Fundamental Change Repurchase Price) of the Notes when due that has not been cured pursuant to the provisions of Section 6.02, (ii) a failure by the Company to pay or deliver, or cause to be delivered, as the case may be, the consideration due upon conversion of the Notes or (iii) a default in respect of a covenant or provision hereof which under Article 10 cannot be modified or amended without the consent of each Holder of an outstanding Note affected. Upon any such waiver the Company, the Trustee and the Holders of the Notes shall be restored to their former positions and rights hereunder; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon. Whenever any Default or Event of Default hereunder shall have been waived as permitted by this Section 6.09, said Default or Event of Default shall for all purposes of the Notes and this Indenture be deemed to have been cured and to be not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default or impair any right consequent thereon.

Section 6.10 *Notice of Defaults and Events of Default.* If a Default or Event of Default occurs and is continuing and is notified in writing to the Trustee, the Trustee shall, within 90 days after the occurrence and continuance of such Default or Event of Default, mail to all Holders (at the Company's expense) as the names and addresses of such Holders appear upon the Note Register, notice of all Defaults so notified in writing, unless such Defaults shall have been cured or waived before the giving of such notice; *provided* that the Trustee shall not be deemed to have knowledge of any occurrence of a Default or Event unless it has received written notice. Except in the case of a Default in the payment of the principal of (including the Fundamental

Change Repurchase Price, if applicable) any of the Notes or a Default in the payment or delivery of the consideration due upon conversion, the Trustee shall be protected in withholding such notice if and so long as the Trustee's board of directors, a Responsible Officer, an executive committee or a committee of Responsible Officers of the Trustee (in its sole discretion) in good faith determines that the withholding of such notice is in the interests of the Holders.

Section 6.11 *Undertaking to Pay Costs*. All parties to this Indenture agree, and each Holder of any Note by its acceptance thereof shall be deemed to have agreed, that any court may, in its discretion, require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit and that such court may in its discretion assess costs, including attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; *provided* that the provisions of this Section 6.11 (to the extent permitted by law) shall not apply to any suit instituted by or against the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in principal amount of the Notes at the time outstanding determined in accordance with Section 8.04, or to any suit instituted by any Holder for the enforcement of the payment of the principal of any Note (including, but not limited to, the Fundamental Change Repurchase Price with respect to the Notes being repurchased as provided in this Indenture) on or after the due date expressed or provided for in such Note or to any suit for the enforcement of the right to convert any Note in accordance with the provisions of Article 14.

ARTICLE 7 CONCERNING THE TRUSTEE

Section 7.01 *Duties and Responsibilities of Trustee*. The Trustee, prior to the occurrence of an Event of Default and after the curing or waiver of all Events of Default that may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture and no implied covenants or obligations will be read into the Indenture against the Trustee. In case an Event of Default, of which the Trustee has actual written notice, has occurred that has not been cured or waived the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs; *provided* that if an Event of Default occurs and is continuing, the Trustee will be under no obligation to exercise any of the rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity and/or security and/or pre-funding satisfactory to it against the costs, liabilities or expenses that might be incurred by it in compliance with such request or direction.

No provision of this Indenture shall be construed to relieve the Trustee from liability for its own grossly negligent action, its own grossly negligent failure to act or its own willful misconduct, except that:

(a) prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default that may have occurred:

(i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of gross negligence and willful misconduct on the part of the Trustee, as proven in a final decision of a court of competent jurisdiction, the Trustee may conclusively and without liability rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions that by any provisions hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of any mathematical calculations or other facts, statements, opinions or conclusions stated therein);

(b) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Responsible Officers of the Trustee, unless it shall be proved in a final decision in a court of competent jurisdiction that the Trustee was grossly negligent in ascertaining the pertinent facts;

(c) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a majority of the aggregate principal amount of the Notes at the time outstanding determined as provided in Section 8.04 relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture;

(d) whether or not therein provided, every provision of this Indenture relating to the conduct or affecting the liability of, or affording protection to, the Trustee shall be subject to the provisions of this Section;

(e) the Trustee shall not be liable in respect of any payment (as to the correctness of amount, entitlement to receive or any other matters relating to payment) or notice effected by the Company or any Paying Agent or any records maintained by any co-Note Registrar with respect to the Notes;

(f) if any party fails to deliver a notice relating to an event the fact of which, pursuant to this Indenture, requires notice to be sent to the Trustee, the Trustee may conclusively and without liability rely on its failure to receive such notice as reason to act as if no such event occurred;

(g) [RESERVED]

(h) the rights, immunities, privileges, disclaimers from liability and protections (including the right to compensation and indemnity) afforded to the Trustee pursuant to this Article 7 shall also be afforded to such Note Registrar, Paying Agent, Conversion Agent or Transfer Agent;

(i) the Trustee shall have no duty to inquire, no duty to determine and no duty to monitor as to the performance of the Company's covenants in this Indenture or the financial performance of the Company; the Trustee shall be entitled to assume, until it has received written notice in accordance with this Indenture, that the Company is properly performing its duties hereunder;

(j) the Trustee shall be under no obligation to enforce any of the provisions of this Indenture unless it is instructed by Holders of at least 25% of the aggregate principal amount of outstanding Notes and is provided with security and/or indemnity and/or pre-funding satisfactory to it;

(k) the Trustee will be under no obligation to exercise any of its rights or powers under this Indenture at the request or direction of any of the Holders unless such Holders have offered to the Trustee indemnity and/or security and/or pre-funding satisfactory to it against any costs, expenses and liabilities that might be incurred by it in compliance with such requests or direction.

(l) before the Trustee acts or refrains from acting, it may require an Officers' Certificate or an Opinion of Counsel prepared and delivered at the cost of the Company conforming to Section 17.06 and the Trustee and the Agents may rely conclusively on such certificate or opinion and will not be liable for any action it takes or omits to take in good faith in reliance on such Officers' Certificate or Opinion of Counsel;

(m) in connection with the exercise by it of its trusts, powers, authorities or discretions (including, without limitation, any modification, waiver, authorization or determination), the Trustee shall have regard to the general interests of the Holders as a class but shall not have regard to any interests arising from circumstances particular to individual Holders (whatever their number) and in particular, but without limitation, shall not have regard to the consequences of the exercise of its trusts, powers, authorities or discretions for individual Holders (whatever their number) resulting from their being for any purpose domiciled or resident in, or otherwise connected with, or subject to the jurisdiction of, any country, state or territory; and

(n) the Trustee is not obliged to do or omit to do anything which in its reasonable opinion, would or may be illegal or would constitute a breach of any fiduciary duty or duty of confidentiality, or any law, rule, regulation, or any decree, order or judgment of any court, or practice, request, direction, notice, announcement or similar action (whether or not having the force of law) of any relevant government, government agency, regulatory authority, stock exchange or self-regulatory organization to which the Trustee is subject. The Trustee may without liability to do anything which is, in its reasonable opinion, necessary to comply with any such law, directive or regulations.

None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

Section 7.02 *Reliance on Documents, Opinions, Etc.* Except as otherwise provided in Section 7.01:

- (a) the Trustee may conclusively and without liability rely and shall be fully protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, Note, coupon or other paper or document (whether in its original or facsimile form) believed by it in good faith to be genuine and to have been signed or presented by the proper party or parties;
- (b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by an Officers' Certificate (unless other evidence in respect thereof be herein specifically prescribed); and any Board Resolution may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;
- (c) the Trustee may consult with counsel and require an Opinion of Counsel and any advice of such counsel or Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken or omitted by it hereunder in good faith and in accordance with such advice or Opinion of Counsel;
- (d) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney at the expense of the Company and shall incur no liability of any kind by reason of such inquiry or investigation;
- (e) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, delegates, custodians, nominees or attorneys and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, delegate, representative, custodian, nominee or attorney appointed by it with due care hereunder;
- (f) the permissive rights of the Trustee enumerated herein shall not be construed as duties;
- (g) under no circumstances and notwithstanding any contrary provision included herein, neither the Trustee, the Paying Agent, the Conversion Agent nor the Note Registrar shall be responsible or liable for special, indirect, punitive, or consequential damages or loss of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether any of them have been advised of the likelihood of such loss or damage and regardless of the form of action;

this provision shall remain in full force and effect notwithstanding the discharge of the Notes, the termination of this Indenture or the resignation, replacement or removal of the Trustee, the Paying Agent, the Conversion Agent and the Note Registrar;

(h) the Trustee, the Paying Agent, the Conversion Agent and the Note Registrar may refrain from taking any action in any jurisdiction if the taking of such action in that jurisdiction would, in its opinion based upon legal advice in the relevant jurisdiction, be contrary to any law of that jurisdiction or, to the extent applicable, of New York; furthermore, the Trustee may also refrain from taking such action if it would otherwise render it liable to any person in that jurisdiction or New York or if, in its opinion based on such legal advice, it would not have the power to do the relevant thing in that jurisdiction by virtue of any applicable law in that jurisdiction or in New York or if it is determined by any court or other competent authority in that jurisdiction that it does not have such power;

(i) the Company understands that The Bank of New York Mellon Corporation is a global financial organization that operates in and provides services and products to clients through its affiliates, branches, representative offices and/or subsidiaries located in multiple jurisdictions (collectively, the “**BNY Mellon Group**” and each a “**BNY Mellon Entity**”). The BNY Mellon Group may: (i) use and/or centralize in one or more BNY Mellon Entity in connection with its performance of the functions, duties and services provided and any other obligations under this Indenture and/or the Notes and in certain other activities (the “**Centralized Functions**”), including, without limitation, audit, accounting, tax, administration, risk management, credit, legal, compliance, operation, sales and marketing, product communication, relationship management, information technology, records and data storage, performance measurement, data aggregation and the compilation and analysis of information and data regarding the Company (which, for purposes of this sub-Section 7.02(i), includes the name and business contact information for the employees and representatives of the Company and any personal data) and the accounts established pursuant to the transactions contemplated in this Indenture and/or the Notes (“**Client Information**”); and (ii) use third party service providers to store, maintain and process Client Information (“**Outsourced Functions**”). Notwithstanding anything to the contrary contained elsewhere in this Indenture and/or the Notes and solely in connection with the Centralized Functions and/or Outsourced Functions, the Company consents to the: (i) collection, use and storage of, and authorizes the BNY Mellon Group to collect, use and store, Client Information within and outside of any jurisdiction, including without limitation Australia, the European Economic Area, Hong Kong, the PRC, Japan, Singapore, India, the British Virgin Islands and the United States of America; and (ii) disclosure of, and authorizes the BNY Mellon Group to disclose, Client Information to: (A) any other BNY Mellon Entity (and their respective officers, directors and employees); and (B) third-party service providers (but solely in connection with Outsourced Functions) who are required to maintain the confidentiality of Client Information. In addition, the BNY Mellon Group may aggregate Client Information with other data collected and/or calculated by the BNY Mellon Group, and the BNY Mellon Group will own all such aggregated data, provided that the BNY Mellon Group shall not distribute the aggregated data in a format that identifies Client Information with the Company specifically. The Company represents to the BNY Mellon Group that it is authorized to consent to the foregoing and that the disclosure of Client Information in connection with the Centralized Functions and/or Outsourced Functions does not violate any relevant data protection legislation.

The Company also consents to the disclosure of Client Information to governmental, tax, regulatory, law enforcement and other authorities in jurisdictions where the BNY Mellon Group operates and otherwise as required by law, rule, or guideline (including any tax and swap trade data reporting regulations);

(j) the Trustee shall not be required to give any bond or surety in respect of the performance of its powers and duties hereunder;

(k) the Trustee may request that the Company deliver Officers' Certificates setting forth the names of individuals and their titles and specimen signatures of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificates may be signed by any Person authorized to sign an Officers' Certificate, as the case may be, including any Person specified as so authorized in any such certificate previously delivered and not superseded;

(l) the Trustee shall not be responsible or liable for any action it takes or omits to take in good faith which it reasonably believes to be authorized or within its rights or powers;

(m) the Trustee shall not be responsible or liable for any action taken or omitted by it in good faith at the direction, in accordance with Section 6.09, of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding determined in accordance with Section 8.04 as to the time, method and place of conducting any proceeding for any remedy available to the Trustee or the exercising of any power conferred by this Indenture; and

(n) the Trustee shall not be responsible or any inaccuracy in the information obtained from the Company or for any inaccuracy or omission in the records which may result from such information or any failure by the Trustee to perform its duties as set forth herein as a result of any inaccuracy or incompleteness of such information.

Section 7.03 *No Responsibility for Recitals, Etc.* The recitals, statements, warranties and representations contained herein and in the Notes (except in the Note Registrar's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the accuracy or correctness of the same or for any failure by the Company or any other party to disclose events that may have occurred and may affect the significance or accuracy of such information, or the execution, legality, effectiveness, adequacy, genuineness, validity, enforceability or admissibility in evidence of this Indenture or of the Notes. The Trustee shall not be accountable for the use or application by the Company of any Notes or the proceeds of any Notes authenticated and delivered by the Note Registrar in conformity with the provisions of this Indenture. Notwithstanding the generality of the foregoing, each Holder shall be solely responsible for making its own independent appraisal of, and investigation into, the financial condition, creditworthiness, condition, affairs, status and nature of the Company, and the Trustee shall not at any time have any responsibility for the same and each Holder shall not rely on the Trustee in respect thereof.

Section 7.04 *Trustee, Paying Agents, Conversion Agents or Note Registrar May Own Notes.* The Trustee, any Paying Agent, any Conversion Agent or Note Registrar, in its individual or any other capacity, may engage in business and contractual relationships with the Company or its Affiliates and may become the owner or pledgee of Notes with the same rights it would have if it were not the Trustee, Paying Agent, Conversion Agent or Note Registrar, and nothing herein shall obligate any of them to account for any profits earned from any business or transactional relationship.

Section 7.05 *Monies to Be Held in Trust.* All monies received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received. Money held by the Trustee in trust or by the Paying Agent hereunder need not be segregated from other funds except to the extent required by law. Neither the Trustee nor the Paying Agent shall be under any liability for interest on any money received by it hereunder.

Section 7.06 *Compensation and Expenses of Trustee.* (a) The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, compensation for all services rendered by it hereunder in any capacity (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust) as mutually agreed to in writing between the Trustee and the Company (which sum shall be paid free and clear of deduction and withholding on account of taxation, set-off and counterclaim), and the Company will pay or reimburse the Trustee upon its request for all properly incurred expenses, disbursements and advances properly incurred or made by the Trustee in accordance with any of the provisions of this Indenture in any capacity thereunder (including the compensation and the properly incurred expenses and disbursements of its agents and counsel and of all Persons not regularly in its employ) except any such expense, disbursement or advance as shall have been caused by its gross negligence or willful misconduct as proven in a final decision in a court of competent jurisdiction. The Company also covenants to indemnify the Trustee (which for the purposes of this Section 7.06 shall be deemed to include its officers, directors, agents and employees) in any capacity under this Indenture (including without limitation as Note Registrar, Transfer Agent, Conversion Agent and Paying Agent) and any other document or transaction entered into in connection herewith, and to hold it harmless against, any loss, claim, damage, liability or expense (whether arising from third party claims or claims by or against the Company) incurred without gross negligence or willful misconduct on the part of the Trustee, its officers, directors, agents or employees, as the case may be, as proven in a final decision of a court of competent jurisdiction, and arising out of or in connection with the acceptance or administration of this Indenture or in any other capacity hereunder, including the costs and expenses of defending themselves against any claim of liability in the process of enforcing this indemnity. The obligations of the Company under this Section 7.06 to compensate or indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall be secured by a senior claim to which the Notes are hereby made subordinate on all money or property held or collected by the Trustee, except, subject to the effect of Section 6.05, funds held in trust herewith for the benefit of the Holders of particular Notes. The Trustee's right to receive payment of any amounts due under this Section 7.06 shall not be subordinate to any other liability or indebtedness of the Company. The indemnity under this Section 7.06(a) is payable upon demand by the Trustee. The obligation of the Company under this Section 7.06(a) shall survive the satisfaction and discharge of the Notes, the termination or discharge of this Indenture

and the resignation, replacement or removal of the Trustee. The indemnification provided in this Section 7.06(a) shall extend to the officers, directors, agents and employees of the Trustee. Subject to Section 7.02(e), any negligence or misconduct of any agent, delegate, attorney or representative, in each case, of the Trustee, shall not affect indemnification of the Trustee.

Without prejudice to any other rights available to the Trustee under applicable law, when the Trustee and its agents incur expenses or render services after an Event of Default specified in Section 6.01(i) or Section 6.01(j) occurs, the expenses and the compensation for the services are intended to constitute expenses of administration under any bankruptcy, insolvency or similar laws. If a Default or Event of Default shall have occurred or if the Trustee finds it expedient or necessary or is requested by the Company and/or the Holders to undertake duties which are of an exceptional nature or otherwise outside the scope of the Trustee's normal duties under this Indenture, the Company will pay such additional remuneration as the Company and the Trustee may separately agree in writing.

(b) The Paying Agent, the Conversion Agent and the Note Registrar shall be entitled to the compensation to be agreed upon in writing with the Company for all services rendered by it under this Indenture, and the Company agrees promptly to pay such compensation and to reimburse the Paying Agent, the Conversion Agent and the Note Registrar for its out-of-pocket expenses (including fees and expenses of counsel) properly incurred by it in connection with the services rendered by it under this Indenture. The Company hereby agrees to indemnify the Paying Agent, the Conversion Agent and the Note Registrar and their respective officers, directors, agents and employees and any successors thereto for, and to hold it harmless against, any loss, liability or expense (including fees and expenses of counsel) properly incurred without gross negligence or willful misconduct on its part arising out of or in connection with its acting as the Paying Agent, the Conversion Agent and the Note Registrar hereunder. The obligations of the Company under this paragraph (b) shall survive the payment of the Notes, the termination or discharge of the Indenture and the resignation, replacement or removal of the Paying Agent, the Conversion Agent and the Note Registrar.

Section 7.07 *Officers' Certificate as Evidence.* Except as otherwise provided in Section 7.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may be deemed to be conclusively proved and established by an Officers' Certificate delivered to the Trustee, and such Officers' Certificate shall be full warrant to the Trustee for any action taken or omitted by it under the provisions of this Indenture upon the faith thereof.

Section 7.08 *Eligibility of Trustee.* There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least US\$50,000,000. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in

accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

Section 7.09 *Resignation or Removal of Trustee.* (a) The Trustee may at any time resign by giving 60 days written notice of such resignation to the Company and by mailing notice thereof to the Holders at their addresses as they shall appear on the Note Register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee shall have been so appointed and have accepted appointment within 30 days after the mailing of such notice of resignation to the Holders, the resigning Trustee may appoint a successor trustee on behalf of and at the expense of the Company or it may at the expense of the Company petition any court of competent jurisdiction for the appointment of a successor trustee, or any Holder who has been a bona fide holder of a Note or Notes for at least six months may, subject to the provisions of Section 6.11, on behalf of himself or herself and all others similarly situated, petition any such court for the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint a successor trustee.

(b) In case at any time any of the following shall occur:

(i) the Trustee shall cease to be eligible in accordance with the provisions of Section 7.08 and shall fail to resign after written request therefor by the Company or by any such Holder, or

(ii) the Trustee shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or a receiver of the Trustee or of its property shall be appointed, or any public officer shall take charge or control of the Trustee or of its property or affairs for the purpose of rehabilitation, conservation or liquidation,

then, in either case, the Company may by a Board Resolution remove the Trustee and appoint a successor trustee by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 6.11, any Holder who has been a bona fide holder of a Note or Notes for at least six months may, on behalf of himself or herself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove the Trustee and appoint a successor trustee.

(c) The Holders of a majority in aggregate principal amount of the Notes at the time outstanding, as determined in accordance with Section 8.04, may at any time remove the Trustee and nominate a successor trustee that shall be deemed appointed as successor trustee unless within ten days after notice to the Company of such nomination the Company objects thereto, in which case the Trustee so removed or any Holder, upon the terms and conditions and otherwise

as in Section 7.09(a) provided, may petition any court of competent jurisdiction for an appointment of a successor trustee.

(d) Any resignation or removal of the Trustee and appointment of a successor trustee pursuant to any of the provisions of this Section 7.09 shall become effective upon acceptance of appointment by the successor trustee as provided in Section 7.10.

Section 7.10 *Acceptance by Successor Trustee.* Any successor trustee appointed as provided in Section 7.09 shall execute, acknowledge and deliver to the Company and to its predecessor trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor trustee shall become effective and such successor trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder, with like effect as if originally named as Trustee herein; but, nevertheless, on the written request of the Company or of the successor trustee, the trustee ceasing to act shall, upon payment of any amounts then due to it pursuant to the provisions of Section 7.06, execute and deliver an instrument transferring to such successor trustee all the rights and powers of the trustee so ceasing to act. Upon request of any such successor trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor trustee all such rights and powers. Any trustee ceasing to act shall, nevertheless, retain a senior claim to which the Notes are hereby made subordinate on all money or property held or collected by such trustee as such, except for funds held in trust for the benefit of Holders of particular Notes, to secure any amounts then due to it pursuant to the provisions of Section 7.06.

No successor trustee shall accept appointment as provided in this Section 7.10 unless at the time of such acceptance such successor trustee shall be eligible under the provisions of Section 7.08.

Upon acceptance of appointment by a successor trustee as provided in this Section 7.10, each of the Company and the successor trustee, at the written direction and at the expense of the Company shall mail or cause to be mailed notice of the succession of such trustee hereunder to the Holders at their addresses as they shall appear on the Note Register. If the Company fails to mail such notice within ten days after acceptance of appointment by the successor trustee, the successor trustee shall cause such notice to be mailed at the expense of the Company.

Section 7.11 *Succession by Merger; Etc.* Any corporation or other entity into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation or other entity resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee (including the administration of this Indenture), shall be the successor to the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto; *provided* that in the case of any corporation or other entity succeeding to all or substantially all of the corporate trust business of the Trustee such corporation or other entity shall be eligible under the provisions of Section 7.08.

In case at the time such successor to the Trustee shall succeed to the trusts created by this Indenture, any of the Notes shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor note registrar, and deliver such Notes so authenticated; and in case at that time any of the Notes shall not have been authenticated, any successor to the Note Registrar may authenticate such Notes either in the name of any predecessor trustee hereunder or in the name of the successor trustee; and in all such cases such certificates shall have the full force which it is anywhere in the Notes or in this Indenture provided that the certificate of the Note Registrar shall have; *provided, however,* that the right to adopt the certificate of authentication of any predecessor note registrar or to authenticate Notes in the name of any predecessor trustee shall apply only to its successor or successors by merger, conversion or consolidation.

Section 7.12 *Trustee's Application for Instructions from the Company.* Any application by the Trustee for written instructions from the Company (other than with regard to any action proposed to be taken or omitted to be taken by the Trustee that affects the rights of the Holders of the Notes under this Indenture) may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three Business Days after the date any officer that the Company has indicated to the Trustee should receive such application actually receives such application, unless any such officer shall have consented in writing to any earlier date), unless, prior to taking any such action (or the effective date in the case of any omission), the Trustee shall have received written instructions in accordance with this Indenture in response to such application specifying the action to be taken or omitted.

ARTICLE 8 CONCERNING THE HOLDERS

Section 8.01 *Action by Holders.* Whenever in this Indenture it is provided that the Holders of a specified percentage of the aggregate principal amount of the Notes may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action), the fact that at the time of taking any such action, the Holders of such specified percentage have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Holders in person or by agent or proxy appointed in writing, or (b) by the record of the Holders voting in favor thereof at any meeting of Holders duly called and held in accordance with the provisions of Article 9, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Holders. Whenever the Company or the Trustee solicits the taking of any action by the Holders of the Notes, the Company or the Trustee may fix, but shall not be required to, in advance of such solicitation, a date as the record date for determining Holders entitled to take such action. The record date if one is selected shall be not more than fifteen days prior to the date of commencement of solicitation of such action.

Section 8.02 *Proof of Execution by Holders.* Subject to the provisions of Section 7.01, Section 7.02 and Section 9.05, proof of the execution of any instrument by a Holder or its agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The holding of Notes shall be proved by the Note Register or by a certificate of the Note Registrar. The record of any Holders' meeting shall be proved in the manner provided in Section 9.06.

Section 8.03 *Who Are Deemed Absolute Owners.* The Company, the Trustee, any Paying Agent, any Conversion Agent and any Note Registrar may deem the Person in whose name a Note shall be registered upon the Note Register to be, and may treat it as, the absolute owner of such Note (whether or not such Note shall be overdue and notwithstanding any notation of ownership or other writing thereon made by any Person other than the Company or any Note Registrar) for the purpose of receiving payment of or on account of the principal of (subject to Section 2.03) such Note, for the purpose of conversion of such Note and for all other purposes; and neither the Company nor the Trustee nor any Paying Agent nor any Conversion Agent nor any Note Registrar shall be affected by any notice to the contrary. All such payments or deliveries so made to any Holder for the time being, or upon its order, shall be valid, and, to the extent of the sums or ADSs so paid or delivered, effectual to satisfy and discharge the liability for monies payable or ADSs deliverable upon any such Note. Notwithstanding anything to the contrary in this Indenture or the Notes following an Event of Default, any Holder of a beneficial interest in a Global Note may directly enforce against the Company, without the consent, solicitation, proxy, authorization or any other action of the Common Depositary or any other Person, such Holder's right to exchange such beneficial interest for a Note in certificated form in accordance with the provisions of this Indenture and such Holder's rights under Article 6 of this Indenture.

Section 8.04 *Company-Owned Notes Disregarded.* In determining whether the Holders of the requisite aggregate principal amount of Notes have concurred in any direction, consent, waiver or other action under this Indenture, Notes that are owned by the Company, by any Subsidiary or Consolidated Affiliated Entity thereof or by any Affiliate of the Company or any Subsidiary or Consolidated Affiliated Entity thereof shall be disregarded and deemed not to be outstanding for the purpose of any such determination; *provided* that for the purposes of determining whether the Trustee shall be protected in relying on any such direction, consent, waiver or other action only Notes in respect of which a Responsible Officer is notified in writing shall be so disregarded. Notes so owned that have been pledged in good faith may be regarded as outstanding for the purposes of this Section 8.04 if the pledgee shall establish its right to so act with respect to such Notes and that the pledgee is not the Company, a Subsidiary or Consolidated Affiliated Entity thereof or an Affiliate of the Company or a Subsidiary or Consolidated Affiliated Entity thereof. Within five days of acquisition of the Notes by any of the above described persons or entities or at the request of the Trustee, the Company shall furnish to the Trustee promptly an Officers' Certificate listing and identifying all Notes, if any, known by the Company to be owned or held by or for the account of any of the above described Persons; and, subject to Section 7.01, the Trustee shall be entitled to accept such Officers' Certificate as conclusive evidence of the facts therein set forth and of the fact that all Notes not listed therein are outstanding for the purpose of any such determination.

Section 8.05 *Revocation of Consents; Future Holders Bound.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 8.01, of the taking of any action by the Holders of the percentage of the aggregate principal amount of the Notes specified in this Indenture in connection with such action, any Holder of a Note that is shown by the evidence to be included in the Notes the Holders of which have consented to such action may, by filing written notice with the Trustee at its Corporate Trust Office and upon proof of holding as provided in Section 8.02, revoke such action so far as concerns such Note. Except as aforesaid, any such action taken by the Holder of any Note shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Note and of any Notes issued in exchange or substitution therefor or upon registration of transfer thereof, irrespective of whether any notation in regard thereto is made upon such Note or any Note issued in exchange or substitution therefor or upon registration of transfer thereof.

ARTICLE 9 HOLDERS' MEETINGS

Section 9.01 *Purpose of Meetings.* A meeting of Holders may be called at any time and from time to time pursuant to the provisions of this Article 9 for any of the following purposes:

- (a) to give any notice to the Company or to the Trustee or to give any directions to the Trustee permitted under this Indenture, or to consent to the waiving of any Default or Event of Default hereunder and its consequences, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of Article 6;
- (b) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article 7;
- (c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 10.02; or
- (d) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Notes under any other provision of this Indenture or under applicable law.

Section 9.02 *Call of Meetings by Trustee.* The Trustee may (in its sole discretion and without obligation) at any time call a meeting of Holders to take any action specified in Section 9.01, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Holders, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting and the establishment of any record date pursuant to Section 8.01, shall be mailed to Holders of such Notes at their addresses as they shall appear on the Note Register. Such notice shall also be mailed to the Company. Such notices shall be mailed not less than 20 nor more than 90 days prior to the date fixed for the meeting.

Any meeting of Holders shall be valid without notice if the Holders of all Notes then outstanding are present in person or by proxy or if notice is waived before or after the meeting by

the Holders of all Notes then outstanding, and if the Company and the Trustee are either present by duly authorized representatives or have, before or after the meeting, waived notice.

Section 9.03 *Call of Meetings by Company or Holders.* In case at any time the Company, pursuant to a Board Resolution, or the Holders of at least 10% of the aggregate principal amount of the Notes then outstanding, shall have requested the Company to call a meeting of Holders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Company shall not have mailed the notice of such meeting within 20 days after receipt of such request, then the Trustee or such Holders may determine the time and the place for such meeting and may call such meeting to take any action authorized in Section 9.01, by mailing notice thereof as provided in Section 9.02.

Section 9.04 *Qualifications for Voting.* To be entitled to vote at any meeting of Holders a Person shall (a) be a Holder of one or more Notes on the record date pertaining to such meeting or (b) be a Person appointed by an instrument in writing as proxy by a Holder of one or more Notes on the record date pertaining to such meeting. The only Persons who shall be entitled to be present or to speak at any meeting of Holders shall be the Persons entitled to vote at such meeting and their counsel and any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

Section 9.05 *Regulations.* Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders, in regard to proof of the holding of Notes and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit.

The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders as provided in Section 9.03, in which case the Company or the Holders calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Holders of a majority in principal amount of the Notes represented at the meeting and entitled to vote at the meeting.

Subject to the provisions of Section 8.04, at any meeting of Holders each Holder or proxyholder shall be entitled to one vote for each US\$1,000 principal amount of Notes held or represented by him or her; *provided, however,* that no vote shall be cast or counted at any meeting in respect of any Note challenged as not outstanding and ruled by the chairman of the meeting to be not outstanding. The chairman of the meeting shall have no right to vote other than by virtue of Notes held by it or instruments in writing as aforesaid duly designating it as the proxy to vote on behalf of other Holders. Any meeting of Holders duly called pursuant to the provisions of Section 9.02 or Section 9.03 may be adjourned from time to time by the Holders of a majority of the aggregate principal amount of Notes represented at the meeting, whether or not constituting a quorum, and the meeting may be held as so adjourned without further notice.

Minutes shall be made of all resolutions and proceedings at every meeting and, if purporting to be signed by the chairman of that meeting or of the next succeeding meeting of Holders of the Notes, shall be conclusive evidence of the matters in them. Until the contrary is proved every meeting for which minutes have been so made and signed shall be deemed to have been duly convened and held and all resolutions passed or proceedings transacted at it to have been duly passed and transacted.

Section 9.06 *Voting*. The vote upon any resolution submitted to any meeting of Holders shall be by written ballot on which shall be subscribed the signatures of the Holders or of their representatives by proxy and the outstanding principal amount of the Notes held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more Persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Section 9.02. The record shall show the principal amount of the Notes voting in favor of or against any resolution. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

Any record so signed and verified shall be conclusive evidence of the matters therein stated.

Section 9.07 *No Delay of Rights by Meeting*. Nothing contained in this Article 9 shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Holders or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders under any of the provisions of this Indenture or of the Notes.

ARTICLE 10 SUPPLEMENTAL INDENTURES

Section 10.01 *Supplemental Indentures Without Consent of Holders*. The Company, when authorized by the resolutions of the Board of Directors, and the Trustee, at the Company's expense and direction, may from time to time and at any time amend or supplement this Indenture or the Notes for one or more of the following purposes:

- (a) to cure any ambiguity, omission, defect or inconsistency;
- (b) to provide for the assumption by a Successor Company of the obligations of the Company under this Indenture and the Notes pursuant to Article 11;
- (c) to add guarantees with respect to the Notes;

- (d) to secure the Notes;
- (e) to add to the covenants or Events of Defaults of the Company for the benefit of the Holders or surrender any right or power conferred upon the Company;
- (f) upon the occurrence of any transaction or event described in Section 14.07(a), to (i) provide that the Notes are convertible into Reference Property, subject to Section 14.02, and (ii) effect the related changes to the terms of the Notes described under Section 14.07(a), in each case, in accordance with Section 14.07;
- (g) to make any change that does not adversely affect the rights of any Holder; or
- (h) comply with the rules of the Euroclear and Clearstream.

Upon the written request of the Company, the Trustee is hereby authorized to join with the Company in the execution of any such amendment or supplement to this Indenture or the Notes, to make any further appropriate agreements and stipulations that may be therein contained, but the Trustee shall not be obligated to, but may in its discretion, enter into any supplemental indenture that affects the Trustee's own rights, duties or immunities under this Indenture or otherwise. The Trustee shall seek an Officers' Certificate and an Opinion of Counsel, at the Company's expense, that any such amendment or supplement to this Indenture or the Notes is authorized and permitted by the terms of this Indenture and not contrary to law.

Any amendment or supplement to this Indenture or the Notes authorized by the provisions of this Section 10.01 may be executed by the Company and the Trustee without the consent of the Holders of any of the Notes at the time outstanding, notwithstanding any of the provisions of Section 10.02.

Section 10.02 *Supplemental Indentures with Consent of Holders*. With the consent (evidenced as provided in Article 8) of the Holders of at least a majority of the aggregate principal amount of the Notes then outstanding (determined in accordance with Article 8 and including, without limitation, consents obtained in connection with a repurchase of, or tender or exchange offer for, Notes), the Company, when authorized by the resolutions of the Board of Directors, and the Trustee, at the Company's expense, may from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or any supplemental indenture or of modifying in any manner the rights of the Holders; *provided, however*, that, without the consent of each Holder of an outstanding Note affected, no such supplemental indenture shall:

- (a) reduce the amount of Notes whose Holders must consent to an amendment or waiver;
- (b) reduce the rate of or extend the stated time for payment of interest (if any) on any Note;
- (c) reduce the principal of or extend the Maturity Date of any Note;

- (d) make any change that adversely affects the conversion rights of any Notes;
- (e) reduce the Fundamental Change Repurchase Price of any Note or amend or modify in any manner adverse to the Holders the Company's obligation to make such payments, whether through an amendment or waiver of provisions in the covenants, definitions or otherwise;
- (f) make any Note payable in a currency other than U.S. dollars;
- (g) change the ranking of the Notes;
- (h) impair the right of any Holder to receive payment of principal and interest (if any) on such Holder's Notes on or after the due dates therefor or to institute suit for the enforcement of any payment on or with respect to such Holder's Note;
- (i) change the Company's obligation to pay Additional Amounts on any Note; or
- (j) make any change in this Article 10 that requires each Holder's consent or in the waiver provisions in Section 6.02 or Section 6.09.

Upon the written request of the Company, and upon the filing with the Trustee of evidence of the consent of Holders as aforesaid and subject to Section 10.05, the Trustee shall join with the Company in the execution of such supplemental indenture unless (i) the Trustee has not received an Officers' Certificate and an Opinion of Counsel that such supplemental indenture is authorized and permitted by the terms of this Indenture and not contrary to law or (ii) such supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture or otherwise, in which case the Trustee may in its discretion, but shall not be obligated to, enter into such supplemental indenture.

Holders do not need under this Section 10.02 to approve the particular form of any proposed supplemental indenture. It shall be sufficient if such Holders approve the substance thereof. After any supplemental indenture becomes effective under Section 10.01 or Section 10.02, the Company shall mail to the Holders a notice briefly describing such supplemental indenture. However, the failure to give such notice to all the Holders, or any defect in the notice, will not impair or affect the validity of the supplemental indenture.

Section 10.03 *Effect of Supplemental Indentures*. Upon the execution of any supplemental indenture pursuant to the provisions of this Article 10, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the Holders shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

Section 10.04 *Notation on Notes*. Notes authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article 10 may, at the

Company's expense, bear a notation in form approved by the Note Registrar as to any matter provided for in such supplemental indenture. If the Company or the Trustee shall so determine, new Notes so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may, at the Company's expense, be prepared and executed by the Company, authenticated by the Note Registrar upon receipt of a Company Order and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 10.05 *Evidence of Compliance of Supplemental Indenture to Be Furnished Trustee*. In addition to the documents required by Section 17.06, the Trustee shall receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article 10 and is permitted or authorized by this Indenture and is not contrary to law.

ARTICLE 11 CONSOLIDATION, MERGER, SALE, CONVEYANCE AND LEASE

Section 11.01 *Company May Consolidate, Etc. on Certain Terms*. Subject to the provisions of Section 11.02, the Company shall not consolidate with, merge with or into, or sell, convey, transfer or lease all or substantially all of the consolidated assets of the Company, its Subsidiaries and its Consolidated Affiliated Entities, taken as a whole, to another Person, unless:

(a) the resulting, surviving or transferee Person (the "**Successor Company**"), if not the Company, shall be a corporation organized and existing under the laws of the Cayman Islands, the British Virgin Islands, Bermuda or Hong Kong and the Successor Company (if not the Company) shall expressly assume, by supplemental indenture all of the obligations of the Company under the Notes and this Indenture (including, for the avoidance of doubt, the obligation to pay Additional Amounts pursuant to Section 4.07);

(b) if the Company will not be the resulting or surviving corporation, the Company shall have, at or prior to the effective date of such transaction, delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that the execution and delivery of the supplemental indenture do not conflict with the requirements set forth in the Indenture and that all conditions precedent to the execution and delivery of such supplemental indenture have been satisfied; and

(c) immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing under this Indenture.

For purposes of this Section 11.01, the sale, conveyance, transfer or lease of all or substantially all of the assets of one or more Subsidiaries or Consolidated Affiliated Entities of the Company to another Person, which properties and assets, if held by the Company instead of such Subsidiaries or Consolidated Affiliated Entities, would constitute all or substantially all of the assets of the Company on a consolidated basis, shall be deemed to be the sale, conveyance, transfer or lease of all or substantially all of the consolidated assets of the Company to another Person.

Section 11.02 *Successor Corporation to Be Substituted.* In case of any such consolidation, merger, sale, conveyance, transfer or lease and upon the assumption by the Successor Company, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of all of the Notes (including, for the avoidance of doubt, any Additional Amounts), the due and punctual delivery or payment, as the case may be, of any consideration due upon conversion of the Notes (including, for the avoidance of doubt, any Additional Amounts) and the due and punctual performance of all of the covenants and conditions of this Indenture to be performed by the Company, such Successor Company (if not the Company) shall succeed to and, except in the case of a lease of all or substantially all of the Company's properties and assets, shall be substituted for the Company, with the same effect as if it had been named herein as the party of the first part. Such Successor Company thereupon may cause to be signed, and may issue either in its own name or in the name of the Company any or all of the Notes issuable hereunder which theretofore shall not have been signed by the Company and delivered to the Note Registrar; and, upon the order of such Successor Company instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Note Registrar shall authenticate and shall deliver, or cause to be authenticated and delivered, any Notes that previously shall have been signed and delivered by the Officers of the Company to the Note Registrar for authentication, and any Notes that such Successor Company thereafter shall cause to be signed and delivered to the Note Registrar for that purpose. All the Notes so issued shall in all respects have the same legal rank and benefit under this Indenture as the Notes theretofore or thereafter issued in accordance with the terms of this Indenture as though all of such Notes had been issued at the date of the execution hereof. In the event of any such consolidation, merger, sale, conveyance or transfer (but not in the case of a lease), upon compliance with this Article 11 the Person named as the "Company" in the first paragraph of this Indenture (or any successor that shall thereafter have become such in the manner prescribed in this Article 11) may be dissolved, wound up and liquidated at any time thereafter and, except in the case of a lease, such Person shall be released from its liabilities as obligor and maker of the Notes and from its obligations under this Indenture and the Notes.

In case of any such consolidation, merger, sale, conveyance, transfer or lease, such changes in phraseology and form (but not in substance) may be made in the Notes thereafter to be issued as may be appropriate.

Section 11.03 *Opinion of Counsel to Be Given to Trustee.* No consolidation, merger, sale, conveyance, transfer or lease shall be effective unless the Trustee shall receive an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale, conveyance, transfer or lease and any such assumption and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, complies with the provisions of this Article 11, that all conditions precedent thereto have been satisfied and that the Notes and such supplemental indenture are the legal, valid and binding obligations of the Successor Company, enforceable against it in accordance with its terms, subject to customary assumptions, qualifications, and exceptions.

ARTICLE 12
IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS

Section 12.01 *Indenture and Notes Solely Corporate Obligations*. No recourse for the payment of the principal of any Note, nor for any claim based thereon or otherwise in respect thereof, and no recourse under or upon any obligation, covenant or agreement of the Company in this Indenture or in any supplemental indenture or in any Note, nor because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, employee, agent, Officer or director or Subsidiary, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that all such liability is hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of the Notes.

ARTICLE 13
INTENTIONALLY OMITTED

ARTICLE 14
CONVERSION OF NOTES

Section 14.01 *Conversion Privilege*. Subject to and upon compliance with the provisions of this Article 14, each Holder of a Note shall have the right, at such Holder's option, to convert all or any portion with a minimum principal amount of US\$10,000,000 and integral multiples of US\$1,000 in excess thereof of such Note at any time on or after September 5, 2020 and prior to the close of business on the second Business Day immediately preceding the Maturity Date into ADSs at an initial conversion rate of 285.714 ADSs (subject to adjustment as provided in this Article 14, the "**Conversion Rate**") per US\$1,000 principal amount of Notes (subject to the settlement provisions of Section 14.02, the "**Conversion Obligation**"), *provided* that no Holder or beneficial owner of a Note shall have the right to receive ADSs on or prior to the Distribution Compliance Period Termination Date and *further provided* that nothing in this Section 14.01 shall prevent conversion of a Note by a Holder (or the relevant beneficial owner) if such Person holds less than the minimum principal amount of the Notes set forth above.

Section 14.02 *Conversion Procedure; Settlement Upon Conversion*.

(a) Upon conversion of any Note, the Company shall cause to be delivered to the converting Holder, in respect of each US\$1,000 principal amount of Notes being converted, a number of ADSs equal to the Conversion Rate in effect immediately prior to the close of business on the relevant Conversion Date, together with a cash payment, if applicable, in lieu of any fractional ADSs ("**Fractional ADSs**") (assuming delivery of the maximum number of ADSs due upon conversion that do not represent a fractional ADS) in accordance with subsection (j) of this Section 14.02, on the third Business Day immediately following the relevant Conversion Date; *provided* that, if a Conversion Date occurs after the Ordinary Shares have been replaced by the Reference Property consisting solely of cash in accordance with Section 14.07, the Company shall cause the consideration due in respect of the conversion to be paid to the converting Holder

on the tenth Business Day immediately following the related Conversion Date. For the avoidance of doubt, neither the Trustee nor any Agent shall have any responsibility to deliver ADSs upon conversion of any Note to any person or deal with cash payments in relation to conversions, except for cash payments in lieu of any fractional ADS.

(b) Subject to Section 14.02(e), before any Holder of a Note shall be entitled to convert a Note as set forth above, such Holder shall (i) in the case of a Global Note, comply with the procedures of the Euroclear and Clearstream in effect at that time and complete, manually sign and deliver a duly completed irrevocable notice to the Conversion Agent as set forth in the Form of Notice of Conversion (or a facsimile thereof) (a “**Notice of Conversion**”) and (ii) in the case of a Physical Note (1) complete, manually sign and deliver a duly completed irrevocable Notice of Conversion to the Conversion Agent at the specified office of the Conversion Agent and state in writing therein the principal amount of Notes to be converted and the name or names (with addresses) in which such Holder wishes the certificate or certificates for any ADSs to be delivered upon settlement of the Conversion Obligation to be registered, (2) surrender such Notes, duly endorsed to the Company or in blank (and accompanied by appropriate endorsement and transfer documents), at the specified office of the Conversion Agent and (3) if required, furnish appropriate endorsements and transfer documents. The Trustee (and if different, the Conversion Agent) shall notify the Company of any conversion pursuant to this Article 14 on the Conversion Date for such conversion. No Notice of Conversion with respect to any Notes may be delivered and no Notes may be surrendered by a Holder for conversion thereof if such Holder has also delivered a Fundamental Change Repurchase Notice to the Company in respect of such Notes and not validly withdrawn such Fundamental Change Repurchase Notice in accordance with Section 15.03. A Notice of Conversion shall be deposited in duplicate at the office of any Conversion Agent on any Business Day from 9:00 a.m. to 3:00 p.m. at the location of the Conversion Agent to which such Notice of Conversion is delivered. Any Notice of Conversion and any Physical Note (if issued) deposited outside the hours specified or on a day that is not a Business Day at the location of the Conversion Agent shall for all purposes be deemed to have been deposited with that Conversion Agent between 9:00 a.m. and 3:00 p.m. on the next Business Day.

If more than one Note shall be surrendered for conversion at one time by the same Holder, the Conversion Obligation with respect to such Notes shall be computed on the basis of the aggregate principal amount of the Notes (or specified portions thereof to the extent permitted thereby) so surrendered. None of the Agents of the Trustee shall have any responsibility whatsoever with respect to the issuance and delivery of the ADSs to the converting Holder.

(c) A Note shall be deemed to have been converted immediately prior to the close of business on the date (the “**Conversion Date**”) that the Holder has complied with the requirements set forth in subsection (b) above. The Company shall issue or cause to be issued, and deliver or cause to be delivered to such converting Holder, or such converting Holder’s nominee or nominees, certificates or a book-entry transfer through Euroclear and Clearstream for the full number of ADSs to which such Holder shall be entitled in satisfaction of the Company’s Conversion Obligation.

(d) In case any Note shall be surrendered for partial conversion, the Company shall execute and instruct the Note Registrar who shall authenticate and deliver to or upon the written order of the Holder of the Note so surrendered a new Note or Notes in authorized denominations in an aggregate principal amount equal to the unconverted portion of the surrendered Note, without payment of any service charge by the converting Holder but, if required by the Company or Trustee, with payment of a sum sufficient to cover any transfer tax or similar governmental charge required by law or that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such conversion being different from the name of the Holder of the old Notes surrendered for such conversion.

(e) If a Holder submits a Note for conversion, the Company shall pay any documentary, stamp, issue, transfer or similar tax due on the delivery of the ADSs upon conversion of the Notes (or the issuance of the underlying Ordinary Shares), unless the tax is due because the Holder requests such ADSs (or such Ordinary Shares) to be issued in a name other than the Holder's name, in which case the Holder shall pay that tax. The Conversion Agent may refuse to deliver the certificates representing the ADSs (or the Ordinary Shares) being issued in a name other than the Holder's name until the Trustee receives a sum sufficient to pay any tax that is due by such Holder in accordance with the immediately preceding sentence. The Company shall pay the ADS Depository's fees for issuance of the ADSs.

(f) Except as provided in Section 14.04, no adjustment shall be made for dividends on any ADSs delivered upon the conversion of any Note as provided in this Article 14.

(g) Upon the conversion of an interest in a Global Note, the Trustee shall make a notation on such Global Note as to the reduction in the principal amount represented thereby. The Company shall notify the Trustee in writing of any conversion of Notes effected through any Conversion Agent other than the Trustee.

(h) The Company's settlement of the Conversion Obligation shall be deemed to satisfy in full its obligation to pay the principal amount of the Note.

(i) The Person in whose name the certificate for any ADSs delivered upon conversion is registered shall be treated as a holder of record of such ADSs as of the close of business on the relevant Conversion Date. Upon a conversion of Notes, such Person shall no longer be a Holder of such Notes surrendered for conversion.

(j) The Company shall not issue any Fractional ADS upon conversion of the Notes and shall instead pay cash in lieu of any Fractional ADS deliverable upon conversion based on the Last Reported Sale Price of the ADSs on the relevant Conversion Date (or if such Conversion Date is not a Trading Day, the immediately preceding Trading Day).

(k) In accordance with the Deposit Agreement, the Company shall issue to the ADS Custodian such Ordinary Shares required for the issuance of the ADSs upon conversion of the Notes, plus written delivery instructions (if requested by the ADS Depository or the ADS Custodian) for such ADSs, shall deliver such legal opinions and any other information or documentation and any additional forms compliant with the procedures of the Depository Trust

Company with respect to such conversion of Notes and shall comply with the Deposit Agreement, as required by the ADS Depository or the ADS Custodian in connection with each issue of Ordinary Shares and issuance and delivery of ADSs.

Section 14.03 [RESERVED]

Section 14.04 *Adjustment of Conversion Rate*. If the number of Ordinary Shares represented by the ADSs is changed, after the date of this Indenture, for any reason other than one or more of the events described in this Section 14.04, the Company shall make an appropriate adjustment to the Conversion Rate such that the number of Ordinary Shares represented by the ADSs upon which conversion of the Notes is based remains the same.

Notwithstanding the adjustment provisions described in this Section 14.04, if the Company distributes to holders of the Ordinary Shares any cash, rights, options, warrants, shares of Capital Stock or similar equity interest, evidences of indebtedness or other assets or property of the Company (but excluding Expiring Rights) and a corresponding distribution is not made to holders of the ADSs, but, instead, the ADSs shall represent, in addition to Ordinary Shares, such cash, rights, options, warrants, shares of Capital Stock or similar equity interest, evidences of indebtedness or other assets or property of the Company, then an adjustment to the Conversion Rate described in this Section 14.04 shall not be made until and unless a corresponding distribution (if any) is made to holders of the ADSs, and such adjustment to the Conversion Rate shall be based on the distribution made to the holders of the ADSs and not on the distribution made to the holders of the Ordinary Shares. However, in the event that the Company issues or distributes to all holders of the Ordinary Shares any Expiring Rights, notwithstanding the immediately preceding sentence, the Company shall adjust the Conversion Rate pursuant to Section 14.04(b) (in the case of Expiring Rights entitling holders of the Ordinary Shares for a period of not more than 45 calendar days after the announcement date of such issuance to subscribe for or purchase Ordinary Shares or ADSs) or Section 14.04(c) (in the case of all other Expiring Rights).

For the avoidance of doubt, if any event described in this Section 14.04 results in a change to the number of Ordinary Shares represented by the ADSs, then such a change shall be deemed to satisfy the Company's obligation to effect the relevant adjustment to the Conversion Rate on account of such event to the extent such change produces the same economic result as the adjustment to the Conversion Rate that would otherwise have been made on account of such event.

The Conversion Rate shall be adjusted from time to time by the Company if any of the following events occurs, except that the Company shall not make any adjustments to the Conversion Rate if Holders of the Notes participate (other than in the case of a share split or share combination), at the same time and upon the same terms as holders of the ADSs and solely as a result of holding the Notes, in any of the transactions described in this Section 14.04, without having to convert their Notes, as if they held a number of ADSs equal to the Conversion Rate, *multiplied by* the principal amount (expressed in thousands) of Notes held by such Holder. Neither the Trustee nor the Conversion Agent shall have any responsibility to monitor the accuracy of any calculation of any adjustment to the Conversion Rate and the same shall be

conclusive and binding on the Holders, absent manifest error. Notice of such adjustment to the Conversion Rate shall be given by the Company promptly to the Holders, the Trustee and the Paying Agent and Conversion Agent and shall be conclusive and binding on the Holders, absent manifest error

(a) If the Company exclusively issues Ordinary Shares as a dividend or distribution on the Ordinary Shares, or if the Company effects a share split or share combination, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where,

- CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date of such dividend or distribution, or immediately prior to the open of business on the effective date of such share split or share combination, as applicable;
- CR_1 = the Conversion Rate in effect immediately after the close of business on such Record Date or immediately after the open of business on such effective date, as applicable;
- OS_0 = the number of Ordinary Shares outstanding immediately prior to the close of business on such Record Date or immediately prior to the open of business on such effective date, as applicable; and
- OS_1 = the number of Ordinary Shares outstanding immediately after giving effect to such dividend, distribution, share split or share combination.

Any adjustment made under this Section 14.04(a) shall become effective immediately after the close of business on the Record Date for such dividend or distribution, or immediately after the open of business on the effective date for such share split or share combination, as applicable. If any dividend or distribution of the type described in this Section 14.04(a) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(b) If the Company issues to all or substantially all holders of the Ordinary Shares (directly or in the form of ADSs) any rights, options or warrants entitling them, for a period of not more than 45 calendar days after the announcement date of such issuance, to subscribe for or purchase Ordinary Shares (directly or in the form of ADSs) at a price per Ordinary Share that is less than the average of the Last Reported Sale Prices of the Ordinary Shares or the ADSs, as the case may be (*divided by*, in the case of the ADSs, the number of Ordinary Shares then represented by one ADS), for the 10 consecutive Trading Day period ending on, and including,

the Trading Day immediately preceding the date of announcement of such issuance, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for the ADSs for such issuance;

CR_1 = the Conversion Rate in effect immediately after the close of business on such Record Date;

OS_0 = the number of Ordinary Shares outstanding immediately prior to the close of business on such Record Date;

X = the total number of Ordinary Shares (directly or in the form of ADSs) deliverable pursuant to such rights, options or warrants; and

Y = the number of Ordinary Shares equal to (i) the aggregate price payable to exercise such rights, options or warrants, *divided by* (ii) the quotient of (a) the average of the Last Reported Sale Prices of the ADSs over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement of the issuance of such rights, options or warrants *divided by* (b) the number of Ordinary Shares then represented by one ADS.

Any increase made under this Section 14.04(b) shall be made successively whenever any such rights, options or warrants are issued and shall become effective immediately after the close of business on the Record Date for the ADSs for such issuance. To the extent that Ordinary Shares or ADSs are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the increase with respect to the issuance of such rights, options or warrants been made on the basis of delivery of only the number of Ordinary Shares actually delivered (directly or in the form of ADSs). If such rights, options or warrants are not so issued, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such the Record Date for the ADSs for such issuance had not occurred.

For purposes of this Section 14.04(b), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase Ordinary Shares (directly or in the form of ADSs) at a price per Ordinary Share that is less than such average of the Last Reported Sale Prices of the Ordinary Shares or the ADSs, as the case may be (divided by, in the case of the ADSs, the number of Ordinary Shares then represented by one ADS), for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the date of announcement for such issuance, and in determining the aggregate offering price of such

Ordinary Shares or ADSs, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors.

(c) If the Company distributes shares of its Capital Stock, evidences of its indebtedness, other assets or property of the Company or rights, options or warrants to acquire its Capital Stock or other securities, to all or substantially all holders of the Ordinary Shares (directly or in the form of ADSs), excluding (i) dividends, distributions or issuances as to which an adjustment was effected pursuant to Section 14.04(a) or Section 14.04(b), (ii) dividends or distributions paid exclusively in cash as to which an adjustment was effected pursuant to Section 14.04(d), and (iii) Spin-Offs as to which the provisions set forth below in this Section 14.04(c) shall apply (any of such shares of Capital Stock, evidences of indebtedness, other assets or property or rights, options or warrants to acquire Capital Stock or other securities of the Company, the “**Distributed Property**”), then the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - FMV}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for the ADSs for such distribution;

CR_1 = the Conversion Rate in effect immediately after the close of business on such Record Date;

SP_0 = the average of the Last Reported Sale Prices of the ADSs (*divided by* the number of Ordinary Shares then represented by one ADS) over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Dividend Date for such distribution; and

FMV = the fair market value (as determined by the Board of Directors) of the Distributed Property with respect to each outstanding Ordinary Share (directly or in the form of ADSs) on the Record Date for the ADSs for such distribution.

Any increase made under the foregoing portion of this Section 14.04(c) above shall become effective immediately after the close of business on the Record Date for the ADSs for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect if such distribution had not been declared. Notwithstanding the foregoing, if “FMV” (as defined above) is equal to or greater than “ SP_0 ” (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, in respect of each US\$1,000 principal amount thereof, at the same time and upon the same terms as holders of the ADSs receive the Distributed Property, the amount and kind of Distributed Property such

Holder would have received if such Holder owned a number of ADSs equal to the Conversion Rate in effect on the Record Date for the ADSs for the distribution.

With respect to an adjustment pursuant to this Section 14.04(c) where there has been a payment of a dividend or other distribution on the Ordinary Shares (directly or in the form of ADSs) of shares of Capital Stock of any class or series, or similar equity interest, of or relating to a Subsidiary or other business unit of the Company, that are, or, when issued, will be, listed or admitted for trading on a U.S. national securities exchange (a “**Spin-Off**”), the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{FMV_0 + MP_0}{MP_0}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the last Trading Day of the Valuation Period;

CR_1 = the Conversion Rate in effect immediately after the close of business on the last Trading Day of the Valuation Period;

FMV_0 = the average of the Last Reported Sale Prices of the Capital Stock or similar equity interest distributed to holders of the Ordinary Shares (directly or in the form of ADSs) applicable to one Ordinary Share (determined by reference to the definition of Last Reported Sale Price as set forth in Section 1.01 as if references therein to the ADSs were to such Capital Stock or similar equity interest) over the first 10 consecutive Trading Day period after, and including, the Ex-Dividend Date of the Spin-Off (the “**Valuation Period**”); and

MP_0 = the average of the Last Reported Sale Prices of the ADSs (*divided by* the number of Ordinary Shares then represented by one ADS) over the Valuation Period.

The adjustment to the Conversion Rate under the preceding paragraph shall occur immediately after the close of business on the last Trading Day of the Valuation Period; *provided* that in respect of any conversion during the Valuation Period, references in the portion of this Section 14.04(c) related to Spin-Offs to 10 Trading Days shall be deemed to be replaced with such lesser number of Trading Days as have elapsed from, and including, the Ex-Dividend Date of such Spin-Off to, and including, the Conversion Date in determining the Conversion Rate.

For purposes of this Section 14.04(c) (and subject in all respect to Section 14.11), rights, options or warrants distributed by the Company to all holders of the Ordinary Shares (directly or in the form of ADSs) entitling them to subscribe for or purchase shares of the Company’s Capital Stock, including Ordinary Shares (either initially or under certain circumstances), which rights, options or warrants, until the occurrence of a specified event or events (“**Trigger Event**”): (i) are deemed to be transferred with such Ordinary Shares (directly or in the form of ADSs); (ii) are

not exercisable; and (iii) are also issued in respect of future issuances of the Ordinary Shares (directly or in the form of ADSs), shall be deemed not to have been distributed for purposes of this Section 14.04(c) (and no adjustment to the Conversion Rate under this Section 14.04(c) will be required) until the occurrence of the earliest Trigger Event, whereupon such rights, options or warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Conversion Rate shall be made under this Section 14.04(c). If any such right, option or warrant, including any such existing rights, options or warrants distributed prior to the date of this Indenture, are subject to events, upon the occurrence of which such rights, options or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new rights, options or warrants with such rights (in which case the existing rights, options or warrants shall be deemed to terminate and expire on such date without exercise by any of the holders thereof). In addition, in the event of any distribution (or deemed distribution) of rights, options or warrants, or any Trigger Event or other event (of the type described in the immediately preceding sentence) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Conversion Rate under this Section 14.04(c) was made, (1) in the case of any such rights, options or warrants that shall all have been redeemed or purchased without exercise by any holders thereof, upon such final redemption or purchase (x) the Conversion Rate shall be readjusted as if such rights, options or warrants had not been issued and (y) the Conversion Rate shall then again be readjusted to give effect to such distribution, deemed distribution or Trigger Event, as the case may be, as though it were a cash distribution, equal to the per Ordinary Share redemption or purchase price received by a holder or holders of Ordinary Shares (directly or in the form of ADSs) with respect to such rights, options or warrants (assuming such holder had retained such rights, options or warrants), made to all holders of Ordinary Shares (directly or in the form of ADSs) as of the date of such redemption or purchase, and (2) in the case of such rights, options or warrants that shall have expired or been terminated without exercise by any holders thereof, the Conversion Rate shall be readjusted as if such rights, options and warrants had not been issued.

For purposes of Section 14.04(a), Section 14.04(b) and this Section 14.04(c), if any dividend or distribution to which this Section 14.04(c) is applicable also includes one or both of:

(A) a dividend or distribution of Ordinary Shares (directly or in the form of ADSs) to which Section 14.04(a) is applicable (the “**Clause A Distribution**”); or

(B) a dividend or distribution of rights, options or warrants to which Section 14.04(b) is applicable (the “**Clause B Distribution**”),

then (1) such dividend or distribution, other than the Clause A Distribution and the Clause B Distribution, shall be deemed to be a dividend or distribution to which this Section 14.04(c) is applicable (the “**Clause C Distribution**”) and any Conversion Rate adjustment required by this Section 14.04(c) with respect to such Clause C Distribution shall then be made, and (2) the Clause A Distribution and Clause B Distribution shall be deemed to immediately follow the Clause C Distribution and any Conversion Rate adjustment required by Section 14.04(a) and Section 14.04(b) with respect thereto shall then be made, except that, if determined by the

Company (I) the “Record Date” of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Record Date of the Clause C Distribution and (II) any Ordinary Shares (directly or in the form of ADSs) included in the Clause A Distribution or Clause B Distribution shall be deemed not to be “outstanding immediately prior to the close of business on such Record Date or immediately after the open of business on such effective date, as applicable” within the meaning of Section 14.04(a) or “outstanding immediately prior to the close of business on such Record Date” within the meaning of Section 14.04(b).

(d) If any cash dividend or distribution is made to all or substantially all holders of the Ordinary Shares (directly or in the form of ADSs), the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for the ADSs for such dividend or distribution;

CR_1 = the Conversion Rate in effect immediately after the close of business on such Record Date;

SP_0 = the Last Reported Sale Price of the ADSs (divided by the number of Ordinary Shares then represented by one ADS) on the Trading Day immediately preceding the Ex-Dividend Date for such dividend or distribution; and

C = the amount in cash per Ordinary Share the Company distributes to all or substantially all holders of the Ordinary Shares (directly or in the form of ADSs).

Any increase pursuant to this Section 14.04(d) shall become effective immediately after the close of business on the Record Date for the ADSs for such dividend or distribution. If such dividend or distribution is not so paid, the Conversion Rate shall be decreased, effective as of the date the Board of Directors determines not to make or pay such dividend or distribution, to be the Conversion Rate that would then be in effect if such dividend or distribution had not been declared. Notwithstanding the foregoing, if “C” (as defined above) is equal to or greater than “ SP_0 ” (as defined above), in lieu of the foregoing increase, each Holder of a Note shall receive, for each US\$1,000 principal amount of Notes, at the same time and upon the same terms as holders of the ADSs, the amount of cash that such Holder would have received if such Holder owned a number of ADSs equal to the Conversion Rate on the Record Date for the ADSs for such cash dividend or distribution.

(e) If the Company or any of its Subsidiaries or Consolidated Affiliated Entities makes a payment in respect of a tender or exchange offer for the Ordinary Shares (directly or in the form of ADSs), to the extent that the cash and value of any other consideration included in

the payment per Ordinary Share exceeds the average of the Last Reported Sale Prices of the ADSs (*divided by* the number of Ordinary Shares then represented by one ADS) over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where,

- CR₀ = the Conversion Rate in effect immediately prior to the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;
- CR₁ = the Conversion Rate in effect immediately after the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires;
- AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors) paid or payable for Ordinary Shares or ADSs, as the case may be, purchased in such tender or exchange offer;
- OS₀ = the number of Ordinary Shares outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase of all Ordinary Shares or ADSs, as the case may be, accepted for purchase or exchange in such tender or exchange offer);
- OS₁ = the number of Ordinary Shares outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all Ordinary Shares or ADSs, as the case may be, accepted for purchase or exchange in such tender or exchange offer); and
- SP₁ = the average of the Last Reported Sale Prices of the ADSs (*divided by* the number of Ordinary Shares then represented by one ADS) over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires.

The adjustment to the Conversion Rate under this Section 14.04(e) shall occur at the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires; *provided* that in respect of any conversion within the 10 Trading Days immediately following, and including, the Trading Day next succeeding the expiration date of any tender or exchange offer, references in this Section 14.04(e) with respect to 10 Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the Trading Day next succeeding the expiration date of such tender or exchange offer to, and including, the Conversion Date in

determining the Conversion Rate. For the avoidance of doubt, no adjustment to the Conversion Rate under this Section 14.04(e) shall be made if such adjustment would result in a decrease in the Conversion Rate.

(f) Subject to Section 14.04(g), if and whenever the Company shall issue any Ordinary Shares or ADSs (other than any issuance pursuant to the Notes or on the exercise of any other rights, existing as of the date of this Indenture, of conversion into, or exchange or subscription for, Ordinary Shares or ADSs) or issue or grant options, warrants or other rights to purchase, subscribe, convert into, exercise or exchange for Ordinary Shares or ADSs (the “**Relevant Securities**”, which for the purposes of this definition only excludes any Ordinary Shares, ADSs, option, warrant or other rights to purchase, subscribe, convert into, exercise or exchange for Ordinary Shares or ADSs issued or granted in accordance with any employee incentive plan of the Company), in each case at a consideration per ADS (on an as-converted and as-exercised basis and, in the case of any issuance of Ordinary Shares, such issue price per Ordinary Share multiplied by the applicable number of Ordinary Shares then represented by each ADS) which is less than the Reference Price, the Conversion Rate shall be adjusted based on the following formula:

$$CR1 = CR0 \times \frac{C}{A + B}$$

where:

CR0 = the Conversion Rate in effect immediately prior to the date of issue of the Relevant Securities;

CR1 = the Conversion Rate in effect as from the date of issue of the Relevant Securities;

A = the number of Ordinary Shares in issue immediately before the issue of the Relevant Securities;

B = the number of Ordinary Shares which the aggregate consideration receivable for the issue of the Relevant Securities would purchase at the price equal to (x) Reference Price, multiplied by (y) the applicable number of Ordinary Shares then represented by each ADS; and

C = the number of Ordinary Shares in issue immediately after the issue of the Relevant Securities,

provided that references to the number of Ordinary Shares in the above formula shall include all the Ordinary Shares to be issued assuming that all options, warrants or other rights to purchase, subscribe, convert into, exercise or exchange for Ordinary Shares or ADSs are exercised in full at the initial exercise price on the date of issue of such options, warrants or other rights.

(g) Prior to September 5, 2020, if and whenever the Company shall complete any Qualified Equity Financing at a consideration per ADS (on an as-converted and as-exercised

basis and, in the case of any issuance of Ordinary Shares, such issue price per Ordinary Share multiplied by the applicable number of Ordinary Shares then represented by each ADS) which is less than the Reference Price, the Conversion Rate shall be adjusted to the higher of (i) the Qualified Equity Financing Conversion Rate or (ii) the Conversion Rate as adjusted pursuant to Section 14.04(f).

(h) Except as stated herein, the Company shall not adjust the Conversion Rate for the issuance of Ordinary Shares or ADSs or any securities convertible into or exchangeable for Ordinary Shares or ADSs or the right to purchase Ordinary Shares or ADSs or such convertible or exchangeable securities.

(i) In addition to those adjustments required by clauses (a), (b), (c), (d) and (e) of this Section 14.04, and to the extent permitted by applicable law and subject to the applicable rules of the New York Stock Exchange and any other securities exchange on which any of the Company's securities are then listed, the Company from time to time may increase the Conversion Rate by any amount for a period of at least 20 Business Days if the Board of Directors determines that such increase would be in the Company's best interest, and the Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of the Ordinary Shares or the ADSs or rights to purchase Ordinary Shares or ADSs in connection with a dividend or distribution of Ordinary Shares or ADSs (or rights to acquire Ordinary Shares or ADSs) or similar event.

(j) Notwithstanding anything to the contrary in this Article 14, the Conversion Rate shall not be adjusted:

(i) upon the issuance of any Ordinary Shares or ADSs pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's securities and the investment of additional optional amounts in Ordinary Shares or ADSs under any plan;

(ii) upon the issuance of any Ordinary Shares or ADSs or options or rights to purchase those Ordinary Shares or ADSs pursuant to any present or future employee, director or consultant benefit plan or program of or assumed by the Company or any of the Company's Subsidiaries or Consolidated Affiliated Entities;

(iii) upon the issuance of any Ordinary Shares or ADSs pursuant to any option, warrant, right or exercisable, exchangeable or convertible security not described in clause (ii) of this subsection and outstanding as of the date the Notes were first issued;

(iv) solely for a change in the par value of the Ordinary Shares; or

(v) for accrued and unpaid interest, if any.

(k) All calculations and other determinations under this Article 14 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000) of an ADS.

(l) Whenever the Conversion Rate is adjusted as herein provided, the Company shall promptly file with the Trustee (and the Conversion Agent if not the Trustee) an Officers' Certificate setting forth the Conversion Rate after such adjustment and setting forth a brief statement of the facts requiring such adjustment. Unless and until a Responsible Officer of the Trustee shall have received such Officers' Certificate, the Trustee shall not be deemed to have knowledge of any adjustment of the Conversion Rate and may assume without inquiry that the last Conversion Rate of which it has knowledge is still in effect. Promptly after delivery of such certificate, the Company shall prepare a notice of such adjustment of the Conversion Rate setting forth the adjusted Conversion Rate and the date on which each adjustment becomes effective and shall mail such notice of such adjustment of the Conversion Rate to each Holder at its last address appearing on the Note Register of this Indenture. Failure to deliver such notice shall not affect the legality or validity of any such adjustment.

(m) For purposes of this Section 14.04, the number of Ordinary Shares at any time outstanding shall not include Ordinary Shares held in the treasury of the Company (directly or in the form of ADSs) so long as the Company does not pay any dividend or make any distribution on Ordinary Shares held in the treasury of the Company (directly or in the form of ADSs), but shall include Ordinary Shares issuable in respect of scrip certificates issued in lieu of fractions of Ordinary Shares.

(n) For purposes of this Section 14.04, the "effective date" means the first date on which the ADSs trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

Section 14.05 *Adjustments of Prices.* Whenever any provision of this Indenture requires the Company to calculate the Last Reported Sale Prices over a span of multiple days, the Board of Directors shall make appropriate adjustments to each to account for any adjustment to the Conversion Rate that becomes effective pursuant to Section 14.04, or any event requiring an adjustment to the Conversion Rate pursuant to Section 14.04 where the Record Date, effective date or expiration date, as the case may be, of the event occurs, at any time during the period when such Last Reported Sale Prices are to be calculated.

Section 14.06 *Ordinary Shares to Be Fully Paid.* The Company shall provide, free from preemptive rights, out of its authorized but unissued Ordinary Shares or Ordinary Shares held in treasury, a sufficient number of Ordinary Shares that corresponds to the number of ADSs due upon conversion of the Notes from time to time as such Notes are presented for conversion (assuming that at the time of computation of such number of Ordinary Shares, all such Notes would be converted by a single Holder).

Section 14.07 *Effect of Recapitalizations, Reclassifications and Changes of the Ordinary Shares.*

(a) In the case of:

(i) any recapitalization, reclassification or change of the Ordinary Shares (other than changes resulting from a subdivision or combination),

- (ii) any consolidation, merger, combination or similar transaction involving the Company,
- (iii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and the Company's Subsidiaries and Consolidated Affiliated Entities substantially as an entirety or
- (iv) any statutory share exchange,

in each case, as a result of which the Ordinary Shares would be converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof) (any such event, a "**Merger Event**"), then, prior to or at the effective time of such Merger Event, the Company or the successor or purchasing Person, as the case may be, shall execute with the Trustee a supplemental indenture permitted under Section 10.01(f) providing that, at and after the effective time of such Merger Event, the right to convert each US\$1,000 principal amount of Notes shall be changed into a right to convert such principal amount of Notes into the kind and amount of shares of stock, other securities or other property or assets (including cash or any combination thereof) that a holder of a number of ADSs equal to the Conversion Rate immediately prior to such Merger Event would have owned or been entitled to receive (the "**Reference Property**," with each "**unit of Reference Property**" meaning the kind and amount of Reference Property that a holder of one ADS is entitled to receive) upon such Merger Event; *provided, however*, that at and after the effective time of the Merger Event the number of ADSs otherwise deliverable upon conversion of the Notes in accordance with Section 14.02 shall instead be deliverable in the amount and type of Reference Property that a holder of that number of ADSs would have been entitled to receive in such Merger Event.

If the Merger Event causes the Ordinary Shares to be converted into, or exchanged for, the right to receive more than a single type of consideration (determined based in part upon any form of holder election), then (i) the Reference Property into which the Notes will be convertible shall be deemed to be the weighted average of the types and amounts of consideration actually received by the holders of the ADSs and (ii) the unit of Reference Property for purposes of the immediately preceding paragraph shall refer to the consideration referred to in clause (i) attributable to one ADS. The Company shall provide written notice to Holders, the Trustee and the Conversion Agent (if other than the Trustee) of such weighted average as soon as practicable after such determination is made.

Such supplemental indenture described in the second immediately preceding paragraph shall provide for anti-dilution and other adjustments that shall be as nearly equivalent as is practicable to the adjustments provided for in this Article 14 (it being understood that no such adjustments shall be required with respect to any portion of the Reference Property that does not consist of shares of Common Equity (however evidenced) or depositary receipts in respect thereof). If, in the case of any Merger Event, the Reference Property includes shares of stock, securities or other property or assets (including cash or any combination thereof) of a Person other than the Company or the successor or purchasing Person, as the case may be, in such Merger Event, then such other Person shall also execute such supplemental indenture, and such supplemental indenture shall contain such additional provisions to protect the interests of the

Holders of the Notes, including the right of Holders to require the Company to repurchase their Notes upon a Fundamental Change pursuant to Section 15.02, as the Board of Directors shall reasonably consider necessary by reason of the foregoing.

(b) [RESERVED]

(c) The Company shall not become a party to any Merger Event unless its terms are consistent with this Section 14.07. None of the foregoing provisions shall affect the right of a holder of Notes to convert its Notes into ADSs as set forth in Section 14.01 and Section 14.02 prior to the effective date of such Merger Event.

(d) The above provisions of this Section shall similarly apply to successive Merger Events.

Section 14.08 *Certain Covenants.* (a) The Company covenants that all ADSs delivered upon conversion of Notes, and all Ordinary Shares represented by such ADSs, will be fully paid and non-assessable by the Company and free from all taxes, liens and charges with respect to the issue thereof.

(b) The Company covenants that, if any ADSs to be provided for the purpose of conversion of Notes hereunder, or any Ordinary Shares represented by such ADSs, require registration with or approval of any governmental authority under any federal or state law before such ADSs may be validly issued upon conversion, the Company will, to the extent then permitted by the rules and interpretations of the Commission, secure such registration or approval, as the case may be.

(c) The Company further covenants that if at any time the ADSs shall be listed on any national securities exchange or automated quotation system the Company will list and keep listed, so long as the ADSs shall be so listed on such exchange or automated quotation system, any ADSs deliverable upon conversion of the Notes.

(d) The Company further covenants to take all actions and obtain all approvals and registrations required with respect to the conversion of the Notes into ADSs and the issuance, and deposit into the ADS facility, of the Ordinary Shares represented by such ADSs. The Company also undertakes to maintain, as long as any Notes are outstanding, the effectiveness of a registration statement on Form F-6 relating to the ADSs and an adequate number of ADSs available for issuance thereunder such that ADSs can be delivered in accordance with the terms of this Indenture, the Notes and the Deposit Agreement, upon conversion of the Notes. In addition, the Company further covenants to provide Holders with a reasonably detailed description of the mechanics for the delivery of ADSs upon conversion of Notes as set forth in the Deposit Agreement upon request.

Section 14.09 *Responsibility of Trustee.* The Trustee and any other Conversion Agent shall not at any time be under any duty or responsibility to any Holder to determine the Conversion Rate (or any adjustment thereto) or whether any facts exist that may require any adjustment (including any increase) of the Conversion Rate, or with respect to the nature or

extent or calculation of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. The Trustee and any other Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any ADSs, or of any securities, property or cash that may at any time be issued or delivered upon the conversion of any Note; and the Trustee and any other Conversion Agent make no representations with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any ADSs or stock certificates or other securities or property or cash upon the surrender of any Note for the purpose of conversion, the accuracy or inaccuracy of any mathematical calculation or formulae under this Indenture, whether by the Company or any Person so authorized by the Company for such purpose under this Indenture or the failure by the Company to comply with any of the duties, responsibilities or covenants of the Company contained in this Article. Without limiting the generality of the foregoing, neither the Trustee nor any Conversion Agent shall be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture entered into pursuant to Section 14.07 relating either to the kind or amount of ADSs or securities or property (including cash) receivable by Holders upon the conversion of their Notes after any event referred to in such Section 14.07 or to any adjustment to be made with respect thereto, but, subject to the provisions of Section 7.01, may accept (without any independent investigation) as conclusive evidence of the correctness of any such provisions, and shall be protected in relying upon, the Officers' Certificate (which the Company shall be obligated to file with the Trustee prior to the execution of any such supplemental indenture) with respect thereto.

Section 14.10 *Notice to Holders Prior to Certain Actions.* In case of any:

- (a) action by the Company or one of its Subsidiaries that would require an adjustment in the Conversion Rate pursuant to Section 14.04 or Section 14.11;
- (b) Merger Event; or
- (c) voluntary or involuntary dissolution, liquidation or winding-up of the Company or any of its Subsidiaries;

then, in each case (unless notice of such event is otherwise required pursuant to another provision of this Indenture), the Company shall cause to be filed with the Trustee and the Conversion Agent (if other than the Trustee) and to be mailed to each Holder at its address appearing on the Note Register, as promptly as possible but in any event at least 20 days prior to the applicable date hereinafter specified, a notice stating (i) the date on which a record is to be taken for the purpose of such action by the Company or one of its Subsidiaries or, if a record is not to be taken, the date as of which the holders of Ordinary Shares or ADSs, as the case may be, of record are to be determined for the purposes of such action by the Company or one of its Subsidiaries, or (ii) the date on which such Merger Event, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Ordinary Shares or ADSs, as the case may be, of record shall be entitled to exchange their Ordinary Shares or ADSs, as the case may be, for securities or other property deliverable upon such Merger Event, dissolution, liquidation or winding-up. Failure to give such notice, or any

defect therein, shall not affect the legality or validity of such action by the Company or one of its Subsidiaries, Merger Event, dissolution, liquidation or winding-up.

Section 14.11 *Stockholder Rights Plans*. To the extent that the Company has a rights plan in effect upon conversion of the Notes, each ADS delivered upon such conversion shall be entitled to receive (either directly or in respect of the Ordinary Shares underlying such ADSs) the appropriate number of rights, if any, and the certificates representing the ADSs delivered upon such conversion shall bear such legends, if any, in each case as may be provided by the terms of any such stockholder rights plan, as the same may be amended from time to time. However, if, prior to any conversion, the rights have separated from the Ordinary Shares underlying the ADSs in accordance with the provisions of the applicable stockholder rights plan, the Conversion Rate shall be adjusted at the time of separation as if the Company distributed to all or substantially all holders of the Ordinary Shares Distributed Property as provided in Section 14.04(c), subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 14.12 *Termination of Depositary Receipt Program*. If the Ordinary Shares cease to be represented by American Depositary Shares issued under a depositary receipt program sponsored by the Company, all references in this Indenture to the ADSs shall be deemed to have been replaced by a reference to the number of Ordinary Shares (and other property, if any) represented by the ADSs on the last day on which the ADSs represented the Ordinary Shares and as if the Ordinary Shares and the other property had been distributed to holders of the ADSs on that day. In addition, all references to the Last Reported Sale Price of the ADSs will be deemed to refer to the Last Reported Sale Price of the Ordinary Shares, and other appropriate adjustments, including adjustments to the Conversion Rate, will be made to reflect such change. In making such adjustments, where currency translations between U.S. dollars and any other currency are required, the exchange rate in effect on the date of determination will apply.

ARTICLE 15 REPURCHASE OF NOTES AT OPTION OF HOLDERS

Section 15.01 [RESERVED]

Section 15.02 *Repurchase at Option of Holders Upon a Fundamental Change*. (a) If a Fundamental Change occurs at any time, each Holder shall have the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes, or any portion thereof that is equal to US\$1,000 or an integral multiple of US\$1,000, on the Business Day (the "**Fundamental Change Repurchase Date**") notified in writing by the Company as set forth in Section 15.02(c) that is not less than 20 Business Days or more than 35 Business Days following the date of the Fundamental Change Company Notice at a repurchase price equal to 100% of the principal amount thereof (the "**Fundamental Change Repurchase Price**"). The Trustee and the Conversion Agent, Paying Agent or any other agent appointed for such purpose shall have no responsibility to determine the Fundamental Change Repurchase Price.

(b) Repurchases of Notes under this Section 15.02 shall be made, at the option of the Holder thereof, upon:

(i) delivery to the Paying Agent (or other agent appointed for this purpose) by a Holder of a duly completed notice (the “**Fundamental Change Repurchase Notice**”) in the form set forth in Attachment 2 to the Form of Note attached hereto as Exhibit A, if the Notes are Physical Notes, or in compliance with the procedures of Euroclear and Clearstream for surrendering interests in global notes, if the Notes are Global Notes, in each case on or before the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date; and

(ii) delivery of the Notes, if the Notes are Physical Notes, to the Trustee at any time after delivery of the Fundamental Change Repurchase Notice (together with all necessary endorsements for transfer) at the Corporate Trust Office, or book-entry transfer of the Notes, if the Notes are Global Notes, in compliance with the procedures of Euroclear and Clearstream, in each case such delivery being a condition to receipt by the Holder of the Fundamental Change Repurchase Price therefor.

The Fundamental Change Repurchase Notice in respect of any Notes to be repurchased shall state:

- (i) in the case of Physical Notes, the certificate numbers of the Notes to be delivered for repurchase;
- (ii) the portion of the principal amount of Notes to be repurchased, which must be US\$1,000 or an integral multiple thereof; and
- (iii) that the Notes are to be repurchased by the Company pursuant to the applicable provisions of the Notes and this Indenture;

provided, however, that if the Notes are Global Notes, the Fundamental Change Repurchase Notice must comply with appropriate procedures of Euroclear and Clearstream.

Notwithstanding anything herein to the contrary, any Holder delivering to the Trustee the Fundamental Change Repurchase Notice contemplated by this Section 15.02 shall have the right to withdraw, in whole or in part, such Fundamental Change Repurchase Notice at any time prior to the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date by delivery of a duly completed written notice of withdrawal to the Trustee in accordance with Section 15.03.

The Trustee shall promptly notify the Company of the receipt by it of any Fundamental Change Repurchase Notice or written notice of withdrawal thereof.

(c) On or before the 20th calendar day after the occurrence of the effective date of a Fundamental Change, the Company shall provide to all Holders, the Trustee (and the Conversion Agent, Paying Agent and any other agent appointed for this purpose, in each case, if other than the Trustee) a written notice (the “**Fundamental Change Company Notice**”) of the occurrence of the effective date of the Fundamental Change and of the repurchase right at the option of the Holders arising as a result thereof. In the case of Physical Notes, such notice shall be by first class mail or, in the case of Global Notes, such notice shall be delivered in accordance

with the applicable procedures of Euroclear and Clearstream. Simultaneously with providing such notice, the Company shall publish a notice containing the information set forth in the Fundamental Change Company Notice in a newspaper of general circulation in The City of New York or publish such information on the Company's website or through such other public medium as the Company may use at that time. Each Fundamental Change Company Notice shall specify:

- (i) the events causing the Fundamental Change;
- (ii) the effective date of the Fundamental Change;
- (iii) the last date on which a Holder may exercise the repurchase right pursuant to this Article 15;
- (iv) the Fundamental Change Repurchase Price;
- (v) the Fundamental Change Repurchase Date;
- (vi) the name and address of the Trustee, the Paying Agent, the Conversion Agent or any other agent appointed for repurchase, if applicable;
- (vii) if applicable, the Conversion Rate;
- (viii) if applicable, that the Notes with respect to which a Fundamental Change Repurchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Fundamental Change Repurchase Notice in accordance with the terms of this Indenture; and
- (ix) the procedures that Holders must follow to require the Company to repurchase their Notes.

No failure of the Company to give the foregoing notices and no defect therein shall limit the Holders' repurchase rights or affect the validity of the proceedings for the repurchase of the Notes pursuant to this Section 15.02.

At the Company's request, the Trustee shall give such notice in the Company's name and at the Company's expense; *provided, however*, that, in all cases, the text of such Fundamental Change Company Notice shall be prepared by the Company.

(d) Notwithstanding the foregoing, no Notes may be repurchased by the Company on any date at the option of the Holders upon a Fundamental Change if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to such date (except in the case of an acceleration resulting from a default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such Notes). The Trustee will promptly return to the respective Holders thereof any Physical Notes held by it during the acceleration of the Notes (except in the case of an acceleration resulting from a default by the Company in the payment of the Fundamental Change Repurchase Price with respect to such

Notes), or any instructions for book-entry transfer of the Notes in compliance with the procedures of Euroclear and Clearstream shall be deemed to have been cancelled, and, upon such return or cancellation, as the case may be, the Fundamental Change Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

Section 15.03 *Withdrawal of Fundamental Change Repurchase Notice.* (a) A Fundamental Change Repurchase Notice may be withdrawn (in whole or in part) by means of a duly completed written notice of withdrawal delivered to the Paying Agent (or other agent appointed for such purpose) in accordance with this Section 15.03 at any time prior to the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date specifying:

- (i) the principal amount of the Notes with respect to which such notice of withdrawal is being submitted,
- (ii) if Physical Notes have been issued, the certificate number of the Note in respect of which such notice of withdrawal is being submitted, and
- (iii) the principal amount, if any, of such Note that remains subject to the original Fundamental Change Repurchase Notice, which portion must be in principal amounts of US\$1,000 or an integral multiple of US\$1,000;

provided, however, that if the Notes are Global Notes, the notice must comply with appropriate procedures of Euroclear and Clearstream.

Section 15.04 *Deposit of Fundamental Change Repurchase Price.* (a) The Company will deposit with the Paying Agent (or any other agent appointed for this purpose by the Company), or if the Company is acting as its own Paying Agent, set aside, segregate and hold in trust as provided in Section 4.04) on or prior to 10:00 a.m., New York City time, on the Fundamental Change Repurchase Date an amount of money sufficient to repurchase all of the Notes to be repurchased at the appropriate Fundamental Change Repurchase Price. Subject to receipt of funds and/or Notes by the Paying Agent (or other agent appointed for this purpose by the Company) and the Trustee, as applicable, payment for Notes surrendered for repurchase (and not withdrawn in accordance with Section 15.03) will be made on the later of (i) the Fundamental Change Repurchase Date (*provided* the Holder has satisfied the conditions in Section 15.02) and (ii) the time of book-entry transfer or the delivery of such Note to the Trustee (or other Paying Agent appointed by the Company) by the Holder thereof in the manner required by Section 15.02, as applicable, by mailing checks for the amount payable to the Holders of such Notes entitled thereto as they shall appear in the Note Register; *provided, however,* that payments to the Common Depositary shall be made by wire transfer of immediately available funds to the account of the Common Depositary or its nominee. The Paying Agent (or other agent appointed for this purpose by the Company) shall, promptly after such payment and upon written demand by the Company, return to the Company any funds in excess of the Fundamental Change Repurchase Price.

(b) If by 10:00 a.m., New York City time, on the Fundamental Change Repurchase Date, the Paying Agent (or other agent appointed for this purpose by the Company) holds money sufficient to make payment on all the Notes or portions thereof that are to be repurchased on such Fundamental Change Repurchase Date, then, with respect to the Notes that have been properly surrendered for repurchase and not validly withdrawn, on such Fundamental Change Repurchase Date, (i) such Notes will cease to be outstanding and (ii) all other rights of the Holders of such Notes will terminate (other than the right to receive the Fundamental Change Repurchase Price).

(c) Upon surrender of a Note that is to be repurchased in part pursuant to Section 15.02, the Company shall execute and the Note Registrar, upon receipt of a Company Order, shall authenticate and deliver to the Holder a new Note in an authorized denomination equal in principal amount to the unreurchased portion of the Note surrendered.

Section 15.05 *Covenant to Comply with Applicable Laws Upon Repurchase of Notes*. In connection with any repurchase offer, the Company will, if required:

- (a) comply with the provisions of Rule 13e-4, Rule 14e-1 and any other tender offer rules under the Exchange Act;
- (b) file a Schedule TO or other required schedule under the Exchange Act; and
- (c) otherwise comply with all federal and state securities laws in connection with any offer by the Company to repurchase the Notes;

in each case, so as to permit the rights and obligations under this Article 15 to be exercised in the time and in the manner specified in this Article 15.

ARTICLE 16 BRRD MATTERS

Notwithstanding and to the exclusion of any other term of this Indenture or any other agreements, arrangements, or understanding between The Bank of New York Mellon SA/NV, Luxembourg Branch and each counterparty, each counterparty acknowledges and accepts that a BRRD Liability arising under this Indenture may be subject to the exercise of Bail-in Powers by the Relevant Resolution Authority, and acknowledges, accepts, and agrees to be bound by:

- (a) the effect of the exercise of Bail-in Powers by the Relevant Resolution Authority in relation to any BRRD Liability of The Bank of New York Mellon SA/NV, Luxembourg Branch to each counterparty under this Indenture, that (without limitation) may include and result in any of the following, or some combination thereof:
 - (i) the reduction of all, or a portion, of the BRRD Liability or outstanding amounts due thereon;
 - (ii) the conversion of all, or a portion, of the BRRD Liability into shares, other securities or other obligations of The Bank of New York Mellon SA/NV, Luxembourg Branch

- or another person, and the issue to or conferral on each counterparty of such shares, securities or obligations;
- (iii) the cancellation of the BRRD Liability;
 - (iv) the amendment or alteration of any interest, if applicable, thereon, the maturity or the dates on which any payments are due, including by suspending payment for a temporary period;
- (b) the variation of the terms of this Indenture, as deemed necessary by the Relevant Resolution Authority, to give effect to the exercise of Bail-in Powers by the Relevant Resolution Authority.

ARTICLE 17
MISCELLANEOUS PROVISIONS

Section 17.01 *Provisions Binding on Company's Successors*. All the covenants, stipulations, promises and agreements of the Company contained in this Indenture shall bind its successors and assigns whether so expressed or not.

Section 17.02 *Official Acts by Successor Corporation*. Any act or proceeding by any provision of this Indenture authorized or required to be done or performed by any board, committee or Officer of the Company shall and may be done and performed with like force and effect by the like board, committee or officer of any corporation or other entity that shall at the time be the lawful sole successor of the Company.

Section 17.03 *Addresses for Notices, Etc*. Any notice or demand that by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders on the Company shall be deemed to have been sufficiently given or made, for all purposes if given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed (until another address is filed by the Company with the Trustee) to Building 20, No. 56 AnTuo Road, Jiading District, Shanghai, 201804, People's Republic of China, Facsimile No.: +86 (21) 3913 0192. Any notice, direction, request or demand hereunder to or upon the Trustee shall be given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed to The Bank of New York Mellon, London Branch, One Canada Square, London E14 5AL, United Kingdom, Attention: Corporate Trust Administration – Project Camel III (NIO Inc.) Fax: +44 1202 689660, with a copy to The Bank of New York Mellon, Hong Kong Branch, Level 26, Three Pacific Place, 1 Queen's Road East, Hong Kong, Attention: Global Corporate Trust – NIO Inc., Facsimile No.: +852-2295.3283. Any notice, direction, request or demand hereunder to or upon the Registrar and the Transfer Agent shall be given or served by being deposited postage prepaid by registered or certified mail in a post office letter box addressed to The Bank of New York Mellon SA/NV, Luxembourg Branch, Vertigo Building – Polaris, 2-4 rue Eugène Ruppert, L-2453 Luxembourg, Attention: Project Camel III (NIO Inc.), Fax: +(352) 24524204, with a copy to The Bank of New York Mellon, Hong Kong Branch, Level 26, Three Pacific Place, 1 Queen's Road East, Hong Kong, Attention: Global Corporate Trust – NIO Inc., Facsimile No.: +852-2295.3283.

All notices and other communications under this Indenture shall be in writing in English.

So long as and to the extent that the Notes are represented by Global Notes and such Global Notes are held by or on behalf of the Common Depositary, notices to owners of beneficial interests in the Global Notes may be given by delivery of the relevant notice to the Euroclear and Clearstream for communication by it to entitled account holders.

The Company hereby acknowledges that it is fully aware of the risks associated with transmitting instructions via electronic methods (including facsimile), and being aware of these risks, authorizes the Trustee to accept and act upon any instruction sent to it or any Paying Agent, Transfer Agent, Conversion Agent or Note Registrar in the Company's name or in the name of one or more appropriate authorized signers of the Company via electronic methods (including facsimile). The Trustee shall be entitled to rely on Section 7.06 of this Indenture when accepting or acting upon any instructions, communications or documents transmitted by facsimile, and shall not be liable in the event any facsimile transmission is not received, or is mutilated, illegible, interrupted, duplicated, incomplete, unauthorized or delayed for any reason, including (but not limited to) electronic or telecommunications failure.

Furthermore, notwithstanding the above, if any Trustee receives information or instructions delivered by electronic mail, other electronic method or other unsecured method of communication believed by it to be genuine and to have been sent by the proper person or persons, the Trustee or any Paying Agent, Transfer Agent, Conversion Agent or Note Registrar shall have (i) no duty or obligation to verify or confirm that the person who sent such instructions is in fact a person authorized to give instructions or directions on behalf of the Company and (ii) absent its or their gross negligence or willful misconduct, no liability for any losses, liabilities, costs or expenses incurred or sustained by any holder, the Company or any other person as a result of such reliance on or compliance with such information or instructions.

The Trustee, by notice to the Company, may designate additional or different addresses for subsequent notices or communications.

Any notice or communication mailed to a Holder shall be mailed to it by first class mail, postage prepaid, at its address as it appears on the Note Register and shall be sufficiently given to it if so mailed within the time prescribed.

Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not the addressee receives it.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice to Holders by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

Section 17.04 *Governing Law; Jurisdiction.* THIS INDENTURE AND EACH NOTE, AND ANY CLAIM, CONTROVERSY OR DISPUTE ARISING UNDER OR RELATED TO

THIS INDENTURE AND EACH NOTE, SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

The Company irrevocably consents and agrees, for the benefit of the Holders from time to time of the Notes and the Trustee, that any legal action, suit or proceeding against it with respect to obligations, liabilities or any other matter arising out of or in connection with this Indenture or the Notes may be brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and, until amounts due and to become due in respect of the Notes have been paid, hereby irrevocably consents and submits to the non-exclusive jurisdiction of each such court *in personam*, generally and unconditionally with respect to any action, suit or proceeding for itself in respect of its properties, assets and revenues.

The Company irrevocably and unconditionally waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions, suits or proceedings arising out of or in connection with this Indenture brought in the courts of the State of New York or the courts of the United States located in the Borough of Manhattan, New York City, New York and hereby further irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

Section 17.05 *Submission to Jurisdiction; Service of Process*. The Company irrevocably appoints Law Debenture Corporate Service Inc. as its authorized agent in the Borough of Manhattan in the City of New York upon which process may be served in any such suit or proceeding, and agrees that service of process upon such agent, and written notice of said service to the Company by the person serving the same to Building 20, No. 56 AnTuo Road, Jiading District, Shanghai, 201804, People's Republic of China, Facsimile No. +86 (21) 3913 0192, shall be deemed in every respect effective service of process upon the Company in any such suit or proceeding. The Company further agrees to take any and all action as may be necessary to maintain such designation and appointment of such agent in full force and effect for a period of five and a half years from the date of this Indenture. If for any reason such agent shall cease to be such agent for service of process, the Company shall forthwith appoint a new agent of recognized standing for service of process in the State of New York and deliver to the Trustee a copy of the new agent's acceptance of that appointment within ten Business Days of such acceptance. Nothing herein shall affect the right of the Trustee, any agent or any Holder to serve process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the Company in any other court of competent jurisdiction. To the extent that the Company has or hereafter may acquire any sovereign or other immunity from jurisdiction of any court or from any legal process with respect to itself or its property, the Company irrevocably waives such immunity in respect of its obligations hereunder or under any Note.

Section 17.06 *Evidence of Compliance with Conditions Precedent; Certificates and Opinions of Counsel to Trustee*. Upon any application or demand by the Company to the Trustee to take any action under any of the provisions of this Indenture, the Company shall, if requested by the Trustee, furnish to the Trustee an Officers' Certificate stating that such action is permitted by the terms of this Indenture.

Each Officers' Certificate provided for, by or on behalf of the Company in this Indenture and delivered to the Trustee with respect to compliance with this Indenture (other than the Officers' Certificates provided for in Section 4.09) shall include (a) a statement that the person making such certificate is familiar with the requested action and this Indenture; (b) a brief statement as to the nature and scope of the examination or investigation upon which the statement contained in such certificate is based; (c) a statement that, in the judgment of such person, he or she has made such examination or investigation as is necessary to enable him or her to express an informed judgment as to whether or not such action is permitted by this Indenture; and (d) a statement as to whether or not, in the judgment of such person, such action is permitted by this Indenture.

Notwithstanding anything to the contrary in this Section 17.06, if any provision in this Indenture specifically provides that the Trustee shall or may receive an Opinion of Counsel in connection with any action to be taken by the Trustee or the Company hereunder, the Trustee shall be entitled to, or entitled to request, such Opinion of Counsel.

Section 17.07 *Legal Holidays*. In any case where any Fundamental Change Repurchase Date, Conversion Date or Maturity Date is not a Business Day, then any action to be taken on such date need not be taken on such date, but may be taken on the next succeeding Business Day with the same force and effect as if taken on such date, and no interest shall accrue in respect of the delay.

Section 17.08 *No Security Interest Created*. Nothing in this Indenture or in the Notes, expressed or implied, shall be construed to constitute a security interest under the Uniform Commercial Code or similar legislation, as now or hereafter enacted and in effect, in any jurisdiction.

Section 17.09 *Benefits of Indenture*. Nothing in this Indenture or in the Notes, expressed or implied, shall give to any Person, other than the Holders, the parties hereto, any Paying Agent, any Conversion Agent, any Note Registrar and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Indenture.

Section 17.10 *Table of Contents, Headings, Etc*. The table of contents and the titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

Section 17.11 *Execution in Counterparts*. This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

Section 17.12 *Severability*. In the event any provision of this Indenture or in the Notes shall be invalid, illegal or unenforceable, then (to the extent permitted by law) the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired.

Section 17.13 *Waiver of Jury Trial*. EACH OF THE COMPANY AND THE TRUSTEE HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

Section 17.14 *Force Majeure*. In no event shall the Trustee or the Agents be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee or the Agents, as the case may be, shall use reasonable efforts that are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 17.15 *Calculations*. Except as otherwise provided herein, the Company shall be responsible for making all calculations called for under the Notes. These calculations include, but are not limited to, determinations of the Last Reported Sale Prices of the ADSs, the Conversion Rate of the Notes and any adjustments thereto. The Company shall make all these calculations in good faith and, absent manifest error, the Company's calculations shall be final and binding on Holders. The Company shall provide a schedule of its calculations to each of the Trustee, the Paying Agent and the Conversion Agent, and each of the Trustee, the Paying Agent and the Conversion Agent is entitled to rely conclusively and without liability upon the accuracy of the Company's calculations without independent verification. The Trustee will forward the Company's calculations to any Holder of Notes upon the prior written request of that Holder at the sole cost and expense of the Company.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the date first above written.

NIO INC.

By: /s/ Steven Feng

Name: Steven Feng

Title: Chief Financial Officer

Signature Page to Indenture

THE BANK OF NEW YORK MELLON, LONDON BRANCH, as
Trustee

By: /s/ Mir Sajid Hussain

Name: Mir Sajid Hussain

Title: Vice President

Signature Page to Indenture

THE BANK OF NEW YORK MELLON, LONDON BRANCH, as
Paying Agent and Conversion Agent

By: /s/ Mir Sajid Hussain

Name: Mir Sajid Hussain

Title: Vice President

Signature Page to Indenture

THE BANK OF NEW YORK MELLON SA/NV, LUXEMBOURG
BRANCH, as Registrar and Transfer Agent

By: /s/ Mir Sajid Hussain

Name: Mir Sajid Hussain

Title: Vice President

Signature Page to Indenture

[FORM OF FACE OF NOTE]

[INCLUDE FOLLOWING LEGEND IF A GLOBAL NOTE]

[THIS IS A GLOBAL NOTE WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AN IS REGISTERED IN THE NAME OF THE COMMON DEPOSITARY OR A NOMINEE OF THE COMMON DEPOSITARY, WHICH MAY BE TREATED BY THE COMPANY, THE TRUSTEE AND ANY AGENT THEREOF AS THE OWNER AND HOLDER OF THIS NOTE FOR ALL PURPOSES

UNLESS THIS NOTE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE BANK OF NEW YORK MELLON, LONDON BRANCH AS COMMON DEPOSITARY (THE "COMMON DEPOSITARY") FOR EUROCLEAR BANK SA/NV ("EUROCLEAR") AND CLEARSTREAM BANKING S.A. ("CLEARSTREAM") TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY NOTE ISSUED IS REGISTERED IN THE NAME OF THE COMMON DEPOSITARY OR A NOMINEE THEREOF OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE COMMON DEPOSITARY (AND ANY PAYMENT IS MADE TO COMMON DEPOSITARY OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE COMMON DEPOSITARY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, THE COMMON DEPOSITARY, HAS AN INTEREST HEREIN.

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF NIO INC. (THE "COMPANY") OR PERSON THAT HAS BEEN AN AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF THE COMPANY DURING THE THREE IMMEDIATELY PRECEDING MONTHS MAY PURCHASE, OTHERWISE ACQUIRE OR OWN THIS NOTE, THE AMERICAN DEPOSITARY SHARES DELIVERABLE UPON CONVERSION HEREOF AND THE ORDINARY SHARES REPRESENTED THEREBY, OR A BENEFICIAL INTEREST HEREIN.]

[INCLUDE FOLLOWING LEGEND IN THE ORIGINALLY ISSUED NOTE AND ANY REPLACEMENT NOTE ISSUED UNTIL THE DISTRIBUTION COMPLIANCE PERIOD TERMINATION DATE]

[THIS SECURITY AND THE ORDINARY SHARES REPRESENTED THEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT") AND, PRIOR TO THE DATE THAT IS 40 DAYS AFTER THE DATE HEREOF, MAY NOT BE OFFERED, SOLD, PLEDGED, HYPOTHECATED OR OTHERWISE TRANSFERRED WITHIN THE UNITED STATES OR TO, OR FOR THE ACCOUNT OR BENEFIT OF, A U.S. PERSON (AS DEFINED IN REGULATION S UNDER THE SECURITIES ACT) EXCEPT PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOTE SUBJECT TO, THE

REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS 40 DAYS AFTER THE DATE HEREOF, THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS NOT A U.S. PERSON AND IS LOCATED OUTSIDE THE UNITED STATES (WITHIN THE MEANING OF REGULATION S UNDER THE SECURITIES ACT) AND THAT IT EXERCISES SOLE INVESTMENT DISCRETION WITH RESPECT TO EACH SUCH ACCOUNT AND THAT IT AND ANY SUCH ACCOUNT IS NOT AN AFFILIATE OF NIO INC. (THE "COMPANY"), AND

(2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE, HYPOTHECATE OR OTHERWISE TRANSFER THIS SECURITY OR ANY BENEFICIAL INTEREST HEREIN PRIOR TO THE DATE THAT IS 40 DAYS AFTER THE DATE HEREOF, EXCEPT:

(A) TO THE COMPANY OR ANY SUBSIDIARY THEREOF, OR

(B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BECOME EFFECTIVE UNDER THE SECURITIES ACT, OR

(C) TO A NON-U.S. PERSON IN AN OFFSHORE TRANSACTION MEETING THE REQUIREMENTS OF RULE 903 OR RULE 904 OF REGULATION S UNDER THE SECURITIES ACT, OR

(D) PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.]

PRIOR TO SEPTEMBER 5, 2020, NO BENEFICIAL OWNER THAT PURCHASED A BENEFICIAL INTEREST IN THIS SECURITY UPON THE ORIGINAL ISSUANCE THEREOF MAY OFFER, SELL, PLEDGE, HYPOTHECATE OR OTHERWISE TRANSFER SUCH BENEFICIAL INTEREST EXCEPT IN ACCORDANCE WITH THE CONVERTIBLE NOTE SUBSCRIPTION AGREEMENTS BETWEEN NIO INC. AND THE RELEVANT PURCHASERS NAMED THEREIN, DATED MARCH 5, 2020. ANY ATTEMPT BY SUCH BENEFICIAL OWNER TO OFFER, SELL, PLEDGE, HYPOTHECATE OR OTHERWISE TRANSFER SUCH BENEFICIAL INTEREST IN VIOLATION OF THIS RESTRICTION SHALL BE VOID.

0% Convertible Senior Note due 2021

No. [_____]

[Initially]¹ US\$ _____

ISIN No. XS2133392576

Common Code 213339257

NIO Inc., a company duly organized and validly existing under the laws of the Cayman Islands (the “**Company**,” which term includes any successor company or corporation or other entity under the Indenture referred to on the reverse hereof), for value received hereby promises to pay to [The Bank of New York Depository (Nominees) Limited]² [_____]³, or registered assigns, the principal sum [as set forth in the “Schedule of Exchanges of Notes” attached hereto]⁴ [of US\$[_____]]⁵, which amount, taken together with the principal amounts of all other outstanding Notes, shall not, unless permitted by the Indenture, exceed US\$235,000,000 in aggregate at any time, in accordance with the rules and procedures of Euroclear and Clearstream, on March 5, 2021 as set forth below.

Except for Defaulted Amounts, this Note shall not bear any interest and the principal amount of this Note will not accrete.

Any Defaulted Amounts shall accrue interest per annum at the rate per annum equal to three percent, subject to the enforceability thereof under applicable law, from, and including, the relevant payment date to, but excluding, the date on which such Defaulted Amounts shall have been paid by the Company, at its election, in accordance with Section 2.03(c) of the Indenture.

The Company shall pay or cause the Paying Agent to pay the principal of (including any premium payable) and interest (if any) on this Note, so long as such Note is a Global Note, in immediately available funds to the Common Depository or its nominee, as the case may be, as the registered Holder of such Note. As provided in and subject to the provisions of the Indenture, the Company shall pay the principal of and interest (if any) on any Notes (other than Notes that are Global Notes) at the office or agency designated by the Company for that purpose. The Company has initially designated the Bank of New York Mellon, London Branch as its Paying Agent and Conversion Agent and The Bank of New York Mellon SA/NV, Luxembourg Branch as its Note Registrar and Transfer Agent in respect of the Notes and its agency in the

¹ Include if a Global Note.

² Include if a Global Note.

³ Include if a Physical Note.

⁴ Include if a Global Note.

⁵ Include if a Physical Note.

Borough of Manhattan, The City of New York, as a place where Notes may be presented for payment or for registration of transfer.

Reference is made to the further provisions of this Note set forth on the reverse hereof, including, without limitation, provisions giving the Holder of this Note the right to convert this Note into ADSs on the terms and subject to the limitations set forth in the Indenture. Such further provisions shall for all purposes have the same effect as though fully set forth at this place.

This Note, and any claim, controversy or dispute arising under or related to this Note, shall be construed in accordance with and governed by the laws of the State of New York (without regard to the conflicts of laws provisions thereof).

In the case of any conflict between this Note and the Indenture, the provisions of the Indenture shall control and govern.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed manually or by facsimile by the Note Registrar under the Indenture.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Company has caused this Note to be duly executed.

NIO INC.

By: _____
Name:
Title:

A-5

Dated:

NOTE REGISTRAR'S CERTIFICATE OF AUTHENTICATION

THE BANK OF NEW YORK MELLON SA/NV, LUXEMBOURG BRANCH
as Note Registrar, certifies that this is one of the Notes described
in the within-named Indenture.

By: _____
Name:
Title:

NIO INC.
0% Convertible Senior Note due 2021

This Note is one of a duly authorized issue of Notes of the Company, designated as its 0% Convertible Senior Notes due 2021 (the “**Notes**”), limited to the aggregate principal amount of US\$235,000,000, subject to Section 2.10 of the Indenture, all issued or to be issued under and pursuant to an Indenture dated as of March 11, 2020 (the “**Indenture**”), between the Company and The Bank of New York Mellon, London Branch as trustee (the “**Trustee**”), to which Indenture and all indentures supplemental thereto reference is hereby made for a description of the rights, limitations of rights, obligations, duties, privileges, disclaimers from liability and immunities thereunder of the Trustee, the Company and the Holders of the Notes. Additional Notes may be issued in an unlimited aggregate principal amount, subject to certain conditions specified in the Indenture.

In the case certain Events of Default, as defined in the Indenture, shall have occurred and be continuing, the principal of, and interest (if any) on, all Notes may be declared, by either the Trustee or Holders of at least 25% in aggregate principal amount of Notes then outstanding, and upon said declaration shall become, due and payable, in the manner, with the effect and subject to the conditions and certain exceptions set forth in the Indenture. In the case certain Events of Default relating to a bankruptcy (or similar proceeding) with respect to the Company or a Significant Subsidiary of the Company shall have occurred, the principal of, and interest (if any) on, all Notes shall automatically become immediately due and payable, as set forth in the Indenture.

Subject to the terms and conditions of the Indenture, the Company will make or cause the Paying Agent to make all payments in respect of the principal amount on the Maturity Date and the Fundamental Change Repurchase Price, as the case may be, to the Holder who surrenders a Note to collect such payments in respect of the Note. The Company will pay or cause the Paying Agent to pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts.

Subject to the terms and conditions of the Indenture, the Company will cause to be paid a premium equal to (i) in the case of any payment of principal to be made on the Maturity Date or pursuant to Section 6.02 of the Indenture, 2.0% of the outstanding principal amount of the Notes, or (ii) in the case of any payment of principal to be made on a Fundamental Change Repurchase Date, the aggregate interest that would have accrued on the outstanding principal amount of the Notes to be repurchased (or such portion thereof, as the case may be) over the period starting from (and including) the original date of issuance of the Notes and ending on (and including) the Fundamental Change Repurchase Date, if the Note were to bear interest at a rate of 2.0% per annum accruing daily and computed on the basis of a 360-day year composed of twelve 30-day months and, for partial months, on the basis of actual days elapsed in a 30-day month.

Subject to the terms and conditions of the Indenture, Additional Amounts will be paid in connection with any payments made and deliveries caused to be made by the Company or any successor to the Company under or with respect to the Indenture and the Notes, including, but

not limited to, payments of principal (including, if applicable, the Fundamental Change Repurchase Price), premium, if any, payments of interest, if any, and deliveries of ADSs or any other consideration due on conversion of a Note (together with payments of cash for any Fractional ADS or other consideration) upon conversion of the Notes to ensure that the net amount received by the beneficial owner of the Notes after any applicable withholding, deduction or reduction (and after deducting any taxes on the Additional Amounts) will equal the amounts that would have been received by such beneficial owner had no such withholding, deduction or reduction been required.

The Indenture contains provisions permitting the Company and the Trustee in certain circumstances, without the consent of the Holders of the Notes, and in certain other circumstances, with the consent of the Holders of not less than a majority in aggregate principal amount of the Notes at the time outstanding, evidenced as in the Indenture provided, to execute supplemental indentures modifying the terms of the Indenture and the Notes as described therein. It is also provided in the Indenture that, subject to certain exceptions, the Holders of a majority in aggregate principal amount of the Notes at the time outstanding may on behalf of the Holders of all of the Notes waive any past Default or Event of Default under the Indenture and its consequences.

No reference herein to the Indenture and no provision of this Note or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay or cause to be delivered, as the case may be, the principal (including the Fundamental Change Repurchase Price, if applicable) of and the consideration due upon conversion of, this Note at the place, at the respective times, at the rate and in the lawful money herein prescribed.

The Notes are issuable in registered form without interest coupons in denominations of US\$1,000 principal amount and integral multiples thereof. At the office or agency of the Company referred to on the face hereof, and in the manner and subject to the limitations provided in the Indenture, Notes may be exchanged for a like aggregate principal amount of Notes of other authorized denominations, without payment of any service charge but, if required by the Company or Trustee, with payment of a sum sufficient to cover any transfer or similar tax that may be imposed in connection therewith as a result of the name of the Holder of the new Notes issued upon such exchange of Notes being different from the name of the Holder of the old Notes surrendered for such exchange.

The Company may not redeem the Notes prior to the Maturity Date. No sinking fund is provided for the Notes.

Upon the occurrence of a Fundamental Change, the Holder has the right, at such Holder's option, to require the Company to repurchase for cash all of such Holder's Notes or any portion thereof (in principal amounts of US\$1,000 or integral multiples thereof) on the Fundamental Change Repurchase Date at a price equal to the Fundamental Change Repurchase Price.

Subject to the provisions of the Indenture, the Holder hereof has the right, at its option, prior to the close of business on the second Business Day immediately preceding the Maturity Date, to convert any Notes or portion thereof that is US\$1,000 principal amount of Notes or an

integral multiple thereof, into ADSs at the Conversion Rate specified in the Indenture, as adjusted from time to time as provided in the Indenture.

Terms used in this Note and defined in the Indenture are used herein as therein defined.

ABBREVIATIONS

The following abbreviations, when used in the inscription of the face of this Note, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM = as tenants in common

UNIF GIFT MIN ACT = Uniform Gifts to Minors Act

CUST = Custodian

TEN ENT = as tenants by the entireties

JT TEN = joint tenants with right of survivorship and not as tenants in common

Additional abbreviations may also be used though not in the above list.

[FORM OF NOTICE OF CONVERSION]

To: NIO INC.

THE BANK OF NEW YORK MELLON, LONDON BRANCH, as Conversion Agent

DEUTSCHE BANK TRUST COMPANY AMERICAS, as ADS Depositary

The undersigned registered holder of this Note (ISIN No. XS2133392576; Common Code 213339257) hereby exercises the option to convert that Note, or the portion thereof (that is either a minimum principal amount of US\$10,000,000 or an integral multiple of US\$1,000 in excess thereof) below designated, into ADSs in accordance with the terms of the Indenture referred to in this Note, and directs that any ADSs deliverable upon such conversion, together with any cash payable for any Fractional ADS, and any Notes representing any unconverted principal amount hereof, be issued and delivered to the registered Holder hereof unless a different name has been indicated below. Terms defined in the Deposit Agreement or the Indenture referred to in this Notice are used herein as so defined. If any ADSs or any portion of this Note not converted are to be issued in the name of a Person other than the undersigned, the undersigned will pay all documentary, stamp, issue, transfer or similar taxes, if any, in accordance with Section 14.02(d) and Section 14.02(e) of the Indenture. Any amount required to be paid to the undersigned on account of interest (if any) accompanies this Notice.

In connection with the conversion of this Note, or the portion hereof below designated, the undersigned acknowledges, represents to and agrees with the Company that the undersigned is not an "affiliate" (as defined in Rule 144 under the Securities Act) of the Company and has not been an "affiliate" (as defined in Rule 144 under the Securities Act) of the Company during the three months immediately preceding the date hereof.

The undersigned hereby instructs the ADS Depositary to register the ADSs in the name of:

1. Name of Beneficial Owner to receive ADSs (English):	
2. Address of Beneficial Owner to receive ADSs (English):	
3. Name of Registered Holder of the Deposited Shares:	
4. Number of Deposited Shares:	
5. Number of ADSs to be issued:	
6. Beneficial Owner's Tax ID Number:	
7. Contact Name and Tel No/email address:	

The undersigned instructs the Depositary to deliver the ADRs representing the ADSs to the following account:

ADS Receiving Broker (* are mandatory fields):

a) DTC Broker Name*:	
b) DTC Broker's Participant Account with DTC *:	
c) DTC Broker Contact Name:	
d) DTC Broker Contact Tel No/email:	
e) Beneficial Owner's Account # with DTC Broker*:	

OR

e) Local Broker Name (have account with DTC Broker)*:	
Local Broker Sub-Account # with DTC Broker*:	
Local Broker Contact Name:	
Local Broker Contact Tel No/email:	

ADS Delivering Party:

Name:	Deutsche Bank Trust Company Americas DTC Account: #2655
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For any ADS settlement inquiries, please contact DBTCA Broker Desk:

Tel: +1-212-250-9100 (New York) / +44-207-547-6500 (London)

Email: adr@db.com

Dated: _____

Signature(s)

Signature Guarantee

Signature(s) must be guaranteed by an eligible Guarantor Institution (banks, stock brokers, savings and loan associations and credit unions) with membership in an approved signature guarantee medallion program pursuant to Securities and Exchange Commission Rule 17Ad-15 if ADSs are to be issued other than to and in the name of the registered holder.

Fill in for registration of ADSs if to be issued other than to and in the name of the registered holder:

(Name)

(Street Address)

(City, State and Zip Code)
Please print name and address

Principal amount to be converted (if less than all):
US\$ _____,000

NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.

Social Security or Other Taxpayer
Identification Number

[FORM OF FUNDAMENTAL CHANGE REPURCHASE NOTICE]

To: NIO INC.

THE BANK OF NEW YORK MELLON, LONDON BRANCH, as Trustee

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from NIO Inc. (the "Company") as to the occurrence of a Fundamental Change with respect to the Company and specifying the Fundamental Change Repurchase Date and requests and instructs the Company to pay to the registered holder hereof in accordance with Section 15.02 of the Indenture referred to in this Note the entire principal amount of this Note, or the portion thereof (that is US\$1,000 principal amount or an integral multiple thereof) below designated.

In the case of Physical Notes, the certificate numbers of the Notes to be repurchased are as set forth below:

Certificate Number(s): _____

Dated: _____	
	Signature(s)
	Social Security or Other Taxpayer Identification Number
	Principal amount to be repaid (if less than all): US\$ _____,000
	NOTICE: The above signature(s) of the Holder(s) hereof must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.



[FORM OF ASSIGNMENT AND TRANSFER]

For value received _____ hereby sell(s), assign(s) and transfer(s) unto _____ (Please insert social security or Taxpayer Identification Number of assignee) the within Note, and hereby irrevocably constitutes and appoints _____ attorney to transfer the said Note on the books of the Company, with full power of substitution in the premises.

In connection with any transfer of the within Note occurring prior to the Distribution Compliance Period Termination Date, as defined in the Indenture governing such Note, the undersigned confirms that such Note is being transferred:

- To NIO Inc. or a subsidiary thereof; or
- Pursuant to a registration statement that has become or been declared effective under the Securities Act of 1933, as amended; or
- To a non-U.S. person in an offshore transaction meeting the requirements of Rule 903 or Rule 904 of Regulation S under the Securities Act of 1933, as amended; or
- Pursuant to an exemption from the registration requirements of the Securities Act.

Dated: _____

Signature(s) _____

NOTICE: The signature on the assignment must correspond with the name as written upon the face of the Note in every particular without alteration or enlargement or any change whatever.



[FORM OF AUTHORIZATION CERTIFICATE]

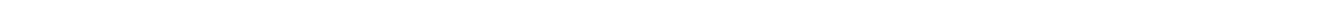
I, [Name], [Title], acting on behalf of NIO Inc. (the “**Company**”) hereby certify that:

(A) the persons listed below are (i) authorized Officers of the Company for purposes of the Indenture (the “**Indenture**”) dated as of March 11, 2020 between the Company and The Bank of New York Mellon, London Branch as trustee, in relation to the 0% Convertible Senior Notes due 2021 (the “**Notes**”), (ii) duly elected or appointed, qualified and acting as the holder of the respective office or offices set forth opposite their names and (iii) the duly authorized persons who executed or will execute the Indenture and the Notes issued pursuant to the Indenture by their manual or facsimile signatures and were at the time of such execution, duly elected or appointed, qualified and acting as the holder of the offices set forth opposite their names;

(B) each of the individuals listed below have the authority to receive call backs at the telephone numbers noted below upon request of The Bank of New York Mellon, London Branch in connection with the Notes issued pursuant to the Indenture;

(C) each signature appearing below is the person’s genuine signature; and

(D) attached hereto as Schedule I is a true, correct and complete specimen of the certificates representing the Notes.



IN WITNESS WHEREOF, I have hereunto executed and delivered this certificate on behalf of the Company as of the date indicated.

Dated: _____

[Name]

By: _____

Name:

Title:

SCHEDULE I

Name	Title, Fax No., Email	Signature	Tel No.

NIO CHINA INVESTMENT AGREEMENT

BY AND AMONG

CMG-SDIC CAPITAL MANAGEMENT CO., LTD.

ANHUI PROVINCIAL EMERGING INDUSTRY INVESTMENT CO., LTD.

HEFEI CITY CONSTRUCTION AND INVESTMENT HOLDINGS (GROUP) CO., LTD.

NIO INC.

NIO NEXTEV LIMITED

NIO USER ENTERPRISE LIMITED

NIO POWER EXPRESS LIMITED

AND

NIO (ANHUI) HOLDING CO., LTD.

Hefei, China

April, 2020

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Exhibit 1: Shareholding Structure of NIO Inc. before this Transaction

Exhibit 2: Shareholding Structure of NIO Inc. after the Completion of this Transaction

Exhibit 3: List of Restructure Assets

Exhibit 4: Disclosure Letter

Exhibit 5: List of Key Intellectual Properties

Exhibit 6: List of the Core Management Team

Exhibit 7: List of Other Core Personnel of the Target Company and Group Members

This NIO China Investment Agreement (this “**Agreement**”) is made on April 29, 2020 (the “**Execution Date**”) by and among:

1. CMG-SDIC Capital Management Co., Ltd., a limited liability company duly established and existing under the Laws of the People’s Republic of China (“**PRC**” or “**China**”, for the purpose of this Agreement, excluding the Hong Kong Special Administrative Region, the Macao Special Administrative Region and Taiwan), holding a business license with unified social credit code of 91130600MA094UG35F, and with its legal representative being GAO Guohua and registered office at West Dong Ao Wei Road, Rongcheng County, Baoding city, Hebei province (“**SDIC**”);
2. Anhui Provincial Emerging Industry Investment Co., Ltd., a limited liability company duly established and existing under the Laws of the PRC, holding a business license with unified social credit code of 9134000032543101X1, and with its legal representative being HUANG Linmu and registered address at Room 301, Innovation Building, 860 Wangjiang West Road, High-tech District, Hefei City, Anhui Province (“**Anhui High-tech Co.**”);
3. Hefei City Construction and Investment Holding (Group) Co., Ltd., a limited liability company duly established and existing under the Laws of the PRC, holding a business license with unified social credit code of 91340100790122917R, and with its legal representative being LI Hongzhuo and registered address at No. 229 Wuhan road, Binhu New District, Hefei City, Anhui Province (“**Hefei Construction Co.**” or the “**Hefei Investor**”);
4. NIO Inc., a company duly organized and validly existing under the laws of the Cayman Islands and having its registered address at PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands, and currently listed on the New York Stock Exchange of the United States under the code of NIO (“**NIO Inc.**”);
5. NIO Nextev Limited, a limited company duly organized and validly existing under the laws of Hong Kong Special Administrative Region, with company number of 2199750 and its registered address at 30th Floor, Jardine House, 1 Connaught Place, Central, Hong Kong (“**NIO HK**”);
6. NIO User Enterprise Limited, a limited company duly organized and validly existing under the laws of Hong Kong Special Administrative Region, with company number of 2487823 and its registered address at 30th Floor, Jardine House, 1 Connaught Place, Central, Hong Kong (“**UE HK**”);
7. NIO Power Express Limited, a limited company duly organized and validly existing under the laws of Hong Kong Special Administrative Region, with company number of 2472480 and its registered address at 30th Floor, Jardine House, 1 Connaught Place, Central, Hong Kong (“**PE HK**”, together with NIO HK and UE HK, “**NIO HK Holding Platforms**”, and together with NIO Inc., the “**NIO Parties**”); and
8. NIO (Anhui) Holding Co., Ltd., a limited liability company duly organized and validly existing under the laws of the PRC with its unified social credit code of 91340111 MA2RAD3M4R, with its legal representative being WANG Zhenglin and its registered

address at West Susong Road and North Shenzhen Road, Economic and Technological Development Zone, Hefei City, Anhui Province (the “**Target Company**” or the “**Company**”).

The above parties are referred to individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS:

1. NIO Inc. is a well-known company producing intelligent electric vehicles headquartered in China and listed on the New York Stock Exchange of the United States. It indirectly holds its PRC domestic operation companies through the NIO HK Holding Platforms. NIO Inc.’s PRC domestic operating entities include NIO Co., Ltd., Shanghai NIO Sales and Service Co., Ltd., NIO Energy Investment (Hubei) Co., Ltd. and other companies indirectly controlled by NIO Inc. under the aforesaid PRC domestic operating entities, and mainly engage in the Main Businesses (as defined below). As of the date hereof, the internal shareholding structure of NIO Inc. is set forth in Exhibit 1.
2. The Target Company was established on November 28, 2017, with the registered capital of RMB 11 million as of the date hereof. It is a company wholly controlled by NIO Inc. through NIO HK and NIO UE in China. The Parties unanimously agree to NIO Inc.’s proposed investment of all of the following equity interests indirectly held by it into the Target Company: the equity interests of NIO Co., Ltd., Shanghai NIO Sales and Service Co., Ltd. and NIO Energy Investment (Hubei) Co., Ltd. (the “**Equity Assets**”, including the interests of other Group Members directly or indirectly held by the above entities), and investment of the assets necessary for the operation of the Main Businesses (“**Restructure Assets**”, see Exhibit 3 for the list of Restructure Assets) in the Target Company. After investment of the above Restructure Assets into the Target Company has been completed, the Target Company will become the headquarter of the Group Members operating the Main Businesses of NIO Inc., and the Target Company will complete the Qualified IPO (as defined below) within China. The Investors and NIO HK will make monetary contributions to the Target Company pursuant to this Agreement to complete the equity investment in the Target Company.
3. The NIO Parties shall complete the Asset Contribution and monetary contribution to the Target Company in accordance with this Agreement. The Investors shall invest in the Target Company in accordance with the terms and conditions of this Agreement, and, except for the Investors, the other shareholders or relevant parties of the Target Company shall agree and warrant that the Target Company and its shareholders shall accept the investment by the Investors in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, based on the principles of equality and mutual benefit and through friendly consultation, the Parties agree to enter into this Agreement with respect to the investment by the Investors in the Target Company in accordance with the Contract Law of the People’s Republic of China, the Company Law of the People’s Republic of China and other relevant PRC laws and regulations.

1 DEFINITIONS AND INTERPRETATION

1.1 Unless otherwise specified in this Agreement, the following terms shall have the following meanings:

Transaction	means	the definition in Article 2.1.3 hereof
Capital Increase in Cash	means	the monetary investment made by the Investors and the NIO Parties in the Target Company in accordance with this Agreement
Events of Force Majeure	means	the definition in Article 11.1 hereof
Restructure Assets	means	the assets Listed in Exhibit 3 hereto
Third Party Transaction	means	the definition in Article 5.4 of this Agreement
Affiliates	means	with respect to any person (including a corporation, unincorporated entity or natural person), any other person that directly or indirectly controls, is controlled by, or is under common control with, such person; with respect to an individual, his spouse, child, brother, sister, parent, spouse's parent, trustee of any trust in which such individual or an immediate family member of such individual is a beneficiary or discretionary object, or any entity or company controlled by such person. For the avoidance of doubt, each shareholder of the Company shall constitute an Affiliate of the Company. " Control " means the possession of the power to direct the management and policies of another person directly or indirectly, whether through the ownership of voting securities, by contract or otherwise (for the avoidance of doubt, the ownership of more than 50% of voting securities of another person or the possession of the power to appoint a majority of the directors shall be deemed to have control)
Qualified IPO	means	the Target Company's application for initial public offering and listing has been approved, reviewed, registered and recorded by the China Securities Regulatory Commission, Shanghai/Shenzhen Stock Exchange or other overseas securities issuance agencies acceptable to all Parties, and the Target Company has completed initial public offering and listing of its shares on a stock exchange market acceptable to all Parties (listing on the PRC National Equities Exchange and Quotations System shall not be considered as a Qualified IPO).
Investors	means	SDIC, Anhui High-tech Co., Hefei Construction Co. and/or the actual investing entity designated by the aforesaid persons
Investor Capital Increase Price	means	the definition in Article 2.1.1.1 hereof

SDIC Capital Increase Price	means	the definition in Article 2.1.1.1 hereof
Anhui High-tech Co. Capital Increase Price	means	the definition in Article 2.1.1.1 hereof
Hefei Investor Capital Increase Price	means	the definition in Article 2.1.1.1 hereof
NIO Parties Capital Increase Price	means	the definition in Article 2.1.1.2 hereof
Capital Increase Price	means	the definition in Article 2.1.1.2 hereof
Equity Contribution	means	the definition in Article 2.1.2.1 hereof
AMR Re-registration Completion Date	means	the definition in Article 4.11 hereof
Articles of Association	means	the definition in Article 2.5.1 hereof
Shareholders' Agreement	means	the definition in Article 2.5.1 hereof
Share Reform	means	the definition in Article 2.1.2.3 hereof
Transition Period	means	the definition in Article 5.1 hereof
Closing	means	the definition in Article 3.5 hereof
Closing Date	means	the definition in Article 3.5 hereof
Transaction Documents	means	the definition in Article 2.5.1 hereof
Due Diligence Documents	means	the definition in Article 6.1.20 hereof
Special Losses	means	the definition in Article 7.2 hereof
Changing Party	means	the definition in Article 14.3 hereof
NIO Overdue Party	means	the definition in Article 3.3.2 hereof
Target Company	means	NIO (Anhui) Holding Co., Ltd.
Asset Contribution	means	the contribution of assets by the NIO Parties and the Target Company in accordance with Article 2.1.2. The shareholding structure of the Group Members under the Target Company upon completion of such asset contribution is set forth in Exhibit 2
Group Members	means	after the completion of Asset Contribution, the Target Company and entities directly or indirectly controlled by the Target Company by mean of equity or contractual control
Core Management Team	means	the senior management of the Target Company as listed in Exhibit 6
Execution Date	means	April 29, 2020
RMB	means	Chinese Yuan
Capital Increase Price	means	the definition in Article 2.1.1 hereof
Material Agreements	means	any contract, agreement or other form of document or arrangement meeting any of the following requirements: (i) the contract amount exceeds RMB 100 million; (ii) the contract amount exceeds RMB

		10 million and the nature of such contract is beyond the scope of the Main Businesses of the Company; (iii) the contract amount exceeds RMB 100 million or such contract is a binding strategic cooperation contract containing exclusive terms, non-competition terms or other provisions restricting the operation of the Main Businesses of the Company; (iv) any contract or agreement of any nature between the Target Company and the Group Members as one party and the Core Management Team as the other party who are in-service or resigned within twelve (12) months; (v) any contract, agreement or arrangement (other than those incurred due to daily business operations) in connection with the sale or purchase of assets by the Company with the contract amount exceeding RMB 100 million; (vi) bonus, pension, retirement pension, share option, commercial insurance or similar agreements in connection with the Core Management Team; (vii) external investment contract, agreement, letter of intent or other arrangements of the Company in which the contract amount exceeds RMB 100 million; (viii) transfer and exclusive license agreement of the intellectual properties of the Company (regardless of whether the Company acts as the transferor, transferee, licensor or licensee); and (ix) other contracts which may have material effect on the assets and business of the Company.
Material Adverse Effect	means	with respect to (i) the Target Company, other Group Members and the Restructure Assets as a whole, or (ii) the Target Company, any circumstance as a result of which the Main Businesses is suspended and cannot be restored for more than one (1) month, or the Main Businesses is terminated, or the qualification, operation, financial conditions and other aspects of the Target Company are materially affected which is adverse to continuous and stable operation, or otherwise would or could cause losses of more than RMB 100 million.
Principal Business	means	(i) Manufacturing, sale, purchase, after-sale repair and other supporting services of finished new-energy automobiles, supporting products for energy sources, parts, materials, components, machinery and equipment, as well as the technical development, technical services, technical transfer and technical consulting services relating thereto;

		(ii) Investing in accordance with the law in the fields in which foreign investment is allowed by the State; (iii) Providing enterprises with such services as technical support in the process of production, sale and market development, staff training and internal personnel management of enterprises, and assisting the enterprises in seeking loans and providing guarantees; (iv) Engaging in research and development of new products and high technologies, transferring research and development achievements, and providing corresponding technical services; (v) Providing Investors with consulting services, and providing affiliated companies with such consulting services as market information related to investment and investment policies; and (vi) Wholesale, commission agency and import and export of goods and technologies of automobile parts
Balance Sheet Date	means	the definition in Article 6.1.5 of this Agreement
Authorities	means	within and outside the PRC, any international organization; national, state, provincial, local or other government; governmental, regulatory or administrative department, agency or commission or any court, tribunal or judicial or arbitration institution
AMR	means	the PRC State Administration for Market Regulation and its local counterparts

- 1.2 Headings to articles of this Agreement are included herein for convenience only and shall not be taken into consideration in the interpretation or construction of this Agreement.
- 1.3 “**Hereof**”, “**herein**” and “**hereunder**” and other similar words refer to this Agreement as a whole instead of to any particular provision of this Agreement; references to any article are references to article of this Agreement, unless otherwise indicated.
- 1.4 “**Include**”, “**includes**” or “**including**” and similar words are not intended to be restrictive and shall be construed as if followed by the words “**without limitation**”.
- 1.5 All terms defined in this Agreement have the defined meanings herein when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein.
- 1.6 “**Written**” and comparable terms refer to printing, typing or other means of visible reproduction, including electronic media.
- 1.7 Each of the terms “**above**” and “**below**” and similar terms is inclusive of the number concerned.

- 1.8 References to a person are also to its successors and permitted transferees.
- 1.9 References to any law, agreement, instrument or other document herein shall refer to such law, agreement, instrument or other document as from time to time amended, supplemented or otherwise modified.
- 1.10 Any reference to this Agreement or any other agreement shall be construed to include this Agreement or such other agreement as may be amended, modified, supplemented or novated.

2 THE TRANSACTION

2.1 Transaction Arrangements

2.1.1 Capital Increase in Cash

2.1.1.1 The total value of the Target Company and all of the Restructure Assets that shall be contributed by the NIO Parties into the Target Company in accordance with this Agreement (including all the equity interests in NIO Co., Ltd., Shanghai NIO Sales and Service Co., Ltd. and NIO Energy Investment (Hubei) Co., Ltd., which shall be contributed by the NIO HK Holding Platforms into the Target Company, and the other restructure assets that shall be contributed by the NIO Parties into the Target Company) shall be RMB 17.767.8 billion, which is 85% of the average of the market value of NIO Inc. based on the stock price of NIO Inc. in the 30 public trading days prior to April 21, 2020 published by the New York Stock Exchange. The Parties agree that the Investors shall invest RMB 7 billion (“**Investors Capital Increase Price**”) to subscribe for RMB 1,223,776,223.79 newly increased registered capital of the Target Company, representing 24.10% of equity interests in the Target Company after the completion of this Transaction, among which:

- (i) SDIC shall subscribe for RMB 174,825,174.83 of the Target Company’s newly increased registered capital at a price of RMB 1,000,000,000.00 (the “**SDIC Capital Increase Price**”), representing 3.44% of equity interest in the Target Company after the completion of this Transaction;
- (ii) Anhui High-tech Co. shall subscribe for RMB 174,825,174.83 of the Target Company’s newly increased registered capital at a price of RMB 1,000,000,000.00 (the “**Anhui High-tech Co. Capital Increase Price**”), representing 3.44% of equity interest in the Target Company after the completion of this Transaction;
- (iii) Hefei Investor shall subscribe for RMB 874,125,874.13 of the newly increased registered capital of the Target Company at a price of RMB 5,000,000,000.00 (the “**Hefei Investor Capital Increase Price**”), which represents 17.22% of equity interest in the Target Company after the completion of this Transaction.

Among the Investors Capital Increase Price, RMB 1,223,776,223.79 shall become the newly increased registered capital of the Target Company and RMB 5,776,223,776.21 shall be included as surplus in the capital reserves of the Target Company. Specifically:

Name of Shareholder	Capital Increase Price	Corresponding Registered Capital	Percentage of Equity Interests in the Target Company after Completion of the Transaction	Premium included as Surplus in the Capital Reserve
SDIC	1,000,000,000.00	174,825,174.83	3.44%	825,174,825.17
Anhui High-tech Co.	1,000,000,000.00	174,825,174.83	3.44%	825,174,825.17
Hefei Investor	5,000,000,000.00	874,125,874.13	17.22%	4,125,874,125.87
TOTAL	7,000,000,000.00	1,223,776,223.79	24.10%	5,776,223,776.21

2.1.1.2 The Parties agree that UE HK shall subscribe for RMB 744,755,244.76 of the newly increased registered capital of the Target Company at the price of RMB 4.26 billion (equivalent to US\$ 602.1 million) (the “**NIO Parties Capital Increase Price**”, together with the Investors Capital Increase Price, the “**Capital Increase Price**”) in accordance with this Agreement, representing 14.68% of equity interest in the Target Company after the completion of this Transaction, RMB 744,755,244.76 of which shall be the newly increased registered capital of the Target Company and RMB 3,515,244,755.24 of which shall be included as surplus in the capital reserves of the Target Company.

2.1.2 Asset Contribution

The Parties agree that the NIO Parties shall carry out Asset Contribution to the Target Company (the “**Asset Contribution**”), the Restructure Assets will be invested into the Target Company at the price of RMB 17,704,785,800.00 to subscribe for RMB 3,095,242,272.71 of the newly increased registered capital of the Target Company, representing 61.00% of equity interest in the Target Company after the completion of the Transaction, RMB 3,095,242,272.71 of which shall be the newly increased registered capital of the Target Company and RMB 14,609,543,527.29 of which shall be included as surplus in the capital reserves of the Target Company.

In connection with the Asset Contribution, the NIO Parties shall complete the Asset Contribution in the Target Company through subscription for capital increase by the NIO HK Holding Platforms, and after the completion of the Transaction, the NIO HK Holding Platforms shall hold equity interest in the

Target Company based on the following percentages. For the avoidance of doubt, the following table only sets forth the equity interests in the Target Company obtained through the Restructure Assets contribution by the NIO HK Holding Platforms:

Name of Shareholder	Amount of Restructure Assets Contribution	of Corresponding Registered Capital	Percentage of Equity Interests in the Target Company after Completion of the Transaction	Premium included as Surplus in the Capital Reserve
NIO Nextev Limited	14,491,793,115.73	2,533,530,264.99	49.92%	11,958,262,850.74
NIO User Enterprise Limited	2,870,760,400.30	501,881,188.84	9.90%	2,368,879,211.46
NIO Power Express Limited	342,232,283.97	59,830,818.88	1.18%	282,401,465.09
TOTAL	17,704,785,800.00	3,095,242,272.71	61.00%	14,609,543,527.29

The NIO Parties hereby warrant that:

- 2.1.2.1 The investment of all equities of NIO Co., Ltd., Shanghai NIO Sales and Service Co., Ltd. and NIO Energy Investment (Hubei) Co., Ltd. in the Target Company to subscribe for the corresponding newly increased registered capital (“**Equity Contribution**”) shall be completed no later than sixty (60) business days after the date of this Agreement. The date of such completion shall be the date on which applicable re-registration with the market supervision and administration authorities is completed.
- 2.1.2.2 Transfer of the ownership of the Restructure Assets (as listed in Exhibit 3, excluding the intellectual properties of NIO Co., Ltd.) other than the Equity Contribution to the Target Company shall be completed no later than one (1) year after the Closing.
- 2.1.2.3 The Target Company shall be changed from a limited liability company to a company limited by shares (“**Share Reform**”) before December 31, 2021 (or at other times agreed by the Parties). The date of the completion of such Share Reform shall be the date when the new business license of the Company as a company limited by shares is issued by local AMR.
- 2.1.2.4 The NIO Parties shall engage an appraisal agency with securities and futures operating qualifications to evaluate the non-monetary contributions (including all Restructure Assets) in this Transaction (the evaluation baseline date shall be December 31, 2019). The above evaluation shall be completed before the baseline date of the Target Company’s Share Reform audit. If the appraisal value of these non-monetary contributions determined by the appraisal report issued by the appraisal agency at that time is lower than the

value of the non-monetary contribution of the NIO Parties in this Transaction agreed under this Agreement, the NIO Parties shall make up the difference by cash within thirty (30) business days as from the date of issuance of such appraisal report. If the NIO Parties fail to complete the above cash make-up, the Target Company shall make capital reduction to the NIO Parties based on the appraisal results, so as to ensure that the Target Company's registered capital is sufficient.

2.1.2.5 Before the Target Company submits an application for Qualified IPO, if it is necessary to evaluate and review the non-monetary investment assets in accordance with the relevant laws and regulations, the requirements of the competent regulatory agency or the listing review authority, the Target Company shall engage an appraisal agency with securities and futures operating qualifications to evaluate the value of the NIO Parties' non-monetary investment in the Transaction at the time of capital contribution. If the appraisal value of these non-monetary contributions determined in the appraisal at that time is lower than the price in this Transaction, the NIO Parties shall make up the difference by cash to ensure that the Qualified IPO be conducted smoothly.

2.1.3 This Transaction

In accordance with this Agreement, after the completion of this Capital Increase in Cash by the Investors and the NIO Parties and the Asset Contribution by the NIO Parties (this "**Transaction**"), the equity structure of the Target Company shall be as set forth in Exhibit 2 hereto.

2.1.4 Termination and Waiver

The NIO Parties hereby waive the pre-emptive right, the right of first refusal and any other priority rights relating to this Transaction available under applicable PRC laws, the Articles of Association, any previous agreements entered into among the direct/indirect shareholders of the Target Company. The NIO Parties warrant that no third party or indirect shareholder shall have the pre-emptive right, the right of first refusal or any other prior or preemptive rights with respect to this Transaction.

2.2 Equity Structure of the Target Company after the Completion of this Transaction

As of the Closing Date, the registered capital of the Target Company shall be RMB 5,074,773,741.26. The amount of subscribed registered capital of each shareholder of the Target Company and the shareholding percentage of the shareholders in the Target Company shall be as follows:

Name of Shareholder	Subscribed Capital Contribution (RMB)	Percentage of Subscribed Capital Contribution
NIO Nextev Limited	2,539,030,264.99	50.03%
NIO User Enterprise Limited	1,252,136,433.60	24.69%
NIO Power Express Limited	59,830,818.88	1.18%
SDIC	174,825,174.83	3.44%
Anhui High-tech Co.	174,825,174.83	3.44%
Hefei Investor	874,125,874.13	17.22%
TOTAL	5,074,773,741.26	100%

2.3 Shareholders' Rights

- 2.3.1 As from the Closing Date, the Investors shall become the shareholders of the Target Company and enjoy shareholder rights in accordance with laws and regulations. The capital reserves, accumulated undistributed profits and other matters of the Target Company on the date of receipt of the first capital increase price shall be enjoyed by the then current shareholders of the Target Company in proportion to their paid-in capital contributions.
- 2.3.2 As from the Closing Date, the NIO Parties and the Investors shall be entitled to the profits and bear the losses of the Target Company in proportion to their paid-in capital contributions in accordance with this Agreement.
- 2.3.3 The equity interests obtained by the Investors in connection with this Transaction shall be entitled to various rights granted to the Investors by laws, regulations and the Transaction Documents. If any rights granted to the Investor under the Transaction Documents cannot be fully realized due to restrictions imposed by the laws of the PRC, the NIO Parties, the Target Company and other Group Members shall adopt other methods permitted by the laws of the PRC to realize the rights and interests of the Investor under the Transaction Documents to the fullest extent.

2.4 Purpose of Increased Capital

Unless otherwise provided in the Transaction Documents or agreed upon by the Parties, the NIO Parties and the Target Company warrant that the Capital Increase Price under this Transaction shall be fully used for the development of the Main Businesses of the Target Company and the Group Members. The Capital Increase Price shall not be possessed or used by the Affiliates of the Target Company, shall not be lent to the Affiliates of the Target Company or any other third parties for use, shall not be used for investment or shareholding of financial assets such as stocks and shall not be used to provide security in any form for the NIO Parties or other shareholders of the Target Company (if any) or any third party.

Without the prior written consent of the Investors, no funding transaction shall exist between the Target Company and other Group Members, on one hand, and the NIO Parties or the Affiliates of the Target Company, on the other hand, other than those arising from related-party transactions approved by the internal competent authorities of the Company.

2.5 Execution of Transaction Documents and Registration of Change

2.5.1 The Parties agree to enter into, in respect of this Transaction, on the date of this Agreement (i) the NIO China Shareholders Agreement (the “**Shareholders Agreement**”); (ii) the Articles of Association of NIO China (the “**Articles of Association**”); and (iii) other ancillary agreements, resolutions and other documents which are necessary for the completion of this Transaction or are executed upon request of the Investors (the above documents and this Agreement collectively referred to as the “**Transaction Documents**”).

2.5.2 The NIO Parties and the Target Company shall be responsible for completing the registration and filing formalities for this transaction with the AMR or other Authorities, for which the Investors shall provide necessary cooperation. The Parties agree to execute necessary and reasonable legal documents required by the AMR and other Authorities from time to time to cause the completion of the registration and/or filing procedures necessary for this Transaction as soon as practicable.

2.5.3 Matters that relate to this Transaction but are not mentioned in this Agreement and the Shareholders’ Agreement shall be governed by the Articles of Association and other Transaction Documents. In the event of any conflict or discrepancy between the Articles of Association and this Agreement or the Shareholders’ Agreement or in the absence of any specific provision in the Articles of Association, this Agreement and the Shareholders’ Agreement shall prevail.

3.1 Payment of Capital Increase Price

3.1.1 Payment of First Installment of Capital Increase Price:

(1) On the fifth (5th) business day after all of the Investor's closing conditions have been proved to be satisfied or waived, SDIC shall pay all SDIC Capital Increase Price of RMB 1,000,000,000.00 to the bank account opened by the Target Company, of which RMB 174,825,174.83 shall be included in the registered capital of the Target Company and RMB 825,174,825.17 shall be included in the capital reserves of the Target Company. SDIC may designate a fund managed by it as the payment entity to pay the capital increase price, and when the fund managed by SDIC pays RMB 1,000,000,000.00 in full to the bank account opened by the Target Company, it shall be deemed as the completion of the payment obligation of SDIC under this Agreement. Upon such completion and provided that the aforementioned fund managed by SDIC has signed the Joinder Agreement in the form of Exhibit I attached hereto, such fund managed by SDIC shall enjoy the rights under this Agreement and the Shareholder Agreement, and shall bear the obligations of SDIC under this Agreement, the Shareholder Agreement and other Transaction Documents (if applicable);

(2) In principal, on the fifth (5th) business day after all of the Investor's closing conditions have been proved to be satisfied or waived, but in no event later than September 30, 2020, Anhui High-tech Co. shall pay all Anhui High-tech Co. Capital Increase Price of RMB 1,000,000,000.00 to the bank account opened by the Target Company, of which RMB 174,825,174.83 shall be included in the registered capital of the Target Company and RMB 825,174,825.17 shall be included in the capital reserves of the Target Company. Any third party designated by Anhui High-tech Co. may pay the capital increase price together with Anhui High-tech Co., and when Anhui High-tech Co. and its designated third party(ies) pay RMB 1,000,000,000.00 in full to the bank account opened by the Target Company, it shall be deemed as the completion of the payment obligation of Anhui High-tech Co. under this Agreement. Upon such completion and provided that the aforementioned third party(ies) have signed the Joinder Agreement in the form of Exhibit I attached hereto in accordance with Article 14.2 of the Shareholder Agreement, such third party(ies) shall jointly enjoy the rights under this Agreement and the Shareholder Agreement with Anhui High-tech Co., and shall jointly bear the obligations of Anhui High-tech Co. under this Agreement, the Shareholder Agreement and other Transaction Documents (if applicable);

(3) On the fifth (5th) business day after all of the Investor's closing conditions have been proved to be satisfied or waived, UE HK shall pay three tenths (3/10) of the NIO Parties' Capital Increase Price, i.e., RMB 1.278 billion, to the bank account opened by the Target Company, of which RMB 223,426,573.43 shall be included in the registered capital of the Target Company and RMB 1,054,573,426.57 shall be included in the capital reserves of the Target Company;

(4) On the fifth (5th) business day after all of the Investor's closing conditions have been proved to be satisfied or waived, Hefei Investor shall pay three tenths (3/10) of the Hefei Investor Capital Increase Price, i.e., RMB 1.5 billion to the bank account of the Target Company, of which, RMB 262,237,762.24 shall be included in the registered capital of the Target Company, and RMB 1,237,762,237.76 shall be included in the capital reserves of the Target Company. Hefei Investor may designate third party(ies) to participate in the payment of such capital increase price. Payment by Hefei Investor and its designated third party(ies) of RMB 1,500,000,000.00 in full to the bank account opened by the Target Company shall be deemed as the completion of the

payment obligation of the Hefei Investor under this agreement. Upon such completion and provided that the aforementioned third party(ies) have signed the Joinder Agreement in the form of Exhibit I attached hereto in accordance with the provisions of Article 14.2 of the Shareholder Agreement, such third party(ies) will jointly enjoy the rights under this Agreement and the Shareholder Agreement with Hefei Investor, and shall jointly bear the obligations of Hefei Investor under this Agreement, the Shareholder Agreement and other Transaction Documents (if applicable) in proportion to their actual payment.

Specifically:

Name of Shareholder	First Installment of Capital Increase Price	Corresponding Registered Capital	Premium included as Surplus in the Capital Reserve
SDIC	1,000,000,000.00	174,825,174.83	825,174,825.17
Anhui High-tech Co.	1,000,000,000.00	174,825,174.83	825,174,825.17
Hefei Investor	1,500,000,000.00	262,237,762.24	1,237,762,237.76
UE HK	1,278,000,000.00	223,426,573.43	1,054,573,426.57
TOTAL	4,778,000,000.00	835,314,685.33	3,942,685,314.67

3.1.2 Payment of the Second Installment of the Capital Increase Price:

(1) UE HK shall pay three tenths (3/10) of the NIO Parties' Capital Increase Price, i.e., RMB 1.278 billion, to the bank account opened by the Target Company on or before June 30, 2020, of which RMB 223,426,573.43 shall be included in the registered capital of the Target Company and RMB 1,054,573,426.57 shall be included in the capital reserves of the Target Company;

(2) Hefei Investor shall pay three tenths (3/10) of the Hefei Investor Capital Increase Price, i.e., RMB 1.5 billion, to the bank account of the Target Company on or before June 30, 2020, of which RMB 262,237,762.24 shall be included in the registered capital of the Target Company, and RMB 1,237,762,237.76 shall be included in the capital reserves of the Target Company. Hefei Investor may designate third party(ies) to participate in the payment of such capital increase price. Payment by Hefei Investor and its designated third party(ies) of RMB 1,500,000,000.00 in full to the bank account opened by the Target Company shall be deemed as the completion of the payment obligation of the Hefei Investor under this agreement. Upon such completion and provided that the aforementioned third party(ies) have signed the Joinder Agreement in the form of Exhibit I attached hereto in accordance with the provisions of Article 14.2 of the Shareholder Agreement, such third party(ies) will jointly enjoy the rights under this Agreement and the Shareholder Agreement with Hefei Investor, and shall jointly bear the obligations of Hefei Investor under this Agreement, the Shareholder Agreement and other Transaction Documents (if applicable) in proportion to their actual payment.

Specifically:

Name of Shareholder	Second Installment of Capital Increase Price	Corresponding Registered Capital	Premium included as Surplus in the Capital Reserve
Hefei Investor	1,500,000,000.00	262,237,762.24	1,237,762,237.76
UE HK	1,278,000,000.00	223,426,573.43	1,054,573,426.57
TOTAL	2,778,000,000.00	485,664,335.67	2,292,335,664.33

3.1.3 Payment of the Third Installment of the Capital Increase Price:

(1) UE HK shall pay one-fifth (1/5) of the NIO Parties' Capital Increase Price, i.e., RMB 852 million, to the bank account opened by the Target Company on or before September 30, 2020, of which RMB 148,951,048.94 shall be included in the registered capital of the Target Company, and RMB 703,048,951.06 shall be included in the capital reserves of the Target Company;

(2) Hefei Investor shall pay one fifth (1/5) of the Hefei Investor Capital Increase Price, i.e., RMB 1 billion, to the bank account opened by the Target Company on or before September 30, 2020, of which RMB 174,825,174.83 shall be included in the registered capital of the Target Company and RMB 825,174,825.17 shall be included in the capital reserves of the Target Company. Hefei Investor may designate third party(ies) to participate in the payment of such capital increase price. Payment by Hefei Investor and its designated third party(ies) of RMB 1,000,000,000.00 in full to the bank account opened by the Target Company shall be deemed as the completion of the payment obligation of the Hefei Investor under this agreement. Upon such completion and provided that the aforementioned third party(ies) have signed the Joinder Agreement in the form of Exhibit I attached hereto in accordance with the provisions of Article 14.2 of the Shareholder Agreement, such third party(ies) will jointly enjoy the rights under this Agreement and the Shareholder Agreement with Hefei Investor, and shall jointly bear the obligations of Hefei Investor under this Agreement, the Shareholder Agreement and other Transaction Documents (if applicable) in proportion to their actual payment.

Specifically:

Name of Shareholder	Third Installment of Capital Increase Price	Corresponding Registered Capital	Premium included as Surplus in the Capital Reserve
Hefei Investor	1,000,000,000.00	174,825,174.83	825,174,825.17
UE HK	852,000,000.00	148,951,048.94	703,048,951.06
TOTAL	1,852,000,000.00	323,776,223.77	1,528,223,776.23

3.1.4 Payment of Fourth Installment of Capital Increase Price:

(1) UE HK shall pay one tenth (1/10) of the NIO Parties' Capital Increase Price, i.e., RMB 426 million, to the bank account opened by the Target Company on or before December 31, 2020, of which RMB 74,475,524.48 shall be included in the registered capital of the Target Company, and RMB 351,524,475.52 shall be included in the capital reserves of the Target Company;

(2) Hefei Investor shall pay one tenth (1/10) of the Hefei Investor Capital Increase Price, i.e., RMB 500,000,000.00, to the bank account opened by the Target Company on or before December 31, 2020, of which RMB 87,412,587.41 shall be included in the registered capital of the Target Company and RMB 412,587,412.59 shall be included in the capital reserves of the Target Company. Hefei Investor may designate third party(ies) to participate in the payment of such capital increase price. Payment by Hefei Investor and its designated third party(ies) of RMB 500,000,000.00 in full to the bank account opened by the Target Company shall be deemed as the completion of the payment obligation of the Hefei Investor under this agreement. Upon such completion and provided that the aforementioned third party(ies) have signed the Joinder Agreement in the form of Exhibit I attached hereto in accordance with the provisions of Article 14.2 of the Shareholder Agreement, such third party(ies) will jointly enjoy the rights under this Agreement and the Shareholder Agreement with Hefei Investor, and shall jointly bear the obligations of Hefei Investor under this Agreement, the Shareholder Agreement and other Transaction Documents (if applicable) in proportion to their actual payment.

Specifically:

Name of Shareholder	Fourth Installment of Capital Increase Price	Corresponding Registered Capital	Premium included as Surplus in the Capital Reserve
Hefei Investor	500,000,000.00	87,412,587.41	412,587,412.59
UE HK	426,000,000.00	74,475,524.48	351,524,475.52
TOTAL	926,000,000.00	161,888,111.89	764,111,888.11

3.1.5 Payment of the Fifth Installment of the Capital Increase Price:

(1) UE HK shall pay one tenth (1/10) of the NIO Parties' Capital Increase Price, i.e., RMB 426 million, to the bank account opened by the Target Company on or before March 31, 2021, of which RMB 74,475,524.48 shall be included in the registered capital of the Target Company, and RMB 351,524,475.52 shall be included in the capital reserves of the Target Company;

(2) Hefei Investor shall pay one tenth (1/10) of the Hefei Investor Capital Increase Price, i.e., RMB 500,000,000.00, to the bank account opened by the Target

Company on or before March 31, 2021, of which RMB 87,412,587.41 shall be included in the registered capital of the Target Company and RMB 412,587,412.59 shall be included in the capital reserves of the Target Company. The Parties agree that if the NIO Parties fail to transfer ownership of the intellectual properties in the Asset Contribution to the Target Company before March 31, 2021, Hefei Investor will be entitled to delay its payment of the fifth installment under this Article 3.1.5. After the NIO Parties have completed transfer of the ownership of the intellectual properties, Hefei Investor shall immediately fulfill its payment obligation in respect of its fifth installment. Hefei Investor may designate any third party to participate in the payment of such capital increase price. Payment by Hefei Investor and its designated third party of RMB 500,000,000.00 in full to the bank account opened by the Target Company shall be deemed as the completion of the payment obligation of the Hefei Investor under this Agreement. Upon such completion and provided that the aforementioned third party has signed the Joinder Agreement in the form of Exhibit I attached hereto in accordance with the provisions of Article 14.2 of the Shareholder Agreement, such third party will jointly enjoy the rights under this Agreement and the Shareholder Agreement with Hefei Investor, and shall jointly bear the obligations of Hefei Investor under this Agreement, the Shareholder Agreement and other Transaction Documents (if applicable) in proportion to their actual payment.

Specifically:

Name of Shareholder	Fifth Installment of Capital Increase Price	Corresponding Registered Capital	Premium included as Surplus in the Capital Reserve
Hefei Investor	500,000,000.00	87,412,587.41	412,587,412.59
UE HK	426,000,000.00	74,475,524.48	351,524,475.52
TOTAL	926,000,000.00	161,888,111.89	764,111,888.11

- 3.1.6 The Investors and UE HK shall pay the Capital Increase Price to the bank account designated by the Target Company.
- 3.1.7 The Target Company shall confirm receipt of each installment of the Capital Increase Price in writing to Investors and UE HK on the date of such receipt.
- 3.1.8 The Capital Increase Price payable in US Dollars shall be converted into RMB at the middle exchange rate between US Dollars and RMB of 1:7.0752 released by the People's Bank of China on April 21, 2020 and paid to the Target Company upon conversion.

3.2 Post-Closing Auditing

- 3.2.1 After the completion of the contribution of Equity Assets and before the payment of the first installment of the Capital Increase Price, the NIO Parties shall conduct a comprehensive audit on the Target Company and the Restructure Assets (the "**Post-Closing Auditing**") to review: (i) whether the contribution of Equity Assets has been completed and all the Equity Assets have been fully invested into the Target Company in compliance with relevant regulations; (ii) whether the financial status of the Target Company and the Restructure Assets has no material adverse effect from the Balance Sheet Date to the Closing Date; (iii) whether there is no event, fact, condition, change or other circumstances that have or are reasonably expected to have material adverse effect on the assets, financial structure, liabilities, technologies, profit prospect

and ordinary operation of the Target Company and the Restructure Assets; and (iv) conduct a comprehensive audit on the balance sheet, profits, cash flow, and other matters with respect to the Target Company and the Restructure Assets of year 2019 and year 2020 till the benchmark date of auditing;

3.2.2 The NIO Parties shall immediately conduct Post-Closing Auditing and determine the baseline date for Post-Closing Auditing within two (2) business days after completion of the contribution of Equity Assets, and the Target Company shall complete Post-Closing Auditing within forty-five (45) business days after the Closing and issue to the Investors the Audit Report of the year of 2019 audited by PwC and for the period ending on the baseline date of auditing.

3.3 If any NIO Party or Investor fails to pay any installment of the Capital Increase Price in accordance with this Agreement, with respect to any installment of the Capital Increase Price paid by any overdue Party:

3.3.1 From the expiry of the Capital Increase Price payment period to the latest of (i) the completion of the payment of Capital Increase Price by the overdue Party and/or (ii) the completion of the Transfer of the unpaid registered capital in accordance with Article 3.3.2 and/or (iii) the completion of the capital reduction (the date of completion of the transfer of unpaid registered capital and the date of completion of the capital reduction shall be the date of the completion of the relevant AMR registration). For each day of delay, such overdue Party shall pay to the Target Company 0.02% of the unpaid Capital Increase Price as overdue fine. For the avoidance of doubt, if the NIO Parties fail to transfer the intellectual property rights listed in Exhibit 3 (but excluding the intellectual property rights under the name of NIO Co., Ltd.) within one (1) year after the Closing due to intention or negligence, the NIO Parties shall pay the overdue fine to the Target Company, which shall be 0.02% of the unpaid Capital Increase Price for each day of delay.

3.3.2 If any NIO Party (the “**NIO Overdue Party**”) fails to pay any installment of the Capital Increase Price on time in accordance with this Agreement, then as from sixty (60) days after the expiry of the Capital Increase Price payment period for such installment or as from the date on which the NIO Party notifies the Target Company, SDIC, Anhui High-tech Co. and Hefei Investor in writing of its failure

to perform the obligation to pay the Capital Increase Price, SDIC, Anhui High-tech Co. and Hefei Investor shall have the right to notify the NIO Overdue Party and the Target Company in writing and request the NIO Overdue Party to transfer the outstanding registered capital corresponding to the overdue Capital Increase Price to SDIC, Anhui High-tech Co., Hefei Investor or the third party designated by them free of charge, and SDIC, Anhui High-tech Co., Hefei Investor or the third party designated by them shall pay the total subscription price that is calculated using the subscription price per newly increased registered capital in this Transaction. The NIO Overdue Party shall, within twenty (20) business days from the date of receiving the aforesaid written notice, transfer the aforesaid unpaid registered capital to SDIC, Anhui High-tech Co., Hefei Investor or any third party designated thereby free of charge, and shall complete the re-registration formalities with AMR and other competent Authorities. If after the transfer, the transferee cannot pay the capital increase price, SDIC, Anhui High-tech Co. and Hefei Investor shall be entitled to require the Target Company to decrease such overdue and unpaid registered capital in accordance with applicable laws and the Articles of Association of the Target Company. If SDIC, Anhui High-tech Co. and Hefei Investor exercise the rights described in this Article at the same time, they shall exercise such rights in proportion to their paid-in capital contributions to the Target Company.

3.3.3 If the NIO Overdue Party fails to pay the Capital Increase Price within sixty (60) days after the expiry of the Capital Increase Price payment period for such installment, and SDIC, Anhui High-tech Co. and Hefei Investor choose not to exercise or only partially exercise the right provided under Article 3.3.2 hereof to request the NIO Overdue Party to transfer the unpaid registered capital without consideration, then with respect to the part of the unpaid registered capital that SDIC, Anhui High-tech Co. and Hefei Investor do not exercise the right, SDIC, Anhui High-tech Co. and Hefei Investor shall have the right to request the Target Company to decrease such overdue and unpaid registered capital in accordance with applicable laws and the Articles of Association of the Target Company.

3.3.4 Once the NIO Parties have paid the NIO Parties Capital Increase Price for the current installment, and have provided the Investors with the bank receipts and other supporting materials for the current payment, the Investors shall pay their respective installment of the Capital Increase Price within the corresponding time period specified in this Agreement. The following circumstances will not be considered as overdue payment by the Investors, and the Investors do not need to pay an overdue fine:

(1) the NIO Parties fail to make due payment of any installment of NIO Parties Capital Increase Price, which causes the Investors' failure to pay the same installment of the Capital Increase Price in time;

(2) the NIO Parties fail to provide the Investors with bank receipts and other supporting materials when or after the NIO Parties Capital Increase Price has been paid, which causes the Investors' failure to pay the same installment of Capital Increase Price in time; and

(3) the NIO Parties fail to transfer the intellectual property rights listed in Exhibit 3 (but excluding the intellectual property rights under the name of NIO Co., Ltd.) within one (1) year after the Closing, which causes Hefei Investor's failure to pay the last installment of its Capital Increase Price on or before March 31, 2021.

3.3.5 For the avoidance of doubt, exercise by SDIC, Anhui High-tech Co. and Hefei Investor of their rights set forth in this Article 3.3 shall not release the NIO Overdue Party from any obligation to pay the overdue fine.

3.4 Capital Verification, Investment Certificate and Register of Shareholders

3.4.1 The Target Company shall, within ten (10) business days after the Investors and the NIO Parties make each installment payment for the Capital Increase Price in cash, complete the capital verification for the relevant installment of capital increase and deliver a scanned copy of the original capital verification report to the Investors and the NIO Parties.

3.4.2 The Target Company shall issue corresponding capital contribution certificates to the Investors and NIO HK Holding Platforms on the date when the respective installments of Capital Increase Price are paid and the respective installments of capital contributions of the Restructure Assets are completed by the Investors and NIO HK Holding Platforms. A capital contribution certificate shall specify the following items: name of the Target Company, date of establishment, registered capital, name of shareholders, amount of subscribed capital contribution, amount of paid-in capital contribution, shareholding ratio, date of payment of capital contribution, serial number and date of issuance of the capital contribution certificate. The capital contribution certificates shall be signed by the legal representative of the Target Company and affixed with the seals of the Target Company.

3.4.3 The Target Company shall register and maintain a register of shareholders, and prepare a new register of shareholders for this Transaction as of the Closing Date. Such register of shareholders shall be kept by the board of directors after it is affixed with the seal of the Target Company, and an original shall be provided to the Investors within five (5) business days after the Closing Date.

3.5 Closing Date

The date on which the Investors pay the first installment of Capital Increase Price in accordance with the provisions of Article 3 of this Agreement ("**Closing**") shall be referred to as the closing date (the "**Closing Date**").

Unless waived by the Investors in writing, the obligations of the Investors to carry out the Closing shall be subject to the satisfaction of each of the following conditions precedent:

- 4.1 There is no judgment, award, ruling, decree or injunction of any PRC laws, court, arbitral body or competent governmental Authorities that restricts, prohibits or cancels this Transaction, nor is there pending or potential litigation, arbitration, judgment, ruling, ruling or injunction which, in the reasonable, good faith judgment of the Investors, has had or will have material adverse effect on this Transaction, including restricting, prohibiting or cancelling this Transaction;
- 4.2 The Target Company and its existing shareholders as of the Execution Date shall have made resolutions approving the execution of the Transaction Documents and this Transaction at the shareholders' meeting, and the shareholders of the Target Company have waived in writing the applicable right of first refusal and/or pre-emptive right;
- 4.3 The Target Company shall have obtained all third party permits for the execution and performance of the Transaction Documents. The execution and performance of the Transaction Documents will not result in the breach by the Target Company and other Group Members of any applicable laws of the PRC or any contracts, agreements or other documents applicable to them;
- 4.4 Completion by the Target Company and the NIO Parties of the execution of various Transaction Documents, including this Agreement, the Shareholders' Agreement, the Articles of Association or the Amendment to the Articles of Association and other ancillary agreements, resolutions and other documents necessary for the consummation of this Transaction or reasonably requested by the Investors, including, without limitation, all filing and registration application materials required by the market supervision and administration Authorities in connection with this Transaction;
- 4.5 The representations, representations and warranties made by the Target Company and the NIO Parties under Article 6 hereof shall continue to be true, complete and accurate, and the covenants required by the Transaction Documents to be performed on or prior to the Closing Date shall have been performed. There is no breach of the Transaction Documents;
- 4.6 The financial condition of the Target Company and the Restructure Assets has no Material Adverse Effect as from the Balance Sheet Date to the Closing Date;
- 4.7 The requisite assets of the Target Company and the Group Members in connection with their Main Businesses are fully kept and all requisite professional technicians have been retained;
- 4.8 As from the date hereof until the Closing Date, there is no event, fact, condition, change or other circumstance that has had or is reasonably expected to have Material Adverse Effect on the assets, financial structure, liabilities, technologies, profit prospect, normal operation and asset contribution of the Target Company and other Group Members;
- 4.9 The Core Management Team and other key personnel of the Target Company and the Group Members as listed in Exhibit 7 (including without limitation the management personnel and key technical personnel of the Target Company to be disclosed at the time

of application for a Qualified IPO by the Target Company) have respectively entered into a letter of undertaking to warrant that (i) they shall serve at the Target Company or other Group Members until three (3) years after the Qualified IPO of the Target Company is completed; (ii) they shall not participate in any competing business, and shall not participate in any competing business through their relatives or other Affiliates, during their term of office and within two (2) years after they leave the Target Company or other Group Members; (iii) before the completion of the Qualified IPO of the Target Company, they shall not directly or indirectly transfer or dispose of the interests or shares (if any) they have at the level of the Target Company or management/employee share incentive platform; (iv) the Core Management Team and other key personnel do not act in violation of their non-compete obligation (including any violation action conducted with any third party);

- 4.10 each of SDIC and Hefei Investor has nominated one (1) candidate whom has been duly appointed as the directors of the Target Company, and the board of directors of the Target Company shall have been duly composed in accordance with the Shareholders' Agreement and the Articles of Association of the Target Company;
- 4.11 Anhui High-tech Co. and Hefei Investor have both obtained their necessary approvals related to state-owned investment;
- 4.12 The Target Company shall have completed the re-registration relating to change of its shareholding structure and directors involved in this Transaction with the AMR (the date on which the re-registration is completed shall be referred to as the "**AMR Re-registration Completion Date**");
- 4.13 NIO HK Holding Platforms have completed Equity Contribution in accordance with Article 2.1.2 hereof and PwC has issued to NIO Inc. the audit report for 2019, and except for the following issues, there is no other non-standard audit opinions: (i) sustainable operation matters; and (ii) internal control deficiencies related to the lack of financial experts who are sufficiently familiar with US accounting standards;
- 4.14 The NIO Parties have signed a letter of engagement with PWC to appoint PWC as the auditor for post-closing auditing matters;
- 4.15 The Target Company has signed an agreement with the NIO Parties regarding the injection of intellectual property rights under the Asset Contribution (see Exhibit 3 for details, but excluding the intellectual property rights of NIO Co., Ltd.) and the use of intellectual property rights during the change of ownership. Such agreement shall stipulate that the Target Company and Group Members have the right to use these intellectual property rights free of charge and exclusively before the registration of the change of ownership of these intellectual property rights is completed in accordance with this Agreement. If the NIO Parties or its Affiliates are using or intend to use such intellectual property rights, it shall be approved by the Target Company in accordance with the laws of the PRC, the United States and other countries and a license agreement shall be signed with the Target Company;
- 4.16 The NIO Parties have engaged lawyers practicing in the jurisdiction where NIO Inc. is listed to provide an email regarding (i) legal advice on the approval procedures that are

required to be performed for this Transaction under the applicable laws and rules of regulatory Authorities in the jurisdiction where NIO Inc. is listed; and (ii) a brief summary of the progress of the ongoing securities class action of NIO Inc., and the NIO Parties have engaged lawyers practicing in the jurisdiction where NIO Inc. is registered to issue a customary Cayman legal opinion for this Transaction; and

- 4.17 The Target Company and the NIO Parties shall have issued to the Investors a confirmation letter confirming that all the above conditions precedent, except for those waived by the Investors in writing, have been satisfied and provided relevant documents evidencing the satisfaction of such conditions precedent.

5 TRANSITIONAL PERIOD

- 5.1 During the period from the Execution Date of this Agreement to the Closing Date (the “**Transitional Period**”), the Target Company and the other Group Members shall, and the NIO Parties shall cause the Target Company and the other Group Members to, conduct the business in the ordinary course consistent with past practice, and shall use their best efforts to preserve intact the assets and business, maintain business cooperation relationship with existing customers, suppliers and other third parties, retain existing officers and employees, and maintain the current status (except for normal wear and tear) of all assets and properties owned or used by the Target Company and the other Group Members.
- 5.2 During the Transitional Period, subject to the receipt of reasonable prior notice from the Investor and the normal operation of the Target Company and the other Group Members, during normal business hours of the Target Company and the other Group Members, the NIO Parties and the Target Company shall provide the Investors and its Representatives with such information regarding the Target Company and the other Group Members as reasonably requested by the Investors in connection with this Transaction, including, without limitation, adequate provision of the books, records, contracts, technical data, personnel data, management information and other documents of the Target Company by the lawyers, accountants and other representatives engaged by the Investors, and prudent examination of the financial, assets and operation status of the Target Company and the other Group Members. In addition, upon occurrence or expected occurrence of any breach of this Agreement by the NIO Parties or the Target Company, the NIO Parties and the Target Company shall promptly notify the Investor in writing of such breach.
- 5.3 During the Transitional Period, the NIO Parties and the Target Company shall promptly notify the Investors in writing of the following matters and discuss with the Investor about the effect of such matters on the Target Company and other Group Members so as to ensure the stable operation of the Target Company and other Group Members in the ordinary course of business consistent with past practice:
- 5.3.1 Change in the equity structure, financial condition, assets, liabilities, business or operations of the Target Company and other Group Members that has or is likely to have any Material Adverse Effect on the Target Company; and
 - 5.3.2 Progress of approval by/registration with governmental Authorities (if applicable).

- 5.4 During the Transitional Period, the Target Company and the NIO Parties shall, and shall cause their Affiliates and advisors, as well as their respective directors, the NIO Parties management and representatives to, (i) on an exclusive basis, deal with the matters relating to this Transaction jointly with the Investors and their Affiliates; (ii) not engage in any similar transaction or any other transactions in conflict with the transactions contemplated in the Transaction Documents (any of such transactions being referred to as the “**Third Party Transaction**”); (iii) immediately terminate any discussion or negotiation with any Person in connection with the Third Party Transaction, and hereafter, refrain from discussing or negotiating with any Person in connection with the Third Party Transaction or providing any information to any Person in connection with the Third Party Transaction; and (iv) not encourage any inquiry or proposal with respect to the possible Third Party Transaction or take any other action to facilitate such inquiry or proposal. The Investors shall be notified promptly if the Target Company or other Group Members or the NIO Parties receives any inquiry from any other party in respect of possible Third Party Transaction.
- 5.5 Without limiting the normal business operation, unless with the prior written consent of the Investor, during the Transitional Period, the NIO Parties shall cause the Target Company and the other Group Members not to, and the Target Company and the other Group Members not to, take the following actions (except for those relevant to this Transaction):
- 5.5.1 Increase, decrease, allot, issue, acquire, repay, assign, pledge or redeem any registered capital or equity;
 - 5.5.2 Take any action that may result in the dilution of the Investor’s equity interest in the Target Company on the Closing Date by amending its articles of association or through reorganization, merger, sale of share capital, acquisition, sale of assets or otherwise;
 - 5.5.3 Any sale, lease, transfer, authorization or assignment of any asset exceeding RMB 50 million individually or in aggregate, except for those conducted in the ordinary course of business in a manner consistent with past practices;
 - 5.5.4 Any new assumption or incurrence of indebtedness, liability, obligation or expense exceeding RMB 50 million (or the equivalent thereof in other currencies) in aggregate except in the ordinary course of business;
 - 5.5.5 Make any capital expenditure in excess of RMB 100 million (or its equivalent) other than in the ordinary course of business;
 - 5.5.6 Create any mortgage, pledge, security interest or other types of encumbrances on any assets in excess of RMB 50 million, except in the ordinary course of business;
 - 5.5.7 Declare, pay and make any distribution or declaration of a dividend;

- 5.5.8 Entry into any transaction with an Affiliate;
- 5.5.9 Conduct or become a party to any acquisition;
- 5.5.10 Incorporation of any subsidiary or acquisition of any equity interest or other interest in any other entity for consideration in excess of RMB 50 million;
- 5.5.11 Unless expressly provided for in the Transaction Documents, formulate or adopt any employee equity incentive plan, or distribute options to or make commitments on distribution options to employees; or
- 5.5.12 Agree or commit to do any of the foregoing, including, without limitation, execution of a letter of intent, commitment letter and letter of consent.

6 REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of the Target Company and the NIO Parties. Except for the matters expressly disclosed in the Disclosure Letter attached hereto as Exhibit 4, the Target Company and the NIO Parties respectively make the following statements, representations and warranties and severally and jointly ensure that each of the following statements, representations and warranties shall be true, complete and accurate as of the date hereof, the AMR Re-registration Completion Date and the Closing Date; provided that the Target Company and the NIO Parties shall have the right to make update and supplement to the Disclosure Letter attached as Exhibit 4 with respect to any occurrence after the Execution Date on the AMR Re-registration Completion Date and the Closing Date respectively. The Disclosure Letter refers to particular sections of this Agreement which are subject to amendment, and shall be read with this Agreement and form an integral part of this Agreement. The matters of the Target Company and its Group Members that have or may have Material Adverse Effect as from the Balance Sheet Date to the Execution Date shall also be disclosed in the Disclosure Letter. The Target Company and the NIO Parties agree that, for the purpose of the following matters of this Article 6, their statements, representations and warranties in respect of the matters involving Target Company shall, to the extent applicable, apply to Target Company and its Group Members at the same time.

- 6.1.1 Authority. The execution of the Transaction Documents, performance by the Target Company of all their obligations thereunder and consummation of the transactions thereunder have been fully and duly authorized by all Transaction Authorities; and the NIO Parties has full capacity for civil conduct and civil rights to execute the Transaction Documents and perform their obligations thereunder. Upon execution, the Transaction Documents shall have legal binding force on the Target Company and the NIO Parties.
- 6.1.2 Investments. As of the Execution Date, the AMR Re-registration Completion Date or the Closing Date, if applicable, other than the Group Members, the Target Company have no other Subsidiaries, partnerships, branches or offices in the PRC or overseas and do not directly or indirectly hold or own similar interests in any other Persons.

- 6.1.3 No Conflict. The execution and performance of the Transaction Documents do not violate or conflict with any provisions of the articles of association or other constitutional documents of the Target Company; both the Target Company and the NIO Parties have obtained all the necessary third party consents or authorizations for the transactions under the Transaction Documents. the NIO Parties has performed necessary internal and external approval procedures for this Transaction, and there is no breach of relevant laws and regulations of the NIO Parties' place of incorporation, place of listing and the registered place of the Target Company, nor is there any breach of written agreements or covenants between the NIO Parties or its Affiliates and any other third party. The material agreements or contracts between the Target Company and its Group Members, the NIO Parties and any other entities will not be terminated or materially affected by the Transaction Documents due to the execution or performance thereof.
- 6.1.4 Validly Existing of Target Company and the Group Members. The Target Company and the Group Members are legally incorporated and validly existing Persons. The registered capital of the Target Company and its Group Members has been paid in full in a timely manner in accordance with the provisions of its articles of association, and complies with the requirements of Chinese laws. There is no failure to pay, delay in payment, false registration, inadequate capital or withdrawal of registered capital. All of the articles of associations of the Target Company and the Group Members have been legally and validly registered (if required), and are valid and enforceable. The business scope specified in the articles of association of the Target Company and the Group Members is in conformity with the requirements of the PRC Laws. The Target Company and the Group Members have conducted operation activities in strict compliance with the business scope set forth in their articles of association and applicable PRC Laws. All licenses, approvals and permits required for the Target Company and its Group Members to carry out business activities under the Laws of the PRC have been applied for and obtained in accordance with law. All such permits are validly existing. The Target Company and the Group Members have passed the annual inspection (if any) over the licenses and permits of the Target Company conducted by relevant competent governmental Authorities. The documents of the Target Company (including minutes of board meetings, shareholders' meeting/general meetings, and register of shareholders of the Target Company) have been properly kept and completely and accurately recorded the matters that shall be recorded in such documents.
- 6.1.5 Financial Reporting. As of December 31, 2019 (the "**Balance Sheet Date**") and the Execution Date, the AMR Re-registration Completion Date or the Closing Date, if applicable, all audited accounts and management accounts (including transfer accounts) of the Target Company and the Group Members have been prepared in accordance with the Laws of the PRC and truly, completely and accurately reflect the financial and operation conditions of the Target Company

and the Group Members as of the relevant account dates, and the financial records and data of the Target Company and the Group Members fully comply with the requirements of the Laws of the PRC and the PRC Accounting Standards. All documents including books, records of changes in shareholdings, financial statements and all other records shall be kept and be in the possession of the Target Company or the Group Members in accordance with the Laws and commercial practices of the PRC and all major transactions relating to the business of the Target Company or the Group Members shall be recorded accurately and on file. The Target Company and the Group Members do not have such problems as off-balance-sheet cash sales income, off-balance-sheet liabilities, shareholders' occupation of the capital of the Target Company and material internal control loopholes.

- 6.1.6 Undisclosed Liabilities. Neither the Target Company nor any Group Member has any other material liabilities (meaning debts exceeding RMB 50 million in the aggregate) not reflected in the balance sheet provided to the Investor as of the Balance Sheet Date; the Target Company or the Group Members have never provided any guarantee or other security for others or created any mortgage, pledge or other security right on their properties.
- 6.1.7 Equity Structure. The registered capital structure of the Target Company and the Group Members as set forth in the articles of association of the Target Company and in the amendments to the articles of association registered with market supervision and administration authorities on the Execution Date is fully consistent with the records in Exhibit 1 hereto and the relevant articles of association of the Target Company and the Group Members provided to the Investor, and truly, completely and accurately reflects the equity structure of the Target Company and the Group Members, and there is no false capital contribution. The Target Company and the Group Members have never committed to or actually issued any equity interests, shares, convertible bonds, warrants, options or equity interests of the same or similar nature other than the above shareholder equity interests in any form or to any person. The equity interests in the Target Company and the Group Members are free and clear of any nominee holding or similar arrangement, pledge or other security interest of any kind, or Encumbrance or any other third party rights (including, with respect to the equity interests in any person, any option or conversion right or pre-emptive right of any nature). The shareholding structure of direct or indirect equity holders of the Target Company (the equity interest in the Target Company penetrating through natural persons or governmental Authorities) will not have material adverse effect on the Target Company's application for initial public offering of its shares and the initial public offering and listing of its shares on the PRC stock exchange (other than the PRC National Equities Exchange and Quotations System). All the registration and filing procedures applicable to the NIO Parties having obtained the shares and interests in the registered capital of the Target Company and the Group Members have been completed.
- 6.1.8 No Change. From the Balance Sheet Date, unless acknowledged by the Investors

in writing or otherwise provided herein, none of the Target Company and the Group Members has taken the following actions, unless for the purpose of consummation of this Transaction (unless the Target Company shall notify the Investor in writing within five (5) days from the occurrence of such actions):

- (1) prepay debts in excess of RMB 50 million cumulatively;
- (2) provide guarantee to other persons or create mortgage, pledge and other security rights on its property;
- (3) release debts owed by others exceeding RMB 50 million in the aggregate or waive any right of claim;
- (4) amend any existing material agreement or contract of the Target Company, which is obviously detrimental to the Target Company;
- (5) appoint or dismiss directors, the general manager, the deputy general managers, the finance controller and other officers of the Company or make substantial amendment to their labor contracts;
- (6) incur any loss, or have any change in its relationship with suppliers, clients or employees, which will have Material Adverse Effect on the Target Company or the Group Members;
- (7) modify the accounting methods, policies or principles and financial accounting rules and systems of the Target Company, except for the modification required by applicable accounting standards;
- (8) transfer or license other persons to use the intellectual properties of the Target Company other than in the ordinary course of business of the Target Company and the Group Members;
- (9) experience material change in any sales practice or accounting methods of sales, or material change in employees' policies, rules or regulations;
- (10) experience material adverse change in the financial condition of the Target Company or any member of the Group, or any transaction or behavior outside the Main Businesses which has Material Adverse Effect on the Target Company;
- (11) adopt any resolutions of shareholders' meeting or board of directors other than in connection with the operation of its Main Businesses, except for those adopted for the performance of matters agreed by the Investor hereunder;
- (12) declare, pay or plan to declare or plan to pay any dividend, bonus or other form of distribution to the shareholders;
- (13) (i) sale, mortgage, pledge, lease, transfer and other disposal of assets exceeding RMB 50 million in aggregate outside the course of Main Businesses,

except for the bank loan or corresponding provisions of guarantee as approved by the board of directors of the Company; (ii) dispose of any fixed assets with an original value exceeding RMB 50 million or agree to the disposal or acquisition of any fixed assets with an original value exceeding RMB 50 million, waive its control over the assets of any Target Company or member of the Group with the original value exceeding RMB 50 million in aggregate, and entry into any contract resulting in the expenditure of fixed assets where the original value of such fixed assets exceeding RMB 100 million in aggregate; or (iii) any expenditure or purchase of any tangible or intangible assets (including equity or equity investment in any person) exceeding RMB 100 million in aggregate;

(14) demerger, merger with or acquisition of a third party's equity interest, assets or business other than in the ordinary course of business;

(15) breach of the provisions of the statements, representations and warranties under this Agreement by way of acts or omissions; and

(16) any act or omission that may result in the occurrence of the above circumstances.

6.1.9 Taxes. (i) All Tax Returns required to be filed by the Target Company and the Group Members with the relevant competent tax Authorities prior to the date hereof have been filed or will be filed on or prior to the date hereof; (ii) the Company has lawfully paid all Taxes due and payable pursuant to such returns prior to the date hereof; (iii) the Target Company and the Group Members have fully assumed or accrued all Tax obligations or Encumbrances which shall be assumed or accrued by them prior to the date hereof in accordance with the Tax Laws and Regulations of the PRC; (iv) all Tax matters required to be completed prior to the date hereof with respect to any transaction relating to the Target Company and the Group Members or for any period starting on or prior to the date hereof have been completed; (v) no Encumbrance has been incurred due to any failure to complete any Tax matters in respect of the equity interests and assets of the Target Company and the Group Members; (vi) there is no pending or potential Tax dispute, nor have any matters found which may give rise to Tax investigation or Tax dispute with any Governmental Authority prior to the date hereof; and (vii) the completion of this Transaction hereunder will not have any material adverse effect on any Tax preference currently enjoyed by the Target Company and the Group Members at the date hereof. None of the Target Company and the Group Members has entered into or got involved in, or is a party to or otherwise gets involved in, any transaction, plan or arrangement in violation of applicable Laws for the purpose of avoiding or reducing Tax liabilities.

6.1.10 Assets. The Target Company and the Group Members (i) own good and marketable title to all of their owned properties and assets free and clear of any Encumbrance, and (ii) have legitimate leasehold interest in their leased properties or assets. The Target Company and the Group Members own or have

the right to use all necessary properties and assets, both tangible and intangible, for the conduct of their current business. The property and equipment used by the Company in its operation, except for normal wear and tear, are in good operating condition and repair and satisfy and meet the current purpose of use.

6.1.11 Related Party Matters. Any existing shareholders of the Target Company and Group Members (other than the Target Company and the Group Members), directors and Core Management Team, or to the knowledge of the Target Company and the NIO Parties, the affiliates of such persons and the Target Company or the Group Members: (i) do not have any contracts or commitments or any transactions conducted, being conducted or proposed to be conducted; (ii) are not indebted (other than current payables for salary and welfare benefits), not committed to providing loans or security directly or indirectly, unilaterally or bilaterally; (iii) have no interest in or material business relationship with the Target Company or contracts entered into by the Target Company, including purchase, sale, license, authorization of use, provision of any assets and services such as products and intellectual property of the Target Company. None of the directors/Core Management Team of the NIO Parties, the Target Company and the Group Members, or (to the knowledge of the Target Company and the NIO Parties) the Affiliates of such directors/Core Management Team members hold any interest in any of the Target Company or Affiliates of the Group Members, or any business that has relationship or competes with the Target Company or the Group Members (other than the Target Company and the Group Members), or in any company in which the Target Company/Group Members have direct or indirect ownership interest (except for the acquisition of less than 0.1% of the stocks of the listed Target Company through the public securities market), or controls such company by loan, agreement or otherwise, or serves as a senior officer or director at any business that has relationship or competes with the Target Company or the Group Members (other than the Target Company and the Group Members).

6.1.12 Contracts. The Target Company and the Group Members have provided the Investor with the copies of some of their material agreements or contracts currently in effect and in conformity with the originals, and the NIO Parties and the Target Company warrant that such material agreements or contracts are legal, valid and enforceable, and there is no material breach by the Target Company or the Group Members or any other Transaction Party.

Neither the Target Company nor any Group Member is a party to or bound by any of the following contracts, agreements or documents:

(1) contracts, agreements or documents in an amount exceeding RMB 50 million that are not formed in the ordinary course of business;

(2) contracts, agreements or documents which are not made at arm's length between independent Persons;

(3) contracts, agreements or documents detrimental to the interests of the Target Company or Group Members;

(4) contracts, agreements or documents restricting the Target Company or Group Members from engaging in the Main Businesses operation;

(5) contracts, agreements or documents involving an amount greater than RMB 200 million that is payable but not yet paid; or

(6) contracts, agreements or documents which have material adverse effect on this Transaction or will be materially affected by this Transaction and have not been disclosed to the Investors;

6.1.13 Intellectual Property. The Target Company and the Group Members own all legal ownership or use rights of intellectual properties necessary for the conduct of Main Business (or will inject Restructure Assets into the Target Company) (including without limitation patents, trademarks, copyrights, know-how, domain names and trade secrets) (including, in particular, the intellectual properties listed in Exhibit 5). Such intellectual properties are valid and enforceable in accordance with law. To the knowledge of the Target Company and the NIO Parties, there is no issue that may lead to the invalidity or unenforceability of any intellectual property. Neither the Target Company nor the Group Members have infringed upon or illegally used any intellectual property in which any third party has any right, title or interest, or have licensed or allowed any third party to use any intellectual property in which any third party has any right, title or interest; neither the Target Company nor the Group Members have infringed upon others' intellectual property, trade secrets, proprietary information or other similar rights, and there is no pending or foreseeable claim, dispute or litigation proceedings requiring the Target Company or the Group Members to make a claim for any infringement upon any third party's intellectual property, trade secrets, proprietary information or other similar rights. To the knowledge of the Target Company and the NIO Parties, there is no infringement by any third party of the intellectual property lawfully owned by the Target Company or the Group Members. The patents, trademarks, software copyrights and domain names owned by the Target Company and the Group Members have been duly registered in accordance with law and are in valid status or proper and effective protection measures have been taken. Except for the intellectual property to be injected into the Target Company in the structural reorganization, the NIO Parties or its Affiliates does not hold any other intellectual property (including without limitation patent, trademark, copyright, non-patented technology, and domain name) in relation to its Principal Business. Key employees of the Target Company and Group Members are employed by the Target Company or Group Members and engage in business activities. To the knowledge of the Target Company and the NIO Parties, such key employees have not violated any contracts or binding undertakings (including without limitation confidentiality obligations and non-competition obligations) entered into with their former employers, and will not constitute infringement upon the

legitimate rights of their former employers or other intellectual property rights holders.

- 6.1.14 Environment, Health and Safety. Since the establishment of the Target Company and the Group Members, they have complied with all applicable Laws of the PRC concerning environmental protection, health and safety in connection with their business operations, and there has been no breach of such Laws of the PRC.
- 6.1.15 Litigation and Other Legal Proceedings. There is no litigation, arbitration, mediation, investigation, inquiry and other legal or administrative proceedings which may have a Material Adverse Effect on the Target Company or the Group Members or materially and adversely affect the formation, validity and enforceability of the Transaction Documents and the transactions thereunder, whether completed, pending or foreseeable to occur.
- 6.1.16 Obey the Laws. The activities of the Target Company and the Group Members have at all times complied with the valid Laws of the PRC and the requirements of relevant governmental Authorities in all respects, and do not violate any Laws of the PRC so as to constitute adverse effect on the Target Company or the Group Members.
- 6.1.17 Non-competition Restrictions. Any operation activities of the Target Company and Group Members within the business scope are not subject to any non-competition restrictions of any nature or with respect to any entities. To the knowledge of the Target Company and the NIO Parties, there is no agreement, judgment, injunction, order or decree which would reasonably be expected to restrict or materially and adversely affect the current or future business activities of the Target Company or Group Members or the conduct of current or proposed business in any material respect.
- 6.1.18 Employees.
- (1) There is no pending or, to the knowledge or expected to the knowledge of the Target Company or the Group Members, potential labor dispute or controversy between the Target Company or the Group Members and its Core Management Team, current or former officers; and to the knowledge or expected to the knowledge of the Target Company or the Group Members, there is no potential labor dispute or controversy between any of its Core Management Team, key technical personnel and other officers and any other business;
 - (2) The Target Company and the Group Members shall have entered into proper intellectual property ownership agreements, confidentiality agreements and non-competition agreements with the Core Management Team and other key technicians;
 - (3) none of the key directors and management team of the Target Company and the Group Members serves as a director, officer or supervisor in any other entities, or holds a position (including part-time) in any other third party entities, or is

obligated to provide consulting/advisory services to any entities;

(4) none of the Target Company and the Group Members has any outstanding payable economic compensation for termination of employment or other similar indemnification or compensation with respect to employment, in an aggregate amount exceeding RMB 10 million;

(5) The Target Company and the Group Members have fully paid and/or withheld pension, housing, medical care, unemployment and all other social insurance or employee benefits payable in accordance with the relevant PRC laws and all relevant laws, agreements and covenants of the PRC in accordance with the relevant PRC laws, and there is no pending or, to the knowledge of the Target Company and the Group Members, threatened dispute with respect to such social insurance or employee benefits;

(6) other than employee benefits, social and pension security, housing fund and economic compensation for termination of labor contracts as required by the laws of the PRC, the Target Company and the Group Members have not provided or undertaken to provide to employees any other employment, severance, dismissal, retirement or pension benefits, security or compensation;

(7) There is no agreement, covenant or contract restricting the Core Management Team and key technical personnel of the Target Company and the Group Members to operate, manage or engage in Main Businesses or hold any equity interest in the Target Company/the Group Members.

6.1.19 Insurance. The Target Company and the Group Members have purchased insurance consistent with general commercial practices in connection with their daily business operations; none of the Target Company and the Group Members has taken action which may result in the invalidity of such insurance policies or increase of premium rates, nor is there any pending claim against such insurance policies.

6.1.20 Provision of Information. Prior to the Execution Date hereof, the Target Company and the Group Members have provided the Investors or the intermediaries engaged by the Investors with the originals or copies (in the case of copies, such copies are true copies) of all the material documents (“**Due Diligence Documents**”) (such as documents, agreements, certificates, instruments, permits and other written statements and reports) relating to the Target Company/the Group Members and their Affiliates as required by the Investors or the intermediaries engaged by the Investors for its legal, financial or commercial due diligence on the Target Company/the Group Members and their Affiliates to carry out the Transaction. The Due Diligence Documents are true, accurate and complete, and there is no material omission or misleading or false representation, information or material which could be reasonably expected to materially affect the decision made by the Investors on whether to proceed with the Transaction in accordance with this Agreement.

6.2 Representations and Warranties of the Investors. The Investors hereby severally but not jointly make the following representations, representations and warranties to the Target Company and the NIO Parties and ensures that each of the following representations, representations and warranties shall be true, complete and accurate as of the Execution Date hereof:

- 6.2.1 Organization and Permissions. It is a company or limited partnership duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation and has all necessary power and authority to enter into this Agreement and the Transaction Documents to which it is a party, perform its obligations hereunder and thereunder and consummate the transactions contemplated hereby and thereby. Its execution and delivery of this Agreement and the Transaction Documents to which it is a party, performance of its obligations hereunder and thereunder and consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate actions for it (if applicable), and it has obtained all approval, filing and appraisal procedures (including, without limitation, appraisal, examination, approval and filing in connection with state-owned investment) as required by the Laws and regulations of the PRC. This Agreement has been, and other Transaction Agreements to which it is a party will be, duly executed and delivered by it, and, assuming due authorization, execution and delivery by the other Parties, this Agreement constitutes, and other Transaction Agreements to which it is a party will upon its execution constitute, its legal, valid and binding obligations, enforceable against it in accordance with the terms hereof and thereof, unless otherwise provided in this Agreement.
- 6.2.2 No Conflicts. Its execution, delivery and performance of this Agreement and the Transaction Documents to which it is a party do not and will not (i) violate, conflict with, or result in a default under, if applicable, its articles of association or similar constitutional documents, (ii) violate or conflict with any Law or Governmental Order applicable to it, or (iii) violate, conflict with, constitute a default under, or constitute a default under, any document or arrangement to which it is a party, including any note, bond, mortgage, contract, agreement, lease, sublease, license, permit or franchise, which will have an adverse effect on its ability to perform its obligations under this Agreement or other Transaction Documents or consummate the transactions contemplated hereby or thereby.
- 6.2.3 No Claim. There is no outstanding claim by or against the Investors or its Affiliates which may affect the legality, validity or enforceability of this Agreement or any Transaction Document or the consummation of the transactions contemplated hereby or thereby.
- 6.2.4 Own funds. The Investors have sufficient internal funds to pay the Capital Increase Price.

7.1 Indemnity Covenant regarding Breach of Agreement

7.1.1 If the Investors incur any losses due to breach of any provisions of this Agreement by any one or more Parties other than the Investors or breach of any statements, warranties and representations under Article 6 hereof, the NIO Parties shall indemnify the Investors and bear joint and several liability for such indemnification. In particular, if such losses are caused expressly by the reason attributable to one or more Parties, such liabilities shall be borne by the Party or Parties causing such losses, and the other NIO Parties shall remain jointly and severally liable for such liabilities.

7.1.2 Subject to Article 7.1 hereof, if the Target Company or the Group Members incur any losses or their assets are impaired due to the breach of any provisions of this Agreement or the breach of any terms of the statements, representations and warranties under Article 6 hereof, the loss of the Investors shall be calculated in proportion to their then actual capital contribution to the Target Company.

7.1.3 The Investors shall indemnify the Target Company, the Group Members or the NIO Parties against any losses incurred by the Target Company, the Group Members or the NIO Parties due to any breach of any provisions of this Agreement by the Investors or the breach of any provisions of the statements, representations and warranties under Article 6 hereof.

7.2 Indemnification Undertaking for Special Matters: The Parties further agree that, if the Target Company and other Group Members incur any losses, costs or expenses (“**Special Losses**”) due to violation of laws and regulations and the following matters, and the Target Company and other Group Members have failed to disclose such matters to the Investors in the disclosure letter set forth in Exhibit 4, upon written request by the Investors, the NIO Parties shall pay the Target Company or the Group Members an amount equal to the Special Losses in cash within ten (10) business days from the date on which the Investors give a written notice so as to restore the Target Company or the Group Members to the status as if such matters have not occurred:

7.2.1 Any tax compliance issues (including but not limited to tax declaration and payment issues, individual income tax withholding issues, tax preference issues and financial subsidy issues) of the Group Members prior to the Closing Date, which cause the Group Members to be ordered to pay any outstanding taxes, refund the financial subsidies, pay the overdue fines and be imposed on administrative penalty by the competent governmental departments, or cause the Group Members to incur other losses;

7.2.2 Any compliance issues of the social insurance and housing funds of the Group Members before the Closing Date, and the labor contract disputes or other labor disputes that may exist between the Group Members and the employees, which result in the Group Members being ordered to pay any outstanding social insurance and the housing funds, pay the overdue fines, and be fined or subject to the administrative penalties by the competent governmental departments, or cause the

Group Members to incur other losses;

- 7.2.3 Any other possible compliance issues of the Group Members prior to the Closing Date, resulting in the Group Members being ordered to pay overdue fine, fines or administrative penalties by the competent governmental departments, or cause the Group Members to incur other losses, and the aforesaid circumstances have caused the material obstacles to the Qualified IPO of the Target Company;
- 7.2.4 Any material or document submitted by the NIO Parties or the Group Members to any Governmental Authority prior to the Closing Date is untrue, inaccurate or incomplete, as a result of which the Group Members are required by relevant governmental Authorities to pay overdue fine, penalty or administrative penalty and such circumstances have caused the material obstacle to the Qualified IPO of the Target Company;
- 7.2.5 The entitlement to any tax preference or financial subsidy is attributed in whole or in part to any irregular method, act, omission, fraud or circumvention, and the tax preference or financial subsidy is required to be refunded;
- 7.2.6 Any asset losses incurred by the Group Members or any claims, demands or claims made by any other party against the Group Members due to any dispute and encumbrance in the title of any assets of the Group Members;
- 7.2.7 Loss caused by product quality problems of Group Members;
- 7.2.8 Group Members assume any responsibility, obligation or punishment for violating applicable laws and regulations before the Closing Date;
- 7.2.9 Any losses, expenditures, expenses, asset impairments, fines or encumbrances suffered by the Investors or Group Members, due to fines, litigation, arbitration and other disputes of any of Group Members which exceed RMB 50 million and are not disclosed by the NIO Parties and/or the Group Members;
- 7.2.10 The Target Company and the Group Members are subject to any administrative or criminal penalties due to insufficient capital contribution, false capital contribution or withdrawal of capital contribution and/or other legal defects on the part of the NIO Parties;
- 7.2.11 The Target Company and Group Members suffer any asset impairment, fine or other losses due to the securities class action matters relating to NIO Inc.; and
- 7.2.12 Any of NIO Parties or the Target Company violates Article 2.4 hereof and cause losses to the Investors.

8 POST CLOSING OBLIGATION

- 8.1 After the Closing, the Target Company and the NIO Parties undertake that, during the performance of this Agreement, they shall have the obligation to promptly, completely and

accurately disclose to the Investors or the Directors appointed by the Investor with respect to their breaches of the representations, warranties and covenants hereunder.

- 8.2 Unless acting in accordance with the Transaction Documents or with the prior written consent of the Investors, the Target Company and the NIO Parties covenant that the Target Company and other Group Members will at all times:
- 8.2.1 Carry out operations in the ordinary course, and maintain its normal business partnership with customers to ensure that the goodwill and operations of the Group Members will not suffer from the Material Adverse Effect after the Closing Date;
 - 8.2.2 To regulate the related-party transactions, and none of the Affiliates of the Group Members shall infringe upon the interests of the Group Members through related-party transactions and dealings;
 - 8.2.3 Perform executed contracts, agreements or other documents relating to the assets and business of the Group Members in a timely manner;
 - 8.2.4 Guarantee that the Target Company and other Group Members will continue to operate legally, and obtain and maintain the governmental approval documents and other permits and consents necessary for their operation; and
 - 8.2.5 Promptly notify the Investor in writing of any event, fact, condition, change or other circumstances that have had or may have Material Adverse Effect on the Target Company or other Group Members.
- 8.3 After the Closing Date, the Target Company shall immediately establish a sound financial system, including but not limited to financial internal control system, in order to ensure that the internal financial authorization of the Company is clear, financial data and records are accurate and the financial treatment complies with the PRC Laws and internal management rules of the Company; and prohibit use of personal accounts for receipts and payments of the Company.
- 8.4 The NIO Parties warrant that when NIO Co., Ltd. and Anhui Jianghuai Automobile Group Limited by Shares sign a supplementary agreement or renew the cooperation agreement for automobile manufacturing cooperative factories, such agreement shall further specify the mechanism for loss subsidy, assumption and recovery of product quality liability, and the adjustment mechanism for single vehicle processing costs.
- 8.5 NIO HK and NIO Energy Investment (Hubei) Co., Ltd. signed an Investment Agreement on the NIO Energy Project with Wuhan East Lake Technology Development Zone Management Committee in May 2017, agreeing that Hubei Technology Investment Group Co., Ltd. which was designated as the main entity by Wuhan East Lake Technology Development Zone Management Committee, shall invest RMB 384 million in Wuhan NIO Energy Development Zone Co., Ltd. in the form of equity investment which is debt investment in nature, and agreeing on the project investment amount, project construction plan and relevant supporting policies. After the Closing, the NIO Parties shall use its commercially reasonable efforts to

further discuss with Wuhan East Lake Technical Development Zone Management Committee regarding the amendment and modification of the agreement based on actual situations then in order to ensure that the foregoing circumstances will not have any material effect on the Qualified IPO of the Target Company. If the NIO Parties violate relevant provisions in the aforesaid Investment Agreement on the NIO Energy Project which causes losses upon the Target Company and/or the Group Members, the NIO Parties agree to indemnify for the losses caused thereby, and if any indemnification shall be paid, such indemnification shall be paid by the NIO Parties without any liability upon the Target Company.

- 8.6 Weiran (Jiangsu) Investment Co., Ltd. and the relevant investors have entered into the Capital Increase and Subscription Agreement and the supplementary agreements thereof, setting forth competition and other terms in connection with its investment in Jiangsu Weiran Automobile Co., Ltd. After the closing, the NIO Parties guarantee that the business operations of Jiangsu Weiran Automobile Co., Ltd. and Weiran (Jiangsu) Investment Co., Ltd. will not have a material adverse impact on the Qualified IPO of the Target Company. If necessary, the assets related to the complete vehicle trial-manufacture of Jiangsu Weiran Automobile Co., Ltd. and Weiran (Jiangsu) Investment Co., Ltd. shall be promptly disposed of to ensure that the work progress of the Qualified IPO of the Target Company will not be affected. Undertaking or explanation letter including the term of no competition shall be issued in accordance with the requirements of the issuance and listing review authority, and measures to resolve any competition issue, including but not limited to deregistration, transfer of the aforesaid two companies, or termination of the competing business of the aforesaid two companies, shall be taken. If the competition between Jiangsu Weiran Automobile Co., Ltd. and Weiran (Jiangsu) Investment Co., Ltd. causes any direct economic losses to the Target Company, all such direct economic losses shall be borne by NIO Inc. without any liability upon the Target Company.
- 8.7 The NIO Parties and the Target Company shall ensure that the related-party transactions between the Target Company and its Group Members as one party and their Affiliates as the other party (including but not limited to the research and development commissioned by NIO USA, Inc., sale of products and technology license between relevant persons including Jiangsu Weiran Automobile Co., Ltd.) are fair, reasonable and necessary and shall enter into formal transaction documents for the remaining related-party transactions within one (1) month after the Closing Date. The NIO Parties and the Target Company shall ensure that if there is any key intellectual property related to the Main Business of the Target Company and Group Members that is created in the research and development commission related-party transactions, the ownership arrangement of such key intellectual property shall be in line with the fairness and reasonableness principle, and the NIO Parties and the Target Company shall ensure that related-party transactions regarding any key intellectual property related to the Main Business of the Target Company and Group Members in the related-party transaction will not have material impact on the Qualified IPO of the Target Company in China's A-share market. If necessary, rectification shall be carried out in line with relevant requirements of the issuance and listing review authority to ensure that the Target Company's Qualified IPO can be conducted smoothly.
- 8.8 Within three (3) months from the Closing Date, the NIO Parties and the Target Company

shall complete the dismantling of the existing VIE structure of Shanghai NIO Automotive New Energy Co., Ltd. and shall clean up the relevant historical payments involved in such VIE structure. Within twelve (12) months as from the Closing Date, the NIO Parties and the Target Company shall specify the treatment of the existing VIE structure of Beijing NIO Network Technology Co., Ltd. and the relevant historical payments; provided, however, that they shall ensure that the relevant VIE structure of Beijing NIO Network Technology Co., Ltd. will not have any material adverse effect on the Qualified IPO of the Target Company.

- 8.9 The NIO Parties warrant to procure by December 31, 2020 that appointment of the directors and officers of the NIO Parties and the Target Company has been adjusted to ensure the personnel independence of the Target Company, that the Core Management Team have entered into employment agreement with the Target Company or Group Members and hold the position in fact, that the composition of the directors and officers of the Target Company is competent for the business operation of the Target Company, and has sufficient decision-making capacity and authority; and that the arrangement of the directors and the officers of the Target Company shall meet the examination and approval requirements for the Qualified IPO of the Target Company in China's A-share market.
- 8.10 With regard to deficiency in the property rights, use purposes, registration procedures, etc. of the properties being used by the Target Company and Group Members (if any), the NIO Parties shall make due correction of such deficiency after the Closing to prevent occurrence of any Material Adverse Effect on the Target Company's Qualified IPO arising therefrom.
- 8.11 The NIO Parties undertake to disclose to Investors the progress of NIO Inc.'s existing securities class action lawsuits, such as any new litigation, arbitration, administrative penalties, injunctions or other possible actions against the NIO Parties which may have Material Adverse Effect on the Target Company and Group Members, the NIO Parties shall promptly inform the Investors of such event after its occurrence.
- 8.12 The Target Company and the NIO Parties undertake that the ownership and exclusive rights of intellectual property rights and other Restructure Assets other than Equity Contributions (see Exhibit 3 for details, excluding intellectual property rights of NIO Co., Ltd.) shall be transferred to the Target Company within one (1) year after the Closing, which means the Target Company shall become the owner or registrant of all such Restructure Assets.
- 8.13 The Target Company and the NIO Parties undertake that the Target Company shall convene the board of directors and shareholders' meeting as soon as possible after the Closing Date, and review and approve the appointment of the Core Management Team such as CEO and CFO of the Target Company, formation of the Target Company's organizational structure and basic management system, and delineation of management responsibilities and authorities.
- 8.14 The Target Company and the NIO Parties undertake to change the name of the Target Company to a name containing the word "NIO China" and registered the name so changed with the AMR within ninety (90) business days after the Closing.
- 8.15 The Target Company and the NIO Parties undertake to complete the selection and

engagement of relevant intermediaries for listing on the domestic market of the Target Company by December 31, 2020, including but not limited to sponsors, lawyers and auditors.

9 TRANSACTION EXPENSES

- 9.1 For the purpose of this Transaction, the lawyers, accountants and other intermediaries engaged by the Investors shall carry out comprehensive business, legal and financial due diligence on the assets, business and other aspects of the Group Members at the expense of the Investors.
- 9.2 Unless otherwise specified in this Agreement or other Transaction Documents, each of the Target Company, the NIO Parties and the Investors shall be solely responsible for all transaction expenses and taxes and fees incurred by it as a result of the Transaction.

10 CONFIDENTIALITY

- 10.1 Unless with the prior written consent of the other Parties or as otherwise provided by this Agreement and Laws, none of the Parties shall, whether directly or indirectly, disclose, use, or permit its directors, employees, representatives, agents, consultants and counsels to disclose or use, the following Confidential Information:
 - 10.1.1 Existence of the Transaction Documents and information relevant to this Transaction;
 - 10.1.2 Any discussions between the Parties regarding the execution and performance of this Agreement, the terms and conditions of this Agreement or any other information relating to this Transaction;
 - 10.1.3 Any confidential or proprietary information relating to the other Parties or their Affiliates obtained by any Party in the course of the negotiation of the Transaction with the other Parties or the performance of this Agreement.
- 10.2 The Parties shall be exempted from the confidentiality obligations hereunder in the following circumstances:
 - 10.2.1 Any confidential information may be disclosed to the officers, representatives, agents, consultants, counsels and other persons who need to know such confidential information for the purpose of participation of any Party in this Transaction. Subject to such disclosure, such officers, representatives, agents, consultants, counsels and other persons shall be obliged to keep the Confidential Information confidential equivalent to the Confidential Information hereunder; and
 - 10.2.2 If any Confidential Information has entered the public domain through no fault of any Party, such Party shall no longer be subject to the confidentiality obligations with respect to such Confidential Information;

10.2.3 The relevant information that has been publicly disclosed or that has been disclosed according to the laws, regulations and/or the requirements of the securities regulatory departments, stock exchanges and the administrative organs that have handled the record-filing or examination and approval.

10.3 The Parties hereto mutually agree that any breach of the confidentiality obligation hereunder by any Party shall constitute a breach by such Party and the non-breaching Party shall have the right to request the breaching Party to bear liabilities for breach of contract and initiate legal proceedings to request the cessation of such breach or the adoption of other remedies so as to prevent further breach.

10.4 The confidentiality obligation set forth in this article shall not be terminated by termination of this Agreement.

11 FORCE MAJEURE

11.1 If a Party encounters earthquake, typhoon, flood, fire, military action, strike, riot, war or other unforeseeable Force Majeure Event beyond the reasonable control of such Party (each, a “**Force Majeure Event**”) and materially impedes its performance of this Agreement, such Party shall immediately notify the other Parties without undue delay, and provide the other Parties with detailed information and documentary evidence in respect of such event to explain the reason for its inability to perform or delay in performing all or part of the obligations hereunder within fifteen (15) days after the notice is given. The Parties shall consult with each other to seek and implement a solution acceptable to both Parties.

11.2 If an Force Majeure Event occurs, the Party affected by such event shall not be responsible for any damage, increased costs or losses which any of the other Parties may sustain by reason of the failure or delay of performance of its obligations under this Agreement and such failure or delay of performance of this Agreement shall not be deemed a breach of this Agreement. The Party encountering the Force Majeure Event shall take appropriate means to minimize or mitigate the effect of the Force Majeure Event and, as soon as practicably possible, attempt to resume performance of the obligation delayed or prevented by the Force Majeure Event; otherwise, the Party encountering the Force Majeure Event shall not be entitled to claim delay or relief for its obligations to the extent of the impact.

11.3 In the event that an Force Majeure Event or the effect thereof prevents one or all Parties from performing all or part of its or their obligations under this Agreement for more than three (3) months, the party not affected by the Force Majeure Event shall have the right to request termination of this Agreement, release of part of its or their obligations under this Agreement, or delay the performance of this Agreement.

12 GOVERNING LAW AND DISPUTE RESOLUTION

12.1 The formation of this Agreement, its validity, interpretation, implementation and resolution of any disputes arising hereunder shall be governed by and construed in accordance with the laws of the PRC.

- 12.2 All disputes arising from the implementation of this Agreement or in connection with this Agreement shall be resolved by the Parties through friendly consultation. Any dispute that cannot be resolved through consultation within thirty (30) days after the occurrence of such dispute, any Party shall have the right to submit the dispute to the China International Economic and Trade Arbitration Commission located in Beijing for arbitration in accordance with its arbitration rules then in effect. The arbitration tribunal shall consist of three (3) arbitrators to be appointed in accordance with the arbitration rules. The applicant shall appoint one (1) arbitrator, the respondent shall appoint one (1) arbitrator, and the third (3rd) arbitrator shall be appointed by the first two arbitrators through consultation or appointed by the China International Economic and Trade Arbitration Commission. The arbitration proceedings shall be conducted in Chinese. The arbitration award shall be final and binding on all Parties.
- 12.3 During the period when a Dispute is being resolved, the Parties shall continue to have their respective rights and perform their obligations under this Agreement other than those involved in the Dispute.

13 EFFECTIVENESS, MODIFICATION AND TERMINATION

- 13.1 Unless otherwise provided hereunder, this Agreement shall become effective upon signature by the legal representative or authorized representative of each Party and affixation of company seal by each Party.
- 13.2 Contents related to the capital increase by Hefei Investor shall be implemented after approval by the State-owned Assets Supervision and Administration Agency of Hefei City. Contents related to the capital increase by Anhui High-tech Co. shall be implemented after the relevant state-owned assets approval procedures have been completed.
- 13.3 If Hefei Investor and Anhui High-tech Co. request to make change to this Agreement in connection with effecting the procedures necessary to obtain state-owned assets approval, the Parties agree to enter into a supplement hereto. If there is any inconsistency, such supplement shall prevail.
- 13.4 This Agreement may be amended or modified by the Parties through mutual consultation. Any amendment or modification shall be made in writing and become effective upon execution by the Parties hereto.
- 13.5 If any term of this Agreement is found, held or deemed to be illegal, invalid or unenforceable by an arbitral body, judicial authority or administrative authority, the validity, legality and enforceability of the remaining terms shall not be affected or impaired thereby. The Parties agree to amend this Agreement or execute a supplementary agreement appropriately as the case may be through consultation in good faith to restore the original intent of this Agreement and the rights or obligations enjoyed or performed by the Parties as originally set forth herein.
- 13.6 If relevant terms hereof are amended due to change of relevant laws, regulations or policies or as required by governmental Authorities, the Parties shall use their respective best efforts to unanimously accept such amendment and enter into relevant agreements to restore and

confirm the rights or obligations that shall be enjoyed or performed by the Parties hereunder in compliance with the requirements of relevant laws, regulations or policies.

13.7 This Agreement may be terminated by the following means:

- 13.7.1 The Parties agree to terminate this Agreement in writing and determine the termination effective date;
- 13.7.2 Prior to the Closing Date, the Investors shall have the right to terminate this Agreement by giving a written notice to the other Parties in the event of the occurrence of any of the following circumstances and shall specify the effective date of such termination in the notice:
- (1) The statements, representations or warranties of the Target Company or the NIO Parties are untrue or have omission in material aspects;
 - (2) The Target Company or any NIO Party breaches any covenant, statement, representation, warranty, covenant or any other obligation hereunder, and fails to take effective remedies satisfactory to the Investors within twenty (20) business days after the Investor gives a written notice of such breach;
 - (3) If this Capital Increase in Cash and Equity Contribution fail to be completed within sixty (60) business days as from the Execution Date hereof or another date agreed by the Parties through consultation (which is the later of the AMR Re-registration Completion Date and the Closing Date), because any of the Investor's closing conditions is proved to be unfulfilled or not waived by the Investors.

13.8 Effect of Termination.

- 13.8.1 After this Agreement is terminated in accordance with the above Article 13.5.1, unless otherwise agreed upon by the Parties, each Party hereto shall refund the considerations received from the other Parties hereunder based on the principles of fairness, reasonableness, honesty and credibility and try to restore to the status prior to the execution of this Agreement.
- 13.8.2 If any of the Investors terminates this Agreement in accordance with the above Article 13.7.2, and if such Investor has paid the capital increase price to the Target Company then, the Target Company shall return the capital increase price in full to the Investor and pay the Investor interest calculated at the interest rate of 8.5% per year (compounded annually). Such interest shall accrue from the actual payment date of each installment of the Capital Increase Price. If such interest cannot make up all losses incurred by such Investor, the Target Company shall make up the same to the Investor. The NIO Parties shall bear joint and several liability for the return of the above Capital Increase Price and interest accrued thereon.
- 13.8.3 After termination of this Agreement, all rights and obligations of the Parties

hereunder shall terminate. The termination of this Agreement shall not affect the non-defaulting party's right to request the defaulting party to pay liquidated damages and compensate for losses.

14 NOTICES AND DELIVERY

- 14.1 During the term of this Agreement, if the performance of this Agreement is affected due to the change of laws, regulations and policies, or due to any Party's loss of its qualification and/or ability to perform this Agreement, such Party shall assume the obligation to notify the other Parties within a reasonable period of time.
- 14.2 The Parties agree that any notice relating to this Agreement shall only be effective if it is delivered in writing. Delivery in written forms include but are not limited to delivery by courier, mail and email. Any such notice shall be deemed to have been delivered: (a) by courier or personal delivery, on the date it is received by the recipient; (b) by registered or certified mail, seven (7) business days after it is sent; and (c) by e-mail, immediately after the e-mail is successfully sent. Notices shall be deemed effectively given to the following places or to the following e-mail boxes:

SDIC

Contact: DU Shuo
Mailing Address: [***]
Contact No.: [***]
Email: [***]

Anhui High-tech Co.

Contact: LIU Jingran
Mailing Address: [***]
Contact No.: [***]
Email: [***]

Hefei Construction Co.

Contact: XU Jing
Mailing Address: [***]
Contact No.: [***]
Email: [***]

The NIO Parties

Contact: LI Bin

Mailing Address: [***]

Contact No.: [***]

Email: [***]

The Company

Contact: LI Bin

Mailing Address: [***]

Contact No.: [***]

Email: [***]

- 14.3 If any Party changes the above mailing address or contact information (the “**Changing Party**”), it shall notify the other Party within seven (7) days after the occurrence of such change. If the Changing Party fails to notify the other Party of the same in a timely manner, it shall bear the losses arising from such failure.

15 MISCELLANEOUS

- 15.1 This Agreement, other Transaction Documents and the exhibits attached hereto shall constitute the entire agreement of the Parties with respect to this Transaction and supersede any prior agreement, letter of intent, memorandum of understanding, representations or other obligations (whether written or oral, including various forms of communication) of the Parties with respect to this Transaction and this Agreement (including amended or modified agreements or amendments thereto, and the other Transaction Documents) contains the only and entire agreement of the Parties with respect to the matters hereunder.
- 15.2 The Exhibits hereto shall be an integral part of this Agreement and shall be supplemental to and have the same legal effect as the text hereof.
- 15.3 Subject to the relevant provisions under this Agreement and the Shareholders Agreement, SDIC, Anhui High-tech Co. and the Hefei Investor shall have the right to transfer all or part of their rights, interests and obligations under this Agreement to their Affiliates or third parties agreed by the NIO Parties. The relevant transferee shall acknowledge and agree to the entire contents of this Agreement, and shall re-sign this agreement with other Parties or sign relevant supplementary agreements or joinder agreements to confirm their rights and obligations. Regarding the aforementioned transfer, the other Parties to this Agreement hereby waive their rights of first refusal and any other priority rights that they may have in accordance with applicable PRC laws, this Agreement, the Shareholders Agreement, Target Company's Articles of Association, or any other cause.

- 15.4 The Investors' implementation of this Transaction does not authorize its use of any trademark, trade name, service mark or logo (or any abbreviation or imitation thereof, including, without limitation, "SDIC", "SDIC Merchants" and "SDIC") of the Investors or their Affiliates. Without the prior written consent of the Investors, the Target Company and the other Group Members, the NIO Parties and its Affiliates shall not directly or indirectly represent that any product or service provided by them has been approved or acknowledged by the Investors or their Affiliates.
- 15.5 For the purpose of providing the Investors with all the rights, powers and remedies granted hereunder, upon reasonable request of the Investors from time to time, the other Parties shall take all such further acts and actions or cause all such further acts and actions to be taken and execute or procure the execution of all such further documents.
- 15.6 **If any provision in this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, the legality, validity and enforceability of the remainder of this Agreement shall not be affected. The Parties shall use their best reasonable efforts in order to substitute the invalid or unenforceable provision with a valid and enforceable substitute provision that comes as close as possible to the invalid or unenforceable provision in terms of its intended meaning and that ensures that the objectives of the invalid or unenforceable provision are as close as possible.**
- 15.7 No failure or delay of any Party to exercise and/or enjoy its rights and/or benefits hereunder shall be deemed as a waiver of such rights and/or benefits, nor shall any partial exercise of such rights and/or benefits preclude any future exercise of such rights and/or benefits.
- 15.8 In the event that a separate agreement is required to be executed in accordance with the form provided by the governmental Authorities for the purpose of requesting a governmental authority to perform of a certain act in connection with the Transaction contemplated by this Agreement, this Agreement shall have full priority over the said separate agreement and such agreement may only be used to request performance of such specific act from the governmental authority and shall not be used to establish and prove the rights and obligations of the relevant Parties with respect to the matters stipulated by this Agreement.
- 15.9 Independence
- 15.9.1 The Parties agree that each Investor shall have rights and obligations to them respectively in connection with this Agreement as the Investors and the obligations and liabilities of each Investor under this Agreement and other Transaction Documents shall be separate but not joint and several.
- 15.9.2 If any dispute arises between any of the Investors and any other Party in connection with the interpretation of this Agreement or other Transaction Documents, the rights and obligations of such Investor in connection with the matters referred to in this Agreement and other Transaction Documents to which the Investors relate shall be interpreted separately. The execution, effectiveness, performance, termination or dispute of this Agreement and the other Transaction Documents by an Investor will not have any adverse effect on the execution,

effectiveness, performance, rescission and dispute of this Agreement and the other Parties.

15.9.3 The waiver of rights or termination of this Agreement by each Investor shall be valid only within the scope of rights and obligations of such Investor and shall not constitute a waiver of rights or termination of this Agreement by any other Party.

15.10 This Agreement is written in the Chinese language in ten (10) originals with the same legal effect. Each Party shall hold one (1) counterpart.

The Parties hereby execute this Agreement as of the date first written above.

[SIGNATURE PAGES FOLLOW]

(This is the Signature Page to the NIO China Investment Agreement)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first written above.

CMG-SDIC Capital Management Co., Ltd.

(Company Chop)

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title:

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first written above.

Anhui Provincial Emerging Industry Investment Co., Ltd.

(Company Chop)

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title:

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first written above.

HeFei City Construction and Investment Holding (Group) Co., Ltd.

(Company Chop)

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title:

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first written above.

NIO Inc.

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title:

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first written above.

NIO Nextev Limited

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title:

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first written above.

NIO User Enterprise Limited

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title:

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first written above.

NIO Power Express Limited

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title:

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the date first written above.

NIO (Anhui) Holding Co., Ltd

(Company Chop)

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title:

NIO CHINA SHAREHOLDERS AGREEMENT

BY AND AMONG
CMG-SDIC CAPITAL MANAGEMENT CO., LTD.
ANHUI PROVINCIAL EMERGING INDUSTRY INVESTMENT CO., LTD.
HEFEI CITY CONSTRUCTION AND INVESTMENT HOLDING (GROUP) CO., LTD.
AND
NIO INC.
NIO NEXTEV LIMITED
NIO USER ENTERPRISE LIMITED
NIO POWER EXPRESS LIMITED
AND
NIO (ANHUI) HOLDING CO., LTD.

Hefei, China

Date: April 2020

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This NIO China Shareholders Agreement (this “**Agreement**”) dated as of April 29, 2020 (the “**Execution Date**”) is made by and among:

1. CMG-SDIC Capital Management Co., Ltd., a limited liability company duly established and existing under the Laws of the People’s Republic of China (“**PRC**”, for the purpose of this Agreement, excluding the Hong Kong Special Administrative Region, the Macao Special Administrative Region and Taiwan), holding a business license with unified social credit code of 91130600MA094UG35F, and with its legal representative being GAO Guohua, and registered office at West Dong Ao Wei Road, Rongcheng County, Baoding City, Hebei Province (“**SDIC**”);
 2. Anhui Provincial Emerging Industry Investment Co., Ltd., a limited liability company duly established and existing under the Laws of the PRC, holding a business license with unified social credit code of 9134000032543101X1, and with its legal representative being HUANG Linmu and registered address at Room 301, Innovation Building, No. 860 West Wangjiang Road, High-tech District, Hefei City, Anhui Province (“**Anhui High-tech Co.**”);
 3. HeFei City Construction and Investment Holding (Group) Co., Ltd., a limited liability company duly established and existing under the Laws of the PRC, holding a business license with unified social credit code of 91340100790122917R, and with its legal representative being LI Hongzhuo and registered address at No. 229 Wuhan road, Binhu New District, Hefei City, Anhui Province (“**Hefei Construction Co.**” or the “**Hefei Investor**”); Hefei Investor together with SDIC and Anhui High-tech Co., collectively referred to as the “**Investors**”);
 4. NIO Inc., a company duly established and validly existing under the Laws of the Cayman Islands, with its registered address at PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands, and is currently listed on the New York Stock Exchange of the United States (NYSE: NIO) (“**NIO Inc.**”);
 5. NIO Nextev Limited, a private company limited by shares duly organized and validly existing under the Laws of the Hong Kong of the PRC, with its company number of 2199750, and registered office at 30th Floor, Jardine House, Once Connaught Place, Central, Hong Kong (“**NIO HK**”);
 6. NIO User Enterprise Limited, a private company limited by shares duly organized and validly existing under the laws of the Hong Kong of the PRC, with its company number of 2487823 and registered office at 30th Floor, Jardine House, Once Connaught Place, Central, Hong Kong (“**UE HK**”);
 7. NIO Power Express Limited, a private company limited by shares duly organized and validly
-

existing under the Laws of the Hong Kong of the PRC, with its company number of 2472480 and registered office at 30th Floor, Jardine House, Once Connaught Place, Central, Hong Kong (“**PE HK**”, together with NIO HK and UE HK, the “**NIO HK Holding Platforms**”; the NIO HK Holding Platforms, together with NIO Inc., the “**NIO Parties**”); and

8. NIO (Anhui) Holding Co., Ltd., a limited liability company duly established and duly existing under the Laws of the PRC, holds a business license with unified social credit code of 91340111MA2RAD3M4R, and with its legal representative being WANG Zhenglin and registered address at West Susong Road and North Shenzhen Road, Economic and Technological Development District, Hefei City, Anhui Province (the “**Target Company**” or the “**Company**”).

Each of the above parties shall be referred to individually as a “**Party**” and collectively as the “**Parties**”.

WHEREAS:

1. As a well-known company producing smart electric motor vehicles, NIO Inc., with its headquarters in China, is listed on the New York Stock Exchange of the United States, and indirectly holds equity interests in the domestic operating entities through the NIO HK Holding Platforms. The domestic operating entities of NIO Inc. mainly include NIO Co., Ltd., Shanghai NIO Sales and Services Co., Ltd. and NIO Energy Investment (Hubei) Co., Ltd. and other companies indirectly controlled by NIO Inc. under the aforesaid PRC domestic operating entities, and mainly engage in the Main Businesses (as defined below). As of the Execution Date, the internal equity structure of NIO Inc. is set forth in Exhibit I to the Investment Agreement.
2. In accordance with the Investment Agreement in respect of NIO China entered into by and among the Investors, the NIO Parties and the Target Company dated April 29, 2020 (the “**Investment Agreement**”), the Parties agree that the Investors may subscribe for RMB 1,223,776,223.79 newly increased registered capital of the Target Company with RMB 7 billion (“**Investors Capital Increase Price**”) in accordance with the Investment Agreement and obtain 24.10% of equity interests in the Target Company on a fully diluted basis (i.e., any existing shareholder or any other party has exercised its subscription right, convertible loan or other rights convertible into any equity interests in the Target Company) after the completion of the capital increase. In the meantime, the Parties agree that, in accordance with the Investment Agreement, the NIO Parties shall subscribe RMB 3,839,997,517.47 of the Target Company’s newly increased registered capital through asset contribution with the value of RMB 17,704,785,800.00 and RMB 4.26 billion (equivalent to USD 602.1 million) in cash

(collectively, the “NIO Parties Capital Increase Price”, together with the Investors Capital Increase Price, the “Capital Increase Price”).

3. As one of the conditions precedent to the payment of the Investors Capital Increase Price by the Investors, the NIO Parties and the Target Company shall enter into this Agreement with the Investors. The Parties intend to make an agreement on the governance of the Target Company, the rights and obligations of the Parties and other matters applicable after the completion of this Transaction through this Agreement.

NOW, THEREFORE, based on equality and mutual benefit and in accordance with the *Contract Law of the PRC*, the *Company Law of the PRC* and other relevant PRC Laws and Regulations, with respect to the governance of the Target Company and the rights and obligations of the Parties and other matters, the Parties hereby agree as follows:

1 DEFINITIONS AND INTERPRETATIONS

- 1.1 Unless otherwise required by the context, the following terms shall have the meanings ascribed to them:

This Transaction	means	this Capital Increase in Cash and the asset contribution in accordance with the Investment Agreement
Price of this Capital Increase in Cash	means	the price at which the Investors and the NIO Parties subscribe for the registered capital of the Target Company in this Capital Increase in Cash, i.e., RMB 5.72 for one (1) Yuan registered capital; the price shall be determined based on the total value of the Target Company and the restructured assets that shall be injected by the NIO Parties into the Target Company in accordance with the Investment Agreement (including without limitation, all equity interests in NIO Co., Ltd., Shanghai NIO Sales and Services Co., Ltd. and NIO Energy Investment (Hubei) Co., Ltd., which shall be injected by the NIO HK Holding Platforms into the Target Company, and the other restructured assets that shall be injected d by the NIO Parties into the Target Company), which shall be 85% of the average of the market value of NIO Inc. for thirty (30)

		public trading days prior to April 21, 2020 published by the New York Stock Exchange, i.e., RMB 17.7678 billion
This Capital Increase in Cash	means	capital increase in cash in the Target Company by the Investors and the NIO Parties in accordance with the Investment Agreement and other relevant documents
This Agreement	means	this NIO China Shareholders Agreement and the exhibits or schedules hereto
Changing Party	means	the definition in Clause 28.2 hereof
Force Majeure	means	the definition in Clause 22.1 hereof
Restructuring	means	the definition in Clause 17 hereof
Laws/Laws and Regulation	means	applicable laws, regulations, departmental rules, local regulations, local rules, normative documents, treaties concluded, judgments or orders of any Governmental Authority
Co-Sale Feedback Period	means	the definition in Clause 8.1.1 hereof
Shareholders	means	the definition in Clause 2.1 hereof
Core Management Team	means	the personnel specified in Exhibit II hereof
Redemption Price	means	the definition in Clause 11.2 hereof
Redemption Notice	means	the definition in Clause 11.4.2 hereof
Joinder Agreement	means	the definition in Clause 14.2 hereof
Competing Business	means	the definition in Clause 18.4 hereof
Transaction Documents	means	this Agreement, the Investment Agreement, the articles of association of the Target Company and other agreements or documents entered into by the Parties in connection with the transactions contemplated by the Investment Agreement.

Group Members	means	upon the completion of the equity capital contribution in accordance with the Investment Agreement, the Target Company and enterprises directly or indirectly controlled by the Target Company including without limitation through equity investment or by contract
Controlling Shareholders	means	NIO Inc. and the NIO HK Holding Platforms
Drag-along Party	means	the definition in Clause 13.1 hereof
Drag-along Transaction	means	the definition in Clause 13.1.2 hereof
Drag-along Asset Transaction	means	the definition in Clause 13.1.2 hereof
Drag-along Notice	means	the definition in Clause 13.1 hereof
US Dollar/USD	means	the lawful currency of the United States of America
Target Company	means	NIO (Anhui) Holding Co., Ltd.
Holdco of the Target Company	means	the person who directly or indirectly holds equity interest/shares in the Target Company
Term of the Target Company	means	the definition in Clause 21.1 hereof
Proposed Transfer	means	the definition in Clause 7.1 hereof
Proposed Capital Increase	means	the definition in Clause 9.1 hereof
Platform	means	the definition in Clause 17 hereof
Term	means	the definition in Clause 21.1 hereof
Execution Date	means	April 29, 2020
Qualified IPO	means	the approval/examination/registration/filing of the application for initial public offering and listing of the Target Company by the CSRC of the PRC, Shanghai/Shenzhen Stock Exchange or other overseas securities issuance examination authority recognized by all Parties, and the initial public offering and listing of shares

		of the Target Company on the securities exchange market recognized by all Parties (for the avoidance of doubt, in no event shall a Qualified IPO include the listing on the PRC National Equities Exchange and Quotations System)
Renminbi/RMB	means	the lawful currency of the PRC
Anhui High-tech Co. Capital Increase Price	means	the definition in Clause 2.1.1.1 of the Investment Agreement
Remaining Property	means	the definition in Clause 12.1 hereof
Actual Controller	means	LI Bin, a PRC citizen, with his ID card number of 110108197406221836 and address at No. 901, Gate 2, Building 8, Yard 166, South Xiangshan Road, Shijingshan District, Beijing
Deemed Liquidation Event	means	the definition in Clause 12.5 hereof
Transferee	means	the definition in Clause 7.1 hereof
Investors	means	SDIC, Anhui High-tech Co., Hefei Construction Co. and/or actual investing entity designated by the aforesaid persons
Investors Subscription Price	means	the definition in Clause 10.1.2 hereof
Investors Capital Increase Price	means	the definition in Clause 2.1.1 of the Investment Agreement
Guaranteed Minimum Return on Investment	means	the definition in Clause 12.1 hereof
Capital Increase Price	means	the definition in Clause 2.1.2 of the Investment Agreement
Investment Agreement	means	the Investment Agreement in respect to NIO (Anhui) Holding Co., Ltd. and the exhibits or schedules thereto
Equity Interests to be Purchased by NIO	means	the definition in Clause 11.4.1 hereof
NIO Parties Capital Increase Price	means	the definition in Clause 2.1.1.2 of the Investment Agreement

NIO Capital Increase Right	means	the definition in Clause 9.2 hereof
Hong Kong	means	the Hong Kong Special Administrative Region of the PRC
Material or Major	means	any act or circumstance which may result in any single or accumulative losses of more than RMB 50 million suffered by the Investors
Preferential Distribution	means	the definition in Clause 12.1 hereof
ROFR Holder	means	the definition in Clause 7.1 hereof
Yuan	means	Renminbi yuan (unless the context otherwise requires)
Main Business	means	(i) Manufacturing, sale, purchase, after-sale repair and other supporting services of finished new-energy automobiles, supporting products for energy sources, parts, materials, components, machinery and equipment, as well as the technical development, technical services, technical transfer and technical consulting services relating thereto; (ii) Investing in accordance with the law in the fields in which foreign investment is allowed by the State; (iii) Providing enterprises with such services as technical support in the process of production, sale and market development, staff training and internal personnel management of enterprises, and assisting the enterprises in seeking loans and providing guarantees; (iv) Engaging in research and development of new products and high technologies, transferring research and development achievements, and providing corresponding technical services; (v) Providing Investors with consulting services, and providing affiliated companies with such consulting services as market information related to investment and investment policies; and (vi) Wholesale, commission

		agency and import and export of goods and technologies of automobile parts
Capital Increase Feedback Period	means	the definition in Clause 9.1.2 hereof
Capital Increase Notice	means	the definition in Clause 9.1.1 hereof
Government Authority	means	any PRC or non-PRC international organization, national, state, provincial, local, or other government, governmental, regulatory or administrative authority, agency or commission or any court, tribunal, or judicial or arbitral body
Governmental Approval	means	means any approval, authorization, consent, franchise, permit or registration by any Governmental Authority, or any report, circular, statement or other correspondences required to be filed with or submitted to any Governmental Authority
Complete Sale	means	the definition in Clause 13.1 hereof
Transfer Feedback Period	means	the definition in Clause 7.1.2 hereof
Transferring Shareholders	means	the definition in Clause 7.1 hereof
Transfer Notice	means	the definition in Clause 7.1.1 hereof
PRC	means	the definition in recitals hereof
CSRC	means	the China Securities Regulatory Commission

- 1.2 Capitalized terms used and not otherwise defined in this Agreement shall have the meanings ascribed to them in the Investment Agreement, unless otherwise required by the context of this Agreement.
- 1.3 “**Section**”, “**Clause**” and “**Exhibits**” mean the clause and section of, and the Exhibit to, this Agreement, respectively. Any reference to “**this Agreement**” shall be construed to include its exhibits.
- 1.4 “**Include**”, “**includes**” or “**including**” and similar words are not intended to be restrictive and shall be construed as if followed by the words “without limitation”.

- 1.5 The headings in this Agreement are inserted for the convenience of reference only and shall not be taken into consideration in the interpretation or construction of this Agreement.
- 1.6 Any reference to this Agreement or any other agreement shall be construed to include this Agreement or such other agreement as may be amended, modified, supplemented or novated.

2 SHAREHOLDERS OF THE TARGET COMPANY

2.1 Shareholders of the Target Company.

The shareholders of the Target Company (the “**Shareholders**”) are as follows:

NIO HK: **NIO Nextev Limited**, a company established and existing under the Laws of Hong Kong, the PRC, with its office at 30th Floor, Jardine House, Once Connaught Place, Central, Hong Kong.

Authorized Representative: LI Bin

UE HK: **NIO User Enterprise Limited**, a company established and existing under the Laws of Hong Kong, the PRC, with its office at 30th Floor, Jardine House, Once Connaught Place, Central, Hong Kong.

Authorized Representative: LI Bin

PE HK: **NIO Power Express Limited**, a company established and existing under the Laws of Hong Kong, the PRC, with its office at 30th Floor, Jardine House, Once Connaught Place, Central, Hong Kong.

Authorized Representative: LI Bin

SDIC: **CMG-SDIC Capital Management Co., Ltd.**, a limited liability company duly established and existing under the Laws of the PRC, holds a business license with unified social credit code of 91130600MA094UG35F, and with registered office at West Dong Ao Wei Road, Rongcheng County, Baoding City, Hebei Province.

Legal Representative: GAO Guohua

Anhui High-tech Co.: **Anhui Provincial Emerging Industry Investment Co., Ltd.**, a limited liability company duly established and existing under

the Laws of the PRC, holds a business license with unified social credit code of 9134000032543101X1, and with its registered office at Room 301, Innovation Building, No. 860 West Wangjiang Road, High-tech District, Hefei City, Anhui Province.

Legal Representative: HUANG Linmu

Hefei Investor: **HeFei City Construction and Investment Holding (Group) Co., Ltd.**, a limited liability company duly established and existing under the Laws of the PRC, holds a business license with unified social credit code of 91340100790122917R, and with its registered office at No. 229 Wuhan road, Binhu New District, Hefei City, Anhui Province.

Legal Representative: LI Hongzhuo

3 OVERVIEW OF THE TARGET COMPANY

3.1 Basic Information of the Target Company.

- 3.1.1 In accordance with the applicable PRC Laws, the Shareholders agree to hold the equity interests in the Target Company jointly pursuant to the terms and conditions of this Agreement.
- 3.1.2 The name of the Target Company in Chinese shall be “蔚来(安徽)控股有限公司”.
- 3.1.3 The name of the Target Company in English shall be “NIO (Anhui) Holding Co., Ltd.”.
- 3.1.4 The registered address of the Target Company shall be West Susong Road and North Shenzhen Road, Economic and Technological Development District, Hefei City, Anhui Province.

3.2 Nature of the Target Company.

The Target Company is a limited liability company with the status of an enterprise legal person. The establishment of and conduct of all activities by the Target Company shall comply with the relevant provisions of the PRC Laws. Its lawful rights and interests shall be protected by the PRC Laws.

3.3 Limited Liability

As the Target Company is a limited liability company under the PRC Laws, it shall be liable to its debts to the extent of all of its assets. Under any circumstance, the liabilities and risks of each Shareholder of the Target Company shall be limited to the amount of their respective contributions to the registered capital of the Target Company expressly subscribed by it under Clause 5.1 below. Furthermore, none of the Shareholders shall have liability whatsoever, jointly or severally, for any debts or obligations of the Target Company.

4 PURPOSE AND SCOPE OF BUSINESS OF THE TARGET COMPANY

4.1 Purpose of the Target Company

The purposes of the Shareholders in jointly investing in the Target Company shall be as follows: the Shareholders are committed to making the Target Company achieve good economic performance through the operation and management of the business of the Target Company.

4.2 Scope of Business of the Target Company

The business scope of the Target Company is as follows: 1. Investment in the fields in which foreign investors are allowed by the state; 2. Provision of the following services to the enterprise it invests in as engaged by such investee in writing: (1) assisting or acting as agent for the enterprise it invests in to purchase, from both home and abroad, any machinery equipment and office equipment for such enterprise's own use, or any material, components and parts needed in manufacturing, and to sell the products manufactured by the enterprise it invests in at both home and abroad, and to provide after-sale service; (2) providing the enterprise it invests in with technological support and other services in the process of manufacturing, sale and market development of product; (3) establishing scientific research and development center or department within the territory of the PRC to engage in the research and development of new products and high technologies, to transfer its research and development achievements, and to provide corresponding technical services; (4) providing its investors with consulting services, and to provide its affiliates with consulting services such as market information and investment policies in relation to its investment; (5) undertaking the outsourcing services of its parent company and affiliates; (6) providing technical development, technical services, technical transfer and technical consultation services for finished new-energy automobiles and the relevant parts thereof; wholesale and commission agent (excluding auction) of automobile parts; import and export of machinery equipment, automobile parts, goods and technologies; sale, lease, designated driving, repair and maintenance (limited to the operations by its branches) and after-sale service of automobiles; sale of automobile supplies and accessories, mechanical equipment, general merchandise, clothing accessories, toys, beverages, gifts and crafts, second-hand automobiles; operation of charging pile facilities; vehicle insurance agent; design, development, technical services and consultation of vehicle-mounted system and software; automobile exhibition activities and marketing; conference, exhibition and catering services; design, production, publication and agent of domestic advertisements; production and sale of food; and import and export of commodities and technologies of all kinds (excluding commodities or technology of which export or import

is forbidden or is limited to certain corporation as required by the state) (Business items subject to approval in accordance with laws shall not be carried out unless approved by relevant authorities).

The business scope of the Target Companies shall be subject to the descriptions on the business license issued by the Registration Authority.

5 REGISTERED CAPITAL

5.1 Registered Capital

The registered capital of the Target Company shall be RMB 5,074,773,741.26, of which:

- 5.1.1 NIO HK shall subscribe to RMB 2,539,030,264.99, representing 50.03% of the registered capital of the Target Company, of which RMB 5,500,000 shall be contributed in cash in RMB and has been paid up as of the Execution Date hereof; RMB 2,293,891,006.40 shall be contributed in the form of equity interests in NIO Co., Ltd.; and the remaining RMB 239,639,258.59 shall be contributed in the form of intellectual property rights;
- 5.1.2 UE HK shall subscribe to RMB 1,252,136,433.60, representing 24.69% of the registered capital of the Target Company, of which RMB 5,500,000 shall be contributed in cash in RMB and has been paid up as of the Execution Date hereof; RMB 744,755,244.76 shall be contributed in cash in USD equivalent; and the remaining RMB 501,881,188.84 shall be contributed in the form of equity interests in Shanghai NIO Sales and Services Co., Ltd.;
- 5.1.3 PE HK shall subscribe to RMB 59,830,818.88, which shall be contributed in the form of equity interests in NIO Energy Investment (Hubei) Co., Ltd., representing 1.18% of the registered capital of the Target Company;
- 5.1.4 SDIC or its designated party shall subscribe to RMB 174,825,174.83, which shall be contributed in cash in RMB, representing 3.44% of the registered capital of the Target Company;
- 5.1.5 Anhui High-tech Co. shall subscribe to RMB 174,825,174.83, which shall be contributed in cash in RMB, representing 3.44% of the registered capital of the Target Company; and
- 5.1.6 Hefei Investor shall subscribe to RMB 874,125,874.13, which shall be contributed in cash in RMB, representing 17.22% of the registered capital of the Target Company.

5.2 Timing of Capital Contribution

- 5.2.1 The contribution to the registered capital of the Target Company subscribed for by each of the shareholders shall be arranged as follows:

Shareholders	Subscribed Registered Capital (RMB, Yuan)	Form of Capital Contribution	Timing of Capital Contribution
NIO Nextev Limited	2,539,030,264.99	RMB 5,500,000 of the registered capital contributed in cash in Renminbi, which has been contributed in full as of the Execution Date hereof; RMB 2,293,891,006.40 of the registered capital contributed in equity interests in NIO Co., Ltd.; RMB 239,639,258.59 of the registered capital contributed in intellectual property rights	Within one (1) year after the closing in accordance with the Investment Agreement
NIO User Enterprise Limited	1,252,136,433.60	RMB 5,500,000 of the registered capital contributed in cash in Renminbi, which has been contributed in full as of the Execution Date hereof; RMB 744,755,244.76 of the registered capital contributed in cash in USD equivalent; RMB 501,881,188.84 of the registered capital contributed in equity interests in Shanghai NIO Sales and Services Co., Ltd.	On or before March 31, 2021 in accordance with the Investment Agreement
NIO Power Express Limited	59,830,818.88	Contributed in equity interests in NIO Energy Investment (Hubei) Co., Ltd.	Within sixty (60) working days after the execution date of the Investment Agreement
CMG-SDIC Capital Management Co., Ltd.	174,825,174.83	Contributed in cash in Renminbi	On the fifth (5 th) working day after all of the Investors' closing conditions under the Investment Agreement have been proved to be satisfied or waived

Shareholders	Subscribed Registered Capital (RMB, Yuan)	Form of Capital Contribution	Timing of Capital Contribution
Anhui Provincial Emerging Industry Investment Co., Ltd.	174,825,174.83	Contributed in cash in Renminbi	In principle, on the fifth (5 th) working day after all of the Investors' closing conditions under the Investment Agreement have been proved to be satisfied or waived; and shall in no event be later than September 30, 2020
Hefei Investor	874,125,874.13	Contributed in cash in Renminbi	On or before March 31, 2021 in accordance with the Investment Agreement
Total	5,074,773,741.26	/	/

5.2.2 In principle, Anhui High-tech Co. shall, on the fifth (5th) working day after all of the Investors' closing conditions have been proved to be satisfied or waived and shall in no event be later than September 30, 2020, pay all Anhui High-tech Co. Capital Increase Price of RMB 1,000,000,000.00 to a bank account opened by the Target Company, of which, RMB 174,825,174.83 shall be accounted for as registered capital of the Target Company, and RMB 825,174,825.17 shall be accounted for as the capital reserve of the Target Company. Each Shareholder agrees that, any third party designated by Anhui High-tech Co. may jointly pay the Anhui High-tech Co. Capital Increase Price with Anhui High-tech Co. under the Investment Agreement. When Anhui High-tech Co. and its designated third party accumulatively pay RMB 1,000,000,000.00 to the bank account opened by the Target Company, it shall be deemed as the completion of the payment obligation of Anhui High-tech Co. under Clause 3.3.1 of the Investment Agreement and the contribution obligation of registered capital of the Target Company under this Agreement. Upon completion of such payment obligation, such third party shall jointly enjoy the rights hereunder with Anhui High-tech Co., and shall jointly bear the obligations of Anhui High-tech Co. under this Agreement and other Transaction Documents (if applicable), provided that the third party has executed the Exhibit I (*Joinder Agreement*) hereto in accordance with Clause 14.2 hereof.

5.2.3 Each Shareholder agrees that, Hefei Investor may designate a third party to make payment of Hefei Investor capital increase price under the Investment Agreement, and due payment of each installment of the capital increase price by such third party designated by Hefei Investor shall be deemed completion of each installment of capital contribution payment obligation of Hefei Investor under the Investment

Agreement. Upon completion of such payment obligation, such third party shall jointly enjoy the rights hereunder with Hefei Investor, and shall jointly bear the obligations of Hefei Investor under this Agreement and other Transaction Documents (if applicable) in proportion to the paid-in capital contribution, provided that the third party has executed the Exhibit I (*Joinder Agreement*) hereto in accordance with Clause 14.2 hereof.

- 5.2.4 Each Shareholder agrees that, SDIC may designate a fund managed by it to make payment of SDIC capital increase price under the Investment Agreement, and due payment of the SDIC capital increase price by such fund managed by SDIC shall be deemed the completion of the payment obligation of SDIC under the Investment Agreement. Upon completion of such payment obligation, such third party shall enjoy the rights under this Agreement, and shall bear the obligations of SDIC under this Agreement and other Transaction Documents (if applicable), provided that the third party has executed the Exhibit I (*Joinder Agreement*) hereto in accordance with Clause 14.2 hereof.
- 5.2.5 Upon completion of the contributions to the registered capital of the Target Company by the Shareholders in accordance with the articles of association and the Investment Agreement, all such contributions shall become the sole property of the Target Company.

6 PROTECTIVE RIGHTS

6.1 Protective Rights

- 6.1.1 During the period in which the Investors hold equity interests in the Target Company, resolutions in respect of the following matters of major importance to the Target Company shall require approval by more than three-fourths (3/4) of the directors before the same is submitted to the Shareholders' meeting for resolution:
- (1) any amendment to the articles of association of the Target Company;
 - (2) any increase or decrease in the registered capital of the Target Company; and
 - (3) any merger, split-off, dissolution and/or change of corporate form of the Target Company.
- 6.1.2 During the period in which the Investors hold equity interests in the Target Company, resolutions in respect of the following matters material to the Target Company shall be adopted by affirmative votes of not less than three-fourths (3/4) of the directors of the Target Company before implementation (if such matters shall be submitted to the Shareholders' meeting for resolution as required by relevant Laws and Regulations or the articles of association of the Target Company, such matters shall be submitted to the Shareholders' meeting for resolution and approval before implementation, and the following matters shall

not be directly submitted to the Shareholders' meeting for resolution without resolution and approval by the Board of Directors):

- (1) any merger, split-off, dissolution and liquidation of the Target Company, or the Target Company applying for its bankruptcy and restructuring, and/or any decision on change of corporate form of the Target Company;
- (2) termination of the Main Business of the Target Company or any change to its current Main Business;
- (3) any equity financing plan of the Target Companies, or any increase, decrease or cancellation of any authorized share capital, issued shares or registered capital of the Target Companies, or any issuance, distribution, purchase or redemption of any shares/equity interests or convertible securities, or any share warrants, or issuance of options or any other matters that may result in the future issuance of new shares or the dilution of the ownership percentage of the Investors in the Target Company;
- (4) any related-party transaction beyond the annual budget between the Target Company and any of its affiliate whose financial statement is not included in a consolidated statement of the Target Company, in excess of RMB 100 million for a single transaction or RMB 200 million in aggregate within one (1) year;
- (5) any borrowing or any other security arrangement by the Target Company and/or any of its controlled subsidiaries beyond the bank credit granted prior to the Transaction or beyond the annual budget approved by the Shareholders' meeting or the Board of Directors of the Target Company after the Transaction, in excess of RMB 100 million for a single loan or RMB 200 million in aggregate within one (1) fiscal year;
- (6) any contract beyond the annual budget between the Target Company and any third party whose financial statement is not included in a consolidated statement of the Target Company out of the ordinary course of business of the Target Company, in excess of RMB 100 million;
- (7) any expenditure or payment beyond the annual budget including construction projects, establishment of any subsidiary or acquisition of equity interest in other companies, in excess of RMB 100 million for an expenditure or payment or RMB 200 million in aggregate within one (1) fiscal year;
- (8) any non-controlling long-term equity investment or any disposal of such investment made by the Target Company beyond the annual budget, in excess of 200 million for a single investment or disposal or in aggregate within any one (1) fiscal year;
- (9) any sale or disposal of assets or equity interests to any third party whose

financial statement is not included in a consolidated statement of the Target Company, in excess of RMB 200 million;

- (10) any lending of money in any form (including without limitation, inter-lending and bridge loan for purposes rather than operation) to any third party whose financial statement is not included in a consolidated statement of the Target Company;
- (11) any provision of guarantee, mortgage, pledge and security of any kind to any third party whose financial statement is not included in a consolidated statement of the Target Company;
- (12) any sale, transfer, license, pledge or disposition of any kind of any material brand, trademark, patent, copyright, non-patent technology or other intellectual properties of the Target Company and/or its controlled subsidiaries to any third party whose financial statement is not included in a consolidated statement of the Target Company;
- (13) formulation and submission of any proposal of any amendment to the articles of association of the Target Company to the Shareholders' meeting for its approval;
- (14) formulation and submission of any proposal of any adjustment to the number and composition of the Board of Directors of the Target Company to the Shareholders' meeting for approval;
- (15) any merger, Deemed Liquidation Event, drag-along event involving the Target Company and any other matter that may result in change of control of the Target Company;
- (16) determination of the application time of listing, percentage of issuance and stock exchange in connection with the Qualified IPO of the Target Company; and
- (17) amendment or change of the rights and pre-emptive rights of the Investors hereunder, or any restriction on such rights, or enabling any other Shareholders to enjoy rights more favorable than or equivalent to those of the Investors.

6.1.3 During the period in which the Investors hold equity interests in the Target Company, resolutions in respect of the following matters material to the Target Company shall be adopted by affirmative votes of not less than two-thirds (2/3) of the directors of the Target Company before implementation (if such matters shall be submitted to the Shareholders' meeting for resolution as required by relevant Laws and Regulations or the articles of association of the Target Company, such matters shall be submitted to the Shareholders' meeting for resolution and approval before implementation, and the following matters shall not be directly submitted to the Shareholders' meeting for resolution without

resolution and approval by the Board of Directors):

- (1) approval of the annual budget and final accounts of the Target Company; and
- (2) appointment or removal of CEO and CFO of the Target Company.

6.1.4 During the period in which the Investors hold equity interests in the Target Company, resolutions in respect of the following matters of major importance to the Target Company shall be adopted by not less than one-half (1/2) of the directors of the Target Company before implementation (if such matters shall be submitted to the Shareholders' meeting for resolution as required by relevant Laws and Regulations or the articles of association of the Target Company, such matters shall be submitted to the Shareholders' meeting for resolution and approval before implementation, and the following matters shall not be directly submitted to the Shareholders' meeting for resolution without resolution and approval by the Board of Directors):

- (1) to amend and approve the adoption of material accounting policies or change the fiscal year, and select and change the auditing firm among the "Big Four" accounting firms (i.e., PwC, DTT, KPMG and EY);
- (2) to distribute profits to the Shareholders and converse capital reserve into share capital; and
- (3) to establish, amend or implement any equity incentive plan/employee stock ownership plan of the Target Company.

6.1.5 During the preparation and formulation of the annual budget of the Target Company, the Investors shall be entitled to arrange observers to make observations and provide suggestions. Prior to the completion of the Qualified IPO of the Target Company, in respect of the annual budget, the annual final accounts, selection and appointment of CEO and CFO of the Target Company and other related matters, the directors nominated by the NIO Parties and the directors nominated by the Investors shall carry out a full consultation before such matters are formally submitted to the Board of Directors or the Shareholders' meeting for resolution.

6.1.6 The aforesaid protective right mechanism shall apply to other Group Members, and none of such Group Members shall engage in the aforesaid matters without the prior written review and approval by the Target Company in accordance with the aforesaid provisions.

6.2 Unless otherwise agreed in the Transaction Documents, the aforesaid clauses shall become void automatically as of the date of the acceptance of the application for the Qualified IPO of the Target Company. However, if such application for the Qualified IPO of the Target Company fails to be approved by the examination authority of the CSRC or relevant stock exchanges, or the Target Company fails to be listed on relevant stock exchanges, the full

validity of such provision entitling rights to the Investors shall restore automatically and immediately.

- 6.3 The Parties hereto agree to amend the articles of association of the Target Company in accordance with this Clause.

7 RIGHT OF FIRST REFUSAL

7.1 Grant and Exercise of the Right of First Refusal

Prior to the Qualified IPO of the Target Company and as long as the Investors hold equity interests in the Target Company, if the NIO Parties intend to indirectly transfer its equity interests in / shares of the Target Company to any third party other than its affiliate (“**Transferee**”) by transferring the equity interests in the Holdco of the Target Company, or if any Shareholders of the Target Company intends to transfer its equity interests in / shares of in the Target Company to any non-affiliated third party except for the Investors (“**Proposed Transfer**”), the NIO Parties shall give a prior written notice to the other Shareholders of the Target Company, which shall specify the terms and conditions of the Proposed Transfer or proposed disposal. Each of the other Shareholders of the Target Company (“**ROFR Holder**”) shall have the right of first refusal to purchase the equity interests in / shares of the Target Company under the same conditions in proportion to their then respective ratio of paid-in capital contribution (each of the aforesaid Shareholder who intends to transfer equity interests shall be referred to individually as a “**Transferring Shareholder**”).

7.1.1 If any Transferring Shareholder intends to transfer, directly or indirectly, any registered capital of the Target Company held by it, it shall give a written notice (“**Transfer Notice**”) to the ROFR Holders fifteen (15) working days before it enters into any binding agreement with such transferee with respect to the Proposed Transfer. The Transfer Notice shall include, without limitation, the number and price of the registered capital to be transferred, and the payment method of the price.

7.1.2 The ROFR Holders shall reply, in writing within fifteen (15) working days (“**Transfer Feedback Period**”) following the receipt of the aforesaid Transfer Notice, whether they opt to exercise the right of first refusal and the amount of registered capital to be purchased by them. If any ROFR Holder fails to reply within such Transfer Feedback Period, it shall be deemed to have waived the right of first refusal, consented to the Proposed Transfer, and waived the co-sale right enjoyed by it (if any).

If any ROFR Holder proposes to exercise the right of first refusal, it shall purchase all or part of the equity interests to be transferred at the proposed transfer price and on other same terms and conditions. If the total number of the equity interests to be transferred of which the ROFR Holder propose to exercise the right of first refusal is in excess of the number of the equity interests to be transferred, the maximum number of the equity interests to be transferred

which each ROFR Holder is entitled to purchase shall be equal to the product of the equity interests to be transferred multiplied by a fraction, of which the numerator is the total registered capital of the Target Company held by such ROFR Holder as of the date of the Transfer Notice, and the denominator is the total registered capital of the Target Company then held by all ROFR Holders that have elected to exercise the right of first refusal as of the date of the Transfer Notice. The delivery of a written notice from the ROFR Holders exercising the right of first refusal shall constitute a formal agreement between the Transferring Shareholders and such ROFR Holders in respect of sell and purchase all or part of the equity interests to be transferred (the amount of which to be subject to the adjustment as described above, if necessary) at the proposed transfer price and in accordance with other applicable terms and conditions set forth in the Transfer Notice. However, to clarify the transaction arrangement and facilitation of the change registration with competent administration for market regulation, the parties shall cooperate to enter into a written contract in accordance with the formal agreement between them.

- 7.1.3 If the ROFR Holders waive the right of first refusal in writing during the Transfer Feedback Period or fails to response within the Transfer Feedback Period, the Proposed Transfer shall be completed within thirty (30) working days from the earlier of the occurrence of the forgoing circumstances (the completion date shall be the date on which the re-registration with competent administration for market regulation is completed, if applicable); if the Proposed Transfer is not completed within such period, the Transferring Shareholders shall re-issue a Transfer Notice in accordance with Clause 7.1.1 hereof and the ROFR Holders shall have the right of first refusal and the right of co-sale (if applicable) with respect to such transfer.
- 7.1.4 If (a) any ROFR Holder waives the right of first refusal in writing during the Transfer Feedback Period, or (b) any ROFR Holder fails to response within the Transfer Feedback Period, or (c) any ROFR Holder elects to exercise the right of first refusal under Clause 7.1.2 above but does not purchase all of the equity interests to be transferred, after the expiration of the Transfer Feedback Period, the Transferring Shareholders may sell the equity interests to be transferred (or, under the circumstance (c) above, the remaining equity interests to be transferred of which the ROFR Holders are not exercised) to the Transferee at a price and on terms and conditions not less favorable than that of the Proposed Transfer and those set forth in the Transfer Notice.
- 7.1.5 If the Investors agree to acquire the NIO Parties' equity interest in the Holdco of the Target Company in accordance with this clause and after the Qualified IPO of the Target Company, the NIO Parties undertake to procure, when the Investors decide to exit from the Target Company, the Holdco of the Target Company to sell the shares of the Target Company indirectly held by the Investors at an amount calculated on a basis of ratio of the Investors' interest in the Holdco of the Target Company, and cooperate with the Investors in completing the procedures for capital reduction by the Holdco of the Target Company; or the

NIO Parties or any third party designated by them shall acquire the interests of the Holdco of the Target Company held by the Investors at a price calculated on a basis of sales price of the shares of the Target Company by the Holdco of the Target Company.

7.2 Infringement on the Right of First Refusal and the Remedies

If the Proposed Transfer infringes the ROFR Holders' right of first refusal:

- 7.2.1 The Proposed Transfer shall be invalid, and none of the Parties shall cooperate in any manner on the registration or filing with the competent administration for market regulation and commerce bureau in respect of the Proposed Transfer;
- 7.2.2 The Transferee of the Proposed Transfer is not entitled to any right and interest as a shareholder of the Target Company; and
- 7.2.3 For the purpose of this Agreement, if the Transferring Shareholder intending to make the Proposed Transfer fails to give the Transfer Notice in accordance with Clause 7.1.1 hereof, or if there is material difference or material omission in the conditions of the Proposed Transfer from those given in the Transfer Notice, it shall constitute an infringement of the ROFR Holders' right of first refusal.

8 RIGHT OF CO-SALE

8.1 Grant and Exercise of Co-sale Right

As long as the Investors hold equity interests in the Target Company, if the NIO Parties intend to directly or indirectly conduct a Proposed Transfer and the Investor fails to exercise the right of first refusal in accordance with Clause 7 hereof, such Investors shall have the co-sale right, i.e., the right to sell the registered capital of the Target Company held by them at the same price and on the same terms and conditions in accordance with this Agreement.

- 8.1.1 The Investors reply in writing within fifteen (15) working days ("**Co-Sale Feedback Period**") from the date of receipt of the Transfer Notice of the Proposed Transfer from the Transferring Shareholders, stating whether they intend to exercise the co-sale right and the amount of the registered capital proposed to be co-sold. If such Investors fail to reply within such time limit, they shall be deemed to have waived the co-sale right enjoyed by them.
- 8.1.2 Each Investor shall be entitled to simultaneously transfer to such third party all or part of its equity interest in / shares of the Target Company at the same price and under the same conditions under the same conditions in proportion to their respective shareholding percentage at the time. If more than two Investors propose to exercise the co-sale right, the number of the registered capital of which each Investor exercising the co-sale right shall be equal to the product of the registered capital of the Target Company proposed to be transferred by the Transferring Shareholders to the Transferee *multiplied* by a fraction, of which

the numerator is the total registered capital of the Target Company then held by such Investor exercising the co-sale right as of the date of the Transfer Notice, and the denominator is the total registered capital of the Target Company then held by all the Investors that have elected to exercise the co-sale right and the Transferring Shareholders as of the date of the Transfer Notice. If the equity interests in / shares of the Target Company that the NIO Parties and the Investors intend to sell exceed the equity interests Holdco of/shares proposed to be transferred to such third party, the Investors shall have the right of priority to sell the equity interests/shares to such third party. If the subject matter of the Proposed Transfer is the equity interest in the Holdco of the Target Company, the amount of the equity interests to be sold of which the Investors exercising co-sale right shall be calculated on a basis of the number of equity interest in / shares of the Target Company representing the subject matter of the Proposed Transfer.

- 8.1.3 If, in any Proposed Transfer, the Transferee does not agree to purchase the equity interest held by the Investors in the Target Company, and as a result of which the Investors are unable to exercise the co-sale right, the Proposed Transfer shall be terminated and shall not continue.
- 8.1.4 If any Investor waives the co-sale right in writing during the Co-Sale Feedback Period or fails to respond within the Co-Sale Feedback Period, the Proposed Transfer shall be completed within thirty (30) working days from the earlier of the occurrence of the forgoing circumstances (the completion date shall be the date on which the re-registration with competent administration for market regulation is completed, if applicable); if the Proposed Transfer is not completed within such period, the Transferring Shareholders shall give a new Transfer Notice in accordance with Clause 7.1.1 hereof and the Investors shall have the co-sale right with respect to such transfer.

8.2 Infringement on the Co-Sale Rights and the Remedies

If the Proposed Transfer infringes the Investors' co-sale right:

- 8.2.1 The Proposed Transfer shall be invalid, and none of the Parties shall cooperate in any manner on the registration or filing with the competent administration for market regulation and commerce bureau in respect of the Proposed Transfer;
- 8.2.2 The Transferee of the Proposed Transfer is not entitled to any right and interest as a shareholder of the Target Company; and
- 8.2.3 For the purpose of this Agreement, if the Transferring Shareholder intending to make the Proposed Transfer fails to give the Transfer Notice in accordance with Clause 7.1.1 hereof, or if there is material difference or material omission in the conditions of the Proposed Transfer from those given in the Transfer Notice, it shall constitute an infringement of the Investors' co-sale right.

9 PRE-EMPTIVE RIGHTS

9.1 Grant and Exercise of the Pre-emptive Right

In the event of increase in the registered capital of the Target Company (“**Proposed Capital Increase**”), the Shareholders shall have the pre-emptive right to subscribe for the newly increased registered capital or newly issued shares of the Target Company in proportion to their respective ratio of paid-in capital contribution under the same conditions.

9.1.1 The Target Company shall give a written notice (“**Capital Increase Notice**”) to each Shareholder fifteen (15) working days before it enters into any binding agreement or convenes a Board’s meeting and/or Shareholders’ meeting in respect of the Proposed Capital Increase, which shall specify, including without limitation, the amount of the registered capital to be increased, the price of the Proposed Capital Increase, and the payment method of price of the registered capital to be increased. If two or more Shareholders with pre-emptive right propose to exercise the pre-emptive rights, the maximum amount of the registered capital for which each Shareholder is entitled to subscribe shall be the product of the newly increased registered capital of the Target Company *multiplied* by a fraction, of which the numerator is the total paid-in capital contribution to the Target Company then held by such Shareholder exercising the pre-emptive right as of the date of the Capital Increase Notice issued by the Target Company, and the denominator is the total paid-in capital contribution to the Target Company then held by all Shareholders that have elected to exercise the pre-emptive right as of the date of the Capital Increase Notice issued by the Target Company.

9.1.2 Each Shareholder shall reply in writing within fifteen (15) working days (“**Capital Increase Feedback Period**”) after the receipt of the aforesaid Capital Increase Notice whether it elects to exercise the pre-emptive right and the amount of the registered capital to be subscribed for by it. If any Shareholder fails to reply within the Capital Increase Feedback Period, it shall be deemed to have waived the pre-emptive right.

9.1.3 If any Shareholder waives the pre-emptive right in writing during the Capital Increase Feedback Period set forth in Clause 9.1.1 or fails to make response during the Capital Increase Feedback Period, the Proposed Capital Increase shall be completed within thirty (30) working days after the earlier of the occurrence of the foregoing circumstances (the completion date shall be the date on which the re-registration with competent administration for market regulation is completed); if the Proposed Capital Increase is not completed within such period, the Target Company shall re-issue a Capital Increase Notice in accordance with Clause 9.1.1 hereof and such Shareholder shall obtain the pre-emptive right with respect to such capital increase.

9.2 During the period from the Execution Date hereof to December 31, 2021, the NIO Parties shall have the right to unilaterally subscribe for the then newly increased registered capital of the Target Company at the Price of this Capital Increase in Cash by investing in not more than USD 600 million in addition to this Capital Increase in Cash (“**NIO’s Capital**

Increase Right”). The NIO Parties shall have the right to designate any of its affiliates to exercise the NIO Capital Increase Right. With respect to the newly increased registered capital of the Target Company to be subscribed for with such capital increase price of USD 600 million, each of the Investors hereby unconditionally and irrevocably waives any pre-emptive right under this Clause 9 and any other priority rights under relevant Laws. After the completion of such capital increase, the shareholding percentage of each Shareholder in the Target Company shall be adjusted accordingly.

9.3 Infringement on the Pre-emptive Right and the Remedies

If the Proposed Capital Increase infringes the Shareholders' pre-emptive right:

- 9.3.1 The Proposed Capital Increase shall be invalid, and none of the Parties shall cooperate in any manner on the registration or filing with the competent administration for market regulation and commerce bureau in respect of the Proposed Capital Increase;
- 9.3.2 The subscriber to the registered capital of the Target Company in respect of the Proposed Capital Increase is not entitled to any right and interest as a shareholder of the Target Company; and
- 9.3.3 For the purpose of this Agreement, if the Target Company fails to give the Capital Increase Notice in accordance with Clause 9.1.1 hereof, or if there is material difference or material omission in the conditions of the Proposed Capital Increase from those given in the Capital Increase Notice, it shall constitute an infringement of the Shareholders' pre-emptive right.

10 VALUE ASSURANCE AND ANTI-DILUTION RIGHTS

10.1 Value Assurance

- 10.1.1 Without prejudice to the NIO's Capital Increase Right set forth in Clause 9.2, without prior written consent of the Investors, the Target Company shall not issue any new shares or increase its registered capital that may result in dilution of the percentage of the Investors' shareholding or equity interest in any form prior to the Qualified IPO of the Target Company.
- 10.1.2 After the closing of this Transaction and prior to the date on which the Target Company obtains the guidance filing notice in connection with the Qualified IPO from the provincial securities regulatory bureau at the place where the Target Company is located, if the Investors consent in writing to the issuance of new shares or increase in the registered capital of the Target Company, the NIO Parties shall guarantee that the price of the subsequent financing shall not be lower than the Price of this Capital Increase in Cash that the Investors paid ("**Investors Subscription Price**").

10.2 Anti-dilution Compensation

If the final price or cost paid by any Investor (including the existing Shareholders and any newly joined shareholders) in any new round of investment of the Target Company in the future (either by means of equity interest transfer or capital increase) is lower than the Investors Subscription Price in accordance with certain agreement or arrangement entered into by and among the Target Company, the NIO Parties and the persons acting in concert with the Target Company and the NIO Parties, the Investors Subscription Price shall be re-calculated based on the following formula:

$$P2 = P1 \times (A + B) \div (A + C),$$

Of which,

P2 = the Investors Subscription Price after the adjustment;

P1 = the initial Investors Subscription Price;

A = the registered capital of the Target Company prior to the above mentioned capital increase on a fully diluted basis (i.e., assuming that each Shareholder or any other party has exercised its subscription right, convertible loan or other rights convertible into any equity interest in the Target Company);

B = the registered capital of the Target Company that can be acquired at P1 price with the above mentioned capital increase;

C = the registered capital of the Target Company actually increased in the above mentioned capital increase.

The Investors shall have the right to re-calculate the amount of the registered capital of the Target Company that they are entitled to, based on the adjusted Investors Subscription Price. To the extent permitted by Laws, the difference between such amount and the registered capital of the Target Company that the Investors subscribe for in accordance with the Investment Agreement shall be made up by the Target Company and the NIO Parties as follows: (i) the additional issuance of equity interests by the Target Company to the Investors at the lowest price permitted by applicable Laws; and (ii) the transfer by the NIO Parties of their equity interests in the Target Company to the Investors at the lowest price permitted by applicable Laws. If such compensation is made by means of subclause (i) above, the subscription price for the equity interests that the Investors shall pay to the Target Company shall be borne by the NIO Parties. Other expenses and costs incurred in the process of compensation (if any) shall be borne by the NIO Parties.

10.3 Implementation of the Anti-dilution Compensation

The implementation of anti-dilution compensation shall be fully completed within one hundred and twenty (120) days after the date on which the Investors exercise the anti-dilution right in accordance with Clause 10.2 hereof and notify the NIO Parties in writing (if additional time is required due to the performance of any public procedure such as appraisal and/or bidding, auction or listing in respect of the transfer of state-owned assets, such time shall not be included in one hundred and twenty (120) days). The completion date shall be the date on which the registration with competent administration for market regulation is completed.

10.4 Anti-dilution Compensation Overdue Penalty

If the NIO Parties fail to fully implement the anti-dilution compensation within the period specified in Clause 10.3 hereof, the NIO Parties shall pay the overdue penalty to the Investors from the first day of such delay. The overdue penalty shall be calculated at the rate of 0.02% of the outstanding amount of cash compensation payable for each day of such delay.

11 REDEMPTION RIGHT

11.1 Triggering Events of Investor Redemption Right

Upon the occurrence of any of the following events, the Investors shall obtain a redemption right, i.e., the right to request NIO Inc. or the NIO HK Holding Platforms to redeem all or part of the equity interest then held by the Investors in the Target Company. The Target Company shall assume an unlimited joint and several liabilities for the performance of the redemption obligations of NIO Inc. and the NIO HK Holding Platforms, and shall cause the Actual Controller to give a written undertaking of using his reasonable efforts to cause NIO Inc. and the NIO HK Holding Platforms to perform the redemption obligations hereunder:

- 11.1.1 Within sixty (60) months following the date on which the Target Company receives first installment of capital increase price from the Investors in full, the Target Company fails to complete the Qualified IPO;
- 11.1.2 Within forty-eight (48) months following the date on which the Target Company receives first installment of capital increase price from the Investors in full, the Target Company fails to submit an application for the Qualified IPO;
- 11.1.3 The NIO Parties or the Target Company has significant concealment, misleading, false statement or suspected fraud in the process of information disclosure for this Transaction;
- 11.1.4 The NIO Parties' capital contribution in the Target Company and the Group Members is false, fraudulent or has been withdrawn, or there is a Material breach in any provision in the formally executed Transaction Documents or any representations, warranties or undertakings thereunder by the NIO Parties and / or the Target Company;
- 11.1.5 The Actual Controller of the Target Company and the core management team of the Target Company as listed in Exhibit II ("**Core Management Team**") encounter Material integrity problems, which lead to the Material internal control loopholes in the Target Company, including without limitation, the off-balance-sheet sales income in cash which is unknown to the Investors, misappropriation of funds and unfair related-party transactions; or the Target Company has Material internal control loopholes, which cause Material adverse impact on the Target Company, even though such loopholes are not caused by the Actual Controller or the Core Management Team of the Target Company

intentionally;

- 11.1.6 There are major changes in the current Main Business of the Target Company as agreed in the Transaction Documents, or any license and permit of the Target Company necessary for operating such current Main Business is rescinded or the Target Company is not able to obtain and maintain such license or permit;
- 11.1.7 The Target Company breaches the provisions with respect to the use of the Capital Increase Price as agreed in the Investment Agreement;
- 11.1.8 There is a change of the Actual Controller of the Target Company or the actual controller of NIO Inc. due to any circumstance;
- 11.1.9 More than half of the Core Management Team resigns within two (2) years prior to the date of submission of the application for the Qualified IPO by the Target Company;
- 11.1.10 Any triggering event for redemption of the equity interests agreed between the Shareholders of the Target Company (except for the Investors) and the Target Company occurs, or any triggering event for redemption of the equity interests agreed between the aforesaid Shareholders and the NIO Parties occurs, and such Shareholders request the Target Company or the NIO Parties to redeem their equity interests in the Target Company;
- 11.1.11 Any triggering event for redemption of the equity interests agreed between the shareholders of NIO Inc. and NIO Inc. occurs, or shareholders of NIO Inc. request NIO Inc. or the actual controller of NIO Inc. to redeem the shares held by them, provided that the performance of such redemption obligations may result in change of the actual controller of NIO Inc. or the Target Company;
- 11.1.12 The Target Company or any of its creditors applies to a PRC court for bankruptcy and reorganization of the Target Company; or NIO Inc. or any of its creditors applies to a competent judicial authority for bankruptcy and reorganization of NIO Inc., which may result in change of the actual controller of NIO Inc. or the Actual Controller of the Target Company;
- 11.1.13 NIO HK fails to transfer all intellectual property rights which are non-monetary capital contribution set forth in the Investment Agreement to the Target Company due to any willful or negligent conduct of the NIO Parties within one (1) year after the closing of this investment;
- 11.1.14 As of March 31, 2021, the NIO Parties fail to pay to the Target Company their capital increase price in cash (i.e., RMB 4.26 billion) in full; and
- 11.1.15 The annual sale of the Target Company is less than 20,000 vehicles for two (2) consecutive years following the date on which the Target Company receives first installment of capital increase price from the Investors in full.

11.2 Price of Redemption

If the Investors obtain the redemption right upon the occurrence of any of the circumstances set forth in Clause 11.1 hereof, and they request NIO Inc. and/or the NIO HK Holding Platforms to redeem all or part of the equity interest in the Target Company then they held, the price of redemption (“**Redemption Price**”) shall be: with respect to each Investor, the sum of the total amount of the investment price paid by the Investors to the Target Company for the purpose of acquiring the equity interest in the Target Company *plus* an investment income calculated at a compound interest rate of 8.5% per annum on basis of the total amount of the investment price (for purpose of calculation, one year shall be calculated as 360 days, and if the time period is less than one year, it shall be calculated based on actual days); in particular, with respect to each Investor, if the investment prices paid by such Investor are paid to the Target Company in installment, the amount of the forging investment income of each installment of the investment price shall be calculated from the actual capital injection date of such batch of investment price. The Redemption Price shall be paid in cash.

The Investors shall have pari-passu redemption right. The Investors shall be entitled to the aforesaid Redemption Price by requesting NIO Inc. and/or the NIO HK Holding Platforms to purchase the equity interest held by the Investors in the Target Company.

11.2.1 NIO Inc. or the NIO HK Holding Platforms shall complete the payment of the Redemption Price within one hundred and twenty (120) days from the date of receipt of the Investor’s notice requesting to exercise the redemption right, the Party obliged to pay the Redemption Price shall pay additional overdue penalty to the Investors. The overdue penalty shall be calculated at the rate of 0.02% of the outstanding amount of cash compensation payable for each day of delay. The relevant parties shall otherwise agree on the time of redemption through consultation, if additional time is required due to the performance of any public procedure such as appraisal and/or bidding, auction or listing in respect of the transfer of state-owned assets, or the performance of any mandatory procedures of announcement in respect of the reduction in registered capital in the Target Company.

11.2.2 If NIO Inc. or the NIO HK Holding Platforms fail to pay the Redemption Price and the overdue penalty in full within one hundred and twenty (120) days from the receipt of the notice of the Investors requesting to exercise the redemption right, the Investors shall have the right to transfer all or part of the equity interest in the Target Company held by it to any third party at any time, and all the then-current Shareholders, the Target Company and the Actual Controller of the Target Company shall cooperate with such transfer. Notwithstanding the foregoing, if NIO Inc. or the NIO HK Holding Platforms fail to comply with the provision in respect of the redemption right, and if the Investors intend to transfer the equity interest in / shares of the Target Company to any NIO Parties Competitor, the Investors shall give a prior notice to the NIO Parties and consult with the NIO Parties in respect of the same, and the NIO Parties shall have the right of first refusal under the same conditions.

Under the circumstance that the NIO Parties elect not to exercise the right of first refusal or fail to notify the Investors in writing of its exercise of the right of first refusal within five (5) days after the receipt of the notice, the Investors may transfer their equity interest in /shares of the Target Company to such NIO Parties Competitor. For the avoidance of doubt, unless expressly indicated by the Investors in writing, no negotiation or execution of any legal document or performance of any closing obligation thereunder by the Investors in respect of the transfer of equity interests / shares to any third party shall be deemed as a waiver of their rights of claiming obligations of the redemption in accordance with the provision of redemption right hereof against any entity who has the redemption obligations. If the price received by the Investors for the transfer of equity interest/shares in the Target Company to a third party under this clause is less than the Redemption Price and overdue penalty entitled to the Investors in accordance with Clause 11.2, NIO Inc. or the NIO HK Holding Platforms shall make up the shortfall in cash to the Investors within thirty (30) days from the date on which the Investors and the third party enter into relevant equity transfer agreement.

11.2.3 If NIO Inc. or the NIO HK Holding Platforms fail to pay the Redemption Price in full within one hundred and twenty (120) days from the receipt of the notice of the Investors requesting to exercise the redemption right, the Investors shall have the right to give a notice to the Target Company requesting the Target Company to assume joint and several liability with NIO Inc. or the NIO HK Holding Platforms in respect of the payment of the Redemption Price and overdue penalty under Clause 11 hereof, and the Target Company shall complete the payment within thirty (30) days after receipt of the notice as required.

11.3 If, after the completion of this Transaction, the Investors intend to acquire more equity interests in /shares of the Target Company by means of capital increase or transfer of equity interests / shares, the Redemption Price of such further increased equity interests / shares shall be agreed by the relevant parties through negotiations.

11.4 The NIO Parties' Redemption Right

11.4.1 The Parties agree that, prior to the date on which the Target Company is converted into a company limited by shares for the purpose of the Qualified IPO of the Target Company, the NIO Parties and/or any third party designated by them shall have the right to redeem half of the equity interests in the Target Company held by Hefei Investor after this Investment (“**Equity Interests to be Purchased by NIO**”).

11.4.2 The NIO Parties and/or any third party designated by them shall have the right to give a written notice (“**Redemption Notice**”) at any time to Hefei Investor to request Hefei Investor to sell all or part of their equity interests to the NIO Parties and/or any third party designated by the NIO Parties. The Redemption Notice shall specify the amount of equity interests in the Target Company requested to be redeemed by each of the NIO Parties and/or any third party designated by the

NIO Parties, provided that the total number shall not exceed the Equity Interests to be Purchased by NIO.

- 11.4.3 The Parties agree that if the NIO Parties and/or any third party designated by the NIO Parties exercise(s) the aforesaid redemption right, the redemption price shall be the higher of the following: (a) the amount of the total paid-in capital increase price in respect of the equity interests to be purchased by the NIO Parties and/or their designated third party plus the investment income calculated at a simple interest rate of 10% per annum (the amount of the investment income of each installment of the investment price shall be calculated from the actual capital injection date of such installment of investment price); and (b) the value of the equity interests to be redeemed by the NIO Parties and/or their designated third party determined based on the valuation of the Target Company in the then latest round of financing.

12 LIQUIDATION PREFERENCE

12.1 Guaranteed Minimum Return on Investment

If the Target Company is to be liquidated due to bankruptcy, reorganization, dissolution, merger, split-off, acquisition or any other reasons, after the Target Company has paid up expenses and costs in all kinds, all debts and taxes in accordance with Laws, the Target Company shall first distribute such Remaining Property to the Investors in cash (“**Remaining Property**”), and the amount of the Remaining Property which shall be distributed first to the Investors shall be the higher of (“**Allocation Priority Amount**”): (1) the amount of Remaining Property to be distributed to the Investors in proportion to their respective paid-in capital contribution to the Target Company; or (2) the sum of the total amount of the investment price paid by the Investors to the Target Company for the purpose of acquiring the equity interest in the Target Company plus an investment income calculated at a compound interest rate of 8.5% per annum on basis of the total amount of the investment price (“**Guaranteed Minimum Investment Return**”). If the Remaining Property of the Target Company is not sufficient to be distributed among the Investors according to the Allocation Priority Amount of the Investors, the Target Company shall distribute the Remaining Property among the Investors in proportion to the Investors’ respective Allocation Priority Amounts.

12.2 Audit of Remaining Property

The Parties unanimously agree that, in the event of the liquidation of the Target Company, an accounting firm recognized by the Parties shall be engaged to audit the balance sheet and property list prepared by the Target Company, and the book value of the Remaining Property shall be subject to the audit results of the auditor so appointed.

12.3 Distribution of Remaining Property

If the Investors have received the Allocation Priority Amount in full, the remaining property of the Target Company distributable to its Shareholders in accordance with the Laws shall be distributed to the other Shareholders of the Target Company in proportion to

their respective shareholding percentages.

12.4 Compensation of Insufficient Distribution

If the Allocation Priority Amount received by the Investors in accordance with Clause 12.1 is less than the Guaranteed Minimum Investment Return, NIO Inc. and the NIO HK Holding Platforms shall compensate the Investors in cash with the amount they obtained in the liquidation. The amount of such compensation equals to the Guaranteed Minimum Investment Return *minus* the amount the Investors obtained in the liquidation. If the aggregate amounts obtained by NIO Inc. and the NIO HK Holding Platforms in the liquidation are not sufficient to make up the difference between the Guaranteed Minimum Investment Return and the amount the Investors obtained in the liquidation, the Investors shall be entitled to the amount which NIO Inc. and the NIO HK Holding Platforms should have obtained in the liquidation in proportion to the Investors' respective Allocation Priority Amount.

12.5 Deemed Liquidation Event

Any of the following events shall be deemed as the liquidation of the Target Company (“**Deemed Liquidation Event**”):

- 12.5.1 Any merger, split-off, acquisition, reorganization, equity transfer, share swap, capital and share increase or other similar one or a series of transactions of the Target Company, which may result in change of control of the Target Company (subject to a legal opinion issued by a law firm recognized by the NIO Parties and the Investors and affixed with the official chop of such firm);
- 12.5.2 Any sale, transfer, lease or disposal of all or substantially all of the business or assets of the Target Company (or a series of transactions that may result in sale, transfer, lease or disposal of all or substantially all of the business or assets of the Target Company); and
- 12.5.3 Exclusive and irrevocable license to a third Party all or substantially all of the intellectual property of the Target Company.

12.6 Distributions in a Deemed Liquidation Event

In case of a Deemed Liquidation Event, the Investors shall have the right to require the Target Company and/or all Shareholders of the Target Company to realize in substance the policies of distribution set forth in Clause 12.1 and Clause 12.3 hereof in a reasonable manner in accordance with Laws and Regulations, so as to ensure the priority liquidation right of the Investors or the distribution of the Guaranteed Minimum Investment Return. In the event that the total consideration received by the Investors in such Deemed Liquidation Events is not sufficient to realize the Guaranteed Minimum Investment Return of the Investors, NIO Inc. and the NIO HK Holding Platforms undertake to compensate separately the shortfall to the Investors in cash, and to assume joint and several liabilities for such compensation.

12.7 Application of Conflicts of Agreement

Notwithstanding the provisions of this Clause 12, upon occurrence of the events set forth in Clause 13, the Parties agree and acknowledge that the relevant transaction consideration shall be allocated in the manner described in Clause 13.

13 DRAG-ALONG RIGHT

13.1 Exercise of Drag-along Right

If the Investors fail to exit through exercising the redemption right set forth in Clause 11 hereof due to any breach or other fault or negligence of the NIO Parties, and if the third party intends to purchase more than fifty percent (50%) of equity interest in the Target Company or all or substantially all/most of the assets or business of the Target Company (collectively, the “**Co-Sale**”), then the Investors that individually or in the aggregate hold more than two-thirds (2/3) of the then total equity interests held by all Investors in this Transaction (the “**Drag-along Party**”) shall have the right to give a written notice (“**Drag-along Notice**”) to the NIO Parties, which shall specify the basic information of such third party, the number of equity interest or description of assets that they intend to purchase, the proposed purchase price and other material terms and conditions, and request the NIO Parties, together with the Drag-along Party, to sell to such third party the assets of the Target Company or equity interests in the Target Company respectively held by them at the same price and under the same conditions:

13.1.1 If a third party intends to purchase the equity interest in the Target Company, the NIO Parties shall have the right to decide and notify the Drag-along Party in writing within thirty (30) days after the receipt of the Drag-along Notice whether they elect to purchase all of the Target Company’s equity interests held by the Drag-along Party at the proposed purchase price and on other equivalent terms and conditions, and to deliver a written decision to the Drag-along Party. Such written decision shall constitute a contract between the NIO Parties and the Drag-along Party for the acquisition of all of the Drag-along Party’s equity interest in the Target Company. If, upon the expiration of the forgoing thirty (30)-day period, or if the NIO Parties reply in writing not to exercise their first refusal right, the Drag-along Party shall have the right to request the NIO Parties to sell, together with the Drag-along Party, their respective equity interest in the Target Company that such third party intends to purchase at the same price and under the same conditions (“**Drag-along Equity Interest Transaction**”). If the consideration obtained by each Drag-along Party through the Drag-Along Equity Interest Transaction is less than the Redemption Price receivable by such Drag-along Party, all transaction consideration obtained by the NIO Parties through the Drag-along Equity Interest Transaction shall be distributed to each Drag-along Party in proportion to the Redemption Price receivable by such Drag-along Party in order to make up the shortfall.

13.1.2 If a third party intends to purchase the assets of the Target Company, the Drag-along Party shall have the right to request the Target Company to sell to such

third party the assets of the Target Company that such third party intends to purchase at the proposed purchase price and on other terms and conditions (“**Drag-along Assets Transaction**”, together with the Drag-along Equity Transaction, the “**Drag-along Transaction**”). After such third party has paid up the consideration for the Drag-along Assets Transaction in full to the Target Company, the Target Company shall redeem all equity interests held by each Drag-along Party in the Target Company. In consideration of such payment, the Target Company shall pay to each Drag-along Party with transaction consideration for the Drag-along Assets in proportion to the shareholding percentage on the basis of Redemption Price that each Drag-along Party shall receive. If the consideration received by each Drag-along Party through the Drag-along Asset Transaction is less than the Redemption Price receivable by such Drag-along Party, all transaction consideration obtained by the NIO Parties through the Drag-along Asset Transaction shall be distributed to each Drag-along Party in proportion to the Redemption Price receivable by such Drag-along Party so as to make up the shortfall.

- 13.2 The NIO Parties shall use their best efforts to cooperate with the Drag-along Party to consummate the Drag-along Transaction, including without limitation, to vote in favor of such Drag-along Transaction at the Shareholders’ (general) meeting and the Board meeting, to execute all necessary resolutions and documents at the request of the Drag-along Party or take all reasonable actions as the Drag-along Party considers necessary, and to make representations and warranties customary for transactions to the third party in the relevant transaction documents in connection with the Drag-along Transaction.

If the consideration obtained by the Investors through the above Drag-along Transaction is less than the Redemption Price, all transfer prices obtained through the Drag-along Transaction shall be distributed to the Investors in proportion to the respective Redemption Price to which the Investors shall be entitled.

14 RESTRICTION ON EQUITY TRANSFER

14.1 Consent Right to Equity Transfer

Prior to the completion of the Qualified IPO of the Target Company, without prior written consent of the Investors or unless otherwise agreed in the Transaction Documents, the NIO Parties shall not, directly or indirectly, transfer, pledge or otherwise dispose the equity interests in / shares of the Target Company if such act may cause the total (direct and indirect) shareholding percentage of NIO Inc. in the Target Company to be decreased to less than 60%. For the avoidance of doubt, (a) the NIO Parties have the right to transfer, pledge or otherwise dispose not more than 15% of the direct and indirect equity interests in the Target Company, without prior written consent of the Investor; and (b) provided that without prejudice to the foregoing, the NIO Parties have the right to transfer all or part of its equity interests in the Target Company to any of its affiliates without prior written consent of the Investors, and the Investors agree to waive their respective right of first refusal, co-sale right and other pre-emptive rights hereunder with respect to such transfer.

Prior to the completion of the Qualified IPO of the Target Company, unless otherwise approved by the Board of Directors of the Target Company, the NIO Parties shall use their best efforts to cause the equity interests in the Target Company or shares of the management / employee shareholding platform directly or indirectly held by the Core Management Team, and the equity interests in the Target Company directly or indirectly held by the NIO HK Holding Platforms, not to be transferred or disposed of during such period prior to the completion of the Qualified IPO of the Target Company.

14.2 Consent to Transaction Documents

Unless otherwise provided in this Agreement or other Transaction Documents, on the date on which any new shareholder of the Target Company becomes a shareholder of the Target Company in the future in accordance with the PRC Laws, such new shareholder shall execute a binding joinder agreement in the form set forth in the Exhibit I hereto (“**Joinder Agreement**”) to become a party hereto, and shall acknowledge the arrangements under this Agreement and other Transaction Documents and consent to the restrictions imposed by this Agreement and other Transaction Documents.

15 EQUITY INCENTIVE

15.1 Principles of Equity Incentive

The Investors encourage the Target Company to maintain the stability of its management team by adopting equity incentives, provided that unless with prior written consent of the Investors, the equity incentives carried out by the Target Company at any time shall satisfy the following requirements:

15.1.1 The equity incentive plan shall not cause any material adverse effect on the Qualified IPO of the Target Company, including without limitation, that adoption of equity incentive plan shall not cause the number of direct or indirect shareholders of the Target Company (excluding the shareholders of NIO Inc.) to exceed 200, and shall not cause any instability in the shareholding structure of the Target Company.

15.1.2 The equity incentive plan shall be subject to review and approval by the Board of Directors of the Target Company in accordance with Clause 6.1.3 hereof. The equity incentive plan shall include, without limitation, the equity incentive prices, shares for the equity incentive scheme, the scope of the eligible participants, and restrictions on transfer of the equity interests acquired by the participants through the equity incentive plan. Without the consent of the Investors, the equity of the Target Company obtained by the participants of the equity incentive scheme shall not be transferred prior to the completion of the Qualified IPO of the Target Company. For the avoidance of doubt, the NIO Parties warrant that the aforesaid equity incentive plan will not cause the shareholding ratio of NIO Inc. in the Target Company (in the aggregate directly and indirectly) to be decreased to less than 60%.

15.2 Method of Equity Incentive

Subject to Clause 15.1 hereof, if equity incentives are realized through transfer of equity interests from one or more existing Shareholder(s) of the Target company to the equity incentive participants or the employee stock ownership platform, the transfer price shall be not lower than the audited net asset value per share of the Target Company as of the end of the then most recent period and shall satisfy the relevant provisions of the CSRC and the applicable stock exchange. If the Target Company intends to realize the equity incentives by issuing new shares to the equity incentive participant or on the employee shareholding platform, the new shares to be issued by the Target Company for the purpose of equity incentives shall not exceed 10% of the audited registered capital / share capital of the Target Company after the completion of this Transaction, and the capital increase price shall be not lower than the net asset value per share of the Target Company as of the end of the then most recent period and shall satisfy the relevant regulations of the CSRC.

16 INFORMATION RIGHTS AND INSECTION RIGHTS

16.1 Information Provision

As long as the Investors hold equity interests in the Target Company, the Target Company shall, and the NIO Parties shall cause the Target Company to, deliver the following documents in connection with the Target Company in accordance with the requirements of the Investors:

- 16.1.1 Within one hundred and twenty (120) days after the end of each fiscal year, submit to the Investors an annual consolidated audit report which has been prepared by a PRC accounting firm recognized by the Investors in accordance with the PRC accounting standards;
- 16.1.2 Within sixty (60) after the end of each semi-year, submit to the Investors an unaudited consolidated semi-annual financial statement prepared in accordance with the PRC accounting standards;
- 16.1.3 Within thirty (30) days after the end of each quarter, submit to the Investors an unaudited quarterly financial statement prepared in accordance with the PRC accounting standards;
- 16.1.4 A work report (if any), a business plan and budget of the Target Company for the new year and other documents, and the use of the capital subscription funds in this Transaction;
- 16.1.5 Other information, statistical data, transaction, business operation and financial data as may be required to which the Shareholders are entitled in accordance with the Laws and Regulations of the PRC, subject to a reasonable request in advance in a manner without any interference to the normal operation of the Target Company.

16.2 Authenticity, Accuracy and Completeness of Information

The legal representative of the Target Company shall verify and confirm that all the

information provided to the Shareholders is true and correct and does not have any misleading effect. The financial statements provided by the Target Company to the Investors shall cover the consolidated financial statements of the Target Company and its subsidiaries, and shall have at least the current profit and loss statement, cash flow statement and balance sheet.

16.3 Provision of Equity Financing Information

Upon request of the Investors, the Target Company shall promptly provide the Investors with the latest version of the Investment Agreement, documents relevant to the Subsequent Financing, management of the Target Company and other matters, including the Articles of Association signed and sealed by the Parties and filed with competent Governmental Authority.

16.4 Collection of Accounting Information

During the working hours, the Investors may inspect, in a reasonable way, the properties, real properties, financial books and operation records of the Target Company and discuss the business, finance and conditions of the Target Company with its officers, provided that the Investors give a prior notice and do not interfere the normal business of the Target Company. The Investors shall have the right to make proposals to the Senior Officers of the Company through the directors nominated by them.

17 RIGHT TO PARTICIPATE IN RESTRUCTURING

After the Investors become the Shareholders of the Target Company, if the Target Company and its directly or indirectly controlled enterprises undertakes any restructuring (“**Restructuring**”) and the NIO Parties intend to change the listing company from the Target Company to another platform company after the completion of the Restructuring, the plan of the aforesaid Restructuring shall be subject to the written consent of the Investors (for the avoidance of doubt, this provision shall not apply to any Restructuring carried out for the purpose of the separate listing of the enterprises directly or indirectly controlled by the Target Company after the Qualified IPO of the Target Company). The Investors shall have the right to participate in such Restructuring, and to replace their directly or indirectly held equity interests in the Target Company with the equity interests in such platform to ensure that the Investors will continue to hold the same interests as those in the Target Company and its directly or indirectly controlled enterprises prior to the Restructuring.

18 UNDERTAKINGS AND CONVANTS

The NIO Parties and the Target Company hereby respectively covenant and warrant to the Investors as follows:

18.1 Non-mandatory Commitment

The Target Company and the NIO Parties covenant that the Investors shall not make any covenant in relation to the listing of the Target Company that is not expressly required by the Laws and Regulations, and neither shall they take any obligation in relation to the listing of the Target Company that is not expressly required by the Laws and Regulations; in

particular, the Investors shall not make any covenant in respect of the performance or profits of the Target Company due to the listing of the Target Company.

18.2 Cooperation Obligation

In the event that the Investment Agreement and/or this Agreement does not specify any party or parties of the Target Company or the NIO Parties as the subject of obligations in respect of a certain act, right or obligation of the Investors, the Target Company or the NIO Parties undertake to make the best reasonable efforts to cooperate.

18.3 Indemnification Commitment

Each of the Target Company or the NIO Parties shall perform this Agreement and other Transaction Documents in good faith, and if any party or parties of the Target Company or the NIO Parties violate any provision of this Agreement or other Transaction Documents, such Party or Parties shall be held liable for any damages that may be caused to the Investors, and the other Parties except for the Investors shall assume the joint and several liabilities with respect to such damages.

18.4 Non-Competition

The Controlling Shareholders undertake that unless otherwise agreed by the Investors in writing in advance, the Controlling Shareholders shall, and shall cause the Actual Controller to, devote sufficient working time and energy to the operation of the Target Company, and use best efforts to promote the development of the Target Company and seek profits for the Target Company, and not to take any part-time job or invest in any other company with the same or similar business type as the Main Business of Target Company, and to strictly comply with the relevant provisions of the *Company Law of the PRC* on non-competition of directors and senior management; from the closing date until the expiration of two (2) years from the date on which the Actual Controller ceases to hold neither any direct or indirect interest in the Target Company nor any position in the Target Company, without the prior written consent of the Investors, the Controlling Shareholders shall not, and shall cause the Actual Controller not to, directly or indirectly engage in any business similar to or competing with the Main Business of the Target Company (“**Competing Business**”), or directly or indirectly hold any interest in any entity that engages in a Competing Business with the Target Company or its subsidiaries (“**Competing Entity**”), or engage in any activity detrimental to the interests of the Target Company, including without limitation:

- 18.4.1 To have a controlling stake in, or indirectly control, any Competing Entity, or hold more than 5% of the equity in any Competing Entity (for the avoidance of doubt, the following circumstances are not in violation of the non-competition provisions in this Clause 18.4: (i) to hold less than 5% of the equity in any Competing Entity; (ii) without affecting the Qualified IPO of the Target Company, to hold interests in any overseas Competing Entity, provided the products of such overseas Competing Entity are not sold to the mainland of China; and (iii) as set forth in Exhibit III, the Actual Controller has directly or

indirectly held interests in the Competing Entity as of the Execution Date of this Agreement);

- 18.4.2 To provide any loan, customer information, advice or any other form of assistance to any Competing Entity;
- 18.4.3 To directly or indirectly obtain benefits from any Competing Business or any Competing Entity;
- 18.4.4 To solicit, in any manner, customers relating to any business of the Target Company or its subsidiaries, or to deal with or attempt to deal with customers relating to the Main Business of the Target Company or its subsidiaries, regardless of whether such customers are customers of the Target Company or its subsidiaries prior to or after the closing date;
- 18.4.5 To employ any member of the Core Management Team who resigns from the Target Company or its subsidiaries as of the closing date in any manner through any individual or organization which is directly or indirectly controlled by them or in which they have an interest; and
- 18.4.6 To solicit, in any manner, the employment of any employee then employed by the Target Company or its subsidiaries.

18.5 Qualified IPO

- 18.5.1 The Target Company shall, within sixty (60) months from the date of receipt of all first installment of the capital increase price from the Investors, obtain the approval, registration or filing of the CSRC, the Shanghai Stock Exchange, the Shenzhen Stock Exchange or any other overseas securities issuance examination institutions unanimously recognized by the Parties, and the initial public offering and listing of shares of the Target Company on the securities exchange market unanimously recognized by the Parties. For the avoidance of doubt, for the purposes of this Agreement, the listing of the Target Company on the PRC National Equities Exchange and Quotations (the "New Third Board") shall not be deemed as Qualified IPO.
- 18.5.2 All the Shareholders shall proactively take reasonable efforts, cooperate with the Target Company to take all necessary actions (including but not limited to cooperate with the Target Company in clearing any material obstacle to the Qualified IPO) and cooperate with the application for the Qualified IPO in accordance with the then effective Laws and regulatory policies of listing.

19 CORPORATE GOVERNANCE

19.1 Shareholders' Meeting

- 19.1.1 The Shareholders' meeting of the Target Company shall be attended by all Shareholders and shall be the highest authority of the Target Company.

- 19.1.2 Shareholders' meetings are composed of regular meetings and extraordinary meetings. The regular Shareholders' meetings shall be convened at least once a year. An extraordinary Shareholders' Meeting shall be convened if so proposed by the Shareholders representing more than one-tenth (1/10) of the voting rights, or more than one-third (1/3) of the directors, or the supervisors.
- 19.1.3 The Shareholders' meeting shall be convened by the Board of Directors and chaired by the chairman; where the chairman is unable or fails to perform his/her duties, the Shareholders' meeting shall be chaired by a director appointed by more than half of the Board of Directors. If the Board of Directors is unable or fails to convene the Shareholders' meeting, the meeting shall be convened and presided over by the supervisors. If the supervisors fail to convene and preside over the Shareholders' meeting, the Shareholders representing more than one-tenth (1/10) of the voting rights may convene and preside over such meeting. A notice of the Shareholders' meeting shall be given to all Shareholders at least fifteen (15) days before the convening of such meeting, unless all Shareholders agree to waive such noticing period.
- 19.1.4 The Shareholders' meeting shall maintain complete and correct minutes of its meetings including copies of all meeting notices. The minutes of the Shareholders' meeting and the resolutions adopted by the Shareholders' meeting shall be recorded by a secretary for a meeting designated by the Shareholders' meeting and shall be circulated among all of the shareholders within ten (10) days after the close of each meeting. All resolutions of the Shareholders' meeting shall be signed by all voting Shareholders, and minutes of the Shareholders' meeting shall be filed by the secretary and kept in the Shareholders' meeting minutes book of the Target Company.
- 19.1.5 Resolutions of the Shareholders' meeting may be adopted by written resolution by the Shareholders, provided that such a resolution is sent to each Shareholder.

19.2 Board of Directors

- 19.2.1 The Execution Date of this Agreement shall be the date of establishment of the board of directors (the "**Board of Directors**" or "**Board**").
- 19.2.2 The Parties unanimously agree that the Board of Directors of the Target Company shall consist of seven (7) directors; the Investors shall be entitled to jointly nominate two (2) directors ("**Investor Directors**"), of which SDIC shall be entitled to nominate one (1) Investor Director, and Hefei Investor shall be entitled to nominate one (1) Investor Director; and the NIO Parties shall be entitled to nominate five (5) directors. If the aggregate percentage of equity interests in the Target Company held by the Investors in the Target Company is lower than five percent (5%), the Investors shall not be entitled to nominate any director. The Parties agree to vote in favor of the election of the above nomination at the Shareholders' Meeting convened to approve this Transaction in accordance with Clause 4.2 of the Investment Agreement so that the person

so nominated shall be elected as the directors of the Target Company.

- 19.2.3 The remuneration to the directors in such capacity and their proxies shall be paid by their nominating Parties. The costs incurred by the directors or their proxies in connection with attending Board meetings and performing their obligations as the directors of the Target Company shall be reimbursed by the Target Company in Renminbi or U.S. Dollars based on vouchers permissible under the PRC accounting standards. All directors, including the chairman, shall perform their duties and responsibilities in accordance with the relevant provisions contained in this Agreement and the articles of association. Each director shall faithfully fulfil his or her duties in accordance with the provisions of this Agreement and the Articles of Association, and refrain from any action that would conflict with the interests of the Target Company.
- 19.2.4 Each of the directors shall serve a term of office of three (3) years, and may serve consecutive terms if re-selected. The Parties agree and undertake that if a director nominated by the Investors or the NIO Parties resigns or is dismissed, or if the seat of the Board becomes vacant due to other reasons, the Investors or the NIO Parties shall have the right to nominate another successor and the Parties undertake to in favor of the election of the above nomination as the director of the Target Company at the Shareholders' Meeting. The replacement shall serve on the Board for the remaining term of the replaced director. The Target Company shall file such change with the registration authority if such filing is so required under the then applicable PRC Law.
- 19.2.5 The Board of Directors shall have one (1) chairman. The chairman shall be appointed by the NIO Parties from the directors nominated by the NIO Parties. The chairman of the Board of Directors shall be the legal representative of the Target Company and shall have the following powers and authorities: convening and presiding over meetings of the Board of Directors; and other powers and authorities granted by the Board of Directors, this Agreement or the articles of association.
- 19.2.6 If a matter requires approval of the Board of Directors in accordance with this Agreement or the articles of association, the chairman shall not be authorized to take any action or sign any document on behalf of the Target Company in respect of such matter unless and until it has been duly approved by the Board of Directors.
- 19.2.7 When the chairman is unable to perform his or her duties (including convening and presiding over Board meetings) for any reason, he or she shall designate another director to act on his or her behalf.
- 19.2.8 The Board of Directors shall convene at least one (1) meeting each quarter, and the Target Company shall hold a regular meeting within twenty (20) working days after the end of each quarter. Any one (1) director of the Target Company shall have the right to propose an extraordinary Board meeting in writing, and

the chairman of the Board shall convene an extraordinary Board meeting within twenty (20) days after the receipt of such proposal.

- 19.2.9 The Board of Directors shall maintain complete and correct minutes of its meetings in Chinese, including copies of all meeting notices. The minutes of the Board meeting and the resolutions adopted by the Board meeting shall be recorded by a secretary for the meeting designated by the Board and shall be circulated among all of the directors within twenty (20) days after the close of each meeting. All resolutions of the Board meeting shall be signed by all voting directors, and minutes of the Board meeting shall be filed by the secretary and kept in the Board meeting minutes book of the Target Company. The nomination, election and replacement of directors shall be recorded in the Board meeting minutes.
- 19.2.10 The management of the Target Company shall submit quarterly work reports to the Board of Directors on regular basis. The contents of a quarterly work report shall include but not be limited to information pertaining to any related-party transactions and any provision of guarantee of the Target Company, any bank credit and borrowings, any external investment or Major expenditure, any disposal of Major assets, execution of any Material contracts that is not related to Main Business, execution of any contract in relation to intellectual property rights and etc.
- 19.2.11 When casting votes on board resolutions, each director shall have one (1) vote.
- 19.2.12 The quorum for a duly convened board meeting shall be at least one-half (1/2) of all the directors present in person (including attending via videoconference or other electronic means) or by proxy. In the absence of a quorum, any resolutions passed at a Board meeting shall be invalid and have no effect.
- 19.2.13 Notwithstanding any other provision to the contrary, resolutions may be passed without a Board meeting if in writing and executed by all directors or a majority of the directors on the Board (as the case may be) as provided for in Clause 6.1.2, provided that the proposed resolution is delivered to each of the directors
- 19.2.14 Resolutions of the Board shall require the affirmative votes of more than half of Directors (the term “more than” referred to herein shall be inclusive of the number immediately following thereto) (provided that, for the matters as provided in Clauses 6.1.1 and 6.1.2, such matters shall only be adopted or submitted for the review by the Shareholders’ meeting upon affirmative votes of more than three-fourths (3/4) of the directors the directors shall require the unanimous approval of more than three-fourths (3/4) of the directors; for the matters as provided in Clause 6.1.3, such matters shall only be adopted or submitted for the review by the Shareholders’ meeting upon affirmative votes of

more than two-third (2/3) of the directors; for the matters as provided in Clause 6.1.4, such matters shall only be adopted or submitted for the review by the Shareholders' meeting upon affirmative votes of more than one-half (1/2) of the directors). If any independent director will serve on the board of Target Company or if the number of directors of the Target Company increases in the future, the Parties agree to renegotiate the special voting mechanism. If required by any of the constitutional documents of NIO Inc., or any Law or regulatory rules applicable to NIO Inc. (including, without limitation, securities regulation Laws of the U.S. or the applicable regulatory rules of the U.S. Securities and Exchange Commission), the above matters submitted to the Board of Directors of the Target Company for decision shall be otherwise submitted to the Board meeting or the general meeting of NIO Inc. for consideration and resolution.

19.2.15 All Board meetings shall be convened and presided over by the chairman or a director, as the case may be. The chairman shall give a written notice of a Board meeting to each director ten (10) working days (or such other period as agreed to by the Investors in writing) in advance, which shall specify the time, venue and agenda of the meeting. The chairman shall deliver documents relevant to a Board meeting, if any, to each of the directors at least ten (10) days prior to the meeting. Meetings of the Board may be conducted in person or in the form of telephone conference or video conference as long as each participant is able to hear the other participants clearly and each director so participating shall be deemed to be present at such meeting. Each director shall have the right to appoint a proxy in writing to attend the meeting, who may be another director of the Board, and the proxy so appointed shall have the right to attend the meeting of the Board and vote on the matters under consideration on behalf of the director who appointed him or her. Any proxy so appointed shall have the same rights as the director who appointed him or her, and one proxy may represent more than one director. Such proxy shall have one vote for each director he or she represents and an additional vote if he or she is also a director in his or her own right. The chairman shall have the same right of one vote as accorded to each of the other directors. If a Board meeting fails to achieve the quorum set forth in Clause 19.2.12, such Board meeting shall be adjourned to the fifth (5th) working day after the originally scheduled meeting date.

19.2.16 All reasonable costs incurred by the directors in connection with attending Board meetings shall be borne by the Target Company. The Investor Directors shall be protected and indemnified by the Target Company to the fullest extent possible under applicable Laws, including without limitation from any liability to any third party resulting from their respective performance of duties.

19.3 Supervisors

19.3.1 The Target Company shall have two (2) supervisors, of which Anhui High-tech Co. shall be entitled to nominate one (1) supervisor, and the NIO Parties shall be entitled to nominate one (1) supervisor. The directors and the Senior Officers

of the Target Company shall not act as the supervisors of the Target Company. The supervisor shall serve a term of office of three (3) years, and may serve consecutive terms if re-nominated by such original nominating Party and re-approved by the Shareholders' meeting.

19.3.2 The supervisors shall exercise their corresponding power in accordance with the relevant provisions of the PRC Laws and the articles of association of the Target Company.

19.4 Operation and Management Organization

19.4.1 The Target Company shall have one (1) chief executive officer (“**CEO**”). The day-to-day management and operation of the Target Company shall be carried out by the CEO in accordance with the policies adopted by the Board of Directors from time to time. The CEO shall be directly responsible to the Board of Directors.

19.4.2 The CEO of the Target Company shall be nominated by the NIO Parties and appointed by the Board of Directors. The CEO shall serve a term of office of three (3) years, and may serve consecutive terms upon re-nomination and re-appointment. The CEO may be dismissed and replaced by the Board of Directors.

19.4.3 The Target Company shall have one (1) chief financial officer who shall be responsible for internal control and tax matters in respect of finance, accounting and finance (“**CFO**”). The CFO of the Target Company shall be nominated by the NIO Parties and appointed by the Board of Directors. In case the CFO is unable to perform his or her duties properly, the Board of Directors may dismiss him or her in accordance with the relevant PRC Laws and the labor contract between the Target Company and the CFO.

19.4.4 The powers and responsibilities of the CEO and the CFO of the Target Company and all management personnel (collectively, the “**Senior Officers**”) and the organizational table indicating the reporting relationship of each Senior Officers are determined by the articles of association and other internal management documents of the Target Company.

19.4.5 In order to enable the CEO to manage the Target Company duly and effectively, the chairman or the Board of Directors, as the case may be, shall issue appropriate written authorizations to the CEO to take actions or sign contracts, agreements or other documents on behalf of the Target Company within the scope of power conferred upon him under this Agreement, the articles of association or any Board resolutions.

19.4.6 The CEO, CFO and other Senior Officers of the Target Company shall be exempted from personal liabilities and indemnified by the Target Company for acts performed in a normal manner within their respective capacity and authorization, except for claims or charges resulting from any intentional or

grossly negligent acts or omissions, or any fraud, graft or serious dereliction of duties.

20 TAXES, FINANCE, AUDIT AND DISTRIBUTION OF PROFIT

20.1 Taxes

The Target Company shall pay taxes in accordance with the relevant PRC Laws applicable to the Target Company.

20.2 Individual Income Tax

All employees of the Target Company shall pay individual income tax in accordance with the *Individual Income Tax Law of the PRC* and other applicable PRC Laws.

20.3 Financial Accounting System

20.3.1 The Target Company shall establish its financial and accounting systems in accordance with the PRC accounting standards and other relevant PRC Laws, which shall be submitted to the Board of Directors for approval.

20.3.2 The Target Company shall adopt the accrual basis and debit and credit method for bookkeeping and shall prepare complete and accurate monthly, quarterly and annual financial statements in accordance with the PRC accounting standards.

20.3.3 The Target Company shall adopt calendar year as its fiscal year, commencing on January 1 and ending on December 31 of each year.

20.3.4 Renminbi shall be adopted as the currency of accounts of the Target Company. The Target Company shall also record accounts in currencies actually used in payments and receipts where such payments and receipts in cash, bank deposits, other funds, credits and debts, and gains and expenses are not in Renminbi.

20.3.5 All accounting vouchers, books and statements prepared by the Target Company shall be written in Chinese.

20.4 Auditing

The Target Company shall engage its external auditor in accordance with Clause 6.1.4(1). The external auditor shall audit the Target Company's accounts and prepare an audit report in accordance with the PRC accounting standards, which report shall be submitted by the CEO and the CFO to the Board of Directors for approval. All necessary documents and account books of the Target Company shall be provided to the external auditor. The external auditor shall agree to keep all information obtained during the course of such auditing confidential.

20.5 Banking and Foreign Exchange

The Target Company shall open Renminbi and foreign exchange bank accounts (if necessary) after receipt of its business license. All foreign exchange matters of the Target Company shall be handled in accordance with relevant PRC Laws in respect of foreign exchange.

20.6 Reserve Funds and Loss Recovery

The Target Company shall pay taxes and retain reserve funds in accordance with relevant PRC Laws. If the Target Company incurs any loss in any previous year, the profit of the current year shall first be used to make up such loss. No profits shall be distributed or reinvested unless and until (a) the losses of any previous year have been fully made up and (b) all reserve funds have been retained in accordance with relevant PRC Law. Any remaining distributable profit of the Target Company of the previous year that has been retained by the Target Company and not been used for reinvestment can be distributed together with the distributable profits of the current year.

21 DURATION AND TERMINATION OF THE TARGET COMPANY

21.1 Duration of the Target Company and Term of this Agreement

The duration of the Target Company shall be fifty (50) years from its incorporation date (“**Duration of the Target Company**”).

The term of this Agreement shall be from the effective date hereof to the expiration or early termination date of the Duration of the Target Company (“**Term**”), which may be renewable upon mutual agreement of the Parties.

21.2 Extension of the Term

The Parties shall hold consultations to discuss the extension of the Term at least one (1) year prior to the expiration of the Term. If the Parties agree to extend the Term, an application for relevant procedures shall be submitted to the registration authority in accordance with applicable Laws.

21.3 Events of Early Termination

This Agreement may be terminated and the Target Company dissolved prior to the expiration of the Term upon the occurrence of any of the following events and in accordance with the following provisions:

- 21.3.1 by either Party, if the Target Company is unable to continue operation during any fiscal year due to an event of Force Majeure and such situation has existed for a period of one hundred and eighty (180) days or more;
- 21.3.2 by either Party, upon approval by the Shareholders’ Meeting, if the Target Company becomes bankrupt or insolvent, or any of its Major assets (including, without limitation, working capital, any operation license, permit or Governmental Approval) necessary for the conduct of its operation activities is

not obtained, or is withdrawn, forfeited, revoked or expropriated by any Governmental Authority, or becomes invalid or has expired and is not renewed, as a result of which the Target Company is unable to conduct normal operation activities or is unable to attain its business objectives;

21.3.3 by the Investors in any event of any Deemed Liquidation Event set forth in Clause 12.5; and

21.3.4 if the Parties unanimously agree that, the termination of the Target Company is in the best interests of the Parties, and approved by the Shareholders' meeting.

21.4 Shareholders' Meeting to Discuss Early Termination or Dissolution

21.4.1 Upon the occurrence of any of the events of early termination set forth in Clause 21.3 above, either Party may request that a Shareholders' Meeting be convened to discuss the early termination of this Agreement. The Board shall convene a Shareholders' Meeting within twenty (20) days of the receipt of such a request in accordance with the provisions regarding the Shareholders' Meetings.

21.4.2 At the Shareholders' meeting, the Shareholders shall use their best efforts to reach a solution acceptable to all the Parties. If the Shareholders are unable to reach a solution acceptable to all Shareholders at the Shareholders' Meeting, the Shareholders shall vote unanimously to dissolve and liquidate the Target Company.

21.5 Effect of the Termination

If the Target Company fails to renew upon expiration or this Agreement is early terminated in accordance with Clauses 21.3 and 21.4 above, this Agreement shall become void with no further force and effect (for the avoidance of doubt, if the termination of the Target Company is due to the fact that the NIO Parties intend to take a platform company other than the Target Company as the listing company after the completion of the Restructuring in accordance with Clause 17 hereof, the Investors shall be ensured to have the same rights under the Transaction Documents in the new platform company), and the Target Company shall be liquidated and dissolved, and the Shareholders' Meeting shall establish a liquidation committee to carry out the liquidation of the Target Company in accordance with relevant PRC Laws and this Agreement. However, no termination of this Agreement pursuant to Clauses 21.3 and 21.4 above shall have an effect on any right of a Party to claim compensation for losses or receive indemnification due to any breach of any representations, warranties, covenants or obligations hereunder prior to the termination of this Agreement. Furthermore, Clause 12 (*Liquidation Preference*), this Clause 21.5 (*Effect of Termination*), Clause 24 (*Confidentiality*) and Clause 29 (*Miscellaneous*) shall survive the termination of this Agreement.

22 FORCE MAJEURE

22.1 Events of Force Majeure

An event of force majeure (“**Force Majeure**”) shall mean any act or event which is reasonably unforeseeable and unavoidable and which is beyond the control of the affected Party, including, without limitation, earthquake, typhoon, flood, or other acts of nature, fire, war, riots, terrorist acts or any other unforeseeable or unavoidable act or event which is generally accepted as Force Majeure in international commercial practice.

22.2 Occurrence of Force Majeure Events

If either Party has been prevented from performing its obligations or responsibilities under this Agreement because of an event of Force Majeure, it shall notify the other Parties in writing within thirty (30) days after the occurrence of such event, provide the other Parties with detailed information concerning the event of Force Majeure and documents evidencing such event, including documentary evidence issued by government authorities or judicial authorities or any other competent authorities, explaining the reason for its inability to perform, and act to mitigate damages, if possible.

22.3 Disclaimer of Liability

If an event of Force Majeure occurs, none of the Parties shall be liable for any damage, increased costs, or losses that the other Parties may sustain because of the failure or delay of performance of any of its obligations under this Agreement, and such failure or delay shall not be deemed a breach of this Agreement. The Party encountering the Force Majeure event shall take appropriate means to minimize or mitigate the effects of Force Majeure and, as soon as practicably possible, attempt to resume performance of the obligation affected by Force Majeure.

23 REPRESENTATIONS AND WARRANTIES OF THE PARTIES

Each of the Parties hereby represents and warrants to the other Parties that, as of the effective date hereof:

23.1 Existence, Authority and Enforceability

It has the power and authority to execute this Agreement and to perform its obligations hereunder. It is an entity duly organized and validly existing under the Law of the jurisdiction of incorporation, or an individual with full capacity for civil conduct; except Hefei Investor, it has completed all decision-making procedures necessary for its execution of this Agreement. Unless otherwise agreed in this Agreement, this Agreement has been duly executed by it, and constitutes its lawful, valid and binding obligations, enforceable against it in accordance with its terms upon the execution of this Agreement.

23.2 No Conflict

Its execution and delivery of this Agreement, and the performance of the obligations hereunder will not (a) conflict with, or result in a breach of any provision of its constitutional documents; (b) result in any breach, contradiction, default or event of default of, or trigger any acceleration or termination of rights or any additional payment

obligations under, the terms of any contract, agreement or license to which it is a party or by which its assets or operations are bound or affected; or (c) violate any Law applicable to it.

24 CONFIDENTIALITY

24.1 General Obligations

Unless with the prior written consent of the other Parties or as otherwise provided by this Agreement and Laws, none of the Parties shall, whether directly or indirectly, disclose, use, or permit its directors, employees, representatives, agents, advisors and counsel to disclose or use, the following confidential information:

- 24.1.1 existence of the Transaction Documents and information in connection with this Transaction;
- 24.1.2 any discussions between the Parties regarding the execution and performance of this Agreement, the terms and conditions of this Agreement or any other information in connection with this Transaction; and
- 24.1.3 any non-public information relating to the other Parties or any of their affiliates obtained by either Party in the negotiation of the Transaction with the other Parties or the performance of this Agreement.

24.2 Special Exemptions

The Parties shall be exempted from the above confidentiality obligations under the following circumstances:

- 24.2.1 any confidential information may be disclosed to the officers, representatives, agents, consultants, counsel and other persons of any Party during this Transaction on the need-to-know basis, provided that such officers, representatives, agents, consultants, counsel and other persons have assumed the confidentiality obligations with respect to such confidential information;
- 24.2.2 if any confidential information has been disclosed by any third party and becomes available to the public which is not attributable to or arises out of any Party, the confidentiality obligations with respect to such confidential information do not apply to such Party; and
- 24.2.3 any information has been publicly disclosed or any information has been disclosed in accordance with any Laws, regulations and/or the requirements of any security regulatory authority, any stock exchanges and any administrative authority that is responsible for filing, examination and approval.

24.3 Remedies

The Parties agree that if either Party breaches the confidentiality obligation hereunder, such

Party shall be in breach of this Agreement, and the other Parties shall have the right to make claim against the defaulting Party for liability for breach of contract and initiate legal proceedings to prevent such infringement or take other remedies to prevent further infringement.

24.4 Survival

The confidentiality obligation under this clause shall survive the termination of this Agreement.

25 GOVERNING LAW AND DISPUTE RESOLUTION

25.1 Governing Law

The formation, validity, interpretation, execution of this Agreement and resolution of any disputes arising hereunder shall be governed by and construed in accordance with the Laws of the PRC.

25.2 Arbitration

25.2.1 Any dispute, controversy, difference or claim arising out of or relating to this Agreement shall be resolved by the Parties in dispute through amicable consultation. If the Parties fail to resolve such dispute within sixty (60) days of the date of the written notice given by a Party to the relevant other Parties indicating the existence of the dispute or requesting the commencement of negotiation, any Party may refer the dispute to arbitral institution.

25.2.2 Any dispute arising out of performance of this Agreement or relating to this Agreement shall be submitted to the China International Economic and Trade Arbitration Commission (“CIETAC”) for arbitration in Beijing in accordance with the arbitration rules of CIETAC effective at the time of application for arbitration. The arbitration proceedings shall be conducted in Chinese.

25.2.3 The arbitration tribunal shall consist of three (3) arbitrators to be appointed in accordance with the arbitration rules. The applicant and the respondent shall each appoint one (1) arbitrator, and the two (2) arbitrators so appointed by the parties shall agree upon the third arbitrator or the CIETAC shall appoint the third arbitrator.

25.2.4 The arbitration award shall be final and binding on the parties to the arbitration.

25.2.5 The losing Party shall be liable for the costs of the arbitration, all costs and expenses of the arbitration proceedings and all costs and expenses in relation to the enforcement of any arbitral award. The arbitral tribunal shall rule upon the costs of the parties not expressly provided for in this section.

25.3 Continued Performance

The Parties shall continue to perform the rights and obligations under this Agreement during the negotiation and arbitration period, other than the disputed matter.

26 EFFECTIVENESS, MODIFICATION AND VALIDITY

26.1 Effectiveness

This Agreement shall come into force and become binding on the Parties upon the execution by the individuals and the respective authorized representatives of foreign entities among the Parties and the execution by the legal representatives or the respective authorized representatives of the Chinese entities and the affixation of their respective company chops, and after the Investment Agreement comes into force and the Investors have become the shareholder of the Target Company, unless otherwise agreed in this Agreement.

26.2 Amendments in Writing

This Agreement may be amended or modified by the Parties through mutual consultation. Any amendment or modification shall be made in writing and become effective upon execution by the Parties hereto.

26.3 Supplemental Agreement

If Hefei Investor and Anhui High-tech Co. intend to amend the provisions of this Agreement during the implementation of the state-owned assets examination and approval process, the Parties agree to enter into a separate supplemental agreement to reach an agreement. In case of any inconsistency, such supplemental agreement shall prevail.

26.4 Validity

If any provisions of this Agreement shall be held, declared or deemed to be illegal, invalid or incapable of being enforced by any arbitral tribunal, judicial or administrative authority, the legality, validity and enforceability of all the other provisions of this Agreement shall not be affected or impaired. The Parties agrees to modify this Agreement or to enter into a supplemental agreement as appropriate through consultation in good faith so as to restore the original intent of this Agreement and the rights or obligations that shall be enjoyed or performed by the Parties as initially agreed in this Agreement.

If any provisions of this Agreement shall be amended due to changes of relevant Laws, regulations or policies or as required by any Governmental Authority, the Parties shall use their best efforts to reach an agreement on such amendment and enter into relevant agreements so as to restore and confirm the rights or obligations that shall be enjoyed or performed by the Parties as agreed in this Agreement under the requirements of relevant Laws, regulations or policies.

27 BREACH

27.1 Events of Breach

The Parties hereto shall strictly comply with the provisions of this Agreement. Each of the following events shall constitute an event of breach:

27.1.1 either Party hereto fails to perform or duly and fully perform any of its obligations or covenants hereunder; or

27.1.2 any of the representations, covenants, undertakings or warranties given by either Party hereto under this Agreement is materially untrue, inaccurate or incomplete.

27.2 Damages for Breach

The Parties agree that, unless otherwise agreed in this Agreement, in the event of a breach of this Agreement, the defaulting Party shall indemnify the non-defaulting Party from and against any losses that may be incurred by non-defaulting Party arising out of the defaulting Party's breach.

27.3 Other Remedies

The damages for breach shall not affect the right of the non-defaulting Party to require the breaching party to continue to perform this Agreement or terminate this Agreement.

28 NOTICES AND DELIVERY

28.1 Notices

The Parties agree that any notices relating to this Agreement shall only be effective if it is given in writing. Delivery in written form includes without limitation to delivery by way of facsimile, courier, registered mail and email. All such notices shall be deemed to have been given or received (a) on the date when the recipient receives the notice if delivered by courier or personal delivery; (b) on the seventh (7th) working day after it is sent if delivered by registered mail; and (c) upon successfully delivery if sent by email. All notices shall be deemed effectively given if delivered or sent to the following addresses or email addresses:

If to the Investors:

SDIC

Attention: DU Shuo

Address: [***]

Telephone: [***]

Email: [***]

Anhui High-tech Co.

Attention: LIU Jingran
Address: [***]
Telephone: [***]
Email: [***]

Hefei Construction Co.

Attention: XU Jing
Address: [***]
Telephone: [***]
Email: [***]

If to the NIO Parties:

Attention: LI Bin
Address: [***]
Telephone: [***]
Email: [***]

If to the Target Company:

Attention: LI Bin
Address: [***]
Telephone: [***]
Email: [***]

28.2 Change of Information

If either Party changes its above mailing address or contact information (the “**Changing Party**”), it shall notify the other Parties within seven (7) days after the occurrence of such change. If the Changing Party fails to notify the other Parties of the same in a timely manner, it shall bear the losses arising from such failure.

29 MISCELLANEOUS

29.1 Entire Agreement

This Agreement, the other Transaction Documents and the exhibits attached hereto shall constitute the entire agreement of the Parties with respect to this Transaction and shall

supersede all prior written or oral agreements, letter of intent, memorandum of understanding, representations or other obligations of the Parties with respect to this Transaction (including all forms of communication), and this Agreement (including any amendments or modifications thereto and the other Transaction Documents) contains the sole and entire agreement of the Parties with respect to the subject matters hereof.

29.2 No Authorization

Nothing in the Investors' implementation of this Transaction shall constitute an authorization of the Investors of the use of any trademark, tradename, service trademark or logo of the Investors or its affiliates (any abbreviated or imitative forms of the foregoing, including without limitation "SDIC" and "CMG-SDIC").

Without prior written consent of the Investors, none of the Target Company, the NIO Parties or any of their affiliates shall directly or indirectly represent that any goods or services provided by it have been approved or recognized by any Investors or any of their affiliates.

29.3 Further Action

For the purpose of maintaining and protecting the rights, powers and remedies of the Investors hereunder, the other Parties shall take all such further acts and actions or cause all such further acts and actions to be taken and execute or procure the execution of all such further documents, as may be reasonably required by the Investors from time to time,

29.4 Severability

If any provision of this Agreement is illegal, invalid or incapable of being enforced, in whole or in part, the legality, validity and enforceability of all the other provisions of this Agreement shall not be affected. The Parties shall, to the extent reasonable, use their best efforts to replace the invalid or unenforceable provision with a valid and enforceable provision that corresponds as far as possible to the spirit and purpose of the invalid or unenforceable provision.

29.5 No Waiver

No failure or delay by either Party hereto to exercise and/or enjoy its rights and/or benefits hereunder shall be deemed as a waiver of such rights and/or benefits, nor shall any partial exercise of such rights and/or benefits preclude any future exercise of such rights and/or benefits. Any waiver by either Party of any provision of this Agreement shall not be construed as a waiver of any other provisions of this Agreement, nor shall such waiver be construed as a waiver of such provision with respect to any other event or circumstances, whether in the past, at present or in future. Furthermore, the remedies provided in this Agreement be cumulative and not exclusive of any provided by Laws.

29.6 Assignment

Subject to relevant provisions of this Agreement, the Investors shall have the right to assign or transfer its equity interest in the Target Company and the rights, interests and obligations hereunder to any third party except for the competitors of the NIO Parties set forth in Exhibit

IV (the “**NIO Parties Competitors**”). In the event that the license or consent of any Party hereto is required for such transfer, such Party shall give its utmost cooperation. In particular, SDIC, Anhui High-tech Co. and Hefei Investor have the right to transfer all or part of their rights, interests and obligations under this Agreement to any of their affiliates or any third party agreed by the NIO Parties, and the relevant transferee shall recognize and consent to all provisions of this Agreement, and together with the original contracting parties, to re-enter into this Agreement or a supplementary agreement or joining agreement to clarify the rights, interests and obligations of the transferee under this Agreement. In respect of such transfer, the other Parties to this Agreement hereby waive their respective pre-emptive rights and any other prior right or right of priority that they may be entitled to in accordance with applicable PRC Laws, this Agreement, the articles of association of the Target Company or any other matters. Unless otherwise agreed in this Agreement, none of the Parties shall assign or transfer any of its rights, benefits or obligations under this Agreement without the prior written consent of the other Parties. No assignment of rights, benefits or obligations in violation of this section shall be valid.

This Agreement shall be binding upon, inure to the benefit of and be effective for the Parties and their respective successors and assigns permitted hereunder. In addition, unless otherwise set forth herein, no third party is intended to be a beneficiary of this Agreement.

29.7 Costs and Expenses

Any costs, expenses or fees of any nature incurred by either Party in connection with the preparation and execution of this Agreement and the articles of association shall be borne by the incurring Party, unless the Parties agree in writing that such costs, expenses or fees shall be borne by the Target Company.

29.8 No Agency

Nothing in this Agreement shall be construed to constitute either Party the agent or partner of the other Parties. On no account may either Party create (or hold itself out to third person as being able to create) any binding obligation on behalf of the other Parties without the prior written consent of the Parties.

29.9 Governmental Format Provisions

In the event that a separate agreement is executed in accordance with the forms of any Governmental Authority is required for the purpose of requesting performance of a specific act by any Governmental Authority with respect to the Transaction contemplated by this Agreement, this Agreement shall have full priority over this Agreement and such agreement may only be used to request performance of such specific act from any Governmental Authority and shall not be used to create and prove the rights and obligations of the relevant parties with respect to the matters stipulated by this Agreement.

29.10 Suspending and Restoring the Effectiveness

The Parties agree and acknowledge that, the effectiveness of provisions in Clause 6, Clause 7, Clause 8, Clause 9, Clause 10, Clause 11, Clause 12, Clause 13 and Clause 14 hereof shall

be suspended on the date of acceptance of the application for Qualified IPO of the Target Company, and rights and obligations of all the Shareholders of the Target Company shall be subject to the provisions of the then effective articles of association of the Target Company. If the application for Qualified IPO of the Target Company is revoked, rejected, disapproved or declined, or if the application for the Qualified IPO of the Target Company is approved, registered or filed but the Qualified IPO fails to be completed within the period of relevant approval documents, the effectiveness of such provisions in Clause 6, Clause 7, Clause 8, Clause 9, Clause 10, Clause 11, Clause 12, Clause 13 and Clause 14 hereof shall restore, and the effectiveness of such provisions shall be deemed that they have never become suspended. If a breach of agreement occurs during the suspension period due to the purpose of this Clause, the non-defaulting Party shall have the right to claim against the defaulting Party for breach of contract and for damage.

29.11 Priority

In case of conflict between any provisions of this Agreement and the articles of association or other Transaction Documents, this Agreement shall prevail.

29.12 Counterparts and Languages

This Agreement shall be written in Chinese and be executed in eight (8) originals, each of which shall have the same legal effect. Each Party shall hold one (1) original.

[SIGNATURE PAGES FOLLOW]

(This is the Signature Page to the Shareholders Agreement in Respect of NIO China)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized representatives as of the date first written above.

CMG-SDIC Capital Management Co., Ltd.

(Company Chop)

By: /s/ Authorized Signatory
Name: Authorized Signatory
Title:

(This is the Signature Page to the Shareholders Agreement in Respect of NIO China)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized representatives as of the date first written above.

**Anhui Provincial Emerging Industry Investment Co.,
Ltd.**

(Company Chop)

By: /s/ Authorized Signatory
Name: Authorized Signatory
Title:

(This is the Signature Page to the Shareholders Agreement in Respect of NIO China)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized representatives as of the date first written above.

**HeFei City Construction and Investment Holding
(Group) Co., Ltd.**

(Company Chop)

By: /s/ Authorized Signatory
Name: Authorized Signatory
Title:

(This is the Signature Page to the Shareholders Agreement in Respect of NIO China)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized representatives as of the date first written above.

NIO Inc.

By: /s/ Authorized Signatory
Name: Authorized Signatory
Title:

(This is the Signature Page to the Shareholders Agreement in Respect of NIO China)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized representatives as of the date first written above.

NIO User Enterprise Limited

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title:

(This is the Signature Page to the Shareholders Agreement in Respect of NIO China)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized representatives as of the date first written above.

NIO Power Express Limited

By: /s/ Authorized Signatory
Name: Authorized Signatory
Title:

(This is the Signature Page to the Shareholders Agreement in Respect of NIO China)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized representatives as of the date first written above.

NIO (Anhui) Holding Co., Ltd

(Company Chop)

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title:

List of Principal Subsidiaries and Consolidated Variable Interest Entities

Subsidiaries:	Place of Incorporation
NIO Nextev Limited	Hong Kong
NIO User Enterprise Limited	Hong Kong
XPT Limited	Hong Kong
NIO Power Express Limited	Hong Kong
XPT Inc.	Delaware
NIO Performance Engineering Limited	United Kingdom
NIO GmbH	Germany
NIO USA, Inc.	California
XPT Technology Limited	Hong Kong
NIO Co., Ltd.	PRC
Shanghai NIO Sales and Services Co., Ltd.	PRC
XPT (Jiangsu) Investment Co., Ltd.	PRC
NIO Energy Investment (Hubei) Co., Ltd.	PRC
XPT (Jiangsu) Automotive Technology Co., Ltd.	PRC
Shanghai NIO Energy Technology Co., Ltd.	PRC
Wuhan NIO Energy Co., Ltd.	PRC
XPT (Nanjing) E-Powertrain Technology Co., Ltd.	PRC
XPT (Nanjing) Energy Storage System Co., Ltd.	PRC
XTRONICS (Nanjing) Automotive Intelligence Technologies Co., Ltd.	PRC
Shanghai XPT Technology Co., Ltd.	PRC
Consolidated variable interest entities and their subsidiaries:	
Beijing NIO Network Technology Co., Ltd.	PRC
Shanghai Anbin Technology Co., Ltd.	PRC
NIO Technology Co., Ltd.	PRC
Shanghai NIO New Energy Automobile Co., Ltd.	PRC

**Certification by the Principal Executive Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Bin Li, certify that:

1. I have reviewed this annual report on Form 20-F of NIO Inc. (the “Company”);
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 Company as of, and for, the periods presented in this report;
4. The Company’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Company 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 Company, 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 Company’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 Company’s internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the Company’s internal control over financial reporting; and
5. The Company’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Company’s auditors and the audit committee of the Company’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 Company’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 Company’s internal control over financial reporting.

Date: May 14, 2020

By: /s/ Bin Li

Name: Bin Li

Title: Chief Executive Officer

**Certification by the Chief Financial Officer
Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002**

I, Wei Feng, certify that:

1. I have reviewed this annual report on Form 20-F of NIO Inc. (the “Company”);
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 Company as of, and for, the periods presented in this report;
4. The Company’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the Company 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 Company, 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 Company’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 Company’s internal control over financial reporting that occurred during the period covered by the annual report that has materially affected, or is reasonably likely to materially affect, the Company’s internal control over financial reporting; and
5. The Company’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the Company’s auditors and the audit committee of the Company’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 Company’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 Company’s internal control over financial reporting.

Date: May 14, 2020

By: /s/ Wei Feng

Name: Wei Feng

Title: Chief Financial Officer

**Certification by the Principal Executive Officer
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Annual Report of NIO Inc. (the "Company") on Form 20-F for the fiscal year ended December 31, 2019 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Bin Li, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; 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: May 14, 2020

By: /s/ Bin Li

Name: Bin Li

Title: Chief Executive Officer

**Certification by the Chief Financial Officer
Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002**

In connection with the Annual Report of NIO Inc. (the "Company") on Form 20-F for the fiscal year ended December 31, 2019 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Wei Feng, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that to my knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934, as amended; 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: May 14, 2020

By: /s/ Wei Feng

Name: Wei Feng

Title: Chief Financial Officer

Consent of Independent Registered Public Accounting Firm

We hereby consent to the incorporation by reference in the Registration Statement on Form S-8 (No. 333-229952) of NIO Inc. of our report dated May 14, 2020 relating to the financial statements and the effectiveness of internal control over financial reporting, which appears in this Form 20-F.

/s/ PricewaterhouseCoopers Zhong Tian LLP

Shanghai, the People's Republic of China
May 14, 2020

Exhibit 15.2

May 14, 2020
Building 20, No. 56 AnTuo Road, Anting Town, Jiading District
Shanghai 201804, People's Republic of China

Dear Sir/Madam:

We hereby consent to the reference of our name under the headings “Item 3. Key Information—D. Risk Factors—Risks Related to Our Corporate Structure” and “Item 4. Information on the Company—C. Organizational Structure” in NIO Inc.’s Annual Report on Form 20-F for the year ended December 31, 2019 (the “Annual Report”), which will be filed with the Securities and Exchange Commission (the “SEC”) on the date hereof, and further consent to the incorporation by reference, in NIO Inc.’s registration statement on Form S-8 (File No. 333-229952), of the summary of our opinion under the headings “Item 3. Key Information—D. Risk Factors—Risks Related to Our Corporate Structure” and “Item 4. Information on the Company—C. Organizational Structure” in the Annual Report.

We also consent to the filing of this consent letter with the SEC as an exhibit to the Annual Report.

In giving such consent, we do not thereby admit that we come within the category of persons whose consent is required under Section 7 of the Securities Act of 1933, or under the Securities Exchange Act of 1934, in each case, as amended, or the regulations promulgated thereunder.

Very truly yours,

/s/ Han Kun Law Offices

Han Kun Law Offices
