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

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**FORM 20-F**

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**(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, 2020.**
- 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**

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**NIO Inc.**

(Exact Name of Registrant as Specified in Its Charter)

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N/A

(Translation of Registrant's Name Into English)

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**Cayman Islands**

(Jurisdiction of Incorporation or Organization)

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

**Wei Feng, Chief Financial Officer**  
**Building 20, No. 56 AnTuo Road, Anting Town, Jiading District**  
**Shanghai 201804, People's Republic of China**  
**Telephone: +8621-6908 2018**  
**Email: ir@nio.com**

(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:

<b>Title of Each Class</b>	<b>Trading Symbol</b>	<b>Name of Each Exchange On Which Registered</b>
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**

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(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, 2020, there were (i) 1,292,312,288 Class A ordinary shares outstanding, par value US\$0.00025 per share, (ii) 128,293,932 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-Oxley Act (15 U.S.C. § 7262(b)) by the registered public accounting firm that prepared or issued its audit report.

Indicate by check mark 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:

- “AD” refers to autonomous driving.
- “ADAS” refers to advanced driver assistance system;
- “ADRs” refer to the American depository receipts that evidence the ADSs;
- “ADSs” refer to our American depository 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, and its consolidated variable interest entity as of the date of this annual report, and depending on the context, may also refer to Shanghai Anbin Technology Co., Ltd., which is no longer our consolidated variable interest entity as of March 31, 2021, and its subsidiaries;
- “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 RMB6.5250 to US\$1.00, the exchange rate in effect as of December 31, 2020 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 impact of the COVID-19 pandemic;
- 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, 2018, 2019 and 2020, selected consolidated balance sheet data as of December 31, 2019 and 2020 and selected consolidated cash flow data for the years ended December 31, 2018, 2019 and 2020 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 and 2017, the selected consolidated balance sheet data as of December 31, 2016, 2017 and 2018, and the selected consolidated cash flow data for the year ended December 31, 2016 and 2017 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	2020	
	RMB	RMB	RMB	RMB	RMB	US\$
(in thousands, except for per share data)						
<b>Selected Consolidated Statements of Comprehensive Loss:</b>						
<b>Revenues<sup>(1)</sup></b>						
Vehicle sales	—	—	4,852,470	7,367,113	15,182,522	2,326,823
Other sales	—	—	98,701	457,791	1,075,411	164,814
<b>Total revenues</b>	—	—	<b>4,951,171</b>	<b>7,824,904</b>	<b>16,257,933</b>	<b>2,491,637</b>
<b>Cost of sales:<sup>(2)</sup></b>						
Vehicle sales	—	—	(4,930,135)	(8,096,035)	(13,255,770)	(2,031,536)
Other sales	—	—	(276,912)	(927,691)	(1,128,744)	(172,988)
<b>Total cost of sales</b>	—	—	<b>(5,207,047)</b>	<b>(9,023,726)</b>	<b>(14,384,514)</b>	<b>(2,204,524)</b>
Gross (loss)/profit	—	—	(255,876)	(1,198,822)	1,873,419	287,113
Operating expenses:						
Research and development <sup>(2)</sup>	(1,465,353)	(2,602,889)	(3,997,942)	(4,428,580)	(2,487,770)	(381,267)
Selling, general and administrative <sup>(2)</sup>	(1,137,187)	(2,350,707)	(5,341,790)	(5,451,787)	(3,932,271)	(602,647)
Other operating loss	—	—	—	—	(61,023)	(9,352)
<b>Total operating expenses</b>	<b>(2,602,540)</b>	<b>(4,953,596)</b>	<b>(9,339,732)</b>	<b>(9,880,367)</b>	<b>(6,481,064)</b>	<b>(993,266)</b>
<b>Loss from operations</b>	<b>(2,602,540)</b>	<b>(4,953,596)</b>	<b>(9,595,608)</b>	<b>(11,079,189)</b>	<b>(4,607,645)</b>	<b>(706,153)</b>
Interest income	27,556	18,970	133,384	160,279	166,904	25,579
Interest expenses	(55)	(18,084)	(123,643)	(370,536)	(426,015)	(65,290)
Shares of losses of equity investee	—	(5,375)	(9,722)	(64,478)	(66,030)	(10,120)
Investment income	2,670	3,498	—	—	—	—
Other income/(loss), net	3,429	(58,681)	(21,346)	66,160	(364,928)	(55,928)
<b>Loss before income tax expenses</b>	<b>(2,568,940)</b>	<b>(5,013,268)</b>	<b>(9,616,935)</b>	<b>(11,287,764)</b>	<b>(5,297,714)</b>	<b>(811,912)</b>
Income tax expenses	(4,314)	(7,906)	(22,044)	(7,888)	(6,368)	(976)
<b>Net loss</b>	<b>(2,573,254)</b>	<b>(5,021,174)</b>	<b>(9,638,979)</b>	<b>(11,295,652)</b>	<b>(5,304,082)</b>	<b>(812,888)</b>
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)	(311,670)	(47,766)
Net loss attributable to non-controlling interests	36,938	36,440	41,705	9,141	4,962	760
<b>Net loss attributable to ordinary shareholders of NIO Inc.</b>	<b>(3,517,549)</b>	<b>(7,561,669)</b>	<b>(23,327,862)</b>	<b>(11,413,101)</b>	<b>(5,610,790)</b>	<b>(859,894)</b>
<b>Net loss</b>	<b>(2,573,254)</b>	<b>(5,021,174)</b>	<b>(9,638,979)</b>	<b>(11,295,652)</b>	<b>(5,304,082)</b>	<b>(812,888)</b>
<b>Other comprehensive (loss)/income</b>						
Foreign currency translation adjustments, net of nil tax	55,493	(124,374)	(20,786)	(168,340)	137,596	21,088
<b>Total other comprehensive (loss)/income</b>	<b>55,493</b>	<b>(124,374)</b>	<b>(20,786)</b>	<b>(168,340)</b>	<b>137,596</b>	<b>21,088</b>
<b>Total comprehensive loss</b>	<b>(2,517,761)</b>	<b>(5,145,548)</b>	<b>(9,659,765)</b>	<b>(11,463,922)</b>	<b>(5,166,486)</b>	<b>(791,800)</b>
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)	(311,670)	(47,766)
Net loss attributable to non-controlling interests	36,938	36,440	41,705	9,141	4,962	760
<b>Comprehensive loss attributable to ordinary shareholders of NIO Inc.</b>	<b>(3,462,056)</b>	<b>(7,686,043)</b>	<b>(23,348,648)</b>	<b>(11,581,441)</b>	<b>(5,473,194)</b>	<b>(838,806)</b>
<b>Weighted average number of ordinary shares used in computing net loss per share</b>						
Basic and diluted	16,697,527	21,801,525	332,153,211	1,029,931,705	1,182,660,948	1,182,660,948
<b>Net loss per share attributable to ordinary shareholders</b>						
Basic and diluted	(210.66)	(346.84)	(70.23)	(11.08)	(4.74)	(0.73)

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	2020	
	RMB	RMB	RMB	RMB	RMB	US\$
(in thousands)						
Cost of sales	—	—	9,289	9,763	5,564	853
Research and development expenses	14,484	23,210	109,124	82,680	51,024	7,820
Selling, general and administrative expenses	62,200	67,086	561,055	241,052	130,506	20,001
<b>Total</b>	<b>76,684</b>	<b>90,296</b>	<b>679,468</b>	<b>333,495</b>	<b>187,094</b>	<b>28,674</b>

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

	2016		2017		As of December 31,		2020	
	RMB	RMB	RMB	RMB	RMB	RMB	US\$	
	(in thousands, except for share data)							
<b>Selected Consolidated Balance Sheet Data:</b>								
Cash and cash equivalents	581,296	7,505,954	3,133,847	862,839	38,425,541	5,888,972		
Restricted cash	—	10,606	57,012	82,507	78,010	11,956		
Long-term restricted cash	15,335	14,293	33,528	44,523	41,547	6,367		
Property, plant and equipment, net	833,004	1,911,013	4,853,157	5,533,064	4,996,228	765,705		
Total assets	1,770,478	10,468,034	18,842,552	14,582,029	54,641,929	8,374,243		
Total liabilities	825,264	2,402,028	10,692,210	19,403,841	22,779,686	3,491,140		
Total mezzanine equity	4,861,574	19,657,786	1,329,197	1,455,787	4,691,287	718,971		
Ordinary shares	52	60	1,809	1,827	2,679	411		
Total shareholders' (deficit)/equity	(3,916,360)	(11,591,780)	6,821,145	(6,277,599)	27,170,956	4,164,132		
Total shares outstanding	17,773,459	23,850,343	1,050,799,032	1,064,472,660	1,526,539,388	1,526,539,388		

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

	2016		2017		For the Year Ended December 31,		2020	
	RMB	RMB	RMB	RMB	RMB	RMB	US\$	
	(in thousands)							
<b>Selected Consolidated Cash Flow Data:</b>								
Net cash (used in)/provided by operating activities	(2,201,564)	(4,574,719)	(7,911,768)	(8,721,706)	1,950,894	298,985		
Net cash provided by/(used in) investing activities	117,843	(1,190,273)	(7,940,843)	3,382,069	(5,071,060)	(777,174)		
Net cash provided by financing activities	2,292,704	12,867,334	11,603,092	3,094,953	41,357,435	6,338,307		
Effects of exchange rate changes on cash, cash equivalents and restricted cash	40,539	(168,120)	(56,947)	10,166	(682,040)	(104,527)		
Net increase/(decrease) in cash, cash equivalents and restricted cash	249,522	6,934,222	(4,306,466)	(2,234,518)	37,555,229	5,755,591		
Cash and cash equivalents and restricted cash at the beginning of year	347,109	596,631	7,530,853	3,224,387	989,869	151,704		
Cash and cash equivalents and restricted cash at the end of year	596,631	7,530,853	3,224,387	989,869	38,545,098	5,907,295		

**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.

Our continued development and manufacturing of our vehicles, the ES8, the ES6, the EC6, and the ET7, 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, or delays in the development and delivery of our core technologies and new vehicle models, such as our NIO Autonomous Driving, or NAD, and technologies for battery packs;
- 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 in manufacturing and production capacity expansion, 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, and making deliveries of the EC6 in September 2020. In January 2021, we launched our fourth volume manufactured electric vehicle, the ET7, and we estimated to start delivery of our flagship smart electric sedan NIO ET7 in the first quarter of 2022. 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 not been profitable, and have only recently started to generate positive cash flows from operation.***

We have not been profitable since our inception, and have only recently started to generate positive cash flows from operation. We incurred net losses of RMB9,639.0 million, RMB11,295.7 million and RMB5,304.1 million (US\$812.9 million) in 2018, 2019 and 2020, respectively. In addition, although we generated positive cash flows from operation in 2020, we had negative cash flows from operating activities of RMB7,911.8 million and RMB8,721.7 million in 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, and potentially in production capacity expansion, to further develop 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 pandemic, 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 improve operating cash flows as well as our capacity to obtain sufficient external equity or debt financing. If we do not succeed in doing so, we may have to limit the scale of our operations, which may limit our business growth and adversely affect our financial condition and results of operations.

***Our business, financial condition and results of operations may be adversely affected by the COVID-19 pandemic.***

Since the beginning of 2020, the COVID-19 pandemic has resulted in temporary closure of many corporate offices, retail stores, manufacturing facilities and factories across China and the world. In early 2020, in response to intensifying efforts to contain the spread of COVID-19, the Chinese government took a number of actions, which included, among others, extending the Chinese New Year holiday, quarantining and otherwise treating individuals in China who had contracted COVID-19, asking residents to remain at home and to avoid gathering in public. While such restrictive measures have been gradually lifted, our business has been and could continue to be adversely impacted by the effects of the COVID-19 pandemic. Although COVID-19 has been largely controlled in China, there have been occasional outbreaks in several cities. To the extent we have service centers and vehicle delivery centers in these locations, we are susceptible to factors adversely affecting one or more of these locations as a result of COVID-19. Our results of operations have been and could continue to be adversely affected to the extent the COVID-19 pandemic 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 the COVID-19 pandemic 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 reduction of vehicles manufactured and in turn fewer vehicles delivered, which have and may continue to 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.

As a result of COVID-19, normal economic life throughout China was sharply curtailed and there were disruptions to normal operation of businesses in various areas, including the manufacturing and sales of vehicles in China. In addition, the ongoing global pandemic may adversely affect the supply chains, which in turn may materially and adversely affect our business and results of operations. The global pandemic, especially the situation in Europe, may also delay the execution of our overseas market expansion plan. Currently, the vaccines are not widely accessible to the public. Relaxation of restrictions on economic and social life may lead to new cases which may lead to the re-imposition of restrictions. As a result, the duration of such business disruption and the resulting financial and operational impact on us cannot be reasonably estimated at this time. The extent to which the COVID-19 pandemic may further impact our business and financial performance will depend on future developments, which are highly uncertain and largely beyond our control. Even if the economic impact of COVID-19 gradually recedes, the pandemic will have a lingering, long-term effect on business activities and consumption behavior. There is no assurance that we will be able to adjust our business operations to adapt to these changes and the increasingly complex environment in which we operate.

***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. We began making deliveries of the all-new ES8 in April 2020, and our third volume manufactured vehicle, the EC6, in September 2020. In January 2021, we launched our fourth volume manufactured electric vehicle, the ET7, and we estimate to start delivery of our flagship smart electric sedan NIO ET7 in the first quarter of 2022.

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 power 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, the ET7, 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 power 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 the manufacturing of our vehicles, initially the ES8, for five years starting from May 2016. In April 2019 and March 2020, we entered into manufacturing cooperation agreements with JAC for the manufacturing of the ES6 and the EC6, respectively. The ES8, ES6 and EC6 are manufactured in partnership with JAC at its Hefei manufacturing plant. As of the date of this annual report, we are in the process of negotiating with JAC for the manufacturing arrangements of the ET7. 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 EC6) and potentially ET7 and 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, 2020, we had paid JAC a total of RMB1,233.9 million, including RMB455.5 million as compensation for losses incurred since 2018 and RMB778.4 million for manufacturing and processing fees. If we continue to be 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 are currently in the process of renewing our overall arrangement with JAC for the manufacturing of our vehicles, which original arrangement is currently set to expire in May 2021. We may be unable to enter into new agreements or extend existing agreements with JAC and other 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. Favorable government incentives and subsidies in China include one-time government subsidies, exemption from vehicle purchase tax, exemption from license plate restrictions in certain cities, preferential utility rates for charging facilities and more. Changes in government subsidies, economic incentives and government policies to support NEVs could adversely affect our results of our operations.

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. The 2020 subsidy standard, effective from April 23, 2020, reduces the base subsidy amount in general by 10% for each NEV, sets subsidies for 2 million vehicles as the upper limit of annual subsidy scale; and provides that national subsidy shall only apply to an NEV with the sale price under RMB300,000 or compatible with battery swapping. We believe that our sales performance of ES8, ES6 and EC6 in 2019 and 2020 was negatively affected by the reduction in the subsidy standard to some extent. The current 2021 subsidy standard, effective from January 1, 2021, reduced by 20% as compared to the 2020 subsidy standard. Further, the 2022 subsidy standard are expected to be reduced by 30% as compared to the standard of 2021.

Our vehicles sales may also be impacted by government policies such as tariffs on imported cars and foreign investment restrictions in the industry. The tariff in China on imported passenger vehicles (other than those originating in the United States of America) was reduced to 15% starting from July 1, 2018. As a result, pricing advantage of domestically manufactured vehicles could be diminished. There used to be certain limit on foreign ownership of automakers in China, but for automakers of NEVs, such limit was lifted in 2018. Further, pursuant to the currently effectively Special Administrative Measures for Market Access of Foreign Investment (2020 Version), or the 2020 Negative List, which came into effect on July 23, 2020, the limit on foreign ownership of automakers for ICE passenger vehicles will be lifted by 2022. As a result, foreign NEV competitors could build wholly-owned facilities in China without the need for a domestic joint venture partner. These changes could affect the competitive landscape of the NEV industry and reduce our pricing advantage, which may adversely affect our business, results of operations and financial condition.

Such negative influence and our undermined sales performance resulted therefrom could 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, delayed payment 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, EC6 and ET7, 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 in 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 2020, and plan to continue to explore more features of the NIO Pilot system in 2021. 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 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, the ET7, 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, 2020, we had paid JAC a total of RMB1,233.9 million, including RMB455.5 million as compensation for losses incurred since 2018 and RMB778.4 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 power solutions.***

We provide our users with comprehensive power solutions. We install home chargers for users where practicable, and provide other solutions including battery swapping, supercharging, charging through publicly accessible charging infrastructure and charging using our fast-charging vans. Our users are able to use our NIO One Click for Power valet charging service where their vehicles are picked up, charged and then returned.

We have very limited experience in the actual provision of our power solutions to users and providing these services is subject to challenges, including the challenges associated with sorting out the logistics of rolling out our network and teams in appropriate areas, inadequate capacity or over capacity of our services in certain areas, security risks or risk of damage to vehicles during One Click for Power 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 also face uncertainties with regard to governmental support and public infrastructure as we roll out our power solutions, including whether we can obtain and maintain access to sufficient charging infrastructure, whether we can obtain any required permits and land use rights and complete any required filings, and whether the government support in this area may discontinue.

Furthermore, given our limited experience in providing power 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 power solutions, our reputation and business may be materially and adversely affected.

***We may face challenges providing the Battery as a Service.***

On August 20, 2020, we introduced the Battery as a Service, or BaaS, which allows users to purchase electric vehicles and subscribe the usage of battery packs separately. If users opt to purchase an ES8, ES6, EC6 or ET7 model and subscribe to use the 70kWh battery pack under the BaaS, they can enjoy an RMB70,000 deduction off the original vehicle purchase price and pay a monthly subscription fee of RMB980 for the battery pack. On November 6, 2020, we launched the 100kWh battery pack with battery update plans. If users opt to purchase an ES8, ES6, EC6 or ET7 and subscribe for the 100kWh battery pack under the BaaS, they can purchase the vehicle without the battery pack while paying a monthly subscription fee of RMB1,480. Users who currently apply the 70kWh battery pack with the intention to upgrade their batteries can choose to either purchase a 100kWh battery pack for permanent upgrades or pay a monthly subscription fee of RMB880 for a flexible upgrade package.

Under the BaaS, we sell a battery pack to the Battery Asset Company, and the user subscribes to the usage of the battery pack from the Battery Asset Company. The service we provide to our users under the BaaS relies, in part, on the smooth operation of and stability and quality of service delivered by the Battery Asset Company, which we cannot guarantee. We invested in the Battery Asset Company with Contemporary Amperex Technology Co., Limited, or CATL, Hubei Science Technology Investment Group Co., Ltd. and a subsidiary of Guotai Junan International Holdings Limited, which we refer to as the Battery Asset Company Investors in this annual report. As a result, we only have limited control over the business operations of the Battery Asset Company. If it fails in providing high-quality services to our users, we will suffer from negative customer reviews and even returns of products or services. If the Battery Asset Company is unable to obtain future financings from the Battery Asset Company Investors or other third parties to meet its operational needs, it may not be able to continue purchasing batteries from us and leasing them to our users, or otherwise maintain its healthy and sustainable operations. On the other hand, if the Battery Asset Company bears a significant rate of customer default on its payment obligations, its results of operations and financial performance may be materially impacted, which will in turn reduce the value of our and the Battery Asset Company Investors' investments in the Battery Asset Company. In addition, in furtherance of the BaaS, we agreed to provide guarantee to the Battery Asset Company for the default in payment of monthly subscription fees from users, while the maximum amount of guarantee that can be claimed shall not be higher than the accumulated service fees we receive from the Battery Asset Company. As the BaaS user base is expanding, if an increased number of default occurs, our results of operations and financial performance will be negatively 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 are also expanding our service scope to meet our users' evolving demands. For example, in January 2021, we launched NIO Certified, our official used car business, where our users can sell their NIO vehicles to us and we will resell them for value. We have established a nationwide used vehicle business network, covering services including vehicle inspection, evaluation, acquisition and sales. In addition, we have also recently started to offer auto financing arrangements to our users directly through our subsidiaries. New service offerings will subject us to unknown risks. We cannot assure you that our services, including our energy package and service package, our used car service, our auto financing services 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 partially 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, the EC6 and the ET7, 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. 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 delivery of the ES8, ES6, EC6, ET7, 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 the premium segment of the passenger vehicles in China increased in 2020, overall automobile sales in China declined 6.8% 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.

***We may face challenges in expanding our business and operations internationally and our ability to conduct business in international markets may be adversely affected by legal, regulatory, political and economic risks.***

We face challenges and risks associated with expanding our business and operations globally into new geographic markets. New geographic markets may have competitive conditions, user preferences, and discretionary spending patterns that are more difficult to predict or satisfy than our existing markets. In certain markets, we have relatively little operating experience and may not benefit from any first-to-market advantages or otherwise succeed. We may also face protectionist policies that could, among other things, hinder our ability to execute our business strategies and put us at a competitive disadvantage relative to domestic companies. Local companies may have a substantial competitive advantage because of their greater understanding of, and focus on, the local users, as well as their more established local brand names, requiring us to build brand awareness in that market through greater investments in advertising and promotional activity. International expansion may also require significant capital investment, which could strain our resources and adversely impact current performance, while adding complexity to our current operations. We are subject to PRC law in addition to the laws of the foreign countries in which we operate. If any of our overseas operations, or our associates or agents, violate such laws, we could become subject to sanctions or other penalties, which could negatively affect our reputation, business and operating results.

In addition, we may face operational issues that could have a material adverse effect on our reputation, business and results of operations, if we fail to address certain factors including, but not limited to, the following:

- lack of acceptance of our products and services, and challenges of localizing our offerings to appeal to local tastes;
- conforming our products to regulatory and safety requirements and charging and other electric infrastructures;
- failure to attract and retain capable talents with international perspectives who can effectively manage and operate local businesses;
- challenges in identifying appropriate local business partners and establishing and maintaining good working relationships with them;
- availability, reliability and security of international payment systems and logistics infrastructure;



- challenges of maintaining efficient and consolidated internal systems, including technology infrastructure, and of achieving customization and integration of these systems with the other parts of our technology platform;
- challenges in replicating or adapting our company policies and procedures to operating environments different from that of China;
- national security policies that restrict our ability to utilize technologies that are deemed by local governmental regulators to pose a threat to their national security;
- the need for increased resources to manage regulatory compliance across our international businesses;
- compliance with privacy laws and data security laws and compliance costs across different legal systems;
- heightened restrictions and barriers on the transfer of data between different jurisdictions;
- differing, complex and potentially adverse customs, import/export laws, tax rules and regulations or other trade barriers or restrictions related compliance obligations and consequences of non-compliance, and any new developments in these areas;
- business licensing or certification requirements of the local markets;
- challenges in the implementation of BaaS and other innovative business models in countries and regions outside of China;
- exchange rate fluctuations; and
- political instability and general economic or political conditions in particular countries or regions, including territorial or trade disputes, war and terrorism.

Failure to manage these risks and challenges could negatively affect our ability to expand our business and operations overseas as well as materially and adversely affect our business, financial condition and results of operations.

***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 digital technologies, 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, the EC6, and the ET7, 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 power 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, EC6 and ET7 each uses a great amount of purchased parts from 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, the EC6, and the ET7, 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. For example, the current global supply constraint of semiconductors has negatively impacted our production activity and volume, as a result of which, we temporarily suspended the vehicle production activity in the JAC-NIO manufacturing plant in Hefei for five working days starting from March 29, 2021 and we produced fewer vehicles in March 2021 than we had previously anticipated without the impact of semiconductor shortage. Our production activity and results of operations may be further impacted should the semiconductor shortage continue. 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, Formula E team sponsorship, 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 provided 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 deduction in the purchase price and users adopting this arrangement pay RMB1,280 per month, payable over 78 months. For the ES8, ES6 and EC6 ordered between January 16, 2019 and August 19, 2020, there is an RMB100,000 deduction 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, respectively. The ES6, the new-ES8 and the EC6 received the CCC certification in April 2019, December 2019 and August 2020, respectively. The ET7 has not yet undergone the CCC certification but must be certified 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 ET7 before delivery, which is estimated to commence in the first quarter of 2022. Furthermore, the government carries out the supervision and scheduled and unscheduled inspection of certified vehicles on a regular basis. In the event that our certifications fail to be renewed upon expiry, a certified vehicle has a defect resulting in quality or safety accidents, or consistent failure of certified vehicles 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, the ET7 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 and NAD, we provide enhanced ADAS and plan to offer higher level of autonomous driving functionalities, and through our research and development, we continually 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. 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, 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.***

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. Subsequently from April to June 2020, we entered into definitive agreements, as amended and supplemented, or the Hefei Agreements, for investments in NIO China with a group of investors, which we refer to as the Hefei Strategic Investors in this annual report. Under the Hefei Agreements, the Hefei Strategic Investors agreed to invest an aggregate of RMB7 billion in cash into NIO Holding Co., Ltd. (previously known as NIO (Anhui) Holding Co., Ltd.), or NIO China, a legal entity wholly owned by us pre-investment. We agreed to 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. For more information, see “Item 4. Information on the Company—B. Business Overview—Certain Other Cooperation Arrangements—Hefei Strategic Investors” included elsewhere in this annual report. For more information on the provisions of the Hefei Agreements, please refer to exhibits 4.30 to 4.38 of this annual report.

Pursuant to the Hefei Agreements, NIO China will establish its headquarters in the Hefei Economic and Technological Development Area, or HETA, where our main manufacturing hub is located, for its business operations, 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.

Subsequent to the entry into the Hefei Agreements, the cash contribution obligations of us and the Hefei Strategic Partners have all been fulfilled and we have exercised the agreed-upon redemption right and capital increase right. In addition, in February 2021, we, through one of our wholly-owned subsidiaries, also purchased from two of the Hefei Strategic Investors an aggregate of 3.305% equity interests in NIO China for a total consideration of RMB5.5 billion and subscribed for newly increased registered capital of NIO China at a subscription price of RMB10.0 billion. As a result of these transactions, as of the date of this annual report, the registered capital of NIO China is approximately RMB6.167 billion, and we hold 90.360% controlling equity interests in NIO China. We are fulfilling our other obligations, including injecting the Asset Consideration into NIO China, in accordance with the Hefei Agreements.

Our collaboration with the Hefei Strategic Investors and HETA and our investment in NIO China are subject to a number of other risks, many of which are beyond our control. If any of the risks materializes, the business of NIO China and our business, results of operations and financial condition may be materially and adversely affected, which could adversely affect the price of our ADSs. For example, we may not be able to perform our contractual obligations under the Hefei Agreements due to reasons beyond our control. As a result, we may be subject to liabilities and obligations under the Hefei Agreements and may not be able to achieve the expected benefits of the investment. We may need to obtain additional financing to fund our contractual obligations under the Hefei Agreements and such financing may not be available in the amounts or on terms acceptable to us, if at all.

In connection with this investment, NIO China 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. You would not enjoy these preferential rights or treatment through investing in our ADSs and the underlying ordinary shares. Exercise of these preferential rights by the Hefei Strategic Investors may also adversely affect your investment in our Company.

In particular, the Hefei Strategic Investors may require us to redeem the shares of NIO China they hold under various circumstances, at a redemption price equal to 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 upon the occurrence of certain events. If any of the triggering events of redemption occurs, we will need substantial capital to redeem the shares of NIO China 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 China when required under the Hefei Shareholders Agreement, which would constitute an event of default under the Hefei Shareholders Agreement and subject us to liabilities.

In addition, before NIO China 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 China's shares to a third party that may result in our shareholding in NIO China falling 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 China's shares.

Because we will inject the core businesses and assets into NIO China, the Hefei Strategic Investors will have senior claims over the assets of NIO China compared to NIO China's other shareholders (i.e., our other subsidiaries) when a liquidation event of NIO China occurs. As a result, holders of our ADSs will be structurally subordinated to the Hefei Strategic Investors, which may negatively affect the value of the investment of ADS holders in our company. We may not have sufficient funding to repay our existing debts. Furthermore, the Hefei Strategic Investors will have voting rights with respect to various significant corporate matters of NIO China and its consolidated entities, such as change in NIO China'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 China. Any of the foregoing could materially adversely affect your investment in our ADSs.



***Our business plans require a significant amount of capital. In addition, our future capital needs may require us to issue 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 power 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 substantial amount of currently outstanding indebtedness may also affect our ability to obtain financing in a timely manner and on reasonable terms.

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 issue 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, the ES6, the EC6, and the ET7, we provide an extended warranty, subject to certain conditions. In addition to the warranty 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, electric 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 delivery of the ES8 until June 2018, of the ES6 until June 2019 and of the EC6 until September of 2020, and will not start making deliveries of the ET7 until the first quarter in 2022, we have little experience with warranty claims regarding our vehicles or with estimating warranty reserves. As of December 31, 2020, we had warranty reserves in respect of our vehicles of RMB952.9 million (US\$146.0 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, 2020, we had 2,654 issued patents and 1,397 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, 2020, we had RMB5,938.3 million (US\$910.1 million) in total long-term borrowings outstanding, consisting primarily of (i) our 4.50% convertible senior notes due 2024; (ii) our convertible senior notes due 2022 issued in September 2019 to an affiliate of Tencent Holdings Limited; and (iii) our long-term bank debt, excluding the current portions of (iii) that are due within one year from December 31, 2020. Meanwhile, as of December 31, 2020, we had RMB1,550.0 million (US\$237.5 million) in total short-term borrowings. In January 2021, we also issued US\$750 million aggregate principal amount of 0.00% convertible senior notes due 2026, or the 2026 Notes, and US\$750 million aggregate principal amount of 0.50% convertible senior notes due 2027, or the 2027 Notes.

In February 2019, we issued US\$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. 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. In connection with the issuance of the 2024 Notes, we entered into capped call transactions and zero-strike call option transactions. Shortly after the pricing of the 2026 Notes and the 2027 Notes in January 2021, we entered into separate and individually privately negotiated agreements with certain holders of the 2024 Notes to exchange approximately US\$581.7 million principal amount of the outstanding 2024 Notes for ADSs (each, a "2024 Notes Exchange" and collectively, the "2024 Notes Exchanges"). The 2024 Notes Exchanges closed on January 15, 2021. In connection with the 2024 Notes Exchanges, we also entered into agreements with certain financial institutions that are parties to our existing capped call transactions (which we had entered into in February 2019 in connection with the issuance of the 2024 Notes) shortly after the pricing of the 2026 Notes and the 2027 Notes to terminate a portion of the relevant existing capped call transactions in a notional amount corresponding to the portion of the principal amount of such 2024 Notes exchanged. In connection with such terminations of the existing capped call transactions, we received deliveries of ADSs in such amounts as specified pursuant to such termination agreements on January 15, 2021.

In September 2019, 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 convertible notes, each in two equally split tranches, collectively the Affiliate Notes. The Affiliate Notes issued in the first tranche matured in 360 days from the issuance date, bore no interest, and required 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 from the issuance date, bear no interest, and require us to pay a premium at 6% of the principal amount at maturity. The 360-day Affiliate Notes are 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 Affiliate Notes are 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. As of December 31, 2020, the 360-day Affiliate Notes issued to each of an affiliate of Tencent Holdings Limited and Mr. Bin Li have been converted to Class A ordinary shares and the three-year Affiliate Notes issued to the wholly owned company of Mr. Bin Li have been converted to ADSs.

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 bore 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 our Class A ordinary shares (or ADSs), prior to maturity and (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 our Class A ordinary shares (or ADSs), prior to maturity and from September 5, 2020, at a conversion price of US\$3.50 per ADS, subject to certain adjustments. As of December 31, 2020, all of the 2021 Notes have been converted to ADSs.

In January 2021, we issued US\$750 million aggregate principal amount of 0.00% convertible senior notes due 2026, or the 2026 Notes, and US\$750 million aggregate principal amount of 0.50% convertible senior notes due 2027, or the 2027 Notes. The 2026 Notes and the 2027 Notes are unsecured debt. Prior to August 1, 2025, in the case of the 2026 Notes, and August 1, 2026, in the case of the 2027 Notes, the 2026 Notes and the 2027 Notes, as applicable, will be convertible at the option of the holders only upon satisfaction of certain conditions and during certain periods. Holders may convert their 2026 Notes or 2027 Notes, as applicable, at their option at any time on or after August 1, 2025, in the case of the 2026 Notes, or August 1, 2026, in the case of the 2027 Notes, until the close of business on the second scheduled trading day immediately preceding the relevant maturity date. Upon conversion, we will pay or deliver to such converting holders, as the case may be, cash, ADSs, or a combination of cash and ADSs, at our election. The initial conversion rate of the 2026 Notes is 10.7458 ADSs per US\$1,000 principal amount of such 2026 Notes. The initial conversion rate of the 2027 Notes is 10.7458 ADSs per US\$1,000 principal amount of such 2027 Notes. The relevant conversion rate for such series of the 2026 Notes and the 2027 Notes is subject to adjustment upon the occurrence of certain events. Holders of the 2026 Notes and the 2027 Notes may require us to repurchase all or part of their 2026 Notes and 2027 Notes for cash on February 1, 2024, in the case of the 2026 Notes, and February 1, 2025, in the case of the 2027 Notes, or in the event of certain fundamental changes, at a repurchase price equal to 100% of the principal amount of the 2026 Notes or the 2027 Notes to be repurchased, plus accrued and unpaid interest, if any, to, but excluding, the relevant repurchase date. In addition, on or after February 6, 2024, in the case of the 2026 Notes, and February 6, 2025, in the case of the 2027 Notes, until the 20th scheduled trading day immediately prior to the relevant maturity date, we may redeem the 2026 Notes or the 2027 Notes, as applicable for cash subject to certain conditions, at a redemption price equal to 100% of the principal amount of the 2026 Notes or the 2027 Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the relevant optional redemption date. Furthermore, we may redeem all but not part of the 2026 Notes or the 2027 Notes in the event of certain changes in the tax laws.

Satisfying the obligations of all these indebtedness and interest 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 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. Lastly, we are exposed to interest rate risk related to our portfolio of investments in debt securities and the debt that we have issued. Among other things, some of our bank loans carry floating interest, and increases in interest rates would result in a decrease in the fair value of our outstanding debt. In the event that we incur a decrease in the fair value of our outstanding debt, our financial performance will be adversely affected.

***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, 2026 Notes and 2027 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, 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 power 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, 2020, awards to purchase an aggregate amount of 79,318,499 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, 2020, our unrecognized share-based compensation expenses amounted to RMB1,013.0 million (US\$155.2 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.

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 SEC.

Following the identification of the material weakness, we have taken measures to remedy the material weakness. Our management has concluded that our internal control over financial reporting was effective as of December 31, 2020 after the remediation. For details on these initiatives, please see "Item 15. Controls and Procedures—Management's Annual Report on Internal Control over Financial Reporting." In addition, our independent registered public accounting firm has audited the effectiveness of our internal control over financial reporting as of December 31, 2020, as stated in its report, which appears on page F-2 of this annual report on Form 20-F.

In the future, our management may conclude that our internal control over financial reporting is not effective. Moreover, even if our management concludes that our internal control over financial reporting is effective, our independent registered public accounting firm, after conducting its own independent testing, may issue a report with adverse opinion if it is not satisfied with our internal controls or the level at which our controls are documented, designed, operated or reviewed, or if it interprets the relevant requirements differently from us.

If we fail to implement and maintain an effective internal control environment, we could suffer material misstatements in our consolidated financial statements and fail to meet our reporting obligations, which would likely cause investors to lose confidence in our reported financial information. This could in turn limit our access to capital markets, harm our results of operations, and lead to a decline in the trading price of our listed securities. Furthermore, we may need to incur additional costs and use additional management and other resources as our business and operations further expand or in an effort to remediate any significant control deficiencies that may be identified in the future. Additionally, ineffective internal control over financial reporting could expose us to increased risk of fraud or misuse of corporate assets and subject us to potential delisting from the stock exchange on which we list, regulatory investigations and civil or criminal sanctions.

***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. Subsequently from April to June 2020, we entered into definitive agreements, as amended and supplemented, for investments in NIO China. 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. In February 2021, we, through NIO China, entered into a further collaboration framework agreement with the municipal government of Hefei, Anhui province, pursuant to which Hefei government and NIO China agreed in principle to jointly build a world-class industrial campus to support the development and innovations of the smart electric vehicle industry and related supply chains led by NIO China. In addition, Hefei government and its associated parties plan to re-invest their returns from the equity investments in NIO China to support the further cooperation in Hefei.



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 non-compliance 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.

***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. In recent years, there have been outbreaks of epidemics in China and globally. Our business operations could be disrupted if any of our employees are suspected of having epidemics, since it could require our employees to be quarantined and/or our offices to be disinfected. In addition, our results of operations could be adversely affected to the extent that the outbreak harms the Chinese economy in general.

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.

***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 down 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.

***Rising international political tension, including 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 cross-border business may not currently be an area of our focus, any unfavorable government policies on international trade, such as capital controls or tariffs, may affect the demand for our products and services, impact the competitive position of our products or prevent us from selling products in certain countries. Moreover, many of the recent policy updates in the U.S., including the Clean Network project initiated by the U.S. Department of State in August 2020 and the Entity List regime maintained and regularly updated by the U.S. Bureau of Industry and Security, may have unforeseen implications for our business. 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.

Additionally, the United States and various foreign governments have imposed controls, export license requirements and restrictions on the import or export of technologies and products (or voiced the intention to do so), especially related to semiconductor, AI and other high-tech areas, which may have a negative impact on our business, financial condition and results of operations. For instance, India has banned a large number of apps in 2020 out of national security concerns, many of which are China-based apps, escalating regional political and trade tensions.

***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.***

In conjunction with our pursuit of being a user enterprise and with the goal of building a deeper connection between NIO and our users, Mr. Bin Li, our chairman of the board of directors and chief executive officer, transferred certain of his ordinary shares to NIO Users Trust after the completion of the initial public offering of our ADSs on the New York Stock Exchange in September 2018. Currently, NIO Users Trust holds 12,189,253 Class A ordinary shares and 37,810,747 Class C ordinary shares through a holding company controlled by it. Mr. Li continues to retain the voting rights of these shares. In 2019, our user committee adopted the NIO Users Trust Charter by way of voting, and established a User Council to generally manage the operation of NIO Users Trust. In this way, our users have the opportunity to discuss and manage the use of the economic benefits from the shares in NIO Users Trust through the User Council consisting of members of our user community elected by our users. The User Council helps coordinate user activity in our community, and the current second User Council has decided to focus their work on user care, industry sub-communities, public welfare and environmental protection in 2021.

The current NIO Users Trust Charter provides certain mechanisms for the User Council to manage and supervise the operations of NIO Users Trust. There is no assurance that such current mechanisms for managing the operations of NIO Users Trust we have adopted are to the satisfaction of all of our users, or that such mechanisms will be carried out in the way it was intended. The User Council may not be able to achieve its intended work focus or carry out their work effectively and efficiently. Furthermore, the accounting implications to us of the arrangement of NIO Users Trust cannot presently be ascertained.

***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. 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 entity 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.***

Foreign ownership of certain areas of businesses is subject to restrictions under current PRC laws and regulations. For example, 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 pursuant to the 2020 Negative List.

We are a Cayman Islands exempted company and our PRC subsidiaries are considered foreign-invested enterprises. To comply with the applicable PRC laws and regulations, we had planned to conduct certain operations that were then subject to restrictions on foreign investment 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 had entered into a series of contractual arrangements with Shanghai Anbin Technology Co., Ltd., or Shanghai Anbin, and its shareholders, which enabled 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 indirectly owned 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 were the primary beneficiary of NIO New Energy and hence consolidated its financial results as our variable interest entity under U.S. GAAP. On March 31, 2021, NIO Co., Ltd., or NIO WFOE, and Shanghai Anbin Technology Co., Ltd., or Shanghai Anbin, and each shareholder of Shanghai Anbin entered into a termination agreement pursuant to which each of the contractual agreements among NIO WFOE, Shanghai Anbin and its shareholders terminated as of the date of the agreement. In addition, 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 VIE and Its 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 entity 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 entity and its 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—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 newly enacted 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 entity are found to be in violation of any existing or future PRC laws or regulations, or our PRC subsidiaries or our variable interest entity 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 entity;
- imposing fines, confiscating the income from our PRC subsidiaries or our variable interest entity, or imposing other requirements with which we or our variable interest entity may not be able to comply;

- requiring us to restructure our ownership structure or operations, including terminating the contractual arrangements with our variable interest entity and deregistering the equity pledge of our variable interest entity, which in turn would affect our ability to consolidate, derive economic interests from, or exert effective control over our variable interest entity; 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 entity that most significantly impact their economic performance, and/or our failure to receive the economic benefits from our variable interest entity, 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 entity and its shareholders to exercise control over our business, which may not be as effective as direct ownership in providing operational control.***

We have relied on contractual arrangements with Shanghai Anbin and its shareholders to conduct a portion of our operations in China. On March 31, 2021, the contractual agreements with Shanghai Anbin and its shareholders were terminated. See “Item 4. Information on the Company—C. Organizational Structure—Contractual Agreements with the VIE and Its Shareholders” for more information. We have relied and expect to continue to rely on contractual arrangements with Beijing NIO and its 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 VIE and Its Shareholders.” The shareholders of 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 entity, or VIE, we would be able to exercise our rights as a shareholder to control our VIE to exercise rights of shareholders to effect changes in the board of directors of our VIE, 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 Beijing NIO and its 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 Beijing NIO.

If Beijing NIO or its 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 entity, 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 entity’ 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 current and past 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. On March 31, 2021, equity interest pledge agreement among NIO WFOE, Shanghai Anbin and its shareholders were terminated, and the deregistration of the equity interest pledges of shareholders of Shanghai Anbin under its equity interests pledge agreement that were previously registered with the relevant local branch of the SAMR was completed. See “Item 4. Information on the Company—C. Organizational Structure—Contractual Agreements with the VIE and Its Shareholders” for more information.

The equity interest pledge agreements with our variable interest entity’s 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 entity 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. On March 31, 2021, the contractual agreements with Shanghai Anbin and its shareholders were terminated. See “Item 4. Information on the Company—C. Organizational Structure—Contractual Agreements with the VIE and Its Shareholders” for more information. As shareholders of Beijing NIO, they may have potential conflicts of interest with us. These shareholders may breach, or cause our variable interest entity to breach, or refuse to renew, the existing contractual arrangements we have with them and our variable interest entity, which would have a material and adverse effect on our ability to effectively control our variable interest entity and receive economic benefits from it. For example, the shareholders may be able to cause our agreements with 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 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 current and past variable interest entities may be subject to scrutiny by the PRC tax authorities and they may determine that we or our current or past 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 current and past 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. On March 31, 2021, the contractual agreements with Shanghai Anbin and its shareholders were terminated. See "Item 4. Information on the Company—C. Organizational Structure—Contractual Agreements with the VIE and Its Shareholders" for more information. However, we may face the material and adverse tax consequences described above with respect to our contractual agreements with Shanghai Anbin and its shareholders when such agreements were effective. In addition, if NIO Co., Ltd. requests the shareholders of 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 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 current and past 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 entity that are material to the operation of our business if our variable interest entity goes bankrupt or becomes subject to dissolution or liquidation proceedings.***

As part of our contractual arrangements with our variable interest entity, the entity may in the future hold certain assets that are material to the operation of our business. If our variable interest entity goes bankrupt and all or part of its 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 entity 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 our variable interest entity 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**

***Our ADSs may be delisted under the Holding Foreign Companies Accountable Act if the PCAOB is unable to inspect auditors who are located in China. The delisting of our ADSs, or the threat of their being delisted, may materially and adversely affect the value of your investment. Additionally, the inability of the PCAOB to conduct inspections deprives our investors with the benefits of such inspections.***

The Holding Foreign Companies Accountable Act, or the HFCA Act, was enacted on December 18, 2020. The HFCA Act states if the SEC determines that we have filed audit reports issued by a registered public accounting firm that has not been subject to inspection by the PCAOB for three consecutive years beginning in 2021, the SEC shall prohibit our shares or ADSs from being traded on a national securities exchange or in the "over-the-counter" trading market in the U.S.

Our auditor, the independent registered public accounting firm that issues the audit report included elsewhere in this annual report, as an auditor 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 pursuant to which the PCAOB conducts regular inspections to assess its compliance with the applicable professional standards. Since our auditor is located in China, a jurisdiction where the PCAOB has been unable to conduct inspections without the approval of the Chinese authorities, our auditor is currently not inspected by the PCAOB.



On March 24, 2021, the SEC adopted interim final rules relating to the implementation of certain disclosure and documentation requirements of the HFCA Act. We will be required to comply with these rules if the SEC identifies us as having a “non-inspection” year under a process to be subsequently established by the SEC. The SEC is assessing how to implement other requirements of the HFCA Act, including the listing and trading prohibition requirements described above.

The SEC may propose additional rules or guidance that could impact us if our auditor is not subject to PCAOB inspection. For example, on August 6, 2020, the President’s Working Group on Financial Markets, or the PWG, issued the Report on Protecting United States Investors from Significant Risks from Chinese Companies to the then President of the United States. This report recommended the SEC implement five recommendations to address companies from jurisdictions that do not provide the PCAOB with sufficient access to fulfil its statutory mandate. Some of the concepts of these recommendations were implemented with the enactment of the HFCA Act. However, some of the recommendations were more stringent than the HFCA Act. For example, if a company was not subject to PCAOB inspection, the report recommended that the transition period before a company would be delisted would end on January 1, 2022.

The SEC has announced that the SEC staff is preparing a consolidated proposal for the rules regarding the implementation of the HFCA Act and to address the recommendations in the PWG report. It is unclear when the SEC will complete its rulemaking and when such rules will become effective and what, if any, of the PWG recommendations will be adopted. The implications of this possible regulation in addition the requirements of the HFCA Act are uncertain. Such uncertainty could cause the market price of our ADSs to be materially and adversely affected, and our securities could be delisted or prohibited from being traded “over-the-counter” earlier than would be required by the HFCA Act. If our securities are unable to be listed on another securities exchange by then, such a delisting would substantially impair your ability to sell or purchase our ADSs when you wish to do so, and the risk and uncertainty associated with a potential delisting would have a negative impact on the price of our ADSs.

The PCAOB’s inability to conduct inspections in China prevents it from fully evaluating the audits and quality control procedures of our independent registered public accounting firm. As a result, we and investors in our ordinary shares are deprived of the benefits of such PCAOB inspections. The inability of the PCAOB to conduct inspections of auditors in China makes it more difficult to evaluate the effectiveness of our independent registered public accounting firm’s audit procedures or quality control procedures as compared to auditors outside of China that are subject to the PCAOB inspections, which could cause investors and potential investors in our stock to lose confidence in our audit procedures and reported financial information and the quality of our financial statements.

In May 2013, the PCAOB announced that it had entered into a Memorandum of Understanding on Enforcement Cooperation with the CSRC and the PRC Ministry of Finance, which establishes a cooperative framework between the parties for the production and exchange of audit documents relevant to investigations undertaken by the PCAOB in the PRC or by the CSRC or the PRC Ministry of Finance in the United States. The PCAOB continues to be in discussions with the CSRC and the PRC Ministry of Finance to permit joint inspections in the PRC of audit firms that are registered with the PCAOB and audit Chinese companies that trade on U.S. exchanges.

***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 were 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.

***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 2020 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 entity through which we operate our business is not treated as domestic investment and our operations carried out through such variable interest entity 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.” Manufacturing of our vehicles is subject to extensive regulations in China. See “Item 4. Information on the Company—B. Business Overview—Regulation—Regulations and Approvals Covering the Manufacturing of Pure Battery 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, our variable interest entity, 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 vans 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, 2020, most of our PRC subsidiaries and our variable interest entities at that time had not made appropriations to statutory reserves as our PRC subsidiaries and our variable interest entities at that time 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 entity 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 current and past variable interest entities may be subject to scrutiny by the PRC tax authorities and they may determine that we or our current and past 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.

Companies registered and operating in China are required under the PRC Social Insurance Law (latest amended in 2018) and the Regulations on the Administration of Housing Funds (latest amended in 2019) 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 VIE 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 VIE 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 costs, we conducted a series of organizational restructuring to cut headcount 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 could undertake an 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 amended in 2009, 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 RMB7.49 million for the phase I construction of the Nanjing Advanced Manufacturing Engineering Center as of December 31, 2020. 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-PRC resident enterprises, including the holders of our ADSs. In addition, non-PRC 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 Treaties, which became effective in January 2020, 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, 2020, most of our subsidiaries and variable interest entities at that time 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 and was amended on June 15, 2018. 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-PRC 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-PRC 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-PRC 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 and variable interest entity 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 and variable interest entity are members of our senior management team who have signed employment agreements with us or our PRC subsidiaries and variable interest entity 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 and variable interest entity. 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 or variable interest entity, we or our PRC subsidiaries or variable interest entity 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. In addition, we may not be able to renew our existing lease agreements before their expiration dates, in which case we may be required to vacate the properties. 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.

## **Risks Related to Our ADSs and Our 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\$2.11 to a high of US\$57.20 between January 1, 2020 and December 31, 2020. 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 and cash flows;
- 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, issuance of ADSs or ordinary shares upon conversion of the convertible notes we issued, 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 February 28, 2021, Mr. Li beneficially owned 39.3% 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 owned 17.5% of the aggregate voting power of our company through Mount Putuo Investment Limited, Image Frame Investment (HK) Limited, Huang River Investment Limited and a wholly-owned subsidiary of Tencent Holding 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.

***Techniques employed by short sellers may drive down the market price of our ADSs.***

Short selling is the practice of selling securities that the seller does not own but rather has borrowed from a third party with the intention of buying identical securities back at a later date to return to the lender. The short seller hopes to profit from a decline in the value of the securities between the sale of the borrowed securities and the purchase of the replacement shares, as the short seller expects to pay less in that purchase than it received in the sale. As it is in the short seller's interest for the price of the security to decline, many short sellers publish, or arrange for the publication of, negative opinions regarding the relevant issuer and its business prospects in order to create negative market momentum and generate profits for themselves after selling a security short. These short attacks have, in the past, led to selling of shares in the market.

Public companies listed in the United States that have a substantial majority of their operations in China have been the subject of short selling. Much of the scrutiny and negative publicity has centered on allegations of a lack of effective internal control over financial reporting resulting in financial and accounting irregularities and mistakes, inadequate corporate governance policies or a lack of adherence thereto and, in many cases, allegations of fraud. As a result, many of these companies are now conducting internal and external investigations into the allegations and, in the interim, are subject to shareholder lawsuits and/or SEC enforcement actions.

We may be the subject of unfavorable allegations made by short sellers in the future. Any such allegations may be followed by periods of instability in the market price of our common shares and ADSs and negative publicity. If and when we become the subject of any unfavorable allegations, whether such allegations are proven to be true or untrue, we could have to expend a significant amount of resources to investigate such allegations and/or defend ourselves. While we would strongly defend against any such short seller attacks, we may be constrained in the manner in which we can proceed against the relevant short seller by principles of freedom of speech, applicable federal or state law or issues of commercial confidentiality. Such a situation could be costly and time-consuming and could distract our management from growing our business. Even if such allegations are ultimately proven to be groundless, allegations against us could severely impact our business operations and shareholders' equity, and the value of any investment in our ADSs could be greatly reduced or rendered worthless.

***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.

***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, we 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.

Shortly after the pricing of the 2026 Notes and 2027 Notes in January 2021, we entered into separate and individually privately negotiated agreements with certain holders of our outstanding 2024 Notes to exchange approximately US\$581.7 million principal amount of the outstanding 2024 Notes for our ADSs (each, a "2024 Notes Exchange" and collectively, the "2024 Notes Exchanges"). The 2024 Notes Exchanges closed on January 15, 2021. In connection with the 2024 Notes Exchanges, we also entered into agreements with certain financial institutions that are parties to our existing capped call transactions we entered into in connection with the issuance of the 2024 Notes shortly after the pricing of the 2026 Notes and 2027 Notes to terminate a portion of the relevant existing capped call transactions in a notional amount corresponding to the portion of the principal amount of such 2024 Notes exchanged. In connection with such terminations of the existing capped call transactions, we received deliveries of the ADSs in such amounts as specified pursuant to such termination agreements on January 15, 2021. The remaining capped call transactions are subject to the same risks as described above. Shortly after the consummation of the 2024 Notes Exchanges, we also terminated a portion of the zero-strike call option transactions (which we had entered into in February 2019 in connection with the issuance of the 2024 Notes).

***We are subject to counterparty risk with respect to the capped call and the zero-strike call transactions.***

The counterparties to the capped call transactions and the zero-strike call transactions we entered into in connection with the issuance of the 2024 Notes are financial institutions or affiliates of financial institutions, and we are subject to the risk that each of these counterparties may default or otherwise fail to perform, or may exercise certain rights to terminate, their obligations under the capped call transactions or the zero-strike call transactions, as the case may be. Our exposure to the credit risk of the counterparties under the capped call transactions and the zero-strike call transactions will not be secured by any collateral. If any such counterparty becomes subject to bankruptcy or other insolvency proceedings, we will become an unsecured creditor in those proceedings with a claim equal to our exposure at that time under our transactions with them. In each case, our exposure will depend on many factors. Generally, the increase in our exposure will be positively correlated to the increase in the market price and in the volatility of our ADSs. In addition, as a result of a default or other failure to perform, or a termination of obligations, by any counterparty to the capped call transactions or zero-strike call transactions, we may suffer more dilution than we currently anticipate with respect to our ADSs and the underlying Class A ordinary shares. We can provide no assurances as to the financial stability or viability of any option counterparty under the capped call transactions or the zero-strike call transactions.

***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, such as our company, will be classified as a passive foreign investment company, or 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.

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 and expected income and assets, we do not believe that we were a PFIC for the taxable year ended December 31, 2020 and we do not expect to be a PFIC for the current taxable year or the foreseeable future. While we do not expect to be or 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 nature and 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, 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.

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.

***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 Act (As Revised) 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 (except for our memorandum and articles of association and our register of mortgages and charges) 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, 303A.07 and 302.00 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, and must hold an annual shareholders' meeting during each fiscal year. 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.

***It may be difficult for overseas regulators to conduct investigations or collect evidence within China.***

Shareholder claims or regulatory investigation that are common in the United States generally are difficult to pursue as a matter of law or practicality in China. For example, in China, there are significant legal and other obstacles to providing information needed for regulatory investigations or litigation initiated outside China. Although the authorities in China may establish a regulatory cooperation mechanism with the securities regulatory authorities of another country or region to implement cross-border supervision and administration, such cooperation with the securities regulatory authorities in the United States may not be efficient in the absence of mutual and practical cooperation mechanism. Furthermore, according to Article 177 of the PRC Securities Law, which became effective in March 2020, no overseas securities regulator is allowed to directly conduct investigations or evidence collection activities within the territory of the PRC. While detailed interpretation of or implementation rules under Article 177 have yet to be promulgated, the inability for an overseas securities regulator to directly conduct investigations or evidence collection activities within China may further increase difficulties faced by you in protecting your interests.

***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 governing the ADSs representing our Class A ordinary shares provides that, subject to the depositary'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 agreement 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 depositary arising out of or relating to our Class A ordinary shares, the ADSs or the deposit agreement, including any claim under the U.S. federal securities laws.

If we or the depositary 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 agreement. 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 agreement 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 agreement 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, lead to increased costs to bring a claim, limited access to information and other imbalances of resources between such holder and us, or limit such holder's ability to bring a claim in a judicial forum that such holder finds favorable. If a lawsuit is brought against us and/or the depository under the deposit agreement, 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 agreement with a jury trial. No condition, stipulation or provision of the deposit agreement or ADSs shall relieve us or the depository from our respective obligations to comply with the Securities Act and the Exchange Act nor serve as a waiver by any holder or beneficial owner of ADSs of compliance with 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 exempted 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 agreement, dated as of September 11, 2018 by and among NIO Inc., Deutsche Bank Trust Company Americas, as ADS depository, and the holders and beneficial owners of the ADSs issued thereunder and the deposit agreement for restricted securities, dated as of February 4, 2019 by and among NIO Inc., Deutsche Bank Trust Company Americas, as depository, and the holders and beneficial owners of the restricted ADSs issued thereunder (each, as the context requires and applicable to a particular ADS holder, the "deposit agreement"). Under the deposit agreement, ADS holders must vote by giving voting instructions to the depository. If we ask for instructions of ADS holders, then upon receipt of such voting instructions, the depository will try to vote the underlying Class A ordinary shares in accordance with these instructions. If we do not instruct the depository to ask for instructions of ADS holders, the depository 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 depository 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 depository 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 depository to vote their shares. In addition, the depository 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 depository 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 agreement for the ADSs, if any holder of the ADSs does not vote, the depository 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 depository with notice of meeting and related voting materials;
- we have instructed the depository that we do not wish a discretionary proxy to be given;
- we have informed the depository 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 depository is limited by the terms of the deposit agreement.***

Under the deposit agreement, any action or proceeding against or involving the depository, arising out of or based upon the deposit agreement 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. However, there is uncertainty as to whether a court would enforce this exclusive jurisdiction provision. Furthermore, investors cannot waive compliance with the U.S. federal securities laws and rules and regulations promulgated thereunder.

The depositary may, in its sole discretion, require that any dispute or difference arising from the relationship created by the deposit agreement be referred to and finally settled by an arbitration conducted under the terms described in the deposit agreement, although the arbitration provisions do not preclude an ADS holder from pursuing claims under the Securities Act or the Exchange Act in state or federal courts. Furthermore, if an 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 agreement. Also, we may amend or terminate the deposit agreement without the consent of any ADS holder. If an ADS holder continues to hold its ADSs after an amendment to the deposit agreement, such holder agrees to be bound by the deposit agreement 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 agreement, 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 our convertible 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 agreement, 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 2020 and 2021 include the following:

- 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. As of December 31, 2020, all of the 2021 Notes have been converted to ADSs.
- 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. Subsequently from April to June 2020, we entered into the Hefei Agreements with the Hefei Strategic Investors for investments in NIO China. Under the Hefei Agreements, the Hefei Strategic Investors agreed to invest an aggregate of RMB7 billion in cash into NIO China. We agreed to inject the Asset Consideration, valued at RMB17.77 billion in total, into NIO China, and invest RMB4.26 billion in cash into NIO China. Subsequent to the entry into the Hefei Agreements, the cash contribution obligations of us and the Hefei Strategic Partners have all been fulfilled and we have exercised our redemption right and capital increase right, pursuant to which in September 2020, we, through one of our wholly-owned subsidiaries, redeemed 8.612% equity interests in NIO China from one of the Hefei Strategic Investors and subscribed for certain newly increased registered capital to increase our shareholding in NIO China. In addition, in February 2021, we, through one of our wholly-owned subsidiaries, purchased from two of the Hefei Strategic Investors an aggregate of 3.305% equity interests in NIO China and subscribed for certain newly increased registered capital of NIO China. As a result of these transactions, as of the date of this annual report, the registered capital of NIO China is approximately RMB6.167 billion, and we hold 90.360% controlling equity interests in NIO China. We are fulfilling our other obligations, including injecting the Asset Consideration into NIO China, in accordance with the Hefei Agreements. For more information, see “Item 4. Information on the Company—B. Business Overview—Certain Other Cooperation Arrangements—Hefei Strategic Investors” included elsewhere in this annual report.
- In March 2020, we entered into a manufacturing cooperation agreement with JAC for the manufacture of EC6. Pursuant to the agreement, we pay JAC manufacturing fees on a per-vehicle basis monthly. We are 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.
- In June 2020, we completed a registered follow-on offering of 82,800,000 ADSs at a public offering price of US\$5.95 per ADS, which included the full exercise by the underwriters of their option to purchase additional ADSs, and raised US\$475.1 million in net proceeds after deducting underwriting commissions and discounts and the offering expenses payable by us.

- In August 2020, joined by Contemporary Amperex Technology Co., Limited, or CATL, Hubei Science Technology Investment Group Co., Ltd. and a subsidiary of Guotai Junan International Holdings Limited (collectively referred to as the Battery Asset Company Investors in this annual report), we established Wuhan Weineng Battery Asset Co., Ltd., or the Battery Asset Company. We and the Battery Asset Company Investors each invested RMB200 million and held 25% equity interests in the Battery Asset Company. The Battery Asset Company is dedicated to purchasing and owning the battery assets, and leasing the battery packs to users who subscribe to the BaaS. In December 2020, the Battery Asset Company entered into a definitive agreement with certain third-party investors in connection with their additional RMB640 million investment in the Battery Asset Company. Upon the consummation of this transaction, our equity interests in the Battery Asset Company would be diluted to approximately 13.9%.
- In September 2020, we completed a registered follow-on offering of 101,775,000 ADSs at a public offering price of US\$17.00 per ADS, which included the full exercise by the underwriters of their option to purchase additional ADSs, and raised US\$1,690.0 million in net proceeds after deducting underwriting commissions and discounts and the offering expenses payable by us.
- In December 2020, we completed a registered follow-on offering of 78,200,000 ADSs at a public offering price of US\$39.00 per ADS, which included the full exercise by the underwriters of their option to purchase additional ADSs, and raised US\$3,007.6 million in net proceeds after deducting underwriting commissions and discounts and the offering expenses payable by us.

- In January 2021, we issued US\$750 million aggregate principal amount of 0.00% convertible senior notes due 2026, or the 2026 Notes, and US\$750 million aggregate principal amount of 0.50% convertible senior notes due 2027, or the 2027 Notes. The 2026 Notes and the 2027 Notes are unsecured debt. Prior to August 1, 2025, in the case of the 2026 Notes, and August 1, 2026, in the case of the 2027 Notes, the 2026 Notes and the 2027 Notes, as applicable, will be convertible at the option of the holders only upon satisfaction of certain conditions and during certain periods. Holders may convert their 2026 Notes or 2027 Notes, as applicable, at their option at any time on or after August 1, 2025, in the case of the 2026 Notes, or August 1, 2026, in the case of the 2027 Notes, until the close of business on the second scheduled trading day immediately preceding the relevant maturity date. Upon conversion, we will pay or deliver to such converting holders, as the case may be, cash, ADSs, or a combination of cash and ADSs, at our election. The initial conversion rate of the 2026 Notes is 10.7458 ADSs per US\$1,000 principal amount of such 2026 Notes. The initial conversion rate of the 2027 Notes is 10.7458 ADSs per US\$1,000 principal amount of such 2027 Notes. The relevant conversion rate for such series of the 2026 Notes and the 2027 Notes is subject to adjustment upon the occurrence of certain events. Holders of the 2026 Notes and the 2027 Notes may require us to repurchase all or part of their 2026 Notes and 2027 Notes for cash on February 1, 2024, in the case of the 2026 Notes, and February 1, 2025, in the case of the 2027 Notes, or in the event of certain fundamental changes, at a repurchase price equal to 100% of the principal amount of the 2026 Notes or the 2027 Notes to be repurchased, plus accrued and unpaid interest, if any, to, but excluding, the relevant repurchase date. In addition, on or after February 6, 2024, in the case of the 2026 Notes, and February 6, 2025, in the case of the 2027 Notes, until the 20th scheduled trading day immediately prior to the relevant maturity date, we may redeem the 2026 Notes or the 2027 Notes, as applicable for cash subject to certain conditions, at a redemption price equal to 100% of the principal amount of the 2026 Notes or the 2027 Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the relevant optional redemption date. Furthermore, we may redeem all but not part of the 2026 Notes or the 2027 Notes in the event of certain changes in the tax laws. Shortly after the pricing of the 2026 Notes and the 2027 Notes, we entered into separate and individually privately negotiated agreements with certain holders of our outstanding 2024 Notes to exchange approximately US\$581.7 million principal amount of the outstanding 2024 Notes for ADSs (each, a “2024 Notes Exchange” and collectively, the “2024 Notes Exchanges”). The 2024 Notes Exchanges closed on January 15, 2021. In connection with the 2024 Notes Exchanges, we also entered into agreements with certain financial institutions that are parties to our existing capped call transactions (which we had entered into in February 2019 in connection with the issuance of the 2024 Notes) shortly after the pricing of the 2026 Notes and the 2027 Notes to terminate a portion of the relevant existing capped call transactions in a notional amount corresponding to the portion of the principal amount of such 2024 Notes exchanged. In connection with such terminations of the existing capped call transactions, we received deliveries of ADSs in such amounts as specified pursuant to such termination agreements on January 15, 2021. Shortly after the consummation of the 2024 Notes Exchanges, we also terminated a portion of the zero-strike call option transactions (which we had entered into in February 2019 in connection with the issuance of the 2024 Notes).

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, Umland 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. We maintain our website at <http://ir.nio.com/>. The information contained on, or linked from, our website is not a part of this annual report.

The SEC maintains a web site at [www.sec.gov](http://www.sec.gov) that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC using its EDGAR system.

See “Item 5. Operating and Financial Review and Prospects—B. Liquidity and Capital Resources—Capital Expenditures” for a discussion of our capital expenditures.

## **B. Business Overview**

Our Chinese name, *Weilai* (蔚来), which means Blue Sky Coming, reflects our commitment to a more environmentally friendly future.



We are a pioneer and a leading manufacturer of premium smart electric vehicles. We design, develop, manufacture and sell premium smart electric vehicles, driving innovations in autonomous driving, digital technologies, electric powertrains and batteries. We differentiate ourselves through our continuous technological breakthroughs and innovations, such as our industry-leading battery swapping technologies, Battery as a Service, or BaaS, as well as our proprietary autonomous driving technologies and Autonomous Driving as a Service, or ADaaS.

We launched the EP9, an electric supercar, in 2016. The EP9 set a world record as the then fastest all-electric car 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 technologies, helping position us as a premium brand.

We launched the ES8, a seven-seater flagship premium smart electric SUV, at our first NIO Day on December 16, 2017, and began making deliveries to users in June 2018. In December 2018, we launched its variant, the six-seater ES8, and began making deliveries to users in March 2019. We launched the all-new ES8 at our third NIO Day on December 28, 2019, and began making deliveries of the all-new ES8 in April 2020. According to JD Power’s 2019 China New Energy Vehicle Experience Index Study published 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 battery electric vehicles.

We launched the ES6, a high-performance premium smart electric SUV, at our second NIO Day on December 15, 2018, and began making deliveries to users in June 2019. According to JD Power’s 2020 China New Energy Vehicle Experience Index Study published in September 2020, NIO ranked the highest in quality among all battery electric vehicle brands, and the ES6 ranked the highest in quality among all midsize battery electric vehicles.

We launched the EC6, a premium smart electric coupe SUV, at our third NIO Day on December 28, 2019, and began making deliveries in September 2020. Based on the results released by C-IASI (China Insurance Automotive Safety Index) in January 2021, the EC6 achieved the best safety rating among all models tested by C-IASI in 2020.

As of December 31, 2020, we had delivered a total of 75,641 vehicles cumulatively.

We launched the ET7, a flagship premium smart electric sedan, at our fourth NIO Day on January 9, 2021. The ET7 features NIO’s latest NAD (NIO Autonomous Driving) technology including NIO Adam, a super computing platform, and NIO Aquila, a super sensing system. We will begin making deliveries of ET7 in the first quarter of 2022.

## **Vehicles**

We design, develop, manufacture and sell our vehicles in the premium smart electric vehicle market. We currently sell our vehicles in China and plan to expand into international markets in the near future to capture the fast-growing EV demand.

### **ES8**

The ES8 is a six-seater or seven-seater flagship premium smart electric SUV.

In December 2017, we launched the ES8, which is equipped with our proprietary electric powertrain featuring two 240 kW induction motors. The ES8 can accelerate from zero to 100 kph in 4.4 seconds and brake from 100 kph to a complete stop in 33.8 meters. The ES8 is engineered to meet the five-star C-NCAP (Chinese New Car Assessment Program) safety standards developed by the China Automotive Technology Research Center. With the 70 kWh battery pack, the ES8’s NEDC range reaches up to 355 km.

In December 2019, we launched the all-new ES8 with more than 180 product improvements. With a combination of a 160 kW permanent magnet motor and a 240 kW induction motor, it can accelerate from zero to 100 kph in 4.9 seconds. With the 70 kWh and 100 kWh battery packs, the all-new ES8’s NEDC range reaches up to 415 km and 580 km, respectively.

The all-new ES8 offers the seven-seater version and the six-seater version with pre-subsidy starting prices of RMB468,000 and RMB476,000, respectively.

## **ES6**

The ES6 is a five-seater high-performance premium smart electric SUV.

The ES6 is the world's first SUV equipped with a combination of a permanent magnet motor (160 kW) and an induction motor (240 kW). It can accelerate from zero to 100 kph in 4.7 seconds and brake from 100 kph to a complete stop in 33.9 meters. With the 70 kWh and 100 kWh battery packs, the ES6's NEDC range reaches up to 430 km and 610 km, respectively.

The ES6 offers the Sporty version, the Performance version and the Signature edition with pre-subsidy starting prices of RMB358,000, RMB398,000, and RMB468,000, respectively.

## **EC6**

The EC6 is a premium smart electric coupe SUV.

Powered by an electric powertrain of a 160 kW permanent magnet motor and a 240 kW induction motor and a 0.26 drag coefficient driven by its dynamic fastback silhouette, the EC6 is capable of accelerating from zero to 100 kph in 4.5 seconds. It also features a 2.1 square meter panoramic all-glass roof. With the 70 kWh and 100 kWh battery packs, the EC6's NEDC range reaches up to 440 km and 615 km, respectively.

The EC6 offers the Sporty version, the Performance version, and the Signature edition with pre-subsidy prices of RMB368,000, RMB408,000 and RMB468,000, respectively.

## **ET7**

The ET7 is a flagship premium smart electric sedan.

Boasting the third-generation high-efficiency electric powertrain with SiC power modules featuring a front 180 kW permanent magnet motor and a rear 300 kW induction motor, together with a 0.23 ultra-low drag coefficient, the ET7 is designed to further improve its energy efficiency and accelerate from zero to 100 kph in 3.9 seconds and brake from 100 kph to a complete stop in 33.5 meters. The ET7 is engineered to meet both five-star Chinese and European New Car Assessment Program safety standards. It applies Karuun® renewable rattan for a green and natural experience. The ET7 features NIO's latest NAD including NIO Adam, our super computing platform, and NIO Aquila, our super sensing system. With the 150 kWh battery pack to be delivered in the fourth quarter of 2022, we expect the ET7 to deliver a NEDC range of up to 1,000 km on a single charge at the set configuration. The ET7 is currently available for pre-order on the NIO app, and we estimate to start delivery of the ET7 in the first quarter of 2022.

## **Our Key Innovations and Breakthroughs**

Since our inception, we have continued to innovate with the goal of consistently creating the most worry-free and convenient experience for our users. We are an industry leader in battery swapping technologies and autonomous driving technologies. Our innovations and breakthroughs differentiate us from our peers, create better user experience, and enhance our users' confidence in us.

### ***Battery Swapping and BaaS***

Since our introduction of the ES8 in 2017, all of our smart electric vehicles have been equipped with proprietary battery swapping technologies, providing our users a "chargeable, swappable, upgradable" experience. In 2020, we launched Battery as a Service, or BaaS, an innovative model which allows users to purchase electric vehicles and subscribe for the usage of battery packs separately. BaaS enables our users to benefit from lower vehicle purchase prices, flexible battery upgrade options and assurance of battery performance.

### *Battery Swapping*

Supported by over 1,200 patented technologies, all of our vehicles support battery swapping. It provides our users with best-in-class “recharging” convenience by simply swapping the user’s battery for another one. In addition, it enables users to enjoy the benefits of battery technology advancements with upgrade options. Our Power Swap station 2.0, which is scheduled to be rolled out in the second quarter of 2021, will significantly increase our service capacity by shortening the battery swapping time to under three minutes and carrying up to 13 battery packs. As of December 31, 2020, we had 172 Power Swap stations covering urban areas and expressways across 74 cities, through which we have completed over 1.4 million battery swaps cumulatively.

### *BaaS*

Enabled by vehicle-battery separation and battery subscription, BaaS offers a chargeable, swappable, upgradable battery usage experience to users. BaaS users enjoy a lower upfront purchase price and flexible subscription options for battery packs of various capacities according to their needs on a monthly or yearly basis, as well as flexibility for battery upgrades in the future. For the quarter ended March 31, 2021, over half of the new orders we received chose BaaS subscriptions.

If users opt to purchase a NIO vehicle and subscribe for the 70 kWh battery pack under BaaS, they can enjoy an RMB70,000 deduction off the original vehicle purchase price while paying a monthly subscription fee of RMB980 for the battery pack. On November 6, 2020, we launched the 100 kWh battery pack with battery upgrade plans. If users opt to purchase a NIO vehicle and subscribe for the 100 kWh battery pack under BaaS, they can enjoy an RMB128,000 deduction off the original vehicle purchase price while paying a monthly subscription fee of RMB1,480. Users who currently have the 70 kWh battery pack with the intention to upgrade their batteries can choose to either purchase a 100 kWh battery pack for a permanent upgrade or pay a monthly subscription fee of RMB880 for a flexible upgrade. Meanwhile, users will continue to enjoy the existing favorable policies such as purchase tax exemption and government subsidies for electric vehicles. In January 2021, we launched our 150 kWh battery pack with cutting-edge technologies. Under BaaS, users will be able to enjoy flexible upgrades to 150 kWh battery pack or other future battery options as the battery technologies evolve.

### *Autonomous Driving and ADaaS*

We believe that autonomous driving is the core of smart electric vehicles and it has been our focus from day one. We have gradually built up our full stack in-house autonomous driving capabilities and successfully delivered competitive products including NIO Pilot, our enhanced ADAS. We are also about to roll out our industry-leading NIO Autonomous Driving, or NAD, to our users.

We are one of the first auto companies in China to offer enhanced ADAS capabilities. 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 monitoring camera. NIO Pilot has a built-in algorithm that leverages data across the entire vehicle fleet for fleet learning and crowd AI analysis, and runs new features under the shadow mode without materially impacting driver safety or vehicle operation. This allows us to fully test and validate the features before releasing them to the users. Our smart data management system can enable us to validate and improve algorithms using millions of miles of empirical data.

As of December 31, 2020, we have successfully rolled out many industry-leading features for NIO Pilot, including NOP (Navigate on Pilot), shiftless automatic parking assist with fusion, nearby summon, forward collision warning, automatic emergency braking, automatic high beam, auto lane change, lane departure warning, blind spot detection, front and rear cross-traffic alert, side door opening warning, and side distance indication. We plan to improve the existing features and roll out more features of the NIO Pilot going forward.

In January 2021, we announced NIO Autonomous Driving, or NAD, our next generation, proprietary full stack autonomous driving technology. We have built up the NAD capability with in-house developed perception algorithms, localization and control strategy and platform software. The technology comprises a super computing platform called NIO Adam and a super sensing system called NIO Aquila. NIO Adam’s core is made up of four NVIDIA DRIVE Orin system-on-chips, or SoCs, while NIO Aquila features 33 high-performance sensing units, including 11 high-resolution cameras, one ultra-long-range high-resolution LiDAR, five millimeter-wave radars and 12 ultrasonic sensors. NAD is expected to gradually cover use cases from expressways, urban roads, parking, battery swapping to other domains to deliver a safer and more relaxing autonomous driving experience for our users and is first available on the ET7. We plan to roll out the NAD through a RMB680 monthly subscription under ADaaS in early 2022.

## Research and Development

We have strategically focused on building in-house capabilities in software and hardware development to control the design and development of the vehicle software and hardware architecture and the critical components that go into our products and services to deliver an optimal experience for our users. Our proprietary technologies, including battery swapping, autonomous driving, digital technologies, electric powertrain, battery and software-driven technologies, among others, are cutting-edge and differentiate us from our competitors. Our capabilities have given us greater flexibility to continually improve our current products and allow us to launch new products more rapidly. By integrating these industry-leading technologies, all our vehicles can create a relaxing, interactive, intelligent and immersive experience for our users.

### *Digital Technologies*

#### *Digital Cockpit*

Our digital cockpit has an AI-driven, scalable and flexible architecture that presents users with an intelligent and immersive digital experience. The ES8, ES6, EC6 adopts NVIDIA PARKER SoC and the ET7 uses the 3rd Generation Qualcomm® Snapdragon™ Automotive Cockpit Platform for in-car digital cockpit. Inside our digital cockpit, NOMI, our in-car AI companion, can listen to, communicate and interact with users to build a strong emotional connection between vehicles and users. We have built flexibility into our digital cockpit, so that we can continue to update the NIO Operating System, or NIO OS, with new features and applications through software-over-the-air, or SOTA, updates.

At our third NIO Day, we launched our second-generation NOMI with a AMOLED full-circular display. At our fourth NIO Day, we launched our second-generation smart cockpit, boosting capabilities such as AI computing and image and media processing by a large margin.

We plan to introduce NIO OS for European users in the second half of 2021, which will provide customizations and upgrades appropriate for a broader user base.

#### *Digital System*

Digital system is the foundation for us to achieve continuous upgrade, the digital platform for building our own proprietary software and algorithms and the security system for deep reassurance.

We are one of the first automobile manufacturers in China that have both FOTA and SOTA capabilities. FOTA updates enable us to upgrade the operating firmware down to the individual programmable Electronic Control Unit level across the vehicle's core systems, such as digital cockpit, autonomous driving domain controller and electric powertrain. FOTA and SOTA technologies allow us to fix bugs and remotely install new features and services after a vehicle has already been delivered to users, reduce the cost and time of marketing new feature roll-outs and continuously improve the user experience throughout the lifecycle.

On top of our proprietary software architecture and cloud data platform, NVOS (NIO Vehicle Operating System), our vehicle digital system, has what we believe to be the industry-leading connectivity and remote service capabilities with an end-to-end security framework. It features comprehensive connectivity capabilities, including smart antenna, 5G, UWB, Wi-Fi 6, 5.2 Bluetooth and V2X, and offers 360-degree and multi-dimensional cyber security capabilities to protect user privacy and safety. It enables a superior driver and passenger experience by syncing vehicle settings, user preferences and user accounts and offering instant remote vehicle diagnostics with respect to faults, alerts and logs to our service and maintenance team.

Utilizing our NIO Technology Platform 2.0, the NVOS will boast a common SOA (service-oriented architecture) middleware across multiple MCUs (micro-controller unit) and the gateway, providing flexibility and efficiency for vehicle software development and achieving great feature competitiveness and AI-driven user experiences.

With our globalization efforts to expand to more markets, we plan to localize connectivity services in line with different laws and regulations in various regions, including the General Data Protection Regulation.

## ***Electric Powertrain and Battery***

### *Electric Powertrain*

Starting from our first product, we have designed, developed and manufactured our own proprietary electric powertrains in-house.

Our electric powertrains are designed specifically for NIO's vehicles, and through FOTA, we are able to continue to improve and update, and adjust according to our users' driving behavior. Our dual-motor configuration offers a 240 kW induction motor both in the front and rear on the first-generation electric powertrain, a 160 kW permanent magnet motor and a 240 kW induction motor on the second-generation electric powertrain and a 180 kW permanent magnet motor and a 300 kW induction motor on the third-generation electric powertrain.

The third-generation electric powertrain will feature Silicon Carbide power modules which can minimize the switching loss compared with Insulated Gate Bipolar Transistor. It can improve supply efficiency with simpler cooling measures and reduce the size of peripheral components due to higher frequency operation.

### *Battery*

We are committed to the research, development and innovations in battery technologies. Our battery packs are based on high energy density battery cells, self-developed liquid-cooled battery packaging, a state-of-the-art battery management system and swapping mechanism. In particular, our battery management system provides real-time monitoring of the vehicle insulation status and features a comprehensive fault diagnosis mechanism to ensure the safety and reliability of battery pack use.

Currently, we offer two battery options: 70 kWh and 100 kWh. The 70 kWh battery pack is designed, developed and manufactured in-house. It comprises cutting-edge NCM (nickel-cobalt-manganese) prismatic cells, liquid cooling thermal system and intelligent battery management system. With proprietary patents, the 100 kWh CTP (cell-to-pack) battery features thermal propagation prevention, highly integrated design, all climate thermal management and bi-directional cloud BMS. In January 2021, we announced the 150 kWh battery pack with the next generation battery technology. We plan to start delivering the 150 kWh battery pack in the fourth quarter of 2022.

## ***Design Capabilities and Software-driven Vehicle Technologies***

We have significant in-house vehicle design and engineering capabilities, which cover all major areas of vehicle development starting from concept to completion with a special focus on software-driven technologies.

Our global design team has comprehensive design capabilities across the board, from brand, vehicles, user interface/user experience, lifestyle products to accessories. Besides having best-in-class engineering capabilities in the field of aerodynamics, handling, comfort and efficient thermal management, our team has also developed in-house software-driven vehicle technologies, such as the NIO 4D Dynamics. Utilizing NAD, HD mapping and vehicle sensing system, NIO 4D Dynamics, which is an advanced smart suspension application, achieves uncompromised comfort by proactively orchestrating the response of vehicle actuators (springs, dampers, steering and brakes) to road events and smoothening the primary and secondary body motions.

## **Worldwide Research and Development Footprint**

We have strategically located our offices in locations where we believe we will have access to the best talent. Our global engineering center is located in Shanghai, our design center is in Munich and our software and autonomous driving technology center is located in San Jose.

### ***Shanghai***

We have vehicle engineering, smart hardware, autonomous driving, digital cockpit, digital system, product planning, NIO app, design, electric powertrain and battery teams in Shanghai. They coordinate our global R&D efforts across different regions and integrate all the technologies into our products. More than half of the patents obtained globally by us originated from our teams in Shanghai.

### ***Beijing***

We have digital cockpit, digital system, digital development and autonomous driving teams in Beijing. The focus of our Beijing research and development teams is on full stack AI technologies to power NOMI and engineering efforts to enable continuous upgrade of digital experience through FOTA. The teams are also responsible for the Internet of Vehicles including design, implementation, maintenance and support of the system.

### ***Hefei***

Our teams in Hefei mainly focus on vehicle engineering, manufacturing engineering, test and quality.

### ***Silicon Valley***

Our teams in San Jose focus on innovations in the areas of autonomous driving, smart hardware, digital cockpit, and digital system, including vehicle operating system and digital security.

### ***Munich***

Our Munich office is primarily responsible for our product and brand design, focusing on vehicle interior and exterior design, user interface design, brand design and other product design.

### ***United Kingdom***

Our engineering teams in Oxford focus on computer-aided engineering and advanced vehicle engineering.

## **User Development and User Community**

We reach out to and engage with our users directly through our own online and offline platforms, including NIO app, NIO Houses and NIO Spaces, and aim to build a community where we share joy and grow together with our users.

### ***NIO App***

NIO app, our mobile application, is designed to be a portal not only for selling cars where users can place orders for and configure all NIO vehicles, but also for vehicle control, service access and NIO Life product purchase, and most importantly, an online platform for our community.

Our NIO app had over 1,600,000 registered users as of December 31, 2020, and approximately 168,000 daily active users on peak days in 2020.

### ***NIO House and NIO Space***

NIO Houses and NIO Spaces serve as the offline channels for us to reach out to and serve our users, as well as the offline platforms for NIO user community.

NIO Houses have showroom functions while serve as a clubhouse for our users and their friends. We opened our first NIO House in Beijing in November 2017. As of December 31, 2020, we had 23 NIO Houses in total, mainly in tier-one and tier-two cities in China.

NIO Spaces are mainly showrooms for our brand, vehicles and services. Compared with NIO Houses, NIO Spaces are generally smaller in scale, more delicate and sales-focused. We opened our first NIO Space in Shanghai in August 2019. As of December 31, 2020, we had 181 NIO Spaces in 113 cities.

### ***NIO Day and NIO Events***

Our annual NIO Day is an event jointly hosted by NIO and our users where we launch our new products and technologies and celebrate the user community.

In December 2017 in Beijing, we held our first NIO Day and launched the ES8. In December 2018 in Shanghai, we held our second NIO Day and launched the ES6. In December 2019 in Shenzhen, we held the third NIO Day and launched the EC6 and the all-new ES8. In January 2021 in Chengdu, we held the fourth NIO Day and launched the ET7. Our users have taken the lead in the planning and organization of the recent two NIO Days. 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. In addition, we organized various online and offline activities in the NIO user community, such as EP Club, NIO Summer, NIO User Volunteers and NIO User Clubs.

### ***NIO Life***

We have established our lifestyle brand NIO Life, which has an online store on NIO app where users can purchase NIO lifestyle products. The product categories include apparels, home and living, travel and bags, consumer electronics, car life, food and wines. Since we launched our online store in December 2016, over 2,600,000 NIO Life items have been delivered to our users through online and offline channels as of December 31, 2020.

### ***NIO Points***

We provide users with NIO Points to encourage user engagement and positive user behavior, such as to keep a safe driving record. NIO Points are earned, among other things, through the welcome packages upon the purchase of NIO vehicles, referrals for test drives and vehicle purchases, and active engagement in the user community. NIO Points can be used, both at our online store and at our NIO Houses and some of the NIO Spaces. In addition, we have set up the Blue Point Plan, under which we help users to certify emission reductions and trade carbon credits and reward them with NIO Points in return.

### ***NIO User Trust***

In conjunction with our pursuit of being a user enterprise and with the goal of building a deeper connection between NIO and our users, Mr. Bin Li, our chairman of the board of directors and chief executive officer, transferred a certain amount of his ordinary shares to NIO User Trust in January 2019. Our users have the opportunity to discuss and propose the use of the economic benefits from the shares in NIO User Trust through a User Council consisting of members of our user community elected by our users. The User Council helps coordinate user activities in our community. The current second User Council has decided to focus their work on user care, industry sub-communities, public welfare and environmental protection in 2021.

### ***Formula E***

We sponsor a Formula E team currently named as NIO 333, which is a racing team that competes in the Fédération Internationale de l'Automobile, or FIA, Formula E championship electric racing series. The team, previously operated by us under other names, has participated in the FIA Formula E Championship ever since its inaugural season (2014) and had won the first FIA Formula E Drivers' Championship. NIO 333 Formula E team currently competes in the 2021 racing season with our company as its primary sponsor.

### ***Formula E Student China***

We are the sponsor of the Formula E Student China, a competition event where college students design and race electric racing vehicles, allowing us to nurture the young talent for the future of the automotive industry.

### **Power Solutions**

We offer a comprehensive and innovative suite of power solutions to address the charging and swapping needs of our users. Our power solutions include home charging called Power Home, battery swapping called Power Swap, supercharging called Power Charger, and mobile charging called Power Mobile, all of which are connected to cloud-enabled Power Cloud, which synchronizes users' power consumption information and our power network, and intelligently suggests the appropriate services, according to the users' locations and power consumption patterns. Our users not only get to check the availability of charging and swapping resources of NIO's own network, but also have access to a network of public chargers and their real-time information through the Power Map on our NIO app. In addition, we offer our users our One Click for Power 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.

### ***Power Home***

Through Power Home, we install home chargers at our users' homes whenever the installation is feasible. Currently we are offering our users standard 7 kW and high-speed 20 kW smart home chargers. The first 7 kW Power Home and basic installation are included in the price of the vehicle though there may be charges in certain circumstances. The high-speed 20 kW Power Home Plus can reduce the charging time to one-third and is provided at an additional cost.

### ***Power Swap***

All of our vehicles support battery swapping. Our Power Swap station 1.0 has a typical size of approximately three parking spaces and accommodates 5 battery packs. Once a vehicle is parked in the swap station and the swap function is activated, battery swapping will take place within minutes. The Power Swap station 2.0 is designed to accommodate up to 13 battery packs to substantially boost the daily service capacity of the battery swap stations, and we estimate we will start the deployment of the Power Swap station 2.0 from the second quarter of 2021.

We plan to further enhance the efficiency of the battery swap stations and to strategically deploy more swap stations in selected geographical areas to ensure consistent optimal battery swap experience for our users as the number of our vehicles sold grows.

### ***Power Charger***

Through Power Charger, our supercharging piles, we provide our users a fast and reliable power solution. Users are able to locate, use and pay for the charging through our NIO app. Our Power Chargers are of a slim design and are located in parking lots and other locations easily accessible to our users, with a maximum output power of 105 kW and 250 ampere.

As of December 31, 2020, we had 792 Power Chargers in operation, covering 53 major cities. We plan to further enhance the efficiency and expand the deployment of our Power Chargers to cater to the growing user demand.

### ***Power Mobile***

Through Power Mobile, we provide charging services through fast charging vans with our proprietary fast-charging technologies, supplementing our charging and swapping network. Users are able to book Power Mobile services in advance through our NIO app.

As of December 31, 2020, we had 318 Power Mobile vans in operation. We regularly adjust the deployment of Power Mobile vans in China based on our user distribution and user needs and plan to improve the efficiency of these NIO Power Mobile vans to create better experiences for users.

### ***Power Map***

In addition to our own charging and swapping network, our users have access to a network of public chargers and their real-time information through the Power Map on our NIO app, which consisted of over 380,000 publicly accessible charging piles as of December 31, 2020. In order to further improve user experience, we have been working to increase the number of chargers with data synchronized to our Power Cloud.

### ***One Click for Power***

We offer our users our One Click for Power valet service. Through our NIO app, a user can have our team pick up his or her vehicle at the user's designated parking location for valet charging or swapping. One Click for Power service is available to users through our energy package or on a pay-per-use basis.

### **Service and Warranty**

Our users can access a full suite of innovative services on our NIO app, as part of our strategy of redefining the user experience. In addition to our battery swapping services, BaaS and NIO Power solutions described above, we offer our users NIO Service, primarily through our worry-free service package and worry-free insurance package. We believe our service capability is among the core competitiveness we possess.



## **Service**

### *Service Network*

We currently provide servicing both through NIO service centers and authorized third-party service centers, both of which provide repair, maintenance and bodywork services.

For our NIO service centers, we have dedicated qualified technicians who receive regular professional trainings and skill tests, which ensures high-quality user services. As of December 31, 2020, we had 28 NIO service centers across 21 cities. For authorized third-party service centers, we have a devoted management team to carefully select and bring authorized service centers into our network, most with experience servicing high-end branded vehicles. As of December 31, 2020, we had 159 authorized service centers across 120 cities.

In addition to our service centers, we have deployed 220 service vans serving users' needs in different regions as of December 31, 2020.

### *Service Package*

We offer our users a worry-free service package, which provides statutory and third-party liability and vehicle damage insurance through third-party insurers, repair and routine maintenance services, courtesy cars, roadside assistances and enhanced data packages, among other services with a starting price of RMB11,600 per year for new vehicles.

Users are able to arrange for vehicle services using our NIO app. At the user's request, we pick up the car, arrange for maintenance and repair services, and then return the car to the user once the services are done. We will also assist the user in engaging with the insurance company and provide necessary support when it is needed.

In addition to the worry-free service package, we have also started to offer a worry-free insurance package since March 1, 2020. Users can supplement their insurance with designated insurance providers, and pay RMB1,680 per year for NIO's competitive maintenance and paint-repair services, courtesy cars, roadside assistances, enhanced data packages and other additional services.

### *Auto Financing*

We currently have agreements with several commercial banks in China, pursuant to which we assist users across China in acquiring financing when they purchase our vehicles. We also offer auto financing arrangements to users directly through our subsidiaries.

### ***NIO Certified (Used Vehicle Service)***

In January 2021, we launched NIO Certified, our used vehicle service, to provide high-quality services for used NIO vehicle transactions. We have developed the capabilities in the major cities in China to cover services including vehicle inspection, evaluation, acquisition and sales. If users are interested in purchasing used NIO vehicles, they can directly find the product information and place orders on our NIO app.

### ***Warranty Policy***

For an initial retail purchaser of a new NIO vehicle, we provide an extended warranty in China subject to certain conditions, including, among others, that the extended warranty only applies for the initial retail purchaser of the new 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 packs, electric motors, power electric units and vehicle control units), 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."

## Supply Chain, Manufacturing and Quality Assurance

We view the suppliers and manufacturers 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.

### ***Supply Chain***

We work with global and local supply chain partners while the majority of our supply base is located in China, which enables us to acquire supplies more quickly and reduces the overall logistics-related cost.

We obtain systems, components, raw materials, parts, manufacturing equipment and other supplies and services from suppliers which we believe to be reputable and reliable. We follow our internal process to source suppliers taking into account quality, cost and timing. We continuously innovate our supply chain in order to establish a more effective and diverse supply chain system. We actively cultivate partnerships with suppliers that have innovative technological capabilities and cost advantages, thereby increasing the competitiveness and innovativeness of our supply chain.

While we obtain components from multiple sources whenever possible, many of the components used in our vehicles are purchased 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 hold our suppliers to high ethical standards of code of conducts in areas such as human rights, labor conventions, environmental protection and anti-corruption, and incorporate these standards in our cooperation agreements with our suppliers.

### ***Manufacturing***

#### *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 and March 2020, we entered into supplemental manufacturing cooperation agreements with JAC for the manufacture of the ES6 and the EC6, respectively. In March 2021, we entered into definitive agreements with JAC to establish a joint venture for manufacturing management and operations with a registered capital of RMB500 million where we hold 49% equity interests.

JAC has a 50-year history in automotive manufacturing of passenger and commercial vehicles. JAC has in-house development, manufacturing, and testing capabilities for new energy vehicles, and is an established player in China's new energy vehicle market. JAC has built a brand-new world-class factory with an annual production capacity of 120,000 units for the production of the ES8, ES6 and EC6, and potentially for ET7 and other future vehicles with us. Pursuant to the current agreements with JAC, we pay JAC on a per-vehicle basis.

The factory has state-of-the-art production facilities and techniques, and also applies environmentally friendly techniques and uses renewable energy. We exercise significant control in the manufacturing partnership with JAC in order 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 and simulation platform to reduce defects in process development to the extent possible. We apply the NIO lean manufacturing system in the JAC-NIO plant to improve execution efficiency and quality.

We place great emphasis on the environment, health and safety, or EHS, management of the factory at JAC. We have worked with JAC to establish a set of factory safety guidelines and provide EHS trainings to ensure that the factory is operating in accordance with safety regulations. In addition, we are partnering with various suppliers and academic institutions to standardize the scrap and recycle process at the factory, aiming to maximize the lifetime value of all used vehicle components and parts.

### *Advanced Manufacturing Technology and Engineering Center*

We have established our Advanced Manufacturing Technology and Engineering Center, or AMTEC, in Nanjing for the production of electric powertrains and 70 kWh battery packs, and a joint venture with Zhengli Investment Co., Ltd. in Changshu for the production of 70 kWh battery packs. 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 electric motors and electric drive components with a planned capacity of up to 300,000 electric motors annually. The Nanjing AMTEC Phase II has a building area of 42,800 square meters and production facilities for both electric motors and 70 kWh battery packs. Its production lines are highly automated and flexible with advanced MES systems and AGVs, and were put into operation in June 2019.

### **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, partner quality management, procurement, power solutions, user experience, service and logistics. Our quality management groups are responsible for our overall quality strategy, quality systems and processes, quality culture, and general quality management implementation.

### **Certain Other Cooperation Arrangements**

#### ***Hefei Strategic Investors***

On April 29, 2020, we entered into an investment agreement, or the initial investment agreement, and a shareholders agreement, or the initial shareholders agreement (collectively, the initial agreements), for investments into NIO Holding Co., Ltd. (previously known as NIO (Anhui) Holding Co., Ltd.), or NIO China, a legal entity wholly owned by us pre-investment, with Hefei City Construction and Investment Holding (Group) Co., Ltd. (“Hefei Construction Co.”), CMG-SDIC Capital Co., Ltd. (“SDIC”) and Anhui Provincial Emerging Industry Investment Co., Ltd. (“Anhui High-tech Co.”).

Pursuant to the initial agreements, each investor may designate a fund managed by it or a third party, as applicable, to perform the investment obligations and assume other rights and obligations under the initial agreements. Accordingly, on May 30, 2020, we entered into respective supplemental agreements I to the initial agreements with the investors and their respective designated funds, Jianheng New Energy Fund, Advanced Manufacturing Industry Investment Fund and New Energy Automobile Fund. Under the supplemental agreements I, (i) Hefei Construction Co. designated Jianheng New Energy Fund to assume all of its rights and obligations under the initial agreements, (ii) SDIC designated Advanced Manufacturing Industry Investment Fund to assume all of its rights and obligations under the initial agreements, (iii) Anhui High-tech Co. designated New Energy Automobile Fund to perform a portion of its investment obligations under the investment agreement and assume the corresponding rights and obligations under the initial agreements, and (iv) Anhui High-tech Co. will continue to perform the remaining of its investment and other obligations not assigned to New Energy Automobile Fund and enjoy its rights under the initial agreements. On June 5, 2020, NIO China updated its Industrial and Commercial Registration to reflect, among others, Jianheng New Energy Fund, Advanced Manufacturing Industry Investment Fund, Anhui High-tech Co. and New Energy Automobile Fund as NIO China’s investors. On June 18, 2020, we entered into respective supplemental agreements II with the parties to the supplemental agreements I and Anhui Provincial Sanzhong Yichuang Industry Development Fund Co., Ltd., another designated fund of Anhui High-tech Co. Under the supplemental agreements II, Anhui High-tech Co. designated Anhui Provincial Sanzhong Yichuang Industry Development Fund Co., Ltd. to assume its remaining rights and obligations under the initial agreements that had not been assigned to New Energy Automobile Fund pursuant to the supplemental agreements I.

The initial investment agreement, as amended and supplemented, is referred to as the Hefei Investment Agreement, and the initial shareholders agreement, as amended and supplemented, is referred to as the Hefei Shareholders Agreement in this annual report. The Hefei Investment Agreement and the Hefei Shareholders Agreement are collectively referred to as Hefei Agreements in this annual report, and the group of investors with whom we entered into the Hefei Agreements are referred to as the Hefei Strategic Investors in this annual report.

Under the Hefei Investment Agreement, the Hefei Strategic Investors agreed to invest an aggregate of RMB7 billion in cash into NIO China. We agreed to 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, 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 agreed to invest RMB4.26 billion in cash into NIO China. Pursuant to the Hefei Shareholders Agreement, upon the completion of the investments, we would hold 75.885% of controlling equity interests in NIO China, and the Hefei Strategic Investors would collectively hold the remaining 24.115%.

Pursuant to the Hefei Investment Agreement, the Hefei Strategic Investors and we agreed to each inject cash into NIO China in five installments. 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.

Pursuant to the Hefei 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. In addition, NIO China could enjoy a series of subsidies and support from HETA, including rent subsidies, financial support and preferential tax treatment, when NIO China meets certain performance criteria, such as targets for manufacturing capacity, procurement amount and vehicle sales.

Pursuant to the Hefei Shareholders Agreement, the Hefei Strategic Investors have certain minority 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. 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 China held by the Hefei Strategic Investors at a redemption price of the total amount of the investment price equal to the Hefei Strategic Investors *plus* an investment income calculated at a compound rate of 8.5% per annum upon the occurrence of certain events.

*Share transfer restriction.* Before NIO China 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 China's shares to a third party that may result in our shareholding in NIO China 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 China's shares. 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 China, and NIO China's shares are issued and listed on the stock exchange market recognized by all shareholders of NIO China.

*NIO Parties' Redemption Right.* Before NIO China is converted into a company limited by shares for the purpose of its qualified initial public offering, we and/or our designated third party have the right to redeem half of the shares Jianheng New Energy Fund acquired through this investment. The redemption price will 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 us or our designated parties, *plus* investment income calculated at a simple interest rate of 10% per annum; and (b) the value of the equity interests to be redeemed by us or our designated parties determined based on the valuation of NIO China in the most recent round of financing.

*NIO's Capital Increase right.* Before December 31, 2021, we and our affiliates designated by us have the right to unilaterally subscribe for up to US\$600 million purchase price of the then newly increased registered capital of NIO China, at the same subscription price at which the Hefei Strategic Investors invested in NIO China pursuant to the Hefei Agreements.

Subsequent to the entry into the Hefei Agreements, the cash contribution obligations of us and the Hefei Strategic Partners have all been fulfilled and we have exercised our redemption right and capital increase right described above. In particular, in connection with our exercise of our redemption right, we, through one of our wholly-owned subsidiaries, redeemed from Jianheng New Energy Fund 50% of the equity interests in NIO China then held by the Jianheng New Energy Fund in September 2020, which accounted for 8.612% equity interests in NIO China, and the total consideration we paid for such redemption was RMB511.5 million, consisting of the actual capital increase payment Jianheng New Energy Fund had made plus prorated interest accrued at an interest rate of 10% per annum. In addition, we assumed Jianheng New Energy Fund's remaining cash contribution obligation of RMB2.0 billion. In connection with our exercise of our capital increase right, we, through one of our wholly-owned subsidiaries, subscribed for newly increased registered capital of NIO China at a consideration of US\$600 million. In addition, in February 2021, we, through one of our wholly-owned subsidiaries, also purchased from two of the Hefei Strategic Investors an aggregate of 3.305% equity interests in NIO China for a total consideration of RMB5.5 billion and subscribed for newly increased registered capital of NIO China at a subscription price of RMB10.0 billion.

As a result of these transactions, as of the date of this annual report, the registered capital of NIO China is approximately RMB6.167 billion, and we hold 90.360% controlling equity interests in NIO China. We are fulfilling our other obligations, including injecting the Asset Consideration into NIO China, in accordance with the Hefei Agreements.

For more information on the provisions of the Hefei Agreements, please refer to exhibits 4.30 to 4.38 of this annual report.

### ***Hefei Government***

On February 4, 2021, NIO China entered into a further collaboration framework agreement with the municipal government of Hefei, Anhui province, where NIO China's headquarters is located. Under the framework agreement, among other things, Hefei government and NIO China agreed in principle to jointly build a world-class industrial campus to support the development and innovations of the smart electric vehicle industry and related supply chains led by NIO China. In addition, Hefei government and its associated parties plan to re-invest their returns from the equity investments in NIO China to support the further cooperation in Hefei. The framework agreement is preliminary in nature, and its implementation will be subject to legally binding definitive transaction documents to be discussed and entered into further.

### ***Battery Asset Company***

On August 18, 2020, we and the Battery Asset Company Investors jointly established Wuhan Weineng Battery Asset Co., Ltd., or the Battery Asset Company. We and the Battery Asset Company Investors each invested RMB200 million and held 25% equity interests in the Battery Asset Company. The Battery Asset Company is dedicated to purchasing and owning the assets of battery packs which are subscribed by users under BaaS. We and the Battery Asset Company Investors will jointly provide comprehensive support to the development of the Battery Asset Company in user operations, technologies, funding and infrastructure. In December 2020, the Battery Asset Company entered into a definitive agreement with certain third-party investors in connection with their additional RMB640 million investment in the Battery Asset Company. Upon the consummation of this transaction, our equity interests in the Battery Asset Company would be diluted to approximately 13.9%.

### ***GAC***

In April 2018, we and other partners, including GAC, jointly established a joint venture company, GAC-NIO New Energy Vehicle Technology Co., Ltd., or GAC JV. We currently hold approximately 4.5% equity interests in GAC JV. The joint venture mainly engages in electric vehicles and parts development, sales and services under its own brand Hycan He Chuang.

### ***Changan***

In January 2018, we and Changan set up a joint venture, Changan NIO Renewable Automobile Co., Ltd., or the Changan JV. We currently hold 4.62% equity interests in the Changan JV. The joint venture may provide services, such as design or development of vehicles or components, sales and after-sale service, sales of automotive parts and EV-related technology services.

## ***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 and driverless ride-hailing services in China and other major territories. Upon the expiration of the previous strategic collaboration, in January 2021, we entered into another strategic collaboration arrangement with Mobileye, pursuant to which we will provide Mobileye with customized smart electric vehicles for Mobileye's driverless ride-hailing services in certain overseas jurisdictions.

## **Competition**

Competition in the automotive industry is intense and evolving. We believe the impact of shifting user needs and expectations, favorable government policies towards new energy vehicles, expanding charging infrastructure, and technological advances in electric components 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 smart 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, the EC6 and the ET7, and their attractive pricing, we believe that we are strategically positioned in China's premium smart 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, 2020, we had 2,654 issued patents and 1,397 pending patent applications, 3,373 registered trademarks and 804 pending trademark applications in the United States, China, Europe and other jurisdictions. As of December 31, 2020, we also held or otherwise had the legal right to use 133 registered copyrights for software or works of art and 686 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 Battery 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 were amended on July 24, 2020, 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. NEVs 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 (which has been merged into the SAMR), 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, the *Guidance on the Development of Electric Vehicle Charging Infrastructure (2015-2020)*, which became effective on October 9, 2015, and the *Development Plan for the New-energy Vehicle Industry (2021-2035)*, which became effective on October 20, 2020, 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 Electric Vehicle Charging Infrastructures in Residential Areas* promulgated on July 25, 2016 further provides that the operators of electric 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 became effective on January 1, 2016 and was latest amended on October 23, 2020, 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.

On November 25, 2020, the SAMR issued the *Circular on Further Improving the Regulation of Recall of Automobile with Over-the-Air (OTA) Technology*, pursuant to which automobiles manufacturers that provide technical services through OTA are required to complete filing with the SAMR and those who have provided such services through OTA must complete such filing before December 31, 2020. In addition, if an automaker uses OTA technology to eliminate defects and recalls their defective products, it must make a recall plan and completes a filing with the SAMR.

### **Regulations on Product Liability**

Pursuant to the Product Quality Law of the PRC, promulgated on February 22, 1993 and latest amended on 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, the ES6 and the EC6 are eligible for such subsidies. 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 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 2020 subsidy standard reduces the base subsidy amount by 10% for each NEV, sets subsidies for 2 million vehicles as the upper limit of annual subsidy scale, and provides that national subsidy shall only apply to an NEV with the sale price under RMB300,000 or equipped with battery swapping module. The current 2021 subsidy standard, effective from January 1, 2021, was provided in the *Circular on Further 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 December 31, 2020. The current 2021 subsidy standard reduces the base subsidy amount by 20% for each NEV on the basis of that for the previous year. Further, the 2022 subsidy standard is expected to be reduced by 30% 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 NEVs 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 power 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 <sup>(1)</sup>	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 <sup>(2)</sup> from 7:00 a.m. to 8:00 p.m. on workdays. Non-local ICE vehicles will be prohibited to pass through the roads in the inner ring from 7:00 a.m. to 10:00 a.m. and from 4:00 p.m. to 7:00 p.m. from May 2021	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 7:00 a.m. to 10:00 a.m. and from 3:00 p.m. to 8:00 p.m. 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 7:30 a.m. to 8:00 p.m. 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 7:00 a.m. to 9:00 a.m. and from 4:30 p.m. to 6:30 p.m. on workdays	No restriction on NEVs. ICE vehicles are restricted on designated bridges and tunnels from 7:00 a.m. to 10:00 p.m. every day 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. The number of NEV licenses issued by the Beijing local government for 2021 is 60,000.
- (2) Including eleven viaducts, two bridges and two tunnels.

### **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 June 2019 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.

The General Administration of Quality Supervision, Inspection and Quarantine and Standardization Administration issued the *Standard of Information Security Technology - Personal Information Security Specification (2017 edition)*, which took effect in May 2018, and the *Standard of Information Security Technology - Personal Information Security Specification (2020 edition)*, which took effect in October 2020. Pursuant to these standards, any entity or person who has the authority or right to determine the purposes for and methods of using or processing personal information is deemed as a personal data controller. Such personal data controller is required to collect information in accordance with applicable laws, and prior to collecting such data, the information provider's consent is required.

On November 28, 2019, the Secretary Bureau of the Cyberspace Administration of China, the General Office of the MIIT, the General Office of the Ministry of Public Security and the General Office of the SAMR jointly issued the Notice on the Measures for Determining the Illegal Collection and Use of Personal Information through Mobile Applications, which aims to provide reference for supervision and administration departments and provide guidance for mobile applications operators' self-examination and self-correction and social supervision by netizens, and further elaborates the forms of behavior constituting illegal collection and use of the personal information through mobile applications including: (i) failing to publish the rules on the collection and use of personal information; (ii) failing to explicitly explain the purposes, methods and scope of the collection and use of personal information; (iii) collecting and using personal information without the users' consent; (iv) collecting personal information unrelated to the services they provide and beyond the necessary principle; (v) providing personal information to others without the users' consent; (vi) failing to provide the function of deleting or correcting the personal information according to the laws or failing to publish information such as ways of filing complaints and reports.

In addition, on May 28, 2020, the National People's Congress of the PRC approved the PRC Civil Code, which came into effect on January 1, 2021. Pursuant to the PRC Civil Code, the collection, storage, use, process, transmission, provision and disclosure of personal information should follow the principles of legitimacy, properness and necessity.

### **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 and latest amended on November 29, 2020, 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 latest amended on April 23, 2019, 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 28, 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 PRC Civil Code. 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 and latest amended in 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 and most recently amended on April 23, 2019, for special construction projects stipulated by the housing and urban-rural development authority of the State Council, the developer shall submit the fire safety design documents to the housing and urban-rural development authority for examination, while for construction projects other than those stipulated as special development projects, the developer shall, at the time of applying for the construction permit or approval for work commencement report, provide the fire safety design drawings and technical materials that satisfy the construction needs. According to Interim Regulations on Administration of Examination and Acceptance of Fire Control Design of Construction Projects promulgated on April 1, 2020 and effective on June 1, 2020, an examination system for fire prevention design and acceptance only applies to special construction projects, and for other projects, a record-filing and spot check system would be applied.

## **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. On October 17, 2020, the Standing Committee of the National People's Congress promulgated the Amendment to the Patent Law of the PRC, which will be effective from June 1, 2021, which provides, among others, that the protection period for a design patent will become 15 years.

### *Regulations on Copyright*

The Copyright Law of the PRC, or the Copyright Law, which took effect on June 1, 1991 and was latest amended in 2020 and will be effective on June 1, 2021, 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 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 latest amended in 2019, 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 (2020 Version), or the 2020 Negative List, which was jointly promulgated by the MOFCOM and the NDRC on June 23, 2020 and came into effect on July 23, 2020, and the Catalogue of Industries for Encouraging Foreign Investment (2020 Version), or the 2020 Encouraging Catalogue, which was jointly promulgated by the MOFCOM and the NDRC on December 27, 2020 and became effective on January 27, 2021. The 2020 Encouraging Catalogue and the 2020 Negative List set out the industries and economic activities in which foreign investment in the PRC is encouraged, restricted or prohibited. Pursuant to the 2020 Encouraging Catalogue and the 2020 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 2020 Negative List also provides that foreign investors shall hold no more than 50% of the equity interests in a service provider operating certain value-added telecommunications services (other than for e-commerce, domestic multi-party communications, storage and forwarding categories, call centers).

The establishment, operation and management of corporate entities in the PRC is governed by the *PRC Company Law*, which was latest amended 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 2020 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.

On October 23, 2019, SAFE issued the *Circular on Further Promoting Cross-border Trade and Investment Facilitation*. This circular allows the foreign-invested enterprises without equity investment as in their approved business scope to use their capital obtained from foreign exchange settlement to make domestic equity investment as long as the investments are real and in compliance with the foreign investment-related laws and regulations. In addition, this circular stipulates that qualified enterprises in certain pilot areas may use their capital income from registered capital, foreign debt and overseas listing, for the purpose of domestic payments without providing authenticity certifications to the relevant banks in advance for those domestic payments. Payments for transactions that take place within the PRC must be made in Renminbi. Foreign currency revenues received by PRC companies may be repatriated into the PRC or retained outside of the PRC in accordance with requirements and terms specified by SAFE.

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 (Revised in 2020)*, 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.

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 equal to 200% of its net assets multiplied by macro-prudential regulation parameter, or Net Asset Limits. The macro-prudential regulation parameter was initially 1 and has been adjusted to 1.25 from March 2020. 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**

Wholly foreign-owned enterprises and Sino-foreign equity joint ventures in the PRC may pay dividends only out of their accumulated profits, if any, as determined in accordance with PRC accounting standards and regulations. Additionally, these foreign-invested enterprises may not pay dividends unless they set aside at least 10% of their respective accumulated profits after tax each year, if any, to fund certain reserve funds, until such time as the accumulative amount of such fund reaches 50% of the enterprise’s registered capital. In addition, these companies also may allocate a portion of their after-tax profits based on PRC accounting standards to employee welfare and bonus funds at their discretion. These reserves are not distributable as cash dividends.

Regulations governing abovementioned dividend distribution arrangements have been replaced by the Foreign Investment Law of PRC and its implantation rules, which do not provide specific dividend distribution rules for foreign invested enterprises. The Foreign Investment Law and its implementation rules also provide that after the conversion from a wholly foreign-owned enterprise or sino-foreign equity joint venture to a foreign invested enterprise under the Foreign Investment Law, distribution method of gains agreed in the joint venture agreements may continue to apply.

## **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 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 latest amended in 2019, 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.

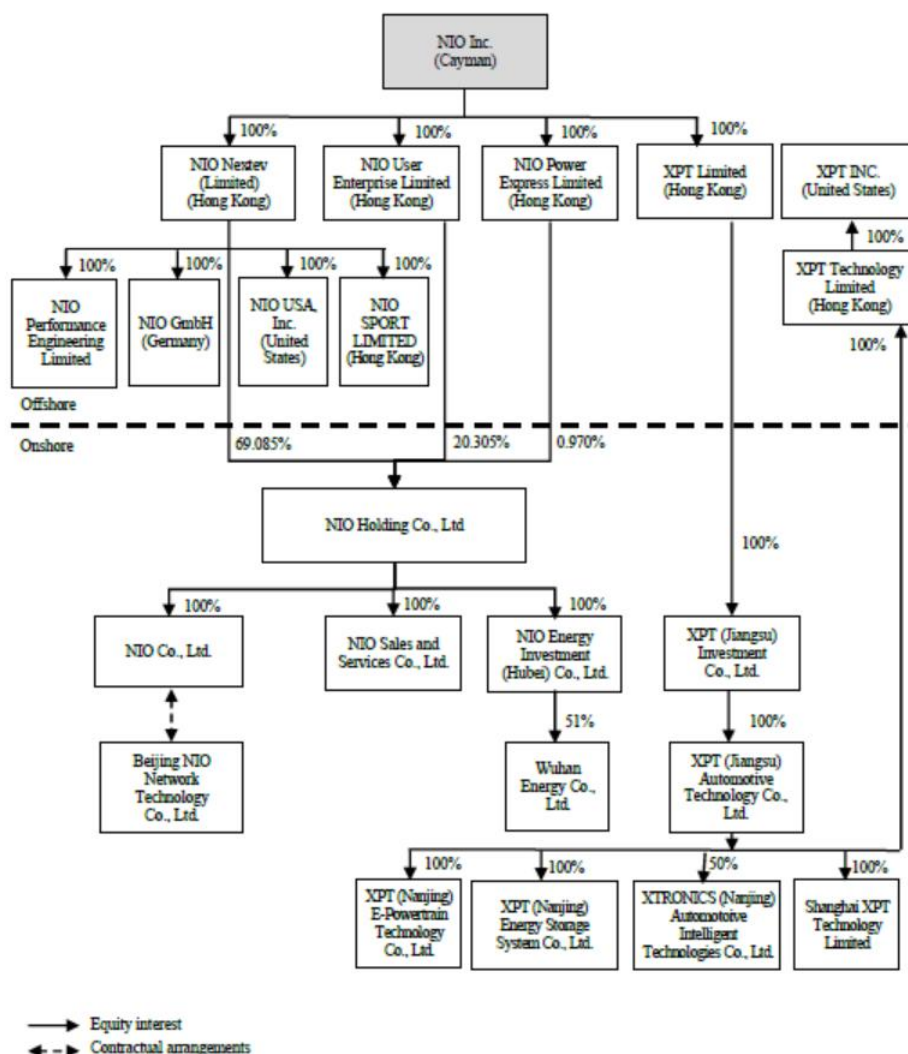
In addition, the SAT has issued certain circulars concerning employee stock options and restricted shares. Under these circulars, employees working in the PRC who exercise stock options or are granted restricted shares will be subject to PRC individual income tax. The PRC subsidiaries of an overseas 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 VIE and Its Shareholders**

Historically, we had two sets of contractual agreements with two VIEs, Beijing NIO and Shanghai Anbin, and their respective shareholders. On March 31, 2021, NIO WFOE, Shanghai Anbin and each shareholder of Shanghai Anbin entered into a termination agreement pursuant to which each of the contractual agreements among NIO WFOE, Shanghai Anbin and its shareholders terminated as of the date of the agreement and after which date we no longer have effective control over Shanghai Anbin, no longer receive any economic benefits of Shanghai Anbin, no longer have an exclusive option to purchase all or part of the equity interests in Shanghai Anbin when and to the extent permitted by the PRC law, and no longer consolidate the financial results of Shanghai Anbin and its subsidiaries as our variable interest entity under U.S. GAAP. We had originally established Shanghai Anbin and its subsidiaries, including NIO New Energy, with the plan to build our own manufacturing plant in Shanghai. We have since decided not to carry out this plan. We decided to terminate the contractual agreements with Shanghai Anbin and its shareholders and wind down NIO New Energy as none of Shanghai Anbin or its subsidiaries currently engage in any material business activities or carry any material assets.



The following is a summary of the contractual agreements with NIO WFOE and 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 VIE in China and NIO WFOE comply with all existing PRC laws and regulations; and
- the contractual arrangements between NIO WFOE, our VIE and its 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 325,217.57 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 as of December 31, 2020:

Location <sup>(1)</sup>	Approximate Size (Building) in Square Meters/Feet <sup>(2)</sup>	Primary Use	Lease Expiration Date
Shanghai	69,671.69	Global headquarters and office	April 9, 2021 – June 19, 2025
	19,515.97	User center (sales, marketing, and customer service)	September 9, 2021 – August 31, 2025
	24,566	Integrated vehicle research and development	April 9, 2021 – June 19, 2025
Shenzhen	1,112.58	Power management	March 31, 2022 – December 31, 2025
	444.60	Warehouse	January 15, 2020 – March 31, 2024
	7,602.58	Sales, marketing, and customer service	September 30, 2022 – November 30, 2023
Chengdu	862.96	Power management	August 31, 2021 – August 25, 2026
	8,976.75	Sales, marketing, and customer service	October 31, 2022 – March 31, 2028
	576.5	Power management	October 30, 2021 – November 30, 2025
Hangzhou	178	Office	November 8, 2019-January 7, 2021
	12,537.24	Sales, marketing, and customer service	July 31, 2022 – December 31, 2023
	225	Power management	June 30, 2022 – December 31, 2024
Nanjing	5,702	Sales, marketing, and customer service	November 30, 2022 – March 31, 2028
	264.25	Power management	June 30, 2022 – June 30, 2028
Suzhou	354.52	Office	May 31, 2021
	8,995	Sales, marketing, and customer service	June 30, 2023 – August 31, 2024
	451	Power management	September 20, 2021 – October 30, 2025
Beijing	2,945.86	Office	December 19, 2021
	24	Office	November 1, 2021
	17,819.3	Sales, marketing, and customer service	May 31, 2021 – June 30, 2027
Hefei	35.27	Warehouse	October 14, 2020
	1,381.75	Power management	July 31, 2021 – November 30, 2028
	315	Power management	February 28, 2023 – September 24, 2030
Kunming	1927.66	Sales, marketing, and customer service	December 31, 2020-April 29, 2023
	4787.18	China headquarter and office	July 31, 2022
	165	Sales, marketing, and customer service	April 30, 2021
Jinan	500	Sales, marketing, and customer service	April 24, 2021
	40	Power management	May 14, 2030
	85.51	Office	October 31, 2021
Guangzhou	266	Sales, marketing, and customer service	September 30, 2022
	105	Power management	November 30, 2021 - April 30, 2025
	2,194.45	Sales, marketing, and customer service	July 31, 2022 - December 31, 2025
Wuhan	1,327.7	Power management	July 31, 2021 – September 30, 2023
	393.52	Office	May 14, 2021
	7,830.33	Sales, marketing, and customer service	October 31, 2021 - December 31 2028
Xi'an	304.73	Power management	September 30, 2021 - November 14, 2025
	2,940.8	Sales, marketing, and customer service	December 31, 2021 – September 30, 2024
	135	Power management	September 30, 2024 – March 31, 2025
Chongqing	14,980.08	Sales, marketing, and customer service	April 30 2022 – August 31, 2025
	205	Power management	July 31, 2023 – August 28, 2025
Ningbo	667.93	Sales, marketing, and customer service	August 16, 2020 – August 15, 2023
	260	Power management	August 15, 2023 – November 14, 2025

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Location <sup>(1)</sup>	Approximate Size (Building) in Square Meters/Feet <sup>(2)</sup>	Primary Use	Lease Expiration Date
Xianning	115	Office	November 30, 2021
	137	Sales, marketing, and customer service	December 31, 2021
Dalian	82.68	Office	January 31, 2022
	149	Sales, marketing, and customer service	April 30, 2022
	43	Power management	November 2, 2025
Xiamen	94.43	Office	August 31, 2022
	9,774.55	Sales, marketing, and customer service	February 28, 2022-November 30, 2028
	120	Power management	July 31, 2025
Dongguan	1602.53	Sales, marketing, and customer service	October 31, 2023-September 30, 2024
	209	Power management	June 30, 2023 – September 30, 2025
Fuzhou	190	Sales, marketing, and customer service	September 30, 2023
	50	Power management	March 31, 2024
Guiyang	221	Sales, marketing, and customer service	February 28, 2023
	50	Power management	April 10, 2024
Haikou	351	Sales, marketing, and customer service	March 31, 2023-October 31, 2023
	145	Power management	November 9, 2023 – December 31, 2023
Huhhot	249	Sales, marketing, and customer service	August 31, 2022
	38.25	Power management	August 31, 2025
Yiwu	410	Sales, marketing, and customer service	December 31, 2022
Nanchang	285	Sales, marketing, and customer service	August 31, 2021-July 30, 2022
	47	Power management	March 31, 2025
Nanning	412	Sales, marketing, and customer service	October 29, 2022-December 14, 2022
	100	Power management	May 31, 2025
Qingdao	3420	Sales, marketing, and customer service	March 31, 2024
	48	Power management	October 19, 2021
Shenyang	170	Sales, marketing, and customer service	December 23, 2023
	43	Power management	May 31, 2023
Shijiazhuang	3,002.67	Sales, marketing, and customer service	October 31, 2023- July 31, 2026
	134	Power management	September 29, 2021 – September 24, 2023
Taiyuan	236	Sales, marketing, and customer service	June 30, 2022
	48	Power management	December 24, 2022
Tianjin	5,343.37	Sales, marketing, and customer service	August 31, 2021- September 9, 2028
	171	Power management	July 31, 2023 – June 25, 2025
Wenzhou	606.07	Sales, marketing, and customer service	February 29, 2024
	217.25	Power management	March 20, 2022 – September 17, 2026
Wuxi	6,123	Sales, marketing, and customer service	September 30, 2023-December 31, 2028
	325	Power management	December 31, 2021 – October 17, 2025
Xuzhou	91	Sales, marketing, and customer service	October 14, 2023
	129	Power management	December 14, 2021 – May 31, 2025
Changsha	3,518	Sales, marketing, and customer service	August 9, 2021-December 9, 2028
	370	Power management	August 14, 2022 – November 31, 2023
Zhengzhou	5,175	Sales, marketing, and customer service	November 30, 2023-October 31, 2024
	153	Power management	October 31, 2024- November 30, 2025
Huzhou	148	Sales, marketing, and customer service	August 31, 2022
	56	Power management	December 31, 2024
Yangzhou	150	Sales, marketing, and customer service	November 30, 2022
Nantong	555	Sales, marketing, and customer service	April 30, 2024
	50	Power management	October 14, 2025
Kunshan	150	Sales, marketing, and customer service	November 1, 2021
Changzhou	868.85	Sales, marketing, and customer service	July 31, 2022
	66	Power management	November 13, 2025
Changshu	200.834	Sales, marketing, and customer service	November 30, 2023
Yichang	161	Sales, marketing, and customer service	Jun 30, 2023
Xinxiang	199	Sales, marketing, and customer service	November 30, 2022
	43	Power management	September 9, 2021
Taizhou	266	Sales, marketing, and customer service	December 31, 2022
	60	Power management	April 30, 2025
Quanzhou	137.8	Sales, marketing, and customer service	April 30, 2022
Jinjiang	188	Sales, marketing, and customer service	September 30, 2022
	45	Power management	September 30, 2023
Zhangzhou	207.85	Sales, marketing, and customer service	January 22, 2023
	45	Power management	October 31, 2023
Foshan	3,443	Sales, marketing, and customer service	July 31, 2028
	123	Power management	August 31, 2023 - September 30, 2023
Lanzhou	735.81	Sales, marketing, and customer service	October 1, 2022

Location <sup>(1)</sup>	Approximate Size (Building) in Square Meters/Feet <sup>(2)</sup>	Primary Use	Lease Expiration Date
San Jose, California	85,017	North American headquarters and global software development center	September 30, 2023
Munich, Germany	99,424	Sales, marketing light assembly, research and development	September 30, 2023
Begbroke Science Park (Oxford, UK) Building 6	3,679	Design headquarters	December 2020 – December 2025
	4,875	Engineering function, HR, finance and IT	July 2022, break any time after July 2020
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 and a leading manufacturer of premium smart electric vehicles. We design, develop, manufacture and sell premium smart electric vehicles, driving innovations in autonomous driving, digital technologies, and electric powertrains and batteries. We differentiate ourselves through our continuous technological breakthroughs and innovations, such as our industry-leading battery swapping technologies, Battery as a Service, or BaaS, as well as our proprietary autonomous driving technologies and Autonomous Driving as a Service, or ADaaS.

We began deliveries of the ES8, a 7-seater flagship premium electric SUV, in China in June 2018, and its variant, the 6-seater ES8, in March 2019. We officially launched the ES6, a 5-seater high-performance premium electric SUV, in December 2018 and began deliveries of the ES6 in June 2019. We officially launched the EC6, a 5-seater premium electric coupe SUV, in December 2019 and began deliveries of the EC6 in September 2020. On January 9, 2021, NIO ET7, the smart electric flagship sedan and our first autonomous driving model, was officially launched and is estimated to start delivery in the first quarter of 2022.

In 2020, we delivered 43,728 vehicles, including 10,861 ES8s, 27,945 ES6s and 4,922 EC6s. As of December 31, 2020, we had delivered a total of 75,641 vehicles. The table below sets forth delivery data relating to our vehicles for the periods indicated.

	<u>2020 Q1</u>	<u>2020 Q2</u>	<u>2020 Q3</u>	<u>2020 Q4</u>	<u>2020 Full Year</u>
ES8s	195	2,263	3,530	4,873	10,861
ES6s	3,643	8,068	8,660	7,574	27,945
EC6s	—	—	16	4,906	4,922
Total	3,838	10,331	12,206	17,353	43,728

We recorded revenues of RMB4,951.2 million, RMB7,824.9 million and RMB16,257.9 million (US\$2,491.6 million) for the years ended December 31, 2018, 2019 and 2020, respectively, 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 power solutions such as our energy package, one-off usage of our One Click for Power services and Power Swap 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.

### **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 have been affected by the spread of COVID-19. The COVID-19 pandemic has impact on China's auto industry in general and the production and delivery of vehicles of our company.

In early 2020, in response to intensifying efforts to contain the spread of COVID-19, the Chinese government took a number of actions, which included extending the Chinese New Year holiday, quarantining individuals infected with or suspected of having contracted 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. We have taken a series of measures in response to the pandemic, including, among others, remote working arrangements for our employees and temporary shutdown of some of our premises and facilities in early 2020. We have followed and are continuing to follow all legal directions and safety guidelines with respect to our premises and facilities in operation. These measures, if taken again in the future, could reduce the capacity and efficiency of our operations, which in turn could negatively affect our results of operations. Although COVID-19 has been largely controlled in China, there have been occasional outbreaks in several cities. To the extent we have service centers and vehicle delivery centers in these locations, we are susceptible to factors adversely affecting one or more of these locations as a result of COVID-19.

We have been 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. As a result, our manufacturing and delivery capacities recovered to the level prior to the COVID-19 pandemic by the second quarter of 2020. In addition, we strive to expand our traffic channels, integrate our online and offline sales efforts and offer high-quality services to bring business and operation back to normal. We will pay close attention to the development of the COVID-19 pandemic, perform further assessment of its impact and take relevant measures to minimize the impact. Although our vehicle deliveries in the first quarter of 2020 was negatively impacted as a result of the COVID-19 pandemic, we achieved satisfactory delivery results in the second, third and fourth quarter of 2020. The total number of vehicles we delivered in the second quarter of 2020 was 10,331, showing an increase by 169.2% from the first quarter of 2020, and an increase by 190.8% from the second quarter of 2019. The total number of vehicles we delivered in the third quarter of 2020 was 12,206, showing an increase by 18.1% from the second quarter of 2020, and an increase by 154.3% from the third quarter of 2019. The total number of vehicles we delivered in the fourth quarter of 2020 was 17,353, showing an increase by 42.2% from the third quarter of 2020, and an increase by 111.0% from the fourth quarter of 2019. We will continue to monitor and evaluate the financial impact to our financial condition, results of operations and cash flows for subsequent periods.

The extent to which COVID-19 impacts our financial position, results of operations and cash flows in the future will depend on the future developments of the pandemic, including the duration and severity of COVID-19, the extent and severity of new waves of outbreak in China and other countries, the development and progress of distribution of COVID-19 vaccine and other medical treatment and the effectiveness of such vaccine and other medical treatment, and the actions taken by government authorities to contain the outbreak, all of which are highly uncertain, unpredictable and beyond our control. In addition, our financial position, results of operations and cash flows could be adversely affected to the extent that the pandemic harms the Chinese economy in general. As of December 31, 2020, we had cash and cash equivalents of RMB38,425.5 million (US\$5,889.0 million). We believe this level of liquidity is sufficient to successfully navigate an extended period of uncertainty.

See “Item 3. Key Information—D. Risk Factors—Risks Related to Our Business and Industry—Our business, financial condition and results of operations may be adversely affected by the COVID-19 pandemic.”

### 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,					
	2018		2019		2020	
	RMB	%	RMB	%	RMB	US\$
	(in thousands)					
<b>Revenues:</b>						
Vehicle sales	4,852,470	98.0	7,367,113	94.1	15,182,522	2,326,823
Other sales	98,701	2.0	457,791	5.9	1,075,411	164,814
<b>Total revenues</b>	<b>4,951,171</b>	<b>100.0</b>	<b>7,824,904</b>	<b>100.0</b>	<b>16,257,933</b>	<b>2,491,637</b>

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, the ES6 and the EC6, 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, the ES6 and the EC6 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 users receive and consume the benefits of the related package.

In January 2021, we launched our fourth volume manufactured electric vehicle, the flagship smart electric sedan NIO ET7. Users can pre-order the ET7 through the NIO App and we expect to generate revenues from sales of the ET7 as soon as we begin making deliveries, which is expected to occur in the first quarter of 2022.

#### 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,					
	2018		2019		2020	
	RMB	%	RMB	%	RMB	US\$
	(in thousands)					
<b>Cost of Sales:</b>						
Vehicle sales	(4,930,135)	94.7	(8,096,035)	89.7	(13,255,770)	(2,031,536)
Other sales	(276,912)	5.3	(927,691)	10.3	(1,128,744)	(172,988)
<b>Total cost of sales</b>	<b>(5,207,047)</b>	<b>100.0</b>	<b>(9,023,726)</b>	<b>100.0</b>	<b>(14,384,514)</b>	<b>(2,204,524)</b>

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, the ES6 and the EC6 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.

### ***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, Hainan Weilai Xiqi Renewable Automobile Technology Co., Ltd., Kunshan Siwopu Intelligent Equipment Co., Ltd., Nanjing Weibang Transmission Technology Co., Ltd., Nanjing Karui Innovation and Entrepreneurship Management Service Co., Ltd., Wuhan Weineng Battery Assets Co., Ltd. and Xunjie Energy (Wuhan) Co., Ltd. in which, as of December 31, 2020, we held a 10.0% 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 income we received with respect to one-off design and research and development services we provided to certain parties.

### ***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%, except for our certain PRC subsidiaries that are qualified as high and new technology enterprises under the PRC Enterprise Income Tax Law and are eligible for a preferential enterprise income tax rate of 15%. 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, 2019 and 2020, the balances of contract liabilities from vehicle sales contracts were RMB491.0 million and RMB1,253.6 million respectively. As of December 31, 2019 and 2020, the balances of contract liabilities from the sales of Energy and Service Packages were RMB57.8 million and RMB91.5 million, respectively.

### **Vehicle sales**

We generate revenue from sales of electric vehicles, currently the ES8, ES6 and EC6, 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.

On August 20, 2020, we introduced the Battery as a Service (BaaS), which allows users to purchase electric vehicles without battery packs and subscribe to the usage of battery packs separately. Under the BaaS, we sell battery packs to the Battery Asset Company, and users subscribe to the usage of the battery packs from the Battery Asset Company by paying a monthly subscription fee.

Together with the launch of the BaaS, we entered into service agreements with the Battery Asset Company, pursuant to which we provide services to the Battery Asset Company including battery packs monitoring, maintenance, upgrade, replacement, IT system support and others, with monthly service charges. In case of any default in payment of monthly subscription fees from users, the Battery Asset Company has right to request us to track and lock down the battery leased to the users to limit its usage. In addition, in furtherance of the BaaS, we agreed to provide guarantee to the Battery Asset Company for the default in payment of monthly subscription fees from users. The maximum amount of guarantee that can be claimed by the Battery Asset Company for the users' payment default shall not be higher than the accumulated service fees we receives from the Battery Asset Company.

In accordance with ASC 606 and ASC 460, for services provided to the Battery Asset Company, revenue is recognized over the period when services are rendered. As for financial guarantee liabilities, the provision of guarantee is linked to and associated with services rendered to the Battery Asset Company and the payment of guarantee amount is therefore accounted for as the reduction to the revenue from the Battery Asset Company.

The fair value of the guarantee liabilities is determined by taking considerations of the default pattern of the Company's existing battery instalment programs provided to users. At each period end, the financial liabilities are remeasured with the corresponding changes recorded as the reduction to the revenue.

For the year ended December 31, 2020, 4,412 NIO vehicles and batteries were delivered to the users under the BaaS and both service revenue and guarantee liability were immaterial.

#### *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 power solutions. 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.

As the consideration for Energy and Service Packages must be paid in advance, which means the payments received are prior to the transfer of services by us, we record the consideration as a contract liability (advance from customers) upon receipt.

#### *Sales of Automotive Regulatory Credits*

We earn tradable new energy vehicle credits in the operation of vehicle business under Chinese regulations related to zero-emission vehicles, greenhouse gas, fuel economy and clean fuel. We sell these credits to other regulated entities who can use the credits to comply with the regulatory requirements.

Payments for automotive regulatory credits are typically received at the point control transfers to the customer, or in accordance with payment terms customary to the business. We recognize revenue on the sale of automotive regulatory credits at the time control of the regulatory credits is transferred to the purchasing party as other sales revenue in the consolidated statements of operations. Revenue from the sale of automotive regulatory credits totaled nil, nil and RMB120.6 million for the years ended December 31, 2018, 2019 and 2020, respectively.

#### *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, 2018, 2019 and 2020, the revenue portion allocated to the points as separate performance obligation was RMB47.3 million, RMB66.3 million and RMB162.5 million (US\$24.9 million), respectively, which is recorded as contract liability (deferred revenue). For the years ended December 31, 2018, 2019 and 2020, the total points recorded as a reduction of revenue was RMB0.4 million, RMB25.4 million and RMB50.9 million (US\$7.8 million), respectively. For the years ended December 31, 2018, 2019 and 2020, the total points recorded as selling and marketing expenses were RMB153.1 million, RMB142.4 million and RMB78.2 million (US\$12.0 million), respectively.

As of December 31, 2019 and 2020, liabilities recorded related to unredeemed points were RMB178.7 million and RMB221.5 million (US\$33.9 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 recognized as incurred.

*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 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 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, 2019 and 2020.

### **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,			
	2018	2019	2020	
	RMB	RMB	RMB	US\$
	(in thousands)			
<b>Revenues: (1)</b>				
Vehicle sales	4,852,470	7,367,113	15,182,522	2,326,823
Other sales	98,701	457,791	1,075,411	164,814
<b>Total revenues</b>	<b>4,951,171</b>	<b>7,824,904</b>	<b>16,257,933</b>	<b>2,491,637</b>
<b>Cost of sales:(2)</b>				
Vehicle sales	(4,930,135)	(8,096,035)	(13,255,770)	(2,031,536)
Other sales	(276,912)	(927,691)	(1,128,744)	(172,988)
<b>Total cost of sales</b>	<b>(5,207,047)</b>	<b>(9,023,726)</b>	<b>(14,384,514)</b>	<b>(2,204,524)</b>
Gross (loss)/profit	(255,876)	(1,198,822)	1,873,419	287,113
Operating expenses:(2)				
Research and development(2)	(3,997,942)	(4,428,580)	(2,487,770)	(381,267)
Selling, general and administrative(2)	(5,341,790)	(5,451,787)	(3,932,271)	(602,647)
Other operating loss	—	—	(61,023)	(9,352)
<b>Total operating expenses</b>	<b>(9,339,732)</b>	<b>(9,880,367)</b>	<b>(6,481,064)</b>	<b>(993,266)</b>
<b>Loss from operations</b>	<b>(9,595,608)</b>	<b>(11,079,189)</b>	<b>(4,607,645)</b>	<b>(706,153)</b>
Interest income	133,384	160,279	166,904	25,579
Interest expenses	(123,643)	(370,536)	(426,015)	(65,290)
Share of losses of equity investee	(9,722)	(64,478)	(66,030)	(10,120)
Other income/(loss), net	(21,346)	66,160	(364,928)	(55,928)
<b>Loss before income tax expenses</b>	<b>(9,616,935)</b>	<b>(11,287,764)</b>	<b>(5,297,714)</b>	<b>(811,912)</b>
Income tax expense	(22,044)	(7,888)	(6,368)	(976)
<b>Net loss</b>	<b>(9,638,979)</b>	<b>(11,295,652)</b>	<b>(5,304,082)</b>	<b>(812,888)</b>

(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,			
	2018	2019	2020	
	RMB	RMB	RMB	US\$
	(in thousands)			
Cost of Sales	9,289	9,763	5,564	853
Research and development expenses	109,124	82,680	51,024	7,820
Selling, general and administrative expenses	561,055	241,052	130,506	20,001
Total	<b>679,468</b>	<b>333,495</b>	<b>187,094</b>	<b>28,674</b>

### Years Ended December 31, 2020 and 2019

#### Revenues

Our revenues increased by 107.8% from RMB7,824.9 million in 2019 to RMB16,257.9 million (US\$2,491.6 million) in 2020, primarily attributable to (i) an increase in the number of vehicles sold in 2020 as compared to 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 59.4% from RMB9,023.7 million in 2019 to RMB14,384.5 million (US\$2,204.5 million) in 2020, mainly due to the increase of delivery volume of the ES6, the ES8, and the EC6 in 2020.

### **Research and Development Expenses**

Research and development expenses decreased by 43.8% from RMB4,428.6 million in 2019 to RMB2,487.8 million (US\$381.3 million) in 2020, primarily due to (i) a 61.9% decrease in design and development expense, which decreased from RMB2,041.0 million in 2019 to RMB778.5 million (US\$119.3 million) in 2020 primarily due to higher design and development expenses incurred before the launch of the ES6 and the all-new ES8 in 2019, as well as reduced design and development activities as a result of the COVID-19 pandemic in 2020; and (ii) a 32.1% decrease in employee compensation for our research and development employees, which decreased from RMB2,004.9 million in 2019 to RMB1,362.2 million (US\$208.8 million) in 2020 primarily due to decrease in the number of our research and development employees (including employees of our product and software development teams) attributable to our continuous cost control efforts.

### **Selling, General and Administrative Expenses**

Selling, general and administrative expenses decreased by 27.9% from RMB5,451.8 million in 2019 to RMB3,932.3 million (US\$602.6 million) in 2020, primarily due to (i) a 24.4% decrease in employee compensation, which decreased from RMB2,231.7 million in 2019 to RMB1,687.9 million (US\$258.7 million) in 2020, due to a decrease in the number of our administrative employees attributable to our continuous cost control efforts; and (ii) a 17.5% decrease in marketing and promotional expenses, which decreased from RMB818.1 million in 2019 to RMB675.1 million (US\$103.5 million) in 2020, primarily due to a decrease in offline marketing and promotional activities as a result of the COVID-19 pandemic.

### **Loss from Operations**

As a result of the foregoing, we incurred a loss from operations of RMB4,607.6 million (US\$706.2 million) in 2020, as compared to a loss of RMB11,079.2 million in 2019.

### **Interest Income**

In 2020, we recorded interest income of RMB166.9 million (US\$25.6 million), as compared to RMB160.3 million in 2019.

### **Interest Expense**

In 2020, we recorded interest expense of RMB426.0 million (US\$65.3 million), as compared to interest expense of RMB370.5 million in 2019, primarily because the principal amount of convertible notes outstanding was higher in 2020 due to the issuance of the Affiliate Notes and the 2021 Notes, and to a lesser extent, the interest-bearing period of our long-term convertible notes issued in February 2019 was shorter in 2019 than in 2020.

### **Share of Losses of Equity Investees**

We recorded share of losses of equity investees of RMB66.0 million (US\$10.1 million) in 2020, as compared with share of losses of equity investee of RMB64.5 million in 2019.

### **Other (Loss)/Income, Net**

We recorded other loss of RMB364.9 million (US\$55.9 million) in 2020, as compared to other income of RMB66.2 million in 2019, primarily due to foreign exchange adjustments in connection with the movements between the U.S. dollar and the Renminbi, which was partially offset by the effect of commission return.

### **Income Tax Expense**

In 2020, our income tax expense was RMB6.4 million (US\$1.0 million), as compared to RMB7.9 million in 2019.

### **Net Loss**

As a result of the foregoing, we incurred a net loss of RMB5,304.1 million (US\$812.9 million) in 2020, as compared to a net loss of RMB11,295.7 million in 2019.

**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 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 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 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 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 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 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 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 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 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 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 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 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, 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 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 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, 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 in 2019, as compared to a net loss of RMB9,639.0 million in 2018.

## **B. Liquidity and Capital Resources**

### **Cash Flows and Working Capital**

We had net cash used in operating activities of RMB7,911.8 million and RMB8,721.7 million in 2018 and 2019, respectively, and net cash provided by operating activities of RMB1,950.9 million (US\$299.0 million) in 2020. 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, 2020, we had a total of RMB38,545.1 million (US\$5,907.3 million) in cash and cash equivalents and restricted cash. As of December 31, 2020, 83.8% of our cash and cash equivalents and restricted cash were denominated in US\$ and held in PRC, Hong Kong and United States, and the other cash and cash equivalents and restricted cash were mainly denominated in Renminbi and held in the PRC. 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, 2020, the total size of our bank facilities was RMB16,255.0 million (US\$2,491.2 million), of which RMB1,875.4 million (US\$287.4 million), RMB680.0 million (US\$104.2 million) and RMB985.0 million (US\$151.0 million) were utilized for borrowing, letters of guarantee and bankers' acceptance, respectively.

As of December 31, 2020, we had approximately US\$910.1 million in total long-term borrowings outstanding, consisting primarily of the 2024 Notes, portions of the Affiliate Notes, and our long-term bank debt.

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. 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. 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.

Shortly after the pricing of the 2026 Notes and the 2027 Notes in January 2021, we entered into separate and individually privately negotiated agreements with certain holders of the 2024 Notes to exchange approximately US\$581.7 million principal amount of the outstanding 2024 Notes for ADSs (each, a “2024 Notes Exchange” and collectively, the “2024 Notes Exchanges”). The 2024 Notes Exchanges closed on January 15, 2021. In connection with the 2024 Notes Exchanges, we also entered into agreements with certain financial institutions that are parties to our existing capped call transactions (which we had entered into in February 2019 in connection with the issuance of the 2024 Notes) shortly after the pricing of the 2026 Notes and the 2027 Notes to terminate a portion of the relevant existing capped call transactions in a notional amount corresponding to the portion of the principal amount of such 2024 Notes exchanged. In connection with such terminations of the existing capped call transactions, we received deliveries of ADSs in such amounts as specified pursuant to such termination agreements on January 15, 2021.

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. As of December 31, 2020, the 360-day Affiliate Notes issued to each of an affiliate of Tencent Holdings Limited and Mr. Bin Li have been converted to Class A ordinary shares and the three-year Affiliate Notes issued to the wholly owned company of Mr. Bin Li have been converted to ADSs.

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. As of December 31, 2020, all of the 2021 Notes have been converted to ADSs.

In January 2021, we issued US\$750 million aggregate principal amount of 0.00% convertible senior notes due 2026, or the 2026 Notes, and US\$750 million aggregate principal amount of 0.50% convertible senior notes due 2027, or the 2027 Notes. The 2026 Notes and the 2027 Notes are unsecured debt. The 2026 Notes will not bear interest, and the principal amount of the 2026 Notes will not accrete. The 2027 Notes will bear interest at a rate of 0.50% per year. The 2026 Notes will mature on February 1, 2026 and the 2027 Notes will mature on February 1, 2027, unless repurchased, redeemed or converted in accordance with their terms prior to such date. Prior to August 1, 2025, in the case of the 2026 Notes, and August 1, 2026, in the case of the 2027 Notes, the 2026 Notes and the 2027 Notes, as applicable, will be convertible at the option of the holders only upon satisfaction of certain conditions and during certain periods. Holders may convert their 2026 Notes or 2027 Notes, as applicable, at their option at any time on or after August 1, 2025, in the case of the 2026 Notes, or August 1, 2026, in the case of the 2027 Notes, until the close of business on the second scheduled trading day immediately preceding the relevant maturity date. Upon conversion, we will pay or deliver to such converting holders, as the case may be, cash, ADSs, or a combination of cash and ADSs, at our election. The initial conversion rate of the 2026 Notes is 10.7458 ADSs per US\$1,000 principal amount of such 2026 Notes. The initial conversion rate of the 2027 Notes is 10.7458 ADSs per US\$1,000 principal amount of such 2027 Notes. The relevant conversion rate for such series of the 2026 Notes and the 2027 Notes is subject to adjustment upon the occurrence of certain events. Holders of the 2026 Notes and the 2027 Notes may require us to repurchase all or part of their 2026 Notes and 2027 Notes for cash on February 1, 2024, in the case of the 2026 Notes, and February 1, 2025, in the case of the 2027 Notes, or in the event of certain fundamental changes, at a repurchase price equal to 100% of the principal amount of the 2026 Notes or the 2027 Notes to be repurchased, plus accrued and unpaid interest, if any, to, but excluding, the relevant repurchase date. In addition, on or after February 6, 2024, in the case of the 2026 Notes, and February 6, 2025, in the case of the 2027 Notes, until the 20th scheduled trading day immediately prior to the relevant maturity date, we may redeem the 2026 Notes or the 2027 Notes, as applicable for cash subject to certain conditions, at a redemption price equal to 100% of the principal amount of the 2026 Notes or the 2027 Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the relevant optional redemption date. Furthermore, we may redeem all but not part of the 2026 Notes or the 2027 Notes in the event of certain changes in the tax laws. Satisfying the obligations of the 2026 Notes and the 2027 Notes could adversely affect the amount or timing of any distributions to our shareholders. We may choose to satisfy, repurchase, or refinance the 2026 Notes or the 2027 Notes through public or private equity or debt financings if we deem such financings available on favorable terms.

We operate with continuous loss. As of the date of this annual report, the cash contribution obligations of us and the Hefei Strategic Investors have all been fulfilled, and we hold 90.360% controlling equity interests in NIO China. For details on the cash investment installments, please see “Item 4. Information on the Company—B. Business Overview—Certain Other Cooperation Arrangements—Hefei Strategic Investors” included elsewhere in this annual report. We believe that our current cash and cash equivalents, short-term investment and cash generated from operations will be sufficient to support our continuous operations and to meet our payment obligations when liabilities fall due for the next 12 months. 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,			
	2018	2019	2020	
	RMB	RMB	RMB	US\$
	(in thousands)			
<b>Summary of Consolidated Cash Flow Data:</b>				
Net cash (used in)/provided by operating activities	(7,911,768)	(8,721,706)	1,950,894	298,985
Net cash provided by/(used in) investing activities	(7,940,843)	3,382,069	(5,071,060)	(777,174)
Net cash provided by financing activities	11,603,092	3,094,953	41,357,435	6,338,307
Effects of exchange rate changes on, cash equivalents and restricted cash	(56,947)	10,166	(682,040)	(104,527)
Net (decrease)/increase in cash, cash equivalents and restricted cash	(4,306,466)	(2,234,518)	37,555,229	5,755,591
Cash, cash equivalents and restricted cash at beginning of the year	7,530,853	3,224,387	989,869	151,704
Cash, cash equivalents and restricted cash at end of the year	3,224,387	989,869	38,545,098	5,907,295

**Operating Activities**

Net cash provided by operating activities was RMB1,950.9 million (US\$299.0 million) in 2020, primarily attributable to a net loss of RMB5,304.1 million (US\$812.9 million), adjusted for (i) non-cash items of RMB 2,425.1 million (US\$371.7 million), which primarily consisted of depreciation and amortization of RMB1046.5 million (US\$160.4 million), amortization of right-of-use assets of RMB499.2 million (US\$76.5 million), share-based compensation expenses of RMB187.1 million (US\$28.7 million) and foreign exchange loss of RMB457.4 million (US\$70.1 million), (ii) a net decrease in operating assets and liabilities by RMB4,829.9 million (US\$742.0 million), which was primarily attributable to an increase in trade and notes payable of RMB3,256.6 million (US\$499.1 million), an increase in accruals and other liabilities of RMB836.5 million (US\$128.2 million), which was partially offset by, among others, a decrease in operating lease liabilities of RMB448.5 million (US\$68.7 million) and an increase in inventory of RMB197.8 million (US\$30.3 million).

Net cash used in operating activities was RMB8,721.7 million in 2019, primarily attributable to a net loss of RMB11,295.7 million, adjusted for (i) non-cash items of RMB2,137.1 million, which primarily consisted of depreciation and amortization of RMB998.9 million and share-based compensation expenses of RMB333.5 million and (ii) a net decrease in operating assets and liabilities by RMB436.8 million, which was primarily attributable to a decrease in inventory by RMB569.2 million, and an increase in accruals and other liabilities by RMB658.9 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 primarily consisting of an increase in the government subsidies relating to our vehicle sales, and payment of operating lease liabilities by RMB345.3 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 RMB505.7 million, which was primarily attributable to an increase in trade payables of RMB2,635.7 million consisting primarily of accounts payable relating to the purchase of inventory; an increase in accruals and other liabilities of RMB1,360.5 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 RMB835.6 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.

### ***Investing Activities***

Net cash used in investing activities was RMB5,071.1 million (US\$777.2 million) in 2020, primarily attributable to (i) purchases of short-term investments of RMB7,594.1 million (US\$1,163.8 million), (ii) purchase of property, plant and equipment and intangible assets of RMB1,127.7 million (US\$172.8 million), and (iii) acquisition of equity investees of RMB250.8 million (US\$38.4 million), partially offset by (i) proceeds from sale of short-term investments of RMB3,738.5 million (US\$572.9 million), and (ii) proceeds from disposal of property and equipment of RMB163.1 million (US\$25.0 million).

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

### ***Financing Activities***

Net cash provided by financing activities was RMB41.4 billion (US\$6.3 billion) in 2020, primarily attributable to (i) proceeds from issuance of ordinary shares, net of RMB34,607.1 million (US\$5,303.8 million), (ii) capital injection from redeemable non-controlling interests holders of RMB5,000.0 million (US\$766.3 million), (iii) proceeds from issuance of convertible promissory note-third parties of RMB3,014.6 million (US\$462.0 million), (iv) proceeds from issuance of convertible promissory note-related parties of RMB90.5 million (US\$13.9 million), (v) proceeds from borrowings from third parties of RMB1,605.5 million (US\$246.0 million), and (vi) proceeds from borrowings from related parties of RMB260.0 million (US\$39.8 million), partially offset by (i) repurchase of redeemable non-controlling interests of RMB2,071.5 million (US\$317.5 million), (ii) repayments of borrowings from third parties of RMB964.8 million (US\$147.9 million), and (iii) repayment of borrowings from related parties of RMB285.8 million (US\$43.8 million).

Net cash provided by financing activities was RMB3,095.0 million in 2019, primarily attributable to (i) proceeds from issuance of convertible promissory note-third parties of RMB2,802.0 million, (ii) proceeds from issuance of convertible promissory note-related parties of RMB1,520.4 million, (iii) the proceeds from borrowings from third parties of RMB1,350.8 million, and (iv) the proceeds from borrowings from related parties of RMB25.8 million, partially offset by repayments of borrowings of RMB2,611.0 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 borrowings from third parties of RMB2,668.5 million.

## **Capital Expenditures**

We made capital expenditures of RMB2,644.0 million, RMB1,706.8 million and RMB1,127.7 million (US\$172.8 million) in 2018, 2019 and 2020, 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 securities we have issued 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, 2020, our total borrowings, including current borrowings and non-current borrowings, were RMB7,868.8 million (US\$1,206.0 million), primarily consisting of convertible notes of RMB5,196.5 million (US\$796.4 million), bank loans of RMB2,234.4 million (US\$342.4 million) and loan from investors of RMB438.0 million (US\$67.1 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 that existed as of December 31, 2020 did not have any material assets or liabilities as of December 31, 2020. 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, 2020 to December 31, 2020 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, 2020:

	Total	Less than 1 year	Payment due by period		
			1-3 years (in RMB thousands)	3-5 years	More than 5 years
Capital commitments	483,359	399,580	78,046	5,213	520
Operating lease obligations	1,780,988	664,988	421,579	287,087	407,334
Finance lease obligations	96,602	36,494	29,561	22,515	8,032
Short-term and long-term borrowings	2,672,332	1,930,560	741,772	—	—
Interest on bank borrowings	100,687	70,028	30,659	—	—
Convertible notes with principal and interest	6,010,248	220,215	786,250	5,003,783	—
Total	11,144,216	3,321,865	2,087,867	5,318,598	415,886

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, 2020.

**G. Safe Harbor**

See "Forward-Looking Information" 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.

Directors and Executive Officers	Age	Position/Title
Bin Li	46	Chairman and Chief Executive Officer
Lihong Qin	47	Director and President
Feng Shen	57	Executive Vice President
Xin Zhou	50	Executive Vice President
Wei Feng	41	Chief Financial Officer
Ganesh V. Iyer	53	Chief Information Officer
Hai Wu	52	Independent Director
Denny Ting Bun Lee	53	Independent Director
James Gordon Mitchell	47	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. In 2000, Mr. Li co-founded Beijing Bitauto E-Commerce Co., Ltd. and served as its director and president until 2006. From 2010 to 2020, Mr. Li served as chairman of the board of directors at Bitauto Holdings Limited, a former NYSE-listed automobile service company and a leading automobile service provider in China. 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 served 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 industry 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 (China) Investment Co., Ltd. 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 32 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, where he served as vice president of Information Technology, Mr. Iyer 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, Cornell University 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 director of certain other listed companies including Frontier Developments Plc (AIM: FDEV), and Tencent Music Entertainment Group (NYSE: TME), and of several unlisted companies. Prior to joining 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, 2020, we paid an aggregate of approximately US\$2.2 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 VIE 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 four 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, and the 2018 Stock Incentive Plan, or the 2018 Plan. The terms of the 2015 Plan, the 2016 Plan and the 2017 Plan are substantially similar. The purpose of our stock incentive 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, the maximum number of shares available for issuance pursuant to all awards is initially 23,000,000 Class A ordinary shares, which amount will 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, 2020, awards to purchase an aggregate amount of 79,318,499 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 and the 2017 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.

**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 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 from January 1, 2019. 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.

The following table summarizes, as of December 31, 2020, the awards granted under the 2015 Plan, the 2016 Plan, the 2017 Plan and 2018 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 29, 2028
		N/A	March 5, 2020	
Lihong Qin	*	2.39	April 2, 2020	April 1, 2030
		2.55	February 28, 2018	February 27, 2028
		2.55	February 1, 2018	January 31, 2028
		N/A	March 5, 2020	
Xin Zhou	*	2.05	September 25, 2019	September 24, 2026
		2.39	April 2, 2020	April 1, 2030
		2.55	February 28, 2018	February 27, 2028
		2.55	February 1, 2018	January 31, 2028
		N/A	March 5, 2020	
Denny Ting Bun Lee	*	N/A	September 12, 2018	
		N/A	August 13, 2020	
		N/A	September 12, 2020	
Hai Wu	*	3.61	May 29, 2019	May 29, 2026
Feng Shen	*	1.8	December 31, 2017	December 30, 2027
		2.05	September 25, 2019	September 24, 2026
		2.39	April 2, 2020	April 1, 2030
		2.55	February 1, 2018	January 31, 2028
		N/A	March 5, 2020	
Wei Feng	*	1.8	November 18, 2019	November 17, 2026
		2.39	April 2, 2020	April 1, 2030
		3.98	May 29, 2020	May 28, 2027
		N/A	March 5, 2020	
Ganesh V Iyer	*	2.05	September 25, 2019	September 24, 2026
		0.27	May 3, 2016	May 2, 2026
		2.55	March 1, 2018	February 29, 2028
		2.39	April 2, 2020	April 1, 2030
Total	25,679,608			

\* Less than one percent of our total outstanding shares.

\*\* Applicable to options only.

As of December 31, 2020, non-executive officers and other grantees as a group held awards of options to purchase 53,841,799 Class A ordinary shares of our company. The exercise prices of the options range from US\$0.1 to US\$48.45 per share.

### 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, 2020, we had 7,763 full-time employees. The following table sets forth the numbers of our employees categorized by function and region as of December 31, 2020.

	<u>As of December 31, 2020</u>
<b>China:</b>	
User experience (sales and marketing and service)	4,141
Product and software development	1,954
Manufacturing	650
General administration	695
<b>Northern California:</b>	
Product and software development	149
General administration	42
<b>Munich:</b>	
Product and software development	75
General administration	20
<b>United Kingdom:</b>	
Product and software development	35
General administration	2
<b>Total number of employees</b>	<b><u>7,763</u></b>

Our employees have set up a labor union in China according to the related Chinese labor law. To date we have not experienced any labor strike, and we consider our relationship with our employees to be good.

We provide competitive level of salary and other employee benefits to our employees. Every employee beneficially owns shares in our company. We provide employees with a wide range of benefits, including but not limited to employees' commercial insurance, physical examinations, vocational training and holiday benefits. We aim to create a warm, safe and secure working environment for everyone.

## 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 February 28, 2021 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 1,638,518,109 ordinary shares outstanding as of February 28, 2021, comprising of 1,361,724,177 Class A ordinary shares, 128,293,932 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†
<b>Directors and Executive Officers**:</b>						
Bin Li <sup>(1)</sup>	25,967,776	—	148,500,000	174,467,776	10.6	39.3
Lihong Qin	*	—	—	*	*	*
Feng Shen	*	—	—	*	*	*
Xin Zhou	*	—	—	*	*	*
Wei Feng	*	—	—	*	*	*
Ganesh V. Iyer <sup>(2)</sup>	*	—	—	*	*	*
Hai Wu <sup>(3)</sup>	*	—	—	*	*	*
Denny Ting Bun Lee <sup>(4)</sup>	*	—	—	*	*	*
James Gordon Mitchell <sup>(5)</sup>	—	—	—	—	—	—
All Directors and Executive Officers as a Group	42,758,029	—	148,500,000	191,258,029	11.6	39.7
<b>Principal Shareholders:</b>						
Founder vehicles <sup>(6)</sup>	16,967,776	—	148,500,000	165,467,776	10.1	39.3
Tencent entities <sup>(7)</sup>	35,955,697	128,293,932	—	164,249,629	10.0	17.9
Baillie Gifford & Co <sup>(8)</sup>	107,907,768	—	—	107,907,768	6.6	3.5

\* 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) 9,000,000 Class A ordinary shares issuable to Mr. Bin Li upon exercise of options within 60 days of February 28, 2021, (ii) 4,778,523 Class A ordinary shares and 84,234,928 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) 12,189,253 Class A ordinary shares and 37,810,747 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) The business address of Mr. Iyer is 3200 North First Street, San Jose, CA 95134.
- (3) The business address of Mr. Wu is No. 53, Gaoyou Road, Xuhui District, Shanghai, People's Republic of China.
- (4) The business address of Mr. Lee is No. 4 Dianthus Road, Yau Yat Chuen, Kowloon, Hong Kong.
- (5) The business address of Mr. Mitchell is Level 29, Three Pacific Place, 1 Queen's Road East, Wanchai, Hong Kong.

- (6) Represents (i) 4,778,523 Class A ordinary shares and 84,234,928 Class C ordinary shares held by Originalwish Limited, (ii) 26,454,325 Class C ordinary shares held by mobike Global Ltd., and (iii) 12,189,253 Class A ordinary shares and 37,810,747 Class C ordinary shares held by NIO Users Limited, which are collectively referred to in this annual report 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.
- (7) Based on the statement on Schedule 13D/A filed on March 4, 2021 jointly by (i) Tencent Holdings Limited, (ii) Image Frame Investment (HK) Limited, (iii) Mount Putuo Investment Limited, and (iv) Huang River Investment 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, a wholly-owned subsidiary of Tencent Holdings Limited holds 146,578 Class A ordinary shares, and Huang River Investment Limited beneficially owns 35,809,119 Class A ordinary shares, which includes (i) 7,070,749 Class A ordinary shares represented by 7,070,749 ADSs held by Huang River Investment Limited, (ii) 16,778,523 Class A ordinary shares issued upon conversion of the 2020 Notes, (iii) 3,154,077 Class A ordinary shares issuable upon conversion of the 2024 Notes within 60 days from March 4, 2021 based on the initial conversion price and (iv) 8,805,770 Class A ordinary shares issuable upon conversion of the 2022 Notes within 60 days from March 4, 2021 based on the initial conversion price. Mount Putuo Investment Limited, Image Frame Investment (HK) Limited, Huang River Investment Limited and Tencent Holdings Limited are collectively referred to in this annual report as the Tencent entities. Mount Putuo Investment Limited and Huang River Investment Limited are companies incorporated in the British Virgin Islands, and Image Frame Investment (HK) Limited is a company incorporated in Hong Kong. Each of Image Frame Investment (HK) Limited, Mount Putuo Investment Limited and Huang River Investment Limited is beneficially owned and controlled by Tencent Holdings Limited, a Cayman Islands company. The registered office of Huang River Investment Limited is Vistra Corporate Services Centre, Wickhams Cay II, Road Town, Tortola, VG1110, 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 Mount Putuo Investment Limited is P.O. Box 957, Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands. The principal business address of Tencent Holdings Limited is Level 29, Three Pacific Place, No. 1 Queen's Road East, Wanchai, Hong Kong.
- (8) Based on the statement on Schedule 13G/A filed on January 29, 2021 by Baillie Gifford & Co., Baillie Gifford & Co. and/or one or more of its investment adviser subsidiaries beneficially own 107,907,768 ADSs representing 107,907,768 Class A ordinary shares. The registered address of Baillie Gifford & Co. is Calton Square, 1 Greenside Row, Edinburgh EH1 3AN, Scotland, UK.

To our knowledge, as of February 28, 2021, 1,286,365,831 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 VIE and Its 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\$5.0 million. 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, collectively the Affiliate Notes. Huang River Investment Limited and Mr. Bin Li each 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 Affiliate 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. As of December 31, 2020, the 360-day Affiliate Notes issued to each of an affiliate of Tencent Holdings Limited and Mr. Bin Li have been converted to Class A ordinary shares and the three-year Affiliate Notes issued to the wholly owned company of Mr. Bin Li have been converted to ADSs.

In February 2019, we issued US\$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 2020, the amount of interest payable to Huang River Investment Limited for the 2024 Notes was US\$0.5 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, 2020, we had repaid the loan in full.

In 2019 and 2020, we received IT support services from Beijing Yiche Information Science and Technology Co., Ltd., a company significantly influenced by Bin Li, and incurred expenses of IT support services of RMB0.5 million and RMB0.3 million (US\$0.04 million), respectively.

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 matured 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 2018, 2019 and 2020, 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., Beijing Yiche Interactive Advertising Co., Ltd., Shanghai Yiju Information Technology Co., Ltd., Tianjin Boyou Information Technology Co., Ltd. and Beijing Bit Ep Information Technology Co., Ltd., and we incurred expenses of marketing and advertising services RMB38.0 million, RMB79.3 million and RMB138.2 million (US\$21.2 million), respectively. Beijing Yiche Interactive Advertising Co., Ltd, 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 December 2020, Mr. Bin Li resigned as chairman of the Board in Beijing Bitauto Interactive Technology Co., Ltd., Since then, Beijing Bitauto Interactive Technology Co., Ltd., Beijing Xinyi Hudong Guanggao Co., Ltd., Bite Shijie (Beijing) Keji Co., Ltd. and Beijing Chehui Hudong Guanggao Co., Ltd. are no longer controlled by Mr. Bin Li, and are no longer our related parties.

In 2018, 2019 and 2020, we provided property management, administrative support, design and research and development services to our affiliates and companies controlled by our principal shareholders, including Shanghai NIO Hongling Investment Management Co., Ltd., Shanghai Weishang Business Consulting Co., Ltd., Nanjing Weibang Transmission Technology Co., Ltd., and Wuhan Weineng Battery Assets Co., Ltd., and we received total service income of RMB3.6 million, RMB4.2 million and RMB1.6 million (US\$0.2 million), respectively.

In 2020, we provided sales of goods to our affiliates, including Wuhan Weineng Battery Assets Co., Ltd., Beijing Bit Ep Information Technology Co., Ltd., Beijing Yiche Interactive Advertising Co., Ltd., Beijing Yiche Information Science and Technology Co., Ltd. and Beijing Bitauto Interactive Technology Co., Ltd., and we received total sales of goods of RMB298.5 million (US\$45.7 million).

In 2018, 2019 and 2020, we paid a total of RMB132.2 million, RMB132.5 million and RMB174.7 million (US\$26.8 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 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 and raw material. In 2020, we paid a total of RMB137.6 million (US\$21.1 million) to Kunshan Siwopu Intelligent Equipment Co., Ltd., Nanjing Weibang Transmission Technology Co., Ltd. and Xunjie Energy (Wuhan) Co., Ltd. for purchase of property and equipment and raw material.

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 the date of this annual report, the loans remain 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, 2020, the amount receivable has been fully repaid.

In 2018, 2019 and 2020, we received research and development and maintenance services from Kunshan Siwopu and Suzhou Zenlead, and paid a total of RMB17.2 million, RMB0.3 million and RMB3.4 million (US\$0.5 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 plaintiffs filed their Second Amended Complaint on September 18, 2020. The company and other defendants filed their Motion to Dismiss on October 19, 2020. Briefing on the Motion to Dismiss was completed on December 4, 2020. Certain of the company's directors and officers, who were named as defendants in this action, also joined the company's Motion. The Court's decision on the Motion to Dismiss is pending. In the New York county action, *In re NIO Inc. Securities Litigation*, Index No. 653422/2019, by an order dated March 23, 2021, the Court granted the plaintiffs' motion to lift the stay in favor of the federal action. Plaintiffs subsequently filed an amended complaint on April 2, 2021. The Company and other defendants will respond in due course. 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 and Industry—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.”

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. See “Item 3. Key Information—D. Risk Factors—Risks Related to Our ADSs and Our Trading Market—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.”

### **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 Act (As Revised) of the Cayman Islands, which we refer to as the Companies Act 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) 2,503,736,290 Class A ordinary shares of a par value of US\$0.00025 each, (ii) 128,293,932 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 Act 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 Act 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 Act 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 Act, 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 Act 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), may only be materially adversely 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 (except for our memorandum and articles of association and our register of mortgages and charges). 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 Act. The Companies Act 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 Treaties, which became effective in January 2020, 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. There can be no assurance that the Internal Revenue Service (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;
- 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 and expected income and assets, we do not believe that we were a PFIC for the taxable year ended December 31, 2020 and we do not expect to be a PFIC for the current taxable year or the foreseeable future. While we do not expect to be or 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 nature and 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, 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 on a qualified exchange, as defined in applicable U.S. Treasury regulations. For those purposes, our ADSs, but not our Class A ordinary shares, are traded on the New York Stock Exchange which is a qualified 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 technically 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](http://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, <http://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, the EC6 and the all-new ES8, 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 exposure to interest rate risk relates primarily to the interest rates associated with the outstanding convertible notes we issued and bank loans that bear floating interest rates. The interest rate risk may result from many factors, including government monetary and tax policies, domestic and international economic and political considerations, and other factors that are beyond our control. We may incur additional loans or other financing facilities in the future. The objective of interest rate risk management is to minimize financial costs and uncertainties associated with interest rate changes. We strive to effectively manage our interest rate risk by periodic monitoring and responding to risk factors on a timely basis, improve the structure of long-term and short-term borrowings and maintain the appropriate balance between loans with floating interest rates and fixed interest rates.

We are subject to interest rate sensitivity on our outstanding 2024 Notes, Affiliate Notes, 2026 Notes and 2027 Notes. We account for our convertible notes on an amortized cost basis and our recognized value of the convertible notes does not reflect changes in fair value. Also, because convertible notes we have issued either bear interest at a fixed rate or bear no interest, we have not incurred financial statement impact resulting 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. Increases in market interest rates would result in a decrease in the fair value of our outstanding convertible notes and decreases in market interest rates would result in an increase in the fair value of our outstanding convertible notes. For information on the maturities and other contractual terms of our convertible notes, see "Item 5. Operating and Financial Review and Prospects—B. Liquidity and Capital Resources—Cash Flows and Working Capital."

With regard to interest rate sensitivity on our bank loans, we present the sensitivity analysis below based on the exposure to interest rates for interest bearing bank loans with variable interest rates as of December 31, 2020. The analysis is prepared assuming that those balances outstanding as of December 31, 2020 were outstanding for the whole financial year. A 1.0% increase or decrease which represents our management's assessment of the reasonably possible change in interest rates is used. Assuming no change in the outstanding balance of our existing interest-bearing bank loans balances with floating interest rates as of December 31, 2020, a 1.0% increase or decrease in each applicable interest rate would add or deduct RMB10.2 million (US\$1.6 million) to our interest expense for the year ended December 31, 2020. We have not used any derivative financial instruments to manage our interest risk exposure.

In addition, we may from time to time invest in interest-earning instruments. Investments in both fixed rate and floating rate interest-earning instruments carry certain interest rate risk associated with our investment return. 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 2018, 2019 and 2020 were increases of 1.9%, 4.5% and 0.2%, 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 depository 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
● Depository services	Up to US\$0.05 per ADS held on the applicable record date(s) established by the depository bank

Holders of our ADSs will also be responsible to pay certain fees and expenses incurred by the depository 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 depository fees payable upon the issuance and cancellation of ADSs are typically paid to the depository bank by the brokers (on behalf of their clients) receiving the newly issued ADSs from the depository bank and by the brokers (on behalf of their clients) delivering the ADSs to the depository bank for cancellation. The brokers in turn charge these fees to their clients. Depository fees payable in connection with distributions of cash or securities to ADS holders and the depository services fee are charged by the depository 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 2020, we received an after-tax reimbursement payment of US\$11,883.9 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, with the participation of our chief executive officer and chief financial officer, has concluded that, as of December 31, 2020, our disclosure controls and procedures were 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, 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, 2020 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 effective as of December 31, 2020.

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

As of December 31, 2020, based on an assessment performed by our management on the performance of certain remediation measures (specified below), we concluded that the material weakness in our internal control over financial reporting previously identified by us and our independent registered public accounting firm in connection with the audit of the effectiveness of internal control over financial reporting as of December 31, 2019 has been remediated.

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 did 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 a number of remedial measures to address the material weakness, including (1) establishing clear roles and responsibilities for accounting and financial reporting staff to address accounting and financial reporting issues; (2) strengthening our financial reporting team by hiring additional personnel with experience in U.S. GAAP and SEC reporting from reputable accounting firms; (3) further increasing the accounting and SEC reporting acumen and accountability of our finance organization employees through training programs designed to enhance these employees' competency with respect to U.S. GAAP and SEC reporting; (4) enhancing our monitoring controls over financial reporting, including additional review by our chief financial officer, financial vice president, and other senior finance staff over the application of U.S. GAAP accounting requirements, the selection and evaluation of U.S. GAAP accounting policies, critical accounting judgments and estimates, reporting and disclosures; (5) establishing related policies and procedures to support the operation of internal controls at the entity level and process level; and (6) strengthening our internal audit function by hiring additional personnel with industry internal audit experience and experience in compliance with the requirements of Section 404 of the Sarbanes-Oxley Act.

Other than as described above, 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.

#### **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, 2020, as stated in its report, which appears on page F-2 of this annual report on Form 20-F.

#### **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.

	<b>For the Year Ended December 31,</b>	
	<b>2019</b>	<b>2020</b>
	<b>(in thousands of RMB)</b>	
Audit fees <sup>(1)</sup>	8,500	10,300
Tax fees <sup>(2)</sup>	1,747	2,338
Other fees <sup>(3)</sup>	1,608	5,636
<b>Total</b>	<b>11,855</b>	<b>18,274</b>

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.



- (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, 303A.07 and 302.00 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, and must hold an annual shareholders' meeting during each fiscal year. 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. [Click or tap here to enter text.](#)

**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. Financial Statements.”

**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**

<b>Exhibit Number</b>	<b>Description of Document</b>
1.1	<a href="#">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)</a>
2.1	<a href="#">Registrant's Specimen American Depositary Receipt (included in Exhibit 2.3)</a>
2.2	<a href="#">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)</a>
2.3	<a href="#">Deposit Agreement, dated as of September 11, 2018, among the Registrant, Deutsche Bank Trust Company Americas, as the depositary, 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)</a>
2.4	<a href="#">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)</a>
2.5	<a href="#">Description of American Depositary Shares of the Registrant (incorporated herein by reference to Exhibit 2.5 to the Company's Report on Form 20-F (File No. 001-38638), filed with the SEC on May 14, 2020)</a>
2.6	<a href="#">Description of Class A ordinary shares of the Registrant (incorporated herein by reference to Exhibit 2.6 to the Company's Report on Form 20-F (File No. 001-38638), filed with the SEC on May 14, 2020)</a>
4.1	<a href="#">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)</a>
4.2	<a href="#">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)</a>
4.3	<a href="#">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)</a>
4.4	<a href="#">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)</a>
4.5	<a href="#">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)</a>
4.6†	<a href="#">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)</a>
4.7	<a href="#">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)</a>
4.8	<a href="#">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)</a>
4.9	<a href="#">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)</a>
4.10	<a href="#">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)</a>
4.11	<a href="#">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)</a>
4.12	<a href="#">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)</a>

- 4.13 [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\)](#)
- 4.14 [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\)](#)
- 4.15 [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 \(File No. 001-38638\), filed with the SEC on April 2, 2019\)](#)
- 4.16 [Form of 4.50% Convertible Senior Notes due 2024 \(included in Exhibit 4.20\) \(incorporated herein by reference to Exhibit 4.22 to the Company's Report on Form 20-F \(File No. 001-38638\), filed with the SEC on April 2, 2019\)](#)
- 4.17 [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 \(File No. 001-38638\), filed with the SEC on April 2, 2019\)](#)
- 4.18† [English translation of NIO ES6 Manufacture Cooperation Agreement, dated as of April 30, 2019, between the registrant and Anhui Jianghuai Automobile Co., Ltd. \(incorporated herein by reference to Exhibit 4.23 to the Company's Report on Form 20-F \(File No. 001-38638\), filed with the SEC on May 14, 2020\)](#)
- 4.19† [English translation of NIO Fury \(EC6\) Manufacture Cooperation Agreement, dated as of March 10, 2020, between the registrant and Anhui Jianghuai Automobile Co., Ltd. \(incorporated herein by reference to Exhibit 4.24 to the Company's Report on Form 20-F \(File No. 001-38638\), filed with the SEC on May 14, 2020\)](#)
- 4.20 [Convertible Notes Subscription Agreement, dated September 4, 2019, between the Registrant and Huang River Investment Limited \(incorporated herein by reference to Exhibit 4.25 to the Company's Report on Form 20-F \(File No. 001-38638\), filed with the SEC on May 14, 2020\)](#)
- 4.21 [Convertible Notes Subscription Agreement, dated September 4, 2019, between the Registrant and Serene View Investment Limited \(incorporated herein by reference to Exhibit 4.26 to the Company's Report on Form 20-F \(File No. 001-38638\), filed with the SEC on May 14, 2020\)](#)
- 4.22 [Form of 0% Convertible Senior Notes due 2020 \(included in Exhibit 4.25\) \(incorporated herein by reference to Exhibit 4.25 to the Company's Report on Form 20-F \(File No. 001-38638\), filed with the SEC on May 14, 2020\)](#)
- 4.23 [Form of 0% Convertible Senior Notes due 2022 \(included in Exhibit 4.25\) \(incorporated herein by reference to Exhibit 4.25 to the Company's Report on Form 20-F \(File No. 001-38638\), filed with the SEC on May 14, 2020\)](#)
- 4.24 [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 \(incorporated herein by reference to Exhibit 4.29 to the Company's Report on Form 20-F \(File No. 001-38638\), filed with the SEC on May 14, 2020\)](#)
- 4.25 [Form of 0% Convertible Senior Notes due 2021 \(included in Exhibit 4.29\) \(incorporated herein by reference to Exhibit 4.29 to the Company's Report on Form 20-F \(File No. 001-38638\), filed with the SEC on May 14, 2020\)](#)
- 4.26 [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 \(incorporated herein by reference to Exhibit 4.31 to the Company's Report on Form 20-F \(File No. 001-38638\), filed with the SEC on May 14, 2020\)](#)
- 4.27 [Form of 0% Convertible Senior Notes due 2021 \(included in Exhibit 4.31\) \(incorporated herein by reference to Exhibit 4.31 to the Company's Report on Form 20-F \(File No. 001-38638\), filed with the SEC on May 14, 2020\)](#)
- 4.28 [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 \(incorporated herein by reference to Exhibit 4.33 to the Company's Report on Form 20-F \(File No. 001-38638\), filed with the SEC on May 14, 2020\)](#)

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4.29	<a href="#">Form of 0% Convertible Senior Notes due 2021 (included in Exhibit 4.33) (incorporated herein by reference to Exhibit 4.33 to the Company's Report on Form 20-F (File No. 001-38638), filed with the SEC on May 14, 2020)</a>
4.30	<a href="#">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 (incorporated herein by reference to Exhibit 4.35 to the Company's Report on Form 20-F (File No. 001-38638), filed with the SEC on May 14, 2020)</a>
4.31	<a href="#">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 (incorporated herein by reference to Exhibit 4.36 to the Company's Report on Form 20-F (File No. 001-38638), filed with the SEC on May 14, 2020)</a>
4.32	<a href="#">English translation of Amendment and Supplementary Agreement to Investment Agreement, dated May 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 (incorporated herein by reference to Exhibit 99.1 to the Company's Current Report on Form 6-K (File No. 001-38638), filed with the SEC on June 9, 2020)</a>
4.33	<a href="#">English translation of Amendment and Supplementary Agreement to Shareholders' Agreement, dated May 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 (incorporated herein by reference to Exhibit 99.2 to the Company's Current Report on Form 6-K (File No. 001-38638), filed with the SEC on June 9, 2020)</a>
4.34	<a href="#">English translation of Amendment and Supplementary Agreement II to Investment Agreement, dated June 18, 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 (incorporated herein by reference to Exhibit 99.1 to the Company's Current Report on Form 6-K (File No. 001-38638), filed with the SEC on June 30, 2020)</a>
4.35	<a href="#">English translation of Amendment and Supplementary Agreement II to Shareholders' Agreement, dated June 18, 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 (incorporated herein by reference to Exhibit 99.2 to the Company's Current Report on Form 6-K (File No. 001-38638), filed with the SEC on June 30, 2020)</a>
4.36*	<a href="#">English translation of Amendment and Supplementary Agreement III to the NIO China Shareholders Agreement, dated September 16, 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</a>
4.37*	<a href="#">English translation of Amendment and Supplementary Agreement IV to the NIO China Shareholders Agreement, dated September 25, 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</a>
4.38*	<a href="#">English translation of Amendment and Supplementary Agreement V to the NIO China Shareholders Agreement, dated January 26, 2021, 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</a>
4.39*	<a href="#">Indenture, dated as of January 15, 2021, by and between the Registrant, as issuer, and Deutsche Bank Trust Company Americas, as trustee, constituting US\$750 million 0.00% Convertible Senior Notes due 2026</a>
4.40*	<a href="#">Form of 0.00% Convertible Senior Notes due 2026 (included in Exhibit 4.39)</a>
4.41*	<a href="#">Indenture, dated as of January 15, 2021, by and between the Registrant, as issuer, and Deutsche Bank Trust Company Americas, as trustee, constituting US\$750 million 0.50% Convertible Senior Notes due 2027</a>
4.42*	<a href="#">Form of 0.50% Convertible Senior Notes due 2027 (included in Exhibit 4.41)</a>
8.1*	<a href="#">List of Principal Subsidiaries and Consolidated Variable Interest Entities</a>
11.1	<a href="#">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)</a>
12.1*	<a href="#">CEO Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>
12.2*	<a href="#">CFO Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002</a>
13.1**	<a href="#">CEO Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>
13.2**	<a href="#">CFO Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002</a>

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15.1*	<a href="#">Consent of PricewaterhouseCoopers Zhong Tian LLP</a>
15.2*	<a href="#">Consent of Han Kun Law Offices</a>
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)

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\* 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: April 6, 2021

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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, 2020 and 2019, 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, 2020, 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, 2020, based on criteria established in Internal Control - Integrated Framework (2013) issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

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

### ***Changes in Accounting Principles***

As discussed in Note 2 to the consolidated financial statements, the Company changed the manner in which it accounts for current expected credit losses on certain financial instruments in 2020 and 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 Annual Report on Internal Control over Financial Reporting appearing under Item 15. 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.

#### *Accrual of warranty liabilities*

As described in Note 2(q) to the consolidated financial statements, the Company provides warranty to its customers for all new vehicles it sold. For the year ended December 31, 2020, the Company accrued warranty cost of RMB582.1 million. As of December 31, 2020, the accrued warranty liabilities were RMB952.9 million. A warranty reserve is accrued based on the Company's best estimate of the projected costs to repair or replace items under warranty including recalls when identified. These estimates are based on actual claims incurred to date and an estimate of the nature, frequency and costs of future claims.

The principal considerations for our determination that performing procedures relating to the warranty liabilities is a critical audit matter are the significant judgment by management in determining the warranty liabilities; this in turn led to significant auditor judgment, subjectivity, and effort in designing and performing procedures relating to evaluating the reasonableness of management's estimate of the nature, frequency and costs of future claims.

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 controls relating to management's estimate of the warranty liabilities, including controls over management's estimate of the nature, frequency and costs of future claims as well as the completeness and accuracy of actual claims incurred to date. These procedures also included, among others, testing management's process for determining the warranty liabilities by (a) evaluating the appropriateness of the model applied; (b) evaluating the reasonableness of significant assumptions related to the nature and frequency of future claims and the related projected costs to repair or replace items under warranty, considering current and past performance, including a lookback analysis comparing prior period forecasted claims to actual claims incurred; and (c) testing the completeness, accuracy and relevance of management's data related to the actual claims incurred to date and that such data was appropriately used by management in the estimation of future claims.

/s/PricewaterhouseCoopers Zhong Tian LLP  
Shanghai, the People's Republic of China  
April 6, 2021

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,		
	2019 RMB	2020 RMB	2020 US\$ Note 2(e)
<b>ASSETS</b>			
Current assets:			
Cash and cash equivalents	862,839	38,425,541	5,888,972
Restricted cash	82,507	78,010	11,956
Short-term investment	111,000	3,950,747	605,478
Trade receivable	1,352,093	1,123,920	172,248
Amounts due from related parties	50,783	169,288	25,945
Inventory	889,528	1,081,553	165,755
Prepayments and other current assets	1,579,258	1,422,403	217,993
Expected credit loss provision – current	—	(44,645)	(6,842)
<b>Total current assets</b>	<b>4,928,008</b>	<b>46,206,817</b>	<b>7,081,505</b>
Non-current assets:			
Long-term restricted cash	44,523	41,547	6,367
Property, plant and equipment, net	5,533,064	4,996,228	765,705
Intangible assets, net	1,522	613	94
Land use rights, net	208,815	203,968	31,259
Long-term investments	115,325	300,121	45,996
Amounts due from related parties	—	617	95
Right-of-use assets – operating lease	1,997,672	1,350,294	206,942
Other non-current assets	1,753,100	1,561,755	239,350
Expected credit loss provision - non-current	—	(20,031)	(3,070)
<b>Total non-current assets</b>	<b>9,654,021</b>	<b>8,435,112</b>	<b>1,292,738</b>
<b>Total assets</b>	<b>14,582,029</b>	<b>54,641,929</b>	<b>8,374,243</b>
<b>LIABILITIES</b>			
Current liabilities:			
Short-term borrowings	885,620	1,550,000	237,548
Trade and notes payable	3,111,699	6,368,253	975,977
Amounts due to related parties	309,729	344,603	52,813
Taxes payable	43,986	181,658	27,840
Current portion of operating lease liabilities	608,747	547,142	83,852
Current portion of long-term borrowings	322,436	380,560	58,323
Accruals and other liabilities	4,216,641	4,604,024	705,600
<b>Total current liabilities</b>	<b>9,498,858</b>	<b>13,976,240</b>	<b>2,141,953</b>
Non-current liabilities:			
Long-term borrowings	7,154,798	5,938,279	910,081
Non-current operating lease liabilities	1,598,372	1,015,261	155,596
Other non-current liabilities	1,151,813	1,849,906	283,510
<b>Total non-current liabilities</b>	<b>9,904,983</b>	<b>8,803,446</b>	<b>1,349,187</b>
<b>Total liabilities</b>	<b>19,403,841</b>	<b>22,779,686</b>	<b>3,491,140</b>
<b>Commitments and contingencies (Note 28)</b>			

**NIO INC.**  
**CONSOLIDATED BALANCE SHEETS**  
**(All amounts in thousands, except for share and per share data)**

	As of December 31,		
	2019 RMB	2020 RMB	2020 US\$ Note 2(e)
<b>MEZZANINE EQUITY</b>			
Redeemable non-controlling interests	1,455,787	4,691,287	718,971
<b>Total mezzanine equity</b>	<u>1,455,787</u>	<u>4,691,287</u>	<u>718,971</u>
<b>SHAREHOLDERS' (DEFICIT)/EQUITY</b>			
<b>Class A Ordinary Shares</b> (US\$0.00025 par value; 2,500,000,000 and 2,503,736,290 shares authorized; 786,937,655 and 1,252,237,171 shares issued; 783,942,438 and 1,249,745,456 shares outstanding as of December 31, 2019 and 2020, respectively)	1,347	2,205	338
<b>Class B Ordinary Shares</b> (US\$0.00025 par value; 132,030,222 and 128,293,932 shares authorized; 132,030,222 and 128,293,932 issued and outstanding as of December 31, 2019 and 2020, respectively)	226	220	34
<b>Class C Ordinary Shares</b> (US\$0.00025 par value; 148,500,000 and 148,500,000 shares authorized, issued and outstanding as of December 31, 2019 and 2020, respectively)	254	254	39
Less: Treasury shares (2,995,217 and 2,491,715 shares as of December 31, 2019 and 2020, respectively)	—	—	—
Additional paid in capital	40,227,856	78,880,014	12,088,891
Accumulated other comprehensive loss	(203,048)	(65,452)	(10,031)
Accumulated deficit	<u>(46,326,321)</u>	<u>(51,648,410)</u>	<u>(7,915,465)</u>
<b>Total NIO Inc. shareholders' (deficit)/equity</b>	<u>(6,299,686)</u>	<u>27,168,831</u>	<u>4,163,806</u>
Non-controlling interests	22,087	2,125	326
<b>Total shareholders' (deficit)/equity</b>	<u>(6,277,599)</u>	<u>27,170,956</u>	<u>4,164,132</u>
<b>Total liabilities, mezzanine equity and shareholders' (deficit)/equity</b>	<u>14,582,029</u>	<u>54,641,929</u>	<u>8,374,243</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,			
	2018	2019	2020	2020
	RMB	RMB	RMB	US\$ Note 2(e)
<b>Revenues:</b>				
Vehicle sales	4,852,470	7,367,113	15,182,522	2,326,823
Other sales	98,701	457,791	1,075,411	164,814
<b>Total revenues</b>	<b>4,951,171</b>	<b>7,824,904</b>	<b>16,257,933</b>	<b>2,491,637</b>
<b>Cost of sales:</b>				
Vehicle sales	(4,930,135)	(8,096,035)	(13,255,770)	(2,031,536)
Other sales	(276,912)	(927,691)	(1,128,744)	(172,988)
<b>Total cost of sales</b>	<b>(5,207,047)</b>	<b>(9,023,726)</b>	<b>(14,384,514)</b>	<b>(2,204,524)</b>
Gross (loss)/profit	(255,876)	(1,198,822)	1,873,419	287,113
<b>Operating expenses:</b>				
Research and development	(3,997,942)	(4,428,580)	(2,487,770)	(381,267)
Selling, general and administrative	(5,341,790)	(5,451,787)	(3,932,271)	(602,647)
Other operating loss, net	—	—	(61,023)	(9,352)
<b>Total operating expenses</b>	<b>(9,339,732)</b>	<b>(9,880,367)</b>	<b>(6,481,064)</b>	<b>(993,266)</b>
<b>Loss from operations</b>	<b>(9,595,608)</b>	<b>(11,079,189)</b>	<b>(4,607,645)</b>	<b>(706,153)</b>
Interest income	133,384	160,279	166,904	25,579
Interest expenses	(123,643)	(370,536)	(426,015)	(65,290)
Share of losses of equity investees	(9,722)	(64,478)	(66,030)	(10,120)
Other (loss)/income, net	(21,346)	66,160	(364,928)	(55,928)
<b>Loss before income tax expense</b>	<b>(9,616,935)</b>	<b>(11,287,764)</b>	<b>(5,297,714)</b>	<b>(811,912)</b>
Income tax expense	(22,044)	(7,888)	(6,368)	(976)
<b>Net loss</b>	<b>(9,638,979)</b>	<b>(11,295,652)</b>	<b>(5,304,082)</b>	<b>(812,888)</b>
Accretion on convertible redeemable preferred shares to redemption value	(13,667,291)	—	—	—
Accretion on redeemable non-controlling interests to redemption value	(63,297)	(126,590)	(311,670)	(47,766)
Net loss attributable to non-controlling interests	41,705	9,141	4,962	760
<b>Net loss attributable to ordinary shareholders of NIO Inc.</b>	<b>(23,327,862)</b>	<b>(11,413,101)</b>	<b>(5,610,790)</b>	<b>(859,894)</b>
<b>Net loss</b>	<b>(9,638,979)</b>	<b>(11,295,652)</b>	<b>(5,304,082)</b>	<b>(812,888)</b>
<b>Other comprehensive (loss)/income</b>				
Foreign currency translation adjustment, net of nil tax	(20,786)	(168,340)	137,596	21,088
<b>Total other comprehensive (loss)/income</b>	<b>(20,786)</b>	<b>(168,340)</b>	<b>137,596</b>	<b>21,088</b>
<b>Total comprehensive loss</b>	<b>(9,659,765)</b>	<b>(11,463,992)</b>	<b>(5,166,486)</b>	<b>(791,800)</b>
Accretion on convertible redeemable preferred shares to redemption value	(13,667,291)	—	—	—
Accretion on redeemable non-controlling interests to redemption value	(63,297)	(126,590)	(311,670)	(47,766)
Net loss attributable to non-controlling interests	41,705	9,141	4,962	760
<b>Comprehensive loss attributable to ordinary shareholders of NIO Inc.</b>	<b>(23,348,648)</b>	<b>(11,581,441)</b>	<b>(5,473,194)</b>	<b>(838,806)</b>
<b>Weighted average number of ordinary shares used in computing net loss per share</b>				
Basic and diluted	332,153,211	1,029,931,705	1,182,660,948	1,182,660,948
<b>Net loss per share attributable to ordinary shareholders</b>				
Basic and diluted	(70.23)	(11.08)	(4.74)	(0.73)
<b>Weighted average number of ADS used in computing net loss per ADS</b>				
Basic and diluted	332,153,211	1,029,931,705	1,182,660,948	1,182,660,948
<b>Net loss per ADS attributable to ordinary shareholders</b>				
Basic and diluted	(70.23)	(11.08)	(4.74)	(0.73)

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 Loss	Accumulated Deficit	Total Shareholders' (Deficit)/Equity	Non- Controlling Interests	Total (Deficit)/ Equity
	Shares	Par Value	Shares	Amount						
<b>Balance as of December 31, 2017</b>	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)
<b>Balance as of December 31, 2018</b>	<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' Equity/(Deficit)	Non- Controlling Interests	Total Equity/ (Deficit)
	Shares	Par Value	Shares	Amount						
<b>Balance as of December 31, 2018</b>	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)
<b>Balance as of December 31, 2019</b>	<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>

**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						
<b>Balance as of December 31, 2019</b>	1,067,467,877	1,827	(2,995,217)	—	40,227,856	(203,048)	(46,326,321)	(6,299,686)	22,087	(6,277,599)
Cumulative effect of adoption of new accounting standard(Note 2(i))	—	—	—	—	—	—	(22,969)	(22,969)	—	(22,969)
Accretion on redeemable non- controlling interests to redemption value	—	—	—	—	(311,670)	—	—	(311,670)	—	(311,670)
Issuance of ordinary shares	262,775,000	448	—	—	34,571,809	—	—	34,572,257	—	34,572,257
Issuance of restricted shares	2,113,469	4	—	—	54,508	—	—	54,512	—	54,512
Conversion of convertible notes to ordinary shares	181,872,811	309	—	—	3,962,990	—	—	3,963,299	—	3,963,299
Exercise of share options	14,814,462	91	439,038	—	187,427	—	—	187,518	—	187,518
Vesting of restricted shares	—	—	51,948	—	9,551	—	—	9,551	—	9,551
Vesting of share options	—	—	—	—	177,543	—	—	177,543	—	177,543
Cancellation of restricted shares	(12,516)	—	12,516	—	—	—	—	—	—	—
Capital withdrawal by non- controlling interests	—	—	—	—	—	—	—	—	(15,000)	(15,000)
Foreign currency translation adjustment	—	—	—	—	—	137,596	—	137,596	—	137,596
Net loss	—	—	—	—	—	—	(5,299,120)	(5,299,120)	(4,962)	(5,304,082)
<b>Balance as of December 31, 2020</b>	<u>1,529,031,103</u>	<u>2,679</u>	<u>(2,491,715)</u>	<u>—</u>	<u>78,880,014</u>	<u>(65,452)</u>	<u>(51,648,410)</u>	<u>27,168,831</u>	<u>2,125</u>	<u>27,170,956</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,			
	2018	2019	2020	2020
	RMB	RMB	RMB	US\$ Note 2(e)
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>				
Net loss	(9,638,979)	(11,295,652)	(5,304,082)	(812,888)
Adjustments to reconcile net loss to net cash used in operating activities:				
Depreciation and amortization	474,223	998,938	1,046,496	160,383
Allowance against receivables	—	108,459	—	—
Expected credit losses	—	—	9,654	1,480
Ineconomy write-downs	—	10,427	5,803	889
Impairment on property, plant and equipment	—	75,278	25,757	3,947
Foreign exchange loss	36,597	13,876	457,382	70,097
Share-based compensation expenses	679,468	333,495	187,094	28,673
Gain from disposal of an equity investee	—	(40,722)	—	—
Share of losses of equity investee	9,722	64,478	66,030	10,120
Loss on disposal of property, plant and equipment	21,547	50,845	127,662	19,565
Amortization of right-of-use assets	—	522,035	499,225	76,510
Changes in operating assets and liabilities:				
Prepayments and other current assets	(835,554)	(68,051)	135,441	20,757
Amount due from related parties	24,416	9,323	(119,128)	(18,257)
Inventory	(1,375,862)	569,163	(197,828)	(30,319)
Other non-current assets	(657,986)	(243,936)	131,657	20,177
Taxes payable	21,398	(7,948)	130,542	20,006
Trade receivable	(756,508)	(681,556)	237,928	36,464
Trade and notes payable	2,635,742	241,646	3,256,552	499,088
Long-term receivables	(574,677)	(83,021)	20,296	3,110
Operating lease liabilities	—	(345,323)	(448,466)	(68,730)
Non-current deferred revenue	193,524	102,391	381,909	58,530
Accruals and other liabilities	1,360,510	658,895	836,511	128,201
Amount due to related parties	179,514	64,347	60,673	9,299
Other non-current liabilities	291,137	220,907	403,786	61,883
Net cash (used in)/provided by operating activities	(7,911,768)	(8,721,706)	1,950,894	298,985
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>				
Purchase of property, plant and equipment and intangible assets	(2,643,964)	(1,706,787)	(1,127,686)	(172,826)
Purchases of short-term investments	(8,090,703)	(2,202,762)	(7,594,110)	(1,163,848)
Proceeds from sale of short-term investments	2,936,000	7,246,465	3,738,490	572,949
Loan to related parties	(65,342)	—	—	—
Loan repayment from related parties	34,066	—	—	—
Acquisitions of equity investees	(110,900)	(31,500)	(250,826)	(38,441)
Proceeds from disposal of an equity investee	—	76,653	—	—
Proceeds from disposal of property and equipment	—	—	163,072	24,992
Net cash (used in)/provided by investing activities	(7,940,843)	3,382,069	(5,071,060)	(777,174)
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>				
Proceeds from exercise of stock options	42,251	50,790	154,861	23,733
Proceeds from collection of receivable from a holder of Series D convertible redeemable preferred shares	78,651	—	—	—
Capital injection from non-controlling interests	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)	—	—	—
Capital injection from redeemable non-controlling interests holders	—	—	5,000,000	766,284
Principal payments on finance leases	—	(43,916)	(42,529)	(6,518)
Capital withdrawal by non-controlling shareholders	—	—	(10,500)	(1,609)
Proceeds from issuance of convertible promissory note - third parties	—	2,802,041	3,014,628	462,012
Proceeds from issuance of convertible promissory note - related parties	—	1,520,416	90,499	13,870
Redemption of redeemable non-controlling interests	—	—	(2,071,515)	(317,474)
Proceeds from borrowings - third parties	2,668,461	1,350,781	1,605,464	246,048
Repayments of borrowings - third parties	(120,205)	(2,610,958)	(964,813)	(147,864)
Proceeds from borrowings - related parties	—	25,799	260,000	39,847
Repayment of borrowings - related parties	—	—	(285,799)	(43,801)
Proceeds from issuance of ordinary shares, net	7,531,037	—	34,607,139	5,303,779
Net cash provided by financing activities	11,603,092	3,094,953	41,357,435	6,338,307
Effects of exchange rate changes on cash, cash equivalents and restricted cash	(56,947)	10,166	(682,040)	(104,527)
<b>NET (DECREASE)/INCREASE IN CASH, CASH EQUIVALENTS AND RESTRICTED CASH</b>	(4,306,466)	(2,234,518)	37,555,229	5,755,591
Cash, cash equivalents and restricted cash at beginning of the year	7,530,853	3,224,387	989,869	151,704
Cash, cash equivalents and restricted cash at end of the year	3,224,387	989,869	38,545,098	5,907,295
<b>NON-CASH INVESTING AND FINANCING ACTIVITIES</b>				
Accruals related to purchase of property and equipment	1,027,377	1,121,715	749,799	114,912
Acquisition of an equity investee	—	35,931	—	—
Issuance of restricted shares	—	—	54,512	8,354
Conversion of convertible notes to ordinary shares	—	—	3,963,299	607,402
Accretion on redeemable non-controlling interests to redemption value	63,297	126,590	311,670	47,766
Accretion on convertible redeemable preferred shares to redemption value	13,667,291	—	—	—
<b>Supplemental Disclosure</b>				
Interest paid	112,682	260,377	333,877	51,169
Income taxes paid	11,157	18,189	13,172	2,019

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

**NIO INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(All amounts in thousands, except for share and per share data)**

**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, 2019 and 2020, 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, 2020, 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 Holding Co., Ltd. (“NIO Holding”) (formerly named NIO (Anhui) Holding Co., Ltd.)	100%	Anhui, PRC, November 2017	Headquarter 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

As of December 31, 2020, the Company indirectly held 86.476% of total paid-in capital of NIO Holding. In accordance with NIO Holding’s share purchase agreement, the redemption of the non-controlling interests is at the holders’ option and is upon the occurrence of the events that are not solely within the control of the Company. Therefore, these redeemable non-controlling interests in NIO Holding were classified as mezzanine equity and are subsequently accreted to the redemption price using the agreed interest rate as a reduction of additional paid in capital (Note 22). Excluding the redeemable non-controlling interests, the Company indirectly held 100% of the equity interests of NIO Holding as of December 31, 2020.

As of December 31, 2020, the Company indirectly held 51% of total paid-in capital of PE WHJV. In accordance with the joint investment agreement, the investment by Wuhan Donghu is accounted for as a loan because it is only entitled to fixed interests and subject to repayment within five years or upon the financial covenant violation (Note 13(iv)). Excluding the interests held by Wuhan Donghu, the Company indirectly held 100% of the equity interests of PE WHJV as of December 31, 2020.

**NIO INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
**(All amounts in thousands, except for share and per share data)**

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.

***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, an exclusive call option agreement and a 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, 2019 and 2020, 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, 2019 and 2020, Prime Hubs held 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, an exclusive call option agreement and a 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, 2020, NIO ABTECH and NIO BJTECH did not have significant operations, nor any material assets or liabilities.

On March 31, 2021, NIO SH, NIO ABTECH and each shareholder of NIO ABTECH entered into a termination agreement pursuant to which each of the contractual agreements among NIO SH, NIO ABTECH and its shareholders terminated as of the date of the agreement and after which date the Company no longer has effective control over NIO ABTECH, no longer receives any economic benefits of NIO ABTECH, no longer has an exclusive option to purchase all or part of the equity interests in NIO ABTECH when and to the extent permitted by the PRC law, and no longer consolidates the financial results of NIO ABTECH and its subsidiaries as our variable interest entity.

***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 RMB9.6 billion, RMB11.3 billion and RMB5.3 billion for the years ended December 31, 2018, 2019 and 2020, respectively. Accumulated deficit amounted to RMB46.3 billion and RMB51.6 billion as of December 31, 2019 and 2020, respectively.

As of December 31, 2020, the Group’s balance of cash and cash equivalents was RMB38.4 billion and the Group had net current assets of RMB32.2 billion. Management has evaluated the sufficiency of its working capital and concluded that the Group’s available cash and cash equivalents, short-term investments, cash generated from operations will be sufficient to support its continuous operations and 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.

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**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 VIEs 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”); and 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 VIEs 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, current expected credit loss 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 VIEs 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*.

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.

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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 income or loss in the consolidated statements of comprehensive 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)/income were negative RMB20,786, negative RMB168,340 and RMB137,596 for the years ended December 31, 2018, 2019 and 2020, 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, 2020 are solely for the convenience of the reader and were calculated at the rate of US\$1.00 = RMB6.5250, 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, 2020. 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, 2020, 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, deposits and other receivables, trade and notes payable, amounts due to related parties, other payables, short-term borrowings and long-term borrowings. As of December 31, 2019 and 2020, the carrying values of these financial instruments are approximated to their fair values.

***(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 deposits that are pledged for property lease.

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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:

	<u>December 31, 2018</u>	<u>December 31 2019</u>	<u>December 31 2020</u>
Cash and cash equivalents	3,133,847	862,839	38,425,541
Restricted cash	57,012	82,507	78,010
Long-term restricted cash	33,528	44,523	41,547
Total	<u>3,224,387</u>	<u>989,869</u>	<u>38,545,098</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, 2019 and 2020, the investment in fixed deposits that were recorded as short-term investments amounted to RMB111,000 and RMB3,950,747, respectively, among which, RMB96,000 and RMB2,873,398 were restricted as collateral for notes payable, bank borrowings and letters of guarantee as of December 31, 2019 and 2020, respectively.

**(i) Current expected credit losses**

In 2016, the FASB issued ASU No. 2016-13, “Financial Instruments—Credit Losses (Topic 326): Measurement of Credit Losses on Financial Instruments” (“ASC Topic 326”), which amends previously issued guidance regarding the impairment of financial instruments by creating an impairment model that is based on expected losses rather than incurred losses. The Company adopted this ASC Topic 326 and several associated ASUs on January 1, 2020 using a modified retrospective approach with a cumulative effect recorded as increase of accumulated deficit with amount of RMB22,969. As of January 1, 2020, upon the adoption, the expected credit loss provision for the current and non-current assets were RMB118,851 and RMB12,899, respectively.

The Company’s trade receivable, receivables of installment payments, deposits and other receivables are within the scope of ASC Topic 326. The Company has identified the relevant risk characteristics of its customers and the related receivables, deposits and other receivables which include size, type of the services or the products the Company provides, or a combination of these characteristics. Receivables with similar risk characteristics have been grouped into pools. For each pool, the Company considers the historical credit loss experience, current economic conditions, supportable forecasts of future economic conditions, and any recoveries in assessing the lifetime expected credit losses. Other key factors that influence the expected credit loss analysis include customer demographics, payment terms offered in the normal course of business to customers, and industry-specific factors that could impact the Company’s receivables. Additionally, external data and macroeconomic factors are also considered. This is assessed at each quarter based on the Company’s specific facts and circumstances.

For the year ended December 31, 2020, the Company recorded RMB9,654 expected credit loss expense in selling, general and administrative expenses. As of December 31, 2020, the expected credit loss provision for the current and non-current assets RMB44,645 and RMB20,031, respectively.

**(j) Trade Receivable and Allowance for Doubtful Accounts**

Trade receivable primarily includes 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 Company recorded a provision for current expected credit losses.

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The following table summarizes the activity in the allowance for credit losses related to trade receivable for the year ended December 31 2020:

	<b>For the Year Ended December 31</b>
Balance as at December 31, 2019	85,824
Adoption of ASC Topic 326	6,775
Balance as at January 1, 2020	92,599
Current period provision, net	2,047
Current period write-offs	(54,098)
Balance as at December 31, 2020	<u>40,548</u>

Allowance for trade receivable recognized for the years ended December 31, 2018 and 2019 was nil and RMB85,824, respectively.

**(k) 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.

**(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:

	<b>Useful lives</b>
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	3-5 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 consolidated 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:

	Useful lives
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 and equity securities without readily determinable fair values. 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.

Equity securities without readily determinable fair values and over which the Group has neither significant influence nor control through investments in common stock or in-substance common stock are measured and recorded using a measurement alternative that measures the securities at cost minus impairment, if any, plus or minus changes resulting from qualifying observable price changes.

**(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, 2018, 2019 and 2020 was nil, RMB75,278 and RMB25,757, respectively. Impairment charge of nil, nil and RMB20,853 were written off against original amount upon the disposal of related long-lived assets for the years ended December 31, 2018, 2019 and 2020.

**(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 warranty, including recalls when identified. 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.

	<b>For the Year Ended December 31</b>		
	<b>2018</b>	<b>2019</b>	<b>2020</b>
Warranty – beginning of year	—	177,293	412,004
Provision for warranty	179,766	283,647	582,069
Warranty costs incurred	(2,473)	(48,936)	(41,127)
Warranty– end of year	177,293	412,004	952,946

**(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 consolidated balance sheets 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, 2019 and 2020, the balances of contract liabilities from vehicle sales contracts were RMB491,014 and RMB1,253,620, respectively. As of December 31, 2019 and 2020, the balances of contract liabilities from the sales of Energy and Service Packages were RMB57,842 and RMB91,486, 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.

On August 20, 2020, the Company introduced the Battery as a Service (BaaS), which allows users to purchase electric vehicles without battery packs and subscribe to the usage of battery packs separately. Under the BaaS, the Group sells battery packs to Weineng, the Battery Asset Company, and users subscribe to the usage of the battery packs from Weineng by paying a monthly subscription fee.

Together with the launch of the BaaS, the Group entered into service agreements with Weineng, pursuant to which the Group provides services to Weineng including battery packs monitoring, maintenance, upgrade, replacement, IT system support, etc., with monthly service charges. In case of any default in payment of monthly rental fees from users, Weineng also has right to request the Group to track and lock down the battery leased to the users to limit its usage. In addition, in furtherance of the BaaS, the Group agreed to provide guarantee to Weineng for the default in payment of monthly subscription fees from users. The maximum amount of guarantee that can be claimed by Weineng for the users’ payment default shall not be higher than the accumulated service fees the Group receives from Weineng.

In accordance with ASC 606 and ASC 460, for services provided to Weineng, revenue is recognized over the period when services are rendered. As for financial guarantee liabilities, the provision of guarantee is linked to and associated with services rendered to Weineng and the payment of guarantee amount is therefore accounted for as the reduction to the revenue from Weineng.

The fair value of the guarantee liabilities is determined by taking considerations of the default pattern of the Company’s existing battery installment programs provided to users. At each period end, the financial liabilities are remeasured with the corresponding changes recorded as the reduction to the revenue.

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For the year ended December 31, 2020, 4,412 NIO vehicles and batteries were delivered to the users under the BaaS model and both service revenue and guarantee liability were immaterial.

*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.

As the consideration for Energy and Service Packages must be paid in advance, which means the payments received are prior to the transfer of services by the Group, the Group records the consideration as a contract liability (advance from customers) upon receipt.

*Sales of Automotive Regulatory Credits*

The Group earns tradable new energy vehicle credits in the operation of vehicle business under Chinese regulations related to zero-emission vehicles, greenhouse gas, fuel economy and clean fuel. The Group sells these credits to other regulated entities who can use the credits to comply with the regulatory requirements.

Payments for automotive regulatory credits are typically received at the point control transfers to the customer, or in accordance with payment terms customary to the business. The Company recognize revenue on the sale of automotive regulatory credits at the time control of the regulatory credits is transferred to the purchasing party as other sales revenue in the consolidated statements of comprehensive loss. Revenue from the sale of automotive regulatory credits totaled nil, nil and RMB120,648 for the years ended December 31, 2018, 2019 and 2020, respectively.

*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.

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*(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 sales 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, 2018, 2019 and 2020, the revenue portion allocated to the points as separate performance obligation was RMB47,310, RMB66,286 and RMB162,485, respectively, which is recorded as contract liability (deferred revenue). For the years ended December 31, 2018, 2019 and 2020, the total points recorded as a reduction of revenue was RMB441, RMB25,408 and RMB50,855, respectively. For the years ended December 31, 2018, 2019 and 2020, the total points recorded as selling and marketing expenses were RMB153,057, RMB142,425 and RMB78,229, respectively.

As of December 31, 2019 and 2020, liabilities recorded related to unredeemed points were RMB178,666 and RMB221,450, respectively.

*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.

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***(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 reserves for estimated warranty expenses 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 advertising expenses, 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, 2018, 2019 and 2020, advertising costs totalled RMB218,060, RMB230,061 and RMB266,569, 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.

***(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 VIEs 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 RMB517,787, RMB553,523 and RMB366,223 for the years ended December 31, 2018, 2019 and 2020, respectively.

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**(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 operating 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, 2019 and 2020.

**(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.

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.

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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 income/(loss) and its components in a full set of financial statements. Comprehensive income/(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 income/(loss), which mainly consists of the foreign currency translation adjustment that have been excluded from the determination of net loss.

**(ab) Leases**

As the lessee, the Group recognizes in the balance sheet a liability to make lease payments (the lease liability) and a right-of-use asset representing its right to use the underlying asset for the lease term. For leases with a term of 12 months or less, the Group makes an accounting policy election by class of underlying asset not to recognize lease assets and lease liabilities and recognizes lease expenses for such lease generally on a straight-line basis over the lease term. 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 sheets as of December 31, 2019 and 2020. 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 sheets as of December 31, 2019 and 2020.

**(ac) Dividends**

Dividends are recognized when declared. No dividends were declared for the years ended December 31, 2018, 2019 and 2020.

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***(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.

**3. Recent Accounting Pronouncements**

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 adoption of this ASU is not expected to have a material impact on the Company's consolidated financial statements.

In January 2020, the FASB issued Accounting Standards Update No. 2020-01, Investments— Equity Securities (Topic 321), Investments—Equity Method and Joint Ventures (Topic 323), and Derivatives and Hedging (Topic 815): Clarifying the Interactions between Topic 321, Topic 323, and Topic 815. The amendments clarified that an entity should consider observable transactions that require it to either apply or discontinue the equity method of accounting for the purposes of applying the measurement alternative in accordance with Topic 321 immediately before applying or upon discontinuing the equity method. The amendments also clarified that for the purpose of applying paragraph 815-10-15-141(a) an entity should not consider whether, upon the settlement of the forward contract or exercise of the purchased option, individually or with existing investments, the underlying securities would be accounted for under the equity method in Topic 323 or the fair value option in accordance with the financial instruments guidance in Topic 825. An entity also would evaluate the remaining characteristics in paragraph 815-10-15-141 to determine the accounting for those forward contracts and purchased options. For public business entities, the amendments in this Update are effective for fiscal years beginning after December 15, 2020, and interim periods within those fiscal years. The 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.

In March 2020, the FASB issued ASU 2020-04, "Reference Rate Reform (Topic 848): Facilitation of the Effects of Reference Rate Reform on Financial Reporting", which provides optional expedients and exceptions for applying U.S. GAAP on contract modifications and hedge accounting to contracts, hedging relationships, and other transactions that reference LIBOR or another reference rate expected to be discontinued because of reference rate reform, if certain criteria are met. These optional expedients and exceptions provided in ASU 2020-04 are effective for the Company as of March 12, 2020 through December 31, 2022. The Company is currently evaluating the impact.



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In August 2020, the FASB issued a new accounting update relating to convertible instruments and contracts in an entity's own equity. For convertible instruments, the accounting update reduces the number of accounting models for convertible debt instruments and convertible preferred stock. Limiting the accounting models results in fewer embedded conversion features being separately recognized from the host contract as compared with current U.S. GAAP. The accounting update amends the guidance for the derivatives scope exception for contracts in an entity's own equity to reduce form-over-substance-based accounting conclusions. The accounting update also simplifies the diluted earnings per share calculation in certain areas. For public business entities, the update is effective for fiscal years beginning after December 15, 2021, including interim periods within those fiscal years. Early adoption is permitted for fiscal years beginning after December 15, 2020 and interim periods within those fiscal years. Entities are allowed to apply this update on either a full or modified retrospective basis. The Company has early adopted this new accounting update on a modified retrospective basis from January 1, 2021 and reported the 2026 Notes as one single unit of account of long-term borrowings on the balance sheet (Note 29).

#### **4. Concentration and Risks**

##### ***(a) Concentration and credit risk***

Assets that potentially subject the Group to significant concentrations of credit risk primarily consist of cash and cash equivalents, restricted cash, short-term investment, trade receivable, amount due from related parties, deposits and other receivables. The maximum exposure of such assets to credit risk is their carrying amounts as of the balance sheet dates. As of December 31, 2019 and 2020, 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.

No individual customer accounted for more than 10% of net revenues for the years ended December 31, 2018, 2019 and 2020. No individual customer accounted for more than 10% of trade receivable as of December 31, 2019 and 2020.

##### ***(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 RMB829,175 and RMB6,219,252 as of December 31, 2019 and 2020, 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.

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**5. Inventory**

Inventory consists of the following:

	<b>December 31, 2019</b>	<b>December 31, 2020</b>
Raw materials	510,990	579,842
Work in process	1,862	2,995
Finished goods	291,116	381,387
Merchandise	95,987	121,978
Less: write-downs	(10,427)	(4,649)
Total	<u>889,528</u>	<u>1,081,553</u>

Raw materials primarily consist of materials for volume production as well as spare parts used for aftersales services.

Work in progress mainly consists of electric drive systems in production.

Finished goods include vehicles ready for transit at production factory, vehicles in transit to fulfill customer orders, new vehicles available for immediate sale at the Group's sales and service center locations and charging piles.

Merchandise 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, 2018 and 2019 and 2020 were nil, RMB10,427 and RMB5,803, respectively.

**6. Prepayments and Other Current Assets**

Prepayments and other current assets consist of the following:

	<b>December 31, 2019</b>	<b>December 31, 2020</b>
Deductible VAT input	1,253,617	943,577
Receivables from JAC	78,132	121,012
Prepayment to vendors	88,900	83,792
Receivables from third party online payment service providers	47,592	69,009
Deposits	73,271	45,891
Other receivables	60,381	159,122
Less: Allowance for doubtful accounts	(22,635)	—
Total	<u>1,579,258</u>	<u>1,422,403</u>

Receivables from JAC mainly consist of national subsidy collected by JAC on behalf of the Group's customers which was not paid to the Company yet as of year ends.

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.

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The following table summarizes the activity in the allowance for credit losses related to prepayments and other current assets for the year ended December 31, 2020:

	<u>Months Ended December 31, 2020</u>
Balance as at December 31, 2019	22,635
Adoption of ASC Topic 326	3,617
Balance as at January 1, 2020	26,252
Current period provision, net	475
Current period write-offs	(22,630)
Balance as at December 31, 2020	<u>4,097</u>

Allowance for the prepayments and other current assets recognized for the years ended December 31, 2018 and 2019 was nil and RMB22,635, respectively.

### 7. Property, Plant and Equipment, Net

Property and equipment and related accumulated depreciation were as follows:

	<u>December 31, 2019</u>	<u>December 31, 2020</u>
Mold and tooling	1,898,975	2,411,164
Leasehold improvements	1,025,570	997,191
Production facilities	869,819	787,039
Building and constructions	828,958	862,603
Charging & battery swap equipment	608,919	721,583
Construction in process	475,977	177,457
Computer and electronic equipment	428,028	372,956
R&D equipment	400,461	432,781
Purchased software	341,379	409,445
Others	279,233	374,219
Subtotal	7,157,319	7,546,438
Less: Accumulated depreciation	(1,548,977)	(2,470,028)
Less: Accumulated impairment	(75,278)	(80,182)
Total property, plant and equipment, net	<u>5,533,064</u>	<u>4,996,228</u>

The Group recorded depreciation expenses of RMB469,408, RMB993,070 and RMB1,041,011 for the years ended December 31, 2018, 2019 and 2020, respectively.

### 8. Intangible Assets, Net

Intangible assets and related accumulated amortization were as follows:

	<u>December 31, 2019</u>			<u>December 31, 2020</u>		
	<u>Gross carrying value</u>	<u>Accumulated amortization</u>	<u>Net carrying value</u>	<u>Gross carrying value</u>	<u>Accumulated amortization</u>	<u>Net carrying value</u>
Domain names and others	4,342	(2,820)	1,522	4,071	(3,458)	613
Total intangible assets, net	4,342	(2,820)	1,522	4,071	(3,458)	613

The Group recorded amortization expenses of RMB1,988, RMB1,021 and RMB638 for the years ended December 31, 2018, 2019 and 2020, respectively.

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**9. Land Use Rights, Net**

Land use rights and related accumulated amortization were as follows:

	December 31, 2019	December 31, 2020
Land use rights	216,489	216,489
Less: Accumulated amortization—land use rights	(7,674)	(12,521)
<b>Total land use rights, net</b>	<b>208,815</b>	<b>203,968</b>

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 RMB2,827, RMB4,847 and RMB4,847 for the years ended December 31, 2018, 2019 and 2020, respectively.

**10. Long-term investments**

The Company's long-term investments consisted of the following:

	December 31, 2019	December 31, 2020
Equity investments:		
Equity method investments	115,325	294,679
Equity securities without readily determinable fair value	—	5,442
<b>Total</b>	<b>115,325</b>	<b>300,121</b>

In August 2020, the Company and three other third party investors entered into an investment agreement to establish Wuhan Weineng Battery Asset Co., Ltd. ("Weineng"). The Company invested RMB200,000 in Weineng and held 25% of Weineng's equity interests. In December 2020, Weineng entered into an agreement with the other third-party investors for a total additional investment of RMB640 million by those investors, which was not consummated as of December 31, 2020. Upon the consummation of this transaction, the Company's equity interests in Weineng would be diluted to approximately 13.9%.

No impairment charge was recognized for the years ended December 31, 2018, 2019 and 2020.

**11. Other Non-current Assets**

Other non-current assets consist of the following:

	December 31, 2019	December 31, 2020
Non-current portion of national subsidy receivable	—	651,006
Receivables of installment payments for battery	657,698	637,402
Long-term deposits	848,655	128,355
Right-of-use assets - finance lease	155,051	95,887
Prepayments for purchase of property and equipment	17,603	15,072
Others	74,093	34,033
<b>Total</b>	<b>1,753,100</b>	<b>1,561,755</b>

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.

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The following table summarizes the activity in the allowance for credit losses related to other non-current assets for the year ended December 31, 2020:

	<u>Year Ended December 31, 2020</u>
Balance as at December 31, 2019	323
Adoption of ASC Topic 326	12,576
Balance as at January 1, 2020	12,899
Current period provision, net	7,132
Balance as at December 31, 2020	<u>20,031</u>

Allowance for the other non-current assets recognized for the years ended December 31, 2018 and 2019 was nil and RMB323, respectively.

**12. Accruals and Other Liabilities**

Accruals and other liabilities consist of the following:

	<u>December 31, 2019</u>	<u>December 31, 2020</u>
Payables for purchase of property and equipment	1,121,715	715,561
Advance from customers	297,096	620,907
Payables for marketing events	436,610	596,110
Salaries and benefits payable	344,922	494,726
Payable for R&D expenses	694,081	402,777
Current portion of deferred revenue	189,172	383,430
Warranty liabilities	120,161	297,446
Payable to employees for options exercised	—	278,209
Accrued expenses	246,121	273,676
Interest payables	105,940	98,462
Current portion of deferred construction allowance	84,495	60,695
Current portion of finance lease liabilities	40,334	33,237
Payables for traveling expenses of employees	17,685	18,672
Investment deposit from investors	154,643	—
Other payables	363,666	330,116
Total	<u>4,216,641</u>	<u>4,604,024</u>

**13. Borrowings**

Borrowings consist of the following:

	<u>December 31, 2019</u>	<u>December 31, 2020</u>
Short-term borrowings:		
Bank loan (i)	188,000	1,550,000
Convertible notes (ii)	697,620	—
Current portion of long-term bank loan (iii)	322,436	380,560
Long-term borrowings:		
Bank loan (iii)	950,154	303,822
Convertible notes (ii)	5,784,984	5,196,507
Loan from joint investor (iv)	419,660	437,950
Total	<u>8,362,854</u>	<u>7,868,839</u>

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*(i) Short-term bank loan*

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%.

As of December 31, 2020, we obtained short-term borrowings from several banks of RMB1,550,000 in aggregate. The annual interest rate of these borrowings is approximately 3.3% to 4.85%.

The short-term borrowings contain covenants including, among others, limitation on liens, consolidation, merger and sale of the Company's assets. The Company is in compliance with all of the loan covenants as of December 31, 2019 and 2020. As of December 31, 2019 and 2020, certain of the Group's short-term borrowings were guaranteed by the Company's subsidiaries or pledged with trade receivable of nil and RMB49,800, short-term investments of nil and RMB155,498, and restricted cash of RMB60,000 and nil, respectively.

*(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 instrument as a long-term debt. The debt issuance cost were recorded as reduction to the long-term debts and are amortized 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. As of December 31, 2019 and 2020, the balances of these convertible notes were RMB5,179,027 and RMB4,870,262, respectively. In November 2020, US\$7.0 in aggregate principal amount of such Notes were converted, pursuant to which the Company issued 735 ADSs to the holders of such Notes. Accordingly, the balance of the notes converted were derecognized and recorded as ordinary shares and additional paid-in capital.

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\$100,000 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 long-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.

In September and December 2020, all of the 360-day Notes due in 2020 and US\$50,000 in aggregate principal amount of the 3-year Notes due in 2022 were converted, pursuant to which the Company issued 49,582,686 Class A ordinary shares to the holders of such notes. Such notes were derecognized and recorded as ordinary shares and additional paid-in capital. As of December 31, 2019 and 2020, the balances of these convertible notes outstanding were RMB1,303,577 and RMB326,245, respectively.

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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\$200,000. 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. The notes were recorded in short-term borrowings with interest expenses accrued over the term using the effective interest method. The debt issuance cost were recorded as reduction to the short-term borrowings and are amortized as interest expenses using the effective interest method. In July and August 2020, all of such notes were converted, pursuant to which the Company issued 65,146,600 ADSs to the holders of such notes. Such notes were derecognized and recorded as ordinary shares and additional paid-in capital. As of December 31, 2019 and 2020, the balances of these convertible notes outstanding were nil.

In March 2020, the Company consummated the issuance of convertible notes to several third party investors with an aggregate principal amount of US\$235,000. 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. The notes was recorded in short-term borrowings with interest expenses accrued over the term using the effective interest method. The debt issuance costs were recorded as reduction to the short-term borrowings and are amortized as interest expenses using the effective interest method. In September and October 2020, all of such notes were converted, pursuant to which the Company issued 67,142,790 Class A ADSs to the holders of such notes. Such notes were derecognized and recorded as ordinary shares and additional paid-in capital. As of December 31, 2019 and 2020, the balances of these convertible notes outstanding were nil.

As of December 31, 2019 and 2020, RMB697,620 and nil of convertible notes were due within one year, respectively.

*(iii) Long-term bank loan*

Ref.	Date of borrowing	Lender/Banks	Maturity/ Repayment date	Outstanding loan	As of December 31, 2019		As of December 31, 2020		
					Current portion according to the repayment schedule	Long-term portion	Outstanding loan	Current portion according to the repayment schedule	Long-term portion
1	May 17, 2017	Bank of Nanjing	May 17, 2022	475,382	200,000	275,382	275,382	200,000	75,382
2	September 28, 2017	China Merchants Bank	September 14, 2021	96,000	8,000	88,000	88,000	88,000	—
3	February 2, 2018	China CITIC Bank	February 1, 2021	44,500	10,000	34,500	34,500	34,500	—
4	August 17, 2018	China CITIC Bank	March 7, 2021	49,500	10,000	39,500	39,500	39,500	—
5	November 30, 2018	Bank of Shanghai	November 30, 2021	4,102	1,014	3,088	—	—	—
6	December 24, 2018	Bank of Shanghai	November 30, 2021	32,305	7,695	24,610	—	—	—
7	January 3, 2019	Bank of Shanghai	November 30, 2021	16,145	3,855	12,290	—	—	—
8	January 10, 2019	Bank of Shanghai	November 30, 2021	32,305	7,695	24,610	—	—	—
9	January 17, 2019	Bank of Shanghai	November 30, 2021	32,305	7,695	24,610	—	—	—
10	January 24, 2019	Bank of Shanghai	November 30, 2021	28,257	6,743	21,514	—	—	—
11	March 25, 2019	Bank of Shanghai	November 30, 2021	128,353	28,862	99,491	—	—	—
12	March 27, 2019	Bank of Shanghai	November 30, 2021	42,777	9,631	33,146	—	—	—
13	March 29, 2019	Hankou Bank	March 29, 2022	199,000	2,000	197,000	197,000	2,000	195,000
14	June 26, 2019	Bank of Shanghai	November 30, 2021	18,072	3,855	14,217	—	—	—
15	September 11, 2019	Bank of Shanghai	November 30, 2021	73,587	15,391	58,196	—	—	—
16	December 24, 2020	Bank of Shanghai	December 24, 2023	—	—	—	50,000	16,560	33,440
	Total			1,272,590	322,436	950,154	684,382	380,560	303,822

The long-term borrowings contain covenants including, among others, limitation on liens, consolidation, merger and sale of the Company's assets. The Company is in compliance with all of the loan covenants as of December 31, 2019 and 2020. As of December 31, 2019 and 2020, certain of the Group's long-term borrowings were guaranteed by the Company's subsidiaries or pledged with trade receivable of RMB601,236 and RMB65,138, respectively.

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*(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, 2019 and 2020, RMB35,660 and RMB53,950 of interest were accrued at the benchmark rate of medium and long-term loan announced by PBOC. As of December 31, 2019 and 2020, certain bank borrowings of PE WHJV were guaranteed by Wuhan Donghu.

**14. Other Non-Current Liabilities**

Other non-current liabilities consist of the following:

	<b>December 31, 2019</b>	<b>December 31, 2020</b>
Deferred revenue	295,915	677,824
Warranty liabilities	291,843	655,500
Deferred government grants	340,667	326,373
Non-current finance lease liabilities	88,790	55,107
Deferred construction allowance	72,762	49,484
Others	61,836	85,618
<b>Total</b>	<b>1,151,813</b>	<b>1,849,906</b>

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.

Deferred construction allowance consists of long-term payable of construction projects, with payment terms over one year.

**15. 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.



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The balances for the operating and finance leases where the Group is the lessee are presented as follows within the consolidated balance sheets:

	As of December 31, 2019	As of December 31, 2020
<b>Operating leases:</b>		
Right-of-use assets - operating lease	1,997,672	1,350,294
Current portion of operating lease liabilities	608,747	547,142
Non-current operating lease liabilities	1,598,372	1,015,261
Total operating lease liabilities	<u>2,207,119</u>	<u>1,562,403</u>
<b>Finance leases:</b>		
Right-of-use assets - finance lease	155,051	95,887
Current portion of finance lease liabilities	40,334	33,237
Non-current finance lease liabilities	88,790	55,107
Total finance lease liabilities	<u>129,124</u>	<u>88,344</u>

The components of lease expenses were as follows:

	Year Ended December 31, 2019	Year Ended December 31, 2020
Lease cost:		
Amortization of right-of-use assets	522,035	499,225
Interest of operating lease liabilities	137,459	96,430
Expenses for short-term leases within 12 months and other non-lease component	155,613	81,022
Total lease cost	<u>815,107</u>	<u>676,677</u>

Other information related to leases where the Group is the lessee is as follows:

	As of December 31, 2019	As of December 31, 2020
<b>Weighted-average remaining lease term:</b>		
Operating leases	4.7 years	3.8 years
Finance leases	3.9 years	3.1 years
<b>Weighted-average discount rate:</b>		
Operating leases	5.83 %	5.82 %
Finance leases	5.77 %	5.70 %

Supplemental cash flow information related to leases where we are the lessee is as follows (in thousands):

	Year Ended December 31, 2019	Year Ended December 31, 2020
Operating cash outflows from operating leases	482,782	544,896
Operating cash outflows from finance leases (interest payments)	5,969	5,729
Financing cash outflows from finance leases	43,916	42,529
Right-of-use assets obtained in exchange for lease liabilities	777,169	279,274

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As of December 31, 2020, the maturities of our operating and finance lease liabilities (excluding short-term leases) are as follows (in thousands):

	As of December 31, 2020	
	Operating Leases	Finance Leases
2021	609,011	36,494
2022	421,579	29,561
2023	287,087	22,515
2024	146,459	7,996
2025	84,925	36
Thereafter	175,950	—
Total minimum lease payments	1,725,011	96,602
Less: Interest	(162,608)	(8,258)
Present value of lease obligations	1,562,403	88,344
Less: Current portion	(547,142)	(33,237)
Long-term portion of lease obligations	1,015,261	55,107

As of December 31, 2019 and 2020, the Group had future minimum lease payments for non-cancelable short-term operating leases of RMB33,580 and RMB55,977, respectively.

For the year ended December 31, 2018, the Company recognized lease expense of RMB490,936 under ASC 840.

## 16. Revenues

Revenues by source consists of the following:

	For the Year Ended December 31,		
	2018	2019	2020
Vehicle sales	4,852,470	7,367,113	15,182,522
Sales of charging pile	82,184	127,632	229,781
Sales of Packages	10,220	111,448	244,072
Others	6,297	218,711	601,558
Total	4,951,171	7,824,904	16,257,933

## 17. 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		
	2018	2019	2020
Deferred revenue/income – beginning of year	—	301,774	485,087
Additions	384,116	428,786	1,013,397
Recognition	(82,342)	(246,861)	(432,069)
Effects on foreign exchange adjustment	—	1,388	(5,161)
Deferred revenue/income – end of year	301,774	485,087	1,061,254

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 RMB405,326 and RMB1,006,824 as of December 31, 2019 and 2020, respectively.

The Group expects that 36% of the transaction price allocated to unsatisfied performance obligation as at December 31, 2020 will be recognized as revenue during the period from January 1, 2021 to December 31, 2021. The remaining 64% will be recognized during the period from January 1, 2022 to December 31, 2025.

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Deferred income includes the reimbursement from a depository bank in connection with the advancement of the Company's ADS 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 income over the beneficial period, with unrecognized deferred income balance of RMB79,761 and RMB54,430 as of December 31, 2019 and 2020.

**18. Manufacturing in collaboration with JAC**

In May 2016, April 2019 and March 2020, the Group entered into several agreements with JAC for the manufacture of the ES8, the ES6 and the EC6 for five years. Pursuant to the arrangements, 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, 2018, 2019 and 2020, JAC charged the Group RMB126,425, RMB206,736 and RMB65,384, respectively, based on the actual losses incurred in Hefei Manufacturing Plant during the same periods, which was recorded in cost of sales.

**19. Research and Development Expenses**

Research and development expenses consist of the following:

	<b>Year Ended December 31,</b>		
	<b>2018</b>	<b>2019</b>	<b>2020</b>
Employee compensation	1,850,886	2,004,931	1,362,231
Design and development expenses	1,827,980	2,041,024	778,463
Depreciation and amortization expenses	103,427	187,137	255,544
Rental and related expenses	33,105	57,401	51,123
Travel and entertainment expenses	104,949	63,998	15,720
Others	77,595	74,089	24,689
<b>Total</b>	<b><u>3,997,942</u></b>	<b><u>4,428,580</u></b>	<b><u>2,487,770</u></b>

**20. Selling, General and Administrative Expenses**

Selling, general and administrative expenses consist of the following:

	<b>Year Ended December 31,</b>		
	<b>2018</b>	<b>2019</b>	<b>2020</b>
Employee compensation	2,256,455	2,231,698	1,687,945
Marketing and promotional expenses	1,158,519	818,053	675,142
Rental and related expenses	450,113	737,578	498,601
Depreciation and amortization expenses	249,765	457,364	325,478
Professional services	578,469	487,537	307,658
IT consumable, office supply and other low value consumable	167,323	109,501	69,954
Travel and entertainment expenses	197,187	126,571	39,328
Expected credit losses	—	—	9,654
Allowance against receivables	—	108,459	—
Others	283,959	375,026	318,511
<b>Total</b>	<b><u>5,341,790</u></b>	<b><u>5,451,787</u></b>	<b><u>3,932,271</u></b>

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**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 installments 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.

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;

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- 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.

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.

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***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.

***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 RMB13,667,291, nil and nil for the years ended December 31, 2018, 2019 and 2020.

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The Company's convertible redeemable preferred shares activities for the year ended December 31, 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)
<b>Balances as of December 31, 2017</b>	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

	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)
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)
<b>Balances as of December 31, 2018</b>	—	—	—	—	—	—	—	—	—	—	—	—

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**22. Redeemable non-controlling interests**

Investment in XPT Auto

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. For the years ended December 31, 2018, 2019 and 2020, the Company recorded RMB63,297, RMB126,590 and RMB104,270, respectively, of accretion on redeemable non-controlling interests to redemption value.

In November 2020, the Company, through its wholly owned subsidiary, purchased all the equity interests in XPT Auto held by its minority shareholders with a cash consideration of RMB1.6 billion, which equaled the redemption price. As a result, the Company indirectly wholly owned XPT Auto thereafter. The Company accounted for such transaction as an equity transaction. The equity interests held by the minority shareholders, which were recorded as redeemable non-controlling interests with the carrying value of RMB1.6 billion, were derecognized accordingly.

Investment in NIO China

On April 29, 2020, the Company entered into definitive agreements, as amended and supplemented in May and June 2020, for investments in NIO Holding, the legal entity of NIO China wholly owned by the Company pre-investment, with a group of investors (collectively, the "Strategic Investors"), pursuant to which, the Strategic Investors agreed to invest an aggregate of RMB7.0 billion in cash into NIO China for its non-controlling interest. In June and July 2020, the Company received RMB5.0 billion. On September 16, 2020, pursuant to a share transfer agreement, the Company repurchased 8.612% equity interests owned by one of the Strategic Investors of NIO China with the total consideration of RMB511.5 million, consisting of the actual capital investment plus accrued interest. In addition, the Company assumed this investor's remaining cash contribution obligation of RMB2.0 billion. As of December 31, 2020, the Company held 86.476% controlling equity interests in NIO Holding.

Pursuant to NIO China's share purchase agreement, each of the Strategic Investors has the right to request the Company to redeem their equity interests in NIO China at an agreed price in case of NIO China's failure to submit the application for a qualified initial public offering in 48 months commencing from June 29, 2020, failure to complete a qualified initial public offering in 60 months commencing from June 29, 2020, or other events as set forth in the share purchase agreement. The agreed price is calculated based on each non-controlling shareholder's cash investment to NIO China plus an annual interest rate of 8.5%.



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As the redemption is at the holders' option and is upon the occurrence of the events that are not solely within the control of the Company, these Strategic Investors' contributions in NIO China were classified as mezzanine equity and is subsequent accreted to the redemption price using the agreed interest rate as a reduction of additional paid in capital. The Company recorded RMB207,400 of accretion on redeemable non-controlling interests to redemption value for the year ended December 31, 2020.

**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, 2019 and 2020, the authorized share capital of the Company is US\$1,000 divided into 4,000,000,000 shares, comprising of: 2,503,736,290 Class A Ordinary Shares, 128,293,932 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.

On June 15, 2020 and subsequently on June 18, 2020, the Company consummated the follow-on offering of a total of 82,800,000 American depositary shares (the "ADSs") at a price of US\$5.95 per ADS.

On September 2, 2020, the Company consummated another follow-on offering of a total of 101,775,000 American depositary shares (the "ADSs") at a price of US\$17.00 per ADS.

On December 16, 2020 and subsequently on December 17, 2020, the Company consummated another follow-on offering of a total of 78,200,000 American depositary shares (the "ADSs") at a price of US\$39.00 per ADS.

As of December 31, 2019 and 2020, 4,000,000,000 ordinary shares were authorized. 1,067,467,877 and 1,529,031,103 shares were issued and 1,064,472,660 and 1,526,539,388 shares were outstanding as of December 31, 2019 and 2020, respectively.

**24. Share-based Compensation**

Compensation expenses recognized for share-based awards granted by the Company were as follows

	<b>For the Year Ended December 31,</b>		
	<b>2018</b>	<b>2019</b>	<b>2020</b>
Cost of sales	9,289	9,763	5,564
Research and development expenses	109,124	82,680	51,024
Selling, general and administrative expenses	561,055	241,052	130,506
Total	<u>679,468</u>	<u>333,495</u>	<u>187,094</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, 2018, 2019 and 2020.

**(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.

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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</u> US\$
Unvested as of December 31, 2017	7,058,338	1.04
Vested	(7,058,338)	1.04
Unvested as of December 31, 2018, 2019 and 2020	—	—

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, 2018, 2019 and 2020, total share-based compensation expenses recognized for the employee restricted shares granted under the Prime Hubs Plan were RMB39,560, nil and nil, respectively.

As of December 31, 2018, all the employee restricted shares granted under the Prime Hubs Plan had been fully vested and hence all related share-based compensation expenses had 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 share 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, 2017 and 2018 Plans 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 share 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 share 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 2015, 2016, 2017 and 2018 Plans for the years ended December 31, 2018, 2019 and 2020:

	<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, 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
Granted	16,077,700	8.09	—	—
Exercised	(15,253,500)	1.55	—	—
Cancelled	(9,030,781)	3.02	—	—
Expired	(1,318,892)	4.49	—	—
Outstanding as of December 31, 2020	79,318,499	3.59	6.39	3,581,119
Vested and expected to vest as of December 31, 2018	88,168,431	1.67	8.21	413,978
Exercisable as of December 31, 2018	32,959,964	0.73	7.45	185,787
Vested and expected to vest as of December 31, 2019	85,578,313	2.37	6.76	159,483
Exercisable as of December 31, 2019	32,925,154	1.78	6.34	80,801
Vested and expected to vest as of December 31, 2020	78,405,625	3.58	6.39	3,540,734
Exercisable as of December 31, 2020	32,504,454	2.28	6.24	1,510,113

The weighted-average grant date fair value for options granted under the Company's 2017, 2018 and 2019 Plans during the years ended December 31, 2018, 2019 and 2020 was US\$1.93, US\$1.46 and US\$4.03, respectively, computed using the binomial option pricing model.

The total share-based compensation expenses recognized for share options during the years ended December 31, 2018, 2019 and 2020 was RMB437,320, RMB329,693 and RMB177,543, respectively.

The fair value of each option granted under the Company's 2017, 2018 and 2019 Plans during 2018, 2019 and 2020 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>2018</u>		<u>2019</u>		<u>2020</u>	
Exercise price (US\$)	0.10	- 6.74	1.80	- 7.09	2.38	- 48.45
Fair value of the ordinary shares on the date of option grant (US\$)	3.38	- 6.74	1.80	- 7.09	2.38	- 48.45
Risk-free interest rate	2.74 %	- 3.15 %	1.66 %	- 2.54 %	0.50 %	- 1.00 %
Expected term (in years)	7	- 10	7	- 10	7	- 10
Expected dividend yield	0 %		0 %		0 %	
Expected volatility	47 %	- 51 %	44 %	- 52 %	54 %	- 55 %
Expected forfeiture rate (post-vesting)	5 %	- 8 %	6 %	- 8 %	2 %	- 6 %

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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, 2019 and 2020, there were RMB89,896 and RMB109,905 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 2.78 and 2.73 years, respectively.

As of December 31, 2019 and 2020, there were RMB269,425 and RMB430,414 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 2.67 years and 2.01 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, 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, and 2020	—	—

Share-based compensation expenses of RMB3,790, RMB2,357 and nil related to restricted shares granted to the employees of NIO US was recognized for the years ended December 31, 2018, 2019 and 2020, respectively.

As of December 31, 2019 and 2020, there were nil of unrecognized compensation expenses related to restricted shares granted to the employees of NIO US.

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, 2018	63,897	6.60
Vested	(31,949)	6.60
Unvested at December 31, 2019	31,948	6.60
Granted	3,869,213	20.07
Vested	(2,165,417)	3.85
Unvested at December 31, 2020	1,735,744	40.05

Share-based compensation expenses of RMB20,323, RMB1,445 and RMB9,551 related to restricted shares granted to the non-US employees was recognized for the years ended December 31, 2018, 2019 and 2020, respectively.

As of December 31, 2019 and 2020, there were RMB1,028 and RMB472,628 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 0.7 and 3.6 years, respectively.

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**(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:

	<b>2018</b>
Exercise price	1.74
Fair value of the Preferred Shares on the measurement date	4.54
Risk-free interest rate	2 %
Remaining life (in years)	0.26
Expected dividend yield	0 %
Expected volatility	43%-44 %

As of December 31, 2018, the Award was fully vested and exercised.

Share-based compensation expenses related to the Award of RMB178,475, nil and nil were recognized for the years ended December 31, 2018, 2019 and 2020, 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 8.25% profit tax on the first HKD2 million taxable income and 16.5% profit tax on the remaining 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, 2018, 2019 and 2020 are as follows:

	<b>For the Year Ended December 31,</b>		
	<b>2018</b>	<b>2019</b>	<b>2020</b>
United States	29.84 %	29.84 %	29.84 %
United Kingdom	19.00 %	19.00 %	19.00 %
Germany	32.98 %	32.98 %	32.98 %

Composition of income tax expense for the periods presented are as follows:

	<b>For the Year Ended December 31,</b>		
	<b>2018</b>	<b>2019</b>	<b>2020</b>
Current income tax expense	22,044	7,888	6,368

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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,		
	2018	2019	2020
Loss before income tax expense	(9,616,935)	(11,287,764)	(5,297,714)
Income tax expense computed at PRC statutory income tax rate of 25%	(2,404,234)	(2,821,941)	(1,324,429)
Non-deductible expenses	96,684	58,374	47,151
Foreign tax rates differential	167,180	107,617	(81,668)
Additional 75% tax deduction for qualified research and development expenses	(216,993)	(22,630)	(36,775)
Tax exempted interest income	(10,377)	(3,093)	—
Non-taxable offshore income	—	—	(523,276)
US tax credits	(42,781)	(72,448)	(21,633)
Prior year adjustments	(1,422)	(16,259)	(4,324)
Tax benefit contributed by Non-controlling interest	—	2,285	1,241
Tax benefit not utilized	2,433,987	2,775,983	1,950,081
Income tax expense	<u>22,044</u>	<u>7,888</u>	<u>6,368</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,		
	2018	2019	2020
<b>Deferred tax assets</b>			
Net operating loss carry-forwards	3,777,696	6,005,461	6,831,387
Accrued and prepaid expenses	255,240	420,714	534,693
Deferred Revenue	83,877	105,840	251,778
Tax credit carry-forwards	117,801	213,773	233,326
Property, plant and equipment, net	17,467	10,584	64,191
Unrealized financing cost	41,939	29,200	40,800
Intangible assets	15,687	36,362	36,702
Allowance against receivables	—	27,196	9,027
Deferred rent	36,729	19,035	9,791
Share-based compensation	8,962	7,688	6,857
Write-downs of inventory	—	2,607	1,162
Advertising expenses in excess of deduction limit	14,234	353	507
Unrealized foreign exchange loss	55	55	(971)
Others	—	162	269
Total deferred tax assets	<u>4,369,687</u>	<u>6,879,030</u>	<u>8,019,519</u>
Less: Valuation allowance	<u>(4,369,687)</u>	<u>(6,879,030)</u>	<u>(8,019,519)</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,		
	2018	2019	2020
<b>Valuation allowance</b>			
Balance at beginning of the year	1,878,643	4,369,687	6,879,030
Additions	2,491,044	2,509,343	1,140,489
Balance at end of the year	<u>4,369,687</u>	<u>6,879,030</u>	<u>8,019,519</u>

The Group has tax losses arising in Mainland China of RMB21,494,377, that will expire in one to nine years for deduction against future taxable profit.

Loss expiring in 2021	38,471
Loss expiring in 2022	57,986
Loss expiring in 2023	2,361,845
Loss expiring in 2024	3,439,013
Loss expiring in 2025	3,529,613
Loss expiring in 2026	547,984
Loss expiring in 2027	2,799,057
Loss expiring in 2028	3,386,670
Loss expiring in 2029	5,333,738
Total	<u>21,494,377</u>

The Group has tax losses arising in Hong Kong of RMB2,601,564 for which could be carried forward indefinitely against future taxable income.

The Group has tax losses arising in United States of RMB22,927, RMB232,098, RMB813,638 and RMB2,394,621 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, 2020.

**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, 2018, 2019 and 2020 as follows:

	For the Year Ended December 31,		
	2018	2019	2020
<b>Numerator:</b>			
Net loss	(9,638,979)	(11,295,652)	(5,304,082)
Accretion on convertible redeemable preferred shares to redemption value	(13,667,291)	—	—
Accretion on redeemable non-controlling interests to redemption value	(63,297)	(126,590)	(311,670)
Net loss attributable to non-controlling interests	41,705	9,141	4,962
Net loss attributable to ordinary shareholders of NIO Inc. for basic/dilutive net loss per share	<u>(23,327,862)</u>	<u>(11,413,101)</u>	<u>(5,610,790)</u>
<b>Denominator:</b>			
Weighted-average number of ordinary shares outstanding — basic and diluted	332,153,211	1,029,931,705	1,182,660,948
Basic and diluted net loss per share attributable to ordinary shareholders of NIO Inc.	<u>(70.23)</u>	<u>(11.08)</u>	<u>(4.74)</u>



**NIO INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
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For the years ended December 31, 2018, 2019 and 2020, the Company had potential ordinary shares, including non-vested restricted shares, options granted, Convertible Notes and Preferred Shares. As the Group incurred losses for the years ended December 31, 2018, 2019 and 2020, 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,		
	2018	2019	2020
Non-vested restricted shares	340,518	459,199	—
Outstanding weighted average options granted	72,735,288	31,276,979	52,558,756
Convertible Notes	—	92,512,382	183,942,782
Preferred Shares	678,614,152	—	—
<b>Total</b>	<b>751,689,958</b>	<b>124,248,560</b>	<b>236,501,538</b>

**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
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
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.	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
Beijing Bitauto Interactive Technology Co., Ltd.	Controlled by Principal Shareholder
Wuhan Weineng Battery Assets Co., Ltd.	Affiliate
Xtronics Innovation Ltd.	Subsidiary's Non-controlling shareholder
Xunjie Energy (Wuhan) Co., Ltd.	Affiliate

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.

In December 2020, Mr. Bin Li resigned as chairman of the Board in Beijing Bitauto Interactive Technology Co., Ltd.. Since then, Beijing Bitauto Interactive Technology Co., Ltd., Beijing Xinyi Hudong Guanggao Co., Ltd., Bite Shijie (Beijing) Keji Co., Ltd. and Beijing Chehui Hudong Guanggao Co., Ltd. were no longer controlled by Mr. Bin Li, and were no longer the Group's related parties.

**NIO INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
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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, 2018, 2019 and 2020, service income was primarily generated from property management and miscellaneous research and development services the Group provided to its related parties.

	<b>For the Year Ended December 31,</b>		
	<b>2018</b>	<b>2019</b>	<b>2020</b>
Nanjing Weibang Transmission Technology Co., Ltd.	—	2,417	1,523
Wuhan Weineng Battery Assets Co., Ltd.	—	—	38
Shanghai Weishang Business Consulting Co., Ltd.	905	1,806	—
Shanghai NIO Hongling Investment Management Co., Ltd.	2,707	—	—
	<u>3,612</u>	<u>4,223</u>	<u>1,561</u>

*(ii) Acceptance of advertising and IT support services*

	<b>For the Year Ended December 31,</b>		
	<b>2018</b>	<b>2019</b>	<b>2020</b>
Beijing Chehui Hudong Guanggao Co., Ltd.	6,915	29,599	92,356
Beijing Xinyi Hudong Guanggao Co., Ltd.	28,245	37,935	39,919
Beijing Bit Ep Information Technology Co., Ltd.	—	3,627	4,159
Tianjin Boyou Information Technology Co., Ltd.	—	264	1,594
Beijing Yiche Information Science and Technology Co., Ltd.	32	466	280
Shanghai Yiju Information Technology Co., Ltd.	—	76	142
Bite Shijie (Beijing) Keji Co., Ltd.	2,865	1,664	47
Beijing Yiche Interactive Advertising Co., Ltd.	—	6,132	—
	<u>38,057</u>	<u>79,763</u>	<u>138,497</u>

*(iii) Loan to related party*

	<b>For the Year Ended December 31,</b>		
	<b>2018</b>	<b>2019</b>	<b>2020</b>
NIO Capital	66,166	—	—

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*

	<b>For the Year Ended December 31,</b>		
	<b>2018</b>	<b>2019</b>	<b>2020</b>
Suzhou Zenlead XPT New Energy Technologies Co., Ltd.	132,152	132,511	174,680

*(v) Purchase of raw material, property and equipment*

	<b>For the Year Ended December 31,</b>		
	<b>2018</b>	<b>2019</b>	<b>2020</b>
Nanjing Weibang Transmission Technology Co., Ltd.	—	34,220	114,329
Kunshan Siwopu Intelligent Equipment Co., Ltd.	11,107	7,982	22,797
Xunjie Energy (Wuhan) Co., Ltd.	—	—	460
	<u>11,107</u>	<u>42,202</u>	<u>137,586</u>

**NIO INC.**  
**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS**  
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*(vi) Interest payable on behalf of related party*

	For the Year Ended December 31,		
	2018	2019	2020
Baidu Capital L.P.	8,065	—	—

*(vii) Acceptance of R&D and maintenance service*

	For the Year Ended December 31,		
	2018	2019	2020
Suzhou Zenlead XPT New Energy Technologies Co., Ltd.	14,776	—	1,953
Kunshan Siwopu Intelligent Equipment Co., Ltd.	2,436	341	1,449
	<u>17,212</u>	<u>341</u>	<u>3,402</u>

*(viii) Payment on behalf of related party*

	For the Year Ended December 31,		
	2018	2019	2020
Nanjing Weibang Transmission Technology Co., Ltd.	2,790	—	—

*(ix) Loan from related party*

	For the Year Ended December 31,		
	2018	2019	2020
Beijing Bitauto Interactive Technology Co., Ltd.	—	—	260,000
Beijing Changxing Information Technology Co., Ltd.	—	25,799	—
	<u>—</u>	<u>25,799</u>	<u>260,000</u>

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, 2020, the loan has been fully repaid by the Company.

In 2020, the Company signed loan agreements with Beijing Bitauto Interactive Technology Co., Ltd. for an aggregate loan amount of RMB260,000 at an interest rate of 6%. As of December 31, 2020, the loans have been fully repaid by the Company.

*(x) Sale of raw material, property and equipment*

	For the Year Ended December 31,		
	2018	2019	2020
Wistron Info Comm (Kunshan) Co., Ltd.	—	725	358
Wuhan Weineng Battery Assets Co., Ltd.	—	—	120
	<u>—</u>	<u>725</u>	<u>478</u>

*(xi) Convertible notes issued to related parties and interest accrual (Note 12)*

	For the Year Ended December 31,		
	2018	2019	2020
Serene View Investment Limited	—	614,926	101,927
Huang River Investment Limited	—	920,914	22,018
	<u>—</u>	<u>1,535,840</u>	<u>123,945</u>

**NIO INC.**  
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*(xii) Sales of goods*

	<b>For the Year Ended December 31,</b>		
	<b>2018</b>	<b>2019</b>	<b>2020</b>
Wuhan Weineng Battery Assets Co., Ltd.	—	—	290,135
Beijing Bit Ep Information Technology Co., Ltd.	—	—	4,402
Beijing Bitauto Interactive Technology Co., Ltd.	—	—	1,974
Beijing Yiche Interactive Advertising Co., Ltd.	—	—	1,453
Beijing Yiche Information Science and Technology Co., Ltd.	—	—	525
	<u>—</u>	<u>—</u>	<u>298,489</u>

**(b) The Group had the following significant related party balances:**

*(i) Amounts due from related parties*

	<b>As of December 31</b>	
	<b>2019</b>	<b>2020</b>
Wuhan Weineng Battery Assets Co. Ltd.	—	118,779
Ningbo Meishan Bonded Port Area Weilan Investment Co., Ltd.	50,000	50,000
Kunshan Siwopu Intelligent Equipment Co., Ltd.	—	617
Nanjing Weibang Transmission Technology Co., Ltd.	674	509
Wistron Info Comm (Kunshan) Co., Ltd.	109	—
Total	<u>50,783</u>	<u>169,905</u>

In 2017, the Company grant interest-free loans to Ningbo Meishan Bonded Port Area Weilan Investment Co., Ltd. As of December 31, 2020, the loans remain outstanding.

*(ii) Amounts due to related parties*

	<b>As of December 31</b>	
	<b>2019</b>	<b>2020</b>
Suzhou Zenlead XPT New Energy Technologies Co., Ltd.	180,687	273,982
Nanjing Weibang Transmission Technology Co., Ltd.	33,018	51,687
Kunshan Siwopu Intelligent Equipment Co., Ltd.	379	11,986
Wistron Info Comm (Kunshan) Co., Ltd.	—	3,007
Beijing Bit Ep Information Technology Co., Ltd.	2,598	1,768
Xtronics Innovation Ltd.	—	1,493
Xunjie Energy (Wuhan) Co., Ltd.	—	513
Beijing Yiche Information Science and Technology Co., Ltd.	205	167
Beijing Xinyi Hudong Guanggao Co., Ltd.	36,714	—
Beijing Changxing Information Technology Co., Ltd.	25,799	—
Beijing Chehui Hudong Guanggao Co., Ltd.	25,170	—
Beijing Yiche Interactive Advertising Co., Ltd.	3,500	—
Bite Shijie (Beijing) Keji Co., Ltd.	1,549	—
Shanghai Yiju Information Technology Co., Ltd.	80	—
Tianjin Boyou Information Technology Co., Ltd.	30	—
Total	<u>309,729</u>	<u>344,603</u>

*(iii) Short-term borrowings and interest payable*

	<b>As of December 31</b>	
	<b>2019</b>	
Huang River Investment Limited	354,840	3,391
Serene View Investment Limited	350,255	—
Total	<u>705,095</u>	<u>3,391</u>

**NIO INC.**  
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*(iv) Long-term borrowings*

	<b>As of December 31</b>	
	<b>2019</b>	<b>2020</b>
Huang River Investment Limited	560,325	531,507
Serene View Investment Limited	258,213	—
<b>Total</b>	<b>818,538</b>	<b>531,507</b>

**28. Commitments and Contingencies**

*(a) Capital commitments*

Capital expenditures contracted for at the balance sheet dates but not recognized in the Group's consolidated financial statements are as follows:

	<b>As of December 31</b>	
	<b>2019</b>	<b>2020</b>
Property and equipment	551,582	428,448
Leasehold improvements	68,652	54,911
<b>Total</b>	<b>620,234</b>	<b>483,359</b>

*(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. In the E.D.N.Y. action, the Company and other defendants filed their Motion to Dismiss on October 19, 2020 and briefing on the Motion to Dismiss was completed on December 4, 2020. The Court's decision on the Motion to Dismiss is pending. In the New York county action, by an order dated March 23, 2021, the Court granted the plaintiffs' motion to lift the stay in favor of the federal action. In the Kings County action, the judge has yet to be assigned and there has not been any major development. 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.

The Group is subject to legal proceedings and regulatory actions in the ordinary course of business, such as disputes with landlords, suppliers, employees, etc. The results of such proceedings cannot be predicted with certainty, but the Group does not anticipate that the final outcome arising out of any of such matters will have a material adverse effect on the consolidated balance sheets, comprehensive loss or cash flows on an individual basis or in the aggregate. As of December 31, 2019 and 2020, the Group is not a party to any material legal or administrative proceedings.

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**29. Subsequent Events**

In January 2021, the Company completed the offering of US\$750 million of convertible senior notes due 2026 (the “2026 Notes”) and US\$750 million of convertible senior notes due 2027 (the “2027 Notes”), which included the exercise in full by the initial purchasers to purchase up to an additional US\$100 million of the 2026 Notes and the 2027 Notes, respectively. Upon conversion, the Company will pay or deliver, as the case may be, cash, ADSs, or a combination of cash and ADSs, at the Company’s discretion. In addition, the Company entered into separate and individually privately negotiated agreements with certain holders of its outstanding 4.50% convertible senior notes due 2024 (the “2024 Notes”) to exchange approximately US\$581.7 million principal amount of the outstanding 2024 Notes for its ADSs, each representing one Class A ordinary share of the Company (the “2024 Notes Exchanges”). The 2024 Notes Exchanges closed on January 15, 2021. In connection with the 2024 Notes Exchanges, the Company also entered into agreements with certain financial institutions that are parties to its existing capped call transactions (which the Company had entered into in February 2019 in connection with the issuance of the 2024 Notes) to terminate a portion of the relevant existing capped call transactions in a notional amount corresponding to the portion of the principal amount of such 2024 Notes exchanged. In connection with such terminations of the existing capped call transactions, the Company received deliveries of the ADSs in such amounts as specified pursuant to such termination agreements on January 15, 2021.

In February 2021, the Company completed the increase of its controlling equity interests in NIO China through the purchase of certain investors’ equity interests and the subscription for newly increased registered capital. As a result, the Company holds an aggregate of 90.360% controlling equity interests in NIO China.

In March 2021, the Group entered into definitive agreements with JAC to establish a joint venture for manufacture management and operations with a registered capital of RMB500 million where the Group holds 49% equity interests.

**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, 2020.

**NIO INC.**  
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*Condensed Balance Sheets*

	As of December 31,		
	2019 RMB	2020 RMB	2020 US\$ Note 2(e)
<b>ASSETS</b>			
Current assets:			
Cash and cash equivalents	11,629	22,173,454	3,398,230
Amounts due from related parties	22,698	19,680	3,016
Prepayments and other current assets	—	34,664	5,312
<b>Total current assets</b>	<b>34,327</b>	<b>22,227,798</b>	<b>3,406,558</b>
Non-current assets:			
Investments in subsidiaries and VIEs	2,884,635	10,540,521	1,615,405
<b>Total non-current assets</b>	<b>2,884,635</b>	<b>10,540,521</b>	<b>1,615,405</b>
<b>Total assets</b>	<b>2,918,962</b>	<b>32,768,319</b>	<b>5,021,963</b>
<b>LIABILITIES</b>			
Current liabilities:			
Short-term borrowings	697,620	—	—
Amounts due to related parties	2,555,511	246,800	37,824
Accruals and other liabilities	100,772	101,750	15,591
<b>Total current liabilities</b>	<b>3,353,903</b>	<b>348,550</b>	<b>53,415</b>
Long-term borrowings	5,784,984	5,196,507	796,400
Deferred revenue	79,761	54,431	8,342
<b>Total non-current liabilities</b>	<b>5,864,745</b>	<b>5,250,938</b>	<b>804,742</b>
<b>Total liabilities</b>	<b>9,218,648</b>	<b>5,599,488</b>	<b>858,157</b>
<b>SHAREHOLDERS' (DEFICIT)/EQUITY</b>			
Class A Ordinary Shares	1,347	2,205	338
Class B Ordinary Shares	226	220	34
Class C Ordinary Shares	254	254	39
Treasury shares	—	—	—
Additional paid in capital	40,227,856	78,880,014	12,088,891
Accumulated other comprehensive loss	(203,048)	(65,452)	(10,031)
Accumulated deficit	(46,326,321)	(51,648,410)	(7,915,465)
<b>Total shareholders' (deficit)/equity</b>	<b>(6,299,686)</b>	<b>27,168,831</b>	<b>4,163,806</b>
<b>Total liabilities and shareholders' (deficit)/equity</b>	<b>2,918,962</b>	<b>32,768,319</b>	<b>5,021,963</b>

**NIO INC.**  
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*Condensed Statements of Comprehensive Loss*

	For the Year ended December 31,			
	2018 RMB	2019 RMB	2020 RMB	2020 US\$ Note 2(e)
<b>Operating expenses:</b>				
Selling, general and administrative	(178,479)	(97)	(7,463)	(1,144)
<b>Total operating expenses</b>	<u>(178,479)</u>	<u>(97)</u>	<u>(7,463)</u>	<u>(1,144)</u>
<b>Loss from operations</b>	<u>(178,479)</u>	<u>(97)</u>	<u>(7,463)</u>	<u>(1,144)</u>
Interest income	7,692	4,212	10,086	1,546
Interest expense	—	(237,374)	(312,662)	(47,918)
Equity in loss of subsidiaries and VIEs	(9,432,640)	(11,076,907)	(5,089,371)	(779,982)
Other income	6,153	23,655	100,290	15,370
<b>Loss before income tax expense</b>	<u>(9,597,274)</u>	<u>(11,286,511)</u>	<u>(5,299,120)</u>	<u>(812,128)</u>
Income tax expense	—	—	—	—
<b>Net loss</b>	<u>(9,597,274)</u>	<u>(11,286,511)</u>	<u>(5,299,120)</u>	<u>(812,128)</u>
Accretion on convertible redeemable preferred shares to redemption value	(13,667,291)	—	—	—
Accretion on redeemable non-controlling interests to redemption value	(63,297)	(126,590)	(311,670)	(47,766)
<b>Net loss attributable to ordinary shareholders of NIO Inc.</b>	<u>(23,327,862)</u>	<u>(11,413,101)</u>	<u>(5,610,790)</u>	<u>(859,894)</u>

*Condensed Statements of Cash Flows*

	For The Year ended December 31,			
	2018 RMB	2019 RMB	2020 RMB	2020 US\$ Note 2(e)
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>				
Net cash generated from/(used in) operating activities	3,917,654	438,465	(2,460,216)	(377,045)
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>				
Net cash used in investing activities	(11,693,144)	(4,817,498)	(12,998,602)	(1,992,123)
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>				
Net cash provided by financing activities	7,762,745	4,373,247	37,867,127	5,803,391
Effects of exchange rate changes on cash and cash equivalents	6,654	236	(246,484)	(37,775)
<b>NET (DECREASE)/INCREASE IN CASH AND CASH EQUIVALENTS</b>	<u>(6,091)</u>	<u>(5,550)</u>	<u>22,161,825</u>	<u>3,396,448</u>
Cash and cash equivalents at beginning of the year	23,270	17,179	11,629	1,782
Cash and cash equivalents at end of the year	<u>17,179</u>	<u>11,629</u>	<u>22,173,454</u>	<u>3,398,230</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.

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's consolidated financial statements.



**Amendment and Supplementary Agreement III to the NIO China Shareholders Agreement**

This Amendment and Supplementary Agreement III to the NIO China Shareholders Agreement (this “**Amendment and Supplementary Agreement III**”) is made on September 16, 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 Amendment and Supplementary Agreement III, 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 North Dong Ao Wei Road, Luosa Avenue, Rongcheng County, Baoding City, Hebei Province (“**SDIC**”);
- (2) **Advanced Manufacturing Industry Investment Fund II (Limited Partnership)**, a limited liability partnership duly established and existing under the Laws of the PRC, holding a business license with unified social credit code of 91320191MA1YK7YA6J, and with its executive partner being CMG-SDIC Capital Management Co., Ltd. and registered office at Room 1380, Fuying Building, No. 99 Tuanjie Road, Research and Innovation Park, Jiangbei New District, Nanjing City (“**Advanced Manufacturing Industry Investment Fund**”);
- (3) **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.**”);
- (4) **Anhui Jintong New Energy Automobile II Fund Partnership (Limited Partnership)**, a limited liability partnership duly established and existing under the Laws of the PRC, holding a business license with unified social credit code of 91340800MA2UE54B3J, and with its executive partner being Anhui Jintong New Energy II Investment Management Partnership (Limited Partnership) and registered office at Room 616-1, Building#1, Zhumeng New Zone, No. 188 Wenyuan Road, Yixiu District, Anqing City, Anhui Province (“**New Energy Automobile Fund**”);
- (5) **Anhui Provincial Sanzhong Yichuang Industry Development Fund Co., Ltd.**, a limited liability company duly established and existing under the Laws of China, with unified social credit code of 91340100MA2NUJ2A1H, and with its legal

representative being XIE Hai and registered address at Room 424, Science and Technology Innovation Center, No. 860 Wangjiang West Road, High-tech District, Hefei City (“**Anhui Sanzhong Yichuang**”);

- (6) **Hefei Construction Investment Holdings (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 (the “**Hefei Investor**”);
- (7) **Hefei Jianheng New Energy Automobile Investment Fund Partnership (Limited Partnership)**, a limited liability partnership duly established and existing under the Laws of the PRC, holding a business license with unified social credit code of 91340111MA2UU69EX8, and with its executive partner being Hefei Xinping Investment Management Co., Ltd. and registered address at Room 101, 1<sup>st</sup> Floor, Area G, Intelligent Equipment Technology Park, No. 3963 Susong Road, Economic and Technological Development Zone, Hefei City, Anhui Province (“**Jianheng New Energy Fund**”);
- (8) **NIO Inc.**, a company duly established and validly existing under the Laws of the Cayman Islands, with its registered address at PO Box 309, Uglan House, Grand Cayman, KY1-1104, Cayman Islands, and currently listed on the New York Stock Exchange of the United States (NYSE: NIO) (“**NIO Inc.**”);
- (9) **NIO Nextev Limited**, a private company limited by shares duly organized and validly existing under the Laws of Hong Kong Special Administrative Region of the PRC, with its company number of 2199750, and registered office at 30<sup>th</sup> Floor, Jardine House, Once Connaught Place, Central, Hong Kong (“**NIO HK**”);
- (10) **NIO User Enterprise Limited**, a private company limited by shares duly organized and validly existing under the laws of Hong Kong Special Administrative Region of the PRC, with its company number of 2487823 and registered office at 30<sup>th</sup> Floor, Jardine House, Once Connaught Place, Central, Hong Kong (“**UE HK**”);
- (11) **NIO Power Express Limited**, a private company limited by shares duly organized and validly existing under the Laws of Hong Kong Special Administrative Region of the PRC, with its company number of 2472480 and registered office at 30<sup>th</sup> Floor, Jardine House, Once Connaught Place, Central, Hong Kong (“**PE HK**”, together with NIO HK, UE HK and NIO Inc., the “**NIO Parties**”); and
- (12) **NIO (Anhui) Holding Co., Ltd.**, a limited liability company duly established and duly existing under the Laws of the PRC, holding a business license with

unified social credit code of 91340111MA2RAD3M4R, and with its legal representative being LI Bin and registered address at West Susong Road and North Shenzhen Road, Economic and Technological Development District, Hefei City, Anhui Province (the “**Target Company**”).

For purposes of this Amendment and Supplementary Agreement III, each of the above parties shall be referred to individually as a “Party” and collectively as the “Parties”.

Unless otherwise provided for in this Amendment and Supplementary Agreement III, all terms used herein shall have the same meanings and interpretation rules as those provided under the Shareholders Agreement (as defined below).

WHEREAS:

- (a) SDIC, Anhui High-tech Co., the Hefei Investor, the NIO Parties and the Target Company have entered into the NIO China Investment Agreement (the “**Investment Agreement**”) and the NIO China Shareholders Agreement (the “**Shareholders Agreement**”) dated as of April 29, 2020;
- (b) SDIC, Advanced Manufacturing Industry Investment Fund, Anhui High-tech Co., New Energy Automobile Fund, the Hefei Investor, Jianheng New Energy Fund, NIO Parties and the Target Company have entered into the Amendment and Supplementary Agreement to the NIO China Shareholders Agreement dated as of June 5, 2020 (the “**Amendment and Supplementary Agreement I**”). Pursuant to the Amendment and Supplementary Agreement I, SDIC designates Advanced Manufacturing Industry Investment Fund, Anhui High-tech Co. designates New Energy Automobile Fund and the Hefei Investor designates Jianheng New Energy Fund to assume all or part of their respective rights and obligations under the Shareholders Agreement;
- (c) SDIC, Advanced Manufacturing Industry Investment Fund, Anhui High-tech Co., New Energy Automobile Fund, the Hefei Investor, Jianheng New Energy Fund, Anhui Sanzhong Yichuang, NIO Parties and the Target Company have entered into the Amendment and Supplementary Agreement II to the NIO China Shareholders Agreement dated as of June 18, 2020 (the “**Amendment and Supplementary Agreement II**”). Pursuant to the Amendment and Supplementary Agreement II, Anhui High-tech Co. designates Anhui Sanzhong Yichuang to assume all or part of its rights and obligations under the Shareholders Agreement and the Amendment and Supplementary Agreement I;
- (d) Jianheng New Energy Fund intends to enter into the Equity Purchase Agreement with NIO HK, under which, NIO HK will exercise the redemption right of NIO Parties under the Shareholders Agreement, the Amendment and Supplementary Agreement I and the Amendment and Supplementary Agreement II; and

- (e) The Parties unanimously agree to make specific amendments and supplements to certain terms of the Shareholders Agreement, the Amendment and Supplementary Agreement I and the Amendment and Supplementary Agreement II in accordance with this Amendment and Supplementary Agreement III.

NOW, THEREFORE, the Parties unanimously agree as follows:

1. The Parties unanimously agree and acknowledge that pursuant to the Equity Purchase Agreement entered into between Jianheng New Energy Fund and NIO HK on September 16, 2020, NIO HK is to exercise the NIO Parties Redemption Right under the Shareholders Agreement, the Amendment and Supplementary Agreement I and the Amendment and Supplementary Agreement II, and purchase the Target Company's registered capital of RMB 437,062,937.06 (8.612% of the total registered capital of the Target Company). After the completion of the transaction, Jianheng New Energy Fund will hold in total 8.612% of the registered capital of the Target Company and NIO HK holds in total 58.645% of the registered capital of the Target Company.
2. Clause 5.1 "Registered Capital" of the Shareholders Agreement shall be amended as follows:

The registered capital of the Company shall be RMB 5,074,773,741.26, of which:

- 5.1.1 NIO HK shall subscribe to RMB 2,976,093,202.05, representing 58.645% of the registered capital of the Company, of which RMB 92,912,587.42 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.; RMB 239,639,258.59 shall be contributed in the form of intellectual property rights; and the remaining 349,650,349.64 shall be contributed in cash in RMB;
- 5.1.2 UE HK shall subscribe to RMB 1,252,136,433.60, representing 24.674% of the registered capital of the 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 1.179% of the registered capital of the Company;

- 5.1.4 Advanced Manufacturing Industry Investment Fund shall subscribe to RMB 174,825,174.83, which shall be contributed in cash in RMB, representing 3.445% of the registered capital of the Company;
- 5.1.5 Anhui Sanzhong Yichuang shall subscribe to RMB 139,860,139.86, which shall be contributed in cash in RMB, representing 2.756% of the registered capital of the Company;
- 5.1.6 New Energy Automobile Fund shall subscribe to RMB 34,965,034.97, which shall be contributed in cash in RMB, representing 0.689% of the registered capital of the Company;
- 5.1.7 Jianheng New Energy Fund shall subscribe to RMB 437,062,937.07, which shall be contributed in cash in RMB, representing 8.612% of the registered capital of the Company.”

3. The form set forth in Clause 5.2.1 of the Shareholders Agreement shall be amended as follows:

<b>Shareholders</b>	<b>Subscribed Registered Capital (RMB, Yuan)</b>	<b>Form of Capital Contribution</b>	<b>Timing of Capital Contribution</b>
NIO Nextev Limited	2,976,093,202.05	RMB 92,912,587.42 of the registered capital contributed in cash in Renminbi, which has been contributed in full as of the Execution Date hereof; RMB 349,650,349.64 of the registered capital contributed in cash in Renminbi; 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	Within one (1) year after the closing in accordance with the Investment Agreement

		intellectual property rights	
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
Advanced Manufacturing Industry Investment Fund II (Limited Partnership)	174,825,174.83	Contributed in cash in Renminbi	On the fifth (5th) working day after all of the Investors' closing conditions under the Investment Agreement have been proved to be satisfied or waived
Anhui Provincial Sanzhong Yichuang Industry Development Fund Co, Ltd.	139,860,139.86	Contributed in cash in Renminbi	In principle, on the fifth (5th) 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
Anhui Jintong New Energy	34,965,034.97	Contributed in cash in Renminbi	In principle, on the fifth (5th) working day after

Automobile II Fund Partnership (Limited Partnership)			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 Jianheng New Energy Automobile Investment Fund Partnership (Limited Partnership)	437,062,937.07	Contributed in cash in Renminbi	On or before March 31, 2021 in accordance with the Investment Agreement, and shall be subject to the completion of the private equity fund filing with the Asset Management Association of China
Total	5,074,773,741.26	/	/

4. Exhibit I to the Shareholders Agreement shall be replaced by Exhibit I to this Amendment and Supplementary Agreement III.
5. This Amendment and Supplementary Agreement III shall be governed by, and construed in accordance with the laws of the PRC.
6. Any dispute, controversy, difference or claim arising out of or relating to this Amendment and Supplementary Agreement III 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 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. 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. The arbitration award shall be final and binding on the parties to the arbitration. 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.

7. This Amendment and Supplementary Agreement III shall come into force and become binding on the Parties upon the execution by the legal representatives, authorized signatories or the respective authorized representatives and the affixation of their respective company chops. The sequence of priority of the Shareholders Agreement, the Amendment and Supplementary Agreement I, the Amendment and Supplementary Agreement II and this Amendment and Supplementary Agreement III shall be:

- (1) In case of conflict between any provisions of the Shareholders Agreement, the Amendment and Supplementary Agreement I, the Amendment and Supplementary Agreement II and this Amendment and Supplementary Agreement III, this Amendment and Supplementary Agreement III shall prevail;
- (2) In case of conflict between any provisions of the Shareholders Agreement and the Amendment and Supplementary Agreement I, the Amendment and Supplementary Agreement I shall prevail;
- (3) In case of conflict between any provisions of the Amendment and Supplementary Agreement I and the Amendment and Supplementary Agreement II, the Amendment and Supplementary Agreement II shall prevail;
- (4) For any matter not mentioned herein, the Amendment and Supplementary Agreement I and the Amendment and Supplementary Agreement II shall prevail; if such matter is not mentioned in the Amendment and Supplementary Agreement I and the Amendment and Supplementary Agreement II, the Shareholders Agreement shall prevail.

Unless otherwise provided herein, the validity of other terms of the Shareholders Agreement, the Amendment and Supplementary Agreement I and the Amendment and Supplementary Agreement II shall not be affected by this Amendment and Supplementary Agreement III.

8. This Amendment and Supplementary Agreement III shall be written in Chinese and be executed in thirteen (13) 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 Amendment and Supplementary Agreement III to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement III to be executed as of the date first written above.

**CMG-SDIC Capital Management Co., Ltd.**

(Company Chop)

By: /s/ Authorized Signatory  
Name: Authorized Signatory  
Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement III to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement III to be 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: Authorized Signatory

Signature Page

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*(This is (the Signature Page to the Amendment and Supplementary Agreement III to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement III to be 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: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement III to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement III to be executed as of the date first written above.

**Advanced Manufacturing Industry Investment  
Fund II (Limited Partnership)**

(Company Chop)

By: /s/ Authorized Signatory  
Name: Authorized Signatory  
Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement III to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement III to be executed as of the date first written above.

**Anhui Jintong New Energy Automobile II  
Fund Partnership (Limited Partnership)**

(Company Chop)

By: /s/ Authorized Signatory  
Name: Authorized Signatory  
Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement III to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement III to be executed as of the date first written above.

**Hefei Jianheng New Energy Automobile  
Investment Fund Partnership (Limited  
Partnership)**

(Company Chop)

By: /s/ Authorized Signatory  
Name: Authorized Signatory  
Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement III to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement III to be executed as of the date first written above.

**Anhui Provincial Sanzhong Yichuang Industry  
Development Fund Co, Ltd.**

(Company Chop)

By: /s/ Authorized Signatory  
Name: Authorized Signatory  
Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement III to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement III to be executed as of the date first written above.

**NIO Inc.**

(Company Chop)

By: /s/ Authorized Signatory  
Name: Authorized Signatory  
Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement III to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement III to be executed as of the date first written above.

**NIO Nextev Limited**

(Company Chop)

By: /s/ Authorized Signatory  
Name: Authorized Signatory  
Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement III to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement III to be executed as of the date first written above.

**NIO User Enterprise Limited**

(Company Chop)

By: /s/ Authorized Signatory  
Name: Authorized Signatory  
Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement III to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement III to be executed as of the date first written above.

**NIO Power Express Limited**

(Company Chop)

By: /s/ Authorized Signatory  
Name: Authorized Signatory  
Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement III to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement III to be executed as of the date first written above.

**NIO (Anhui) Holding Co., Ltd**

(Company Chop)

By: /s/ Authorized Signatory  
Name: Authorized Signatory  
Title: Authorized Signatory

Signature Page

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## Exhibit I: Joinder Agreement

### Joinder Agreement

This Joinder Agreement (this “**Joinder Agreement**”) is executed and delivered by the undersigned party (the “**Join in Party**”) on the following date in accordance with (a) the 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., NIO Inc., NIO Nextev Limited, NIO User Enterprise Limited, NIO Power Express Limited and NIO (Anhui) Holding Co., Ltd. dated as of April 29, 2020, (b) the Amendment and Supplementary Agreement to the NIO China Shareholders Agreement by and among CMG-SDIC Capital Management Co., Ltd., Advanced Manufacturing Industry Investment Fund II (Limited Partnership), Anhui Provincial Emerging Industry Investment Co., Ltd., Anhui Jintong New Energy Automobile II Fund Partnership (Limited Partnership), Hefei City Construction and Investment Holding (Group) Co., Ltd., Hefei Jianheng New Energy Automobile Investment Fund Partnership (Limited Partnership), NIO Inc., NIO Nextev Limited, NIO User Enterprise Limited, NIO Power Express Limited and NIO (Anhui) Holding Co., Ltd. dated as of June 5, 2020, (c) the Amendment and Supplementary Agreement II to the NIO China Shareholders Agreement by and among CMG-SDIC Capital Management Co., Ltd., Advanced Manufacturing Industry Investment Fund II (Limited Partnership), Anhui Provincial Emerging Industry Investment Co., Ltd., Anhui Jintong New Energy Automobile II Fund Partnership (Limited Partnership), Anhui Provincial Sanzhong Yichuang Industry Development Fund Co, Ltd., Hefei City Construction and Investment Holding (Group) Co., Ltd., Hefei Jianheng New Energy Automobile Investment Fund Partnership (Limited Partnership), NIO Inc., NIO Nextev Limited, NIO User Enterprise Limited, NIO Power Express Limited and NIO (Anhui) Holding Co., Ltd. dated as of June 18, 2020, and the Amendment and Supplementary Agreement III to the NIO China Shareholders Agreement by and among the above parties on September 16, 2020 (as amended or modified from time to time, hereinafter collectively referred to as “**Shareholders Agreement**”).

The Join in Party hereby agrees and acknowledges that, by execution of this Joinder Agreement, the Join in Party shall be deemed to be a Party to the Shareholders Agreement as of the date of this Joinder Agreement, and shall have all of the rights and obligations of \_\_\_\_\_ under the Shareholders Agreement, as if it had executed the Shareholders Agreement as an original signatory party of the Shareholders Agreement. The Join in Party fully accepts, as of the date of this Joinder Agreement, and agrees to be bound by, all terms and conditions contained in the Shareholders Agreement.

This Joinder Agreement shall be deemed as a part of the Shareholders Agreement, and shall, together with the Shareholders Agreement, constitute one single agreement among the Parties to the Shareholders Agreement (including but not limited to the Join in Party).

IN WITNESS WHEREOF, the Join in Party has caused this Joinder Agreement to be duly executed by its duly authorized representative as of the following date.

DATE: \_\_\_\_\_

[Name of the Join in Party]

SIGNED BY

Name: [ • ]

Title: Chairman

Address for notices:

Amendment and Supplementary Agreement III to the NIO China Shareholders Agreement - Exhibit I

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**Amendment and Supplementary Agreement IV to the NIO China Shareholders Agreement**

This Amendment and Supplementary Agreement IV to the NIO China Shareholders Agreement (this “**Amendment and Supplementary Agreement IV**”) is made on September 25, 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 Amendment and Supplementary Agreement IV, 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 North Dong Ao Wei Road, Luosa Avenue, Rongcheng County, Baoding City, Hebei Province (“**SDIC**”);
- (2) **Advanced Manufacturing Industry Investment Fund II (Limited Partnership)**, a limited liability partnership duly established and existing under the Laws of the PRC, holding a business license with unified social credit code of 91320191MA1YK7YA6J, and with its executive partner being CMG-SDIC Capital Management Co., Ltd. and registered office at Room 1380, Fuying Building, No. 99 Tuanjie Road, Research and Innovation Park, Jiangbei New District, Nanjing City (“**Advanced Manufacturing Industry Investment Fund**”);
- (3) **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.**”);
- (4) **Anhui Jintong New Energy Automobile II Fund Partnership (Limited Partnership)**, a limited liability partnership duly established and existing under the Laws of the PRC, holding a business license with unified social credit code of 91340800MA2UE54B3J, and with its executive partner being Anhui Jintong New Energy II Investment Management Partnership (Limited Partnership) and registered office at Room 616-1, Building#1, Zhumeng New Zone, No. 188 Wenyuan Road, Yixiu District, Anqing City, Anhui Province (“**New Energy Automobile Fund**”);
- (5) **Anhui Provincial Sanzhong Yichuang Industry Development Fund Co., Ltd.**, a limited liability company duly established and existing under the Laws of China, with unified social credit code of 91340100MA2NUJ2A1H, and with its legal

representative being XIE Hai and registered address at Room 424, Science and Technology Innovation Center, No. 860 Wangjiang West Road, High-tech District, Hefei City (“**Anhui Sanzhong Yichuang**”);

- (6) **Hefei Construction Investment Holdings (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 (the “**Hefei Investor**”);
- (7) **Hefei Jianheng New Energy Automobile Investment Fund Partnership (Limited Partnership)**, a limited liability partnership duly established and existing under the Laws of the PRC, holding a business license with unified social credit code of 91340111MA2UU69EX8, and with its executive partner being Hefei Xinping Investment Management Co., Ltd. and registered address at Room 101, 1<sup>st</sup> Floor, Area G, Intelligent Equipment Technology Park, No. 3963 Susong Road, Economic and Technological Development Zone, Hefei City, Anhui Province (“**Jianheng New Energy Fund**”);
- (8) **NIO Inc.**, a company duly established and validly existing under the Laws of the Cayman Islands, with its registered address at PO Box 309, Uglan House, Grand Cayman, KY1-1104, Cayman Islands, and currently listed on the New York Stock Exchange of the United States (NYSE: NIO) (“**NIO Inc.**”);
- (9) **NIO Nextev Limited**, a private company limited by shares duly organized and validly existing under the Laws of Hong Kong Special Administrative Region of the PRC, with its company number of 2199750, and registered office at 30<sup>th</sup> Floor, Jardine House, Once Connaught Place, Central, Hong Kong (“**NIO HK**”);
- (10) **NIO User Enterprise Limited**, a private company limited by shares duly organized and validly existing under the laws of Hong Kong Special Administrative Region of the PRC, with its company number of 2487823 and registered office at 30<sup>th</sup> Floor, Jardine House, Once Connaught Place, Central, Hong Kong (“**UE HK**”);
- (11) **NIO Power Express Limited**, a private company limited by shares duly organized and validly existing under the Laws of Hong Kong Special Administrative Region of the PRC, with its company number of 2472480 and registered office at 30<sup>th</sup> Floor, Jardine House, Once Connaught Place, Central, Hong Kong (“**PE HK**”, together with NIO HK, UE HK and NIO Inc., the “**NIO Parties**”); and
- (12) **NIO (Anhui) Holding Co., Ltd.**, a limited liability company duly established and duly existing under the Laws of the PRC, holding a business license with



unified social credit code of 91340111MA2RAD3M4R, and with its legal representative being LI Bin and registered address at West Susong Road and North Shenzhen Road, Economic and Technological Development District, Hefei City, Anhui Province (the “**Target Company**”).

For purposes of this Amendment and Supplementary Agreement IV, each of the above parties shall be referred to individually as a “Party” and collectively as the “Parties”.

Unless otherwise provided for in this Amendment and Supplementary Agreement IV, all terms used herein shall have the same meanings and interpretation rules as those provided under the Shareholders Agreement (as defined below).

WHEREAS:

- (a) SDIC, Anhui High-tech Co., the Hefei Investor, the NIO Parties and the Target Company have entered into the NIO China Investment Agreement (“**Investment Agreement**”) and the NIO China Shareholders Agreement (“**Shareholders Agreement**”) dated as of April 29, 2020;
- (b) SDIC, Advanced Manufacturing Industry Investment Fund, Anhui High-tech Co., New Energy Automobile Fund, the Hefei Investor, Jianheng New Energy Fund, NIO Parties and the Target Company have entered into the Amendment and Supplementary Agreement to the NIO China Shareholders Agreement dated as of June 5, 2020 (“**Amendment and Supplementary Agreement I**”). Pursuant to the Amendment and Supplementary Agreement I, SDIC designates Advanced Manufacturing Industry Investment Fund, Anhui High-tech Co. designates New Energy Automobile Fund and the Hefei Investor designates Jianheng New Energy Fund to assume all or part of their respective rights and obligations under the Shareholders Agreement;
- (c) SDIC, Advanced Manufacturing Industry Investment Fund, Anhui High-tech Co., New Energy Automobile Fund, the Hefei Investor, Jianheng New Energy Fund, Anhui Sanzhong Yichuang, NIO Parties and the Target Company have entered into the Amendment and Supplementary Agreement II to the NIO China Shareholders Agreement dated as of June 18, 2020 (“**Amendment and Supplementary Agreement II**”). Pursuant to the Amendment and Supplementary Agreement II, Anhui High-tech Co. designates Anhui Sanzhong Yichuang to assume all or part of its rights and obligations under the Shareholders Agreement and the Amendment and Supplementary Agreement I;
- (d) Jianheng New Energy Fund and NIO HK entered into the Equity Purchase Agreement with NIO HK on September 16, 2020, under which, NIO HK exercised the redemption right of NIO Parties under the Shareholders Agreement, the Amendment and Supplementary Agreement I and the Amendment and

Supplementary Agreement II, and purchased the Target Company's registered capital of RMB 437,062,937.06 (8.612% of the total registered capital of the Target Company). After the completion of the transaction, Jianheng New Energy Fund holds 8.612% of the registered capital of the Target Company in total and NIO HK holds 58.645% of the registered capital of the Target Company in total; SDIC, Advanced Manufacturing Industry Investment Fund, Anhui High-tech Co., New Energy Automobile Fund, Hefei Investor, Jianheng New Energy Fund, Anhui Sanzhong Yichuang, NIO Parties and Target Company entered into the Amendment and Supplementary Agreement III to the NIO China Shareholders Agreement ("**Amendment and Supplementary Agreement III**") to make specific amendments and supplements to certain terms of the Shareholders Agreement, the Amendment and Supplementary Agreement I and the Amendment and Supplementary Agreement II; and

- (e) The Parties unanimously agree to make specific amendments and supplements to certain terms of the Shareholders Agreement, the Amendment and Supplementary Agreement I, the Amendment and Supplementary Agreement II and the Amendment and Supplementary Agreement III in accordance with this Amendment and Supplementary Agreement IV.

NOW, THEREFORE, the Parties unanimously agree as follows:

1. The Parties unanimously agree and acknowledge that pursuant to the Capital Increase Agreement entered into by and between the relevant parties and NIO HK on September 25, 2020, NIO HK is to unilaterally subscribe to the newly increased registered capital of the Target Company at the price of capital increase in cash as provided under the Investment Agreement by investing an amount of no more than USD 600,000,000 in cash, after which, NIO HK will subscribe to all newly increased registered capital of the Target Company of RMB 742,153,846.15 and the Target Company's registered capital will be changed from RMB 5,074,773,741.26 to RMB 5,816,927,587.41, of which NIO HK will hold 63.921% of the Target Company's registered capital in total.
2. Article 1 of the whereas clause under the Shareholders Agreement shall be amended as follows:

"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)."

3. Article 2 of the whereas clause under the Shareholders Agreement shall be amended as follows:

“Pursuant to the Equity Purchase Agreement entered into by and between Jianheng New Energy Fund and NIO HK dated as of September 16, 2020, NIO HK exercised the redemption right of the NIO Parties under the NIO China Shareholders Agreement dated as of April 29, 2020, the Amendment and Supplementary Agreement to the NIO China Shareholders Agreement dated as of June 5, 2020 and the Amendment and Supplementary Agreement II to the NIO China Shareholders Agreement dated as of June 18, 2020, to purchase the Target Company’s registered capital of RMB 437,062,937.06 from Jianheng New Energy Fund, representing 8.612% of the Target Company’s total registered capital. Pursuant to Capital Increase Agreement entered into by and between the relevant parties and NIO HK on September 25, 2020, NIO HK is to exercise the NIO Capital Increase Right under the NIO China Shareholders Agreement dated as of April 29, 2020 to unilaterally subscribe to the newly increased registered capital of the Target Company at the price of capital increase in cash as provided under the Shareholders Agreement by investing an amount of no more than USD 600,000,000 in cash. Upon completion of the foregoing transaction, the Target Company’s registered capital will be RMB 5,816,927,587.41, of which NIO HK holds 63.921% of the Target Company’s registered capital in total.”

4. Article 3 of the whereas clause under the Shareholders Agreement shall be amended as follows:

“The Parties intend to make arrangements in terms of corporate governance of the Target Company, and rights and obligations of the Parties through this Agreement.”

5. Certain definitions under the Shareholders Agreement shall be amended as follows:

Investment Agreement	means	the Investment Agreement in respect of NIO China signed by the relevant parties on April 29, 2020, the Amendment and Supplementary Agreement to Investment Agreement on NIO China (“Amendment and Supplementary Agreement I”) signed by the relevant parties on June 5, 2020, the Amendment and Supplementary Agreement II to Investment Agreement on NIO China (“Amendment and Supplementary Agreement II”) signed by the relevant parties on June 18, 2020, and the exhibits or schedules to all foregoing agreements.
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NIO Parties Capital Increase Agreement	means	the Capital Increase Agreement signed by the relevant parties and NIO HK on September 25, 2020, pursuant to which, NIO HK is to exercise the NIO Parties Capital Increase Right under the NIO China Shareholders Agreement signed by NIO HK and the relevant parties on April 29, 2020, to unilaterally subscribe to the newly increased registered capital of the Target Company at the price of capital increase in cash as provided under the NIO China Shareholders Agreement by investing an amount of no more than USD 600,000,000 in cash; each Party agrees the exchange rate between USD and RMB for subscription price of the newly increased capital shall be calculated at the rate of 1:7.0752.
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The definitions in Clause 1.1 of the Shareholders Agreement shall be deleted:

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

6. Clause 5.1 “Registered Capital” of the Shareholders Agreement shall be amended as follows:

The registered capital of the Company shall be RMB 5,816,927,587.41, of which:

- 5.1.1 NIO HK shall subscribe to RMB 3,718,247,048.20, representing 63.921% of the registered capital of the Company, of which RMB 92,912,587.42 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.; RMB 239,639,258.59 shall be contributed in the form of intellectual property rights; and the remaining 1,091,804,195.79 shall be shall be contributed in cash in USD;
- 5.1.2 UE HK shall subscribe to RMB 1,252,136,433.60, representing 21.526% of the registered capital of the 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 1.029% of the registered capital of the Company;
- 5.1.4 Advanced Manufacturing Industry Investment Fund shall subscribe to RMB 174,825,174.83, which shall be contributed in cash in RMB, representing 3.005% of the registered capital of the Company;
- 5.1.5 Anhui Sanzhong Yichuang shall subscribe to RMB 139,860,139.86, which shall be contributed in cash in RMB, representing 2.404% of the registered capital of the Company;
- 5.1.6 New Energy Automobile Fund shall subscribe to RMB 34,965,034.97, which shall be contributed in cash in RMB, representing 0.601% of the registered capital of the Company;
- 5.1.7 Jianheng New Energy Fund shall subscribe to RMB 437,062,937.07, which shall be contributed in cash in RMB, representing 7.514% of the registered capital of the Company.”

7. The form set forth in Clause 5.2.1 of the Shareholders Agreement shall be amended as follows:

<b>Shareholders</b>	<b>Subscribed Registered Capital (RMB, Yuan)</b>	<b>Form of Capital Contribution</b>	<b>Timing of Capital Contribution</b>
NIO Nextev Limited	3,718,247,048.20	RMB 92,912,587.42 of the registered capital contributed in cash in Renminbi, which has been contributed in full as of the Execution Date hereof; RMB 1,091,804,195.79 of the registered capital contributed in cash in USD; RMB	Within one (1) year after the closing in accordance with the Investment Agreement; among others, RMB 742,153,846.15 shall be paid on the closing date as defined in the NIO Parties Capital Increase Agreement

		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	
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
Advanced Manufacturing Industry Investment Fund II (Limited Partnership)	174,825,174.83	Contributed in cash in Renminbi	On the fifth (5th) working day after all of the Investors' closing conditions under the Investment Agreement have been proved to be satisfied or waived
Anhui Provincial Sanzhong Yichuang	139,860,139.86	Contributed in cash in Renminbi	In principle, on the fifth (5th) working day after all of the Investors' closing conditions

Industry Development Fund Co, Ltd.			under the Investment Agreement have been proved to be satisfied or waived; and shall in no event be later than September 30, 2020
Anhui Jintong New Energy Automobile II Fund Partnership (Limited Partnership)	34,965,034.97	Contributed in cash in Renminbi	In principle, on the fifth (5th) 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 Jianheng New Energy Automobile Investment Fund Partnership (Limited Partnership)	437,062,937.07	Contributed in cash in Renminbi	On or before March 31, 2021 in accordance with the Investment Agreement, and shall be subject to the completion of the private equity fund filing with the Asset Management Association of China
Total	5,816,927,587.41	/	/

8. Clause 9.2 of the Shareholders Agreement shall be deleted from the Shareholders Agreement and remains in blank.
9. Clause 10.1.1 of the Shareholders Agreement shall be amended as follows:  

“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. Exhibit I to the Shareholders Agreement shall be replaced by Exhibit I to this Amendment and Supplementary Agreement IV.
11. This Amendment and Supplementary Agreement IV shall be governed by, and construed in accordance with the laws of the PRC.

12. Any dispute, controversy, difference or claim arising out of or relating to this Amendment and Supplementary Agreement IV 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 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. 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. The arbitration award shall be final and binding on the parties to the arbitration. 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.
  
13. This Amendment and Supplementary Agreement IV shall come into force and become binding on the Parties upon the execution by the legal representatives, authorized signatories or the respective authorized representatives and the affixation of their respective company chops. The sequence of priority of the Shareholders Agreement, the Amendment and Supplementary Agreement I, the Amendment and Supplementary Agreement II, the Amendment and Supplementary Agreement III and this Amendment and Supplementary Agreement IV shall be:
  - (1) In case of conflict between any provisions of the Shareholders Agreement, the Amendment and Supplementary Agreement I, the Amendment, the Amendment and Supplementary Agreement II, the Supplementary Agreement III and this Amendment and Supplementary Agreement IV, this Amendment and Supplementary Agreement IV shall prevail;
  - (2) In case of conflict between any provisions of the Shareholders Agreement and the Amendment and Supplementary Agreement I, the Amendment and Supplementary Agreement I shall prevail;
  - (3) In case of conflict between any provisions of the Amendment and Supplementary Agreement I and the Amendment and Supplementary Agreement II, the Amendment and Supplementary Agreement II shall prevail;



- (4) In case of conflict between any provisions of the Amendment and Supplementary Agreement II and the Amendment and Supplementary Agreement III, the Amendment and Supplementary Agreement III shall prevail;
- (5) For any matter not mentioned herein, the Amendment and Supplementary Agreement I, the Amendment and Supplementary Agreement II and the Amendment and Supplementary Agreement III shall prevail; if such matter is not mentioned in the Amendment and Supplementary Agreement I, the Amendment and Supplementary Agreement II and the Amendment and Supplementary Agreement III, the Shareholders Agreement shall prevail.

Unless otherwise provided herein, the validity of other terms of the Shareholders Agreement, the Amendment and Supplementary Agreement I, the Amendment and Supplementary Agreement II and the Amendment and Supplementary Agreement III shall not be affected by this Amendment and Supplementary Agreement IV.

- 14. This Amendment and Supplementary Agreement IV shall be written in Chinese and be executed in thirteen (13) originals, each of which shall have the same legal effect. Each Party shall hold one (1) original.

[SIGNATURE PAGES FOLLOW]

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*This is the Signature Page to the Amendment and Supplementary Agreement IV to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement IV to be executed as of the date first written above.

**CMG-SDIC Capital Management Co., Ltd.**

(Company Chop)

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement IV to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement IV to be 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: Authorized Signatory

Signature Page

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*(This is (the Signature Page to the Amendment and Supplementary Agreement IV to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement IV to be 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: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement IV to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement IV to be executed as of the date first written above.

**Advanced Manufacturing Industry Investment Fund II  
(Limited Partnership)**

(Company Chop)

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement IV to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement IV to be executed as of the date first written above.

**Anhui Jintong New Energy Automobile II Fund Partnership (Limited Partnership)**

(Company Chop)

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement IV to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement IV to be executed as of the date first written above.

**Hefei Jianheng New Energy Automobile Investment Fund Partnership (Limited Partnership)**

(Company Chop)

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement IV to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement IV to be executed as of the date first written above.

**Anhui Provincial Sanzhong Yichuang Industry  
Development Fund Co, Ltd.**

(Company Chop)

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement IV to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement IV to be executed as of the date first written above.

**NIO Inc.**

(Company Chop)

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement IV to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement IV to be executed as of the date first written above.

**NIO Nextev Limited**

(Company Chop)

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement IV to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement IV to be executed as of the date first written above.

**NIO User Enterprise Limited**

(Company Chop)

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement IV to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement IV to be executed as of the date first written above.

**NIO Power Express Limited**

(Company Chop)

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement IV to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement IV to be executed as of the date first written above.

**NIO (Anhui) Holding Co., Ltd**

(Company Chop)

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title: Authorized Signatory

Signature Page

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## Exhibit I: Joinder Agreement

### Joinder Agreement

This Joinder Agreement (this “**Joinder Agreement**”) is executed and delivered by the undersigned party (the “**Join in Party**”) on the following date in accordance with (a) the 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., NIO Inc., NIO Nextev Limited, NIO User Enterprise Limited, NIO Power Express Limited and NIO (Anhui) Holding Co., Ltd. dated as of April 29, 2020, (b) the Amendment and Supplementary Agreement to the NIO China Shareholders Agreement by and among CMG-SDIC Capital Management Co., Ltd., Advanced Manufacturing Industry Investment Fund II (Limited Partnership), Anhui Provincial Emerging Industry Investment Co., Ltd., Anhui Jintong New Energy Automobile II Fund Partnership (Limited Partnership), Hefei City Construction and Investment Holding (Group) Co., Ltd., Hefei Jianheng New Energy Automobile Investment Fund Partnership (Limited Partnership), NIO Inc., NIO Nextev Limited, NIO User Enterprise Limited, NIO Power Express Limited and NIO (Anhui) Holding Co., Ltd. dated as of June 5, 2020, (c) the Amendment and Supplementary Agreement II to the NIO China Shareholders Agreement by and among CMG-SDIC Capital Management Co., Ltd., Advanced Manufacturing Industry Investment Fund II (Limited Partnership), Anhui Provincial Emerging Industry Investment Co., Ltd., Anhui Jintong New Energy Automobile II Fund Partnership (Limited Partnership), Anhui Provincial Sanzhong Yichuang Industry Development Fund Co, Ltd., Hefei City Construction and Investment Holding (Group) Co., Ltd., Hefei Jianheng New Energy Automobile Investment Fund Partnership (Limited Partnership), NIO Inc., NIO Nextev Limited, NIO User Enterprise Limited, NIO Power Express Limited and NIO (Anhui) Holding Co., Ltd. dated as of June 18, 2020, the Amendment and Supplementary Agreement III to the NIO China Shareholders Agreement entered into by and among the above parties dated as of September 16, 2020 and the Amendment and Supplementary Agreement IV to the NIO China Shareholders Agreement entered into by and among the above parties dated as of September 25, 2020 (as amended or modified from time to time, hereinafter collectively referred to as “**Shareholders Agreement**”).

The Join in Party hereby agrees and acknowledges that, by execution of this Joinder Agreement, the Join in Party shall be deemed to be a Party to the Shareholders Agreement as of the date of this Joinder Agreement, and shall have all of the rights and obligations of \_\_\_\_\_ under the Shareholders Agreement, as if it had executed the Shareholders Agreement as an original signatory party of the Shareholders Agreement. The Join in Party fully accepts, as of the date of this Joinder Agreement, and agrees to be bound by, all terms and conditions contained in the Shareholders Agreement.

This Joinder Agreement shall be deemed as a part of the Shareholders Agreement, and shall, together with the Shareholders Agreement, constitute one single agreement among the Parties to the Shareholders Agreement (including but not limited to the Join in Party).

IN WITNESS WHEREOF, the Join in Party has caused this Joinder Agreement to be duly executed by its duly authorized representative as of the following date.

DATE: \_\_\_\_\_

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[Name of the Join in Party]

SIGNED BY \_\_\_\_\_

Name: [•]

Title: Chairman

Address for notices:

Amendment and Supplementary Agreement IV to the NIO China Shareholders Agreement - Exhibit I

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**Amendment and Supplementary Agreement V to the NIO China Shareholders Agreement**

This Amendment and Supplementary Agreement V to the NIO China Shareholders Agreement (this “**Amendment and Supplementary Agreement V**”) is made on January 26, 2021 (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 Amendment and Supplementary Agreement V, 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 North Dong Ao Wei Road, Luosa Avenue, Rongcheng County, Baoding City, Hebei Province (“**SDIC**”);
- (2) **Advanced Manufacturing Industry Investment Fund II (Limited Partnership)**, a limited liability partnership duly established and existing under the Laws of the PRC, holding a business license with unified social credit code of 91320191MA1YK7YA6J, and with its executive partner being CMG-SDIC Capital Management Co., Ltd. and registered office at Room 1380, Fuying Building, No. 99 Tuanjie Road, Research and Innovation Park, Jiangbei New District, Nanjing City (“**Advanced Manufacturing Industry Investment Fund**”);
- (3) **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.**”);
- (4) **Anhui Jintong New Energy Automobile II Fund Partnership (Limited Partnership)**, a limited liability partnership duly established and existing under the Laws of the PRC, holding a business license with unified social credit code of 91340800MA2UE54B3J, and with its executive partner being Anhui Jintong New Energy II Investment Management Partnership (Limited Partnership) and registered office at Room 616-1, Building#1, Zhumeng New Zone, No. 188 Wenyuan Road, Yixiu District, Anqing City, Anhui Province (“**New Energy Automobile Fund**”);
- (5) **Anhui Provincial Sanzhong Yichuang Industry Development Fund Co., Ltd.**, a limited liability company duly established and existing under the Laws of China, with unified social credit code of 91340100MA2NUJ2A1H, and with its legal



representative being XIE Hai and registered address at Room 424, Science and Technology Innovation Center, No. 860 Wangjiang West Road, High-tech District, Hefei City (“**Anhui Sanzhong Yichuang**”);

- (6) **Hefei Construction Investment Holdings (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 (the “**Hefei Investor**”);
- (7) **Hefei Jianheng New Energy Automobile Investment Fund Partnership (Limited Partnership)**, a limited liability partnership duly established and existing under the Laws of the PRC, holding a business license with unified social credit code of 91340111MA2UU69EX8, and with its executive partner being Hefei Xinping Investment Management Co., Ltd. and registered address at Room 101, 1<sup>st</sup> Floor, Area G, Intelligent Equipment Technology Park, No. 3963 Susong Road, Economic and Technological Development Zone, Hefei City, Anhui Province (“**Jianheng New Energy Fund**”);
- (8) **NIO Inc.**, a company duly established and validly existing under the Laws of the Cayman Islands, with its registered address at PO Box 309, Uglan House, Grand Cayman, KY1-1104, Cayman Islands, and currently listed on the New York Stock Exchange of the United States (NYSE: NIO) (“**NIO Inc.**”);
- (9) **NIO Nextev Limited**, a private company limited by shares duly organized and validly existing under the Laws of Hong Kong Special Administrative Region of the PRC, with its company number of 2199750, and registered office at 30<sup>th</sup> Floor, Jardine House, Once Connaught Place, Central, Hong Kong (“**NIO HK**”);
- (10) **NIO User Enterprise Limited**, a private company limited by shares duly organized and validly existing under the laws of Hong Kong Special Administrative Region of the PRC, with its company number of 2487823 and registered office at 30<sup>th</sup> Floor, Jardine House, Once Connaught Place, Central, Hong Kong (“**UE HK**”);
- (11) **NIO Power Express Limited**, a private company limited by shares duly organized and validly existing under the Laws of Hong Kong Special Administrative Region of the PRC, with its company number of 2472480 and registered office at 30<sup>th</sup> Floor, Jardine House, Once Connaught Place, Central, Hong Kong (“**PE HK**”, together with NIO HK, UE HK and NIO Inc., the “**NIO Parties**”); and
- (12) **NIO Holding Co., Ltd.**, a limited liability company duly established and duly existing under the Laws of the PRC, holding a business license with unified social

credit code of 91340111MA2RAD3M4R, and with its legal representative being LI Bin and registered address at West Susong Road and North Shenzhen Road, Economic and Technological Development District, Hefei City, Anhui Province (the “**Target Company**”).

For purposes of this Amendment and Supplementary Agreement V, each of the above parties shall be referred to individually as a “Party” and collectively as the “Parties”.

Unless otherwise provided for in this Amendment and Supplementary Agreement V, all terms used herein shall have the same meanings and interpretation rules as those provided under the Shareholders Agreement (as defined below).

WHEREAS:

- (a) SDIC, Anhui High-tech Co., the Hefei Investor, the NIO Parties and the Target Company have entered into the NIO China Investment Agreement (the “**Investment Agreement**”) and the NIO China Shareholders Agreement (the “**Shareholders Agreement**”) dated as of April 29, 2020;
- (b) SDIC, Advanced Manufacturing Industry Investment Fund, Anhui High-tech Co., New Energy Automobile Fund, the Hefei Investor, Jianheng New Energy Fund, NIO Parties and the Target Company have entered into the Amendment and Supplementary Agreement to the NIO China Shareholders Agreement dated as of June 5, 2020 (the “**Amendment and Supplementary Agreement I**”). Pursuant to the Amendment and Supplementary Agreement I, SDIC designates Advanced Manufacturing Industry Investment Fund, Anhui High-tech Co. designates New Energy Automobile Fund and the Hefei Investor designates Jianheng New Energy Fund to assume all or part of their respective rights and obligations under the Shareholders Agreement;
- (c) SDIC, Advanced Manufacturing Industry Investment Fund, Anhui High-tech Co., New Energy Automobile Fund, the Hefei Investor, Jianheng New Energy Fund, Anhui Sanzhong Yichuang, NIO Parties and the Target Company have entered into the Amendment and Supplementary Agreement II to the NIO China Shareholders Agreement dated as of June 18, 2020 (the “**Amendment and Supplementary Agreement II**”). Pursuant to the Amendment and Supplementary Agreement II, Anhui High-tech Co. designates Anhui Sanzhong Yichuang to assume all or part of its rights and obligations under the Shareholders Agreement and the Amendment and Supplementary Agreement I;
- (d) Jianheng New Energy Fund and NIO HK entered into the Equity Purchase Agreement with NIO HK on September 16, 2020, under which, NIO HK exercised NIO Parties Redemption Right under the Shareholders Agreement, the Amendment and Supplementary Agreement I and the Amendment and

Supplementary Agreement II, and purchased the Target Company's registered capital of RMB 437,062,937.06; SDIC, Advanced Manufacturing Industry Investment Fund, Anhui High-tech Co., New Energy Automobile Fund, Hefei Investor, Jianheng New Energy Fund, Anhui Sanzhong Yichuang, NIO Parties and Target Company entered into the Amendment and Supplementary Agreement III to the NIO China Shareholders Agreement (the "**Amendment and Supplementary Agreement III**") to make specific amendments and supplements to certain terms of the Shareholders Agreement, the Amendment and Supplementary Agreement I and the Amendment and Supplementary Agreement II;

- (e) The Target Company, the NIO Parties, Advanced Manufacturing Fund, New Energy Automobile Fund, Anhui Sanzhong Yichuang and Jianheng New Energy Fund entered into the Capital Increase Agreement dated as of September 25, 2020 under which NIO HK exercised the NIO Capital Increase Right under the Shareholders Agreement to subscribe to the Target Company's newly increased registered capital of RMB 742,153,846.15; SDIC, Advanced Manufacturing Industry Investment Fund, Anhui High-tech Co., New Energy Automobile Fund, the Hefei Parties, Jianheng New Energy Fund, Anhui Sanzhong Yichuang, the NIO Parties and the Target Company entered into the Amendment and Supplementary Agreement IV to the NIO China Shareholders Agreement (the "**Amendment and Supplementary Agreement IV**") to make specific amendments and supplements to the Shareholders Agreement, the Amendment and Supplementary Agreement I, the Amendment and Supplementary Agreement II and the Amendment and Supplementary Agreement III;
- (f) The name of the Target Company was changed from NIO (Anhui) Holding Co., Ltd. to NIO Holding Co., Ltd. on October 13, 2020; and
- (g) The Parties unanimously agree to make specific amendments and supplements to certain terms of the Shareholders Agreement, the Amendment and Supplementary Agreement I, the Amendment and Supplementary Agreement II, the Amendment and Supplementary Agreement III and the Amendment and Supplementary Agreement IV in accordance with this Amendment and Supplementary Agreement V.

NOW, THEREFORE, the Parties unanimously agree as follows:

1. The Parties unanimously agree and acknowledge that:

Pursuant to the Capital Increase and Equity Purchase Agreement entered into by and between the Target Company, the NIO Parties, Advanced Manufacturing Industry Investment Fund, New Energy Automobile Fund, Anhui Sanzhong Yichuang, Jianheng New Energy on January 26, 2021, NIO HK is to purchase

the Target Company’s registered capital of RMB 174,825,174.83 from Jianheng New Energy Fund and the Target Company’s registered capital of RMB 17,482,517.48 from Advanced Manufacturing Industry Investment, and subscribe to the newly increased registered capital of RMB 349,650,349.65 at the subscription price of RMB 10,000,000,000 in cash or USD equivalent in cash.

2. Article 2 of the whereas clause under the Shareholders Agreement shall be amended as follows:

“Pursuant to the Equity Purchase Agreement entered into by and between Jianheng New Energy Fund and NIO HK on September 16, 2020, NIO HK has exercised the redemption right of the NIO Parties under the NIO China Shareholders Agreement dated as of April 29, 2020, the Amendment Supplementary Agreement to the NIO China Shareholders Agreement dated as of June 5, 2020 and the Amendment and Supplementary Agreement II to the NIO China Shareholders Agreement dated as of June 18, 2020, to purchase the Target Company’s registered capital of RMB 437,062,937.06 from Jianheng New Energy Fund.  
Pursuant to Capital Increase Agreement entered into by and between the relevant parties and NIO HK on September 25, 2020, NIO HK has exercised NIO Capital Increase Right under the NIO China Shareholders Agreement dated as of April 29, 2020, to unilaterally subscribe to the Target Company’s newly increased registered capital of RMB 742,153,846.15 at the price of capital increase in cash as provided under the Shareholders Agreement by investing an amount of no more than USD 600,000,000 in cash.  
Pursuant to the Capital Increase and Equity Purchase Agreement entered into by and between the relevant parties and NIO HK on January 26, 2021, NIO HK is to purchase the Target Company’s registered capital of RMB 174,825,174.83 from Jianheng New Energy Fund and the Target Company’s registered capital of RMB 17,482,517.48 from Advanced Manufacturing Industry Investment, and subscribe to the newly increased registered capital of RMB 349,650,349.65 at the subscription price of RMB 10,000,000,000 in cash or USD equivalent in cash.”

3. Certain definition in the Shareholders Agreement shall be amended as follows:

NIO Parties Capital Increase and Equity Purchase Agreement	means	the Capital Increase and Equity Purchase Agreement entered into by and between the relevant parties and NIO HK on January 26, 2021, under which NIO HK is to purchase the Target Company’s registered capital of RMB 174,825,174.83 from Jianheng New Energy Fund, and the Target Company’s registered capital of RMB 17,482,517.48 from Advanced Manufacturing Industry Investment
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		Fund, and subscribe to the Target Company's newly increased registered capital of RMB 349,650,349.65 at the subscription price of RMB 10,000,000,000 or USD equivalent in cash
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4. Clause 3.1 of the Shareholder Agreement "Basic Information of the Target Company" shall be amended as follows:

“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 “蔚来控股有限公司”.

3.1.3 The name of the Target Company in English shall be “NIO Holding Co., Ltd.”.

3.1.2 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.”

The reference to the Chinese or English names of the Target Company in the Shareholder Agreement, the Amendment and Supplementary Agreement I, the Amendment and Supplementary Agreement II, the Amendment and Supplementary Agreement III and the Amendment and Supplementary Agreement IV shall be amended correspondingly.

5. Section 5.1 of the Shareholders Agreement "Registered Capital" shall be amended as follows:

“The registered capital of the Target Company shall be RMB 6,166,577,937.06, of which:

5.1.1 NIO HK shall subscribe to RMB 4,260,205,090.16, representing 69.085% of the registered capital of the Target Company, of which, RMB 285,220,279.73 shall be contributed in cash in RMB, RMB 2,293,891,006.40 shall be contributed in the form of equity interests in NIO Co., Ltd. (both have been paid up as of the Execution Date hereof); RMB 239,639,258.59 shall be contributed in the form of intellectual property rights, which has not been paid up as of the Execution Date hereof yet; the remaining RMB 1,441,454,545.44 shall

be contributed in the form of RMB in cash or USD equivalent in cash, of which RMB 1,091,804,195.79 has been paid up as of the Execution Date hereof and the remaining RMB 349,650,349.65 shall be paid up by the prescribed date under the NIO Parties Capital Increase and Equity Purchase Agreement;

- 5.1.2 UE HK shall subscribe to RMB 1,252,136,433.60, representing 20.305% of the registered capital of the Target Company, of which RMB 5,500,000 shall be contributed in cash in RMB, 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. All the foregoing contributions have been paid up as of the Execution Date hereof;
- 5.1.3 PE HK shall subscribe to RMB 59,830,818.88, representing 0.970% of the registered capital of the Target Company, which shall be contributed in the form of equity interests in NIO Energy Investment (Hubei) Co., Ltd. and has been paid up as of the Execution Date hereof;
- 5.1.4 Advanced Manufacturing Industry Investment Fund shall subscribe to RMB 157,342,657.35, representing 2.552% of the registered capital of the Target Company, which shall be contributed in cash in RMB and has been paid up as of the Execution Date hereof;
- 5.1.5 Anhui Sanzhong Yichuang shall subscribe to RMB 139,860,139.86, representing 2.268% of the registered capital of the Target Company, which shall be contributed in cash in RMB and has been paid up as of the Execution Date hereof;
- 5.1.6 New Energy Automobile Fund shall subscribe to RMB 34,965,034.97, representing 0.567% of the registered capital of the Target Company, which shall be contributed in cash in RMB and has been paid up as of the Execution Date hereof;
- 5.1.7 Jianheng New Energy Fund shall subscribe to RMB 262,237,762.24, representing 4.253% of the registered capital of the Target Company, which shall be contributed in cash in RMB and has been paid up as of the Execution Date hereof.”

- 6. The table in Clause 5.2.1 of the Shareholders Agreement shall be amended as follows:

Shareholders	Subscribed Registered Capital (RMB, Yuan)	Paid-in Registered Capital (RMB)	Form of Capital Contribution	Timing of Capital Contribution
NIO Nextev Limited	4,260,205,090.16	3,670,915,481.92	RMB 285,220,279.73 of the registered capital contributed in cash in Renminbi, which has been contributed in full as of the Execution Date hereof; RMB 1,441,454,545.44 of the registered capital contributed in cash in RMB or USD equivalent in cash, of which RMB 1,091,804,195.79 has been contributed in full as of the Execution and the remaining 349,650,349.65 to be paid up on the prescribed date under the NIO Parties Capital Increase and Equity Purchase Agreement; RMB 2,293,891,006.40 of the registered capital contributed in equity interests in NIO Co., Ltd., which has been contributed in full as of the Execution	Within one (1) year after the closing in accordance with the Investment Agreement; among others, RMB 349,650,349.65 shall be paid on the prescribed date under the NIO Parties Capital Increase and Equity Transfer Agreement

			Date hereof; RMB 239,639,258.59 of the registered capital contributed in intellectual property rights, which has not been paid up yet as of the Execution Date hereof.	
NIO User Enterprise Limited	1,252,136,433.60	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, which has been contributed in full as of the Execution Date hereof;  RMB 501,881,188.84 of the registered capital contributed in equity interests in Shanghai NIO Sales and Services Co., Ltd., which has been contributed in full as of the Execution Date hereof	On or before March 31, 2021 in accordance with the Investment Agreement



NIO Power Express Limited	59,830,818.88	59,830,818.88	Contributed in equity interests in NIO Energy Investment (Hubei) Co., Ltd., which has been contributed in full as of the Execution Date hereof	Within sixty (60) working days after the execution date of the Investment Agreement
Advanced Manufacturing Industry Investment Fund II (Limited Partnership)	157,342,657.35	157,342,657.35	Contributed in cash in Renminbi, which has been contributed in full as of the Execution Date hereof	On the fifth (5th) working day after all of the Investors' closing conditions under the Investment Agreement have been proved to be satisfied or waived
Anhui Provincial Sanzhong Yichuang Industry Development Fund Co., Ltd.	139,860,139.86	139,860,139.86	Contributed in cash in Renminbi, which has been contributed in full as of the Execution Date hereof	In principle, on the fifth (5th) 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
Anhui Jintong New Energy Automobile II Fund	34,965,034.97	34,965,034.97	Contributed in cash in Renminbi, which has been contributed in full as of the	In principle, on the fifth (5th) working day after all of the

Partnership (Limited Partnership)			Execution Date hereof	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 Jianheng New Energy Automobile Investment Fund Partnership (Limited Partnership)	262,237,762.24	262,237,762.24	Contributed in cash in Renminbi, which has been contributed in full as of the Execution Date hereof	On or before March 31, 2021 in accordance with the Investment Agreement, and shall be subject to the completion of the private equity fund filing with the Asset Management Association of China
Total	6,166,577,937.06	5,577,288,328.82	/	/

7. Exhibit I to the Shareholders Agreement shall be replaced by Exhibit I to this Amendment and Supplementary Agreement V.
8. This Amendment and Supplementary Agreement V shall be governed by, and construed in accordance with the laws of the PRC.
9. Any dispute, controversy, difference or claim arising out of or relating to this Amendment and Supplementary Agreement V 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 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. 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. The arbitration award shall be final and binding on the parties to the arbitration. 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.

10. This Amendment and Supplementary Agreement V shall come into force and become binding on the Parties upon the execution by the legal representatives, authorized signatories or the respective authorized representatives and the affixation of their respective company chops. The sequence of priority of the Shareholders Agreement, the Amendment and Supplementary Agreement I, the Amendment and Supplementary Agreement II, the Amendment and Supplementary Agreement III, the Amendment and Supplementary Agreement IV and this Amendment and Supplementary Agreement V shall be:

- (1) this Amendment and Supplementary Agreement V;
- (2) the Amendment and Supplementary Agreement IV;
- (3) the Amendment and Supplementary Agreement III;
- (4) the Amendment and Supplementary Agreement II;
- (5) the Amendment and Supplementary Agreement I;
- (6) Shareholders Agreement.

For any matter not mentioned herein, the Amendment and Supplementary Agreement I, the Amendment and Supplementary Agreement II, the Amendment and Supplementary Agreement III and the Amendment and Supplementary Agreement IV shall prevail; for matters not mentioned in the Amendment and Supplementary Agreement I, the Amendment and Supplementary Agreement II, the Amendment and Supplementary Agreement III and the Amendment and Supplementary Agreement IV, the Shareholders Agreement shall prevail.

Unless otherwise provided herein, the validity of other terms of the Shareholders Agreement, the Amendment and Supplementary Agreement I, the Amendment and Supplementary Agreement II, the Amendment and Supplementary Agreement III and the Amendment and Supplementary Agreement IV shall not be affected by this Amendment and Supplementary Agreement V.

11. This Amendment and Supplementary Agreement V shall be written in Chinese and be executed in thirteen (13) 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 Amendment and Supplementary Agreement V to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement V to be executed as of the date first written above.

**CMG-SDIC Capital Management Co., Ltd.**

(Company Chop)

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement V to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement V to be 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: Authorized Signatory

Signature Page

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*(This is (the Signature Page to the Amendment and Supplementary Agreement V to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement V to be 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: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement V to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement V to be executed as of the date first written above.

**Advanced Manufacturing Industry Investment Fund II (Limited Partnership)**

(Company Chop)

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement V to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement V to be executed as of the date first written above.

**Anhui Jintong New Energy Automobile II Fund Partnership  
(Limited Partnership)**

(Company Chop)

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement V to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement V to be executed as of the date first written above.

**Hefei Jianheng New Energy Automobile Investment Fund Partnership (Limited Partnership)**

(Company Chop)

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement V to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement V to be executed as of the date first written above.

**Anhui Provincial Sanzhong Yichuang Industry Development Fund Co, Ltd.**

(Company Chop)

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement V to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement V to be executed as of the date first written above.

**NIO Inc.**

(Company Chop)

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement V to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement V to be executed as of the date first written above.

**NIO Nextev Limited**

(Company Chop)

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement V to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement V to be executed as of the date first written above.

**NIO User Enterprise Limited**

(Company Chop)

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement V to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement V to be executed as of the date first written above.

**NIO Power Express Limited**

(Company Chop)

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title: Authorized Signatory

Signature Page

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*(This is the Signature Page to the Amendment and Supplementary Agreement V to the NIO China Shareholders Agreement)*

IN WITNESS WHEREOF, the Parties have caused this Amendment and Supplementary Agreement V to be executed as of the date first written above.

**NIO Holding Co., Ltd**

(Company Chop)

By: /s/ Authorized Signatory

Name: Authorized Signatory

Title: Authorized Signatory

Signature Page

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## Exhibit I: Joinder Agreement

### Joinder Agreement

This Joinder Agreement (this “**Joinder Agreement**”) is executed and delivered by the undersigned party (the “**Join in Party**”) on the following date in accordance with (a) the 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., NIO Inc., NIO Nextev Limited, NIO User Enterprise Limited, NIO Power Express Limited and NIO (Anhui) Holding Co., Ltd. dated as of April 29, 2020, (b) the Amendment and Supplementary Agreement to the NIO China Shareholders Agreement by and among CMG-SDIC Capital Management Co., Ltd., Advanced Manufacturing Industry Investment Fund II (Limited Partnership), Anhui Provincial Emerging Industry Investment Co., Ltd., Anhui Jintong New Energy Automobile II Fund Partnership (Limited Partnership), Hefei City Construction and Investment Holding (Group) Co., Ltd., Hefei Jianheng New Energy Automobile Investment Fund Partnership (Limited Partnership), NIO Inc., NIO Nextev Limited, NIO User Enterprise Limited, NIO Power Express Limited and NIO Holding Co., Ltd. dated as of June 5, 2020, (c) the Amendment and Supplementary Agreement II to the NIO China Shareholders Agreement by and among CMG-SDIC Capital Management Co., Ltd., Advanced Manufacturing Industry Investment Fund II (Limited Partnership), Anhui Provincial Emerging Industry Investment Co., Ltd., Anhui Jintong New Energy Automobile II Fund Partnership (Limited Partnership), Anhui Provincial Sanzhong Yichuang Industry Development Fund Co, Ltd., Hefei City Construction and Investment Holding (Group) Co., Ltd., Hefei Jianheng New Energy Automobile Investment Fund Partnership (Limited Partnership), NIO Inc., NIO Nextev Limited, NIO User Enterprise Limited, NIO Power Express Limited and NIO Holding Co., Ltd. dated as of June 18, 2020, the Amendment and Supplementary Agreement III to the NIO China Shareholders Agreement entered into by and among the above parties dated as of September 16, 2020, the Amendment and Supplementary Agreement IV to the NIO China Shareholders Agreement entered into by and among the above parties dated as of September 25, 2020, and the Amendment and Supplementary Agreement V to the NIO China Shareholders Agreement entered into by and among the above parties dated as of January 26, 2021 (as amended or modified from time to time, hereinafter collectively referred to as “**Shareholders Agreement**”).

The Join in Party hereby agrees and acknowledges that, by execution of this Joinder Agreement, the Join in Party shall be deemed to be a Party to the Shareholders Agreement as of the date of this Joinder Agreement, and shall have all of the rights and obligations of \_\_\_\_\_ under the Shareholders Agreement, as if it had executed the Shareholders Agreement as an original signatory party of the Shareholders Agreement. The Join in Party fully accepts, as of the date of this Joinder Agreement, and agrees to be bound by, all terms and conditions contained in the Shareholders Agreement.

This Joinder Agreement shall be deemed as a part of the Shareholders Agreement, and shall, together with the Shareholders Agreement, constitute one single agreement among the Parties to the Shareholders Agreement (including but not limited to the Join in Party).

IN WITNESS WHEREOF, the Join in Party has caused this Joinder Agreement to be duly executed by its duly authorized representative as of the following date.

---

DATE:

[Name of the Join in Party]

SIGNED BY

\_\_\_\_\_  
Name: [ ]

Title: Chairman

Address for notices:

Amendment and Supplementary Agreement V to the NIO China Shareholders Agreement - Exhibit I

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NIO Inc.

*and*

Deutsche Bank Trust Company Americas, as Trustee

**INDENTURE**

dated as of January 15, 2021

**US\$750,000,000 0.00% CONVERTIBLE SENIOR NOTES DUE 2026**

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INDENTURE dated as of January 15, 2021 between NIO INC., a Cayman Islands exempted company, as issuer (the “**Company**,” as more fully set forth in Section 1.01) and DEUTSCHE BANK TRUST COMPANY AMERICAS, a New York banking corporation, as trustee (the “**Trustee**,” as more fully set forth in Section 1.01).

W I T N E S S E T H:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issuance of its 0.00% Convertible Senior Notes due 2026 (the “**Notes**”), initially in an aggregate principal amount not to exceed US\$750,000,000, 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, the Form of 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 Trustee, 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 ADSs**” shall have the meaning specified in Section 14.03(a).

“**Additional Amounts**” shall have the meaning specified in Section 4.07(a).

“**Additional Interest**” means all amounts, if any, payable pursuant to Section 2.03(c), Section 4.06(d), Section 4.06(e) and Section 6.03, as applicable.

**“Additional Interest Payment Date”** means each February 1 and August 1 of each year or, if the relevant date is not a Business Day, the immediately following Business Day, beginning on August 1, 2021.

**“Additional Interest Record Date,”** with respect to any Additional Interest Payment Date, shall mean the January 15 or July 15 (whether or not such day is a Business Day) immediately preceding the applicable February 1 or August 1 Additional Interest Payment Date, respectively.

**“ADS”** means an American Depositary Share, issued pursuant to the Unrestricted Deposit Agreement or Restricted Deposit Agreement, as applicable, 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 Unrestricted Deposit Agreement or the Restricted Deposit Agreement, as applicable, or any successor entity thereto.

**“ADS Depository”** means Deutsche Bank Trust Company Americas, as depository for the ADSs, or any successor entity thereto.

**“ADS Price”** shall have the meaning specified in Section 14.03(c).

**“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, the Conversion Agent and the Bid Solicitation Agent, in each case, unless the Company is acting in such capacity.

**“Applicable PRC Rate”** means (i) in the case of deduction or withholding of People’s Republic of China income tax, 10%, (ii) in the case of deduction or withholding of, or reduction for, People’s Republic of China value added tax (including any related local levies), 6.72%, or (iii) in the case of deduction or withholding of, or reduction for, both People’s Republic of China income tax and People’s Republic of China value added tax (including any related local levies), 16.72%.

**“applicable taxes”** shall have the meaning specified in Section 4.07(a).

**“Authenticating Agent”** shall have the meaning specified in Section 2.11.

**“Bid Solicitation Agent”** means the Company or any Person appointed by the Company to solicit bids for the Trading Price in accordance with Section 14.01(b)(i). The Company shall initially act as the Bid Solicitation Agent.

“**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.

“**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.

“**Cash Settlement**” shall have the meaning specified in Section 14.02(a).

“**Change in Tax Law**” shall have the meaning specified in Section 16.01.

“**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).

“**close of business**” means 5:00 p.m. (New York City time).

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended.

“**Combination Settlement**” shall have the meaning specified in Section 14.02(a).

“**Commission**” means the U.S. Securities and Exchange Commission.

“**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 Notice**” shall have the meaning specified in Section 15.01(a).

“**Company Order**” means a written order of the Company, signed by an Officer of the Company and delivered to the Trustee.

“**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 Price**” means as of any time, US\$1,000, *divided by* the Conversion Rate as of such time.

“**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 60 Wall Street, 24<sup>th</sup> Floor, Mail Stop: NYC60-2405, New York, New York, 10005, Attention: Trust & Agency Services, Corporates Team – NIO Inc. Facsimile: (732) 578-4635, 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).

“**Daily Conversion Value**” means, for each of the 20 consecutive Trading Days during the Observation Period, 5% of the product of (a) the Conversion Rate on such Trading Day and (b) the Daily VWAP for such Trading Day.

“**Daily Measurement Value**” means the Specified Dollar Amount (if any), *divided by* 20.

“**Daily Settlement Amount,**” for each of the 20 consecutive Trading Days during the Observation Period, shall consist of:

(a) cash in an amount equal to the lesser of (i) the Daily Measurement Value and (ii) the Daily Conversion Value on such Trading Day; and

(b) if the Daily Conversion Value on such Trading Day exceeds the Daily Measurement Value, a number of ADSs equal to (i) the difference between the Daily Conversion Value and the Daily Measurement Value, *divided by* (ii) the Daily VWAP for such Trading Day.

“**Daily VWAP**” means, for each of the 20 consecutive Trading Days during the relevant Observation Period, the per ADS volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page “NIO <equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one ADS on such Trading Day determined, using a volume-weighted average method, by a nationally recognized independent

investment banking firm retained for this purpose by the Company). The “**Daily VWAP**” shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

“**Default**” means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

“**Default Settlement Method**” shall have the meaning specified in Section 14.02(a)(iii).

“**Defaulted Amounts**” means any amounts on any Note (including, without limitation, the Redemption Price, the Repurchase Price, the Fundamental Change Repurchase Price, principal and Additional Interest, if any) that are payable but are not punctually paid or duly provided for.

“**Depository**” means, with respect to each Global Note, the Person specified in Section 2.05(c) and Section 2.05(e) as the Depository with respect to such Notes, until a successor shall have been appointed and become such pursuant to the applicable provisions of this Indenture, and thereafter, “**Depository**” shall mean or include such successor.

“**Designated Financial Institution**” shall have the meaning specified in Section 14.13(a).

“**Distributed Property**” shall have the meaning specified in Section 14.04(c).

“**DTC**” means The Depository Trust Company, a New York corporation.

“**Effective Date**” shall have the meaning specified in Section 14.03(c), except that, as used in Section 14.04 and Section 14.05, “**Effective Date**” means the first date on which ADSs trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

“**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.

“**Exchange Election**” shall have the meaning specified in Section 14.13(a).

“**Expiring Rights**” means any rights (other than in connection with a stockholders rights plan), 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 4 to the Form of Note.

“**Form of Fundamental Change Repurchase Notice**” shall mean the “Form of Fundamental Change Repurchase Notice” attached as Attachment 2 to the Form of Note .

“**Form of Note**” shall mean 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 .

“**Form of Repurchase Notice**” shall mean the “Form of Repurchase Notice” attached as Attachment 3 to the Form of Note .

“**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 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 ordinary share capital (including ordinary share capital held in the form of ADSs) representing more than 50% of the voting power of the Company’s ordinary share capital, 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 that directly or indirectly through one or more intermediaries is controlling, is controlled by, or is under common control with, any or all of the Permitted Holders) 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 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 ordinary share capital (including ordinary share capital held in the form of ADSs) 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 *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.

“**Initial Purchasers**” means Credit Suisse Securities (USA) LLC, Goldman Sachs (Asia) LLC, Morgan Stanley & Co. LLC and China International Capital Corporation Hong Kong Securities Limited as representatives of the several “Purchasers” (as defined in the Purchase Agreement).

“**Last Reported Sale Price**” of the ADSs (or such other security for which a closing price must be determined) 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 (or such other security) are traded. If (i) subject to the immediately succeeding clause (ii), the ADSs (or such other security) 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, and, if the ADSs (or such other security) 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 (or such other security) on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose and (ii) a Fundamental Change described in clause (d) of the definition thereof has occurred and the Newly Listed Equity has been accepted for listing on a Permitted Exchange, the “**Last Reported Sale Price**” on the relevant date will be determined, in a commercially reasonable manner, by a nationally recognized independent investment banking firm retained by the Company for this purpose. The “Last Reported Sale Price” shall be determined without regard to after-hours trading or any other trading outside of regular trading session hours.

“**Make-Whole Fundamental Change**” means any transaction or event described in clause (a), (b), (d) or (e) of the definition of Fundamental Change (determined after giving effect to any exceptions to or exclusions from such definition, including in the *proviso* immediately succeeding clause (e) of the definition thereof, but without regard to the *proviso* in clause (b) of the definition thereof).



**“Market Disruption Event”** means, for the purposes of determining amounts due upon conversion, (a) a failure by the primary U.S. national or regional securities exchange or market on which the ADSs are listed or admitted for trading to open for trading during its regular trading session or (b) the occurrence or existence prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for the ADSs for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in the ADSs or in any options contracts or futures contracts relating to the ADSs. **“Maturity Date”** means February 1, 2026.

**“Measurement Period”** shall have the meaning specified in Section 14.01(b)(i).

**“Merger Event”** shall have the meaning specified in Section 14.07(a).

**“New Listing Reference Date”** shall have the meaning specified in Section 10.03.

**“Newly Listed Equity”** means the Ordinary Shares, other Common Equity or the Reference Property of the Company that have been accepted for listing on a Permitted Exchange.

**“Note”** or **“Notes”** shall have the meaning specified in the first paragraph of the recitals of this Indenture.

**“Notes Fungibility Date”** means the date, if any, following the Resale Restriction Termination Date on which all of the Rule 144A Notes and all of the Regulation S Notes are no longer Restricted Securities, do not bear the restrictive legend required by Section 2.05(c), are fungible for U.S. securities law purposes and are assigned an identical, unrestricted CUSIP number.

**“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).

**“Observation Period”** with respect to any Note surrendered for conversion means: (i) subject to clause (ii), if the relevant Conversion Date occurs prior to August 1, 2025, the 20 consecutive Trading Day period beginning on, and including, the third Trading Day immediately succeeding such Conversion Date; (ii) if the relevant Conversion Date occurs on or after the date of the Company’s issuance of a Tax Redemption Notice or Optional Redemption Notice with respect to the Notes pursuant to Section 16.01 or Section 16.02 and prior to the close of business on the second Business Day prior to the relevant Tax Redemption Date or Optional Redemption Date, the 20 consecutive Trading Days beginning on, and including, the 21<sup>st</sup> Scheduled Trading Day immediately preceding such Tax Redemption Date or Optional Redemption Date; and (iii) subject to clause (ii), if the relevant Conversion Date occurs on or after August 1, 2025, the 20 consecutive Trading Days beginning on, and including, the 21<sup>st</sup> Scheduled Trading Day immediately preceding the Maturity Date.

**“Offering Memorandum”** means the preliminary offering memorandum dated January 11, 2021, as supplemented by the pricing term sheet dated January 12, 2021, relating to the offering and sale of the Notes.

**“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.

**“Optional Redemption Date”** shall have the meaning specified in Section 16.02(b).

**“Optional Redemption Notice”** shall have the meaning specified in Section 16.02(b).

**“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 Trustee under this Indenture, except:

- (a) Notes theretofore canceled by the Trustee or accepted by the Trustee 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;
- (e) Notes redeemed pursuant to Article 16; and
- (f) 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.

**“Paying Agent Office”** means the designated office of the Paying Agent at which at any time this Indenture shall be administered, which office at the date hereof is located at located at 60 Wall Street, 24<sup>th</sup> Floor, Mail Stop: NYC60-2405, New York, New York, 10005, Attention: Trust & Agency Services, Corporates Team – NIO Inc. Facsimile: (732) 578-4635, or such other address as the Paying Agent may designate from time to time by notice to the Holders and the Company, or the designated office of any successor paying agent (or such other address as such successor paying agent may designate from time to time by notice to the Holders and the Company).

**“Permitted Exchange”** means Singapore Exchange, Stock Exchange of Hong Kong or London Stock Exchange (or any of their respective successors).

**“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.

**“Physical Settlement”** shall have the meaning specified in Section 14.02(a).

**“PRC”** means the People’s Republic of China, excluding, for the purpose of this Indenture only, Taiwan, Hong Kong, and Macau.

**“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.

“**Purchase Agreement**” means that certain Purchase Agreement, dated as of January 12, 2021, among the Company and the Initial Purchasers.

“**Record Date**” means, with respect to any dividend, distribution or other transaction or event in which the holders of the ADSs (or other applicable security) have the right to receive any cash, securities or other property or in which the ADSs (or other applicable security) are exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of the ADSs (or other applicable security) entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors, statute, contract or otherwise).

“**Redemption Notice**” means a Tax Redemption Notice or an Optional Redemption Notice, as the context requires.

“**Redemption Price**” shall have the meaning each specified in Section 16.01 and Section 16.02, as the context requires.

“**Redemption Reference Date**” shall have the meaning specified in Section 14.03(g).

“**Redemption Reference Price**” shall have the meaning specified in Section 14.03(g).

“**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.

“**Regulation S Notes**” means the Notes initially offered and sold outside the United States pursuant to Regulation S.

“**Relevant Jurisdiction**” shall have the meaning specified in Section 4.07(a).

“**Relevant Taxing Jurisdiction**” shall have the meaning specified in Section 4.07(a).

“**Repurchase Date**” shall have the meaning specified in Section 15.01(a).

“**Repurchase Expiration Time**” shall have the meaning specified in Section 15.01(a).

“**Repurchase Notice**” shall have the meaning specified in Section 15.01(a).

“**Repurchase Price**” shall have the meaning specified in Section 15.01(a).

“**Resale Restriction Termination Date**” shall have the meaning specified in Section 2.05(c).

“**Responsible Officer**” means, when used with respect to the Trustee, any officer within the Corporate Trust Office of the Trustee or any other officer of the Trustee to whom any corporate trust matter relating to this Indenture is referred because of such Person’s knowledge of and familiarity with the particular subject and, in each case, who shall have direct responsibility for the administration of this Indenture.

“**Restricted Deposit Agreement**” means the deposit agreement for restricted securities dated February 4, 2019 by and among the Company, the ADS Depository and the holders and beneficial owners of the restricted ADSs delivered thereunder or, if amended or supplemented as provided therein, as so amended or supplemented.

“**Restricted Securities**” shall have the meaning specified in Section 2.05(c).

“**Rule 144**” means Rule 144 as promulgated under the Securities Act.

“**Rule 144A**” means Rule 144A as promulgated under the Securities Act.

“**Rule 144A Notes**” means the notes initially offered and sold pursuant to Rule 144A.

“**Scheduled Trading Day**” means a day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange or market on which the ADSs are listed or admitted for trading. If the ADSs are not so listed or admitted for trading, “**Scheduled Trading Day**” means a Business Day.

“**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.

“**Settlement Amount**” has the meaning specified in Section 14.02(a)(v).

“**Settlement Method**” means, with respect to any conversion of Notes, Physical Settlement, Cash Settlement or Combination Settlement, as elected (or deemed to have been elected) by the Company.

“**Settlement Method Election Deadline**” shall have the meaning specified in Section 14.02(a)(iii).

“**Settlement Notice**” has the meaning specified in Section 14.02(a)(iii).

“**Specified Dollar Amount**” means the maximum cash amount per US\$1,000 principal amount of Notes to be received upon conversion as specified in the Settlement Notice related to any converted Notes (or deemed specified pursuant to Section 14.02(a)(iii)).

“**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).

“**Tax Redemption Date**” shall have the meaning specified in Section 16.01(b).

“**Tax Redemption Notice**” shall have the meaning specified in Section 16.01(b)

“**Tender/Exchange Offer Consideration**” shall have the meaning specified in Section 14.04(e).

“**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; and *provided further*, that for the purposes of determining the settlement amounts due upon conversion only, “**Trading Day**” means a day on which (i) there is no Market Disruption Event and (ii) trading in the ADSs generally occurs on the New York Stock Exchange or, if the ADSs 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 are then listed or, if the ADSs are not then listed on a U.S. national or regional securities exchange, on the principal other market on which the ADSs are then listed or admitted for trading, except if the ADSs are not so listed or admitted for trading, “**Trading Day**” means a “Business Day.”

“**Trading Price**” means, with respect to the Notes and any date of determination, the average of the secondary market bid quotations obtained by the Bid Solicitation Agent for US\$1,000,000 principal amount of Notes at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers the Company selects for this purpose; *provided* that if three such bids cannot reasonably be obtained by the Bid Solicitation Agent but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Bid Solicitation Agent, that one bid shall be used. If the Bid Solicitation Agent cannot reasonably obtain at least one bid for US\$1,000,000 principal amount of Notes from a nationally recognized securities dealer on any determination date, then the Trading Price per US\$1,000 principal amount of Notes on such determination date shall be deemed to be less than 98% of the product of the Last Reported Sale Price of the ADSs and the Conversion Rate.

“**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 2.05(a).

“**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.

“**U.S. Person**” shall have the meaning as such term is defined under Regulation S.

“**unit of Reference Property**” shall have the meaning specified in Section 14.07(a).

“**Unrestricted Deposit Agreement**” means the deposit agreement dated as of September 11, 2018 by and among the Company, the ADS Depositary and the holders and beneficial owners of the ADSs delivered thereunder or, if amended or supplemented as provided therein, as so amended or supplemented.

“**Valuation Period**” shall have the meaning specified in Section 14.04(c).

Section 1.02 *References to Interest*. Unless the context otherwise requires, any reference to interest on, or in respect of, any Note in this Indenture shall be deemed to refer solely to Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to any of Section 4.06(d), Section 4.06(e) and Section 6.03 or any such interest payable on any Defaulted Amounts as set forth in Section 2.03(c).

## ARTICLE 2 ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.01 *Designation and Amount*. The Notes shall be designated as the “0.00% Convertible Senior Notes due 2026.” The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is initially limited to US\$750,000,000, 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 Trustee’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 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 a 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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid Additional Interest, if any, on, a 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; Additional Interest and 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. Additional Interest, if any, on the Notes shall be computed on the basis of a 360-day year composed of twelve 30-day months.

(b) The Person in whose name any Note (or its Predecessor Note) is registered on the Note Register at the close of business on any Additional Interest Record Date with respect to any Additional Interest Payment Date shall be entitled to receive any Additional Interest payable on such Additional Interest Payment Date. The Additional Interest, if any, be payable at the office or agency of the Company maintained by the Company for such purposes in the Borough of Manhattan, The City of New York, which shall initially be the Corporate Trust Office. The Company shall pay or cause the Paying Agent to pay Additional Interest, if any, (i) on any Physical Notes (A) to Holders holding Physical Notes having an aggregate principal amount of US\$5,000,000 or less, by check mailed (at the Company's expense) to the Holders of these Notes



at their address as it appears in the Note Register and (B) to Holders holding Physical Notes having an aggregate principal amount of more than US\$5,000,000, either by check mailed (at the Company's expense) to such Holders or, upon application by such Holder to the Note Registrar not later than the relevant Additional Interest Record Date, by wire transfer in immediately available funds to that Holder's account within the United States, which application shall remain in effect until the Holder notifies, in writing, the Note Registrar to the contrary or (ii) on any Global Note by wire transfer of immediately available funds to the account of the Depository or its nominee.

(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 per annum borne by the Notes on such payment date *plus* one percent (except that, if on such payment date no Additional Interest was payable with respect to the Notes, any Defaulted Amounts shall accrue interest per annum at the rate of one percent per annum), subject to the enforceability of such interest under applicable law, from, and including, such relevant payment date, and such Defaulted Amounts together with any 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 written 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, electronic 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 Trustee.

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 Trustee for authentication, together with a Company Order for the authentication and delivery of such Notes, and the Trustee 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 (including the initial amount of Rule 144A Notes and the initial amount of Regulation S Notes), and the applicable rate at which interest will accrue on such Notes. The Trustee shall thereupon authenticate and deliver said Notes to or upon the written order of the Company (as set forth in such Company Order).

The Trustee 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 Trustee, an Officers’ Certificate and an Opinion of Counsel in accordance with Section 17.06 hereof; (b) if the Trustee determines that such action may not lawfully be taken; or (c) if the Trustee determines that such action would expose to Trustee to personal liability, unless indemnity and/or security and/or pre-funding satisfactory to the Trustee against such liability is provided to the Trustee and 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, executed manually or electronically by an authorized officer of the Trustee, shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee 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 Trustee, 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; 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. Deutsche Bank Trust Company Americas 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 Notes Fungibility Date, upon surrender for registration of transfer of any Rule 144A Note or Regulation S Note, as the case may be, 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 Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Rule 144A Notes or Regulation S Notes, as the case may be, 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 Notes Fungibility 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 Trustee 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 Section 2.05(c).

Prior to the Notes Fungibility Date, Rule 144A Notes and Regulation S Notes, as the case may be, may be exchanged for other Rule 144A Notes or Regulation S Notes, as the case may be, of any authorized denominations and of a like aggregate principal amount, upon surrender of the Rule 144A Notes or Regulation S Notes, as the case may be, to be exchanged at any such office or agency maintained by the Company pursuant to Section 4.02. Whenever any Rule 144A Notes or Regulation S Notes, as the case may be, are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Rule 144A Notes or Regulation S Notes, as the case may be, that the Holder making the exchange is entitled to receive, bearing registration numbers not contemporaneously outstanding. Following the Notes Fungibility 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 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 Trustee 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 Note Registrar and 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 Trustee, 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 all ADSs deliverable upon conversion.

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, (ii) any Notes, or a portion of any Note, surrendered for repurchase (and not withdrawn) in accordance with Article 15 or (iii) any Notes selected for redemption in accordance with Article 16.

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 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 Depository and any other registered Holder of Notes) of any notice (including any notice of redemption pursuant to Article 16) 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 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 Depository subject to the customary procedures of the Depository. The Trustee may rely and shall be fully protected in relying upon information furnished by the Depository with respect to its direct or indirect participants.

Neither the Note Registrar nor the Trustee shall have any 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 the Depository, 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 Depository or the nominee of the Depository. 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 Depository in accordance with this Indenture (including the restrictions on transfer set forth herein) and the procedures of the Depository therefor. Prior to the Notes Fungibility Date, the Rule 144A Notes shall be represented by one or more Global Notes and the Regulation S Notes shall be represented by one or more separate Global Notes. Following the Notes Fungibility Date, the Rule 144A Notes and the Regulation S Notes may be represented by one or more of the same Global Notes.

(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) (together with any ADSs (including the Ordinary Shares represented thereby) delivered upon conversion of the Notes that are required to bear the legend set forth in Section 2.05(d), collectively, the “**Restricted Securities**”) shall be subject to the restrictions on transfer set forth in this Section 2.05(c) (including the legend 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 Restricted Security, by such Holder’s acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in this Section 2.05(c) and Section 2.05(d), the term “**transfer**” encompasses any sale, pledge, transfer or other disposition whatsoever of any Restricted Security.

Until the date (the “**Resale Restriction Termination Date**”) that is the later of (1) the date that is one year after the last date of original issuance of the Notes, or such shorter period of time as permitted by Rule 144 under the Securities Act or any successor provision thereto, and (2) such later date, if any, as may be required by applicable law, any certificate evidencing such Note (and all securities issued in exchange therefor or substitution thereof, other than ADSs (including the Ordinary Shares represented thereby) issued upon conversion thereof, which shall bear the legend set forth in Section 2.05(d), if applicable) 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 pursuant to the exemption from registration provided by Rule 144 under the Securities Act or any similar provision then in force under the Securities Act, or unless otherwise agreed by the Company in writing, with notice thereof to the Trustee):

THIS SECURITY, THE AMERICAN DEPOSITARY SHARES DELIVERABLE UPON CONVERSION OF THIS SECURITY, IF ANY, AND THE ORDINARY SHARES REPRESENTED THEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), ARE “RESTRICTED SECURITIES” WITHIN THE MEANING OF RULES 144 UNDER THE SECURITIES ACT OR CONTRACTUALLY RESTRICTED SECURITIES, AND MAY NOT BE OFFERED,

SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF (OR THEREOF) OR OF A BENEFICIAL INTEREST HEREIN (OR THEREIN), THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS (A) A “QUALIFIED INSTITUTIONAL BUYER” (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) OR (B) NOT A U.S. PERSON AND 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, AND HAS NOT BEEN FOR THE IMMEDIATELY PRECEDING THREE MONTHS, AN AFFILIATE OF NIO INC. (THE “COMPANY”), AND

(2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY, THE AMERICAN DEPOSITARY SHARES DELIVERABLE UPON CONVERSION OF THIS SECURITY, IF ANY, AND THE CLASS A ORDINARY SHARES REPRESENTED THEREBY, OR ANY BENEFICIAL INTEREST HEREIN OR THEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, 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 QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) TO A NON-U.S. PERSON LOCATED OUTSIDE THE UNITED STATES IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT, OR

(E) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE).

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH (2)(E) ABOVE, THE COMPANY, THE DEPOSITARY AND THE TRUSTEE RESERVE THE

RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF 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, IF ANY, AND THE ORDINARY SHARES REPRESENTED THEREBY, OR A BENEFICIAL INTEREST HEREIN OR THEREIN.

No transfer of any Note prior to the Resale Restriction Termination Date will be registered by the Note Registrar unless the applicable box on the Form of Assignment and Transfer has been checked.

Any Note (or security issued in exchange or substitution therefor) as to which such restrictions on transfer shall have expired in accordance with their terms may, upon surrender of such Note for exchange to the Note Registrar in accordance with the provisions of this Section 2.05, be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the restrictive legend required by this Section 2.05(c) and shall not be assigned a restricted CUSIP number. The Company shall be entitled to instruct the Trustee in writing to so surrender any Global Note as to which such restrictions on transfer shall have expired in accordance with their terms for exchange, and, upon such instruction, the Trustee shall so surrender such Global Note for exchange; and any new Global Note so exchanged therefor shall not bear the restrictive legend specified in this Section 2.05(c) and shall not be assigned a restricted CUSIP number. The Company shall promptly notify the Trustee in writing upon the occurrence of the Resale Restriction Termination Date and after a registration statement, if any, with respect to the Notes or the ADSs (including the Ordinary Shares represented thereby) issued upon conversion of 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 Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary 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 Depositary (for itself or on behalf of a beneficial owner) by written notice given to the Trustee by or on behalf of the Depositary in accordance with customary procedures of the Depositary and in compliance with this Section 2.05(c).

The Depositary shall be a clearing agency registered under the Exchange Act. The Company initially appoints The Depositary Trust Company to act as Depositary with respect to each Global Note. Initially, each Global Note shall be issued to the Depositary, registered in the

name of Cede & Co., as the nominee of the Depository, and deposited with Deutsche Bank Trust Company Americas as custodian for Cede & Co.

If (i) the Depository notifies the Company at any time that the Depository is unwilling or unable to continue as depository for the Global Notes and a successor depository is not appointed within 90 days, (ii) the Depository ceases to be registered as a clearing agency under the Exchange Act and a successor depository is not appointed within 90 days 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 Trustee, 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 Trustee 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 Depository, pursuant to instructions from its direct or indirect participants or otherwise, or, in the case of clause (iii) of the immediately preceding paragraph, the relevant beneficial owner, shall instruct the Trustee in writing. Upon execution and authentication, the Trustee 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 Trustee in accordance with standing procedures and existing instructions of the 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 Depository, be appropriately reduced or increased, as the case may be, and an endorsement shall be made on such Global Note, by the Trustee, 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 the payment of amounts to beneficial holders, 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) Until the Resale Restriction Termination Date, any certificate representing ADSs (including the Ordinary Shares represented thereby) issued upon conversion of such Note shall bear a legend in substantially the following form (unless the Note or such ADSs (including the Ordinary Shares represented thereby) has 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 pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or such ADS or the Ordinary Shares represented thereby have been issued upon conversion of Notes that 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 pursuant to the exemption from registration provided by Rule 144 under the Securities Act or any similar provision then in force under the Securities Act, or unless otherwise agreed by the Company with written notice thereof to the Note Registrar and any transfer agent for the ADSs):

THE AMERICAN DEPOSITARY SHARES EVIDENCED HEREBY AND THE ORDINARY SHARES REPRESENTED THEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), ARE "RESTRICTED SECURITIES" WITHIN THE MEANING OF RULE 144 UNDER THE SECURITIES ACT OR CONTRACTUALLY RESTRICTED SECURITIES, AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF (OR THEREOF) OR OF A BENEFICIAL INTEREST HEREIN (OR THEREIN), THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS (A) A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) OR (B) NOT A U.S. PERSON AND 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, AND HAS NOT BEEN FOR THE IMMEDIATELY PRECEDING THREE MONTHS, AN AFFILIATE OF NIO INC. (THE "COMPANY"), AND

(2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY AND THE ORDINARY SHARES REPRESENTED THEREBY, OR ANY BENEFICIAL INTEREST HEREIN OR THEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE OF THE SERIES OF NOTES UPON THE CONVERSION OF WHICH THIS SECURITY WAS ISSUED OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, 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 QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) TO A NON-U.S. PERSON LOCATED OUTSIDE THE UNITED STATES IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT, OR

(E) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE).

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH (2)(E) ABOVE, THE COMPANY, THE DEPOSITARY AND THE TRANSFER AGENT FOR THE COMPANY'S AMERICAN DEPOSITARY SHARES RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF 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 THE AMERICAN DEPOSITARY SHARES EVIDENCED HEREBY OR A BENEFICIAL INTEREST HEREIN OR THEREIN.

Any such ADSs as to which such restrictions on transfer shall have expired in accordance with their terms may, upon surrender of the certificates representing such ADSs for exchange in accordance with the procedures of the ADS Depositary and the Restricted Deposit Agreement, as applicable, be exchanged for a new certificate or certificates for a like aggregate number of ADSs, which shall not bear the restrictive legend required by this Section 2.05(d).

(e) Any Note or ADS delivered upon the conversion or exchange of any Note that is repurchased or owned by any Affiliate of the Company may not be resold by such Affiliate (or a Holder that was the Company's Affiliate at any time during three months preceding the resale) 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 or ADS, as the case may be, 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 Trustee for cancellation in accordance with Section 2.08.

(f) Until the Resale Restriction Termination Date, prior to any sale of Regulation S Notes, the ADSs deliverable upon conversion thereof or the Ordinary Shares represented thereby, to a qualified institutional buyer in compliance with Rule 144A, the Holder thereof shall deliver to the Trustee, Transfer Agent and/or Depositary, as the case may be, written confirmation that the prospective purchaser is a Person such Holder reasonably believes is a “qualified institutional buyer” (within the meaning of Rule 144A) that is purchasing for its own account or for the account of another qualified institutional buyer and to whom notice is given that the transfer is being made in reliance on Rule 144A.

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 Trustee 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 Trustee such security, pre-funding 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 Trustee evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

The Trustee may authenticate any such substituted Note and deliver the same upon the receipt of such security, pre-funding and/or indemnity as the Trustee and the Company may require. No service charge shall be imposed by the Company, the Transfer Agent, the ADS Depositary, the Note Registrar, any co-Note Registrar or the Paying Agent upon the issuance of any substitute Note, but the Company and the Trustee 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 has been selected for redemption in accordance with Article 16 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, pre-funding 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 Trustee 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 Trustee 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 Trustee 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 Trustee 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 Trustee (including any of the Company's agents, Subsidiaries or Affiliates), to be delivered and surrendered to the Trustee for cancellation. Upon the delivery of a Company Order requesting cancellation, all Notes delivered to the Trustee shall be canceled promptly by it, and except for Notes surrendered for transfer or exchange, no Notes shall be authenticated in exchange thereof except as expressly permitted by any of the provisions of this Indenture. The Trustee 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 *CUSIP Numbers.* The Company in issuing the Notes may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in all notices issued to Holders as a convenience to such Holders; *provided* that the Trustee shall have no liability for any defect in the "CUSIP" numbers as they appear on any Note, notice or elsewhere, and provided further 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 "CUSIP" or "ISIN"

numbers, as applicable. Prior to the Notes Fungibility Date, the Rule 144A Notes and the Regulation S Notes shall have different “CUSIP” numbers. Following the Notes Fungibility Date, the Rule 144A Notes and the Regulation S Notes shall have the same “CUSIP” number.

Section 2.10 *Additional Notes; Repurchases.* The Company may, without the consent of, or notice to, 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 Additional 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 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 CUSIP, ISIN or other identifying number from both the Rule 144A Notes and the Regulation S 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, Consolidated Affiliated Entities 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 Trustee 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 repurchase. 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 Trustee 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.

Section 2.11 *Appointment of Authenticating Agent.* As long as any Notes remain outstanding, the Trustee may, by an instrument in writing, appoint with the approval of the Company an authenticating agent (an “**Authenticating Agent**”), which shall be authorized to act on behalf of the Trustee to authenticate Notes pursuant to this Indenture. Notes authenticated by such Authenticating Agent shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee. Whenever reference is made in this Indenture to the authentication and delivery of Notes by the Trustee or to the Trustee’s certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Such Authenticating Agent shall at all times be a Person that is eligible pursuant to the Trust Indenture Act to act as such and that 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.

ARTICLE 3  
SATISFACTION AND DISCHARGE

Section 3.01 *Satisfaction and Discharge.* This Indenture shall upon request of the Company contained in an Officers' Certificate be discharged and shall 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, paid or converted 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 Trustee for cancellation; or (ii) the Company has deposited cash with the Trustee and/or delivered to Holders (solely to satisfy the Company's Conversion Obligation, if applicable) ADSs, sufficient to pay all of (or satisfy such Conversion Obligation in respect of) the outstanding Notes, as the case may be, after the Notes have become due and payable, whether on the Maturity Date, any Tax Redemption Date, any Optional Redemption Date, the Repurchase Date, any Fundamental Change Repurchase Date, upon conversion or otherwise; (b) if the Company has deposited cash with the Trustee, the Trustee has received irrevocable instruction from the Company to make a payment on (or to satisfy such Conversion Obligation in respect of) the outstanding Notes, as the case may be, after the Notes have become due and payable, whether on the Maturity Date, any Tax Redemption Date, any Optional Redemption Date, the Repurchase Date, any Fundamental Change Repurchase Date, upon conversion or otherwise; and (c) 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 Additional Interest.* The Company covenants and agrees that it will cause to be paid the principal (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid Additional Interest, if any, on, each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes.

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 Deutsche Bank Trust Company Americas as the Paying Agent, Note Registrar, Transfer Agent and Conversion Agent and the Corporate Trust Office and the office or agency of Deutsche Bank Trust Company Americas 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.

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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid Additional Interest, if any, on, the Notes for the benefit of the Holders of the Notes;

(ii) that it will give the Trustee prompt written notice of any failure by the Company to make any payment of the principal (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid Additional Interest, if any, on, 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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid Additional Interest, if any, on, the Notes, deposit with the Paying Agent a sum in immediately available funds sufficient to pay such principal (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) or accrued and unpaid Additional Interest, if any, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee in writing 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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid Additional Interest, if any, on, the Notes when such principal or Additional Interest, if any, 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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid Additional Interest, if any, on, 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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) and accrued and unpaid Additional Interest, if any, 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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid Additional Interest, if any, on, 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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid Additional Interest, if any, on, or in satisfaction of its Conversion Obligation with respect to, any Note and remaining unclaimed for two years after such principal (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) or Additional Interest, if any, 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 or property, 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 *Rule 144A Information Requirement and Annual Reports*. (a) At any time the Company is not subject to Section 13 or 15(d) of the Exchange Act, the Company shall, so long as any of the Notes, any ADSs deliverable upon conversion thereof, if any, or any Ordinary Shares underlying ADSs deliverable upon conversion thereof shall, at such time, constitute “restricted securities” within the meaning of Rule 144(a)(3) under the Securities Act, promptly provide to the Trustee and shall, upon written request, provide to any Holder, beneficial owner or prospective purchaser of such Notes or the ADSs deliverable upon conversion of such Notes, if any, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Notes or ADSs pursuant to Rule 144A. The Company shall take such further action as any Holder or beneficial owner of such Notes or such ADSs may reasonably request to the extent from time to time required to enable such Holder or beneficial owner to sell such Notes or ADSs in accordance with Rule 144A, as such rule may be amended from time to time.

(b) The Company shall provide to the Trustee within 15 days after the same are required to be filed with the Commission, copies of any documents or reports that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act (giving effect to any applicable grace period provided by Rule 12b-25 under the Exchange Act). Any such document or report that the Company files with the Commission via the Commission’s EDGAR system (or any successor thereto) shall be deemed to be provided to the Trustee for purposes of this Section 4.06(b) at the time such documents are filed via the EDGAR system (or any successor thereto). The Trustee shall have no obligation to determine if and when the Company’s statements or reports are publically available and/or accessible electronically.

(c) Delivery of the reports and documents described in subsection (b) above to the Trustee is for informational purposes only, and the Trustee’s receipt of such shall not constitute actual or constructive notice or knowledge of any information contained therein or determinable from information contained therein, including the Company’s compliance with any of its covenants hereunder (as to which the Trustee is entitled to conclusively rely on an Officers’ Certificate).

(d) If, at any time during the six-month period beginning on, and including, the date that is six months after the last date of original issuance of the Notes, the Company fails to timely file any document or report that it is required to file with the Commission pursuant to

Section 13 or 15(d) of the Exchange Act, as applicable (after (i) giving effect to all applicable grace periods thereunder and (ii) other than reports on Form 6-K to the extent such reports are not required to satisfy the “current public information” requirements of Rule 144), or the Notes are not otherwise freely tradable pursuant to Rule 144 by Holders other than the Company’s Affiliates or Holders that were the Company’s Affiliates at any time during the three months immediately preceding (as a result of restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes), the Company shall pay or cause the Paying Agent (on behalf of the Company and subject to receipt of funds from the Company pursuant to the last paragraph in Section 4.04(a)) to pay Additional Interest on the Notes. Such Additional Interest shall accrue on the Notes at the rate of 0.50% per annum of the principal amount of the Notes outstanding for each day during such period for which the Company’s failure to file has occurred and is continuing or the period during which the Notes are not freely tradable, as described in this Section 4.06(d), by Holders other than Affiliates of the Company (or Holders that were Affiliates of the Company at any time during the three months immediately preceding). As used in this Section 4.06(d), documents or reports that the Company is required to “file” with the Commission pursuant to Section 13 or 15(d) of the Exchange Act does not include documents or reports that the Company furnishes to the Commission pursuant to Section 13 or 15(d) of the Exchange Act.

(e) If, and for so long as, the restrictive legend on the Notes specified in Section 2.05(c) has not been removed, the Notes are assigned a restricted CUSIP or the Notes are not otherwise freely tradable by Holders other than the Company’s Affiliates or Holders that were the Company’s Affiliates at any time during the three months immediately preceding (without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes) as of the 370th day after the last date of original issuance of the Notes, the Company shall pay or cause the Paying Agent to pay Additional Interest on the Notes at a rate equal to 0.50% per annum of the principal amount of Notes outstanding until the restrictive legend on the Notes has been removed in accordance with Section 2.05(c), the Notes have been assigned an unrestricted CUSIP and the Notes are freely tradable by Holders other than the Company’s Affiliates or Holders that were the Company’s Affiliates at any time during the three months immediately preceding (without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes).

(f) Additional Interest will be payable in arrears on each Additional Interest Payment Date following accrual.

(g) The Additional Interest that is payable in accordance with Section 4.06(d) or Section 4.06(e) shall be in addition to, and not in lieu of, any Additional Interest that may be payable as a result of the Company’s election pursuant to Section 6.03. In no event shall Additional Interest accrue on any day under the terms of this Indenture (taking any Additional Interest payable pursuant to Section 4.06(d) and Section 4.06(e) together with any Additional Interest payable pursuant to Section 6.03) at an annual rate in excess of 0.50%, in the aggregate, for any violation or Default caused by the Company’s failure to be current in respect of its Exchange Act reporting obligations.

(h) If Additional Interest is payable by the Company pursuant to Section 4.06(d) or Section 4.06(e), the Company shall deliver to the Trustee an Officers’ Certificate to that effect

stating (i) the amount of such Additional Interest that is payable and (ii) the date on which such Additional Interest is payable. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office such a certificate, the Trustee may assume without inquiry that no such Additional Interest is payable. If the Company has paid such Additional Interest directly to the Persons entitled to it, the Company shall deliver to the Trustee an Officers' Certificate setting forth the particulars of such payment.

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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price), premium, if any, payments of Additional Interest, if any, and payments of cash and/or 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), 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 cash and/or 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 Redemption Price, the Repurchase Price and Fundamental Change Repurchase Price, if applicable) and Additional Interest on, such Note or the payment of cash and/or the delivery of ADSs (together with payment of cash for any Fractional ADS) or other consideration 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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable), and Additional Interest on, such Note or the payment of cash and/or delivery of ADSs (together with payment of cash for any Fractional ADS) or other consideration 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 or delivery 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, (on behalf of the Company and subject to receipt of funds from the Company pursuant to the last paragraph in Section 4.04(a)) to pay Additional Amounts to Holders on the relevant payment or delivery 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 payment of cash and/or 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 Redemption Price, the Repurchase Price and Fundamental Change Repurchase Price, if applicable) and any premium or Additional 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 Additional Interest, if any, 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, 2021) 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 reasonably practicable, 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.* Upon request of the Trustee, 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 each January 15 and July 15 in each year beginning with July 15, 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 Trustee 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 Additional Interest 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 redemption in accordance with Section 16.01 or Section 16.02, upon any required repurchase, upon declaration of acceleration or otherwise;
- (c) failure by the Company to comply with its obligations 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) or notice of a Make-Whole Fundamental Change in accordance with Section 14.03(a) or notice in accordance with Section 14.03(g) or notice of a specified corporate event in accordance with Section 14.01(b)(ii) or Section 14.01(b)(iii), in each case, 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\$60 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, if any, 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\$60 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; or

(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.

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, and accrued and unpaid Additional Interest, if any on, 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, and accrued and unpaid Additional Interest, if any, on, 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, the Agents and any other 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 installments of accrued and unpaid Additional Interest, if any, upon all Notes and the principal of any and all Notes that shall have become due otherwise than by acceleration (with interest on overdue installments of accrued and any unpaid Additional Interest, to the extent that payment of such interest is enforceable under applicable law, and on such principal at the rate per annum borne by the Notes on the relevant payment date when such amounts were not punctually paid (except that, if on such relevant payment date no Additional Interest was payable with respect to the Notes, at the rate of one 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 and accrued and unpaid Additional Interest, if any, on 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, or accrued and unpaid Additional Interest, if any, on 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 *Additional Interest*. Notwithstanding anything in this Indenture or in the Notes to the contrary, to the extent the Company elects, the sole remedy for Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06(b) shall after the occurrence of such an Event of Default consist exclusively of the right to receive Additional Interest on the Notes at a rate equal to:

(a) 0.25% per annum of the principal amount of the Notes outstanding for each day during the period beginning on, and including, the date on which such an Event of Default first occurs and ending on the earlier of (i) the date on which such Event of Default is cured or validly waived and (ii) the 90th day immediately following, and including, the date on which such Event of Default first occurred; and

(b) if such Event of Default has not been cured or validly waived prior to the 91st day immediately following, and including, the date on which such Event of Default first occurred, 0.50% per annum of the principal amount of the Notes outstanding for each day during the period beginning on, and including, the 91st day immediately following, and including, the date on which such an Event of Default first occurred and ending on the earlier of (i) the date on which such Event of Default is cured or validly waived and (ii) the 180th day immediately following, and including, the date on which such Event of Default first occurred.

Additional Interest payable pursuant to this Section 6.03 shall be in addition to, not in lieu of, any Additional Interest payable pursuant to Section 4.06(d) or Section 4.06(e). In no event shall Additional Interest accrue on the Notes on any day under this Indenture (taking any Additional Interest payable pursuant to this Section 6.03 together with any Additional Interest payable pursuant to Section 4.06(d) and Section 4.06(e)) at an annual rate accruing in excess of 0.50%, in the aggregate, for any violation or Default caused by the Company's failure to be current in respect of its Exchange Act reporting obligations. On the 181st day after such Event of Default (if the Event of Default with respect to the Company's obligations under Section 4.06(b) is not cured or waived prior to such 181st day), the Notes will be subject to acceleration as provided in Section 6.02. In the event the Company does not elect to pay Additional Interest following an Event of Default in accordance with this Section 6.03 or the Company elected to make such payment but does not pay the Additional Interest when due, the Notes shall be subject to acceleration as provided in Section 6.02.

In order to elect to pay Additional Interest as the sole remedy during the first 180 days after the occurrence of any Event of Default described in the immediately preceding paragraph, the Company must notify in writing all Holders of the Notes, the Trustee and the Paying Agent of such election prior to the beginning of such 180-day period. Upon the failure to timely give such notice, the Notes shall be immediately subject to acceleration as provided in Section 6.02.

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, 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 and Additional Interest, at the rate per annum borne by the Notes on the relevant payment date when such amounts were not punctually paid (except that, if on such relevant payment date no Additional Interest was payable with respect to the Notes, at the rate of one 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, sequestrator 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 Additional 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 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 or property 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 to the Trustee, including to its agents and counsel, hereunder and any payments due to the Paying Agent, the Transfer Agent, the Conversion Agent and the Note Registrar hereunder;

**Second**, in case the principal of the outstanding Notes shall not have become due and be unpaid, to the payment of Additional Interest, if any, 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 has been collected by the Trustee) upon such overdue payments at the rate of Additional Interest then payable on such Notes, if any, 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 Redemption Price, Repurchase Price or Fundamental Change Repurchase Price and any cash due upon conversion) then owing and unpaid upon the Notes for principal and Additional Interest, if any, with interest on the overdue principal and, to the extent that such Additional Interest has been collected by the Trustee, upon overdue installments of Additional Interest at the rate of Additional Interest then payable on such Notes, if any, 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 Redemption Price, Repurchase Price or Fundamental Change Repurchase Price and the cash due upon conversion) and interest without preference or priority of principal over Additional Interest, if any, or of Additional Interest over principal or of any installment of Additional Interest over any other

installment of Additional Interest, or of any Note over any other Note, ratably to the aggregate of such principal (including, if applicable, the Redemption Price, Repurchase Price or Fundamental Change Repurchase Price) and accrued and unpaid Additional 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 Redemption Price, the Repurchase Price or Fundamental Change Repurchase Price) or Additional 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 60 days after its receipt of such notice, request and offer of security and/or indemnity and/or pre-funding, shall have not complied with such written request of the Holders 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 60-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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase

Price, if applicable) of, (y) accrued and unpaid Additional Interest, if any, on, and (z) 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 conflicts with law or this Indenture, that may involve the Trustee in personal liability or violating applicable law, 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 (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders). 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 Additional Interest, if any, on, or the principal (including, if applicable, the Redemption Price, Repurchase Price or 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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable), or accrued and unpaid Additional Interest, if any, on, 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 or accrued and unpaid Additional Interest, if any, on any Note (including, but not limited to, the Redemption Price, the Repurchase Price and 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 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 losses, 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 determined 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) in the absence of written investment direction from the Company, all cash received by the Trustee shall be placed in a non-interest bearing trust account, and in no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon or for losses incurred as a result of the liquidation of any such investment prior to its maturity date or the failure of the party directing such investments prior to its maturity date or the failure of the party directing such investment to provide timely written investment direction, and the Trustee shall have no obligation to invest or reinvest any amounts held hereunder in the absence of such written investment direction from the Company;

(h) in the event that the Trustee or any of its affiliates is also acting as Note Registrar, Paying Agent, Conversion Agent, Bid Solicitation Agent or Transfer Agent hereunder, 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, Bid Solicitation 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 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 any 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 or refraining from 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 of its selection 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 Trustee shall not be deemed to have knowledge of any Default or Event of Default with respect to the Notes, unless a written notice of such Default or Event of Default shall have been received by the Trustee at the Corporate Trust Office of the Trustee in accordance with Section 17.03;

(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; and

(o) neither the Trustee nor any agent thereof shall have any responsibility or liability for any actions taken or not taken by the Depository.

Section 7.03 *No Responsibility for Recitals, Etc.* The recitals, statements, warranties and representations contained herein and in the Notes (except in the Trustee'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 Trustee 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. The Trustee shall have no responsibility or liability with respect to any information, statement or recital in the offering memorandum, prospectus, prospectus supplement or other disclosure material prepared or distributed with respect to any of the Notes.

Section 7.04 *Trustee, Paying Agents, Conversion Agents, Bid Solicitation Agent or Note Registrar May Own Notes.* The Trustee, any Paying Agent, any Conversion Agent, Bid Solicitation Agent (if other than the Company or any Affiliate thereof) 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, Bid Solicitation 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 and ADSs to Be Held in Trust.* All monies and ADSs 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 and ADSs held by the Trustee in trust or by the Paying Agent hereunder need not be segregated from other funds or property except to the extent required by law. Neither the Trustee nor the Paying Agent shall be under any liability for interest on any money or ADSs received by it hereunder.

Section 7.06 *Compensation, Expenses and Indemnification of Trustee and Agents.* (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, disbursements and advances 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, including taxes (other than taxes based upon, measured by or determined by the income of the Trustee) (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 Transfer 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 Transfer 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 Transfer 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 Transfer 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 Transfer 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 30 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 60 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 trustee, 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 Trustee 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 Trustee shall have; *provided, however*, that the right to adopt the certificate of authentication of any predecessor trustee 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 Transfer 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 and (subject to Section 2.03) accrued and unpaid Additional Interest, if any, on 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 Transfer Agent nor any Conversion Agent nor any Note Registrar shall be affected by any notice to the contrary. The sole registered holder of a Global Note shall be the Depositary or its nominee. 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 owner 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 Depositary or any other Person, such owner's right to exchange such beneficial interest for a Note in certificated form in accordance with the provisions 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, including virtually. 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 (including virtually) 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 Trustee 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 Trustee shall not have mailed the notice of such meeting within 20 days after receipt of such request, then the Company 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 aggregate 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 aggregate 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 aggregate 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 or any credit enhancements of similar nature 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 in any material respect;

(h) to make changes in connection with an acceptance for listing on a Permitted Exchange as contemplated in Section 10.03;

(i) to comply with the rules of the Depository;

(j) to evidence and provide for the acceptance of the appointment of a successor trustee in accordance with this Indenture; or

(k) to conform the provisions of this Indenture or the Notes to the "Description of the Notes" section of the Offering Memorandum.

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, and the execution and delivery of the supplemental indenture to this Indenture or the Notes is authorized and permitted by the terms of this Indenture and that all conditions precedent hereto have been satisfied, and that the supplemental indenture or amendment or supplement are enforceable against the Company, subject to customary assumptions and qualifications.

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 the Notes or 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 Additional 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 Repurchase Price payable on the Repurchase Date, the Fundamental Change Repurchase Price or the Redemption 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 Additional 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 (with a copy to the Trustee) 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 *Supplemental Indenture in respect of Fundamental Change.* If a Fundamental Change described in clause (d) of the definition thereof has occurred and the Newly Listed Equity has been accepted for listing on a Permitted Exchange, then, from and after the later

to occur of (x) the date of such acceptance for listing on a Permitted Exchange and (y) the Effective Date of such Fundamental Change (the “**New Listing Reference Date**”), Section 14.07 of this Indenture will be deemed to apply *mutatis mutandis* as if the Reference Property for the Notes were the Newly Listed Equity. No later than five Business Days after the New Listing Reference Date, the Company shall execute with the Trustee a supplemental indenture containing such provisions that the Board of Directors determines in good faith are appropriate to preserve the economic interests of the Holders and are necessary to reflect the replacement of the ADSs (or Ordinary Shares or other Common Equity or ADSs in respect of Reference Property then underlying the Notes) with the Newly Listed Equity. The Company shall notify the Holders and the Conversion Agent (if other than the Trustee) in writing as promptly as reasonably practicable following the date the Company and the Trustee execute such supplemental indenture, and the Company shall substantially concurrently with such notice either post such supplemental indenture on the Company’s website or disclose the same in a current report on Form 6-K (or any successor form) that is filed with the Commission.

Section 10.04 *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 10.05 *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 Trustee 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 Trustee upon receipt of a Company Order and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 10.06 *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 with respect to such Opinion of Counsel, that such supplemental indenture is the valid and binding obligation of the Company enforceable in accordance with its terms, subject to customary exceptions and qualifications.

## 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 and accrued and unpaid Additional Interest, if any, on 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 Trustee; 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 Trustee 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 Trustee for authentication, and any Notes that such Successor Company thereafter shall cause to

be signed and delivered to the Trustee 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 or accrued and unpaid Additional Interest, if any, on 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*. (a) 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 (if the portion to be converted is US\$1,000 principal amount or an integral multiple thereof) of such Note (i) subject to satisfaction of the conditions described in Section 14.01(b), at any time prior to the close of business on the Business Day immediately preceding August 1, 2025 under the circumstances and during the periods set forth in Section 14.01(b), and (ii) regardless of the conditions described in Section 14.01(b), on or after August 1, 2025 and prior to the close of business on the second Scheduled Trading Day immediately preceding the Maturity Date, in each case, at an initial conversion rate of 10.7458 ADSs (subject to adjustment as provided in this Article 14, the "**Conversion Rate**") per US\$1,000 principal amount of Notes (subject to, and in accordance with, the settlement provisions of Section 14.02, the "**Conversion Obligation**"). For the avoidance of doubt, "Conversion Rate" as of a particular date without setting forth a particular time on such date shall mean the Conversion Rate immediately after the close of business on such date.

(b) (i) Prior to the close of business on the Business Day immediately preceding August 1, 2025, a Holder may surrender all or any portion of its Notes for conversion at any time during the five Business Day period immediately after any ten consecutive Trading Day period (the "**Measurement Period**") in which the Trading Price per US\$1,000 principal amount of Notes, as determined following a request by a Holder of Notes in accordance with this subsection (b)(i), for each Trading Day of the Measurement Period was less than 98% of the product of the Last Reported Sale Price of the ADSs on each such Trading Day and the Conversion Rate on each such Trading Day. The Trading Prices shall be determined by the Bid Solicitation Agent pursuant to this subsection (b)(i) and the definition of Trading Price set forth in this Indenture. The Company shall provide written notice to the Bid Solicitation Agent (if other than the Company) of the three independent nationally recognized securities dealers selected by the Company pursuant to the definition of Trading Price, along with appropriate contact information for each. The Bid Solicitation Agent (if other than the Company) shall have no obligation to determine the Trading Price per US\$1,000 principal amount of Notes unless the Company has requested such determination in writing, and the Company shall have no obligation to make such request (or, if the Company is acting as Bid Solicitation Agent, the Company shall have no obligation to determine the Trading Price per US\$1,000 principal amount of Notes) unless a Holder provides the Company with reasonable evidence that the Trading Price per US\$1,000 principal amount of Notes on any Trading Day would be less than 98% of the product of the Last Reported Sale Price of the ADSs on such Trading Day and the Conversion Rate on such Trading Day, at which time the Company shall instruct the Bid Solicitation Agent (if other than the Company) in writing to determine, or if the Company is acting as Bid Solicitation Agent, the Company shall determine, the Trading Price per US\$1,000 principal amount of Notes beginning on the next Trading Day and on each successive Trading Day until the Trading Price per US\$1,000 principal amount of Notes is greater than or equal to 98% of the product of the Last Reported Sale Price of the ADSs and the Conversion Rate. At such time as the Company directs the Bid Solicitation Agent in writing to

solicit bid quotations, the Company will provide the Bid Solicitation Agent with the names and contact details of the three independent nationally recognized securities dealers the Company selects, and the Company will direct those securities dealers to provide bids to the Bid Solicitation Agent. If (x) the Company is not acting as Bid Solicitation Agent, and the Company does not, when the Company is required to, instruct the Bid Solicitation Agent to determine the Trading Price per US\$1,000 principal amount of Notes when obligated as provided in the preceding sentence, or if the Company instructs the Bid Solicitation Agent in writing to obtain bids and the Bid Solicitation Agent fails to make such determination, or (y) the Company is acting as Bid Solicitation Agent and the Company fails to make such determination when obligated as provided in the preceding sentence, then, in either case, the Trading Price per US\$1,000 principal amount of Notes shall be deemed to be less than 98% of the product of the Last Reported Sale Price of the ADSs and the Conversion Rate on each Trading Day of such failure. If the Trading Price condition set forth above has been met, the Company shall so notify the Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing. If, at any time after the Trading Price condition set forth above has been met, the Trading Price per US\$1,000 principal amount of Notes is greater than or equal to 98% of the product of the Last Reported Sale Price of the ADSs and the Conversion Rate for such date, the Company shall so notify in writing the Holders, the Trustee and the Conversion Agent (if other than the Trustee).

(ii) If, prior to the close of business on the Business Day immediately preceding August 1, 2025, the Company elects to:

(A) issue 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 share that is less than the average of the Last Reported Sale Prices of the ADSs, *divided by* 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; or

(B) distribute to all or substantially all holders of the Ordinary Shares (directly or in the form of ADSs) the Company's assets, securities or rights to purchase securities of the Company, which distribution has a per share value, as determined by the Board of Directors, exceeding 10% of (i) the Last Reported Sale Price of the ADSs on the Trading Day preceding the date of announcement for such distribution, *divided by* (ii) the number of Ordinary Shares then represented by one ADS,

then, in either case, the Company shall notify all Holders of the Notes, the Trustee and the Conversion Agent (if other than the Trustee) in writing at least 30 Scheduled Trading Days prior to the Ex-Dividend Date for such issuance or distribution. Once the Company has given such notice, a Holder may surrender all or any portion of its Notes for conversion at any time until the earlier of (1) the close of business on the Business Day immediately preceding the Ex-Dividend Date for such issuance or distribution and (2) the Company's announcement that such

issuance or distribution will not take place, in each case, even if the Notes are not otherwise convertible at such time.

(iii) If (1) a transaction or event that constitutes a Fundamental Change or a Make-Whole Fundamental Change occurs prior to the close of business on the Business Day immediately preceding August 1, 2025, regardless of whether a Holder has the right to require the Company to repurchase the Notes pursuant to Section 15.02, or (2) if the Company is a party to a consolidation, merger, binding share exchange, or transfer or lease of all or substantially all of its assets that occurs prior to the close of business on the Business Day immediately preceding August 1, 2025, in each case, pursuant to which the ADSs would be converted into cash, securities or other assets, all or any portion of a Holder's Notes may be surrendered for conversion at any time from or after the actual effective date of such transaction until 35 Trading Days after the actual effective date of such transaction or, if such transaction also constitutes a Fundamental Change, until the related Fundamental Change Repurchase Date. The Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing as promptly as practicable following the date the Company publicly announces such transaction. If the Company does not provide such notice by the effective date of such transaction, then the last day on which the Notes are convertible shall be extended by the number of Business Days from, and including, the effective date thereof to, but excluding, the date the Company provides the notice.

(iv) Prior to the close of business on the Business Day immediately preceding August 1, 2025, a Holder may surrender all or any portion of its Notes for conversion at any time during any calendar quarter commencing after the calendar quarter ending on March 31, 2021 (and only during such calendar quarter), if the Last Reported Sale Price of the ADSs for at least 20 Trading Days (whether or not consecutive) during the period of 30 consecutive Trading Days ending on, and including, the last Trading Day of the immediately preceding calendar quarter is greater than or equal to 130% of the Conversion Price on each applicable Trading Day. The Company shall determine at the beginning of each calendar quarter commencing after March 31, 2021 whether the Notes may be surrendered for conversion in accordance with this clause (iv) and shall notify the Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing if the Notes become convertible in accordance with this clause (iv).

(v) If the Company calls any or all of the Notes for redemption pursuant to Article 16, then a Holder may surrender any or all of its Notes for conversion at any time prior to the close of business on the second Business Day prior to the Tax Redemption Date or Optional Redemption Date, even if the Notes are not otherwise convertible at such time. After that time, the right to convert such Notes on account of the Company's delivery of the notice of redemption shall expire, unless the Company defaults in the payment of the Redemption Price, in which case a Holder may convert any or all of its Notes until the Redemption Price has been paid or duly provided for.

Section 14.02 *Conversion Procedure; Settlement Upon Conversion.*

(a) Subject to this Section 14.02, Section 14.03(b) and Section 14.07(a), upon conversion of any Note, the Company shall pay or deliver, as the case may be, to the converting Holder, in respect of each US\$1,000 principal amount of Notes being converted, cash (“**Cash Settlement**”), ADSs together with cash, if applicable, in lieu of delivering any fractional ADSs (“**Fractional ADSs**”) (in accordance with subsection (j) of this Section 14.02 (“**Physical Settlement**”)) or a combination of cash and ADSs, together with cash, if applicable, in lieu of delivering any fractional ADS in accordance with subsection (j) of this Section 14.02 (“**Combination Settlement**”), at its election, as set forth in this Section 14.02.

(i) All conversions for which the relevant Conversion Date occurs after the Company’s issuance of a Redemption Notice with respect to the Notes and prior to the close of business on the second Business Day prior to the related Tax Redemption Date or Optional Redemption Date, and all conversions for which the relevant Conversion Date occurs on or after August 1, 2025 shall be settled using the same Settlement Method.

(ii) Except for any conversions for which the relevant Conversion Date occurs after the Company’s issuance of a Redemption Notice with respect to the Notes but prior to the close of business on the second Business Day prior to the related Tax Redemption Date or Optional Redemption Date (as the case may be), and any conversions for which the relevant Conversion Date occurs on or after August 1, 2025, the Company shall use the same Settlement Method for all conversions with the same Conversion Date, but the Company shall not have any obligation to use the same Settlement Method with respect to conversions with different Conversion Dates.

(iii) If, in respect of any Conversion Date (or, in the case of any conversions for which the relevant Conversion Date occurs after the date of issuance of a Redemption Notice with respect to the Notes and prior to the close of business on the second Business Day prior to the related Tax Redemption Date or Optional Redemption Date (as the case may be), in such Redemption Notice or on or after August 1, 2025, no later than August 1, 2025, as the case may be), the Company elects a Settlement Method, the Company shall deliver a written notice (the “**Settlement Notice**”) of the relevant Settlement Method in respect of such Conversion Date (or such period, as the case may be) to converting Holders, the Trustee and the Conversion Agent (if other than the Trustee) no later than the close of business on the second Trading Day immediately following the relevant Conversion Date (or, in the case of any conversions for which the relevant Conversion Date occurs after the date of issuance of a Redemption Notice with respect to the Notes and prior to the close of business on the second Business Day prior to the related Tax Redemption Date or Optional Redemption Date (as the case may be), in such Redemption Notice or on or after August 1, 2025, no later than August 1, 2025) (in each case, the “**Settlement Method Election Deadline**”). If the Company does not elect a Settlement Method prior to the deadline set forth in the immediately preceding sentence, the Company shall no longer have the right to elect Cash Settlement or Physical Settlement and the Company shall be deemed to have elected Physical Settlement in respect of its Conversion Obligation (such settlement method, the “**Default Settlement Method**” initially elected by the Company). Such Settlement Notice shall specify the relevant Settlement Method and in the case of an election of Combination Settlement, the relevant Settlement Notice shall indicate the Specified Dollar Amount per US\$1,000 principal amount of Notes. If the Company

delivers a Settlement Notice electing Combination Settlement in respect of its Conversion Obligation but does not indicate a Specified Dollar Amount per US\$1,000 principal amount of Notes in such Settlement Notice, the Specified Dollar Amount per US\$1,000 principal amount of Notes shall be deemed to be US\$1,000.

(iv) The Company may, by written notice to Holders, the Trustee and the Conversion Agent (if other than the Trustee), on or before August 1, 2025, change the Default Settlement Method or elect to irrevocably fix the Settlement Method to any Settlement Method that the Company is then permitted to elect, including Combination Settlement with a Specified Dollar Amount per \$1,000 principal amount of Notes of \$1,000 or with an ability to continue to set the Specified Dollar Amount per \$1,000 principal amount of Notes at or above any specific amount set forth in such election notice, that will apply to all Note conversions with a Conversion Date that is on or after the date the Company sends such notice. If the Company changes the Default Settlement Method or elects to irrevocably fix the Settlement Method, in either case, to Combination Settlement with an ability to continue to set the Specified Dollar Amount per \$1,000 principal amount of Notes at or above a specified amount, the Company shall, after the date of such change or election, as the case may be, inform Holders converting their Notes, the Trustee and the Conversion Agent (if other than the Trustee) in writing of such Specified Dollar Amount in respect of the relevant conversion or conversions no later than the relevant Settlement Method Election Deadline for such conversion or conversions, or, if the Company does not timely inform the Holders, the Trustee and the Conversion Agent of the Specified Dollar Amount, such Specified Dollar Amount shall be the specific amount set forth in the change or election notice or, if no specific amount was set forth in the change or election notice, such Specified Dollar Amount shall be deemed to be \$1,000 per \$1,000 principal amount of Notes. If the Company changes the Default Settlement Method or irrevocably fixes the Settlement Method, then the Company shall concurrently either post the Default Settlement Method or fixed Settlement Method, as applicable, on the Company's website or disclose the same in a current report on Form 6-K (or any successor form) that is filed with the Commission. Notwithstanding the foregoing, no such change in the Default Settlement Method or irrevocable election will affect any Settlement Method theretofore elected (or deemed to be elected) with respect to any Conversion Date pursuant to this Section 14.02. For the avoidance of doubt, such change or election (as the case may be), if made, will be effective without the need to amend this Indenture or the Notes, including pursuant to Section 10.02(a). However, the Company may nonetheless choose to execute such an amendment at the Company's option.

(v) The cash, ADSs or a combination of cash and ADSs, as applicable, in respect of any conversion of Notes (the "**Settlement Amount**") shall be computed as follows:

(A) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by Physical Settlement, the Company shall deliver 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 on the Conversion Date for such conversion;

(B) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by Cash Settlement, the Company shall pay to the converting Holder in respect of each US\$1,000 principal amount of Notes being converted cash in an amount equal to the sum of the Daily Conversion Values for each of the 20 consecutive Trading Days during the related Observation Period; and

(C) if the Company elects (or is deemed to have elected) to satisfy its Conversion Obligation in respect of such conversion by Combination Settlement, the Company shall pay or deliver, as the case may be, in respect of each US\$1,000 principal amount of Notes being converted, a Settlement Amount equal to the sum of the Daily Settlement Amounts for each of the 20 consecutive Trading Days during the related Observation Period.

(vi) The Daily Settlement Amounts (if applicable) and the Daily Conversion Values (if applicable) shall be determined by the Company promptly following the last day of the Observation Period. Promptly after such determination of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash payable in lieu of delivering any fractional ADS, the Company shall notify the Trustee and the Conversion Agent (if other than the Trustee) in writing of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash payable in lieu of delivering fractional ADSs. The Trustee and the Conversion Agent (if other than the Trustee) shall have no responsibility for any such determination.

(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, (1) comply with the procedures of the Depository in effect at that time for converting a beneficial interest in a Global Note, and the procedures agreed between the Company and the ADS Depository with respect to any ADSs issued upon conversion of the Notes prior to the Resale Restriction Termination Date, (2) if required, pay funds equal to Additional Interest, if any, payable on the next Additional Interest Payment Date to which such Holder is not entitled as set forth in Section 14.02(h), and (3) prior to the Resale Restriction Termination Date, complete, manually sign and deliver a duly completed irrevocable notice to the Conversion Agent, the Company and the ADS Depository 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, the Company and the ADS Depository, 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 Trustee, (3) if required, furnish appropriate endorsements and transfer documents and (4) if required, pay funds equal to Additional Interest, if any, payable on the next Additional Interest Payment Date to which such Holder is not entitled as set forth in Section 14.02(h). The Trustee (and if different, the Conversion Agent) shall notify the Company of any conversion pursuant to this Article 14 on the Conversion Date, or promptly following instructions 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 Repurchase Notice or Fundamental Change Repurchase Notice to the Company in respect of such Notes and has not validly withdrawn such Repurchase Notice or Fundamental Change Repurchase Notice, as the case may be, in accordance with Section 15.03. The delivery of the ADSs by the ADS Depository to Holders upon conversion of their Notes or their designated transferees will be governed by the terms of the Deposit Agreement and by procedures agreed between the Company and the ADS Depository with respect to any ADSs issued upon conversion of the Notes.

By converting a beneficial interest in a Global Note into ADSs, the Holder is deemed to represent to the Company and the ADS Depository that such Holder is not an “affiliate” (as defined in Rule 144) of the Company and has not been an “affiliate” of the Company during the three months immediately preceding the Conversion Date.

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.

(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. Except as set forth in Section 14.03(b) and Section 14.07(a), the Company shall pay or deliver, as the case may be, the consideration due in respect of the Conversion Obligation on the third Business Day immediately following the relevant Conversion Date, if the Company elects Physical Settlement, or on the third Business Day immediately following the last Trading Day of the relevant Observation Period, in the case of any other Settlement Method; *provided* that in respect of (x) all conversions for which the relevant Conversion Date occurs after the issuance of a Redemption Notice by the Company with respect to the Notes and prior to the close of business on the second Business Day prior to the related Tax Redemption Date or Optional Redemption Date (as the case may be) and (y) all conversions for which the relevant Conversion Date occurs on or after August 1, 2025, the Company shall pay or deliver, as the case may be, the consideration due in respect of the Conversion Obligation on the second Business Day immediately following the relevant Conversion Date, if the Company elects Physical Settlement, or on the second Business Day immediately following the last Trading Day of the relevant Observation Period, in the case of any other Settlement Method. If any ADSs are due to a converting Holder, the Company shall issue or cause to be issued, and deliver (if applicable) to such Holder, or such Holder’s nominee or nominees, the full number of ADSs to which such Holder shall be entitled, in book-entry format through the Depository, 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 Trustee 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 any 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 Company 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 Company or the Depositary, as applicable, receives a sum sufficient to pay any tax that is due by such Holder in accordance with the immediately preceding sentence. The Company shall also pay the ADS Depositary's fees for issuance of all ADSs deliverable upon conversion.

(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 Additional Interest, if any, except as set forth below and the Company will not adjust the Conversion Rate for any accrued and unpaid Additional Interest on the Notes. 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 Additional Interest, if any, to, but not including, the relevant Conversion Date. As a result, accrued and unpaid Additional Interest, if any, to, but not including, the relevant Conversion Date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. Upon a conversion of Notes into a combination of cash and ADSs, accrued and unpaid Additional Interest, if any, will be deemed to be paid first out of the cash paid upon such conversion. Notwithstanding the foregoing, if Notes are converted after the close of business on an Additional Interest Record Date and prior to the open of business on the immediately following Additional Interest Payment Date, Holders of such Notes as of the close of business on such Additional Interest Record Date will receive the full amount of Additional Interest, if any, payable on such Notes on the corresponding Additional Interest Payment Date notwithstanding the conversion. Notes surrendered for conversion during the period from the close of business on any Additional Interest Record Date to the open of business on the immediately following Additional Interest Payment Date must be accompanied by funds equal to the amount of Additional Interest, if any, payable on the Notes so converted (regardless of whether the converting Holder was the holder of record on the corresponding Additional Interest Record Date); provided that no such payment shall be required (1) for conversions following January 15, 2026; (2) if the Company has specified a Tax Redemption Date or an Optional Redemption Date that is after an Additional Interest Record Date and on or prior to the third Business Day immediately succeeding the corresponding Additional Interest Payment Date; (3) if the Company has specified a Fundamental Change Repurchase Date that is after an Additional Interest Record Date and on or prior to the third Business Day immediately succeeding the corresponding Additional Interest

Payment Date; or (4) to the extent of any Defaulted Amounts, if any Defaulted Amounts exists at the time of conversion with respect to such Note. Neither the Trustee nor the Conversion Agent (if other than the Trustee) will have any duty to determine or verify determination by the Company of whether any of the conditions to conversion have been satisfied.

(i) The Person in whose name the certificate for any ADSs shall be 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 (if the Company elects to satisfy the related Conversion Obligation by Physical Settlement) or the last Trading Day of the relevant Observation Period (if the Company elects to satisfy the related Conversion Obligation by Combination Settlement), as the case may be. 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 delivering any Fractional ADS deliverable upon conversion based on the Daily VWAP for the relevant Conversion Date (in the case of Physical Settlement) or based on the Daily VWAP for the last Trading Day of the relevant Observation Period (in the case of Combination Settlement). For each Note surrendered for conversion, if the Company has elected (or is deemed to have elected) Combination Settlement, the full number of ADSs that shall be issued upon conversion thereof shall be computed on the basis of the aggregate Daily Settlement Amounts for the relevant Observation Period and any Fractional ADSs remaining after such computation shall be paid in cash.

(k) In accordance with the Unrestricted Deposit Agreement or the Restricted Deposit Agreement, as applicable, 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 shall comply with the Unrestricted Deposit Agreement and the Restricted Deposit Agreement (as the case may be), in each case, as required by the ADS Depository or the ADS Custodian in connection with each issue of Ordinary Shares and issuance and delivery of ADSs.

(l) The Conversion Agent will open a non-interest bearing account in the name of the Company in relation to its Cash Settlements.

Section 14.03 *Increased Conversion Rate Applicable to Certain Notes Surrendered in Connection with Make-Whole Fundamental Changes.* (a) If a Make-Whole Fundamental Change occurs prior to the Maturity Date and a Holder elects to convert its Notes in connection with such Make-Whole Fundamental Change, the Company shall, under the circumstances described below, increase the Conversion Rate for the Notes so surrendered for conversion by a number of additional ADSs (the “**Additional ADSs**”), as described below. A conversion of Notes shall be deemed for these purposes to be “in connection with” such Make-Whole Fundamental Change if the relevant Notice of Conversion is received by the Conversion Agent from, and including, the Effective Date of the Make-Whole Fundamental Change up to, and including, the second Business Day immediately prior to the related Fundamental Change Repurchase Date (or, in the case of a Make-Whole Fundamental Change that would have been a Fundamental Change but for the *proviso* in clause (b) of the definition thereof, the 35th Trading

Day immediately following the Effective Date of such Make-Whole Fundamental Change). The Company shall provide written notification to Holders and the Trustee (and the Conversion Agent, if other than the Trustee) of the Effective Date of any Make-Whole Fundamental Change and issue a press release announcing such Effective Date no later than five Business Days after such Effective Date.

(b) Upon surrender of Notes for conversion in connection with a Make-Whole Fundamental Change, the Company shall, at its option, satisfy the related Conversion Obligation by Physical Settlement, Cash Settlement or Combination Settlement in accordance with Section 14.02; *provided, however*, that if, at the effective time of a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Reference Property following such Make-Whole Fundamental Change is composed entirely of cash, for any conversion of Notes following the Effective Date of such Make-Whole Fundamental Change, the Conversion Obligation shall be calculated based solely on the ADS Price for the transaction and shall be deemed to be an amount of cash per US\$1,000 principal amount of converted Notes equal to the Conversion Rate (including any adjustment for Additional ADSs), *multiplied* by such ADS Price.

(c) The number of Additional ADSs, if any, by which the Conversion Rate shall be increased shall be determined by reference to the table below, based on the date on which the Make-Whole Fundamental Change occurs or becomes effective (the “**Effective Date**”) and the price (the “**ADS Price**”) paid (or deemed to be paid) per ADS in the Make-Whole Fundamental Change. If the holders of the ADSs receive in exchange for their ADSs only cash in a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the ADS Price shall be the cash amount paid per ADS. Otherwise, the ADS Price shall be the average of the Last Reported Sale Prices of the ADSs over the five Trading Day period ending on, and including, the Trading Day immediately preceding the Effective Date of the Make-Whole Fundamental Change.

(d) The ADS Prices set forth in the column headings of the table below shall be adjusted as of any date on which the Conversion Rate of the Notes is otherwise adjusted. The adjusted ADS Prices shall equal the ADS Prices applicable immediately prior to such adjustment, *multiplied* by a fraction, the numerator of which is the Conversion Rate immediately prior to such adjustment giving rise to the ADS Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional ADSs set forth in the table below shall be adjusted in the same manner and at the same time as the Conversion Rate as set forth in Section 14.04.

(e) The following table sets forth the number of Additional ADSs to be received per US\$1,000 principal amount of Notes pursuant to this Section 14.03 for each ADS Price and Effective Date set forth below:

Effective Date	ADS Price											
	\$62.04	\$70.00	\$80.00	\$93.06	\$107.00	\$120.98	\$140.00	\$170.00	\$200.00	\$250.00	\$325.00	\$450.00
<b>January 15, 2021</b>	5.3728	4.2514	3.2344	2.3239	1.6740	1.2277	0.8224	0.4494	0.2473	0.0852	0.0082	0.0000
<b>February 1, 2022</b>	5.3728	4.2514	3.2119	2.2544	1.5841	1.1336	0.7344	0.3797	0.1961	0.0578	0.0021	0.0000

<b>February 1, 2023</b>	5.3728	4.2404	3.0761	2.0798	1.4075	0.9714	0.5994	0.2855	0.1332	0.0292	0.0000	0.0000
<b>February 1, 2024</b>	5.3728	3.7273	2.6648	1.7540	1.1434	0.7543	0.4329	0.1786	0.0679	0.0066	0.0000	0.0000
<b>February 1, 2025</b>	5.3728	3.6103	2.4011	1.4131	0.8054	0.4596	0.2129	0.0574	0.0101	0.0000	0.0000	0.0000
<b>February 1, 2026</b>	5.3728	3.5400	1.7543	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

The exact ADS Prices and Effective Dates may not be set forth in the table above, in which case:

(i) if the ADS Price is between two ADS Prices in the table above or the Effective Date is between two Effective Dates in the table, the number of Additional ADSs shall be determined by a straight-line interpolation between the number of Additional ADSs set forth for the higher and lower ADS Prices and the earlier and later Effective Dates, as applicable, based on a 365-day year;

(ii) if the ADS Price is greater than US\$450.00 per ADS (subject to adjustment in the same manner as the ADS Prices set forth in the column headings of the table above pursuant to subsection (d) above), no Additional ADSs shall be added to the Conversion Rate; and

(iii) if the ADS Price is less than US\$62.04 per ADS (subject to adjustment in the same manner as the ADS Prices set forth in the column headings of the table above pursuant to subsection (d) above), no Additional ADSs shall be added to the Conversion Rate.

Notwithstanding the foregoing, in no event shall the Conversion Rate per US\$1,000 principal amount of Notes exceed 16.1186 ADSs, subject to adjustment in the same manner as the Conversion Rate pursuant to Section 14.04.

(f) Nothing in this Section 14.03 shall prevent an adjustment to the Conversion Rate pursuant to Section 14.04.

(g) If the Holder elects to convert its Notes in connection with the Company's election to (i) redeem the Notes in respect of a Change in Tax Law pursuant to Section 16.01 or (ii) redeem the Notes at the Company's option pursuant to Section 16.02, in each case, the Conversion Rate shall be increased by a number of additional ADSs determined pursuant to this Section 14.03(g). The Company shall settle conversions of Notes as described in Section 14.02 and, for the avoidance of doubt, pay Additional Amounts, if any, with respect to any such conversion.

A conversion shall be deemed to be "in connection with" the Company's election to redeem the Notes in respect of a Change in Tax Law or redeem the Notes at the Company's option if the relevant Notice of Conversion is received by the Conversion Agent during the period from, and including, the date the Company provides the related notice of redemption to Holders until the close of business on the second Business Day immediately preceding the Tax Redemption Date or the Optional Redemption date, as the case may be (or, if the Company fails to pay the Redemption Price, such later date on which the Company pays the Redemption Price).

Simultaneously with providing such notice of redemption, the Company shall publish a notice containing this information in a newspaper of general circulation in The City of New York or publish the information on the Company's website or through such other public medium as the Company may use at that time.

The number of additional ADSs by which the Conversion Rate will be increased in the event the Company elects to redeem the Notes pursuant to Article 16 hereof will be determined by reference to the table in clause (e) above based on the Redemption Reference Date and the Redemption Reference Price (each as defined below), but determined for purposes of this Section 14.03(g) as if (x) the Holder had elected to convert its Notes in connection with a Make-Whole Fundamental Change, (y) the applicable "Redemption Reference Date" were the "Effective Date" as specified in clause (c) above and (z) the applicable "Redemption Reference Price" were the "ADS price" as specified in clause (c) above. "**Redemption Reference Date**" means the date the Company delivers the relevant Redemption Notice. "**Redemption Reference Price**" means, for any conversion in connection with the Company's election to redeem the Notes in respect of a Change in Tax Law pursuant to Section 16.01 or redeem the Notes at the Company's option pursuant to Section 16.02, as the case may be, the average of the Last Reported Sale Prices of the ADSs over the 5 consecutive Trading Day period ending on, and including the Trading Day immediately preceding, the date the Company delivers the relevant Redemption Notice.

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 described in clause (b) below 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 an event to the extent such change reflects what a corresponding change to the Conversion Rate would have been 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 (x) a share split or share combination or (y) a tender or exchange offer), 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 in writing to the Holders, the Trustee, the Paying Agent and the 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<sub>0</sub> = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for the ADSs 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<sub>1</sub> = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date or Effective Date, as applicable;
- OS<sub>0</sub> = the number of Ordinary Shares outstanding immediately prior to the open of business on such Ex-Dividend Date or Effective Date, as applicable (before giving effect to any such dividend, distribution, split or combination); and
- OS<sub>1</sub> = 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 open of business on the Ex-Dividend Date for the ADSs 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) (other than in connection with a stockholder rights plan) 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:

$$CR_1 \square CR_0 \square \frac{OS_0 \square X}{OS_0 \square Y}$$

where,

- $CR_0$  = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for the ADSs for such issuance;
- $CR_1$  = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date;
- $OS_0$  = the number of Ordinary Shares outstanding immediately prior to the open of business on such Ex-Dividend 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 become effective immediately after the open of business on the Ex-Dividend 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). To the extent 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 had the increase to the Conversion Rate for such issuance been made on the basis of only the rights, options or warrants, if any, actually issued.

For purposes of this Section 14.04(b) and Section 14.01(b)(ii)(A), 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:

$$CR_1 \square CR_0 \square \frac{SP_0}{SP_0 \square FMV}$$

where,

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for the ADSs for such distribution;
- CR<sub>1</sub> = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date;
- SP<sub>0</sub> = 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 Ex-Dividend 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 open of business on the Ex-Dividend Date for the ADSs for such distribution. If such distribution is not so paid or made in full, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the distribution, if any, actually paid or made. Notwithstanding the foregoing, if “FMV” (as defined above) is equal to or greater than “SP<sub>0</sub>” (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:

$$CR_1 \square CR_0 \square \frac{FMV_0 \square MP_0}{MP_0}$$

where,

CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the end of the Valuation Period;

CR<sub>1</sub> = the Conversion Rate in effect immediately after the end of the Valuation Period;

FMV<sub>0</sub> = 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<sub>0</sub> = 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 (x) in respect of any conversion of Notes for which Physical Settlement is applicable, if the relevant Conversion Date occurs during the Valuation Period, references in the portion of this Section 14.04(c) with respect 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, such Conversion Date in determining the Conversion Rate and (y) in respect of any conversion of Notes for which Cash Settlement or Combination Settlement is applicable, for any Trading Day that falls within the relevant Observation Period for such conversion and within the Valuation Period, the reference to “10” in the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed between (and including, in each case) the Ex-Dividend Date for such Spin-Off and such Trading Day in determining the Conversion Rate as of such Trading Day.

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 Ex-Dividend 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 “Ex-Dividend Date” of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Ex-Dividend 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 open of business on such Ex-Dividend Date or Effective Date” within the meaning of Section 14.04(a) or “outstanding immediately prior to the open of business on such Ex-Dividend 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 open of business on the Ex-Dividend Date for the ADSs for such dividend or distribution;

$CR_1$  = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution;

$SP_0$  = 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 open of business on the Ex-Dividend 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<sub>0</sub>” (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 Tender/Exchange Offer Consideration (as defined below) 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:

$$CR_1 \square CR_0 \square \frac{AC \square (SP_1 \square OS_1)}{OS_0 \square SP_1}$$

where,

- CR<sub>0</sub> = 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;
- CR<sub>1</sub> = 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 thereof in good faith and as of the time such tender or exchange offer expires (the “**Tender/Exchange Offer Consideration**”)) paid or payable for Ordinary Shares or ADSs, as the case may be, purchased in such tender or exchange offer;
- OS<sub>0</sub> = 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);
- OS<sub>1</sub> = 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

SP<sub>1</sub> = 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 (x) in respect of any conversion of Notes for which Physical Settlement is applicable, if the relevant Conversion Date occurs during 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” or “10<sup>th</sup>” in the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the expiration date of such tender or exchange offer to, and including such Conversion Date in determining the Conversion Rate and (y) in respect of any conversion of Notes for which Cash Settlement or Combination Settlement is applicable, for any Trading Day that falls within the relevant Observation Period for such conversion and within the 10 Trading Days immediately following, and including the Trading Day next succeeding the expiration date of such tender or exchange offer, references with respect to 10 Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the expiration date of such tender or exchange offer to, and including, such Trading Day in determining the Conversion Rate as of such Trading Day. For the avoidance of doubt, no adjustment under this Section 14.04(e) will be made if such adjustment would result in a decrease in the Conversion Rate (other than, for the avoidance of doubt, any readjustment described in the immediately succeeding paragraph).

(f) Notwithstanding this Section 14.04 or any other provision of this Indenture or the Notes, if a Conversion Rate adjustment becomes effective on any Ex-Dividend Date, and a Holder that has converted its Notes on or after such Ex-Dividend Date and on or prior to the related Record Date would be treated as the record holder of the ADSs as of the related Conversion Date as described under Section 14.02(i) based on an adjusted Conversion Rate for such Ex-Dividend Date, then, notwithstanding the Conversion Rate adjustment provisions in this Section 14.04, the Conversion Rate adjustment relating to such Ex-Dividend Date shall not be made for such converting Holder. Instead, such Holder shall be treated as if such Holder were the record owner of the ADSs on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

(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 repurchase of any Ordinary Shares pursuant to an open-market share repurchase program or other buyback transaction that is not a tender offer or exchange offer of the nature described in clause (e) of this Section 14.04 above;

(iv) 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;

(v) solely for a change in the par value of the Ordinary Shares; or

(vi) for accrued and unpaid Additional 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 deliver to the Trustee (and the Conversion Agent if not the Trustee) an Officers' Certificate setting forth (i) the adjusted Conversion Rate, (ii) the subsection of this Section 14.04 pursuant to which after such adjustment has been made, showing in reasonable detail the facts upon which such adjustment is based, and (iii) the date as of which such adjustment is effective, and such Officers' Certificate shall be conclusive evidence of the accuracy of such adjustment absent manifest error. 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 deliver 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. Neither the Trustee nor any Conversion Agent shall be under any duty or responsibility with respect to any such certificate or the information and calculations contained therein.

(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, the Daily VWAPs, the Daily Conversion Values, the Daily Settlement Amounts, the ADS Price for purposes of a Make-Whole Fundamental Change or the Redemption Reference Price for purposes of the Company’s election to redeem the Notes in connection with a Change in Tax Law or to redeem the Notes as described under Section 16.02 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 Ex-Dividend 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, ADS Prices, the Daily VWAPs, the Daily Conversion Values or the Daily Settlement Amounts 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 and that Physical Settlement were applicable).

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 ADSs or 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 ADSs or 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 such Merger Event (A) the Company shall continue to have the right to determine the form of consideration to be paid or delivered, as the case may be, upon conversion of Notes in accordance with Section 14.02 and (B) (I) any amount payable in cash upon conversion of the Notes in accordance with Section 14.02 shall continue to be payable in cash, (II) any ADSs that the Company would have been required to deliver 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 and (III) the Daily VWAP shall be calculated based on the value of a unit of Reference Property that a holder of one ADS would have received in such transaction.

If the Merger Event causes the ADSs or 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.

Such supplemental indenture described in the second immediately preceding paragraph shall (i) 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) and (ii) contain such other provisions that the Board of Directors determines in good faith are appropriate to preserve the economic interests of the Holders and to give effect to the provisions described in this Section 14.07. 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 and the right of Holders to require the Company to repurchase their Notes on the Repurchase Date pursuant to Section 15.01, 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 cash, ADSs or a combination of cash and ADSs, as applicable, 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 upon conversion of the Notes, if any, in accordance with the terms of this Indenture, the Notes and the Unrestricted Deposit Agreement or the Restricted Deposit Agreement, as applicable, 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 Unrestricted Deposit Agreement or the Restricted Deposit Agreement (including pursuant to

a certain procedures letter for the issuance of restricted ADSs contemplated by Section 11 of the Restricted Deposit Agreement) upon request.

Section 14.09 *Responsibility of Trustee*. Neither the Trustee nor the Conversion Agent shall 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 in the Indenture or in any supplemental indenture provided to be employed, in making the same. The Trustee and the Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of the 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 the Conversion Agent make no representations with respect thereto. Neither the Trustee nor the Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any ADSs or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company in connection therewith. Without limiting the generality of the foregoing, neither the Trustee nor the Conversion Agent shall be under any responsibility to (a) determine whether a supplemental indenture needs to be entered into or (b) determine the correctness of any provisions contained in any supplemental indenture entered into. The Trustee and the Conversion Agent shall be protected in conclusively relying upon the Officer's Certificate (which the Company shall be obligated to deliver to the Trustee and the Conversion Agent 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, if any, 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.*** Except as provided in Section 10.03, if the Ordinary Shares cease to be represented by ADSs issued under the Unrestricted Deposit Agreement, 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.

**Section 14.13 *Exchange In Lieu Of Conversion.*** (a) When a Holder surrenders its Notes for conversion, the Company may, at its election (an “**Exchange Election**”), direct the Conversion Agent to deliver, on or prior to the Business Day immediately following the Conversion Date, such Notes to one or more financial institutions designated by the Company (each, a “**Designated Financial Institution**”) for exchange in lieu of conversion. In order to accept any Notes surrendered for conversion, the Designated Financial Institution(s) must agree to timely pay and/or deliver, as the case may be, in exchange for such Notes, the cash, ADSs or a combination thereof, as applicable, that would otherwise be due upon conversion pursuant to Section 14.02 (the “**Conversion Consideration**”). If the Company makes an Exchange Election, the Company shall, by the close of business on the Business Day following the relevant Conversion Date, notify in writing the Trustee, the Conversion Agent (if other than the Trustee) and the Holder surrendering Notes for conversion that the Company has made the Exchange Election and the Company shall promptly notify the Designated Financial Institution(s) of the relevant deadline for delivery of the Conversion Consideration and the type of Conversion Consideration to be paid and/or delivered, as the case may be.

(b) Any Notes exchanged by the Designated Financial Institution(s) shall remain outstanding, subject to applicable procedures of the Depositary. If the Designated Financial Institution(s) agree(s) to accept any Notes for exchange but does not timely pay and/or deliver, as

the case may be, the related Conversion Consideration, or if such Designated Financial Institution(s) does not accept the Notes for exchange, the Company shall pay and/or deliver, as the case may be, the relevant Conversion Consideration, as, and at the time, required pursuant to this Indenture as if the Company had not made the Exchange Election.

(c) The Company's designation of any Designated Financial Institution(s) to which the Notes may be submitted for exchange does not require such Designated Financial Institution(s) to accept any Notes.

ARTICLE 15  
REPURCHASE OF NOTES AT OPTION OF HOLDERS

Section 15.01 *Repurchase at Option of Holders.*

(a) Each Holder shall have the right, at such Holder's option, to require the Company to repurchase for cash on February 1, 2024 (the "**Repurchase Date**"), all of such Holder's Notes, or any portion thereof that is an integral multiple of US\$1,000 principal amount, at a repurchase price (the "**Repurchase Price**") that is equal to 100% of the principal amount of the Notes to be repurchased, *plus* accrued and unpaid Additional Interest, if any, to, but excluding, the Repurchase Date (unless the Repurchase Date falls after an Additional Interest Record Date but on or prior to the immediately succeeding Additional Interest Payment Date, in which case the Company shall pay on the Additional Interest Payment Date the full amount of accrued and unpaid Additional Interest, if any, to the Holder of record as of the close of business on such Additional Interest Record Date, and the Repurchase Price will be equal to 100% of the principal amount of the Notes to be repurchased). Not later than 20 Business Days prior to the Repurchase Date, the Company shall mail a notice (the "**Company Notice**") by first class mail to the Trustee, to the Paying Agent and to each Holder at its address shown in the Note Register of the Note Registrar (and to beneficial owners as required by applicable law and to the Conversion Agent if other than the Trustee). The Company Notice shall include a Form of Repurchase Notice to be completed by a holder and shall state:

- (i) the last date on which a Holder may exercise its repurchase right pursuant to this Section 15.01 (the "**Repurchase Expiration Time**");
- (ii) the Repurchase Price;
- (iii) the Repurchase Date;
- (iv) the name and address of the Conversion Agent and Paying Agent;
- (v) that the Notes with respect to which a Repurchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Repurchase Notice in accordance with the terms of this Indenture;
- (vi) that the Holder shall have the right to withdraw any Notes surrendered prior to the Repurchase Expiration Time; and

(vii) the procedures a Holder must follow to exercise its repurchase rights under this Section 15.01 and a brief description of those rights.

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 Company Notice shall be prepared by the Company.

Simultaneously with providing the Company Notice, the Company shall publish a notice containing the information included in the 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.

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 15.01.

Repurchases of Notes under this Section 15.01 shall be made, at the option of the Holder thereof, upon:

(A) delivery to the Trustee (or other agent appointed for such purpose) by the Holder of a duly completed notice (the "**Repurchase Notice**") in the form set forth in Attachment 3 to the Form of Note attached hereto as Exhibit A, if the Notes are Physical Notes, or in compliance with the Depository's procedures for surrendering interests in global notes, if the Notes are Global Notes, in each case during the period beginning at any time from the open of business on the date that is 20 Business Days prior to the Repurchase Date until the close of business on the second Business Day immediately preceding the Repurchase Date; and

(B) delivery of the Notes, if the Notes are Physical Notes, to the Trustee at any time after delivery of the Repurchase Notice (together with all necessary endorsements) at the Corporate Trust Office of the Trustee, or book-entry transfer of the Notes, if the Notes are Global Notes, in compliance with the procedures of the Depository, in each case such delivery being a condition to receipt by the Holder of the Repurchase Price therefor.

Each Repurchase Notice shall state:

(A) in the case of Physical Notes, the certificate numbers of the Notes to be delivered for repurchase;

(B) the portion of the principal amount of the Notes to be repurchased, which must be US\$1,000 or an integral multiple thereof; and

(C) 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 Repurchase Notice must comply with appropriate Depository procedures.

Notwithstanding anything herein to the contrary, any Holder delivering to the Trustee the Repurchase Notice contemplated by this Section 15.01 shall have the right to withdraw, in whole or in part, such Repurchase Notice at any time prior to the close of business on the second Business Day immediately preceding the 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 Repurchase Notice or written notice of withdrawal thereof.

No Repurchase Notice with respect to any Notes may be delivered and no Note may be surrendered for repurchase pursuant to this Section 15.01 by a Holder thereof to the extent such Holder has also delivered a Fundamental Change Repurchase Notice with respect to such Note in accordance with Section 15.02 and not validly withdrawn such Fundamental Change Repurchase Notice in accordance with Section 15.03.

(b) Notwithstanding the foregoing, no Notes may be repurchased by the Company at the option of the Holders on the Repurchase Date if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to such Repurchase Date (except in the case of an acceleration resulting from a default by the Company in the payment of the 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 Repurchase Price with respect to such Notes), or any instructions for book-entry transfer of the Notes in compliance with the procedures of the Depositary shall be deemed to have been cancelled, and, upon such return or cancellation, as the case may be, the Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

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, *plus* accrued and unpaid Additional Interest, if any, thereon to, but excluding, the Fundamental Change Repurchase Date (the "**Fundamental Change Repurchase Price**"), unless the Fundamental Change Repurchase Date falls after an Additional Interest Record Date but on or prior to the Additional Interest Payment Date to which such Additional Interest Record Date relates, in which case the Company shall instead pay on the Additional Interest Payment Date the full amount of accrued and unpaid Additional Interest, if any, to Holders of record as of such Additional Interest Record Date, and the Fundamental Change Repurchase Price shall be equal to 100% of the principal amount of Notes to be repurchased pursuant to this Article 15. 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 Trustee (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 Depository’s procedures 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 the Depository, 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 Depository procedures.

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.

No Fundamental Change Repurchase Notice with respect to any Notes may be delivered and no Note may be surrendered by a Holder for repurchase thereof to the extent such Holder has also surrendered a Repurchase Notice with respect to such Note in accordance with Section 15.01 and not validly withdrawn such Repurchase Notice in accordance with Section 15.03.



(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 the Depositary. 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 and whether such events also constitute a Make-Whole 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 and any adjustments to the Conversion Rate as a result of such Fundamental Change if it is a Make-Whole Fundamental Change;
- (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 the Depository 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 Repurchase Notice or Fundamental Change Repurchase Notice.* (a) A Repurchase Notice or 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 Trustee (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 Repurchase Date or prior to the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date, as the case may be, 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 Repurchase Notice or Fundamental Change Repurchase Notice, as the case may be, 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 the Depository.

Section 15.04 *Deposit of Repurchase Price or 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 Repurchase Date or Fundamental Change Repurchase Date, as the case may be, an amount of money sufficient to repurchase all of the Notes to be repurchased at the appropriate Repurchase Price or 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 Repurchase Date or Fundamental Change Repurchase Date, as the case may be, (*provided* the Holder has satisfied the conditions in Section 15.01 or Section 15.02, as the case may be) and (ii) the time of book-

entry transfer or the delivery of such Note to the Trustee (or other agent appointed by the Company) by the Holder thereof in the manner required by Section 15.01 or 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 Depositary shall be made by wire transfer of immediately available funds to the account of the 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 Repurchase Price or Fundamental Change Repurchase Price, as the case may be.

(b) If by 10:00 a.m., New York City time, on the Repurchase Date or Fundamental Change Repurchase Date, as the case may be, 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 Repurchase Date or Fundamental Change Repurchase Date, as the case may be, then, with respect to the Notes that have been properly surrendered for repurchase to the Trustee (or other agent appointed for such purpose) and not validly withdrawn, on such Repurchase Date or Fundamental Change Repurchase Date, as the case may be, (i) such Notes will cease to be outstanding, (ii) Additional Interest will cease to accrue on such Notes (whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Trustee) and (iii) all other rights of the Holders of such Notes will terminate (other than the right to receive the Repurchase Price or Fundamental Change Repurchase Price, as the case may be, and the right of the Holder on the applicable Additional Interest Record Date to receive previously accrued and unpaid Additional Interest, if any, upon delivery or transfer of the Notes to the extent not included in the Repurchase Price or Fundamental Change Repurchase Price, as the case may be).

(c) Upon surrender of a Note that is to be repurchased in part pursuant to Section 15.01 or Section 15.02, the Company shall execute and the Trustee, 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 unrepurchased 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.

Notwithstanding anything to the contrary in this Indenture, the Company shall not be required to repurchase, or to make an offer to repurchase, the Notes upon a Fundamental Change if a third party makes such an offer in the same manner, at the same time, for the same or greater

price and otherwise in compliance with the requirements for an offer made by the Company as set forth above in this Section 15.05, and such third party purchases all Notes properly surrendered and not validly withdrawn under its offer in the same manner, at the same time, for the same or greater price and otherwise in compliance with the requirements for an offer made by the Company as set forth above in this Section 15.05 (including the requirement to pay the Fundamental Change Repurchase Price on the later of the applicable Fundamental Change Repurchase Date and the time of book-entry transfer or delivery of the relevant Notes); *provided* that the Company will continue to be obligated to (i) deliver the applicable Fundamental Change notice to the holders (which Fundamental Change notice will state that such third party will make such an offer to purchase the Notes), (ii) comply with applicable securities laws as set forth in this Section 15.05 in connection with any such purchase and (iii) pay the applicable Fundamental Change Repurchase Price on the later of the applicable Fundamental Change Repurchase Date and the time of book-entry transfer or delivery of the relevant Notes in the event such third party fails to make such payment in such amount at such time.

Notwithstanding anything to the contrary in this Indenture, to the extent that the provisions of any federal or state securities laws or other applicable laws or regulations adopted after the date on which the Notes are first issued conflict with the provisions of this Indenture relating to the Company's obligations to repurchase the Notes upon a Fundamental Change, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under such provisions of this Indenture by virtue of such conflict.

#### ARTICLE 16 OPTIONAL REDEMPTION

Section 16.01 *Optional Redemption for Changes in the Tax Law of the Relevant Jurisdiction.* Other than as described in this Article 16, the Notes may not be redeemed by the Company at its option prior to maturity. If the Company has, or on the next Additional Interest Payment Date would, become obligated to pay to the Holder of any Note Additional Amounts that are more than a *de minimis* amount, as a result of:

(a) any change or amendment that is publicly announced and becomes effective on or after January 11, 2021 (or, in the case of a jurisdiction that becomes a Relevant Jurisdiction after such date, after such later date) in the laws or any rules or regulations of a Relevant Jurisdiction; or

(b) any change that is publicly announced and becomes effective on or after January 11, 2021 (or, in the case of a jurisdiction that becomes a Relevant Jurisdiction after such date, after such later date) in an interpretation, administration or application of such laws, rules or regulations by any legislative body, court, governmental agency, taxing authority or regulatory or administrative authority of such Relevant Jurisdiction (including the enactment of any legislation and the announcement or publication of any judicial decision or regulatory or administrative interpretation or determination);

(each, a “**Change in Tax Law**”), the Company may, at its option, redeem all but not part of the Notes (except in respect of certain Holders that elect otherwise as described below) at a

redemption price equal to 100% of the principal amount thereof (the “**Redemption Price**”), plus accrued and unpaid Additional Interest, if any, to, but not including the date fixed by the Company for redemption, which shall be on or prior to the 20<sup>th</sup> Scheduled Trading Day immediately before the Maturity Date (the “**Tax Redemption Date**”), including, for the avoidance of doubt, any Additional Amounts with respect to such Redemption Price; *provided* that the Company may only redeem the Notes if: (i) the Company cannot avoid such obligations by taking commercially reasonable measures available to the Company (*provided* that changing the jurisdiction of incorporation of the Company shall be deemed not to be a commercially reasonable measure); and (ii) the Company delivers to the Trustee an opinion of outside legal counsel of recognized standing in the Relevant Jurisdiction and an Officers’ Certificate attesting to such Change in Tax Law and obligation to pay Additional Amounts. The Trustee shall and is entitled to rely upon such opinion and Officers’ Certificate (without further investigation and enquiry) and it shall be conclusive and binding on the Holders.

Notwithstanding anything to the contrary in this Article 16, neither the Company nor any successor Person may redeem any of the Notes in the case that Additional Amounts are payable in respect of PRC withholding tax and any other tax collected at source at the Applicable PRC Rate or less solely as a result of the Company or its successor Person being considered a PRC tax resident under the PRC Enterprise Income Tax law.

If the Redemption Date occurs after an Additional Interest Record Date and on or prior to the corresponding Additional Interest Payment Date, the Company shall pay or cause the Paying Agent to pay, on or at its election, on such Additional Interest Payment Date, pay the full amount of accrued and unpaid Additional Interest, if any, and any Additional Amounts with respect to such Additional Interest, due on such Additional Interest Payment Date to the record holder of the Notes on the Additional Interest Record Date corresponding to such Additional Interest Payment Date, and the Redemption Price payable to any Holder (other than a Holder that elects to not have its Notes redeemed pursuant to the provisions described below) shall be equal to 100% of the principal amount of such Note to be redeemed, including, for the avoidance of doubt, any Additional Amounts with respect to such Redemption Price. The Company shall notify the Trustee in writing of its election and the date on which such Additional Interest and any Additional Amounts with respect to such Additional Interest shall be paid at the time the Company provides notice of such redemption.

The Company shall give the Trustee and Holders of Notes not less than 30 Scheduled Trading Days’ but no more than 40 Scheduled Trading Days’ notice of redemption (a “**Tax Redemption Notice**”) prior to the Tax Redemption Date, which will include the Redemption Price, the Tax Redemption Date and the Settlement Method that will apply to all conversions with a Conversion Date that occurs on or after the date the Company sends such Tax Redemption Notice and before the close of business on the second Business Day immediately before the related Tax Redemption Date. Simultaneously with providing such notice, which will include the Redemption Price, the Tax Redemption Date and the Settlement Method that will apply to all conversions with a Conversion Date that occurs on or after the date the Company sends such notice of redemption and before the close of business on the second Business Day immediately before the related Tax Redemption Date, the Company shall publish a notice containing this information in a newspaper of general circulation in The City of New York or publish the

information on the Company's website or through such other public medium as the Company may use at that time. The Tax Redemption Date must be a Business Day.

Upon receiving such notice of redemption, each Holder shall have the right to elect to not have its Notes redeemed, *provided* that (i) the Company shall not be obligated to pay any Additional Amounts on any payment with respect to such Notes solely as a result of such Change in Tax Law that resulted in the obligation to pay such Additional Amounts (whether upon conversion, required repurchase in connection with a Fundamental Change or on the Repurchase Date, at maturity or otherwise, and whether in cash, ADSs, or combination thereof, Reference Property or otherwise) after the Tax Redemption Date (or, if the Company fails to pay the Redemption Price on the Tax Redemption Date, such later date on which the Company pays the Redemption Price), and (ii) all future payments with respect to such Notes shall be subject to the deduction or withholding of such Relevant Taxing Jurisdiction and taxes required by law to be deducted or withheld as a result of such Change in Tax Law; *provided further* that, notwithstanding the foregoing, if a Holder electing not to have its Notes redeemed converts its Notes in connection with the Company's election to redeem the Notes in respect of such Change in Tax Law pursuant to Section 14.03(g), the Company shall be obligated to pay Additional Amounts, if any, with respect to such conversion.

Subject to the applicable procedures of DTC in the case of Global Notes, a Holder electing to not have its Notes redeemed must deliver to the Paying Agent a written notice of election so as to be received by the Paying Agent no later than the close of business on the second Business Day immediately preceding the Tax Redemption Date; *provided* that, a Holder that complies with the requirements for conversion in Section 14.02(b) shall be deemed to have delivered a notice of its election to not have its Notes so redeemed. A Holder may withdraw any notice of election (other than such a deemed notice of election in connection with a conversion) by delivering to the Paying Agent a written notice of withdrawal prior to the close of business on the Business Day immediately preceding the Tax Redemption Date (or, if the Company fails to pay the Redemption Price on the Tax Redemption Date, such later date on which the Company pays the Redemption Price). If no election is made or deemed to have been made, the Holder shall have its Notes redeemed without any further action.

No Notes may be redeemed by the Company or its successor if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to the Tax Redemption Date.

Section 16.02 *Optional Redemption by the Company*. The Company may not redeem the Notes prior to February 6, 2024, except under the circumstances described in Section 16.01.

(a) On or after February 6, 2024 and on or prior to the 20<sup>th</sup> Scheduled Trading Day immediately prior to the Maturity Date, the Company may redeem for cash all or part of the Notes, at its option, if the Last Reported Sale Price of the ADSs has been at least 130% of the Conversion Price then in effect on (i) each of at least 20 Trading Days (whether or not consecutive) during the period of 30 consecutive Trading Days ending on, and including, the Trading Day immediately prior to the date the Company provides notice of redemption and (ii) the Trading Day immediately preceding the date the Company sends such notice.

(b) In case the Company exercises its option to redeem all or, as the case may be, any part of the Note, it shall fix a date for redemption (the “**Optional Redemption Date**”) and shall give the Holders, Trustee, Conversion Agent, Paying Agent and each Holder of the Notes not less than 30 Scheduled Trading Days’ but no more than 40 Scheduled Trading Days’ notice (an “**Optional Redemption Notice**”) prior to the Optional Redemption Date, and the Redemption Price will be equal to 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid Additional Interest, if any, to, but excluding, the Optional Redemption Date (unless the Optional Redemption Date falls after an Additional Interest Record Date but on or prior to the immediately succeeding Additional Interest Payment Date, in which case the Company shall pay on the Additional Interest Payment Date the full amount of accrued and unpaid Additional Interest, if any, to the holder of record as of the close of business on such Additional Interest Record Date, and the Redemption Price shall be equal to 100% of the principal amount of the Notes to be redeemed). The Optional Redemption Date must be a Business Day. The Company shall send to each Holder written Optional Redemption Notice containing certain information set forth in this Indenture, including:

(i) the Optional Redemption Date;

(ii) the Redemption Price;

(iii) the Settlement Method that will apply to all conversions with a Conversion Date that occurs on or after the date the Company sends such Optional Redemption Notice and before the close of business on the second Business Day immediately before the related Optional Redemption Date;

(iv) that on the Optional Redemption Date, the Redemption Price will become due and payable for each Note to be redeemed, and that interest thereon, if any, shall cease to accrue on and after the Optional Redemption Date unless the Company defaults in the payment of the Redemption Price;

(v) the place or places where the Notes subject to such redemption are to be surrendered for payment of the Redemption Price;

(vi) that Holders may surrender Notes for conversion at any time prior to the close of business on the second Business Day prior to the Optional Redemption Date (unless the Company fails to pay the Redemption Price, in which case a Holder of Notes may convert such Notes until the Business Day immediately preceding the date on which the Redemption Price has been paid or duly provided for);

(vii) the Conversion Rate and, if applicable, the number of Additional ADSs added to the Conversion Rate in accordance with Section 14.03;

(viii) the CUSIP, ISIN or other similar numbers, if any, assigned to such Notes and that no representation is made as to the correctness or accuracy of the CUSIP or ISIN number listed in such notice or printed on the Notes; and

(ix) in case any Note is to be redeemed in part only, the portion of the principal amount thereof to be redeemed, and that upon surrender of such Note, a new Note in principal amount equal to the unredeemed portion thereof shall be issued.

An Optional Redemption Notice shall be irrevocable. At the Company's prior written request, the Trustee shall give the Optional Redemption Notice in the Company's name and at its expense; *provided, however*, that the Company shall have delivered to the Trustee not later than the close of business five Business Days prior to the date the Redemption Notice is to be sent (unless a shorter period shall be satisfactory to the Trustee), an Officer's Certificate and a Company Order requesting that the Trustee give such Optional Redemption Notice together with the Optional Redemption Notice to be given setting forth the information to be stated therein as provided in the preceding paragraph. The Optional Redemption Notice, if given in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, failure to give such Optional Redemption Notice or any defect in the Optional Redemption Notice to the Holder of any Note designated for redemption as a whole or in part shall not affect the validity of the proceedings for the Optional Redemption of any other Note.

If the Company decides to redeem fewer than all of the outstanding Notes, the Trustee will select the Notes to be redeemed (in principal amounts of \$1,000 or multiples thereof) by lot, on a pro rata basis or by another method the Trustee considers to be fair and appropriate and, in the case of a Global Note, in accordance with, and subject to, DTC's applicable procedures.

If the Trustee selects a portion of a Holder's Notes for partial redemption and such Holder converts a portion of such Notes, the converted portion shall be deemed to be from the portion selected for redemption. In the event of any redemption in part, the Company shall not be required to register the transfer of or exchange any Note so selected for redemption, in whole or in part, except the unredeemed portion of any such Note being redeemed in part.

No Notes may be redeemed if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to the Optional Redemption Date (except in the case of an acceleration resulting from a default by the Company in the payment of the Redemption Price with respect to such Notes).

#### 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 Deutsche Bank Trust Company Americas, Trust and Agency Services, 60 Wall Street, 24th Floor, Mail Stop: NYC60-2405, New York, New York 10005, Attn: Corporates Team, NIO INC. DEAL ID SF4090, Facsimile: (732) 578-4635.

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 DTC, notices to owners of beneficial interests in the Global Notes may be given by delivery of the relevant notice to DTC for communication by it to entitled account holders in accordance with DTC's applicable procedures.

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 Cogency Global 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 six 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 and Opinion of Counsel 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.

Section 17.07 *Legal Holidays.* In any case where any Additional Interest Payment Date, Tax Redemption Date, Optional Redemption Date, Fundamental Change Repurchase Date, Conversion Date, Repurchase 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.

Facsimile, documents executed, scanned and transmitted electronically and electronic signatures, including those created or transmitted through a software platform or application, shall be deemed original signatures for purposes of this Indenture and all other related documents and all matters and agreements related thereto, with such facsimile, scanned and electronic signatures having the same legal effect as original signatures. The parties agree that this Indenture or any other related document or any instrument, agreement or document necessary for the consummation of the transactions contemplated by this Indenture or the other related documents or related hereto or thereto (including, without limitation, addendums, amendments, notices, instructions, communications with respect to the delivery of securities or the wire transfer of funds or other communications) (“**Executed Documentation**”) may be accepted, executed or agreed to through the use of an electronic signature in accordance with applicable laws, rules and regulations in effect from time to time applicable to the effectiveness and enforceability of electronic signatures. Any Executed Documentation accepted, executed or agreed to in conformity with such laws, rules and regulations will be binding on all parties hereto to the same extent as if it were physically executed and each party hereby consents to the use of any third party electronic signature capture service providers as may be reasonably chosen by a signatory hereto or thereto. When the Trustee or an Agent acts on any Executed Documentation sent by electronic transmission, the Trustee or Agent will not be responsible or liable for any losses, costs or expenses arising directly or indirectly from its reliance upon and compliance with such Executed Documentation, notwithstanding that such Executed Documentation (a) may not be an authorized or authentic communication of the party involved or in the form such party sent or intended to send (whether due to fraud, distortion or otherwise) or (b) may conflict with, or be inconsistent with, a subsequent written instruction or communication; it being understood and agreed that the Trustee and each Agent shall conclusively presume that Executed Documentation that purports to have been sent by an authorized officer of a Person has been sent by an authorized officer of such Person. The party providing Executed Documentation through electronic transmission or otherwise with electronic signatures agrees to assume all risks arising out of such electronic methods, including, without limitation, the risk of the Trustee or an Agent acting on unauthorized instructions and the risk of interception and misuse by third parties.

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, AND EACH HOLDER, BY ITS ACCEPTANCE OF A NOTE OR A BENEFICIAL INTEREST IN A GLOBAL NOTE, AS APPLICABLE, SHALL BE DEEMED TO HAVE WAIVED, 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, pandemics, epidemics and wide spread health crisis, 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 or in connection with a conversion. These calculations include, but are not limited to, determinations of the Last Reported Sale Prices of the ADSs, the Daily VWAPs, the Daily Conversion Values, the Daily Settlement Amounts, any accrued Additional Interest, if any, payable on the Notes, the number of Additional ADSs to be added to the Conversion Rate upon a Make-Whole Fundamental Change, if any, 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 registered Holder of Notes upon the prior written request of that Holder at the sole cost and expense of the Company.

Section 17.16 *Patriot Act*. In order to comply with the laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions, including, without limitation, those relating to the funding of terrorist activities and money laundering, including Section 326 of the USA PATRIOT Act of the United States ("Applicable Law"), the Trustee is required to obtain, verify, record and update certain information relating to individuals and entities which maintain a business relationship with the Trustee. Accordingly, each of the parties agree to provide to the Trustee, upon their request from time to time such identifying information and documentation as may be available for such party in order to enable the Trustee to comply with Applicable Law.

*[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/ Bin Li  
Name: Bin Li  
Title: Chairman of the Board of  
Directors and Chief Executive  
Officer

*Signature Page to Indenture*

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DEUTSCHE BANK TRUST COMPANY  
AMERICAS, as Trustee

By: /s/ Annie Jaghatspanyan  
Name: Annie Jaghatspanyan  
Title: Vice President

By: /s/ Irina Golovashchuk  
Name: Irina Golovashchuk  
Title: Vice President

*Signature Page to Indenture*

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[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 AND IS REGISTERED IN THE NAME OF THE DEPOSITARY OR A NOMINEE OF THE 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 CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

[INCLUDE FOLLOWING LEGEND IF A RESTRICTED SECURITY]

[THIS SECURITY, THE AMERICAN DEPOSITARY SHARES DELIVERABLE UPON CONVERSION OF THIS SECURITY, IF ANY, AND THE ORDINARY SHARES REPRESENTED THEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), ARE “RESTRICTED SECURITIES” WITHIN THE MEANING OF RULE 144 UNDER THE SECURITIES ACT OR CONTRACTUALLY RESTRICTED SECURITIES, AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF (OR THEREOF) OR OF A BENEFICIAL INTEREST HEREIN (OR THEREIN), THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS (A) A “QUALIFIED INSTITUTIONAL BUYER” (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) OR (B) NOT A U.S. PERSON AND 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, AND HAS NOT BEEN FOR THE IMMEDIATELY PRECEDING THREE MONTHS, AN AFFILIATE OF NIO INC. (THE “COMPANY”), AND

(2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY, THE AMERICAN DEPOSITARY SHARES DELIVERABLE UPON CONVERSION OF THIS



SECURITY, IF ANY, AND THE ORDINARY SHARES REPRESENTED THEREBY OR ANY BENEFICIAL INTEREST HEREIN OR THEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, 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 QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR
- (D) TO A NON-U.S. PERSON LOCATED OUTSIDE THE UNITED STATES IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT, OR
- (E) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE).

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH (2)(E) ABOVE, THE COMPANY, THE DEPOSITARY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF 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, IF ANY, AND THE ORDINARY SHARES REPRESENTED THEREBY OR A BENEFICIAL INTEREST HEREIN OR THEREIN.]

NIO INC.

0.00% Convertible Senior Note due 2026

No. [\_\_\_\_\_]

[Initially]<sup>1</sup> US\$ \_\_\_\_\_

CUSIP No. 62914V AC0<sup>2</sup> / G6525F AC6<sup>3</sup>

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 [CEDE & CO.]<sup>4</sup> [\_\_\_\_\_] <sup>5</sup>, or registered assigns, the principal sum [as set forth in the “Schedule of Exchanges of Notes” attached hereto]<sup>6</sup> [of US\$[\_\_\_\_\_] <sup>7</sup>], which amount, taken together with the principal amounts of all other outstanding Notes, shall not, unless permitted by the Indenture, exceed US\$750,000,000 in aggregate at any time, in accordance with the rules and procedures of the Depositary, on February 1, 2026, and interest thereon as set forth below.

This Note shall bear no regular interest, and the principal amount of this Note shall not accrete. Additional Interest may be payable in accordance with the Indenture. If applicable, such Additional Interest shall be payable on each February 1 and August 1, commencing on August 1, 2021, as provided in the Indenture, and shall be paid to the Holders of record at the close of business on the preceding January 15 and July 15 (whether or not such day is a Business Day), respectively.

Any Defaulted Amounts shall accrue interest per annum at the rate per annum borne by the Notes on the relevant payment date *plus* one percent (except that, if on the relevant payment date no Additional Interest was payable with respect to the Notes, any Defaulted Amounts shall accrue interest per annum at the rate on one percent per annum), subject to enforceability thereof under applicable law, from, and including, such 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 and Additional Interest, if any, on this Note, so long as such Note is a Global Note, in immediately available funds to the Depositary or its nominee, as the case may be, as the registered Holder of such Note.

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<sup>1</sup> Include if a Global Note.

<sup>2</sup> Include if a Rule 144A Global Note.

<sup>3</sup> Include if a Reg S Global Note.

<sup>4</sup> Include if a Global Note.

<sup>5</sup> Include if a Physical Note.

<sup>6</sup> Include if a Global Note.

<sup>7</sup> Include if a Physical 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 Deutsche Bank Trust Company Americas as its Paying Agent, Conversion Agent and Note Registrar 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.

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 cash, ADSs or a combination of cash and ADSs, as applicable, 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 electronically by the Trustee 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:

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Dated:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

DEUTSCHE BANK TRUST COMPANY AMERICAS  
as Trustee, certifies that this is one of the Notes described  
in the within-named Indenture.

By: \_\_\_\_\_  
Name:  
Title:

[FORM OF REVERSE OF NOTE]

NIO INC.  
0.00% Convertible Senior Note due 2026

This Note is one of a duly authorized issue of Notes of the Company, designated as its 0.00% Convertible Senior Notes due 2026 (the “**Notes**”), initially limited to the aggregate principal amount of US\$750,000,000, subject to Section 2.10 of the Indenture, all issued or to be issued under and pursuant to an Indenture dated as of January 15, 2021 (the “**Indenture**”), between the Company and Deutsche Bank Trust Company Americas, 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, indemnifications, 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. The Rule 144A Notes and the Regulation S Notes initially have separate CUSIP numbers and will initially not be fungible.

In the case certain Events of Default, as defined in the Indenture, shall have occurred and be continuing, the principal of, and Additional 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 Additional 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, the Redemption Price, the Repurchase Price 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, 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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price), premium, if any, payments of Additional Interest, if any, and payments of cash and/or 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) 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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, accrued and unpaid Additional Interest on, 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 February 6, 2024, except in the event of certain Changes in Tax Law as described in Section 16.01 of the Indenture. The Notes shall be redeemable at the Company's option in certain circumstances on or after February 6, 2024 in accordance with the terms and subject to the conditions specified in the Indenture. No sinking fund is provided for the Notes.

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 Repurchase Date at a price equal to the Repurchase Price.

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, during certain periods and upon the occurrence of certain conditions specified in the Indenture, prior to the close of business on the second Scheduled Trading 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 cash, ADSs or a combination of cash and ADSs, as

applicable, 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.

DEUTSCHE BANK TRUST COMPANY AMERICAS, 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 cash payable and 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 Unrestricted Deposit Agreement, the Restricted 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 and the ADS Depositary that the undersigned is not an “affiliate” (as defined in Rule 144 under the Securities Act of 1933) of the Company and has not been an “affiliate” (as defined in Rule 144 under the Securities Act of 1933) of the Company during the three months immediately preceding the date hereof.

[The undersigned further certifies:

1. The undersigned acknowledges (and if the undersigned is acting for the account of another person, that person has confirmed that it acknowledges) that the Restricted Securities received upon conversion of this Note (or securities represented thereby) have not been and are not expected to be registered under the Securities Act.

2. The undersigned further certifies that either:

(a) The undersigned is, and at the time ADSs are delivered in conversion of its Notes will be, the holder of the ADSs and the Ordinary Shares represented thereby, and (i) the undersigned is not a U.S. person (as defined in Regulation S under the Securities Act) and is located outside the United States (within the meaning of Regulation S) and acquired, or have agreed to acquire and will have acquired, the Notes being converted and the ADSs and the Ordinary Shares represented thereby being delivered in the conversion outside the United States and (ii) the undersigned is not in the business of buying and selling securities or, if the undersigned is in such business, the undersigned

did not acquire the Notes being converted from the Company or any affiliate thereof in the initial distribution of the Notes.

OR

(b) The undersigned is a broker-dealer acting on behalf of its customer; its customer has confirmed to the undersigned that it is, and at the time ADSs are delivered in conversion of the said Notes will be, the holder of the ADSs and the Ordinary Shares represented thereby, and (i) it is not a U.S. person (as defined in Regulation S under the Securities Act) and it is located outside the United States (within the meaning of Regulation S) and acquired, or have agreed to acquire and will have acquired, the Notes being converted and the ADSs and the Ordinary Shares represented thereby being delivered in the conversion outside the United States and (ii) it is not in the business of buying and selling securities or, if it is in such business, it did not acquire the Notes being converted from the Company or any affiliate thereof in the initial distribution of the Notes.

OR

(c) The undersigned is a qualified institutional buyer (as defined in Rule 144A under the Securities Act) acting for its own account or for the account of one or more qualified institutional buyers and the undersigned is (or such account or accounts are) the sole beneficial owner(s) of the ADSs to be received upon conversion of the Notes.

3. The undersigned acknowledges that the undersigned (and any such other account) may not continue to hold or retain any interest in Restricted Securities received upon conversion of this Note if the undersigned (or such other account) becomes an Affiliate of the Company.

4. The undersigned agrees (and if the undersigned is acting for the account of another person, that person has confirmed that it agrees) that, prior to the Resale Restriction Termination Date, the undersigned (and such other account) will not offer, sell, pledge or otherwise transfer the Restricted Security (or securities represented by such Restricted Security) except in accordance with the restrictions set forth in that legend and any applicable securities laws of the United States and any state thereof.<sup>9</sup>

[The undersigned hereby instructs the ADS Depository 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: \_\_\_\_\_

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<sup>9</sup> Include if a Restricted Security.

7. Contact Name and Tel No/email address:]<sup>10</sup> \_\_\_\_\_

[The undersigned instructs the Depository 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]<sup>11</sup>

**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](mailto:adr@db.com)

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<sup>10</sup> Include if a Restricted Security.

<sup>11</sup> Include bracketed language in the conversion Notice if the Note being converted is not a Restricted Security.

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, or Notes are to be delivered, other than to and in the name of the registered holder.

Fill in for registration of ADSs if to be issued, and Notes if to be delivered, 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.

DEUTSCHE BANK TRUST COMPANY AMERICAS, 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 (1) 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, and (2) if such Fundamental Change Repurchase Date does not fall during the period after an Additional Interest Record Date and on or prior to the corresponding Additional Interest Payment Date, accrued and unpaid Additional Interest thereon to, but excluding, such Fundamental Change Repurchase Date.

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 REPURCHASE NOTICE]

To: NIO INC.

DEUTSCHE BANK TRUST COMPANY AMERICAS, as Trustee

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from NIO Inc. (the “**Company**”) regarding the right of Holders to elect to require the Company to repurchase 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 accordance with the applicable provisions of the Indenture referred to in this Note, at the Repurchase Price to the registered Holder hereof.

In the case of certificated Notes, the certificate numbers of the Notes to be purchased 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 Resale Restriction 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
- Pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended [(“**Rule  
144A**”), and the undersigned confirms that the undersigned reasonably believes that the transferee of such Note is  
a “qualified institutional buyer” (within the meaning of Rule 144A) that is purchasing for its own account or for  
the account of another qualified institutional buyer and the undersigned has provided such transferee notice that  
the transfer is being made in reliance on Rule 144A]<sup>12</sup>; or
- Outside the United States in accordance with Regulation S under the Securities Act of 1933, as amended;  
or
- Pursuant to and in compliance with Rule 144 under the Securities Act of 1933, as amended (if available).

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<sup>12</sup> Include if Regulation S Note.

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 Notes are to be delivered, other than to and in the name of the registered holder.

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 January 15, 2021 between the Company and Deutsche Bank Trust Company Americas, as trustee, in relation to the 0.00% Convertible Senior Notes due 2026 (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 Deutsche Bank Trust Company Americas 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:

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**SCHEDULE I**

Name	Title, Fax No., Email	Signature	Tel No.
_____	_____	_____	_____
_____	_____	_____	_____



NIO Inc.

*and*

Deutsche Bank Trust Company Americas, as Trustee

**INDENTURE**

dated as of January 15, 2021

**US\$750,000,000 0.50% CONVERTIBLE SENIOR NOTES DUE 2027**

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INDENTURE dated as of January 15, 2021 between NIO INC., a Cayman Islands exempted company, as issuer (the “**Company**,” as more fully set forth in Section 1.01) and DEUTSCHE BANK TRUST COMPANY AMERICAS, a New York banking corporation, as trustee (the “**Trustee**,” as more fully set forth in Section 1.01).

W I T N E S S E T H:

WHEREAS, for its lawful corporate purposes, the Company has duly authorized the issuance of its 0.50% Convertible Senior Notes due 2027 (the “**Notes**”), initially in an aggregate principal amount not to exceed US\$750,000,000, 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, the Form of 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 Trustee, 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 ADSs**” shall have the meaning specified in Section 14.03(a).

“**Additional Amounts**” shall have the meaning specified in Section 4.07(a).

“**Additional Interest**” means all amounts, if any, payable pursuant to Section 4.06(d), Section 4.06(e) and Section 6.03, as applicable.

“**ADS**” means an American Depositary Share, issued pursuant to the Unrestricted Deposit Agreement or Restricted Deposit Agreement, as applicable, 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 Unrestricted Deposit Agreement or the Restricted Deposit Agreement, as applicable, or any successor entity thereto.

“**ADS Depositary**” means Deutsche Bank Trust Company Americas, as depositary for the ADSs, or any successor entity thereto.

“**ADS Price**” shall have the meaning specified in Section 14.03(c).

“**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, the Conversion Agent and the Bid Solicitation Agent, in each case, unless the Company is acting in such capacity.

“**Applicable PRC Rate**” means (i) in the case of deduction or withholding of People’s Republic of China income tax, 10%, (ii) in the case of deduction or withholding of, or reduction for, People’s Republic of China value added tax (including any related local levies), 6.72%, or (iii) in the case of deduction or withholding of, or reduction for, both People’s Republic of China income tax and People’s Republic of China value added tax (including any related local levies), 16.72%.

“**applicable taxes**” shall have the meaning specified in Section 4.07(a).

“**Authenticating Agent**” shall have the meaning specified in Section 2.11.

“**Bid Solicitation Agent**” means the Company or any Person appointed by the Company to solicit bids for the Trading Price in accordance with Section 14.01(b)(i). The Company shall initially act as the Bid Solicitation Agent.

“**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.

“**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.

“**Cash Settlement**” shall have the meaning specified in Section 14.02(a).

“**Change in Tax Law**” shall have the meaning specified in Section 16.01.

“**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).

“**close of business**” means 5:00 p.m. (New York City time).

“**Code**” means the U.S. Internal Revenue Code of 1986, as amended.

“**Combination Settlement**” shall have the meaning specified in Section 14.02(a).

“**Commission**” means the U.S. Securities and Exchange Commission.

“**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 Notice**” shall have the meaning specified in Section 15.01(a).

“**Company Order**” means a written order of the Company, signed by an Officer of the Company and delivered to the Trustee.

“**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 Price**” means as of any time, US\$1,000, *divided by* the Conversion Rate as of such time.

“**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 60 Wall Street, 24<sup>th</sup> Floor, Mail Stop: NYC60-2405, New York, New York, 10005, Attention: Trust & Agency Services, Corporates Team – NIO Inc. Facsimile: (732) 578-4635, 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).

“**Daily Conversion Value**” means, for each of the 20 consecutive Trading Days during the Observation Period, 5% of the product of (a) the Conversion Rate on such Trading Day and (b) the Daily VWAP for such Trading Day.

“**Daily Measurement Value**” means the Specified Dollar Amount (if any), *divided by* 20.

“**Daily Settlement Amount,**” for each of the 20 consecutive Trading Days during the Observation Period, shall consist of:

(a) cash in an amount equal to the lesser of (i) the Daily Measurement Value and (ii) the Daily Conversion Value on such Trading Day; and

(b) if the Daily Conversion Value on such Trading Day exceeds the Daily Measurement Value, a number of ADSs equal to (i) the difference between the Daily Conversion Value and the Daily Measurement Value, *divided by* (ii) the Daily VWAP for such Trading Day.

“**Daily VWAP**” means, for each of the 20 consecutive Trading Days during the relevant Observation Period, the per ADS volume-weighted average price as displayed under the heading “Bloomberg VWAP” on Bloomberg page “NIO <equity> AQR” (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on such Trading Day (or if such volume-weighted average price is unavailable, the market value of one ADS on such Trading Day determined, using a volume-weighted average method, by a nationally recognized independent investment banking firm retained for this purpose by the Company). The “**Daily VWAP**” shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

**“Default”** means any event that is, or after notice or passage of time, or both, would be, an Event of Default.

**“Default Settlement Method”** shall have the meaning specified in Section 14.02(a)(iii).

**“Defaulted Amounts”** means any amounts on any Note (including, without limitation, the Redemption Price, the Repurchase Price, the Fundamental Change Repurchase Price, principal and interest) that are payable but are not punctually paid or duly provided for.

**“Depository”** means, with respect to each Global Note, the Person specified in Section 2.05(c) and Section 2.05(e) as the Depository with respect to such Notes, until a successor shall have been appointed and become such pursuant to the applicable provisions of this Indenture, and thereafter, **“Depository”** shall mean or include such successor.

**“Designated Financial Institution”** shall have the meaning specified in Section 14.13(a).

**“Distributed Property”** shall have the meaning specified in Section 14.04(c).

**“DTC”** means The Depository Trust Company, a New York corporation.

**“Effective Date”** shall have the meaning specified in Section 14.03(c), except that, as used in Section 14.04 and Section 14.05, **“Effective Date”** means the first date on which ADSs trade on the applicable exchange or in the applicable market, regular way, reflecting the relevant share split or share combination, as applicable.

**“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.

**“Exchange Election”** shall have the meaning specified in Section 14.13(a).

**“Expiring Rights”** means any rights (other than in connection with a stockholders rights plan), 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 4 to the Form of Note.

**“Form of Fundamental Change Repurchase Notice”** shall mean the “Form of Fundamental Change Repurchase Notice” attached as Attachment 2 to the Form of Note.

**“Form of Note”** shall mean 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.

**“Form of Repurchase Notice”** shall mean the “Form of Repurchase Notice” attached as Attachment 3 to the Form of Note .

**“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 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 ordinary share capital (including ordinary share capital held in the form of ADSs) representing more than 50% of the voting power of the Company’s ordinary share capital, 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 that directly or indirectly through one or more intermediaries is controlling, is controlled by, or is under common control with, any or all of the Permitted Holders) 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 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 ordinary share capital

(including ordinary share capital held in the form of ADSs) 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 *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.

“**Initial Purchasers**” means Credit Suisse Securities (USA) LLC, Goldman Sachs (Asia) LLC, Morgan Stanley & Co. LLC and China International Capital Corporation Hong Kong Securities Limited as representatives of the several “Purchasers” (as defined in the Purchase Agreement).

“**Interest Payment Date**” means each February 1 and August 1 of each year or, if the relevant date is not a Business Day, the immediately following Business Day, beginning on August 1, 2021.

“**Last Reported Sale Price**” of the ADSs (or such other security for which a closing price must be determined) 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 (or such other security) are traded. If (i) subject to the immediately succeeding clause (ii), the ADSs (or such other security) 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, and, if the ADSs (or such other security) 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 (or such other security) on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose and (ii) a Fundamental Change described in clause (d) of the definition thereof has occurred and the Newly Listed Equity has been accepted for listing on a Permitted Exchange, the “**Last Reported Sale Price**” on the relevant date will be determined, in a commercially reasonable manner, by a nationally recognized independent investment banking firm retained by the Company for this purpose. The “Last Reported Sale Price” shall be determined without regard to after-hours trading or any other trading outside of regular trading session hours.

“**Make-Whole Fundamental Change**” means any transaction or event described in clause (a), (b), (d) or (e) of the definition of Fundamental Change (determined after giving effect to any exceptions to or exclusions from such definition, including in the *proviso* immediately

succeeding clause (e) of the definition thereof, but without regard to the *proviso* in clause (b) of the definition thereof).

**“Market Disruption Event”** means, for the purposes of determining amounts due upon conversion, (a) a failure by the primary U.S. national or regional securities exchange or market on which the ADSs are listed or admitted for trading to open for trading during its regular trading session or (b) the occurrence or existence prior to 1:00 p.m., New York City time, on any Scheduled Trading Day for the ADSs for more than one half-hour period in the aggregate during regular trading hours of any suspension or limitation imposed on trading (by reason of movements in price exceeding limits permitted by the relevant stock exchange or otherwise) in the ADSs or in any options contracts or futures contracts relating to the ADSs.

**“Maturity Date”** means February 1, 2027.

**“Measurement Period”** shall have the meaning specified in Section 14.01(b)(i).

**“Merger Event”** shall have the meaning specified in Section 14.07(a).

**“New Listing Reference Date”** shall have the meaning specified in Section 10.03.

**“Newly Listed Equity”** means the Ordinary Shares, other Common Equity or the Reference Property of the Company that have been accepted for listing on a Permitted Exchange.

**“Note”** or **“Notes”** shall have the meaning specified in the first paragraph of the recitals of this Indenture.

**“Notes Fungibility Date”** means the date, if any, following the Resale Restriction Termination Date on which all of the Rule 144A Notes and all of the Regulation S Notes are no longer Restricted Securities, do not bear the restrictive legend required by Section 2.05(c), are fungible for U.S. securities law purposes and are assigned an identical, unrestricted CUSIP number.

**“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).

**“Observation Period”** with respect to any Note surrendered for conversion means: (i) subject to clause (ii), if the relevant Conversion Date occurs prior to August 1, 2026, the 20 consecutive Trading Day period beginning on, and including, the third Trading Day immediately succeeding such Conversion Date; (ii) if the relevant Conversion Date occurs on or after the date of the Company’s issuance of a Tax Redemption Notice or Optional Redemption Notice with respect to the Notes pursuant to Section 16.01 or Section 16.02 and prior to the close of business on the second Business Day prior to the relevant Tax Redemption Date or Optional Redemption Date, the 20 consecutive Trading Days beginning on, and including, the 21<sup>st</sup> Scheduled Trading Day immediately preceding such Tax Redemption Date or Optional Redemption Date; and (iii) subject to clause (ii), if the relevant Conversion Date occurs on or after August 1, 2026, the 20

consecutive Trading Days beginning on, and including, the 21<sup>st</sup> Scheduled Trading Day immediately preceding the Maturity Date.

“**Offering Memorandum**” means the preliminary offering memorandum dated January 11, 2021, as supplemented by the pricing term sheet dated January 12, 2021, relating to the offering and sale of the Notes.

“**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.

“**Optional Redemption Date**” shall have the meaning specified in Section 16.02(b).

“**Optional Redemption Notice**” shall have the meaning specified in Section 16.02(b).

“**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 Trustee under this Indenture, except:

- (a) Notes theretofore canceled by the Trustee or accepted by the Trustee 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;
- (e) Notes redeemed pursuant to Article 16; and
- (f) 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.

**“Paying Agent Office”** means the designated office of the Paying Agent at which at any time this Indenture shall be administered, which office at the date hereof is located at located at 60 Wall Street, 24<sup>th</sup> Floor, Mail Stop: NYC60-2405, New York, New York, 10005, Attention: Trust & Agency Services, Corporates Team – NIO Inc. Facsimile: (732) 578-4635, or such other address as the Paying Agent may designate from time to time by notice to the Holders and the Company, or the designated office of any successor paying agent (or such other address as such successor paying agent may designate from time to time by notice to the Holders and the Company).

**“Permitted Exchange”** means Singapore Exchange, Stock Exchange of Hong Kong or London Stock Exchange (or any of their respective successors).

**“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.

**“Physical Settlement”** shall have the meaning specified in Section 14.02(a).

**“PRC”** means the People’s Republic of China, excluding, for the purpose of this Indenture only, Taiwan, Hong Kong, and Macau.

**“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.

“**Purchase Agreement**” means that certain Purchase Agreement, dated as of January 12, 2021, among the Company and the Initial Purchasers.

“**Record Date**” means, with respect to any dividend, distribution or other transaction or event in which the holders of the ADSs (or other applicable security) have the right to receive any cash, securities or other property or in which the ADSs (or other applicable security) are exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of the ADSs (or other applicable security) entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors, statute, contract or otherwise).

“**Redemption Notice**” means a Tax Redemption Notice or an Optional Redemption Notice, as the context requires.

“**Redemption Price**” shall have the meaning each specified in Section 16.01 and Section 16.02, as the context requires.

“**Redemption Reference Date**” shall have the meaning specified in Section 14.03(g).

“**Redemption Reference Price**” shall have the meaning specified in Section 14.03(g).

“**Reference Property**” shall have the meaning specified in Section 14.07(a).

“**Regular Record Date**,” with respect to any Interest Payment Date, shall mean the January 15 or July 15 (whether or not such day is a Business Day) immediately preceding the applicable February 1 or August 1 Interest Payment Date, respectively.

“**Regulation S**” means Regulation S under the Securities Act or any successor to such regulation.

“**Regulation S Notes**” means the Notes initially offered and sold outside the United States pursuant to Regulation S.

“**Relevant Jurisdiction**” shall have the meaning specified in Section 4.07(a).

“**Relevant Taxing Jurisdiction**” shall have the meaning specified in Section 4.07(a).

“**Repurchase Date**” shall have the meaning specified in Section 15.01(a).

“**Repurchase Expiration Time**” shall have the meaning specified in Section 15.01(a).

“**Repurchase Notice**” shall have the meaning specified in Section 15.01(a).

“**Repurchase Price**” shall have the meaning specified in Section 15.01(a).

“**Resale Restriction Termination Date**” shall have the meaning specified in Section 2.05(c).

**“Responsible Officer”** means, when used with respect to the Trustee, any officer within the Corporate Trust Office of the Trustee or any other officer of the Trustee to whom any corporate trust matter relating to this Indenture is referred because of such Person’s knowledge of and familiarity with the particular subject and, in each case, who shall have direct responsibility for the administration of this Indenture.

**“Restricted Deposit Agreement”** means the deposit agreement for restricted securities dated February 4, 2019 by and among the Company, the ADS Depositary and the holders and beneficial owners of the restricted ADSs delivered thereunder or, if amended or supplemented as provided therein, as so amended or supplemented.

**“Restricted Securities”** shall have the meaning specified in Section 2.05(c).

**“Rule 144”** means Rule 144 as promulgated under the Securities Act.

**“Rule 144A”** means Rule 144A as promulgated under the Securities Act.

**“Rule 144A Notes”** means the notes initially offered and sold pursuant to Rule 144A.

**“Scheduled Trading Day”** means a day that is scheduled to be a Trading Day on the principal U.S. national or regional securities exchange or market on which the ADSs are listed or admitted for trading. If the ADSs are not so listed or admitted for trading, **“Scheduled Trading Day”** means a Business Day.

**“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.

**“Settlement Amount”** has the meaning specified in Section 14.02(a)(v).

**“Settlement Method”** means, with respect to any conversion of Notes, Physical Settlement, Cash Settlement or Combination Settlement, as elected (or deemed to have been elected) by the Company.

**“Settlement Method Election Deadline”** shall have the meaning specified in Section 14.02(a)(iii).

**“Settlement Notice”** has the meaning specified in Section 14.02(a)(iii).

**“Specified Dollar Amount”** means the maximum cash amount per US\$1,000 principal amount of Notes to be received upon conversion as specified in the Settlement Notice related to any converted Notes (or deemed specified pursuant to Section 14.02(a)(iii)).

**“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).

**“Tax Redemption Date”** shall have the meaning specified in Section 16.01(b).

**“Tax Redemption Notice”** shall have the meaning specified in Section 16.01(b)

**“Tender/Exchange Offer Consideration”** shall have the meaning specified in Section 14.04(e).

**“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; and *provided further*, that for the purposes of determining the settlement amounts due upon conversion only, “Trading Day” means a day on which (i) there is no Market Disruption Event and (ii) trading in the ADSs generally occurs on the New York Stock Exchange or, if the ADSs 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 are then listed or, if the ADSs are not then listed on a U.S. national or regional securities exchange, on the principal other market on which the ADSs are then listed or admitted for trading, except if the ADSs are not so listed or admitted for trading, “Trading Day” means a “Business Day.”

**“Trading Price”** means, with respect to the Notes and any date of determination, the average of the secondary market bid quotations obtained by the Bid Solicitation Agent for US\$1,000,000 principal amount of Notes at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers the Company selects for this purpose; *provided* that if three such bids cannot reasonably be obtained by the Bid Solicitation Agent but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Bid Solicitation Agent, that one bid shall be used. If the Bid Solicitation Agent cannot reasonably obtain at least one bid for US\$1,000,000 principal amount of Notes from a nationally recognized securities dealer on any determination date, then the Trading Price per US\$1,000 principal amount of Notes on such determination date shall be deemed to be less than 98% of the product of the Last Reported Sale Price of the ADSs and the Conversion Rate.

“**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 2.05(a).

“**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.

“**U.S. Person**” shall have the meaning as such term is defined under Regulation S.

“**unit of Reference Property**” shall have the meaning specified in Section 14.07(a).

“**Unrestricted Deposit Agreement**” means the deposit agreement dated as of September 11, 2018 by and among the Company, the ADS Depositary and the holders and beneficial owners of the ADSs delivered thereunder or, if amended or supplemented as provided therein, as so amended or supplemented.

“**Valuation Period**” shall have the meaning specified in Section 14.04(c).

Section 1.02 *References to Interest*. Unless the context otherwise requires, any reference to interest on, or in respect of, any Note in this Indenture shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to any of Section 4.06(d), Section 4.06(e) and Section 6.03. Unless the context otherwise requires, any express mention of Additional Interest in any provision hereof shall not be construed as excluding Additional Interest in those provisions hereof where such express mention is not made.

## ARTICLE 2 ISSUE, DESCRIPTION, EXECUTION, REGISTRATION AND EXCHANGE OF NOTES

Section 2.01 *Designation and Amount*. The Notes shall be designated as the “0.50% Convertible Senior Notes due 2027.” The aggregate principal amount of Notes that may be authenticated and delivered under this Indenture is initially limited to US\$750,000,000, 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 Trustee'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 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 a 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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest on, a 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; Payments of Interest and 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 bear interest, if any, from, and including, the date specified on the face of such Note. Accrued interest, if any, on the Notes shall be computed on the basis of a 360-day year composed of twelve 30-day months.

(b) The Person in whose name any Note (or its Predecessor Note) is registered on the Note Register at the close of business on any Regular Record Date with respect to any Interest

Payment Date shall be entitled to receive the interest payable on such Interest Payment Date. Interest shall be payable at the office or agency of the Company maintained by the Company for such purposes in the Borough of Manhattan, The City of New York, which shall initially be the Corporate Trust Office. The Company shall pay or cause the Paying Agent to pay interest (i) on any Physical Notes (A) to Holders holding Physical Notes having an aggregate principal amount of US\$5,000,000 or less, by check mailed (at the Company's expense) to the Holders of these Notes at their address as it appears in the Note Register and (B) to Holders holding Physical Notes having an aggregate principal amount of more than US\$5,000,000, either by check mailed (at the Company's expense) to such Holders or, upon application by such Holder to the Note Registrar not later than the relevant Regular Record Date, by wire transfer in immediately available funds to that Holder's account within the United States, which application shall remain in effect until the Holder notifies, in writing, the Note Registrar to the contrary or (ii) on any Global Note by wire transfer of immediately available funds to the account of the Depository or its nominee.

(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 per annum borne by the Notes *plus* one percent, 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 written 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, electronic 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 Trustee.

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 Trustee for authentication, together with a Company Order for the authentication and delivery of such Notes, and the Trustee 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 (including the initial amount of Rule 144A Notes and the initial amount of Regulation S Notes), and the applicable rate at which interest will accrue on such Notes. The Trustee shall thereupon authenticate and deliver said Notes to or upon the written order of the Company (as set forth in such Company Order).

The Trustee 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 Trustee, an Officers’ Certificate and an Opinion of Counsel in accordance with Section 17.06 hereof; (b) if the Trustee determines that such action may not lawfully be taken; or (c) if the Trustee determines that such action would expose to Trustee to personal liability, unless indemnity and/or security and/or pre-funding satisfactory to the Trustee against such liability is provided to the Trustee and 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 , executed manually or electronically by an authorized officer

of the Trustee, shall be entitled to the benefits of this Indenture or be valid or obligatory for any purpose. Such certificate by the Trustee 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 Trustee, 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; 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. Deutsche Bank Trust Company Americas 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 Notes Fungibility Date, upon surrender for registration of transfer of any Rule 144A Note or Regulation S Note, as the case may be, 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 Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Rule 144A Notes or Regulation S Notes, as the case may be, 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 Notes Fungibility 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 Trustee 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 Section 2.05(c).

Prior to the Notes Fungibility Date, Rule 144A Notes and Regulation S Notes, as the case may be, may be exchanged for other Rule 144A Notes or Regulation S Notes, as the case may be, of any authorized denominations and of a like aggregate principal amount, upon surrender of the Rule 144A Notes or Regulation S Notes, as the case may be, to be exchanged at any such office or agency maintained by the Company pursuant to Section 4.02. Whenever any Rule 144A Notes or Regulation S Notes, as the case may be, are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Rule 144A Notes or Regulation S Notes, as the case may be, that the Holder making the exchange is entitled to receive, bearing registration numbers not contemporaneously outstanding. Following the Notes

Fungibility 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 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 Trustee 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 Note Registrar and 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 Trustee, 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 all ADSs deliverable upon conversion.

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, (ii) any Notes, or a portion of any Note, surrendered for repurchase (and not withdrawn) in accordance with Article 15 or (iii) any Notes selected for redemption in accordance with Article 16.

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 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 Depository and any other registered Holder of Notes) of any notice (including any notice of redemption pursuant to Article 16) 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 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 Depository subject to the customary procedures of the Depository. The Trustee may rely and

shall be fully protected in relying upon information furnished by the Depository with respect to its direct or indirect participants.

Neither the Note Registrar nor the Trustee shall have any 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 the Depository, 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 Depository or the nominee of the Depository. 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 Depository in accordance with this Indenture (including the restrictions on transfer set forth herein) and the procedures of the Depository therefor. Prior to the Notes Fungibility Date, the Rule 144A Notes shall be represented by one or more Global Notes and the Regulation S Notes shall be represented by one or more separate Global Notes. Following the Notes Fungibility Date, the Rule 144A Notes and the Regulation S Notes may be represented by one or more of the same Global Notes.

(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) (together with any ADSs (including the Ordinary Shares represented thereby) delivered upon conversion of the Notes that are required to bear the legend set forth in Section 2.05(d), collectively, the “**Restricted Securities**”) shall be subject to the restrictions on transfer set forth in this Section 2.05(c) (including the legend 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 Restricted Security, by such Holder’s acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in this Section 2.05(c) and Section 2.05(d), the term “**transfer**” encompasses any sale, pledge, transfer or other disposition whatsoever of any Restricted Security.

Until the date (the “**Resale Restriction Termination Date**”) that is the later of (1) the date that is one year after the last date of original issuance of the Notes, or such shorter period of time as permitted by Rule 144 under the Securities Act or any successor provision thereto, and (2) such later date, if any, as may be required by applicable law, any certificate evidencing such Note (and all securities issued in exchange therefor or substitution thereof, other than ADSs (including the Ordinary Shares represented thereby) issued upon conversion thereof, which shall bear the legend set forth in Section 2.05(d), if applicable) 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 pursuant to the exemption from registration provided by Rule 144 under the Securities Act or any similar provision then in force under the Securities Act, or unless otherwise agreed by the Company in writing, with notice thereof to the Trustee):



THIS SECURITY, THE AMERICAN DEPOSITARY SHARES DELIVERABLE UPON CONVERSION OF THIS SECURITY, IF ANY, AND THE ORDINARY SHARES REPRESENTED THEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), ARE "RESTRICTED SECURITIES" WITHIN THE MEANING OF RULES 144 UNDER THE SECURITIES ACT OR CONTRACTUALLY RESTRICTED SECURITIES, AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF (OR THEREOF) OR OF A BENEFICIAL INTEREST HEREIN (OR THEREIN), THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS (A) A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) OR (B) NOT A U.S. PERSON AND LOCATED OUTSIDE THE UNITED STATES (WITHIN THE MEANING OF REGULATIONS 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, AND HAS NOT BEEN FOR THE IMMEDIATELY PRECEDING THREE MONTHS, AN AFFILIATE OF NIO INC. (THE "COMPANY"), AND

(2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY, THE AMERICAN DEPOSITARY SHARES DELIVERABLE UPON CONVERSION OF THIS SECURITY, IF ANY, AND THE CLASS A ORDINARY SHARES REPRESENTED THEREBY, OR ANY BENEFICIAL INTEREST HEREIN OR THEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, 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 QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR

(D) TO A NON-U.S. PERSON LOCATED OUTSIDE THE UNITED STATES IN ACCORDANCE WITH REGULATIONS UNDER THE SECURITIES ACT, OR

(E) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE).

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH (2)(E) ABOVE, THE COMPANY, THE DEPOSITARY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF 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, IF ANY, AND THE ORDINARY SHARES REPRESENTED THEREBY, OR A BENEFICIAL INTEREST HEREIN OR THEREIN.

No transfer of any Note prior to the Resale Restriction Termination Date will be registered by the Note Registrar unless the applicable box on the Form of Assignment and Transfer has been checked.

Any Note (or security issued in exchange or substitution therefor) as to which such restrictions on transfer shall have expired in accordance with their terms may, upon surrender of such Note for exchange to the Note Registrar in accordance with the provisions of this Section 2.05, be exchanged for a new Note or Notes, of like tenor and aggregate principal amount, which shall not bear the restrictive legend required by this Section 2.05(c) and shall not be assigned a restricted CUSIP number. The Company shall be entitled to instruct the Trustee in writing to so surrender any Global Note as to which such restrictions on transfer shall have expired in accordance with their terms for exchange, and, upon such instruction, the Trustee shall so surrender such Global Note for exchange; and any new Global Note so exchanged therefor shall not bear the restrictive legend specified in this Section 2.05(c) and shall not be assigned a restricted CUSIP number. The Company shall promptly notify the Trustee in writing upon the occurrence of the Resale Restriction Termination Date and after a registration statement, if any, with respect to the Notes or the ADSs (including the Ordinary Shares represented thereby) issued upon conversion of 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 Depositary to a nominee of the Depositary or by a nominee of the Depositary to the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary 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 Depositary (for itself or on behalf of a beneficial owner) by written notice given to the Trustee

by or on behalf of the Depository in accordance with customary procedures of the Depository and in compliance with this Section 2.05(c).

The Depository shall be a clearing agency registered under the Exchange Act. The Company initially appoints The Depository Trust Company to act as Depository with respect to each Global Note. Initially, each Global Note shall be issued to the Depository, registered in the name of Cede & Co., as the nominee of the Depository, and deposited with Deutsche Bank Trust Company Americas as custodian for Cede & Co.

If (i) the Depository notifies the Company at any time that the Depository is unwilling or unable to continue as depository for the Global Notes and a successor depository is not appointed within 90 days, (ii) the Depository ceases to be registered as a clearing agency under the Exchange Act and a successor depository is not appointed within 90 days 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 Trustee, 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 Trustee 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 Depository, pursuant to instructions from its direct or indirect participants or otherwise, or, in the case of clause (iii) of the immediately preceding paragraph, the relevant beneficial owner, shall instruct the Trustee in writing. Upon execution and authentication, the Trustee 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 Trustee in accordance with standing procedures and existing instructions of the 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 Depository, be appropriately reduced or increased, as the case may be, and an endorsement shall be made on such Global Note, by the Trustee, 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 the payment of amounts to beneficial holders, 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) Until the Resale Restriction Termination Date, any certificate representing ADSs (including the Ordinary Shares represented thereby) issued upon conversion of such Note shall bear a legend in substantially the following form (unless the Note or such ADSs (including the Ordinary Shares represented thereby) has 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 pursuant to the exemption from registration provided by Rule 144 or any similar provision then in force under the Securities Act, or such ADS or the Ordinary Shares represented thereby have been issued upon conversion of Notes that 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 pursuant to the exemption from registration provided by Rule 144 under the Securities Act or any similar provision then in force under the Securities Act, or unless otherwise agreed by the Company with written notice thereof to the Note Registrar and any transfer agent for the ADSs):

THE AMERICAN DEPOSITARY SHARES EVIDENCED HEREBY AND THE ORDINARY SHARES REPRESENTED THEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), ARE "RESTRICTED SECURITIES" WITHIN THE MEANING OF RULE 144 UNDER THE SECURITIES ACT OR CONTRACTUALLY RESTRICTED SECURITIES, AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF (OR THEREOF) OR OF A BENEFICIAL INTEREST HEREIN (OR THEREIN), THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS (A) A "QUALIFIED INSTITUTIONAL BUYER" (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) OR (B) NOT A U.S. PERSON AND LOCATED OUTSIDE THE UNITED STATES (WITHIN THE MEANING OF REGULATIONS 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, AND HAS NOT BEEN FOR THE IMMEDIATELY PRECEDING THREE MONTHS, AN AFFILIATE OF NIO INC. (THE "COMPANY"), AND

(2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY AND THE ORDINARY SHARES REPRESENTED THEREBY, OR ANY BENEFICIAL INTEREST HEREIN OR THEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE OF THE SERIES OF NOTES UPON THE CONVERSION OF WHICH THIS SECURITY WAS ISSUED OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, 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 QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR
- (D) TO A NON-U.S. PERSON LOCATED OUTSIDE THE UNITED STATES IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT, OR
- (E) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE).

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH (2)(E) ABOVE, THE COMPANY, THE DEPOSITARY AND THE TRANSFER AGENT FOR THE COMPANY'S AMERICAN DEPOSITARY SHARES RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF 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 THE AMERICAN DEPOSITARY SHARES EVIDENCED HEREBY OR A BENEFICIAL INTEREST HEREIN OR THEREIN.

Any such ADSs as to which such restrictions on transfer shall have expired in accordance with their terms may, upon surrender of the certificates representing such ADSs for exchange in accordance with the procedures of the ADS Depositary and the Restricted Deposit Agreement, as applicable, be exchanged for a new certificate or certificates for a like aggregate number of ADSs, which shall not bear the restrictive legend required by this Section 2.05(d).

(e) Any Note or ADS delivered upon the conversion or exchange of any Note that is repurchased or owned by any Affiliate of the Company may not be resold by such Affiliate (or a Holder that was the Company's Affiliate at any time during three months preceding the resale) 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 or ADS, as the case may be, 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 Trustee for cancellation in accordance with Section 2.08.

(f) Until the Resale Restriction Termination Date, prior to any sale of Regulation S Notes, the ADSs deliverable upon conversion thereof or the Ordinary Shares represented thereby, to a qualified institutional buyer in compliance with Rule 144A, the Holder thereof shall deliver to the Trustee, Transfer Agent and/or Depository, as the case may be, written confirmation that the prospective purchaser is a Person such Holder reasonably believes is a “qualified institutional buyer” (within the meaning of Rule 144A) that is purchasing for its own account or for the account of another qualified institutional buyer and to whom notice is given that the transfer is being made in reliance on Rule 144A.

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 Trustee 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 Trustee such security, pre-funding 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 Trustee evidence to their satisfaction of the destruction, loss or theft of such Note and of the ownership thereof.

The Trustee may authenticate any such substituted Note and deliver the same upon the receipt of such security, pre-funding and/or indemnity as the Trustee and the Company may require. No service charge shall be imposed by the Company, the Transfer Agent, the ADS Depository, the Note Registrar, any co-Note Registrar or the Paying Agent upon the issuance of any substitute Note, but the Company and the Trustee 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 has been selected for redemption in accordance with Article 16 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, pre-funding 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 Trustee 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 Trustee 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 Trustee 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 Trustee 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 Trustee (including any of the Company's agents, Subsidiaries or Affiliates), to be delivered and surrendered to the Trustee for cancellation. Upon the delivery of a Company Order requesting cancellation, all Notes delivered to the Trustee shall be canceled promptly by it, and except for Notes surrendered for transfer or exchange, no Notes shall be authenticated in exchange thereof except as expressly permitted by any of the provisions of this Indenture. The Trustee 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 *CUSIP Numbers.* The Company in issuing the Notes may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in all notices issued to Holders as a convenience to such Holders; *provided* that the Trustee shall have no liability for any defect in the "CUSIP" numbers as they appear on any Note, notice or elsewhere, and provided further 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 “CUSIP” or “ISIN” numbers, as applicable. Prior to the Notes Fungibility Date, the Rule 144A Notes and the Regulation S Notes shall have different “CUSIP” numbers. Following the Notes Fungibility Date, the Rule 144A Notes and the Regulation S Notes shall have the same “CUSIP” number.

Section 2.10 *Additional Notes; Repurchases.* The Company may, without the consent of, or notice to, 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 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 CUSIP, ISIN or other identifying number from both the Rule 144A Notes and the Regulation S 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, Consolidated Affiliated Entities 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 Trustee 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 repurchase. 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 Trustee 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.

Section 2.11 *Appointment of Authenticating Agent.* As long as any Notes remain outstanding, the Trustee may, by an instrument in writing, appoint with the approval of the Company an authenticating agent (an “**Authenticating Agent**”), which shall be authorized to act on behalf of the Trustee to authenticate Notes pursuant to this Indenture. Notes authenticated by such Authenticating Agent shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee. Whenever reference is made in this Indenture to the authentication and delivery of Notes by the Trustee or to the Trustee’s certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Such Authenticating Agent shall at all times be a Person that is eligible pursuant to the Trust Indenture Act to act as such and that 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.



ARTICLE 3  
SATISFACTION AND DISCHARGE

Section 3.01 *Satisfaction and Discharge.* This Indenture shall upon request of the Company contained in an Officers' Certificate be discharged and shall 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, paid or converted 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 Trustee for cancellation; or (ii) the Company has deposited with the Trustee cash and/or delivered to Holders (solely to satisfy the Company's Conversion Obligation, if applicable) ADSs, sufficient to pay all of (or satisfy such Conversion Obligation in respect of) the outstanding Notes, as the case may be, after the Notes have become due and payable, whether on the Maturity Date, any Tax Redemption Date, any Optional Redemption Date, the Repurchase Date, any Fundamental Change Repurchase Date, upon conversion or otherwise; (b) if the Company has deposited cash with the Trustee, the Trustee has received irrevocable instruction from the Company to make a payment on (or to satisfy such Conversion Obligation in respect of) the outstanding Notes, as the case may be, after the Notes have become due and payable, whether on the Maturity Date, any Tax Redemption Date, any Optional Redemption Date, the Repurchase Date, any Fundamental Change Repurchase Date, upon conversion or otherwise; and (c) 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 Interest.* The Company covenants and agrees that it will cause to be paid the principal (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest, if any, on, each of the Notes at the places, at the respective times and in the manner provided herein and in the Notes.

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 Deutsche Bank Trust Company Americas as the Paying Agent, Note Registrar, Transfer Agent and Conversion Agent and the Corporate Trust Office and the office or agency of Deutsche Bank Trust Company Americas 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.

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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest, if any, on, the Notes for the benefit of the Holders of the Notes;

(ii) that it will give the Trustee prompt written notice of any failure by the Company to make any payment of the principal (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest, if any, on, 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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest, if any, on, the Notes, deposit with the Paying Agent a sum in immediately available funds sufficient to pay such principal (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) or accrued and unpaid interest, if any, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee in writing 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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest, if any, on, the Notes when such principal or interest, if any, 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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest, if any, on, 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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) and accrued and unpaid interest, if any, 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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, or accrued and unpaid interest, if any, on, 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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, and accrued and unpaid interest, if any, on, or in satisfaction of its Conversion Obligation with respect to, any Note and remaining unclaimed for two years after such principal (including the Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) or interest, if any, 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 or property, 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 *Rule 144A Information Requirement and Annual Reports*. (a) At any time the Company is not subject to Section 13 or 15(d) of the Exchange Act, the Company shall, so long as any of the Notes, any ADSs deliverable upon conversion thereof, if any, or any Ordinary Shares underlying ADSs deliverable upon conversion thereof shall, at such time, constitute “restricted securities” within the meaning of Rule 144(a)(3) under the Securities Act, promptly provide to the Trustee and shall, upon written request, provide to any Holder, beneficial owner or prospective purchaser of such Notes or the ADSs deliverable upon conversion of such Notes, if any, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act to facilitate the resale of such Notes or ADSs pursuant to Rule 144A. The Company shall take such further action as any Holder or beneficial owner of such Notes or such ADSs may reasonably request to the extent from time to time required to enable such Holder or beneficial owner to sell such Notes or ADSs in accordance with Rule 144A, as such rule may be amended from time to time.

(b) The Company shall provide to the Trustee within 15 days after the same are required to be filed with the Commission, copies of any documents or reports that the Company is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act (giving effect to any applicable grace period provided by Rule 12b-25 under the Exchange Act). Any such document or report that the Company files with the Commission via the Commission’s EDGAR system (or any successor thereto) shall be deemed to be provided to the Trustee for purposes of this Section 4.06(b) at the time such documents are filed via the EDGAR system (or any successor thereto). The Trustee shall have no obligation to determine if and when the Company’s statements or reports are publically available and/or accessible electronically.

(c) Delivery of the reports and documents described in subsection (b) above to the Trustee is for informational purposes only, and the Trustee’s receipt of such shall not constitute actual or constructive notice or knowledge of any information contained therein or determinable from information contained therein, including the Company’s compliance with any of its covenants hereunder (as to which the Trustee is entitled to conclusively rely on an Officers’ Certificate).

(d) If, at any time during the six-month period beginning on, and including, the date that is six months after the last date of original issuance of the Notes, the Company fails to timely file any document or report that it is required to file with the Commission pursuant to Section 13 or 15(d) of the Exchange Act, as applicable (after (i) giving effect to all applicable

grace periods thereunder and (ii) other than reports on Form 6-K to the extent such reports are not required to satisfy the “current public information” requirements of Rule 144), or the Notes are not otherwise freely tradable pursuant to Rule 144 by Holders other than the Company’s Affiliates or Holders that were the Company’s Affiliates at any time during the three months immediately preceding (as a result of restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes), the Company shall pay or cause the Paying Agent (on behalf of the Company and subject to receipt of funds from the Company pursuant to the last paragraph in Section 4.04(a)) to pay Additional Interest on the Notes. Such Additional Interest shall accrue on the Notes at the rate of 0.50% per annum of the principal amount of the Notes outstanding for each day during such period for which the Company’s failure to file has occurred and is continuing or the period during which the Notes are not freely tradable, as described in this Section 4.06(d), by Holders other than Affiliates of the Company (or Holders that were Affiliates of the Company at any time during the three months immediately preceding). As used in this Section 4.06(d), documents or reports that the Company is required to “file” with the Commission pursuant to Section 13 or 15(d) of the Exchange Act does not include documents or reports that the Company furnishes to the Commission pursuant to Section 13 or 15(d) of the Exchange Act.

(e) If, and for so long as, the restrictive legend on the Notes specified in Section 2.05(c) has not been removed, the Notes are assigned a restricted CUSIP or the Notes are not otherwise freely tradable by Holders other than the Company’s Affiliates or Holders that were the Company’s Affiliates at any time during the three months immediately preceding (without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes) as of the 370th day after the last date of original issuance of the Notes, the Company shall pay or cause the Paying Agent to pay Additional Interest on the Notes at a rate equal to 0.50% per annum of the principal amount of Notes outstanding until the restrictive legend on the Notes has been removed in accordance with Section 2.05(c), the Notes have been assigned an unrestricted CUSIP and the Notes are freely tradable by Holders other than the Company’s Affiliates or Holders that were the Company’s Affiliates at any time during the three months immediately preceding (without restrictions pursuant to U.S. securities laws or the terms of this Indenture or the Notes).

(f) Additional Interest will be payable in arrears on each Interest Payment Date following accrual in the same manner as regular interest on the Notes.

(g) The Additional Interest that is payable in accordance with Section 4.06(d) or Section 4.06(e) shall be in addition to, and not in lieu of, any Additional Interest that may be payable as a result of the Company’s election pursuant to Section 6.03. In no event shall Additional Interest accrue on any day under the terms of this Indenture (taking any Additional Interest payable pursuant to Section 4.06(d) and Section 4.06(e) together with any Additional Interest payable pursuant to Section 6.03) at an annual rate in excess of 0.50%, in the aggregate, for any violation or Default caused by the Company’s failure to be current in respect of its Exchange Act reporting obligations.

(h) If Additional Interest is payable by the Company pursuant to Section 4.06(d) or Section 4.06(e), the Company shall deliver to the Trustee an Officers’ Certificate to that effect stating (i) the amount of such Additional Interest that is payable and (ii) the date on which such

Additional Interest is payable. Unless and until a Responsible Officer of the Trustee receives at the Corporate Trust Office such a certificate, the Trustee may assume without inquiry that no such Additional Interest is payable. If the Company has paid such Additional Interest directly to the Persons entitled to it, the Company shall deliver to the Trustee an Officers' Certificate setting forth the particulars of such payment.

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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price), premium, if any, payments of interest (if applicable), including any Additional Interest, and payments of cash and/or 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), 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 cash and/or 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 Redemption Price, the Repurchase Price and Fundamental Change Repurchase Price, if applicable) and interest on, such Note or the payment of cash and/or the delivery of ADSs (together with payment of cash for any Fractional ADS) or other consideration 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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if

applicable), and interest on, such Note or the payment of cash and/or delivery of ADSs (together with payment of cash for any Fractional ADS) or other consideration 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 or delivery 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, (on behalf of the Company and subject to receipt of funds from the Company pursuant to the last paragraph in Section 4.04(a)) to pay Additional Amounts to Holders on the relevant payment or delivery 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 payment of cash and/or 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 Redemption Price, the Repurchase Price and Fundamental Change Repurchase Price, if applicable) and any premium or interest, if any, (including any Additional Interest) 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, if any, 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, 2021) 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 reasonably practicable, 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.* Upon request of the Trustee, 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 each January 15 and July 15 in each year beginning with July 15, 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 Trustee 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 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 redemption in accordance with Section 16.01 or Section 16.02, upon any required repurchase, upon declaration of acceleration or otherwise;
- (c) failure by the Company to comply with its obligations 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) or notice of a Make-Whole Fundamental Change in accordance with Section 14.03(a) or notice in accordance with Section 14.03(g) or notice of a specified corporate event in accordance with Section 14.01(b)(ii) or Section 14.01(b)(iii), in each case, 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\$60 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, if any, 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\$60 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; or

(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.

**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, and accrued and unpaid interest, if any on, 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, and accrued and unpaid interest, if any, on, 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, the Agents and any other 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 installments of accrued and unpaid interest, if any, upon all Notes and the principal of any and all Notes that shall have become due otherwise than by acceleration (with interest on overdue installments of accrued and unpaid interest to the extent that payment of such interest is enforceable under applicable law, and on such principal at the rate per annum borne by the Notes *plus* one percent) 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 and accrued and unpaid interest, if any, on 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, or accrued and unpaid interest, if any, on 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 *Additional Interest*. Notwithstanding anything in this Indenture or in the Notes to the contrary, to the extent the Company elects, the sole remedy for Event of Default relating to the Company's failure to comply with its obligations as set forth in Section 4.06(b) shall after the occurrence of such an Event of Default consist exclusively of the right to receive Additional Interest on the Notes at a rate equal to:

(a) 0.25% per annum of the principal amount of the Notes outstanding for each day during the period beginning on, and including, the date on which such an Event of Default first occurs and ending on the earlier of (i) the date on which such Event of Default is cured or validly waived and (ii) the 90th day immediately following, and including, the date on which such Event of Default first occurred; and

(b) if such Event of Default has not been cured or validly waived prior to the 91st day immediately following, and including, the date on which such Event of Default first occurred, 0.50% per annum of the principal amount of the Notes outstanding for each day during the

period beginning on, and including, the 91st day immediately following, and including, the date on which such an Event of Default first occurred and ending on the earlier of (i) the date on which such Event of Default is cured or validly waived and (ii) the 180th day immediately following, and including, the date on which such Event of Default first occurred.

Interest payable pursuant to this Section 6.03 shall be in addition to, not in lieu of, any Additional Interest payable pursuant to Section 4.06(d) or Section 4.06(e). In no event shall Additional Interest accrue on the Notes on any day under this Indenture (taking any Additional Interest payable pursuant to this Section 6.03 together with any Additional Interest payable pursuant to Section 4.06(d) and Section 4.06(e)) at an annual rate accruing in excess of 0.50%, in the aggregate, for any violation or Default caused by the Company's failure to be current in respect of its Exchange Act reporting obligations. If the Company so elects, such Additional Interest shall be payable in the same manner and on the same dates as regular interest on the Notes. On the 181st day after such Event of Default (if the Event of Default with respect to the Company's obligations under Section 4.06(b) is not cured or waived prior to such 181st day), the Notes will be subject to acceleration as provided in Section 6.02. In the event the Company does not elect to pay Additional Interest following an Event of Default in accordance with this Section 6.03 or the Company elected to make such payment but does not pay the Additional Interest when due, the Notes shall be subject to acceleration as provided in Section 6.02.

In order to elect to pay Additional Interest as the sole remedy during the first 180 days after the occurrence of any Event of Default described in the immediately preceding paragraph, the Company must notify in writing all Holders of the Notes, the Trustee and the Paying Agent of such election prior to the beginning of such 180-day period. Upon the failure to timely give such notice, the Notes shall be immediately subject to acceleration as provided in Section 6.02.

**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, 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 and interest, if any, with interest on any overdue principal and interest, if any, at the rate per annum borne by the Notes at such time *plus* one percent, 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, sequestrator 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 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 or property 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 to the Trustee, including to its agents and counsel, hereunder and any payments due to the Paying Agent, the Transfer Agent, the Conversion Agent and the Note Registrar hereunder;

**Second**, in case the principal of the outstanding Notes shall not have become due and be unpaid, to the payment of interest, if any, 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 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 Redemption Price, Repurchase Price or 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 per annum borne by the Notes at such time *plus* one percent, 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 Redemption Price, Repurchase Price or Fundamental Change Repurchase Price and the cash due upon conversion) and interest without preference or priority of principal over interest, if any, 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 Redemption Price, Repurchase Price or 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 Redemption Price, the Repurchase Price or Fundamental Change Repurchase Price) 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 60 days after its receipt of such notice, request and offer of security and/or indemnity and/or pre-funding, shall have not complied with such written request of the Holders 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 60-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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, (y) accrued and unpaid interest, if any, on, and (z) 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 conflicts with law or this Indenture, that may 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 (it being understood that the Trustee does not have an affirmative duty to ascertain whether or not such actions or forbearances are unduly prejudicial to such Holders). 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, if any, on, or the principal (including, if applicable, the Redemption Price, Repurchase Price or 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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable), or accrued and unpaid interest, if any, on, 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 or accrued and unpaid interest, if any, on any Note (including, but not limited to, the Redemption Price, the Repurchase Price and 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 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 losses, 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 determined 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) in the absence of written investment direction from the Company, all cash received by the Trustee shall be placed in a non-interest bearing trust account, and in no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon or for losses incurred as a result of the liquidation of any such investment prior to its maturity date or the failure of the party directing such investments prior to its maturity date or the failure of the party directing such investment to provide timely written investment direction, and the Trustee shall have no obligation to invest or reinvest any amounts held hereunder in the absence of such written investment direction from the Company;

(h) in the event that the Trustee or any of its affiliates is also acting as Note Registrar, Paying Agent, Conversion Agent, Bid Solicitation Agent or Transfer Agent hereunder, 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, Bid Solicitation 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 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 any 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 or refraining from 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 of its selection 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 Trustee shall not be deemed to have knowledge of any Default or Event of Default with respect to the Notes, unless a written notice of such Default or Event of Default shall have been received by the Trustee at the Corporate Trust Office of the Trustee in accordance with Section 17.03 ;

(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; and

(o) neither the Trustee nor any agent thereof shall have any responsibility or liability for any actions taken or not taken by the Depository.

**Section 7.03 *No Responsibility for Recitals, Etc.*** The recitals, statements, warranties and representations contained herein and in the Notes (except in the Trustee'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 Trustee 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. The Trustee shall have no responsibility or liability with respect to any information, statement or recital in the offering memorandum, prospectus, prospectus supplement or other disclosure material prepared or distributed with respect to any of the Notes.

**Section 7.04 *Trustee, Paying Agents, Conversion Agents, Bid Solicitation Agent or Note Registrar May Own Notes.*** The Trustee, any Paying Agent, any Conversion Agent, Bid Solicitation Agent (if other than the Company or any Affiliate thereof) 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, Bid Solicitation 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 and ADSs to Be Held in Trust.*** All monies and ADSs 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 and ADSs held by the Trustee in trust or by the Paying Agent hereunder need not be segregated from other funds or property except to the extent required by

law. Neither the Trustee nor the Paying Agent shall be under any liability for interest on any money or ADSs received by it hereunder.

**Section 7.06 Compensation, Expenses and Indemnification of Trustee and Agents.** (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, disbursements and advances 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, including taxes (other than taxes based upon, measured by or determined by the income of the Trustee) (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 Transfer 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 Transfer 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 Transfer 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 Transfer 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 Transfer 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 30 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 60 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 trustee, 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 Trustee 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 Trustee shall have; *provided, however*, that the right to adopt the certificate of authentication of any predecessor trustee 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 Transfer 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 and (subject to Section 2.03) accrued and unpaid interest, if any, on 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 Transfer Agent nor any Conversion Agent nor any Note Registrar shall be affected by any notice to the contrary. The sole registered holder of a

Global Note shall be the Depository or its nominee. 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 owner 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 Depository or any other Person, such owner's right to exchange such beneficial interest for a Note in certificated form in accordance with the provisions 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, including virtually. 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 (including virtually) 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 Trustee 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 Trustee shall not have mailed the notice of such meeting within 20 days after receipt of such request, then the Company 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 aggregate 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 aggregate 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 aggregate 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 or any credit enhancements of similar nature 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 in any material respect;
- (h) to make changes in connection with an acceptance for listing on a Permitted Exchange as contemplated in Section 10.03;



- (i) to comply with the rules of the Depository;
- (j) to evidence and provide for the acceptance of the appointment of a successor trustee in accordance with this Indenture; or
- (k) to conform the provisions of this Indenture or the Notes to the “Description of the Notes” section of the Offering Memorandum.

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, and the execution and delivery of the supplemental indenture to this Indenture or the Notes is authorized and permitted by the terms of this Indenture and that all conditions precedent hereto have been satisfied, and that the supplemental indenture or amendment or supplement are enforceable against the Company, subject to customary assumptions and qualifications.

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 the Notes or 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 Repurchase Price payable on the Repurchase Date, the Fundamental Change Repurchase Price or the Redemption 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.

Holdings 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 (with a copy to the Trustee) 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 *Supplemental Indenture in respect of Fundamental Change*. If a Fundamental Change described in clause (d) of the definition thereof has occurred and the Newly Listed Equity has been accepted for listing on a Permitted Exchange, then, from and after the later to occur of (x) the date of such acceptance for listing on a Permitted Exchange and (y) the Effective Date of such Fundamental Change (the "**New Listing Reference Date**"), Section 14.07 of this Indenture will be deemed to apply *mutatis mutandis* as if the Reference Property for the Notes were the Newly Listed Equity. No later than five Business Days after the New Listing Reference Date, the Company shall execute with the Trustee a supplemental indenture containing such provisions that the Board of Directors determines in good faith are appropriate to preserve the economic interests of the Holders and are necessary to reflect the replacement of the ADSs (or Ordinary Shares or other Common Equity or ADSs in respect of Reference Property then underlying the Notes) with the Newly Listed Equity. The Company shall notify the Holders and the Conversion Agent (if other than the Trustee) in writing as promptly as reasonably practicable

following the date the Company and the Trustee execute such supplemental indenture, and the Company shall substantially concurrently with such notice either post such supplemental indenture on the Company's website or disclose the same in a current report on Form 6-K (or any successor form) that is filed with the Commission.

Section 10.04 *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 10.05 *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 Trustee 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 Trustee upon receipt of a Company Order and delivered in exchange for the Notes then outstanding, upon surrender of such Notes then outstanding.

Section 10.06 *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 with respect to such Opinion of Counsel, that such supplemental indenture is the valid and binding obligation of the Company enforceable in accordance with its terms, subject to customary exceptions and qualifications.

## 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 and accrued and unpaid interest, if any, on 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 Trustee; 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 Trustee 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 Trustee for authentication, and any Notes that such Successor Company thereafter shall cause to be signed and delivered to the Trustee 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 or accrued and unpaid interest, if any, on 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.* (a) 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 (if the portion to be converted is US\$1,000 principal amount or an integral multiple thereof) of such Note (i) subject to satisfaction of the conditions described in Section 14.01(b), at any time prior to the close of business on the Business Day immediately preceding August 1, 2026 under the circumstances and during the periods set forth in Section 14.01(b), and (ii) regardless of the conditions described in Section 14.01(b), on or after August 1, 2026 and prior to the close of business on the second Scheduled Trading Day immediately preceding the Maturity Date, in each case, at an initial conversion rate of 10.7458 ADSs (subject to adjustment as provided in this Article 14, the "**Conversion Rate**") per US\$1,000 principal amount of Notes (subject to, and in accordance with, the settlement provisions of Section 14.02, the "**Conversion Obligation**"). For the avoidance of doubt, "Conversion Rate" as of a particular

date without setting forth a particular time on such date shall mean the Conversion Rate immediately after the close of business on such date.

(b) (i) Prior to the close of business on the Business Day immediately preceding August 1, 2026, a Holder may surrender all or any portion of its Notes for conversion at any time during the five Business Day period immediately after any ten consecutive Trading Day period (the “**Measurement Period**”) in which the Trading Price per US\$1,000 principal amount of Notes, as determined following a request by a Holder of Notes in accordance with this subsection (b)(i), for each Trading Day of the Measurement Period was less than 98% of the product of the Last Reported Sale Price of the ADSs on each such Trading Day and the Conversion Rate on each such Trading Day. The Trading Prices shall be determined by the Bid Solicitation Agent pursuant to this subsection (b)(i) and the definition of Trading Price set forth in this Indenture. The Company shall provide written notice to the Bid Solicitation Agent (if other than the Company) of the three independent nationally recognized securities dealers selected by the Company pursuant to the definition of Trading Price, along with appropriate contact information for each. The Bid Solicitation Agent (if other than the Company) shall have no obligation to determine the Trading Price per US\$1,000 principal amount of Notes unless the Company has requested such determination in writing, and the Company shall have no obligation to make such request (or, if the Company is acting as Bid Solicitation Agent, the Company shall have no obligation to determine the Trading Price per US\$1,000 principal amount of Notes) unless a Holder provides the Company with reasonable evidence that the Trading Price per US\$1,000 principal amount of Notes on any Trading Day would be less than 98% of the product of the Last Reported Sale Price of the ADSs on such Trading Day and the Conversion Rate on such Trading Day, at which time the Company shall instruct the Bid Solicitation Agent (if other than the Company) in writing to determine, or if the Company is acting as Bid Solicitation Agent, the Company shall determine, the Trading Price per US\$1,000 principal amount of Notes beginning on the next Trading Day and on each successive Trading Day until the Trading Price per US\$1,000 principal amount of Notes is greater than or equal to 98% of the product of the Last Reported Sale Price of the ADSs and the Conversion Rate. At such time as the Company directs the Bid Solicitation Agent in writing to solicit bid quotations, the Company will provide the Bid Solicitation Agent with the names and contact details of the three independent nationally recognized securities dealers the Company selects, and the Company will direct those securities dealers to provide bids to the Bid Solicitation Agent. If (x) the Company is not acting as Bid Solicitation Agent, and the Company does not, when the Company is required to, instruct the Bid Solicitation Agent to determine the Trading Price per US\$1,000 principal amount of Notes when obligated as provided in the preceding sentence, or if the Company instructs the Bid Solicitation Agent in writing to obtain bids and the Bid Solicitation Agent fails to make such determination, or (y) the Company is acting as Bid Solicitation Agent and the Company fails to make such determination when obligated as provided in the preceding sentence, then, in either case, the Trading Price per US\$1,000 principal amount of Notes shall be deemed to be less than 98% of the product of the Last Reported Sale Price of the ADSs and the Conversion Rate on each Trading Day of such failure. If the Trading Price condition set forth above has been met, the Company shall so notify the Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing. If, at any time after the Trading Price condition set forth above has been met, the Trading Price per US\$1,000 principal amount of Notes is greater than or equal to 98% of the product of the Last Reported Sale Price of the ADSs and the Conversion Rate for such date, the Company shall so notify in writing the Holders, the Trustee and the Conversion Agent (if other than the Trustee).

(ii) If, prior to the close of business on the Business Day immediately preceding August 1, 2026, the Company elects to:

(A) issue 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 share that is less than the average of the Last Reported Sale Prices of the ADSs, *divided by* 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; or

(B) distribute to all or substantially all holders of the Ordinary Shares (directly or in the form of ADSs) the Company's assets, securities or rights to purchase securities of the Company, which distribution has a per share value, as determined by the Board of Directors, exceeding 10% of (i) the Last Reported Sale Price of the ADSs on the Trading Day preceding the date of announcement for such distribution, *divided by* (ii) the number of Ordinary Shares then represented by one ADS,

then, in either case, the Company shall notify all Holders of the Notes, the Trustee and the Conversion Agent (if other than the Trustee) in writing at least 30 Scheduled Trading Days prior to the Ex-Dividend Date for such issuance or distribution. Once the Company has given such notice, a Holder may surrender all or any portion of its Notes for conversion at any time until the earlier of (1) the close of business on the Business Day immediately preceding the Ex-Dividend Date for such issuance or distribution and (2) the Company's announcement that such issuance or distribution will not take place, in each case, even if the Notes are not otherwise convertible at such time.

(iii) If (1) a transaction or event that constitutes a Fundamental Change or a Make-Whole Fundamental Change occurs prior to the close of business on the Business Day immediately preceding August 1, 2026, regardless of whether a Holder has the right to require the Company to repurchase the Notes pursuant to Section 15.02, or (2) if the Company is a party to a consolidation, merger, binding share exchange, or transfer or lease of all or substantially all of its assets that occurs prior to the close of business on the Business Day immediately preceding August 1, 2026, in each case, pursuant to which the ADSs would be converted into cash, securities or other assets, all or any portion of a Holder's Notes may be surrendered for conversion at any time from or after the actual effective date of such transaction until 35 Trading Days after the actual effective date of such transaction or, if such transaction also constitutes a Fundamental Change, until the related Fundamental Change Repurchase Date. The Company shall notify Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing as promptly as practicable following the date the Company publicly announces such transaction. If the Company does not provide such notice by the effective date of such transaction, then the last day on which the Notes are convertible shall be extended by the number of Business

Days from, and including, the effective date thereof to, but excluding, the date the Company provides the notice.

(iv) Prior to the close of business on the Business Day immediately preceding August 1, 2026, a Holder may surrender all or any portion of its Notes for conversion at any time during any calendar quarter commencing after the calendar quarter ending on March 31, 2021 (and only during such calendar quarter), if the Last Reported Sale Price of the ADSs for at least 20 Trading Days (whether or not consecutive) during the period of 30 consecutive Trading Days ending on, and including, the last Trading Day of the immediately preceding calendar quarter is greater than or equal to 130% of the Conversion Price on each applicable Trading Day. The Company shall determine at the beginning of each calendar quarter commencing after March 31, 2021 whether the Notes may be surrendered for conversion in accordance with this clause (iv) and shall notify the Holders, the Trustee and the Conversion Agent (if other than the Trustee) in writing if the Notes become convertible in accordance with this clause (iv).

(v) If the Company calls any or all of the Notes for redemption pursuant to Article 16, then a Holder may surrender any or all of its Notes for conversion at any time prior to the close of business on the second Business Day prior to the Tax Redemption Date or Optional Redemption Date, even if the Notes are not otherwise convertible at such time. After that time, the right to convert such Notes on account of the Company's delivery of the notice of redemption shall expire, unless the Company defaults in the payment of the Redemption Price, in which case a Holder may convert any or all of its Notes until the Redemption Price has been paid or duly provided for.

#### Section 14.02 *Conversion Procedure; Settlement Upon Conversion.*

(a) Subject to this Section 14.02, Section 14.03(b) and Section 14.07(a), upon conversion of any Note, the Company shall pay or deliver, as the case may be, to the converting Holder, in respect of each US\$1,000 principal amount of Notes being converted, cash ("**Cash Settlement**"), ADSs together with cash, if applicable, in lieu of delivering any fractional ADSs ("**Fractional ADSs**") (in accordance with subsection (j) of this Section 14.02 ("**Physical Settlement**")) or a combination of cash and ADSs, together with cash, if applicable, in lieu of delivering any fractional ADS in accordance with subsection (j) of this Section 14.02 ("**Combination Settlement**"), at its election, as set forth in this Section 14.02.

(i) All conversions for which the relevant Conversion Date occurs after the Company's issuance of a Redemption Notice with respect to the Notes and prior to the close of business on the second Business Day prior to the related Tax Redemption Date or Optional Redemption Date, and all conversions for which the relevant Conversion Date occurs on or after August 1, 2026 shall be settled using the same Settlement Method.

(ii) Except for any conversions for which the relevant Conversion Date occurs after the Company's issuance of a Redemption Notice with respect to the Notes but prior to the close of business on the second Business Day prior to the related Tax Redemption Date or Optional Redemption Date (as the case may be), and any conversions for which the relevant Conversion Date occurs on or after August 1, 2026, the Company shall use the



same Settlement Method for all conversions with the same Conversion Date, but the Company shall not have any obligation to use the same Settlement Method with respect to conversions with different Conversion Dates.

(iii) If, in respect of any Conversion Date (or, in the case of any conversions for which the relevant Conversion Date occurs after the date of issuance of a Redemption Notice with respect to the Notes and prior to the close of business on the second Business Day prior to the related Tax Redemption Date or Optional Redemption Date (as the case may be), in such Redemption Notice or on or after August 1, 2025, no later than August 1, 2025, as the case may be), the Company elects a Settlement Method, the Company shall deliver a written notice (the “**Settlement Notice**”) of the relevant Settlement Method in respect of such Conversion Date (or such period, as the case may be) to converting Holders, the Trustee and the Conversion Agent (if other than the Trustee) no later than the close of business on the second Trading Day immediately following the relevant Conversion Date (or, in the case of any conversions for which the relevant Conversion Date occurs after the date of issuance of a Redemption Notice with respect to the Notes and prior to the close of business on the second Business Day prior to the related Tax Redemption Date or Optional Redemption Date (as the case may be), in such Redemption Notice or on or after August 1, 2026, no later than August 1, 2026) (in each case, the “**Settlement Method Election Deadline**”). If the Company does not elect a Settlement Method prior to the deadline set forth in the immediately preceding sentence, the Company shall no longer have the right to elect Cash Settlement or Physical Settlement and the Company shall be deemed to have elected Physical Settlement in respect of its Conversion Obligation (such settlement method, the “**Default Settlement Method**” initially elected by the Company). Such Settlement Notice shall specify the relevant Settlement Method and in the case of an election of Combination Settlement, the relevant Settlement Notice shall indicate the Specified Dollar Amount per US\$1,000 principal amount of Notes. If the Company delivers a Settlement Notice electing Combination Settlement in respect of its Conversion Obligation but does not indicate a Specified Dollar Amount per US\$1,000 principal amount of Notes in such Settlement Notice, the Specified Dollar Amount per US\$1,000 principal amount of Notes shall be deemed to be US\$1,000.

(iv) The Company may, by written notice to Holders, the Trustee and the Conversion Agent (if other than the Trustee), on or before August 1, 2026, change the Default Settlement Method or elect to irrevocably fix the Settlement Method to any Settlement Method that the Company is then permitted to elect, including Combination Settlement with a Specified Dollar Amount per \$1,000 principal amount of Notes of \$1,000 or with an ability to continue to set the Specified Dollar Amount per \$1,000 principal amount of Notes at or above any specific amount set forth in such election notice, that will apply to all Note conversions with a Conversion Date that is on or after the date the Company sends such notice. If the Company changes the Default Settlement Method or elects to irrevocably fix the Settlement Method, in either case, to Combination Settlement with an ability to continue to set the Specified Dollar Amount per \$1,000 principal amount of Notes at or above a specified amount, the Company shall, after the date of such change or election, as the case may be, inform Holders converting their Notes, the Trustee and the Conversion Agent (if other than the Trustee) in writing of such Specified Dollar Amount

in respect of the relevant conversion or conversions no later than the relevant Settlement Method Election Deadline for such conversion or conversions, or, if the Company does not timely inform the Holders, the Trustee and the Conversion Agent of the Specified Dollar Amount, such Specified Dollar Amount shall be the specific amount set forth in the change or election notice or, if no specific amount was set forth in the change or election notice, such Specified Dollar Amount shall be deemed to be \$1,000 per \$1,000 principal amount of Notes. If the Company changes the Default Settlement Method or irrevocably fixes the Settlement Method, then the Company shall concurrently either post the Default Settlement Method or fixed Settlement Method, as applicable, on the Company's website or disclose the same in a current report on Form 6-K (or any successor form) that is filed with the Commission. Notwithstanding the foregoing, no such change in the Default Settlement Method or irrevocable election will affect any Settlement Method theretofore elected (or deemed to be elected) with respect to any Conversion Date pursuant to this Section 14.02. For the avoidance of doubt, such change or election (as the case may be), if made, will be effective without the need to amend this Indenture or the Notes, including pursuant to Section 10.02(a). However, the Company may nonetheless choose to execute such an amendment at the Company's option.

(v) The cash, ADSs or a combination of cash and ADSs, as applicable, in respect of any conversion of Notes (the "**Settlement Amount**") shall be computed as follows:

(A) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by Physical Settlement, the Company shall deliver 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 on the Conversion Date for such conversion;

(B) if the Company elects to satisfy its Conversion Obligation in respect of such conversion by Cash Settlement, the Company shall pay to the converting Holder in respect of each US\$1,000 principal amount of Notes being converted cash in an amount equal to the sum of the Daily Conversion Values for each of the 20 consecutive Trading Days during the related Observation Period; and

(C) if the Company elects (or is deemed to have elected) to satisfy its Conversion Obligation in respect of such conversion by Combination Settlement, the Company shall pay or deliver, as the case may be, in respect of each US\$1,000 principal amount of Notes being converted, a Settlement Amount equal to the sum of the Daily Settlement Amounts for each of the 20 consecutive Trading Days during the related Observation Period.

(vi) The Daily Settlement Amounts (if applicable) and the Daily Conversion Values (if applicable) shall be determined by the Company promptly following the last day of the Observation Period. Promptly after such determination of the Daily Settlement Amounts or the Daily Conversion Values, as the case may be, and the amount of cash payable in lieu of delivering any fractional ADS, the Company shall notify the Trustee and the Conversion Agent (if other than the Trustee) in writing of the Daily Settlement

Amounts or the Daily Conversion Values, as the case may be, and the amount of cash payable in lieu of delivering fractional ADSs. The Trustee and the Conversion Agent (if other than the Trustee) shall have no responsibility for any such determination.

(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, (1) comply with the procedures of the Depository in effect at that time for converting a beneficial interest in a Global Note, and the procedures agreed between the Company and the ADS Depository with respect to any ADSs issued upon conversion of the Notes prior to the Resale Restriction Termination Date, (2) and, if required, pay funds equal to interest, if any, payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 14.02(h), and (3) prior to the Resale Restriction Termination Date, complete, manually sign and deliver a duly completed irrevocable notice to the Conversion Agent, the Company and the ADS Depository 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, the Company and the ADS Depository, 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 Trustee, (3) if required, furnish appropriate endorsements and transfer documents and (4) if required, pay funds equal to interest, if any, payable on the next Interest Payment Date to which such Holder is not entitled as set forth in Section 14.02(h). The Trustee (and if different, the Conversion Agent) shall notify the Company of any conversion pursuant to this Article 14 on the Conversion Date, or promptly following instructions 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 Repurchase Notice or Fundamental Change Repurchase Notice to the Company in respect of such Notes and has not validly withdrawn such Repurchase Notice or Fundamental Change Repurchase Notice, as the case may be, in accordance with Section 15.03. The delivery of the ADSs by the ADS Depository to Holders upon conversion of their Notes or their designated transferees will be governed by the terms of the Deposit Agreement and by procedures agreed between the Company and the ADS Depository with respect to any ADSs issued upon conversion of the Notes.

By converting a beneficial interest in a Global Note into ADSs, the Holder is deemed to represent to the Company and the ADS Depository that such Holder is not an “affiliate” (as defined in Rule 144) of the Company and has not been an “affiliate” of the Company during the three months immediately preceding the Conversion Date.

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.

(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. Except as set forth in Section 14.03(b) and Section 14.07(a), the Company shall pay or deliver, as the case may be, the consideration due in respect of the Conversion Obligation on the third Business Day immediately following the relevant Conversion Date, if the Company elects Physical Settlement, or on the third Business Day immediately following the last Trading Day of the relevant Observation Period, in the case of any other Settlement Method; *provided* that in respect of (x) all conversions for which the relevant Conversion Date occurs after the issuance of a Redemption Notice by the Company with respect to the Notes and prior to the close of business on the second Business Day prior to the related Tax Redemption Date or Optional Redemption Date (as the case may be) and (y) all conversions for which the relevant Conversion Date occurs on or after August 1, 2026, the Company shall pay or deliver, as the case may be, the consideration due in respect of the Conversion Obligation on the second Business Day immediately following the relevant Conversion Date, if the Company elects Physical Settlement, or on the second Business Day immediately following the last Trading Day of the relevant Observation Period, in the case of any other Settlement Method. If any ADSs are due to a converting Holder, the Company shall issue or cause to be issued, and deliver (if applicable) to such Holder, or such Holder’s nominee or nominees, the full number of ADSs to which such Holder shall be entitled, in book-entry format through the Depository, 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 Trustee 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 any 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 Company 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 Company or the ADS Depository, as applicable, receives a sum sufficient to pay any tax that is due by such Holder in accordance with the immediately preceding sentence. The Company shall also pay the ADS Depository’s fees for issuance of all ADSs deliverable upon conversion.

(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 and the Company will not adjust the Conversion Rate for any accrued and unpaid interest on the Notes. 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. As a result, accrued and unpaid interest, if any, to, but not including, the relevant Conversion Date shall be deemed to be paid in full rather than cancelled, extinguished or forfeited. Upon a conversion of Notes into a combination of cash and ADSs, accrued and unpaid interest, if any, will be deemed to be paid first out of the cash paid upon such conversion. Notwithstanding the foregoing, if Notes are converted after the close of business on a Regular Record Date and prior to the open of business on the immediately following Interest Payment Date, Holders of such Notes as of the close of business on such Regular Record Date will receive the full amount of interest, if any, payable on such Notes on the corresponding Interest Payment Date notwithstanding the conversion. Notes surrendered for conversion during the period from the close of business on any Regular Record Date to the open of business on the immediately following Interest Payment Date must be accompanied by funds equal to the amount of interest, if any, payable on the Notes so converted (regardless of whether the converting Holder was the holder of record on the corresponding Regular Record Date); provided that no such payment shall be required (1) for conversions following January 15, 2027; (2) if the Company has specified a Tax Redemption Date or an Optional Redemption Date that is after a Regular Record Date and on or prior to the third Business Day immediately succeeding the corresponding Interest Payment Date; (3) if the Company has specified a Fundamental Change Repurchase Date that is after a Regular Record Date and on or prior to the third Business Day immediately succeeding the corresponding Interest Payment Date; or (4) to the extent of any Defaulted Amounts, if any Defaulted Amounts exists at the time of conversion with respect to such Note. Neither the Trustee nor the Conversion Agent (if other than the Trustee) will have any duty to determine or verify determination by the Company of whether any of the conditions to conversion have been satisfied.

(i) The Person in whose name the certificate for any ADSs shall be 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 (if the Company elects to satisfy the related Conversion Obligation by Physical Settlement) or the last Trading Day of the relevant Observation Period (if the Company elects to satisfy the related Conversion Obligation by Combination Settlement), as the case may be. 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 delivering any Fractional ADS deliverable upon conversion based on the Daily VWAP for the relevant Conversion Date (in the case of Physical Settlement) or based on the Daily VWAP for the last Trading Day of the relevant Observation Period (in the case of Combination Settlement). For each Note surrendered for conversion, if the Company has elected (or is deemed to have elected) Combination Settlement, the full number of ADSs that shall be issued upon conversion thereof shall be computed on the basis of the aggregate Daily Settlement

Amounts for the relevant Observation Period and any Fractional ADSs remaining after such computation shall be paid in cash.

(k) In accordance with the Unrestricted Deposit Agreement or the Restricted Deposit Agreement, as applicable, 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 shall comply with the Unrestricted Deposit Agreement and the Restricted Deposit Agreement (as the case may be), in each case, as required by the ADS Depository or the ADS Custodian in connection with each issue of Ordinary Shares and issuance and delivery of ADSs.

(l) The Conversion Agent will open a non-interest bearing account in the name of the Company in relation to its Cash Settlements.

Section 14.03 *Increased Conversion Rate Applicable to Certain Notes Surrendered in Connection with Make-Whole Fundamental Changes.* (a) If a Make-Whole Fundamental Change occurs prior to the Maturity Date and a Holder elects to convert its Notes in connection with such Make-Whole Fundamental Change, the Company shall, under the circumstances described below, increase the Conversion Rate for the Notes so surrendered for conversion by a number of additional ADSs (the “**Additional ADSs**”), as described below. A conversion of Notes shall be deemed for these purposes to be “in connection with” such Make-Whole Fundamental Change if the relevant Notice of Conversion is received by the Conversion Agent from, and including, the Effective Date of the Make-Whole Fundamental Change up to, and including, the second Business Day immediately prior to the related Fundamental Change Repurchase Date (or, in the case of a Make-Whole Fundamental Change that would have been a Fundamental Change but for the *proviso* in clause (b) of the definition thereof, the 35th Trading Day immediately following the Effective Date of such Make-Whole Fundamental Change). The Company shall provide written notification to Holders and the Trustee (and the Conversion Agent, if other than the Trustee) of the Effective Date of any Make-Whole Fundamental Change and issue a press release announcing such Effective Date no later than five Business Days after such Effective Date.

(b) Upon surrender of Notes for conversion in connection with a Make-Whole Fundamental Change, the Company shall, at its option, satisfy the related Conversion Obligation by Physical Settlement, Cash Settlement or Combination Settlement in accordance with Section 14.02; *provided, however*, that if, at the effective time of a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the Reference Property following such Make-Whole Fundamental Change is composed entirely of cash, for any conversion of Notes following the Effective Date of such Make-Whole Fundamental Change, the Conversion Obligation shall be calculated based solely on the ADS Price for the transaction and shall be deemed to be an amount of cash per US\$1,000 principal amount of converted Notes equal to the Conversion Rate (including any adjustment for Additional ADSs), *multiplied by* such ADS Price.

(c) The number of Additional ADSs, if any, by which the Conversion Rate shall be increased shall be determined by reference to the table below, based on the date on which the

Make-Whole Fundamental Change occurs or becomes effective (the “**Effective Date**”) and the price (the “**ADS Price**”) paid (or deemed to be paid) per ADS in the Make-Whole Fundamental Change. If the holders of the ADSs receive in exchange for their ADSs only cash in a Make-Whole Fundamental Change described in clause (b) of the definition of Fundamental Change, the ADS Price shall be the cash amount paid per ADS. Otherwise, the ADS Price shall be the average of the Last Reported Sale Prices of the ADSs over the five Trading Day period ending on, and including, the Trading Day immediately preceding the Effective Date of the Make-Whole Fundamental Change.

(d) The ADS Prices set forth in the column headings of the table below shall be adjusted as of any date on which the Conversion Rate of the Notes is otherwise adjusted. The adjusted ADS Prices shall equal the ADS Prices applicable immediately prior to such adjustment, *multiplied by* a fraction, the numerator of which is the Conversion Rate immediately prior to such adjustment giving rise to the ADS Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The number of Additional ADSs set forth in the table below shall be adjusted in the same manner and at the same time as the Conversion Rate as set forth in Section 14.04.

(e) The following table sets forth the number of Additional ADSs to be received per US\$1,000 principal amount of Notes pursuant to this Section 14.03 for each ADS Price and Effective Date set forth below:

Effective Date	ADS Price											
	\$62.04	\$70.00	\$80.00	\$93.06	\$107.00	\$120.98	\$140.00	\$170.00	\$200.00	\$250.00	\$325.00	\$450.00
January 15, 2021	5.3728	4.3099	3.3379	2.4571	1.8183	1.3718	0.9571	0.5618	0.3367	0.1418	0.0294	0.0000
February 1, 2022	5.3728	4.3099	3.3364	2.4160	1.7573	1.3034	0.8889	0.5034	0.2903	0.1129	0.0183	0.0000
February 1, 2023	5.3728	4.3099	3.2708	2.3116	1.6396	1.1866	0.7833	0.4211	0.2294	0.0786	0.0076	0.0000
February 1, 2024	5.3728	4.2649	3.1059	2.1156	1.4467	1.0115	0.6377	0.3179	0.1585	0.0432	0.0006	0.0000
February 1, 2025	5.3728	3.7644	2.7006	1.7888	1.1768	0.7859	0.4616	0.2014	0.0843	0.0128	0.0000	0.0000
February 1, 2026	5.3728	3.6267	2.4183	1.4311	0.8238	0.4775	0.2286	0.0682	0.0153	0.0000	0.0000	0.0000
February 1, 2027	5.3728	3.5400	1.7543	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

The exact ADS Prices and Effective Dates may not be set forth in the table above, in which case:

(i) if the ADS Price is between two ADS Prices in the table above or the Effective Date is between two Effective Dates in the table, the number of Additional ADSs shall be determined by a straight-line interpolation between the number of Additional ADSs set forth for the higher and lower ADS Prices and the earlier and later Effective Dates, as applicable, based on a 365-day year;

(ii) if the ADS Price is greater than US\$450.00 per ADS (subject to adjustment in the same manner as the ADS Prices set forth in the column headings of the

table above pursuant to subsection (d) above), no Additional ADSs shall be added to the Conversion Rate; and

(iii) if the ADS Price is less than US\$62.04 per ADS (subject to adjustment in the same manner as the ADS Prices set forth in the column headings of the table above pursuant to subsection (d) above), no Additional ADSs shall be added to the Conversion Rate.

Notwithstanding the foregoing, in no event shall the Conversion Rate per US\$1,000 principal amount of Notes exceed 16.1186 ADSs, subject to adjustment in the same manner as the Conversion Rate pursuant to Section 14.04.

(f) Nothing in this Section 14.03 shall prevent an adjustment to the Conversion Rate pursuant to Section 14.04.

(g) If the Holder elects to convert its Notes in connection with the Company's election to (i) redeem the Notes in respect of a Change in Tax Law pursuant to Section 16.01 or (ii) redeem the Notes at the Company's option pursuant to Section 16.02, in each case, the Conversion Rate shall be increased by a number of additional ADSs determined pursuant to this Section 14.03(g). The Company shall settle conversions of Notes as described in Section 14.02 and, for the avoidance of doubt, pay Additional Amounts, if any, with respect to any such conversion.

A conversion shall be deemed to be "in connection with" the Company's election to redeem the Notes in respect of a Change in Tax Law or redeem the Notes at the Company's option if the relevant Notice of Conversion is received by the Conversion Agent during the period from, and including, the date the Company provides the related notice of redemption to Holders until the close of business on the second Business Day immediately preceding the Tax Redemption Date or the Optional Redemption date, as the case may be (or, if the Company fails to pay the Redemption Price, such later date on which the Company pays the Redemption Price).

Simultaneously with providing such notice of redemption, the Company shall publish a notice containing this information in a newspaper of general circulation in The City of New York or publish the information on the Company's website or through such other public medium as the Company may use at that time.

The number of additional ADSs by which the Conversion Rate will be increased in the event the Company elects to redeem the Notes pursuant to Article 16 hereof will be determined by reference to the table in clause (e) above based on the Redemption Reference Date and the Redemption Reference Price (each as defined below), but determined for purposes of this Section 14.03(g) as if (x) the Holder had elected to convert its Notes in connection with a Make-Whole Fundamental Change, (y) the applicable "Redemption Reference Date" were the "Effective Date" as specified in clause (c) above and (z) the applicable "Redemption Reference Price" were the "ADS price" as specified in clause (c) above. "**Redemption Reference Date**" means the date the Company delivers the relevant Redemption Notice. "**Redemption Reference Price**" means, for any conversion in connection with the Company's election to redeem the Notes in respect of a Change in Tax Law pursuant to Section 16.01 or redeem the Notes at the



Company's option pursuant to Section 16.02, as the case may be, the average of the Last Reported Sale Prices of the ADSs over the 5 consecutive Trading Day period ending on, and including the Trading Day immediately preceding, the date the Company delivers the relevant Redemption Notice.

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 described in clause (b) below 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 an event to the extent such change reflects what a corresponding change to the Conversion Rate would have been 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 (x) a share split or share combination or (y) a tender or exchange offer), 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 in writing to

the Holders, the Trustee, the Paying Agent and the 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<sub>0</sub> = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for the ADSs 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<sub>1</sub> = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date or Effective Date, as applicable;
- OS<sub>0</sub> = the number of Ordinary Shares outstanding immediately prior to the open of business on such Ex-Dividend Date or Effective Date, as applicable (before giving effect to any such dividend, distribution, split or combination); and
- OS<sub>1</sub> = 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 open of business on the Ex-Dividend Date for the ADSs 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) (other than in connection with a stockholder rights plan) 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:

$$CR_1 \square CR_0 \square \frac{OS_0 \square X}{OS_0 \square Y}$$

where,

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for the ADSs for such issuance;
- CR<sub>1</sub> = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend Date;
- OS<sub>0</sub> = the number of Ordinary Shares outstanding immediately prior to the open of business on such Ex-Dividend 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 become effective immediately after the open of business on the Ex-Dividend 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). To the extent 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 had the increase to the Conversion Rate for such issuance been made on the basis of only the rights, options or warrants, if any, actually issued.

For purposes of this Section 14.04(b) and Section 14.01(b)(ii)(A), 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:

$$CR_1 \square CR_0 \square \frac{SP_0}{SP_0 \square FMV}$$

where,

- $CR_0$  = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for the ADSs for such distribution;
- $CR_1$  = the Conversion Rate in effect immediately after the open of business on such Ex-Dividend 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 Ex-Dividend 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 open of business on the Ex-Dividend Date for the ADSs for such distribution. If such distribution is not so paid or made in full, the Conversion Rate shall be decreased to the Conversion Rate that would then be in effect had the adjustment been made on the basis of only the distribution, if any, actually paid or made. 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:

$$CR_1 \square CR_0 \square \frac{FMV_0 \square MP_0}{MP_0}$$

where,

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the end of the Valuation Period;
- CR<sub>1</sub> = the Conversion Rate in effect immediately after the end of the Valuation Period;
- FMV<sub>0</sub> = 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<sub>0</sub> = 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 (x) in respect of any conversion of Notes for which Physical Settlement is applicable, if the relevant Conversion Date occurs during the Valuation Period, references in the portion of this Section 14.04(c) with respect 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, such Conversion Date in determining the Conversion Rate and (y) in respect of any conversion of Notes for which Cash Settlement or Combination Settlement is applicable, for any Trading Day that falls within the relevant Observation Period for such conversion and within the Valuation Period, the reference to “10” in the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed between (and including, in each case) the Ex-Dividend Date for such Spin-Off and such Trading Day in determining the Conversion Rate as of such Trading Day.

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 Ex-Dividend 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 “Ex-Dividend Date” of the Clause A Distribution and the Clause B Distribution shall be deemed to be the Ex-Dividend 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 open of business on such Ex-Dividend Date or Effective Date” within the meaning of Section 14.04(a) or “outstanding immediately prior to the open of business on such Ex-Dividend 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:

$$CR_1 = CR_0 \left( \frac{SP_0}{SP_0 + C} \right)$$

where,

- CR<sub>0</sub> = the Conversion Rate in effect immediately prior to the open of business on the Ex-Dividend Date for the ADSs for such dividend or distribution;
- CR<sub>1</sub> = the Conversion Rate in effect immediately after the open of business on the Ex-Dividend Date for such dividend or distribution;
- SP<sub>0</sub> = 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 open of business on the Ex-Dividend 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<sub>0</sub>” (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 Tender/Exchange Offer Consideration (as defined below) 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:

$$CR_1 \square CR_0 \square \frac{AC \square (SP_1 \square OS_1)}{OS_0 \square SP_1}$$

where,

- CR<sub>0</sub> = 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;
- CR<sub>1</sub> = 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 thereof in good faith and as of the time such tender or exchange offer expires (the “**Tender/Exchange Offer Consideration**”)) paid or payable for Ordinary Shares or ADSs, as the case may be, purchased in such tender or exchange offer;
- OS<sub>0</sub> = 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);
- OS<sub>1</sub> = 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
- SP<sub>1</sub> = 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 (x) in respect of any conversion of Notes for which Physical Settlement is applicable, if the relevant Conversion Date occurs during 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” or “10<sup>th</sup>” in the preceding paragraph shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the



expiration date of such tender or exchange offer to, and including such Conversion Date in determining the Conversion Rate and (y) in respect of any conversion of Notes for which Cash Settlement or Combination Settlement is applicable, for any Trading Day that falls within the relevant Observation Period for such conversion and within the 10 Trading Days immediately following, and including the Trading Day next succeeding the expiration date of such tender or exchange offer, references with respect to 10 Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the expiration date of such tender or exchange offer to, and including, such Trading Day in determining the Conversion Rate as of such Trading Day. For the avoidance of doubt, no adjustment under this Section 14.04(e) will be made if such adjustment would result in a decrease in the Conversion Rate (other than, for the avoidance of doubt, any readjustment described in the immediately succeeding paragraph).

(f) Notwithstanding this Section 14.04 or any other provision of this Indenture or the Notes, if a Conversion Rate adjustment becomes effective on any Ex-Dividend Date, and a Holder that has converted its Notes on or after such Ex-Dividend Date and on or prior to the related Record Date would be treated as the record holder of the ADSs as of the related Conversion Date as described under Section 14.02(i) based on an adjusted Conversion Rate for such Ex-Dividend Date, then, notwithstanding the Conversion Rate adjustment provisions in this Section 14.04, the Conversion Rate adjustment relating to such Ex-Dividend Date shall not be made for such converting Holder. Instead, such Holder shall be treated as if such Holder were the record owner of the ADSs on an unadjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

(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 repurchase of any Ordinary Shares pursuant to an open-market share repurchase program or other buyback transaction that is not a tender offer or exchange offer of the nature described in clause (e) of this Section 14.04 above;

(iv) 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;

(v) solely for a change in the par value of the Ordinary Shares; or

(vi) 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 deliver to the Trustee (and the Conversion Agent if not the Trustee) an Officers' Certificate setting forth (i) the adjusted Conversion Rate, (ii) the subsection of this Section 14.04 pursuant to which after such adjustment has been made, showing in reasonable detail the facts upon which such adjustment is based, and (iii) the date as of which such adjustment is effective, and such Officers' Certificate shall be conclusive evidence of the accuracy of such adjustment absent manifest error. 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 deliver 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. Neither the Trustee nor any Conversion Agent shall be under any duty or responsibility with respect to any such certificate or the information and calculations contained therein.

(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, the Daily VWAPs, the Daily Conversion Values, the Daily Settlement Amounts, the ADS Price for purposes of a Make-Whole Fundamental Change or the Redemption Reference Price for purposes of the Company's election to redeem the Notes in connection with a Change in Tax Law or to redeem the Notes as described under Section 16.02 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 Ex-Dividend 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, ADS Prices, the Daily VWAPs, the Daily Conversion Values or the Daily Settlement Amounts 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 and that Physical Settlement were applicable).

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 ADSs or 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 ADSs or 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 such Merger Event (A) the Company shall continue to have the right to determine the form of consideration to be paid or delivered, as the case may be, upon conversion of Notes in accordance with Section 14.02 and (B) (I) any amount payable in cash upon conversion of the Notes in accordance with Section 14.02 shall continue to be payable in cash, (II) any ADSs that the Company would have been required to deliver 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 and (III) the Daily VWAP shall be calculated based on the value of a unit of Reference Property that a holder of one ADS would have received in such transaction.

If the Merger Event causes the ADSs or 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 (i) 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) and (ii) contain such other provisions that the Board of Directors determines in good faith are appropriate to preserve the economic interests of the Holders and to give effect to the provisions described in this Section 14.07. 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 and the right of Holders to require the Company to repurchase their Notes on the Repurchase Date pursuant to Section 15.01, 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 cash, ADSs or a combination of cash and ADSs, as applicable, 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 upon conversion of the Notes, if any, in accordance with the terms of this Indenture, the Notes and the Unrestricted Deposit Agreement or the Restricted Deposit Agreement, as applicable, 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 Unrestricted Deposit Agreement or the Restricted Deposit Agreement (including pursuant to a certain procedures letter for the issuance of restricted ADSs contemplated by Section 11 of the Restricted Deposit Agreement) upon request.

Section 14.09 *Responsibility of Trustee*. Neither the Trustee nor the Conversion Agent shall 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 in the Indenture or in any supplemental indenture provided to be employed, in making the same. The Trustee and the Conversion Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any shares of the 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 the Conversion Agent make no representations with respect thereto. Neither the Trustee nor the Conversion Agent shall be responsible for any failure of the Company to issue, transfer or deliver any ADSs or cash upon the surrender of any Note for the purpose of conversion or to comply with any of the duties, responsibilities or covenants of the Company in connection

therewith. Without limiting the generality of the foregoing, neither the Trustee nor the Conversion Agent shall be under any responsibility to (a) determine whether a supplemental indenture needs to be entered into or (b) determine the correctness of any provisions contained in any supplemental indenture entered into. The Trustee and the Conversion Agent shall be protected in conclusively relying upon the Officer's Certificate (which the Company shall be obligated to deliver to the Trustee and the Conversion Agent 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, if any, 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.* Except as provided in Section 10.03, if the Ordinary Shares cease to be represented by ADSs issued under the Unrestricted Deposit Agreement, 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.

Section 14.13 *Exchange In Lieu Of Conversion.* (a) When a Holder surrenders its Notes for conversion, the Company may, at its election (an “**Exchange Election**”), direct the Conversion Agent to deliver, on or prior to the Business Day immediately following the Conversion Date, such Notes to one or more financial institutions designated by the Company (each, a “**Designated Financial Institution**”) for exchange in lieu of conversion. In order to accept any Notes surrendered for conversion, the Designated Financial Institution(s) must agree to timely pay and/or deliver, as the case may be, in exchange for such Notes, the cash, ADSs or a combination thereof, as applicable, that would otherwise be due upon conversion pursuant to Section 14.02 (the “**Conversion Consideration**”). If the Company makes an Exchange Election, the Company shall, by the close of business on the Business Day following the relevant Conversion Date, notify in writing the Trustee, the Conversion Agent (if other than the Trustee) and the Holder surrendering Notes for conversion that the Company has made the Exchange Election and the Company shall promptly notify the Designated Financial Institution(s) of the relevant deadline for delivery of the Conversion Consideration and the type of Conversion Consideration to be paid and/or delivered, as the case may be.

(b) Any Notes exchanged by the Designated Financial Institution(s) shall remain outstanding, subject to applicable procedures of the Depositary. If the Designated Financial Institution(s) agree(s) to accept any Notes for exchange but does not timely pay and/or deliver, as the case may be, the related Conversion Consideration, or if such Designated Financial Institution(s) does not accept the Notes for exchange, the Company shall pay and/or deliver, as the case may be, the relevant Conversion Consideration, as, and at the time, required pursuant to this Indenture as if the Company had not made the Exchange Election.

(c) The Company’s designation of any Designated Financial Institution(s) to which the Notes may be submitted for exchange does not require such Designated Financial Institution(s) to accept any Notes.

## ARTICLE 15 REPURCHASE OF NOTES AT OPTION OF HOLDERS

### Section 15.01 *Repurchase at Option of Holders.*

(a) Each Holder shall have the right, at such Holder’s option, to require the Company to repurchase for cash on February 1, 2025 (the “**Repurchase Date**”), all of such Holder’s Notes,

or any portion thereof that is an integral multiple of US\$1,000 principal amount, at a repurchase price (the “**Repurchase Price**”) that is equal to 100% of the principal amount of the Notes to be repurchased, *plus* accrued and unpaid interest, if any, to, but excluding, the Repurchase Date (unless the Repurchase Date falls after a Regular Record Date but on or prior to the immediately succeeding Interest Payment Date, in which case the Company shall pay on the Interest Payment Date the full amount of accrued and unpaid interest, if any, to the Holder of record as of the close of business on such Regular Record Date, and the Repurchase Price will be equal to 100% of the principal amount of the Notes to be repurchased). Not later than 20 Business Days prior to the Repurchase Date, the Company shall mail a notice (the “**Company Notice**”) by first class mail to the Trustee, to the Paying Agent and to each Holder at its address shown in the Note Register of the Note Registrar (and to beneficial owners as required by applicable law and to the Conversion Agent if other than the Trustee). The Company Notice shall include a Form of Repurchase Notice to be completed by a holder and shall state:

- (i) the last date on which a Holder may exercise its repurchase right pursuant to this Section 15.01 (the “**Repurchase Expiration Time**”);
- (ii) the Repurchase Price;
- (iii) the Repurchase Date;
- (iv) the name and address of the Conversion Agent and Paying Agent;
- (v) that the Notes with respect to which a Repurchase Notice has been delivered by a Holder may be converted only if the Holder withdraws the Repurchase Notice in accordance with the terms of this Indenture;
- (vi) that the Holder shall have the right to withdraw any Notes surrendered prior to the Repurchase Expiration Time; and
- (vii) the procedures a Holder must follow to exercise its repurchase rights under this Section 15.01 and a brief description of those rights.

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 Company Notice shall be prepared by the Company.

Simultaneously with providing the Company Notice, the Company shall publish a notice containing the information included in the 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.

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 15.01.

Repurchases of Notes under this Section 15.01 shall be made, at the option of the Holder thereof, upon:



(A) delivery to the Trustee (or other agent appointed for such purpose) by the Holder of a duly completed notice (the “**Repurchase Notice**”) in the form set forth in Attachment 3 to the Form of Note attached hereto as Exhibit A, if the Notes are Physical Notes, or in compliance with the Depository’s procedures for surrendering interests in global notes, if the Notes are Global Notes, in each case during the period beginning at any time from the open of business on the date that is 20 Business Days prior to the Repurchase Date until the close of business on the second Business Day immediately preceding the Repurchase Date; and

(B) delivery of the Notes, if the Notes are Physical Notes, to the Trustee at any time after delivery of the Repurchase Notice (together with all necessary endorsements) at the Corporate Trust Office of the Trustee, or book-entry transfer of the Notes, if the Notes are Global Notes, in compliance with the procedures of the Depository, in each case such delivery being a condition to receipt by the Holder of the Repurchase Price therefor.

Each Repurchase Notice shall state:

(A) in the case of Physical Notes, the certificate numbers of the Notes to be delivered for repurchase;

(B) the portion of the principal amount of the Notes to be repurchased, which must be US\$1,000 or an integral multiple thereof; and

(C) 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 Repurchase Notice must comply with appropriate Depository procedures.

Notwithstanding anything herein to the contrary, any Holder delivering to the Trustee the Repurchase Notice contemplated by this Section 15.01 shall have the right to withdraw, in whole or in part, such Repurchase Notice at any time prior to the close of business on the second Business Day immediately preceding the 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 Repurchase Notice or written notice of withdrawal thereof.

No Repurchase Notice with respect to any Notes may be delivered and no Note may be surrendered for repurchase pursuant to this Section 15.01 by a Holder thereof to the extent such Holder has also delivered a Fundamental Change Repurchase Notice with respect to such Note in accordance with Section 15.02 and not validly withdrawn such Fundamental Change Repurchase Notice in accordance with Section 15.03.

(b) Notwithstanding the foregoing, no Notes may be repurchased by the Company at the option of the Holders on the Repurchase Date if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to such Repurchase Date

(except in the case of an acceleration resulting from a default by the Company in the payment of the 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 Repurchase Price with respect to such Notes), or any instructions for book-entry transfer of the Notes in compliance with the procedures of the Depository shall be deemed to have been cancelled, and, upon such return or cancellation, as the case may be, the Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

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, *plus* accrued and unpaid interest, if any, thereon to, but excluding, the Fundamental Change Repurchase Date (the "**Fundamental Change Repurchase Price**"), unless the Fundamental Change Repurchase Date falls after a Regular Record Date but on or prior to the Interest Payment Date to which such Regular Record Date relates, in which case the Company shall instead pay on the Interest Payment Date the full amount of accrued and unpaid interest, if any, to Holders of record as of such Regular Record Date, and the Fundamental Change Repurchase Price shall be equal to 100% of the principal amount of Notes to be repurchased pursuant to this Article 15. 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 Trustee (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 Depository's procedures 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 the Depository, 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 Depository procedures.

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.

No Fundamental Change Repurchase Notice with respect to any Notes may be delivered and no Note may be surrendered by a Holder for repurchase thereof to the extent such Holder has also surrendered a Repurchase Notice with respect to such Note in accordance with Section 15.01 and not validly withdrawn such Repurchase Notice in accordance with Section 15.03.

(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 the Depository. 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 and whether such events also constitute a Make-Whole 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 and any adjustments to the Conversion Rate as a result of such Fundamental Change if it is a Make-Whole Fundamental Change;
- (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 the Depositary 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 Repurchase Notice or Fundamental Change Repurchase Notice.* (a) A Repurchase Notice or 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 Trustee (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 Repurchase Date or prior to the close of business on the second Business Day immediately preceding the Fundamental Change Repurchase Date, as the case may be, 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 Repurchase Notice or Fundamental Change Repurchase Notice, as the case may be, 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 the Depository.

Section 15.04 *Deposit of Repurchase Price or 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 Repurchase Date or Fundamental Change Repurchase Date, as the case may be, an amount of money sufficient to repurchase all of the Notes to be repurchased at the appropriate Repurchase Price or 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 Repurchase Date or Fundamental Change Repurchase Date, as the case may be, (*provided* the Holder has satisfied the conditions in Section 15.01 or Section 15.02, as the case may be) and (ii) the time of book-entry transfer or the delivery of such Note to the Trustee (or other agent appointed by the Company) by the Holder thereof in the manner required by Section 15.01 or 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 Depository shall be made by wire transfer of immediately available funds to the account of the 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 Repurchase Price or Fundamental Change Repurchase Price, as the case may be.

(b) If by 10:00 a.m., New York City time, on the Repurchase Date or Fundamental Change Repurchase Date, as the case may be, 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 Repurchase Date or Fundamental Change Repurchase Date, as the case may be, then, with respect to the Notes that have been properly surrendered for repurchase to the Trustee (or other agent appointed for such purpose) and not validly withdrawn, on such Repurchase Date or Fundamental Change Repurchase Date, as the case may be, (i) such Notes will cease to be outstanding, (ii) interest will cease to accrue on such Notes (whether or not book-entry transfer of the Notes has been made or the Notes have been delivered to the Trustee) and (iii) all other rights of the Holders of such Notes will terminate (other than the right to receive the Repurchase Price or Fundamental Change Repurchase Price, as the case may be,

and the right of the Holder on the applicable Regular Record Date to receive previously accrued and unpaid interest, if any, upon delivery or transfer of the Notes to the extent not included in the Repurchase Price or Fundamental Change Repurchase Price, as the case may be).

(c) Upon surrender of a Note that is to be repurchased in part pursuant to Section 15.01 or Section 15.02, the Company shall execute and the Trustee, 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.

Notwithstanding anything to the contrary in this Indenture, the Company shall not be required to repurchase, or to make an offer to repurchase, the Notes upon a Fundamental Change if a third party makes such an offer in the same manner, at the same time, for the same or greater price and otherwise in compliance with the requirements for an offer made by the Company as set forth above in this Section 15.05, and such third party purchases all Notes properly surrendered and not validly withdrawn under its offer in the same manner, at the same time, for the same or greater price and otherwise in compliance with the requirements for an offer made by the Company as set forth above in this Section 15.05 (including the requirement to pay the Fundamental Change Repurchase Price on the later of the applicable Fundamental Change Repurchase Date and the time of book-entry transfer or delivery of the relevant Notes); *provided* that the Company will continue to be obligated to (i) deliver the applicable Fundamental Change notice to the holders (which Fundamental Change notice will state that such third party will make such an offer to purchase the Notes), (ii) comply with applicable securities laws as set forth in this Section 15.05 in connection with any such purchase and (iii) pay the applicable Fundamental Change Repurchase Price on the later of the applicable Fundamental Change Repurchase Date and the time of book-entry transfer or delivery of the relevant Notes in the event such third party fails to make such payment in such amount at such time.

Notwithstanding anything to the contrary in this Indenture, to the extent that the provisions of any federal or state securities laws or other applicable laws or regulations adopted after the date on which the Notes are first issued conflict with the provisions of this Indenture relating to the Company's obligations to repurchase the Notes upon a Fundamental Change, the Company shall comply with the applicable securities laws and regulations and shall not be deemed to have breached its obligations under such provisions of this Indenture by virtue of such conflict.

ARTICLE 16  
OPTIONAL REDEMPTION

Section 16.01 *Optional Redemption for Changes in the Tax Law of the Relevant Jurisdiction.* Other than as described in this Article 16, the Notes may not be redeemed by the Company at its option prior to maturity. If the Company has, or on the next Interest Payment Date would, become obligated to pay to the Holder of any Note Additional Amounts that are more than a *de minimis* amount, as a result of:

(a) any change or amendment that is publicly announced and becomes effective on or after January 11, 2021 (or, in the case of a jurisdiction that becomes a Relevant Jurisdiction after such date, after such later date) in the laws or any rules or regulations of a Relevant Jurisdiction; or

(b) any change that is publicly announced and becomes effective on or after January 11, 2021 (or, in the case of a jurisdiction that becomes a Relevant Jurisdiction after such date, after such later date) in an interpretation, administration or application of such laws, rules or regulations by any legislative body, court, governmental agency, taxing authority or regulatory or administrative authority of such Relevant Jurisdiction (including the enactment of any legislation and the announcement or publication of any judicial decision or regulatory or administrative interpretation or determination);

(each, a “**Change in Tax Law**”), the Company may, at its option, redeem all but not part of the Notes (except in respect of certain Holders that elect otherwise as described below) at a redemption price equal to 100% of the principal amount thereof (the “**Redemption Price**”), plus accrued and unpaid interest, if any, to, but not including the date fixed by the Company for redemption, which shall be on or prior to the 20<sup>th</sup> Scheduled Trading Day immediately before the Maturity Date (the “**Tax Redemption Date**”), including, for the avoidance of doubt, any Additional Amounts with respect to such Redemption Price; *provided* that the Company may only redeem the Notes if: (i) the Company cannot avoid such obligations by taking commercially reasonable measures available to the Company (*provided* that changing the jurisdiction of incorporation of the Company shall be deemed not to be a commercially reasonable measure); and (ii) the Company delivers to the Trustee an opinion of outside legal counsel of recognized standing in the Relevant Jurisdiction and an Officers’ Certificate attesting to such Change in Tax Law and obligation to pay Additional Amounts. The Trustee shall and is entitled to rely upon such opinion and Officers’ Certificate (without further investigation and enquiry) and it shall be conclusive and binding on the Holders.

Notwithstanding anything to the contrary in this Article 16, neither the Company nor any successor Person may redeem any of the Notes in the case that Additional Amounts are payable in respect of PRC withholding tax and any other tax collected at source at the Applicable PRC Rate or less solely as a result of the Company or its successor Person being considered a PRC tax resident under the PRC Enterprise Income Tax law.

If the Redemption Date occurs after a Regular Record Date and on or prior to the corresponding Interest Payment Date, the Company shall pay or cause the Paying Agent to pay, on or at its election, on such Interest Payment Date, pay the full amount of accrued and unpaid

interest, if any, and any Additional Amounts with respect to such interest, due on such Interest Payment Date to the record holder of the Notes on the Regular Record Date corresponding to such Interest Payment Date, and the Redemption Price payable to any Holder (other than a Holder that elects to not have its Notes redeemed pursuant to the provisions described below) shall be equal to 100% of the principal amount of such Note to be redeemed, including, for the avoidance of doubt, any Additional Amounts with respect to such Redemption Price. The Company shall notify the Trustee in writing of its election and the date on which such interest and any Additional Amounts with respect to such interest shall be paid at the time the Company provides notice of such redemption.

The Company shall give the Trustee and Holders of Notes not less than 30 Scheduled Trading Days' but no more than 40 Scheduled Trading Days' notice of redemption (a "**Tax Redemption Notice**") prior to the Tax Redemption Date, which will include the Redemption Price, the Tax Redemption Date and the Settlement Method that will apply to all conversions with a Conversion Date that occurs on or after the date the Company sends such Tax Redemption Notice and before the close of business on the second Business Day immediately before the related Tax Redemption Date. Simultaneously with providing such notice, which will include the Redemption Price, the Tax Redemption Date and the Settlement Method that will apply to all conversions with a Conversion Date that occurs on or after the date the Company sends such notice of redemption and before the close of business on the second Business Day immediately before the related Tax Redemption Date, the Company shall publish a notice containing this information in a newspaper of general circulation in The City of New York or publish the information on the Company's website or through such other public medium as the Company may use at that time. The Tax Redemption Date must be a Business Day.

Upon receiving such notice of redemption, each Holder shall have the right to elect to not have its Notes redeemed, *provided* that (i) the Company shall not be obligated to pay any Additional Amounts on any payment with respect to such Notes solely as a result of such Change in Tax Law that resulted in the obligation to pay such Additional Amounts (whether upon conversion, required repurchase in connection with a Fundamental Change or on the Repurchase Date, at maturity or otherwise, and whether in cash, ADSs, or combination thereof, Reference Property or otherwise) after the Tax Redemption Date (or, if the Company fails to pay the Redemption Price on the Tax Redemption Date, such later date on which the Company pays the Redemption Price), and (ii) all future payments with respect to such Notes shall be subject to the deduction or withholding of such Relevant Taxing Jurisdiction and taxes required by law to be deducted or withheld as a result of such Change in Tax Law; *provided further* that, notwithstanding the foregoing, if a Holder electing not to have its Notes redeemed converts its Notes in connection with the Company's election to redeem the Notes in respect of such Change in Tax Law pursuant to Section 14.03(g), the Company shall be obligated to pay Additional Amounts, if any, with respect to such conversion.

Subject to the applicable procedures of DTC in the case of Global Notes, a Holder electing to not have its Notes redeemed must deliver to the Paying Agent a written notice of election so as to be received by the Paying Agent no later than the close of business on the second Business Day immediately preceding the Tax Redemption Date; *provided* that, a Holder that complies with the requirements for conversion in Section 14.02(b) shall be deemed to have delivered a notice of its election to not have its Notes so redeemed. A Holder may withdraw any



notice of election (other than such a deemed notice of election in connection with a conversion) by delivering to the Paying Agent a written notice of withdrawal prior to the close of business on the Business Day immediately preceding the Tax Redemption Date (or, if the Company fails to pay the Redemption Price on the Tax Redemption Date, such later date on which the Company pays the Redemption Price). If no election is made or deemed to have been made, the Holder shall have its Notes redeemed without any further action.

No Notes may be redeemed by the Company or its successor if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to the Tax Redemption Date.

Section 16.02 *Optional Redemption by the Company*. The Company may not redeem the Notes prior to February 6, 2025, except under the circumstances described in Section 16.01.

(a) On or after February 6, 2025 and on or prior to the 20<sup>th</sup> Scheduled Trading Day immediately prior to the Maturity Date, the Company may redeem for cash all or part of the Notes, at its option, if the Last Reported Sale Price of the ADSs has been at least 130% of the Conversion Price then in effect on (i) each of at least 20 Trading Days (whether or not consecutive) during the period of 30 consecutive Trading Days ending on, and including, the Trading Day immediately prior to the date the Company provides notice of redemption and (ii) the Trading Day immediately preceding the date the Company sends such notice.

(b) In case the Company exercises its option to redeem all or, as the case may be, any part of the Note, it shall fix a date for redemption (the “**Optional Redemption Date**”) and shall give the Holders, Trustee, Conversion Agent, Paying Agent and each Holder of the Notes not less than 30 Scheduled Trading Days’ but no more than 40 Scheduled Trading Days’ notice (an “**Optional Redemption Notice**”) prior to the Optional Redemption Date, and the Redemption Price will be equal to 100% of the principal amount of the Notes to be redeemed, plus accrued and unpaid interest, if any, to, but excluding, the Optional Redemption Date (unless the Optional Redemption Date falls after a Regular Record Date but on or prior to the immediately succeeding Interest Payment Date, in which case the Company shall pay on the Interest Payment Date the full amount of accrued and unpaid interest, if any, to the holder of record as of the close of business on such Regular Record Date, and the Redemption Price shall be equal to 100% of the principal amount of the Notes to be redeemed). The Optional Redemption Date must be a Business Day. The Company shall send to each Holder written Optional Redemption Notice containing certain information set forth in this Indenture, including:

(i) the Optional Redemption Date;

(ii) the Redemption Price;

(iii) the Settlement Method that will apply to all conversions with a Conversion Date that occurs on or after the date the Company sends such Optional Redemption Notice and before the close of business on the second Business Day immediately before the related Optional Redemption Date;

(iv) that on the Optional Redemption Date, the Redemption Price will become due and payable for each Note to be redeemed, and that interest thereon, if any, shall

cease to accrue on and after the Optional Redemption Date unless the Company defaults in the payment of the Redemption Price;

(v) the place or places where the Notes subject to such redemption are to be surrendered for payment of the Redemption Price;

(vi) that Holders may surrender Notes for conversion at any time prior to the close of business on the second Business Day prior to the Optional Redemption Date (unless the Company fails to pay the Redemption Price, in which case a Holder of Notes may convert such Notes until the Business Day immediately preceding the date on which the Redemption Price has been paid or duly provided for);

(vii) the Conversion Rate and, if applicable, the number of Additional ADSs added to the Conversion Rate in accordance with Section 14.03;

(viii) the CUSIP, ISIN or other similar numbers, if any, assigned to such Notes and that no representation is made as to the correctness or accuracy of the CUSIP or ISIN number listed in such notice or printed on the Notes; and

(ix) in case any Note is to be redeemed in part only, the portion of the principal amount thereof to be redeemed, and that upon surrender of such Note, a new Note in principal amount equal to the unredeemed portion thereof shall be issued.

An Optional Redemption Notice shall be irrevocable. At the Company's prior written request, the Trustee shall give the Optional Redemption Notice in the Company's name and at its expense; *provided, however*, that the Company shall have delivered to the Trustee not later than the close of business five Business Days prior to the date the Redemption Notice is to be sent (unless a shorter period shall be satisfactory to the Trustee), an Officer's Certificate and a Company Order requesting that the Trustee give such Optional Redemption Notice together with the Optional Redemption Notice to be given setting forth the information to be stated therein as provided in the preceding paragraph. The Optional Redemption Notice, if given in the manner herein provided, shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, failure to give such Optional Redemption Notice or any defect in the Optional Redemption Notice to the Holder of any Note designated for redemption as a whole or in part shall not affect the validity of the proceedings for the Optional Redemption of any other Note.

If the Company decides to redeem fewer than all of the outstanding Notes, the Trustee will select the Notes to be redeemed (in principal amounts of \$1,000 or multiples thereof) by lot, on a pro rata basis or by another method the Trustee considers to be fair and appropriate and, in the case of a Global Note, in accordance with, and subject to, DTC's applicable procedures.

If the Trustee selects a portion of a Holder's Notes for partial redemption and such Holder converts a portion of such Notes, the converted portion shall be deemed to be from the portion selected for redemption. In the event of any redemption in part, the Company shall not be required to register the transfer of or exchange any Note so selected for redemption, in whole or in part, except the unredeemed portion of any such Note being redeemed in part.

No Notes may be redeemed if the principal amount of the Notes has been accelerated, and such acceleration has not been rescinded, on or prior to the Optional Redemption Date (except in the case of an acceleration resulting from a default by the Company in the payment of the Redemption Price with respect to such Notes).

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 Deutsche Bank Trust Company Americas, Trust and Agency Services, 60 Wall Street, 24th Floor, Mail Stop: NYC60-2405, New York, New York 10005, Attn: Corporates Team, NIO INC. DEAL ID SF4090, Facsimile: (732) 578-4635.

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 DTC, notices to owners of beneficial interests in the Global Notes may be given by delivery of the relevant notice to DTC for communication by it to entitled account holders in accordance with DTC's applicable procedures.

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 Cogency Global 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 seven 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 and Opinion of Counsel 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.

*Section 17.07 Legal Holidays.* In any case where any Interest Payment Date, Tax Redemption Date, Optional Redemption Date, Fundamental Change Repurchase Date, Conversion Date, Repurchase 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.

Facsimile, documents executed, scanned and transmitted electronically and electronic signatures, including those created or transmitted through a software platform or application, shall be deemed original signatures for purposes of this Indenture and all other related documents and all matters and agreements related thereto, with such facsimile, scanned and electronic signatures having the same legal effect as original signatures. The parties agree that this Indenture or any other related document or any instrument, agreement or document necessary for the consummation of the transactions contemplated by this Indenture or the other related documents or related hereto or thereto (including, without limitation, addendums, amendments, notices, instructions, communications with respect to the delivery of securities or the wire transfer of funds or other communications) (“**Executed Documentation**”) may be accepted, executed or agreed to through the use of an electronic signature in accordance with applicable laws, rules and regulations in effect from time to time applicable to the effectiveness and enforceability of electronic signatures. Any Executed Documentation accepted, executed or agreed to in conformity with such laws, rules and regulations will be binding on all parties hereto to the same extent as if it were physically executed and each party hereby consents to the use of any third party electronic signature capture service providers as may be reasonably chosen by a signatory hereto or thereto. When the Trustee or an Agent acts on any Executed Documentation sent by electronic transmission, the Trustee or Agent will not be responsible or liable for any losses, costs or expenses arising directly or indirectly from its reliance upon and compliance with such Executed Documentation, notwithstanding that such Executed Documentation (a) may not be an authorized or authentic communication of the party involved or in the form such party sent or intended to send (whether due to fraud, distortion or otherwise) or (b) may conflict with, or be inconsistent with, a subsequent written instruction or communication; it being understood and agreed that the Trustee and each Agent shall conclusively presume that Executed Documentation that purports to have been sent by an authorized officer of a Person has been sent by an authorized officer of such Person. The party providing Executed Documentation through electronic transmission or otherwise with electronic signatures agrees to assume all risks arising

out of such electronic methods, including, without limitation, the risk of the Trustee or an Agent acting on unauthorized instructions and the risk of interception and misuse by third parties.

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, AND EACH HOLDER, BY ITS ACCEPTANCE OF A NOTE OR A BENEFICIAL INTEREST IN A GLOBAL NOTE, AS APPLICABLE, SHALL BE DEEMED TO HAVE WAIVED, 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, pandemics, epidemics and wide spread health crisis, 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 or in connection with a conversion. These calculations include, but are not limited to, determinations of the Last Reported Sale Prices of the ADSs, the Daily VWAPs, the Daily Conversion Values, the Daily Settlement Amounts, any accrued interest, if any, payable on the Notes, the number of Additional ADSs to be added to the Conversion Rate upon a Make-Whole Fundamental Change, if any, 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 registered Holder of Notes upon the prior written request of that Holder at the sole cost and expense of the Company.

Section 17.01 *Patriot Act*. In order to comply with the laws, rules, regulations and executive orders in effect from time to time applicable to banking institutions, including, without limitation, those relating to the funding of terrorist activities and money laundering, including Section 326 of the USA PATRIOT Act of the United States ("**Applicable Law**"), the Trustee is are required to obtain, verify, record and update certain information relating to individuals and entities which maintain a business relationship with the Trustee. Accordingly, each of the parties

agree to provide to the Trustee, upon their request from time to time such identifying information and documentation as may be available for such party in order to enable the Trustee to comply with Applicable Law.

*[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/ Bin Li  
Name: Bin Li  
Title: Chairman of the Board of  
Directors and Chief Executive  
Officer

*Signature Page to Indenture*

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DEUTSCHE BANK TRUST COMPANY  
AMERICAS, as Trustee

By: /s/ Annie Jaghatspanyan  
Name: Annie Jaghatspanyan  
Title: Vice President

By: /s/ Irina Golovashchuk  
Name: Irina Golovashchuk  
Title: Vice President

*Signature Page to Indenture*

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[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 AND IS REGISTERED IN THE NAME OF THE DEPOSITARY OR A NOMINEE OF THE 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 CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITARY TRUST COMPANY, A NEW YORK CORPORATION (“DTC”), TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE, OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

[INCLUDE FOLLOWING LEGEND IF A RESTRICTED SECURITY]

[THIS SECURITY, THE AMERICAN DEPOSITARY SHARES DELIVERABLE UPON CONVERSION OF THIS SECURITY, IF ANY, AND THE ORDINARY SHARES REPRESENTED THEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), ARE “RESTRICTED SECURITIES” WITHIN THE MEANING OF RULE 144 UNDER THE SECURITIES ACT OR CONTRACTUALLY RESTRICTED SECURITIES, AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN ACCORDANCE WITH THE FOLLOWING SENTENCE. BY ITS ACQUISITION HEREOF (OR THEREOF) OR OF A BENEFICIAL INTEREST HEREIN (OR THEREIN), THE ACQUIRER:

(1) REPRESENTS THAT IT AND ANY ACCOUNT FOR WHICH IT IS ACTING IS (A) A “QUALIFIED INSTITUTIONAL BUYER” (WITHIN THE MEANING OF RULE 144A UNDER THE SECURITIES ACT) OR (B) NOT A U.S. PERSON AND 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, AND HAS NOT BEEN FOR THE IMMEDIATELY PRECEDING THREE MONTHS, AN AFFILIATE OF NIO INC. (THE “COMPANY”), AND

(2) AGREES FOR THE BENEFIT OF THE COMPANY THAT IT WILL NOT OFFER, SELL, PLEDGE OR OTHERWISE TRANSFER THIS SECURITY, THE AMERICAN DEPOSITARY SHARES DELIVERABLE UPON CONVERSION OF THIS

SECURITY, IF ANY, AND THE ORDINARY SHARES REPRESENTED THEREBY OR ANY BENEFICIAL INTEREST HEREIN OR THEREIN PRIOR TO THE DATE THAT IS THE LATER OF (X) ONE YEAR AFTER THE LAST ORIGINAL ISSUE DATE HEREOF OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144 UNDER THE SECURITIES ACT OR ANY SUCCESSOR PROVISION THERETO AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW, 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 QUALIFIED INSTITUTIONAL BUYER IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, OR
- (D) TO A NON-U.S. PERSON LOCATED OUTSIDE THE UNITED STATES IN ACCORDANCE WITH REGULATION S UNDER THE SECURITIES ACT, OR
- (E) PURSUANT TO AN EXEMPTION FROM REGISTRATION PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE).

PRIOR TO THE REGISTRATION OF ANY TRANSFER IN ACCORDANCE WITH (2)(E) ABOVE, THE COMPANY, THE DEPOSITARY AND THE TRUSTEE RESERVE THE RIGHT TO REQUIRE THE DELIVERY OF SUCH LEGAL OPINIONS, CERTIFICATIONS OR OTHER EVIDENCE AS MAY REASONABLY BE REQUIRED IN ORDER TO DETERMINE THAT THE PROPOSED TRANSFER IS BEING MADE IN COMPLIANCE WITH THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS. NO REPRESENTATION IS MADE AS TO THE AVAILABILITY OF ANY EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

NO AFFILIATE (AS DEFINED IN RULE 144 UNDER THE SECURITIES ACT) OF 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, IF ANY, AND THE ORDINARY SHARES REPRESENTED THEREBY OR A BENEFICIAL INTEREST HEREIN OR THEREIN.]

NIO INC.

0.50% Convertible Senior Note due 2027

No. [\_\_\_\_\_]

[Initially]<sup>1</sup> US\$\_\_\_\_\_

CUSIP No. 62914V AD8<sup>2</sup>/ G6525F AD4<sup>3</sup>

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 [CEDE & CO.]<sup>4</sup> [\_\_\_\_\_] <sup>5</sup>, or registered assigns, the principal sum [as set forth in the “Schedule of Exchanges of Notes” attached hereto]<sup>6</sup> [of US\$[\_\_\_\_\_] <sup>7</sup>], which amount, taken together with the principal amounts of all other outstanding Notes, shall not, unless permitted by the Indenture, exceed US\$750,000,000 in aggregate at any time, in accordance with the rules and procedures of the Depository, on February 1, 2027, and interest thereon as set forth below.

This Note shall bear cash interest at the rate of 0.50% per year from, and including, January 15, 2021, or from, and including, the most recent date to which interest had been paid or provided for to, but excluding, the next scheduled Interest Payment Date until February 1, 2027. Interest is payable semi-annually in arrears on each February 1 and August 1, commencing on August 1, 2021, to Holders of record at the close of business on the preceding January 15 and July 15 (whether or not such day is a Business Day), respectively. Additional Interest, if any, will be payable as set forth in Section 4.06(d), Section 4.06(e) and Section 6.03 of the within-mentioned Indenture, and any reference to interest on, or in respect of, any Note therein shall be deemed to include Additional Interest if, in such context, Additional Interest is, was or would be payable pursuant to any of such Section 4.06(d), Section 4.06(e) and Section 6.03, and any express mention of the payment of Additional Interest, if any, in any provision therein shall not be construed as excluding Additional Interest in those provisions thereof where such express mention is not made.

Any Defaulted Amounts shall accrue interest per annum at the rate per annum borne by the Notes *plus* one 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

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<sup>1</sup> Include if a Global Note.

<sup>2</sup> Include if a Rule 144A Global Note.

<sup>3</sup> Include if a Reg S Global Note.

<sup>4</sup> Include if a Global Note.

<sup>5</sup> Include if a Physical Note.

<sup>6</sup> Include if a Global Note.

<sup>7</sup> Include if a Physical Note.

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 and interest on this Note, so long as such Note is a Global Note, in immediately available funds to the 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 Deutsche Bank Trust Company Americas as its Paying Agent, Conversion Agent and Note Registrar 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.

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 cash, ADSs or a combination of cash and ADSs, as applicable, 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 electronically by the Trustee 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

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Dated:

TRUSTEE'S CERTIFICATE OF AUTHENTICATION

DEUTSCHE BANK TRUST COMPANY AMERICAS  
as Trustee, certifies that this is one of the Notes described  
in the within-named Indenture.

By: \_\_\_\_\_  
Name:  
Title:



[FORM OF REVERSE OF NOTE]

NIO INC.  
0.50% Convertible Senior Note due 2027

This Note is one of a duly authorized issue of Notes of the Company, designated as its 0.50% Convertible Senior Notes due 2027 (the “**Notes**”), initially limited to the aggregate principal amount of US\$750,000,000, subject to Section 2.10 of the Indenture, all issued or to be issued under and pursuant to an Indenture dated as of January 15, 2021 (the “**Indenture**”), between the Company and Deutsche Bank Trust Company Americas, 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, indemnifications, 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. The Rule 144A Notes and the Regulation S Notes initially have separate CUSIP numbers and will initially not be fungible.

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 on the Maturity Date, the Redemption Price, the Repurchase Price 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, 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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price), premium, if any, payments of interest, including any additional interest and payments of cash and/or 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) 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 Redemption Price, the Repurchase Price and the Fundamental Change Repurchase Price, if applicable) of, accrued and unpaid interest on, 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 February 6, 2025, except in the event of certain Changes in Tax Law as described in Section 16.01 of the Indenture. The Notes shall be redeemable at the Company's option in certain circumstances on or after February 6, 2025 in accordance with the terms and subject to the conditions specified in the Indenture. No sinking fund is provided for the Notes.

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 Repurchase Date at a price equal to the Repurchase Price.

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, during certain periods and upon the occurrence of certain conditions specified in the Indenture, prior to the close of business on the second Scheduled Trading 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 cash, ADSs or a combination of cash and ADSs, as applicable, 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.

DEUTSCHE BANK TRUST COMPANY AMERICAS, 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 cash payable and 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 Unrestricted Deposit Agreement, the Restricted 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 and the ADS Depositary that the undersigned is not an “affiliate” (as defined in Rule 144 under the Securities Act of 1933) of the Company and has not been an “affiliate” (as defined in Rule 144 under the Securities Act of 1933) of the Company during the three months immediately preceding the date hereof.

[The undersigned further certifies:

1. The undersigned acknowledges (and if the undersigned is acting for the account of another person, that person has confirmed that it acknowledges) that the Restricted Securities received upon conversion of this Note (or securities represented thereby) have not been and are not expected to be registered under the Securities Act.

2. The undersigned further certifies that either:

(a) The undersigned is, and at the time ADSs are delivered in conversion of its Notes will be, the holder of the ADSs and the Ordinary Shares represented thereby, and (i) the undersigned is not a U.S. person (as defined in Regulation S under the Securities Act) and is located outside the United States (within the meaning of Regulation S) and acquired, or have agreed to acquire and will have acquired, the Notes being converted and the ADSs and the Ordinary Shares represented thereby being delivered in the conversion outside the United States and (ii) the undersigned is not in the business of buying and selling securities or, if the undersigned is in such business, the undersigned

did not acquire the Notes being converted from the Company or any affiliate thereof in the initial distribution of the Notes.

OR

(b) The undersigned is a broker-dealer acting on behalf of its customer; its customer has confirmed to the undersigned that it is, and at the time ADSs are delivered in conversion of the said Notes will be, the holder of the ADSs and the Ordinary Shares represented thereby, and (i) it is not a U.S. person (as defined in Regulation S under the Securities Act) and it is located outside the United States (within the meaning of Regulation S) and acquired, or have agreed to acquire and will have acquired, the Notes being converted and the ADSs and the Ordinary Shares represented thereby being delivered in the conversion outside the United States and (ii) it is not in the business of buying and selling securities or, if it is in such business, it did not acquire the Notes being converted from the Company or any affiliate thereof in the initial distribution of the Notes.

OR

(c) The undersigned is a qualified institutional buyer (as defined in Rule 144A under the Securities Act) acting for its own account or for the account of one or more qualified institutional buyers and the undersigned is (or such account or accounts are) the sole beneficial owner(s) of the ADSs to be received upon conversion of the Notes.

3. The undersigned acknowledges that the undersigned (and any such other account) may not continue to hold or retain any interest in Restricted Securities received upon conversion of this Note if the undersigned (or such other account) becomes an Affiliate of the Company.

4. The undersigned agrees (and if the undersigned is acting for the account of another person, that person has confirmed that it agrees) that, prior to the Resale Restriction Termination Date, the undersigned (and such other account) will not offer, sell, pledge or otherwise transfer the Restricted Security (or securities represented by such Restricted Security) except in accordance with the restrictions set forth in that legend and any applicable securities laws of the United States and any state thereof.<sup>9</sup>

[The undersigned hereby instructs the ADS Depository 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: \_\_\_\_\_

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<sup>9</sup> Include if a Restricted Security.

7. Contact Name and Tel No/email address:]<sup>10</sup> \_\_\_\_\_

[The undersigned instructs the Depository 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]<sup>11</sup>

**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](mailto:adr@db.com)

<sup>10</sup> Include if a Restricted Security.

<sup>11</sup> Include bracketed language in the conversion Notice if the Note being converted is not a Restricted Security.



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, or Notes are to be delivered, other than to and in the name of the registered holder.

Fill in for registration of ADSs if to be issued, and Notes if to be delivered, 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.

DEUTSCHE BANK TRUST COMPANY AMERICAS, 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 (1) 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, and (2) if such Fundamental Change Repurchase Date does not fall during the period after a Regular Record Date and on or prior to the corresponding Interest Payment Date, accrued and unpaid interest thereon to, but excluding, such Fundamental Change Repurchase Date.

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 REPURCHASE NOTICE]

To: NIO INC.

DEUTSCHE BANK TRUST COMPANY AMERICAS, as Trustee

The undersigned registered owner of this Note hereby acknowledges receipt of a notice from NIO Inc. (the “Company”) regarding the right of Holders to elect to require the Company to repurchase 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 accordance with the applicable provisions of the Indenture referred to in this Note, at the Repurchase Price to the registered Holder hereof.

In the case of certificated Notes, the certificate numbers of the Notes to be purchased 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 Resale Restriction 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
- Pursuant to and in compliance with Rule 144A under the Securities Act of 1933, as amended [(“**Rule  
144A**”), and the undersigned confirms that the undersigned reasonably believes that the transferee of such Note is  
a “qualified institutional buyer” (within the meaning of Rule 144A) that is purchasing for its own account or for  
the account of another qualified institutional buyer and the undersigned has provided such transferee notice that  
the transfer is being made in reliance on Rule 144A]<sup>12</sup>; or
- Outside the United States in accordance with Regulation S under the Securities Act of 1933, as amended;  
or
- Pursuant to and in compliance with Rule 144 under the Securities Act of 1933, as amended (if available).

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<sup>12</sup> Include if Regulation S Note.

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 Notes are to be delivered, other than to and in the name of the registered holder.

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 January 15, 2021 between the Company and Deutsche Bank Trust Company Americas, as trustee, in relation to the 0.50% Convertible Senior Notes due 2027 (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 Deutsche Bank Trust Company Americas 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.



## List of Principal Subsidiaries and Consolidated Variable Interest Entities

<b>Subsidiaries:</b>	<b>Place of Incorporation</b>
NIO Nextev Limited	Hong Kong
NIO User Enterprise Limited	Hong Kong
NIO Power Express Limited	Hong Kong
XPT Limited	Hong Kong
XPT Inc.	Delaware
NIO Performance Engineering Limited	United Kingdom
NIO GmbH	Germany
NIO USA, Inc.	California
NIO SPORT LIMITED	Hong Kong
XPT Technology Limited	Hong Kong
NIO Holding Co., Ltd.	PRC
NIO Co., Ltd.	PRC
NIO Sales and Services Co., Ltd.	PRC
NIO Energy Investment (Hubei) Co., Ltd.	PRC
XPT (Jiangsu) Investment Co., Ltd.	PRC
XPT (Jiangsu) Automotive Technology Co., Ltd.	PRC
Wuhan Energy Co., Ltd.	PRC
XPT (Nanjing) E-Powertrain Technology Co., Ltd.	PRC
XPT (Nanjing) Energy Storage System Co., Ltd.	PRC
XTRONICS (Nanjing) Automotive Intelligent Technologies Co., Ltd.	PRC
Shanghai XPT Technology Limited	PRC
<b>Consolidated variable interest entity:</b>	
Beijing NIO Network Technology Co., Ltd.	PRC

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**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: April 6, 2021

By: /s/ Bin Li

Name: Bin Li

Title: Chief Executive Officer

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**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: April 6, 2021

By: /s/ Wei Feng

Name: Wei Feng

Title: Chief Financial Officer

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**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, 2020 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: April 6, 2021

By: /s/ Bin Li

Name: Bin Li

Title: Chief Executive Officer

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**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, 2020 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: April 6, 2021

By: /s/ Wei Feng

Name: Wei Feng

Title: Chief Financial Officer

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**Consent of Independent Registered Public Accounting Firm**

We hereby consent to the incorporation by reference in the Registration Statements on Form S-8 (No. 333-229952) and Form F-3 (No. 333-239047) of NIO Inc. of our report dated April 6, 2021 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

April 6, 2021

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April 6, 2021  
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, 2020 (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) and NIO Inc.’s Registration Statement on Form F-3 (No. 333-239047), 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

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Han Kun Law Offices

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