

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549
FORM 10-K

(Mark One)

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

For the fiscal year ended December 31, 2020

OR

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

FOR THE TRANSITION PERIOD FROM TO

Commission File Number 001-40015

Viant Technology Inc.

(Exact name of Registrant as specified in its Charter)

Delaware
(State or other jurisdiction of
incorporation or organization)
2722 Michelson Drive, Suite 100
Irvine, CA
(Address of principal executive offices)

85-3447553
(I.R.S. Employer
Identification No.)

92612
(Zip Code)

Registrant's telephone number, including area code: (949) 861-8888

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Class A common stock, par value \$0.001 per share	DSP	The Nasdaq Stock Market LLC (Nasdaq Global Select Market)

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

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. YES NO

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or 15(d) of the Act. YES NO

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

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

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

Large accelerated filer Accelerated filer

Non-accelerated filer Smaller reporting company

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). YES NO

As of June 30, 2020, the last business day of the registrant's most recently completed second fiscal quarter, the registrant's Class A common stock was not listed on any exchange or over-the-counter market. The registrant's Class A common stock began trading on the Nasdaq Global Select Market on February 10, 2021.

As of March 19, 2021, there were 11,500,000 shares and 47,435,559 shares of the registrant's Class A and Class B common stock, respectively, \$0.001 par value per share, outstanding.

DOCUMENTS INCORPORATED BY REFERENCE

None

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PART I

FORWARD-LOOKING STATEMENTS

This Annual Report on Form 10-K (“Annual Report”) contains forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). All statements, other than statements of historical fact included in this Annual Report, including, without limitation, statements regarding our financial position, business strategy and other plans and objectives for our future operations, are forward-looking statements. These statements include declarations regarding our management’s beliefs and current expectations. In some cases, you can identify forward-looking statements by terminology such as “may,” “will,” “should,” “could,” “intend,” “consider,” “expect,” “plan,” “anticipate,” “believe,” “estimate,” “predict” or “continue” or the negative of such terms or other comparable terminology. Such statements are not guarantees of future performance and involve a number of assumptions, risks and uncertainties that could cause actual results to differ materially from expected results. As a result, you should not put undue reliance on any forward-looking statement.

These forward-looking statements are included throughout this Annual Report. Factors that could cause our actual results to differ materially from those expressed or implied in such forward-looking statements include, but are not limited to, the risk factors discussed in the “*Risk Factors*” section of this Annual Report.

The forward-looking statements contained in this Annual Report are based on historical performance and management’s current plans, estimates and expectations in light of information currently available to us and are subject to uncertainty and changes in circumstances. There can be no assurance that future developments affecting us will be those that we have anticipated. Actual results may differ materially from these expectations due to changes in global, regional or local political, economic, business, competitive, market, regulatory and other factors, many of which are beyond our control, as well as the other factors described in the section entitled “*Risk Factors*.” Additional factors or events that could cause our actual results to differ may also emerge from time to time, and it is not possible for us to predict all of them. Should one or more of these risks or uncertainties materialize, or should any of our assumptions prove to be incorrect, our actual results may vary in material respects from what we may have expressed or implied by these forward-looking statements. We caution that you should not place undue reliance on any of our forward-looking statements. Any forward-looking statement made by us in this Annual Report speaks only as of the date on which we make it. We undertake no obligation to publicly update any forward-looking statement, whether as a result of new information, future developments or otherwise, except as may be required by applicable securities laws.

Item 1. Business.

Our Company

We are an advertising software company. Our software enables the programmatic purchase of advertising, which is the electronification of the advertising buying process. Programmatic advertising is rapidly taking market share from traditional ad sales channels, which require more staffing, offer less transparency and involve higher costs to buyers.

Our demand side platform (“DSP”), Adelphic, is an enterprise software platform that is used by marketers and their advertising agencies to centralize the planning, buying and measurement of their advertising across most channels. Through our technology, a marketer can easily buy ads on desktop, mobile, connected TV, linear TV, streaming audio and digital billboards.

Our software is designed to make our customers’ lives easier by enabling marketers and their advertising agencies to plan, buy and measure advertising campaigns in a highly automated fashion. We offer an easy-to-use self-service platform that provides customers with transparency and control over their advertising campaigns.

Our platform offers customers unique visibility across inventory, allowing them to create customized audience segments and leverage our people-based and strategic partner data to reach target audiences at scale. Our platform delivers a full suite of forecasting, reporting and built-in automation that provides our customers with insights into available inventory based on the desired target audience. We offer advanced forecasting and reporting that empowers our customers with functionality designed to ensure they can accurately measure and improve their return-on-advertising spend (“ROAS”) across channels.

Marketers use our software to deliver advertising campaigns to their desired target audience across channels and formats. Through platform integrations, we offer our customers access to omnichannel advertising inventory, which refers to media available across devices, channels and formats. This includes access to over 300 million unique desktop and mobile users, 114 million connected TVs, 112 million linear TV households, over 200 million unique digital audio users, and 158,000 unique digital billboards, in the U.S. Our platform supports a full range of transaction types including real-time bidding, private marketplace and programmatic guaranteed, allowing customers to easily source and integrate ad inventory directly from publishers and private marketplaces.

We enable deep data access through our data integrations to authenticate user identities across a range of devices. Our matching of people-based identifiers enables us to be the nexus point with more than 70 data partners, providing customers with deep access to people-based data across market verticals such as automotive, entertainment, business to business, retail, consumer packaged goods, travel and tourism, and healthcare. Our proprietary identity graph is matched to more than 250 million users across 115 million households in the U.S., which we believe makes it one of the largest in the industry.

Our customers are advertising buyers including large advertising holding companies, independent advertising agencies, mid-market advertising service organizations as well as marketers that rely on our self-service software platform for their programmatic ad buying needs. We are a trusted partner to our customers and have had a 95% customer satisfaction rating for the last 3 years based on Viant’s Annual Adelpic Customer Satisfaction Survey. Many of our customers use our software as their primary demand side platform.

Our platform is built on people-based data. Using our identity resolution capabilities and identity graph, marketers and their advertising agencies can identify targeted consumers using real-world identifiers rather than relying primarily on cookies to track users. We believe the industry is shifting to a people-based framework to replace the cookie in delivering personalized advertising, particularly for identification. People-based data allows marketers to deliver personalized advertising while being able to accurately link ad impressions across multiple devices and to customer sales, letting them know what they get in return for their advertising dollars. In addition, people-based data allows consumers to know who is collecting their data and what it is being used for, and also gives them the right to delete or stop their use of data for personalized advertising. Many of our competitors rely on cookies for the targeting and measurement of digital advertising but this technology has not been effective at accurately measuring the real impact of a marketer’s ad spend on their business results. Apple’s popular web browser, Safari, currently does not allow third party cookies and Google Chrome has announced plans to entirely disallow third party cookies in their browser in early 2022. This market change has created an increase in demand by marketers actively looking for platforms like ours that offer an alternative to cookie-based tracking, which we believe is strengthening our strategic position.

Programmatic advertising has proven its value to marketers and more organizations are devoting more of their digital ad spend to it. The digital ecosystem continues to evolve and with it programmatic advertising, creating new opportunities and needs for marketers and their agencies. The U.S. programmatic advertising market is expected to grow from \$65 billion in 2018 to \$140 billion in 2022, a 21% CAGR, according to eMarketer, a market research company that provides insights and trends related to digital marketing, media, and commerce. We focus on ad buyers and believe that our solutions will accelerate the shift of advertising budgets to programmatic advertising. Additionally, as marketers desire more control over programmatic advertising and move some functions of programmatic ad buying in-house, our software platform is designed to address these needs and expands our market opportunity.

Our total revenue was \$165.3 million, \$164.9 million and \$108.4 million for the fiscal years ended December 31, 2020, 2019 and 2018, respectively, representing an increase of 0.2% from 2019 to 2020 and 52.1% from 2018 to 2019. We recorded net income of \$20.6 million and \$9.9 million and Adjusted EBITDA of \$31.8 million and \$24.7 million for the years ended December 31, 2020 and 2019, respectively, compared to a net loss of \$25.5 million and Adjusted EBITDA loss of \$7.5 million for the year ended December 31, 2018.

Adjusted EBITDA is a financial measure not presented in accordance with generally accepted accounting principles in the United States of America (“GAAP”). For a definition of Adjusted EBITDA, an explanation of our management’s use of this measure and a reconciliation of Adjusted EBITDA to our net income or net loss, see “*Management’s Discussion and Analysis of Financial Condition and Results of Operations—Key Operating and Financial Performance Metrics—Use of Non-GAAP Financial Measures.*”

Our Industry

We believe the key industry trends shaping the advertising market include:

Advertising dollars shifting towards programmatic advertising: We believe the advertising industry is still in the early stages of a shift to programmatic advertising. The ability to transact through real-time-bidding platforms has evolved beyond banner advertising to be used across a wide range of advertising channels and formats, including desktop, mobile, connected TV, linear TV, streaming audio and digital billboards. U.S. programmatic advertising is experiencing a rapid increase in adoption and, according to eMarketer, is expected to grow at a 21% CAGR from 2018 to 2022, reaching \$94 billion in 2020, \$118 billion in 2021 and \$140 billion by 2022. U.S. programmatic advertising is forecasted to represent 48% of total U.S. media spend by 2022, increasing from 29% in 2018. The TV industry is undergoing significant disruptions as Internet-enabled connected TV has become a preferred vehicle for streaming video content. The amount of connected TV users in the U.S. is forecasted to increase from 195 million, or 59% of the U.S. population, in 2019 to 226 million, or 66% of the U.S. population, in 2024, according to eMarketer. Connected TV also provides a number of benefits to advertisers, including more accurate control of scale, addressability, and measurement. Marketers are increasingly investing in connected TV as more inventory becomes available. According to eMarketer, 51% of connected TV ad spend was transacted programmatically in 2019 and the share of programmatic will increase to nearly 60% in 2021. In addition, connected TV ad spend is expected to grow from \$6 billion in 2019 to \$8 billion in 2020 to \$18 billion in 2024, a 25% CAGR.

Strong marketer demand for Return-On-Advertising-Spend measurement across all channels: Marketers are looking for a centralized view of their customers, while connecting online and offline purchases to accurately measure ROAS. Return-on-advertising-spend is a critical metric for marketing campaigns. Insights from ROAS across all campaigns inform marketers about what they are getting for their money across all media investments near real-time. Hence, marketers seek tools to track their ROAS across all channels. We believe people-based platforms are able to provide a more accurate measurement of ROAS as compared to cookie-based platforms.

Demand for scaled people-based platforms: Advertising has become more data driven and marketers need to be able to target audiences at the individual and household level while respecting consumer privacy. Internet advertisers in the past have capitalized on anonymous data from cookies to gain insights into users and ad performance. However, increased privacy concerns and changing requirements of browser providers including Google (Chrome) and Apple (Safari) are causing marketers to reduce their reliance on vendors and software platforms that primarily utilize cookies for device identification. In today’s connected world, marketers need to be able to identify their customers and connect with them across multiple channels, devices and formats. This is driving an industry shift away from cookie-based DSPs to scaled people-based DSPs.

Brands directly selecting advertising software solutions: Marketers are increasingly becoming directly involved in the selection of their advertising software solutions as they seek to reduce costs, better leverage their customer data and gain more control over their advertising. These factors have also led to an increase in marketers moving programmatic ad buying functions in-house. The automation of ad-buying technology has enabled fast, accurate and cost-effective decision-making, resulting in ad buying becoming a skillset that an increasing number of Chief Marketing Officers (“CMOs”) want to fully own. According to a recent survey by IAB in 2019, 18% of U.S. brands have completely moved programmatic ad buying in-house, and 51% of U.S. brands have moved a portion of their programmatic ad buying in-house.

Our Market Opportunity

We believe that over the long term, our total addressable market is the total global advertising market which, according to eMarketer, is forecasted to grow from \$614 billion in 2020 to \$846 billion in 2024, an 8% CAGR. Currently, our focus is primarily on the U.S. market, and according to eMarketer, desktop, mobile, connected TV, linear TV, streaming audio and digital billboard channels are forecasted to grow from \$205 billion in 2020 to \$314 billion in 2024 in the U.S., an 11% CAGR, broken into the following segments:

- **Mobile and Desktop:** According to eMarketer, U.S. mobile and desktop advertising are forecasted to be a \$129.7 billion market in 2020 and forecasted to grow to \$218.2 billion in 2024, a 14% CAGR.
- **Connected TV:** According to eMarketer, U.S. connected TV advertising is forecasted to be an \$8.1 billion market in 2020 and forecasted to grow to \$18.3 billion in 2024, a 23% CAGR. Connected TV includes over-the-top (“OTT”) content delivered through a connected device over the internet.
- **Linear TV:** According to eMarketer, U.S. linear TV advertising is forecasted to be a \$60.0 billion market in 2020 and forecasted to grow to \$67.5 billion in 2024, a 3% CAGR.
- **Streaming Audio:** According to eMarketer, U.S. digital audio advertising is forecasted to be a \$4.5 billion market in 2020 and forecasted to grow to \$6.3 billion in 2024, a 9% CAGR.
- **Digital Billboards:** According to eMarketer, U.S. billboard advertising is forecasted to be a \$2.2 billion market in 2020 and forecasted to grow to \$3.6 billion in 2024, a 14% CAGR.

The forecasts above include both programmatic and non-programmatic digital advertising. In recent years, programmatic advertising has represented an increasing portion of total U.S. media spend. According to eMarketer, the U.S. advertising market, as represented by desktop, mobile, connected TV, linear TV, streaming audio and digital billboard channels, is forecasted to grow from \$205 billion in 2020 to \$241 billion in 2021 and \$269 billion in 2022.

Our Solution

We provide a software platform that enables marketers and their advertising agencies to plan, buy and measure their advertising across channels. Integrated with our people-based capabilities, we provide our customers with a full suite of forecasting, reporting and automation functionality to make informed decisions around their advertising investments.

Cloud-Based, Self-Service Portal: Our software is available in a self-service interface, providing customers with transparency and control over their advertising campaigns and underlying data infrastructure. Customers can log on to the self-service platform to immediately create, update or re-align campaigns themselves, without having to involve our employees or any third parties.

Omnichannel Demand Side Platform: We are a demand side platform for ad buyers. Marketers and their agencies can use our integrated software platform to efficiently manage omnichannel campaigns and access metrics from each channel to inform decisions in other channels. Our integrations enable the purchase of advertising media across desktop, mobile, connected TV, linear TV, streaming audio and digital billboards. Our technology leverages machine learning to identify the best supply partners, formats and impressions based on our customers’ goals.

Advanced Reporting and Measurement: We invest heavily in our measurement capabilities, as we believe this will increase our customers’ usage of our software. Our software and self-service data lake empower customers with differentiated insights, including foot-traffic data reports, multi-touch attribution and ROAS analytics. Leveraging our people-based framework and machine learning algorithms, our platform provides marketers real-time actionable insights throughout an advertising campaign. Our built-in automation enables marketers to optimize digital campaigns designed to achieve their KPI goals.

People-Based Identification for Advertising: Our identity resolution capabilities and identity graph reduce or eliminate the need for cookies by enabling matching of people-based identifiers, and allow marketers to reach targeted consumers in a privacy-conscious manner, irrespective of device or channel. Our identity graph is matched to more than 250 million users across 115 million households in the U.S., which we believe makes it one of the largest in the industry.

Onboarding: We enable marketers to onboard their first-party data to gain a view into their customers' top attributes, create targeting segments and easily activate these customer segments. Our simple interface allows marketers to upload audience data with ease and create a unique segment or build look-a-like audiences without the need for a separate data management platform. Our data integrations provide marketers with high match rates, which leads to meaningful audience insights for segmentation and targeting.

Our Strengths

We believe the following attributes and capabilities provide us with long-term competitive advantages:

- **Scalable Self-Service Platform:** We offer a self-service platform that enables customers to operate their ad campaigns without extensive involvement of our staff. This dynamic allows us to add new customers and allows customers to scale their spend on our platform in a manner that grows our revenue at a faster pace than the growth of our personnel costs.
- **Centralized Platform:** We believe our software platform enables our customers to plan, buy and measure advertising across more channels than our competitors and to centralize the purchase of each type of programmatic media on a single platform. Our supply integrations provide customers with access to over 300 million unique desktop and mobile users, 114 million connected TVs, 112 million linear TV households, over 200 million unique streaming audio users and 158,000 unique digital billboards, in the U.S.
- **Proprietary Technology:** We leverage a robust suite of proprietary tools and products in order to enable our customers to utilize our platform and services. We are constantly iterating and developing new tools and products while utilizing our patented technologies and processes. As of December 31, 2020, we have 26 issued patents and 10 additional pending patent applications, which cover many of our proprietary products. As new offerings are developed, we continue to file and obtain patents on the most valuable and innovative products developed at the company.
- **Machine Learning Capabilities:** We enable the use of machine learning, workflow automation, automated reporting and other functionalities that allow our customers to update and make thousands of changes automatically to help achieve their desired business outcomes. These capabilities make our customers' lives easier and improve the performance of their campaigns.
- **Advanced Reporting and Measurement:** We invest heavily in our measurement capabilities, as we believe this will increase our customers' usage of our software. Our platform measures ROAS across all channels and empowers our customers with real-time insights leveraging people-based data, including foot-traffic reports and multi-touch attribution analytics. Our advanced reporting functionality uses our identity graph that is currently matched to more than 250 million users across 115 million households in the U.S. to provide marketers with a holistic view of measurement across all channels.
- **Differentiated People-Based Capabilities:** Our software is built on a people-based framework. We integrate with over 70 data partners using people-based identifiers. We believe this allows for a much more effective and privacy-friendly approach to advertising than using cookies for identification. Our platform is built on a foundation of user consent with advanced consumer opt-out capabilities to keep privacy and security on the forefront.

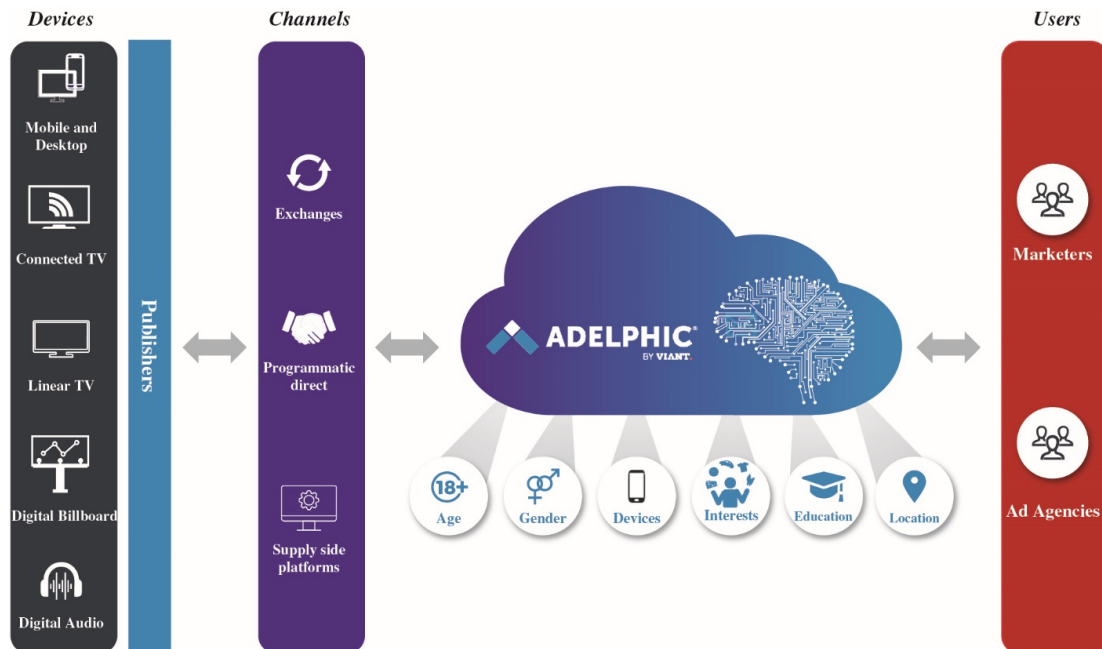
- **Experienced Management Team:** Our management team has deep and extensive experience in the advertising technology sector, which we believe provides us with a competitive advantage. This experience of our management team has allowed us to continue to be innovative in developing solutions for our customers.
- **Profitable Business Model:** Because we are a self-service platform, as we add new customers and as customers increase the use of our software, we are able to demonstrate strong operating leverage. During the years ended December 31, 2020 and 2019, revenue was \$165.3 million and 164.9 million, respectively. Our net income was \$20.6 million and \$9.9 million and our Adjusted EBITDA was \$31.8 million and \$24.7 million during the years ended December 31, 2020 and 2019, respectively.

Our Growth Strategy

We believe that the advertising market is in the early stages of a secular shift towards programmatic advertising. We intend to capitalize on this opportunity by pursuing the following strategies:

- **Continue to invest in our customers' success:** Our platform provides extensive functionality designed to provide our customers with a high level of control and enable them to run the most efficient campaigns. We continue to enhance new customer onboarding and support while investing in training and education for customers to maximize their success with the platform.
- **Add new customers and increase our customers' usage of our platform:** We continue to add functionality to our platform to attract new customers and encourage our customers to increase their usage of our platform. We believe many advertisers are in the early stages of moving a greater percentage of their advertising budgets to programmatic channels. By providing solutions for the planning, buying and measuring of their media spend across all channels we believe we are well positioned to capture the increase in programmatic budgets from new and existing customers.
- **Continue to strengthen our omnichannel partnerships:** We believe we have the largest breadth of advertising inventory across channels in our industry landscape. We will continue to invest in the integration of new supply partners across all channels, further broadening and deepening our supply of advertising inventory.
- **Expand our sales and marketing investment:** We intend to continue to expand sales and marketing efforts to increase awareness and consideration of our platform and promote the advantages of our people-based framework as cookie-based options continue to decline.
- **Extend our leadership position in people-based advertising:** We believe there is significant value in continuing to invest in enhancing our identity resolution capabilities through additional people-based data integrations.
- **Invest in growth through acquisitions:** We also intend to invest in acquisitions to offer new products and to capitalize on our large and growing market opportunity. To the extent we find attractive acquisition candidates and business opportunities in the future, we may continue to acquire complementary businesses, products and technologies.

Our Platform



Our platform enables a marketer or their agency to programmatically buy an ad in linear television, a digital billboard on the side of the highway, a streaming ad on connected TVs, an ad in your favorite mobile app or on your favorite podcast or a dynamically personalized ad on any website, all within a single user interface.

The key components of our platform include:

Omnichannel DSP: We offer an omni-channel, people-based DSP that provides enterprise-ready, self-service technology to enable our customers to engage with consumers across all channels, devices, and formats.

- **Comprehensive Forecasting.** Our platform allows customers to plan future marketing campaigns based on desired targeting tactics by utilizing historical bid request data to project performance onto available inventory. Customers can easily apply multiple data segmentation filters and see what ad inventory is available and at what price.
- **Easy Campaign Setup.** Our intuitive user interface enables marketers to seamlessly move from forecasting to launching live advertising campaigns. Our platform reduces the time from planning a campaign to execution, helping marketers to fluidly execute deterministic cross-channel campaigns using a variety of quality data and supply partners to reach their target audience.
- **Campaign Decisioning.** We offer the ability to continuously measure and optimize campaigns by leveraging powerful KPIs directly within platform reports. Marketers have the ability to log on to the self-service platform to immediately pause, update or re-align campaigns, even if they have already started. This granular decision-making ability provides customers more accurate and real-time understanding over the performance of their live campaigns.

Identity Management: Marketers can easily sync customer data, build custom audiences, extend target audiences and understand audience insights seamlessly within our cloud-based, on-demand platform.

- *Onboarding.* Through our simple interface, marketers can easily upload and leverage their first-party data. We enable marketers to onboard their first-party data and instantly gain a view into their customers' top attributes, create targeting segments and easily activate these customer segments.
- *Look-a-Like Modeling.* We help expand the reach of an existing audience segment or prospect list for new customers.
- *Identity Direct Match to More than 70 Data Partners.* Our DSP is integrated with more than 70 data partners. We use people-based identifiers to integrate with these data partners, which allows for marketers to achieve high match rates against 280,000 audience segments for use in targeted ad campaigns. Our latest software innovation, Mediator, quickly matches demand and supply and we believe efficiency will increase significantly as we continue to improve the software.
- *Privacy and Security.* We believe in giving consumers more transparency, choice, and control over how their data is used in digital advertising. We support most advanced hashing protocols and make data protection a top priority for consumers and customers.

Advanced Reporting: We close the loop on digital and traditional media by linking advertising spend to online and offline sales.

- *Reach and Frequency.* Our platform accurately measures how many households and unique users an advertising campaign reached and the frequency of exposures.
- *Cross-Channel Suite.* Our cross-channel reporting capabilities equip customers to analyze cross-device and cross-channel campaign impact on sales and other key performance indicators.
- *TV Reporting Suite.* Our TV reporting suite gives insights into the impact connected and linear television advertising has on driving digital engagement like website visits or conversions, as well as offline sales. These insights create better visibility into the true ROAS of TV ad campaigns.
- *Multi-Touch Attribution ("MTA").* Our MTA suite gives customers the ability to report on six different attribution models, ingest online and offline files and gain visibility into consumer purchase pathways. The resulting holistic view of ad performance enables customers to close the loop in measurement and better link spend to sales.
- *Foot Traffic Attribution.* Our foot traffic data reporting capabilities allow customers to analyze the impact of their ad campaigns on driving visits to a physical location.
- *Digital Billboard Reporting Suite.* Our digital billboard reporting suite provides a holistic view of ad spend, giving customers real-time insights into their digital billboard ad performance and helping customers optimize budgets by allocating ad spend on effective digital billboards and venue types.
- *Automated Brand Surveys.* Customers using our reporting capabilities can generate on-demand surveys to better gauge the effectiveness of advertising campaigns. Brand surveys deliver automated feedback and give customers the ability to create accurate benchmarks for historical performance and for measurement of advertising performance with a real-time feedback loop.

Our platform is built with ad buyers in mind and offers many in-depth features that give buyers the highest levels of control, which helps ensure they are running the most efficient campaigns possible. This includes:

- **Bulk Functionality:** Our platform is built to ease the lives of programmatic traders. With Adelphic, traders can mass edit ad orders and campaigns, instead of making individual changes one at a time, saving significant time. For example, if a trader wants to change the bid price for all 1,000 of their ad orders, they could simply download a form and upload it, rather than wasting time by editing each ad order one by one.
- **API Capabilities:** Adelphic provides ease of integration using APIs and tools. The API capabilities provide bilateral data syndication into or out of the platform for trafficking and reporting in formats easily accepted by business intelligence teams for programmatic traders. With these, traders can maintain customer identities with a fully integrated platform that links devices and offline activities to real people and seamlessly execute and measure campaigns.
- **Machine Learning Algorithms:** Our built-in advanced machine learning technology analyzes millions of impressions and data points every second. Our algorithms find optimal bid prices for maximizing performance and scale across all major KPIs, allowing our customers to strengthen their campaign efforts and build confidence in programmatic campaign performance.

Our Technology and Development

Rapid and continuing innovation is a core driver of our business success and our corporate culture. Our product and engineering team is responsible for the design, development and testing of our platform. We are committed to continuous innovation and rapid introduction of new technologies, features and functionality that bring value to our customers. We expect technology and development expense and capitalized software development costs to increase as we continue to invest in the development of our platform to support additional features and functions, such as enhancement of our user interface and automation functions, and to increase the number of advertising and data inventory integrations in various channels.

The technical infrastructure for our platform is currently managed through third-party web hosting services providers and to a limited extent, our own servers which are located at a third-party data center facility. We generally enter into one to two year agreements with our web hosting providers.

Our Customers

Our customers consist of purchasers of programmatic advertising inventory. We define an Active Customer as a customer that had total aggregate revenue ex-TAC of at least \$5,000 through our platform during the previous twelve months. We had 264 and 277 Active Customers for the years ended December 31, 2020 and 2019, in each case consisting of advertising buyers, including large advertising holding companies, independent advertising agencies, mid-market advertising service organizations as well as marketers relying on our self-service software platform for their programmatic ad buying needs. For a detailed discussion of Active Customers, see “Management’s Discussion and Analysis of Financial Condition and Results of Operation—Key Operating and Financial Performance Metrics—Number of Active Customers and Average Revenue ex-TAC per Active Customer.” Revenue ex-TAC is a non-GAAP measure. For a detailed discussion of our key operating and financial performance metrics and a reconciliation of revenue ex-TAC to the most directly comparable financial measure calculated in accordance with GAAP, see “Management’s Discussion and Analysis of Financial Condition and Results of Operation—Key Operating and Financial Performance Metrics—Use of Non-GAAP Financial Measures.”

Many of the advertising agencies that we work with are owned by holding companies, where decision-making is generally highly decentralized such that purchasing decisions are made, and relationships with advertisers are located, at the agency, local branch or division level. Our customer count includes only those parties with which we have a billing relationship. We contract with our customers either through master service agreements or insertion orders. Our agreements do not contain any material commitments on behalf of customers to use our platform to purchase ad inventory or use other features. Our agreements with customers generally do not have a specified term, and are generally terminable at any time by either party upon specified notice periods, typically ranging from 30 to 90 days. Insertion orders are generally limited in scope and can be reduced or canceled by a buyer without penalty.

Our Advertising and Data Supply

We obtain digital advertising inventory primarily through our integrations with supply side platforms (“SSPs”) and directly with publishers. We believe that our integrations across every channel give us the most robust omnichannel integrations of any single platform. These suppliers provide us with access to a breadth of programmatic advertising inventory across desktop, mobile, connected TV, linear TV, streaming audio and digital billboards.

We enable deep data access through our integrations with over 70 leading data companies, giving our customers access to data across key industry verticals, including auto, retail, consumer packaged goods, travel and health. Customers onboard their own first-party data onto our platform, without the need of a separate data management platform. Our operation of Myspace.com provides certain data assets and intellectual property that we may leverage to continue to offer innovative products and services to our clients.

Sales and Marketing

We sell our platform through a direct sales team focused on business development across all markets, including sales to new customers and revenue growth within existing customers. We have an experienced sales team of 75 sellers across the United States who are focused on selling access to our platform in our target markets, building and nurturing relationships with global brands and agencies. We use a consultative sales approach focused on educating existing and potential customers on our platform capabilities, and training clients to use our platform. We offer a formal certification program, Programmatic University and Adelpic Certification, that covers programmatic industry trends, technology capabilities and time-saving workflows and have an online knowledge base with robust documentation. We provide dedicated customer support and work with customers as they set up and optimize their campaigns, assist with delivery against key performance indicators and goals, and provide post-campaign support and recommendations.

We tailor our contracts and terms to the needs of our customers, including by offering our three different pricing options: a percentage of spend option, a subscription option and a fixed CPM pricing option. Customers can use our platform on a self-service basis or can enlist our services to execute their campaigns.

Our marketing efforts are focused on increasing awareness and consideration for our brands, executing thought-leadership initiatives, participating in industry events, creating comprehensive sales support materials and generating new customer leads. We seek to accomplish these objectives by presenting at industry conferences, hosting customer conferences, publishing white papers and research, public relations activities, advertising campaigns and social media presence.

Privacy and Data Protection

Modern consumers use multiple platforms to learn about and purchase products and services, and consumers have come to expect a seamless experience across all channels. This challenges marketing organizations to balance the demands of the consumer and the most effective advertising techniques with responsible, privacy-compliant methods of managing data internally and with advertising technology intermediaries.

We believe strongly in providing consumers with more visibility and control over their data. We have prioritized protecting the privacy of consumers and their data and offer consumers a robust suite of tools to manage their data. We have policies and operational practices governing our use of data that are designed to actively promote a set of meaningful privacy guidelines, including advanced consumer opt-out capability, best in class security measures, encryption of data using robust industry standards, proactive identification of threats and regular penetration testing. When giving our customers access to personal data, we provide that data in a “hashed,” or de-identified, manner. We have dedicated personnel in place to oversee our compliance with the data protection regulations that govern our business activities in the jurisdictions in which we operate.

The U.S. Congress and state legislatures, along with federal regulatory authorities, have recently increased their attention on matters concerning the collection and use of consumer data, including relating to internet-based advertising. Data privacy legislation has been introduced in the U.S. Congress, and California has enacted broad-based privacy legislation, the California Consumer Privacy Act. State legislatures outside of California have proposed, and in certain cases enacted, a variety of types of data privacy legislation. Many non-U.S. jurisdictions have also enacted or are developing laws and regulations governing the collection and use of personal data.

We expect the trend of enacting and revising data protection laws to continue and that new and expanded data privacy legislation in various forms will be implemented in the U.S. and in other countries around the globe.

Competition

Our industry is highly competitive and fragmented. We compete with smaller, privately-held companies, along with public companies such as the Trade Desk, and with divisions of large, well-established companies such as Google and Amazon. The competitive landscape in recent years has been affected by consolidation and limited investment in new startups in our industry and there are few competitors with self-service capabilities. Our long history and time in the market with customers has given us significant advantages in terms of platform development and expertise, as well as a long development lead ahead of new entrants. We believe that we compete primarily based on the performance of campaigns running on our platform, capabilities of our platform, our identity resolution capabilities, our omnichannel capabilities and our advance reporting capabilities. We believe that we are differentiated from our competitors in the following areas:

- we are an independent technology company focused on serving advertising agencies and marketers on the buy-side of our industry;
- our platform is self-service and easy to use;
- we offer our DSP in an integrated manner with our people-based capabilities, so customers do not need to use separate providers for onboarding client information and ad and data purchasing services;
- our platform provides comprehensive access to a wide range of inventory types across a broad range of channels;
- our platform provides comprehensive access to a wide range of data partners across a broad range of industry verticals and channels to enable precise audience targeting and measurement;
- our identity resolution capabilities help marketers plan, buy and measure their campaigns more effectively;
- we provide customer service and satisfaction; and
- we provide flexible pricing options to support a wide variety of customers.

Our Human Capital

We are a founder-led business and believe our employees and culture are key to our success. Our employees tend to be long tenured for our industry, with average tenure of the leadership team of nearly 12 years and more than 4 years across all employees. Our business and our culture are anchored on four core values that embody our resourceful mentality: “Live,” “Lead,” “Create” and “Figure It Out.” We believe we attract talented employees to our company and sophisticated customers to our platform in large part because of our vision and unwavering commitment to using cutting-edge technologies to create products that help advance the advertising industry.

As of December 31, 2020, we had 289 employees in 10 offices around the United States. Our team draws from a broad spectrum of backgrounds and experiences across technology and advertising industries.

Diversity and Inclusion

We are committed to fostering a culture of inclusion where all employees feel valued and included. We believe our greatest asset is the people who work for us, and as part of our investment in our people, we prioritize diversity and inclusion. Our goal is to create a culture where we value, respect, and provide fair treatment and opportunities for all employees. Each year, we conduct an annual survey to give employees the opportunity to provide feedback on our management team and culture. This survey helps drive new programs that continue the development of our inclusive culture. Our leaders review the survey feedback and work with their teams to initiate new initiatives based on the results.

We are committed to developing a diverse environment through recruiting, development programs, community involvement and fostering conversations about differences.

Talent Development

Even though Viant has been around for 20+ years, our culture still reflects an entrepreneurial spirit. We empower employees to develop their skills and abilities by following our core values and acting on great ideas regardless of their role or function. We encourage employees at all levels to be creative and come up with ideas that can help the business grow. We work to provide an environment where talented individuals and teams can take control of their career growth. We provide a wide range of learning and development opportunities in both individual and group settings.

Compensation and Benefits

We provide compensation and benefits programs to help meet the needs of our employees and reward their efforts and contributions. We use internal and external resources to help develop plans that are fair and reward our employees’ commitment and performance with the goal of attracting and retaining high performing individuals.

In addition to salaries, we provide competitive compensation programs that are in line with our peers and industry. These programs may include bonuses, equity awards, 401(k) plan, healthcare and insurance benefits, flexible spending accounts, paid time off, family leave and employee assistance programs among many others.

Health, Safety and Wellness

We strive to provide a work environment where our employees feel safe and are comfortable working. In response to the COVID-19 pandemic, we immediately implemented a teleworking program that complied with all applicable government regulations and protected our employees while allowing them to continue to be effective in their jobs. We continue to stay updated on changes in government regulations and implement them to meet our employees’ changing health and wellness needs.

Intellectual Property

The protection of our technology and intellectual property is an important component of our success. We rely on intellectual property laws, including trade secret, copyright, patent and trademark laws in the U.S. and abroad, and use contracts, confidentiality procedures, non-disclosure agreements, employee disclosure and invention assignment agreements and other contractual rights to protect our intellectual property.

As of December 31, 2020, we held 26 issued patents, 10 pending patent applications and 306 issued trademarks. Our issued patents are scheduled to expire between 2025 and 2038. We continually review our development efforts to assess the existence and patentability of new intellectual property. In addition to the intellectual property relating to the operation of Adelphic and our people-based framework, we own intellectual property related to our owned site, Myspace.com. Of our issued patents, 11 relate to our platform and our people-based framework, and 15 relate to the Myspace.com site.

Corporate Information

Viant was founded in 1999 by Tim, Chris and Russ Vanderhook who continue to lead our company today. Viant has been at the forefront of digital advertising technology since its inception and has demonstrated its ability to grow, thrive, and innovate as competitors have come and gone. In 2011, Viant acquired the social network website Myspace.com. In 2011, Tim and Chris Vanderhook started Xumo, a connected TV streaming service, which was acquired by Comcast Corp. in 2020. In 2015, Viant completed its first people-based integration. Viant remained independent until 2016, when Time Inc. acquired a 60% interest in Viant through its subsidiary, Viant Technology Holding Inc. (the “Former Holdco”). That interest was later acquired by Meredith Corporation when it acquired Time Inc. in 2018. In 2017, the Company purchased Adelphic, a DSP. Since the Adelphic acquisition, the Company has materially transformed from a full-service provider of digital advertising solutions into a leading DSP that enables marketers and their advertising agencies to centralize the planning, buying and measurement of their media investments using a people-based framework. Viant has grown from a business operating from a home office to a company with nearly 300 employees in 10 offices throughout the U.S. In 2019, Viant entered into an agreement that resulted in the retirement of the Former Holdco’s interest in Viant and Tim Vanderhook, Chris Vanderhook and Four Brothers 2 LLC (the “Vanderhook Parties”) acquired that 60% interest in the Company (the “2019 Former Holdco transaction”), allowing it to once again become an independent company. Viant Technology Inc. was incorporated in Delaware on October 9, 2020. In connection with the consummation of our initial public offering (the “IPO”), Viant Technology Inc. became the sole managing member of Viant Technology LLC. We completed the IPO of our Class A common stock on February 12, 2021. Our principal executive offices are located at 2722 Michelson Drive, Suite 100, Irvine, CA 92612 and our telephone number is (949) 861-8888. Our website address is www.viantinc.com.

The SEC maintains a website at www.sec.gov that contains reports, information statements and other information regarding issuers that file electronically with the SEC. Our Annual Report can be downloaded from the SEC’s website. We will file with or furnish to the SEC periodic reports and other information. We furnish or make available to our stockholders annual reports containing our audited financial statements prepared in accordance with GAAP. We also furnish or make available to our stockholders quarterly reports containing our unaudited interim financial information, for the first three fiscal quarters of each fiscal year. We make our periodic reports and other information filed with or furnished to the SEC available, free of charge, through our website, as soon as reasonably practicable after those reports and other information are electronically filed with or furnished to the SEC. Information contained on our website or linked therein or otherwise connected thereto does not constitute part of nor is it incorporated by reference into this Annual Report.

Item 1A. Risk Factors.

Investing in our Class A common stock involves a high degree of risk. You should carefully consider the following risks and uncertainties described below, together with all other information contained in this Annual Report and in our other public filings, including our consolidated financial statements and the related notes appearing at the end of this Annual Report. The occurrence of any of the following risks, as well as any risks or uncertainties not currently known to us or that we currently do not believe to be material, could materially and adversely affect our business, prospects, financial condition, results of operations and cash flow, in which case, the trading price of our Class A common stock could decline and you could lose all or part of your investment.

Summary of Factors That May Affect Our Future Results

The following summarizes the principal factors that make an investment in the Company speculative or risky. This summary should be read in conjunction with the remainder of this “Risk Factors” section and should not be relied upon as an exhaustive summary of the material risks facing our business. The occurrence of any of these risks could harm our business, financial condition, results of operations and/or growth prospects or cause our actual results to differ materially from those contained in forward-looking statements we have made in this report and those we may make from time to time. You should consider all of the risk factors described in our public filings when evaluating our business.

- our ability to add new customers, effectively educate and train our existing customers on how to make full use of our platform and increase the usage of our platform by our customers;
- failure to realize the expected benefits of an industry shift away from cookie-based consumer tracking;
- the impact of the COVID-19 pandemic and other sustained adverse market events on our and our customers’ business operations;
- our ability to innovate, effectively manage our growth and make the right investment decisions;
- the relatively new and evolving market for programmatic buying for advertising campaigns;
- the loss of a significant amount of revenue from select advertising agencies as customers;
- fluctuations in our operating results and the varying nature, in terms of mix, of our different pricing options;
- our lengthy sales cycle and payment-related risks;
- diminishment of, or failure to grow, our access to advertising inventory;
- the intensely competitive nature of the market in which we participate; and
- the impact on our business of data privacy regulation or data privacy breaches.

Risks Related to Our Business

Our success and revenue growth is dependent on adding new customers, effectively educating and training our existing customers on how to make full use of our platform and increasing usage of our platform by our customers.

Our success is dependent on regularly adding new customers and increasing our customers' usage of our platform. Our contracts and relationships with customers generally do not include long-term or exclusive obligations requiring them to use our platform or maintain or increase their use of our platform. Our customers typically have relationships with numerous providers and can use both our platform and those of our competitors without incurring significant costs or disruption. Our customers may also choose to decrease their overall advertising spend for any reason, including if they do not believe they are receiving a sufficient return on their advertising spend. Accordingly, we must continually work to win new customers and retain existing customers, increase their usage of our platform and capture a larger share of their advertising spend. We may not be successful at educating and training customers, particularly our newer customers, on how to use our platform, in particular our advanced reporting tools, in order for our customers to get the most benefit from our platform and increase their usage. If these efforts are unsuccessful or customers decide not to continue to maintain or increase their usage of our platform for any other reason, or if we fail to attract new customers, our revenue could fail to grow or decline, which would materially and adversely harm our business, operating results and financial condition. We cannot assure you that our customers will continue to use and increase their spend on our platform or that we will be able to attract a sufficient number of new customers to continue to grow our business and revenue. If customers representing a significant portion of our business decide to materially reduce their use of our platform or cease using our platform altogether, our revenue could be significantly reduced, which could have a material adverse effect on our business, operating results and financial condition. We may not be able to replace customers who decrease or cease their usage of our platform with new customers that will use our platform to the same extent.

We may not realize the expected benefits of an industry shift away from cookie-based consumer tracking as such shift may not occur as rapidly as we expect or may not be realized at all.

We expect to benefit as compared to others in our industry from marketers reducing their reliance on vendors and software platforms that utilize third-party cookies for tracking. However, we cannot assure you that the shift away from cookie-based consumer tracking will happen as rapidly as we expect or that such shift will occur at all. Additionally, even if the shift away from cookie-based consumer tracking does occur, we may not be as successful in growing our business and increasing our revenue as we expect. For example, marketers may not shift their business away from our competitors if our competitors are successful in developing alternative products or services that are not significantly reliant on the cookie-based framework.

The effects of the ongoing COVID-19 pandemic and other sustained adverse market events have had, and could in the future have, an adverse impact on our business, operating results and financial condition.

Our business and operations have been and could in the future be adversely affected by health epidemics, such as the global COVID-19 pandemic. The COVID-19 pandemic and efforts to control its spread have curtailed the movement of people, goods and services worldwide, including in the regions in which we and our customers and partners operate, and are significantly impacting economic activity and financial markets. Many marketers, particularly those in the travel, retail and automotive industries, have decreased or paused their advertising spending as a response to the economic uncertainty, decline in business activity, and other COVID-19-related impacts, which has negatively impacted, and may continue to negatively impact, our revenue and results of operations, the extent and duration of which we may not be able to accurately predict. The spread of an infectious disease may also result in, and, in the case of the COVID-19 pandemic has resulted in, regional quarantines, labor shortages or stoppages, changes in consumer purchasing patterns, disruptions to service providers' ability to deliver data on a timely basis, or at all, and overall economic instability.

A recession, depression or other sustained adverse market events resulting from the spread of COVID-19 could materially and adversely affect our business and that of our customers or potential customers. Our customers' and potential customers' businesses or cash flows have been and may continue to be negatively impacted by the COVID-19 pandemic, which has led and may continue to lead them to reduce their advertising spending and delay their advertising initiatives or technology spending, or attempt to renegotiate contracts and obtain concessions, which may materially and negatively impact our business, operating results and financial condition. Our customers may also seek adjustments to their payment terms, delay making payments or default on their payables, any of which may impact the timely receipt and/or collectability of our receivables. Typically, we are contractually required to pay advertising inventory and data suppliers within a negotiated period of time, regardless of whether our customers pay us on time, or at all, and we may not be able to renegotiate better terms. As a result, our financial condition and results of operations may be adversely impacted if the business or financial condition of our customers and marketers is negatively affected by the pandemic.

Our operations are subject to a range of external factors related to the COVID-19 pandemic that are not within our control. We have taken precautionary measures intended to minimize the risk of the spread of the virus to our employees, partners and customers, and the communities in which we operate. A wide range of governmental restrictions has also been imposed on our employees', customers' and partners' physical movement to limit the spread of COVID-19. There can be no assurance that precautionary measures, whether adopted by us or imposed by others, will be effective, and such measures could negatively affect our sales, marketing, and customer service efforts, delay and lengthen our sales cycles, decrease our employees' or customers' or partners' productivity, or create operational or other challenges, any of which could harm our business, operating results and financial condition.

The economic uncertainty caused by the COVID-19 pandemic has made and may continue to make it difficult for us to forecast revenue and operating results and to make decisions regarding operational cost structures and investments. Our business depends on the overall demand for advertising and on the economic health of our customers that benefit from our platform. Economic downturns or unstable market conditions may cause our customers to decrease their advertising budgets, which could reduce usage of our platform and adversely affect our business, operating results and financial condition. We have committed, and we plan to continue to commit, resources to grow our business, including to expand our employee base and develop our platform and systems, and such investments may not yield anticipated returns, particularly if worldwide business activity continues to be impacted by the COVID-19 pandemic. The duration and extent of the impact from the COVID-19 pandemic depend on future developments that cannot be accurately predicted at this time, and if we are not able to respond to and manage the impact of such events effectively, our business may be harmed. Such future developments may include, among others, the duration and spread of the outbreak, new information that may emerge concerning the severity of COVID-19 and government actions to contain COVID-19 or treat its impact, the level of relief efforts designed to help businesses and consumers, including any declines in such levels, impact on our customers and our sales cycles, impact on our customer, industry or employee events, and effect on our advertising inventory partners.

Our results may also fluctuate unpredictably as and to the extent there is a recovery from the pandemic and a return to non-pandemic business conditions. We cannot predict the impact of a post-pandemic recovery on the economy, our customers or consumer media consumption patterns or the degree to which certain trends, such as the growth in demand for our connected TV offering, will continue.

If we fail to innovate and make the right investment decisions in our offerings and platform, we may not attract and retain customers and our revenue and results of operations may decline.

Our industry is subject to rapid and frequent changes in technology, evolving customer needs and the frequent introduction by our competitors of new and enhanced offerings. We must regularly make investment decisions regarding offerings and technology to maintain the technological competitiveness of our products and services and meet customer demand and evolving industry standards. The complexity and uncertainty regarding the development of new technologies and the extent and timing of market acceptance of innovative products and services create difficulties in maintaining this competitiveness. The success of any enhancement or new solution depends on many factors, including timely completion, adequate quality testing, appropriate introduction and market acceptance. Without the timely introduction of new products, services and enhancements, our offerings could become technologically or commercially obsolete over time, in which case our revenue and operating results would suffer. If new or existing competitors have more attractive offerings, we may lose customers or customers may decrease their use of our platform. New customer demands, superior competitive offerings or new industry standards could require us to make unanticipated and costly changes to our platform or business model.

If we fail to enhance our current products and services or fail to develop new products to adapt to our rapidly changing industry or to evolving customer needs, demand for our platform could decrease and our business, operating results and financial condition may be adversely affected.

The market for programmatic buying for advertising campaigns is relatively new and evolving. If this market develops slower or differently than we expect, our business, operating results and financial condition would be adversely affected.

We derive revenue from the programmatic purchase of advertising on our platform. We expect that programmatic ad buying will continue to be our primary source of revenue for the foreseeable future, and that our revenue growth will largely depend on increasing our customers' usage of our platform. While the market for programmatic ad buying for desktop and mobile display ads is relatively established, the market in other channels is still emerging, and our current and potential customers may not shift quickly enough to programmatic ad buying from other buying methods, which would reduce our growth potential. If the market for programmatic ad buying deteriorates or develops more slowly than we expect, it could reduce demand for our platform, and our business, growth prospects and financial condition would be adversely affected.

In particular, the market for programmatic buying for advertising campaigns across multiple advertising channels, including connected TV, linear TV, streaming audio and digital billboard channels is an emerging market. Our ability to provide capabilities across multiple advertising channels, which we refer to as omnichannel, may be constrained if we are not able to maintain or grow advertising inventory for such channels, and some of our omnichannel offerings may not gain market acceptance. We may not be able to accurately predict changes in overall industry demand for the channels in which we operate and cannot assure you that our investment in channel development will correspond to any such changes. For example, we cannot predict whether the growth in demand for our connected TV offering will continue. Furthermore, if our channel mix changes due to a shift in customer demand, such as customers shifting their usage more quickly or more extensively than expected to channels in which we have relatively less functionality, features, or inventory, such as linear TV, then demand for our platform could decrease, and our business, financial condition, and results of operations could be adversely affected.

We receive a significant amount of revenue from a select number of advertising agency holding companies, owning various advertising agencies, and the loss of advertising agencies as customers could harm our business, operating results and financial condition.

A significant amount of our revenue comes from advertising agencies. We had 264 Active Customers for the year ended December 31, 2020, consisting primarily of advertising agencies. Many of these agencies are owned by advertising agency holding companies, where decision making is generally highly decentralized such that purchasing decisions are made, and relationships with marketers are located, at the agency, local branch or division level. If all of our individual customer contractual relationships were aggregated at the holding company level, two advertising agency holding companies would represent 13.3% and 13.2%, respectively, of our revenue for 2020. Due to the highly decentralized operations and decision-making at the agencies owned by each of these advertising agency holding companies, we consider the individual agencies rather than the holding company to be our customers.

Often, we enter into separate contracts and billing relationships with the individual agencies and account for them as separate customers. However, some holding companies for these agencies may choose to exert control over the individual agencies in the future. If so, any loss of relationships with such holding companies and, consequently, of their agencies, local branches or divisions, as customers could significantly harm our business, operating results and financial condition.

We do not have exclusive relationships with advertising agencies and we depend on agencies to work with us as they embark on advertising campaigns for their clients. The loss of such agencies could significantly harm our business, operating results and financial condition. If we fail to maintain satisfactory relationships with an advertising agency, we risk losing business from the marketers represented by that agency.

Marketers may change advertising agencies. If a marketer switches from an agency that utilizes our platform to one that does not, we could lose revenue from that marketer. In addition, some advertising agencies have strong relationships with competing DSPs or other platforms and may direct their marketers to such other platforms.

We may experience fluctuations in our operating results, which could make our future operating results difficult to predict or cause our operating results to fall below securities analysts' and investors' expectations.

Our quarterly and annual operating results have fluctuated in the past and we expect our future operating results to fluctuate due to a variety of factors, many of which are beyond our control. In particular, we offer our customers a choice of three different pricing options: a percentage of spend option, a subscription option and a fixed cost per mille (“CPM”) pricing option. We also offer our customers the ability to use our services to aid them in data management, media execution and advanced reporting. Our revenue and revenue ex-TAC vary across these different pricing and service options, and therefore our results may vary based on the mix of pricing and service options chosen by customers in any given period. The varying nature of our pricing mix between periods therefore may make it more difficult for us to forecast our future operating results. Further, variation in our pricing mix may make it more difficult to make comparisons between prior, current and future periods. Period-to-period comparisons of our operating results should not be relied upon as an indication of our future performance. Fluctuations in our operating results could cause our performance to fall below the expectations of securities analysts and investors, and adversely affect the price of our Class A common stock. Because our business is changing and evolving rapidly, and the macroeconomic environment continues to evolve as a result of the COVID-19 pandemic, our historical operating results may not be necessarily indicative of our future operating results. It is also difficult to predict the impact of a post-pandemic recovery on our business and operating results. In addition to changes in terms of mix of our different pricing options, factors that may cause our operating results to fluctuate include the following:

- changes in demand for our platform, including those related to the seasonal nature of our customers' spending on digital advertising campaigns;
- changes in our pricing policies, the pricing policies of our competitors and the pricing or availability of inventory, data or other third-party services;
- changes in our customer base and platform offerings;
- the addition or loss of advertising agencies and marketers as customers;
- changes in advertising budget allocations, agency affiliations or marketing strategies;
- changes to our channel mix (including, for example, changes in demand for connected TV);
- changes and uncertainty in the regulatory and business environment for us or customers (for example, when Apple or Google change policies for their browsers and operating systems);
- changes in the economic prospects of marketers or the economy generally (due to COVID-19, or otherwise), which could alter marketers' spending priorities, or could increase the time or costs required to complete advertising inventory sales;
- changes in the availability of advertising inventory or in the cost of reaching end consumers through digital advertising;
- disruptions or outages on our platform;
- the introduction of new technologies or offerings by our competitors;
- changes in our capital expenditures as we acquire the hardware, equipment and other assets required to support our business;

- timing differences between our payments for advertising inventory and our collection of related advertising revenue;
- the length and unpredictability of our sales cycle;
- costs related to acquisitions of businesses or technologies, or employee recruiting; and
- shifting views and behaviors of consumers concerning use of data.

Based upon the factors above and others beyond our control, we have a limited ability to forecast our future revenue, costs and expenses, and, as a result, our operating results may, from time to time, fall below our estimates or the expectations of securities analysts and investors.

We often have long sales cycles, which can result in significant time between initial contact with a prospect and execution of a customer agreement, making it difficult to project when, if at all, we will obtain new customers and when we will generate revenue from those customers.

Our sales cycle, from initial contact to contract execution and implementation, can take significant time. As part of our sales cycle, we may incur significant expenses before we generate any revenue from a prospective customer. We have no assurance that the substantial time and money spent on our sales efforts will generate significant revenue. If conditions in the marketplace, generally or with a specific prospective customer, change negatively, it is possible that we will be unable to recover any of these expenses. Our sales efforts involve educating our customers about the use, technical capabilities and benefits of our platform. Some of our customers undertake an evaluation process that frequently involves not only our platform but also the offerings of our competitors. As a result, it is difficult to predict when we will obtain new customers and begin generating revenue from these new customers. Even if our sales efforts result in obtaining a new customer, the customer controls when and to what extent it uses our platform and therefore the amount of revenue we generate, and it may not sufficiently justify the expenses incurred to acquire the customer and the related training support. As a result, we may not be able to add customers, or generate revenue, as quickly as we may expect, which could harm our growth prospects.

Customers have the option to use our platform on a self-service basis, which requires us to commit substantial time and expenses towards training potential customers on how to make full use of our platform. If we fail to offer sufficient customer training and support for our platform, we may not be able to attract new customers or maintain our current customers.

Because we operate a platform that has many powerful tools and that customers can choose to use on a self-service basis, we are often required to spend a substantial amount of time and effort educating and training current customers and potential customers on how to make full use of our platform. Because potential customers may already be trained to use our competitors' platforms, we are also required to spend a significant amount of time cultivating relationships with those potential customers to ensure they understand the potential benefits of our platform and this relationship building process can take many months and may not result in us winning an opportunity with any given potential customer. As a result, customer training and support is critical for the successful and continued use of our platform and for maintaining and increasing spend through our platform from existing and new customers.

Providing this training and support requires that our platform operations personnel have specific domain knowledge and expertise, making it more difficult for us to hire qualified personnel and to scale up our support operations due to the extensive training required. The importance of high-quality customer service will increase as we expand our business and pursue new customers. If we are not responsive and proactive regarding our customers' advertising needs, or do not provide effective support for our customers' advertising campaigns, our ability to retain our existing customers would suffer and our reputation with existing or potential customers would be harmed, which would negatively impact our business.

We are subject to payment-related risks and if our customers do not pay, or dispute their invoices, our business, operating results and financial condition may be adversely affected.

Many of our contracts with advertising agencies provide that if the marketer does not pay the agency, the agency is not liable to us, and we must seek payment solely from the marketer, a type of arrangement called sequential liability. The credit risk associated with these arrangements may vary depending on the nature of an advertising agency's aggregated marketer base and the credit risk of the agency itself. We may also be involved in disputes with agencies and their marketers over the operation of our platform, the terms of our agreements or our billings for purchases made by them through our platform. When we are unable to collect or make adjustments to our bills to customers, we incur write-offs for bad debt, which could have a material adverse effect on our results of operations for the periods in which the write-offs occur. In the future, bad debt may exceed reserves for such contingencies and our bad debt exposure may increase over time. Any increase in write-offs for bad debt could have a materially negative effect on our business, operating results and financial condition.

Furthermore, we are generally contractually required to pay suppliers of advertising inventory and data within a negotiated period of time, regardless of whether our customers pay us on time, or at all. While we attempt to negotiate long payment periods with our suppliers and shorter periods from our customers, we are not always successful. As a result, our accounts payable are often due on shorter cycles than our accounts receivables, requiring us to remit payments from our own funds, and accept the risk of bad debt.

This payment process will increasingly consume working capital if we continue to be successful in growing our business. In addition, like many companies in our industry, we often experience slow payment by advertising agencies. In this regard, we had average days sales outstanding, or DSO, of 64 days, and average days payable outstanding, or DPO, of 62 for the year ended December 31, 2020. We compute our average DSO as of a given month end based on a weighted average of outstanding accounts receivable. Specifically, the DSO is calculated by multiplying the percentage of accounts receivable outstanding for each monthly billing period by the number of days outstanding related to each billing period and then summing the weighted days outstanding. We compute our DPO as of a given month end by dividing our trade payables (including accrued liabilities) by the average daily cost of media, data, other direct costs and certain operating expenses over the last four months. Historically, our DSOs have fluctuated over time. If our DSOs increase significantly, and we are unable to borrow against these receivables on commercially acceptable terms, our working capital availability could be reduced, and as a consequence our results of operations and financial condition would be adversely impacted.

Due to this potential imbalance in our DSOs and DPOs, we may rely on our credit facility to partially or completely fund our working capital requirements. We cannot assure you that as we continue to grow, our business will generate sufficient cash flow from operations or that future borrowings will be available to us under the credit facility in an amount sufficient to fund our working capital needs. If our cash flows and credit facility borrowings are insufficient to fund our working capital requirements, we may not be able to grow at the rate we currently expect or at all. In addition, in the absence of sufficient cash flows from operations, we might be unable to meet our obligations under our credit facility and we may therefore be at risk of default thereunder. We cannot assure you that we would be able to access additional financing or increase our borrowing or borrowing capacity under our current or any future credit facility on commercially reasonable terms or at all.

If our access to advertising inventory is diminished or fails to grow, our revenue could decline and our growth could be impeded.

We must maintain a consistent supply of ad inventory. Our success depends on our ability to secure inventory on reasonable terms across a broad range of advertising inventory partners in various verticals and formats. The amount, quality and cost of inventory available to us can change at any time. If our relationships with any of our significant suppliers were to cease, or if the material terms of these relationships were to change unfavorably, our business would be negatively impacted. Our suppliers are generally not bound by long-term contracts. As a result, there is no guarantee that we will have access to a consistent supply of inventory on favorable terms. Inventory suppliers control the sales process for the inventory they supply, and their processes may not always work in our favor. For example, suppliers may place restrictions on the use of their inventory, including prohibiting the placement of advertisements on behalf of specific marketers.

As new types of inventory, such as digital advertising for television, become more readily available, we will need to expend significant resources to ensure we have access to such new inventory. Although television advertising is a large market, only a relatively small percentage of it is currently purchased programmatically. We are investing heavily in our programmatic television offering, including by increasing our workforce and by adding new features, functions and integrations to our platform. If the digital television advertising market does not grow as we anticipate or we fail to successfully serve such a market, our growth prospects could be harmed.

Our success depends on consistently adding valued inventory in a cost-effective manner. If we are unable to maintain a consistent supply of inventory for any reason, customer retention and loyalty, and our operating results and financial condition could be harmed.

If our access to people-based data is diminished, the effectiveness of our platform would be decreased, which could harm our operating results and financial condition.

Much of the data that we use is obtained through integrations with third-party data suppliers. We are dependent upon our ability to obtain necessary data licenses on commercially reasonable terms. We could suffer material adverse consequences if we were unable to obtain data through our integrations with data suppliers. Our ability to serve particular customers is also enhanced when such customers upload their own first-party data. Our operation of our platform and access to data could be negatively affected if, due to legal, contractual, privacy, market optics, competition or other economic concerns, third parties cease entering into data integration agreements with us or customers cease uploading their data to our platform. Additionally, we could terminate relationships with our data suppliers if they fail to adhere to our data quality and privacy standards.

Furthermore, digital advertising and in-app advertising are largely dependent on established technology companies and their operation of the most commonly used Internet browsers (Chrome, Firefox, Internet Explorer and Safari), devices and operating systems (Android and iOS). These companies may change the operations or policies of their browsers, devices and operating systems in a manner that fundamentally changes our ability to operate our platform or use or collect data. Users of these browsers, devices or operating systems may also adjust their behaviors and use of technology in ways that change our ability to collect data. Digital advertising and in-app advertising are also dependent, in part, on internet protocols and the practices of internet service providers, including IP address allocation. Changes that these providers make to their practices, or adoption of new internet protocols, may materially limit or alter the availability of data. A limitation or alteration of the availability of data in any of these or other instances may have a material impact on the advertising technology industry, which could decrease advertising budgets and subsequently reduce our revenue and adversely affect our business, operating results and financial condition.

If we were to lose access to significant amounts of the data that enables our people-based framework, our ability to provide products and services to our customers could be materially and adversely impacted, which could be materially adverse to our business, operating results and financial condition.

If we do not effectively grow and train our sales and support teams, we may be unable to add new customers or increase usage of our platform by our existing customers and our business will be adversely affected.

We are substantially dependent on our sales and support teams to obtain new customers and to increase usage of our platform by our existing customers. We believe that there is significant competition for sales personnel with the skills and technical knowledge that we require. Our ability to achieve revenue growth will depend, in large part, on our success in recruiting, training, integrating and retaining sufficient numbers of sales personnel to support our growth. Due to the complexity of our platform, a significant time lag exists between the hiring date of sales and support personnel and the time when they become fully productive. Our recent and planned hires may not become productive as quickly as we expect, and we may be unable to hire or retain sufficient numbers of qualified individuals in the markets where we do business or plan to do business. If we are unable to hire and train sufficient numbers of effective sales personnel, or the sales personnel are not successful in obtaining new customers or increasing our existing customers' spend with us, our business will be adversely affected.

As our costs increase, we may not be able to generate sufficient revenue to sustain profitability.

We have expended significant resources to grow our business in recent years by increasing the offerings of our platform and growing our number of employees and expanding our number of offices in the United States. We anticipate continued growth that could require substantial financial and other resources to, among other things:

- develop our platform, including by investing in our engineering team, creating, acquiring or licensing new products or features, and improving the functionality, availability and security of our platform;
- improve our technology infrastructure, including investing in internal technology development and acquiring outside technologies;
- cover general and administrative expenses, including legal, accounting and other expenses necessary to support a larger organization;
- cover sales and marketing expenses, including a significant expansion of our direct sales organization;
- cover expenses relating to data collection and consumer privacy compliance, including additional infrastructure, automation and personnel; and
- explore strategic acquisitions.

Investing in the foregoing, however, may not yield anticipated returns. Consequently, as our costs increase, we may not be able to generate sufficient revenue to achieve or sustain profitability.

A significant inadvertent disclosure or breach of confidential and/or personal information we hold, or of the security of our or our customers', suppliers', or other partners' computer systems could be detrimental to our business, reputation and results of operations.

Our business requires the storage, transmission and utilization of data, including personal information, much of which must be maintained on a confidential basis. These activities have made, and may in the future make, us a target of cyber-attacks by third parties seeking unauthorized access to the data we maintain, including our customer data, or to disrupt our ability to provide service. As a result of the types and volume of personal data on our systems, we believe that we are a particularly attractive target for such breaches and attacks. For example, in 2016, we discovered a breach of information from our Myspace databases resulting in the unauthorized access and offer for sale of approximately 360 million Myspace user account email addresses, usernames, and hashed passwords. See “*—We face liabilities arising out of our ownership and operation of Myspace.com.*”

In recent years, the frequency, severity and sophistication of cyber-attacks, computer malware, viruses, social engineering, and other intentional misconduct by computer hackers has significantly increased, and government agencies and security experts have warned about the growing risks of hackers, cyber criminals and other potential attackers targeting information technology systems. Such third parties could attempt to gain entry to our systems for the purpose of stealing data or disrupting the systems. In addition, our security measures may also be breached due to employee error, malfeasance, system errors or vulnerabilities, including vulnerabilities of our vendors, suppliers, their products, or otherwise. Third parties may also attempt to fraudulently induce employees or customers into disclosing sensitive information such as user names, passwords or other information to gain access to our customers' data or our data, including intellectual property and other confidential business information.

We currently serve the majority of our platform functions from third-party data center hosting facilities operated by Google Cloud Platform and Amazon Web Services. While we and our third-party cloud providers have implemented security measures designed to protect against security breaches, these measures could fail or may be insufficient, particularly as techniques used to sabotage or obtain unauthorized access to systems change frequently and generally are not recognized until launched against a target, resulting in the unauthorized disclosure, modification, misuse, destruction, or loss of our or our customers' data or other sensitive information. Any failure to prevent or mitigate security breaches and improper access to or disclosure of the data we maintain, including personal information, could result in litigation, indemnity obligations, regulatory enforcement actions, investigations, fines, penalties, mitigation and remediation costs, disputes, reputational harm, diversion of management's attention, and other liabilities and damage to our business.

We believe we have taken appropriate measures to protect our systems from intrusion, but we cannot be certain that advances in criminal capabilities, discovery of new vulnerabilities in our systems and attempts to exploit those vulnerabilities, physical system or facility break-ins and data thefts or other developments will not compromise or breach the technology protecting our systems and the information we possess.

We may incur significant costs in protecting against or remediating cyber-attacks. Any security breach could result in operational disruptions that impair our ability to meet our customers' requirements, which could result in decreased revenue. Also, whether there is an actual or a perceived breach of our security, our reputation could suffer irreparable harm, causing our current and prospective customers to reject our products and services in the future, deterring data suppliers from supplying us data or customers from uploading their data on our platform, or changing consumer behaviors and use of our technology. Further, we could be forced to expend significant resources in response to a security breach, including those expended in notifying individuals and providing mitigating services, repairing system damage, increasing cyber security protection costs by deploying additional personnel and protection technologies, and litigating and resolving legal claims or governmental inquiries and investigations, all of which could divert the attention of our management and key personnel away from our business operations. Federal, state and foreign governments continue to consider and implement laws and regulations addressing data privacy, cybersecurity, and data protection laws, which include provisions relating to breaches. For example, statutory damages may be available to users through a private right of action for certain data breaches under the California Consumer Privacy Act (the "CCPA"), and potentially other states' laws. In any event, a significant security breach could materially harm our business, operating results and financial condition. See "*Risks Related to Data Privacy.*"

Our customers, suppliers and other partners are primarily responsible for the security of their information technology environments, and we rely heavily on them and other third parties to supply clean data content and/or to utilize our products and services in a secure manner. Each of these third parties may face risks relating to cyber security, which could disrupt their businesses and therefore materially impact ours. While we provide guidance and specific requirements in some cases, we do not directly control any of such parties' cyber security operations, or the amount of investment they place in guarding against cyber security threats. Accordingly, we are subject to any flaw in or breaches of their systems, which could materially impact our business, operating results and financial results.

We allow our customers and suppliers to utilize application programming interfaces, or APIs, with our platform, which could result in outages or security breaches and negatively impact our business, operating results and financial condition.

The use of application programming interfaces, or APIs, by our customers and suppliers has significantly increased in recent years. Our APIs allow customers and suppliers to build their own media buying and data management interface by using our APIs to develop custom integration of their business with our platform. The increased use of APIs increases security and operational risks to our systems, including the risk for intrusion attacks, data theft, or denial of service attacks. Furthermore, while APIs allow customers and suppliers greater ease and power in accessing our platform, they also increase the risk of overusing our systems, potentially causing outages. We have experienced system slowdowns due to customer or supplier overuse of our systems through our APIs. While we have taken measures intended to decrease security and outage risks associated with the use of APIs, we cannot guarantee that such measures will be successful. Our failure to prevent outages or security breaches resulting from API use could result in government enforcement actions against us, claims for damages by consumers and other affected individuals, costs associated with investigation, notification, mitigation, and remediation, damage to our reputation and loss of goodwill, any of which could have a material adverse impact on our business, operating results and financial condition.

Operational and performance issues with our platform, whether real or perceived, including a failure to respond to technological changes or to upgrade our technology systems, may adversely affect our business, operating results and financial condition.

We depend upon the sustained and uninterrupted performance of our platform to manage our inventory supply; acquire inventory for each campaign; collect, process and interpret data; and optimize campaign performance in real time and provide billing information to our financial systems. If our platform cannot scale to meet demand, if there are errors in our execution of any of these functions on our platform, or if we experience outages, then our business may be harmed.

Our platform is complex and multifaceted, and operational and performance issues could arise both from the platform itself or from outside factors, such as cyberattacks or other third party attacks. Errors, failures, vulnerabilities or bugs have been found in the past, and may be found in the future. Our platform also relies on third-party technology and systems to perform properly, and our platform is often used in connection with computing environments utilizing different operating systems, system management software, equipment and networking configurations, which may cause errors in, or failures of, our platform or such other computing environments. Operational and performance issues with our platform could include the failure of our user interface, outages, errors during upgrades or patches, discrepancies in costs billed versus costs paid, unanticipated volume overwhelming our databases, server failure, or catastrophic events affecting one or more server facilities. While we have built redundancies in our systems, full redundancies do not exist. Some failures will shut our platform down completely, others only partially. We provide service level agreements to some of our customers, and if our platform is not available for specified amounts of time, we may be required to provide credits or other financial compensation to our customers.

As we grow our business, we expect to continue to invest in technology services and equipment. Without these improvements, our operations might suffer from unanticipated system disruptions, slow transaction processing, unreliable service levels, impaired quality or delays in reporting accurate information regarding transactions in our platform, any of which could negatively affect our reputation and ability to attract and retain customers. In addition, the expansion and improvement of our systems and infrastructure may require us to commit substantial financial, operational and technical resources, with no assurance our business will grow. If we fail to respond to technological change or to adequately maintain, expand, upgrade and develop our systems and infrastructure in a timely fashion, our growth prospects and results of operations could be adversely affected.

Operational and performance issues with our platform could also result in negative publicity, damage to our brand and reputation, loss of or delay in market acceptance of our platform, increased costs or loss of revenue, loss of the ability to access our platform, loss of competitive position or claims by customers for losses sustained by them. Alleviating problems resulting from such issues could require significant expenditures of capital and other resources and could cause interruptions, delays or the cessation of our business, any of which may adversely affect our operating results and financial condition.

We are dependent on the continued availability of third-party hosting and transmission services. Operational issues with, or changes to the costs of, our third-party data center providers could harm our business, reputation or results of operations.

We currently serve the majority of our platform functions from third-party data center hosting facilities operated by Google Cloud Platform and Amazon Web Services, and we primarily use shared servers in such facilities. We are dependent on these third parties to provide continuous power, cooling, Internet connectivity and physical and technological security for our servers, and our operations depend, in part, on their ability to protect these facilities against any damage or interruption from natural disasters, such as earthquakes and hurricanes, power or telecommunication failures, criminal acts and similar events. In the event that any of our third-party facilities arrangements is terminated, or if there is a lapse of service or damage to a facility, we could experience interruptions in our platform as well as delays and additional expenses in arranging new facilities and services.

Any damage to, or failure of, the systems of our third-party providers could result in interruptions to our platform. Despite precautions taken at our data centers, the occurrence of spikes in usage volume, a natural disaster, such as earthquakes or hurricane, an act of terrorism, vandalism or sabotage, a decision to close a facility without adequate notice, or other unanticipated problems at a facility could result in lengthy interruptions in the availability of our platform. Even with current and planned disaster recovery arrangements, our business could be harmed. Also, in the event of damage or interruption, our insurance policies may not adequately compensate us for any losses that we may incur. These factors in turn could further reduce our revenue, subject us to liability and cause us to issue credits or cause customers to stop using our platform, any of which could materially and adversely affect our business.

We incur significant costs with our third-party data hosting services. If the costs for such services increase due to vendor consolidation, regulation, contract renegotiation, or otherwise, we may not be able to increase the fees for our products and services to cover the changes. As a result, our operating results may be significantly worse than forecasted.

If the non-proprietary technology, software, products and services that we use are unavailable, have future terms we cannot agree to, or do not perform as we expect, our business, operating results and financial condition could be harmed.

We depend on various technology, software, products and services from third parties or available as open source, including for critical features and functionality of our platform and API technology, payment processing, payroll and other professional services. Identifying, negotiating, complying with and integrating with third-party terms and technology are complex, costly and time-consuming matters. Failure by third-party providers to maintain, support or secure their technology either generally or for our accounts specifically, or downtime, errors or defects in their products or services, could materially and adversely impact our platform, our administrative obligations or other areas of our business. Having to replace any third-party providers or their technology, products or services could result in outages or difficulties in our ability to provide our services.

Our failure to meet content and inventory standards and provide services that our customers and inventory suppliers trust, could harm our brand and reputation and negatively impact our business, operating results and financial condition.

We do not provide or control the content of the advertisements we serve or that of the websites providing the inventory. Our customers provide the advertising content and inventory suppliers provide the inventory. Both customers and inventory suppliers are concerned about being associated with content they consider inappropriate, competitive or inconsistent with their brands, or illegal, and they are hesitant to spend money without guaranteed brand security. For example, our customers expect that ad placements will not be misrepresented, such as auto-play in banner placements marketed as pre-roll inventory. Consequently, our reputation depends in part on providing services that our customers and inventory suppliers trust, and we have contractual obligations to meet content and inventory standards. We contractually prohibit the misuse of our platform by agencies (and their marketer customers) and inventory suppliers. Additionally, we use our proprietary technology and third-party services to, and we participate in industry co-ops that work to, detect malware and other content issues as well as click fraud (whether by humans or software known as “bots”) and to block fraudulent inventory. Despite such efforts, our customers may inadvertently purchase inventory that proves to be unacceptable for their campaigns, in which case we may not be able to recoup the amounts paid to inventory suppliers. Preventing and combating fraud is an industry-wide issue that requires constant vigilance, as well as a balancing of cost effectiveness and risk, and we cannot guarantee that we will be fully successful in our efforts to combat fraud. We may provide access to inventory that is objectionable to our customers or we may serve advertising that contains malware or objectionable content to our inventory suppliers, which could harm our or our customers’ brand and reputation, cause customers to decrease or terminate their relationship with us or otherwise negatively impact our business, operating results and financial condition.

We face potential liability and harm to our business based on the human factor of inputting information into our platform.

We or our customers set up campaigns on our platform using a number of available variables. While our platform includes several checks and balances, it is possible for human error to result in significant over-spending. We offer a number of protections such as daily or overall spending caps, but despite these protections, the ability for overspend exists. For example, campaigns which last for a period of time can be set to pace evenly or as quickly as possible. If a customer with a high credit limit enters an incorrect daily cap with a campaign set to a rapid pace, it is possible for a campaign to accidentally go significantly over budget. Our potential liability for such errors may be higher when they occur in situations in which we are executing purchases on behalf of a customer rather than the customer using the self-service feature of our platform. While our customer contracts state that customers are responsible for media purchased through our platform, we are ultimately responsible for paying the inventory providers and we may be unable to collect when such issues occur.

We face liabilities arising out of our ownership and operation of Myspace.com.

In 2011, we acquired Myspace LLC, which owns Myspace.com. We have faced and may continue to face claims or lawsuits or incur liability as a result of content published or made available on Myspace.com, including claims for defamation, intellectual property rights, including copyright infringement, rights of publicity and privacy, illegal content, misinformation, content regulation and personal injury torts. The laws relating to the liability of providers of online products or services for activities of the people who use them remain somewhat unsettled, both within the United States and internationally. This risk is enhanced in certain jurisdictions outside the United States where our protection from liability for third-party actions may be unclear or where we may be less protected under local laws than we are in the United States. For example, in April 2019, the European Union passed a directive expanding online platform liability for copyright infringement and regulating certain uses of news content online, which member states must implement by June 2021. In addition, there have been various Congressional efforts, executive actions, and civil litigation efforts to restrict the scope of the protections available to online platforms under Section 230 of the Communications Decency Act, and our current protections from liability for third-party content in the United States could decrease or change. We could incur significant costs investigating and defending claims related to content published or made available on Myspace.com and, if we are found liable, could face significant damages.

In 2011, Myspace LLC was the subject of an investigation by the Federal Trade Commission (“FTC”) relating to its privacy practices. In connection with its settlement of this matter with the FTC in 2012, Myspace LLC agreed to a settlement order that bars Myspace LLC from misrepresenting the extent to which it protects the privacy of users’ personal information or the extent to which it belongs to or complies with any privacy, security or other compliance program. The order also requires that Myspace LLC establish a comprehensive privacy program designed to protect consumers’ information, and to obtain biennial assessments of its privacy program by independent, third-party auditors for 20 years. The order terminates in August 2032. If Myspace LLC fails to comply with the mandates of the FTC consent order, or if Myspace LLC is found to be in violation of the consent order or other requirements, we may be subject to regulatory or governmental investigations or lawsuits, which may result in significant monetary fines, judgments, or other penalties, and we may also be required to make additional changes to our business practices.

Myspace.com has been and may in the future be a source of cybersecurity incidents or data breaches. In 2016, we announced our discovery of a third-party cyber-attack in which Myspace.com usernames, passwords and email addresses were stolen from the old Myspace platform prior to June 11, 2013, when the site was relaunched with significant steps to strengthen account security. While we took steps to remediate the attack, including notifying and invalidating the passwords of known affected users, any further failure to prevent or mitigate security breaches and improper access to or disclosure of the data on the Myspace.com site could result in litigation, indemnity obligations, regulatory enforcement actions, investigations, fines, penalties, mitigation and remediation costs, disputes, reputational harm, diversion of management’s attention, and other liabilities and damage to our business. Myspace.com may also face operational or performance issues. For example, as a result of a server migration project in 2019, older photo, video or audio files of some users were lost.

Myspace.com has in the past been, and may in the future be, the subject of unfavorable publicity regarding, for example, its privacy practices, site quality and site operational matters. Myspace.com may also face negative publicity relating to content or information that is published or made available on the platform, including defamation, dissemination of misinformation or news hoaxes, discrimination, violations of intellectual property rights, violations of rights of publicity and privacy, hate speech or other types of content. Any such negative publicity could damage our reputation and the reputation of our primary business, which could adversely affect our business and financial results.

The market growth forecasts included in this Annual Report may prove to be inaccurate and, even if the market in which we compete achieves forecasted growth, we cannot assure you our business will grow at similar rates, if at all.

Market growth forecasts are subject to significant uncertainty and are based on assumptions and estimates which may not prove to be accurate. The forecasts in this Annual Report relating to expected growth in the digital advertising and programmatic ad markets may prove to be inaccurate. Even if these markets experience the forecasted growth, we may not grow our business at similar rates, or at all. Our growth is subject to many factors including our success in implementing our business strategy, which is subject to many risks and uncertainties.

Risks Related to Data Privacy

Changes in legislative, judicial, regulatory, or cultural environments relating to information collection, use and processing may limit our ability to collect, use and process data. Such developments could cause revenue to decline, increase the cost of data, reduce the availability of data and adversely affect the demand for our products and services.

We receive, store and process personal information and other data from and about consumers in addition to personal information and other data from and about our customers, employees, and services providers. Our handling of this data is subject to a wide variety of federal, state, and foreign laws and regulations and is subject to regulation by various government authorities and consumer actions. Our data handling is also subject to contractual obligations and may be deemed to be subject to industry standards.

The U.S. federal and various state and foreign governments have adopted or proposed laws relating to the collection, disclosure, processing, use, storage and security of data relating to individuals and households, including the use of contact information and other data for marketing, advertising and other communications with individuals and businesses. In the U.S., various laws and regulations apply to the collection, disclosure, processing, use, storage and security of certain types of data. Additionally, the FTC, many state attorneys general, and many courts are interpreting federal and state consumer protection laws as imposing standards for the collection, disclosure, process, use, storage and security of data. The regulatory framework for data privacy issues worldwide is complex, continually evolving and often conflicting, and is likely to remain uncertain for the foreseeable future. The occurrence of unanticipated events often rapidly drives the adoption of legislation or regulation affecting the use, collection or other processing of data and manner in which we conduct our business. As a result, further restrictions could be placed upon the collection, disclosure, processing, use, storage and security of information, which could result in a material increase in the cost of obtaining certain kinds of data and could limit the ways in which we may collect, disclose, process, use, store or secure information.

U.S. federal and state legislatures, along with federal regulatory authorities, have recently increased their focus on matters concerning the collection and use of consumer data, including relating to interest-based advertising, or the use of data to draw inferences about a user's interests and deliver relevant advertising to that user, and similar or related practices, such as cross-device data collection and aggregation, and steps taken to de-identify personal data and to use and distribute the resulting data, including for purposes of personalization and the targeting of advertisements. In the U.S., non-sensitive consumer data generally may be used under current rules and regulations, subject to certain restrictions, including relating to transparency and affirmative "opt-out" rights of the collection or use of such data in certain instances. To the extent additional opt-out rights are made available in the U.S., additional regulations are imposed, or if an "opt-in" model were to be adopted, less data would be available, the cost of data and compliance would be higher, or we could be required to modify our data processing practices and policies. For example, California recently enacted legislation, the CCPA, that became operative on January 1, 2020 and came under California Attorney General ("AG") enforcement on July 1, 2020. The CCPA requires covered companies to, among other things, provide new disclosures to California consumers and grant such consumers a new right to opt-out of "sales" of personal information, a concept that is defined broadly. The CCPA is also subject to regulations issued by the California AG, which were finalized and became effective in August 2020. The California Privacy Rights and Enforcement Act ("CPRA"), which was passed as a ballot initiative in November 2020 and comes into effect on January 1, 2023, expands upon the CCPA and, among other things, creates new categories of personal information with additional protections, creates new data subject rights such as a right of correction, creates a new state rulemaking and enforcement agency for the CPRA, expands potential liability for violations and gives consumers rights to opt out of additional forms of data sharing with third parties. It remains unclear how aspects of the CCPA (as amended by the CPRA) or its implementing regulations will be interpreted. We cannot yet fully predict the impact of these laws on our business or operations, but it or future regulations (particularly any regulations using an "opt-in" model), could require us or our customers to modify our data processing practices and policies and to incur substantial costs and expenses in an effort to comply. Decreased availability and increased costs of information and costs of compliance could adversely affect our ability to meet our customers' expectations and requirements and could result in decreased revenue.

While our platform and people-based framework operates primarily in the United States, some of our operations, including our owned website Myspace.com, may subject us to data privacy laws outside the United States. In the European Union (“EU”), the European General Data Protection Regulation (“GDPR”) took effect on May 25, 2018 and applies to our processing related to products and services that we provide to individuals who are in the European Union. The GDPR includes significant penalties for noncompliance of up to the greater of €20 million or 4% of an enterprise’s global turnover (or revenue) for the preceding fiscal year and each European Union Member State may provide for other penalties applicable to such noncompliance.

We are subject to evolving laws and regulations that dictate whether, how, and under what circumstances we, or our data processors, may transfer, process and/or receive certain data, including data shared between countries or regions in which we operate and data shared among our products and services. For example, ongoing legal uncertainty in Europe regarding the transfer of data to the United States could result in further limitations, including in light of the recent Schrems II ruling from the Court of Justice of the European Union dated July 16, 2020. This ruling effectively invalidated the EU-U.S. Privacy Shield framework, and while it upheld the Standard Contractual Clauses (“SCCs”) as an alternative mechanism, it requires the parties to the SCCs to ensure that the level of protection required by European Union law is respected, potentially by yet-to-be-clarified supplementary measures. Similarly, legal uncertainty could result in further limitations regarding the United Kingdom, which exited the European Union with the transition period ending on December 31, 2020 (transition period for certain matters scheduled to run through December 31, 2020), in particular in relation to data transfers to and from the United Kingdom. However, as part of the European Union and the United Kingdom’s new trade deal, the European Union allows personal data to flow freely to the United Kingdom for a duration of six months in total as from January 1, 2021 (known as the “bridge”), until an adequacy decision has been adopted by the European Commission. In the unlikely event that no such adequacy decision is adopted by the European Commission at the end of the “bridge” period, we will need to rely on SCCs or other GDPR transfer mechanisms to ensure a lawful transfer of data from the European Economic Area to the United Kingdom. Certain countries outside of the EEA have also passed (e.g. Russia, China) or are considering passing laws requiring local data residency or otherwise impeding the transfer of data across borders. If one or more of the legal bases for transferring data to the U.S. is invalidated, if we are unable to transfer or receive data between and among countries and regions in which we operate, or if we are prohibited from sharing data among our products and services, it could affect the manner in which we provide our services or adversely affect our financial results. Similarly, there are a number of European legislative proposals that could also significantly affect our business. For example, the proposal for a Regulation concerning the respect for private life and the protection of personal data in electronic communications and repealing European Union Directive 2002/58/EC, could impose new obligations or limitations in areas affecting our business, notably with respect to the use of cookies.

In addition to government regulation, self-regulatory standards and other industry standards may legally or contractually apply to us or be argued to apply to us, or we may elect to comply with such standards or to facilitate our customers’ compliance with such standards. Because privacy, data protection, and information security are competitive factors in our industry, we may make statements on our website, in marketing materials, or in other settings about our data security measures and our compliance with, or our ability to facilitate our customers’ compliance with, these standards. We are members of self-regulatory bodies that impose additional requirements related to the collection, use, and disclosure of consumer data. Under the requirements of these self-regulatory bodies, in addition to other compliance obligations, we are obligated to provide all consumers with notice about our use of cookies and other technologies to execute the collection of consumer data and of our collection and use of consumer data for certain purposes, and to provide consumers with certain choices relating to the use of consumer data. Some of these self-regulatory bodies have the ability to discipline members or participants, which could result in fines, penalties, and/or public censure (which could in turn cause reputational harm). Additionally, some of these self-regulatory bodies might refer violations of their requirements to the Federal Trade Commission or other regulatory bodies.

Regulatory investigations and enforcement actions could also impact us. In the U.S., the FTC uses its enforcement powers under Section 5 of the Federal Trade Commission Act (which prohibits “unfair” and “deceptive” trade practices) to investigate companies engaging in online tracking and the processing of consumer personal information more generally. This is the basis on which the FTC investigated Myspace LLC. See “—*We face liabilities arising out of our ownership and operation of Myspace.com.*” Advocacy organizations have also filed complaints with data protection authorities against advertising technology companies, arguing that certain of these companies’ practices do not comply with the GDPR. It is possible that investigations or enforcement actions will involve our practices or practices similar to ours.

Our legal risk depends in part on our customers' or other third parties' adherence to privacy laws and regulations and their use of our services in ways consistent with end user expectations. We rely on representations made to us by customers and data suppliers that they will comply with all applicable laws, including all relevant privacy and data protection regulations. Although we make reasonable efforts to enforce such representations and contractual requirements, we do not fully audit our customers' or data suppliers' compliance with our recommended disclosures or their adherence to privacy laws and regulations. If our customers or data suppliers fail to adhere to our expectations or contracts in this regard, we and our customers or data suppliers could be subject to adverse publicity, damages, and related possible investigation or other regulatory activity.

Because the interpretation and application of privacy and data protection laws, regulations and standards are uncertain, it is possible that these laws, regulations and standards may be interpreted and applied in manners that are, or are asserted to be, inconsistent with our data management practices or the technological features of our products and services. If so, in addition to the possibility of fines, investigations, lawsuits and other claims and proceedings, it may be necessary or desirable for us to fundamentally change our business activities and practices or modify our products and services, which could have an adverse effect on our business. We may be unable to make such changes or modifications in a commercially reasonable manner or at all. Any inability to adequately address privacy concerns, even if unfounded, or any actual or perceived failure to comply with applicable privacy or data protection laws, regulations, standards or policies, could result in additional cost and liability to us, damage our reputation, inhibit sales and harm our business. Furthermore, the costs of compliance with, and other burdens imposed by, the laws, regulations, standards and policies that are applicable to the businesses of our customers may limit the use and adoption of, and reduce the overall demand for, our platform. Privacy concerns, whether valid or not valid, may inhibit market adoption of our platform particularly in certain industries and foreign countries.

Adapting our business to the CCPA and its implementing regulations and to the enhanced and evolving privacy obligations in the EU and elsewhere could continue to involve substantial expense and may cause us to divert resources from other aspects of our operations, all of which may adversely affect our business. Further, adaptation of the digital advertising marketplace requires increasingly significant collaboration between participants in the market, such as publishers and marketers. Failure of the industry to adapt to changes required for operating under laws including the CCPA and the GDPR and user response to such changes could negatively impact inventory, data, and demand. We cannot control or predict the pace or effectiveness of such adaptation, and we cannot currently predict the impact such changes may have on our business.

Our business or ability to operate our platform could be impacted by changes in the technology industry by established technology companies or government regulation. Such developments, including the restriction of "third-party cookies," could cause instability in the advertising technology industry.

Digital advertising and in-app advertising are largely dependent on established technology companies and their operation of the most commonly used Internet browsers (Chrome, Firefox, Internet Explorer and Safari), devices and their operating systems (Android and iOS). These companies may change the operations or policies of their browsers, devices and operating systems in a manner that fundamentally changes our ability to operate our platform or collect data. Users of these browsers, devices or operating systems may also adjust their behaviors and use of technology in ways that change our ability to collect data. Digital advertising and in-app advertising are also dependent, in part, on internet protocols and the practices of internet service providers, including IP address allocation. Changes that these providers make to their practices, or adoption of new internet protocols, may materially limit or alter the availability of data. A limitation or alteration of the availability of data in any of these or other instances may have a material impact on the advertising technology industry, which could decrease advertising budgets and subsequently reduce our revenue and adversely affect our business, operating results and financial condition.

For example, browser providers have recently enacted changes restricting the use of third-party cookies in their browsers, which may cause instability in the digital advertising market. Execution of digital advertising relies to a significant extent on the use of cookies, pixels and other similar technology, including mobile device identifiers that are provided by mobile operating systems for advertising purposes, which we refer to collectively as cookies, to collect data about users and devices. Although our business is less reliant on cookies than some of our competitors because we do not need cookies for marketers and their advertising agencies to identify consumers with our identity resolution capabilities and identity graph, we do use third-party cookies. Third-party cookies are cookies owned and used by parties other than the owners of the website visited by the Internet user, in connection with our business for execution of obtaining information about consumers, and for delivering digital advertising. In January 2020, Google publicly stated it intends for Chrome to block third-party cookies at some point in the following 24 months. Google has also introduced ad blocking software in its Chrome web browser that will block certain ads based on quality standards established under a multi-stakeholder coalition. Additionally, the Safari browser currently blocks third-party cookies by default and has recently added controls that algorithmically block or limit some cookies. Other browsers have added similar controls. These actions will have significant impacts on the digital advertising and marketing ecosystems in which we operate, which could cause changes in advertising budget allocations and thereby could negatively impact our business.

For in-app advertising, data regarding interactions between users and devices are tracked mostly through stable, pseudonymous mobile device identifiers that are built into the device operating system with privacy controls that allow users to express a preference with respect to data collection for advertising, including to disable the identifier. These identifiers and privacy controls are defined by the developers of the mobile platforms and could be changed by the mobile platforms in a way that may negatively impact our business. Privacy aspects of other channels for programmatic advertising, such as connected TVs or over-the-top video, are still developing. Technical or policy changes, including regulation or industry self-regulation, could harm our growth in those channels.

Digital advertising is also subject to government regulation which may impact our ability to collect and use data. As the collection and use of data for digital advertising has received ongoing media attention over the past several years, some government regulators, such as the FTC, and privacy advocates have raised significant concerns around observed data. There has been an array of 'do-not-track' efforts, suggestions and technologies introduced to address these concerns. However, the potential regulatory and self-regulatory landscape is inherently uncertain, and there is no consensus definition of tracking, nor agreement on what would be covered by 'do-not-track' functionality. There is activity by the major Internet browsers to default set on 'do-not-track' functionality, including by Safari and Firefox. It is not clear if other Internet browsers will follow.

Limitations on our or our customers' ability to collect and use data for advertising, whether imposed by established technology companies or U.S. legislation, or otherwise, may impact the performance of our platform.

Uncertainty caused by lack of uniformity among laws to which we are or may become subject and instability in the global legal landscape may cause us to incur additional or unexpected costs and legal risk, increase our risk of reputational harm, or cause us to change our platform or business model.

We cannot predict the future of the regulatory landscape regarding the protection of personal information. U.S. (state and federal) and foreign governments are considering enacting additional legislation related to privacy and data protection and we expect to see an increase in, or changes to, legislation and regulation in this area. For example, in the U.S., a federal privacy law is the subject of active discussion and several bills have been introduced. Additionally, industry groups in the U.S. and their international counterparts have self-regulatory guidelines that are subject to periodic updates to which we have agreed to adhere. High profile incidents involving breaches of personal information or misuse of consumer information may increase the likelihood of new U.S. federal, state, or international laws or regulations in addition to those set out above, and such laws and regulations may be inconsistent across jurisdictions.

In addition to laws regulating the processing of personal information, we are also subject to regulation with respect to political advertising activities, which are governed by various federal and state laws in the U.S., and national and provincial laws worldwide. Online political advertising laws are rapidly evolving, and in certain jurisdictions have varying transparency and disclosure requirements. We have already seen publishers impose varying prohibitions and restrictions on the types of political advertising and breadth of targeted advertising allowed on their platforms with respect to advertisements for the 2020 U.S. presidential election in response to political advertising scandals in prior election cycles. The lack of uniformity and increasing requirements on transparency and disclosure could adversely impact the inventory made available for political advertising and the demand for such inventory on our platform, and otherwise increase our operating and compliance costs.

Concerns about political advertising, whether or not valid and whether or not driven by applicable laws and regulations, industry standards, customer or inventory provider expectations, or public perception, may harm our reputation, result in loss of goodwill, and inhibit use of our platform by current and future customers.

Additionally, as the advertising industry evolves, and new ways of collecting, combining and using data are created, governments may enact legislation in response to technological advancements and changes that could result in our having to re-design features or functions of our platform, therefore incurring unexpected compliance costs.

These laws and other obligations may be interpreted and applied in a manner that is inconsistent with our existing data management practices or the features of our platform. If so, in addition to the possibility of fines, lawsuits and other claims, we could be required to fundamentally change our business activities and practices or modify our products, which could have an adverse effect on our business. We may be unable to make such changes and modifications in a commercially reasonable manner or at all, and our ability to develop new products and features could be limited. All of this could impair our or our customers' ability to collect, use, or disclose information relating to consumers, which could decrease demand for our platform, increase our costs, and impair our ability to maintain and grow our customer base and increase our revenue.

Commitments to advertising technology industry self-regulation may subject us to investigation by government or self-regulatory bodies, government or private litigation, and operational costs or harm to reputation or brand.

In addition to our legal obligations, we have committed to comply, and generally require our customers and partners to comply, with applicable self-regulatory principles, such as the Network Advertising Initiative's Code of Conduct and the Digital Advertising Alliance's Self-Regulatory Principles for Online Behavioral Advertising in the U.S., and similar self-regulatory principles in Europe and Canada adopted by the local Digital Advertising Alliance.

Trade associations and industry self-regulatory groups have also promulgated best practices and other industry standards relating to targeted advertising. Our efforts to comply with these self-regulatory principles include offering Internet users notice and choice when advertising is served to them based, in part, on their interests. If we or our customers or partners make mistakes in the implementation of these principles, or if self-regulatory bodies expand these guidelines or government authorities issue different guidelines regarding Internet-based advertising, or opt out mechanisms fail to work as designed, or if Internet users misunderstand our technology or our commitments with respect to these principles, we may, as a result, be subject to negative publicity, government investigation, government or private litigation, or investigation by self-regulatory bodies or other accountability groups. Any such action against us, or investigations, even if meritless, could be costly and time consuming, require us to change our business practices, cause us to divert management's attention and our resources, and be damaging to our brand, reputation, and business. In addition, privacy advocates and industry groups may propose new and different self-regulatory standards that either legally or contractually apply to us. We cannot yet determine the impact such future standards may have on our business.

Unfavorable publicity and negative public perception about our industry, particularly concerns regarding data privacy and security relating to our industry's technology and practices, and perceived failure to comply with laws and industry self-regulation, could adversely affect our business and operating results.

With the growth of digital advertising and e-commerce, there is increasing awareness and concern among the general public, privacy advocates, mainstream media, governmental bodies and others regarding marketing, advertising, and data privacy matters, particularly as they relate to individual privacy interests and the global reach of the online marketplace. Concerns about industry practices with regard to the collection, use, and disclosure of personal information, whether or not valid and whether driven by applicable laws and regulations, industry standards, customer or inventory provider expectations, or the broader public, may harm our reputation, result in loss of goodwill, and inhibit use of our platform by current and future customers. Any unfavorable publicity or negative public perception about us, our industry, including our competitors, or even other data focused industries can affect our business and results of operations, and may lead to digital publishers or our customers changing their business practices or additional regulatory scrutiny or lawmaking that affects us or our industry. For example, in recent years, consumer advocates, mainstream media and elected officials have increasingly and publicly criticized the data and marketing industry for its collection, storage and use of personal data. Additional public scrutiny may lead to general distrust of our industry, consumer reluctance to share and permit use of personal data, increased consumer opt-out rates or increased private class actions, any of which could negatively influence, change or reduce our current and prospective customers' demand for our products and services, subject us to liability and adversely affect our business and operating results.

Risks Related to Our Intellectual Property

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

Our success depends, in part, on our ability to protect proprietary methods and technologies that we develop or otherwise acquire, so that we can prevent others from using our inventions and proprietary information. If we fail to protect our intellectual property rights adequately, our competitors might gain access to our technology and our business might be adversely affected. We rely upon a combination of patent, trademark, copyright and trade secret laws, as well as third-party confidentiality and non-disclosure agreements, to establish and protect our proprietary rights. Establishing trade secret, copyright, trademark, domain name, and patent protection can be difficult and expensive, and the laws, procedures and restrictions may provide only limited protection. It may be possible for unauthorized third parties to copy or reverse engineer aspects of our technology or otherwise obtain and use information that we regard as proprietary, or to develop technologies similar or superior to our technology or design around our proprietary rights, despite the steps we have taken to protect our proprietary rights. Our contracts with our employees and contractors that relate to intellectual property issues generally restrict the use of our confidential information solely in connection with our services. However, the theft or misuse of our proprietary information could occur by employees or contractors who have access to our technology.

While we have issued patents and patent applications pending, we may be unable to obtain patent protection for the technology covered in our patent applications or such patent protection may not be obtained quickly enough to meet our business needs. Furthermore, the patent prosecution process is expensive, time-consuming, and complex, and we may not be able to prepare, file, prosecute, maintain, and enforce all necessary or desirable patent applications at a reasonable cost or in a timely manner. The scope of patent protection also can be reinterpreted after issuance and issued patents may be invalidated. Even if our patent applications do issue as patents, they may not issue in a form that is sufficiently broad to protect our technology, prevent competitors or other third parties from competing with us or otherwise provide us with any competitive advantage.

Policing unauthorized use of our technology is difficult. In addition, the laws of some foreign countries may not be as protective of intellectual property rights as those of the United States, and mechanisms for enforcement of our proprietary rights in such countries may be inadequate. If we are unable to protect our proprietary rights (including in particular, the proprietary aspects of our platform) we may find ourselves at a competitive disadvantage to others who have not incurred the same level of expense, time and effort to create and protect their intellectual property.

We are subject to third party claims for alleged infringement of their proprietary rights, which would result in additional expense and potential damages.

There is significant patent and other intellectual property development activity in the digital advertising industry. Third-party intellectual property rights may cover significant aspects of our technologies or business methods or block us from expanding our offerings. Our success depends on the continual development of our platform. From time to time, we receive claims from third parties that our platform and underlying technology infringe or violate such third parties' intellectual property rights. To the extent we gain greater public recognition, we may face a higher risk of being the subject of intellectual property claims. The cost of defending against such claims, whether or not the claims have merit, is significant, regardless of whether we are successful in our defense, and could divert the attention of management, technical personnel and other employees from our business operations. Litigation regarding intellectual property rights is inherently uncertain due to the complex issues involved, and we may not be successful in defending ourselves in such matters. Additionally, we may be obligated to indemnify our customers or inventory and data suppliers in connection with any such litigation. If we are found to infringe these rights, we could potentially be required to cease utilizing portions of our platform. We may also be required to develop alternative non-infringing technology, which could require significant time and expense. Alternatively, we could be required to pay royalty payments, either as a one-time fee or ongoing, as well as damages for past use that was deemed to be infringing. If we cannot license or develop technology for any allegedly infringing aspect of our business, we would be forced to limit our service and may be unable to compete effectively. Any of these results could harm our business.

We face potential liability and harm to our business based on the nature of our business and the content on our platform.

Advertising often results in litigation relating to copyright or trademark infringement, public performance royalties or other claims based on the nature and content of advertising that is distributed through our platform. Though we contractually require agencies to represent to us that they have the rights necessary to serve advertisements through our platform, we do not independently verify whether we are permitted to deliver, or review the content of, such advertisements. If any of these representations are untrue, we may be exposed to potential liability and our reputation may be damaged. While our customers are typically obligated to indemnify us, such indemnification may not fully cover us, or we may not be able to collect. In addition to settlement costs, we may be responsible for our own litigation costs, which can be extensive.

Risks Relating to Governmental Regulation and Tax Matters

Our business is subject to a wide range of laws and regulations, many of which are evolving, and failure to comply with such laws and regulations could harm our business, financial condition, and results of operations.

Our business is subject to regulation by various federal, state, local and foreign governmental agencies, including agencies responsible for monitoring and enforcing employment and labor laws, consumer protection laws, anti-bribery laws, import and export controls, federal securities laws, and tax laws and regulations. These laws and regulations impose added costs on our business and could require us to make changes to our business or platform. Noncompliance with applicable regulations or requirements could subject us to investigations, enforcement actions, sanctions, fines, damages, penalties, injunctions or termination of contracts. Any such matters could have a material adverse effect on our business, results of operations and financial condition.

Viant Technology Inc. depends on distributions from Viant Technology LLC to pay any dividends, if declared, taxes and other expenses, including payments under the Tax Receivable Agreement.

Viant Technology Inc. is a holding company and its only business is to act as the managing member of Viant Technology LLC, and its only material assets are Class A units representing approximately 19.5% of the membership interests of Viant Technology LLC. Viant Technology Inc. does not have any independent means of generating revenue. We anticipate that Viant Technology LLC will continue to be treated as a partnership for U.S. federal income tax purposes and, as such, generally will not be subject to any entity-level U.S. federal income tax. Instead, taxable income will be allocated to the members of Viant Technology LLC. Accordingly, Viant Technology Inc. is required to pay income taxes on its allocable share of any net taxable income of Viant Technology LLC. We cause Viant Technology LLC to make distributions to each of its members, including Viant Technology Inc., in an amount intended to enable each member to pay all applicable taxes on taxable income allocable to such member and to allow Viant Technology Inc. to make payments under the Tax Receivable Agreement. In addition, Viant Technology LLC reimburses Viant Technology Inc. for corporate and other overhead expenses. If the amount of tax distributions to be made exceeds the amount of funds available for distribution, Viant Technology Inc. shall receive the full amount of its tax distribution before the other members receive any distribution and the balance, if any, of funds available for distribution shall be distributed to the other members pro rata in accordance with their assumed tax liabilities. To the extent that Viant Technology Inc. needs funds, and Viant Technology LLC is restricted from making such distributions under applicable laws or regulations, or is otherwise unable to provide such funds, it could materially and adversely affect Viant Technology Inc.'s ability to pay dividends and taxes and other expenses, including payments under the Tax Receivable Agreement, and affect our liquidity and financial condition.

The Internal Revenue Service ("IRS") might challenge the tax basis step-ups and other tax benefits we received in connection with our IPO and the related transactions and in connection with future acquisitions of Viant Technology LLC units.

The Viant Technology LLC units held directly by the members of Viant Technology LLC other than Viant Technology Inc., including the Vanderhook Parties, may in the future be exchanged for shares of our Class A common stock or, at our election, cash. Those exchanges may result in increases in the tax basis of the assets of Viant Technology LLC that otherwise would not have been available. These increases in tax basis are expected to increase (for tax purposes) Viant Technology Inc.'s depreciation and amortization and, together with other tax benefits, reduce the amount of tax that Viant Technology Inc. would otherwise be required to pay, although it is possible that the IRS might challenge all or part of these tax basis increases or other tax benefits, and a court might sustain such a challenge. Viant Technology Inc.'s ability to achieve benefits from any tax basis increases or other tax benefits will depend upon a number of factors, as discussed below, including the timing and amount of our future income.

We will not be reimbursed for any payments previously made under the Tax Receivable Agreement if the basis increases or other tax benefits described above are successfully challenged by the IRS or another taxing authority. As a result, in certain circumstances, payments could be made under the Tax Receivable Agreement in excess of our ultimate cash tax savings.

Viant Technology Inc. is required to pay over to continuing members of Viant Technology LLC most of the tax benefits Viant Technology Inc. receives from tax basis step-ups (and certain other tax benefits) attributable to its acquisition of units of Viant Technology LLC, and the amount of those payments are expected to be substantial.

Viant Technology Inc. has entered into a Tax Receivable Agreement with Viant Technology LLC, continuing members of Viant Technology LLC (not including Viant Technology Inc.) and the representative of such continuing members of Viant Technology LLC (the "TRA Representative"). The Tax Receivable Agreement provides for payment by Viant Technology Inc. to continuing members of Viant Technology LLC (not including Viant Technology Inc.) of 85% of the amount of the net cash tax savings, if any, that Viant Technology Inc. realizes (or, under certain circumstances, is deemed to realize) as a result of increases in tax basis (and utilization of certain other tax benefits) resulting from (i) Viant Technology Inc.'s acquisition of Viant Technology LLC units from pre-IPO members of Viant Technology LLC in connection with the IPO and in future exchanges and (ii) any payments Viant Technology Inc. makes under the Tax Receivable Agreement (including tax benefits related to imputed interest). Viant Technology Inc. will retain the benefit of the remaining 15% of these net cash tax savings.

The term of the Tax Receivable Agreement will continue until all tax benefits that are subject to the Tax Receivable Agreement have been utilized or have expired, unless we exercise our right to terminate the Tax Receivable Agreement (or it is terminated due to a change in control or our breach of a material obligation thereunder), in which case, Viant Technology Inc. will be required to make the termination payment specified in the Tax Receivable Agreement. In addition, payments we make under the Tax Receivable Agreement will be increased by any interest accrued from the due date (without extensions) of the corresponding tax return. The actual future payments to the continuing members of Viant Technology LLC will vary based on the factors discussed below, and estimating the amount and timing of payments that may be made under the Tax Receivable Agreement is by its nature imprecise, as the calculation of amounts payable depends on a variety of factors and future events. We expect to receive distributions from Viant Technology LLC in order to make any required payments under the Tax Receivable Agreement. However, we may need to incur debt to finance payments under the Tax Receivable Agreement to the extent such distributions or our cash resources are insufficient to meet our obligations under the Tax Receivable Agreement as a result of timing discrepancies or otherwise.

The actual increase in tax basis, as well as the amount and timing of any payments under the Tax Receivable Agreement, will vary depending on a number of factors, including the price of our Class A common stock at the time of the exchange; the timing of future exchanges; the extent to which exchanges are taxable; the amount and timing of the utilization of tax attributes; the amount, timing and character of Viant Technology Inc.'s income; the U.S. federal, state and local tax rates then applicable; the amount of each exchanging unitholder's tax basis in its units at the time of the relevant exchange; the depreciation and amortization periods that apply to the increases in tax basis; the timing and amount of any earlier payments that Viant Technology Inc. may have made under the Tax Receivable Agreement and the portion of Viant Technology Inc.'s payments under the Tax Receivable Agreement that constitute imputed interest or give rise to depreciable or amortizable tax basis. We expect that, as a result of the increases in the tax basis of the tangible and intangible assets of Viant Technology LLC attributable to the exchanged Viant Technology LLC interests, and certain other tax benefits, the payments that Viant Technology Inc. will be required to make to the holders of rights under the Tax Receivable Agreement will be substantial. There may be a material negative effect on our financial condition and liquidity if, as described below, the payments under the Tax Receivable Agreement exceed the actual benefits Viant Technology Inc. receives in respect of the tax attributes subject to the Tax Receivable Agreement and/or distributions to Viant Technology Inc. by Viant Technology LLC are not sufficient to permit Viant Technology Inc. to make payments under the Tax Receivable Agreement.

In certain circumstances, payments under the Tax Receivable Agreement may be accelerated and/or significantly exceed the actual tax benefits, if any, that Viant Technology Inc. actually realizes.

The Tax Receivable Agreement provides that if (i) Viant Technology Inc. exercises its right to early termination of the Tax Receivable Agreement in whole (that is, with respect to all benefits due to all beneficiaries under the Tax Receivable Agreement) or in part (that is, with respect to some benefits due to all beneficiaries under the Tax Receivable Agreement), (ii) Viant Technology Inc. experiences certain changes in control, (iii) the Tax Receivable Agreement is rejected in certain bankruptcy proceedings, (iv) Viant Technology Inc. fails (subject to certain exceptions) to make a payment under the Tax Receivable Agreement within 180 days after the due date or (v) Viant Technology Inc. materially breaches its obligations under the Tax Receivable Agreement, Viant Technology Inc. will be obligated to make an early termination payment to holders of rights under the Tax Receivable Agreement equal to the present value of all payments that would be required to be paid by Viant Technology Inc. under the Tax Receivable Agreement. The amount of such payments will be determined on the basis of certain assumptions in the Tax Receivable Agreement, including (i) the assumption that Viant Technology Inc. would have enough taxable income in the future to fully utilize the tax benefit resulting from the tax assets that are the subject of the Tax Receivable Agreement, (ii) the assumption that any item of loss deduction or credit generated by a basis adjustment or imputed interest arising in a taxable year preceding the taxable year that includes an early termination will be used by Viant Technology Inc. ratably from such taxable year through the earlier of (x) the scheduled expiration of such tax item or (y) 15 years; (iii) the assumption that any non-amortizable assets are deemed to be disposed of in a fully taxable transaction on the fifteenth anniversary of the earlier of the basis adjustment and the early termination date; (iv) the assumption that U.S. federal, state and local tax rates will be the same as in effect on the early termination date, unless scheduled to change; and (v) the assumption that any units of Viant Technology LLC (other than those held by Viant Technology Inc.) outstanding on the termination date are deemed to be exchanged for an amount equal to the market value of the corresponding number of shares of Class A common stock on the termination date. Any early termination payment may be made significantly in advance of the actual realization, if any, of the future tax benefits to which the termination payment relates. The amount of the early termination payment is determined by discounting the present value of all payments that would be required to be paid by Viant Technology Inc. under the Tax Receivable Agreement at a rate equal to the lesser of (a) 6.5% and (b) the Secured Overnight Financing Rate, as reported by the Wall Street Journal ("SOFR") plus 400 basis points.

Moreover, as a result of an elective early termination, a change in control or Viant Technology Inc.'s material breach of its obligations under the Tax Receivable Agreement, Viant Technology Inc. could be required to make payments under the Tax Receivable Agreement that exceed its actual cash savings under the Tax Receivable Agreement. Thus, Viant Technology Inc.'s obligations under the Tax Receivable Agreement could have a substantial negative effect on its financial condition and liquidity and could have the effect of delaying, deferring or preventing certain mergers, asset sales, or other forms of business combinations or changes of control. We cannot assure you that we will be able to finance any early termination payment. It is also possible that the actual benefits ultimately realized by us may be significantly less than were projected in the computation of the early termination payment. We will not be reimbursed if the actual benefits ultimately realized by us are less than were projected in the computation of the early termination payment.

Payments under the Tax Receivable Agreement will be based on the tax reporting positions that we will determine and the IRS or another tax authority may challenge all or part of the tax basis increases, as well as other related tax positions we take, and a court could sustain such challenge. If any tax benefits that have given rise to payments under the Tax Receivable Agreement are subsequently disallowed, Viant Technology Inc. would be entitled to reduce future amounts otherwise payable to a holder of rights under the Tax Receivable Agreement to the extent the holder has received excess payments. However, the required final and binding determination that a holder of rights under the Tax Receivable Agreement has received excess payments may not be made for a number of years following commencement of any challenge, and Viant Technology Inc. will not be permitted to reduce its payments under the Tax Receivable Agreement until there has been a final and binding determination, by which time sufficient subsequent payments under the Tax Receivable Agreement may not be available to offset prior payments for disallowed benefits. Viant Technology Inc. will not be reimbursed for any payments previously made under the Tax Receivable Agreement if the basis increases described above are successfully challenged by the IRS or another taxing authority. As a result, in certain circumstances, payments could be made under the Tax Receivable Agreement that are significantly in excess of the benefit that Viant Technology Inc. actually realizes in respect of the increases in tax basis (and utilization of certain other tax benefits) and Viant Technology Inc. may not be able to recoup those payments, which could adversely affect Viant Technology Inc.'s financial condition and liquidity.

In certain circumstances, Viant Technology LLC will be required to make distributions to us and the existing members of Viant Technology LLC, and the distributions that Viant Technology LLC will be required to make may be substantial.

Viant Technology LLC is expected to continue to be treated as a partnership for U.S. federal income tax purposes and, as such, is not subject to U.S. federal income tax. Instead, taxable income is allocated to members, including Viant Technology Inc. Pursuant to the Viant Technology LLC Operating Agreement, Viant Technology LLC makes tax distributions to its members, including Viant Technology Inc., which generally are pro rata based on the ownership of Viant Technology LLC units, calculated using an assumed tax rate, to help each of the members to pay taxes on that member's allocable share of Viant Technology LLC's net taxable income. Under applicable tax rules, Viant Technology LLC is required to allocate net taxable income disproportionately to its members in certain circumstances. Because tax distributions are determined based on the member who is allocated the largest amount of taxable income on a per unit basis and on an assumed tax rate that is the highest possible rate applicable to any member, but are made pro rata based on ownership of Viant Technology LLC units, Viant Technology LLC is required to make tax distributions that, in the aggregate, likely exceed the aggregate amount of taxes payable by its members with respect to the allocation of Viant Technology LLC income.

Funds used by Viant Technology LLC to satisfy its tax distribution obligations are not available for reinvestment in our business. Moreover, the tax distributions Viant Technology LLC is required to make may be substantial, and may significantly exceed (as a percentage of Viant Technology LLC's income) the overall effective tax rate applicable to a similarly situated corporate taxpayer. In addition, because these payments are calculated with reference to an assumed tax rate, and because of the disproportionate allocation of net taxable income, these payments likely significantly exceed the actual tax liability for many of the existing members of Viant Technology LLC.

As a result of potential differences in the amount of net taxable income allocable to us and to the existing members of Viant Technology LLC, as well as the use of an assumed tax rate in calculating Viant Technology LLC's distribution obligations, we may receive distributions significantly in excess of our tax liabilities and obligations to make payments under the Tax Receivable Agreement. We may choose to manage these excess distributions through a number of different approaches, including by applying them to general corporate purposes.

Pursuant to recent regulations issued under Section 162(m) of the Code, Viant Technology Inc. may not be permitted to deduct its distributive share of compensation expense to the extent that the compensation was paid by Viant Technology LLC to certain of Viant Technology Inc.'s covered employees, potentially resulting in additional U.S. federal income tax liability for Viant Technology Inc. and reducing cash available for distribution to Viant Technology Inc.'s stockholders and/or for the payment of other expenses and obligations of Viant Technology Inc.

Section 162(m) of the Code disallows the deduction by any publicly held corporation of applicable employee compensation paid with respect to any covered employee to the extent that such compensation for the taxable year exceeds \$1,000,000. A "covered employee" means any employee of the taxpayer if the employee (a) is the principal executive officer ("PEO") or principal financial officer ("PFO") of the taxpayer at any time during the taxable year, or was an individual acting in such a capacity, (b) was among the three highest compensated executive officers for the taxable year (other than the PEO or PFO or an individual acting in such a capacity), or (c) was a covered employee of the taxpayer (or any predecessor) for any preceding taxable year beginning after December 31, 2016. Pursuant to final regulations released for publication in the Federal Register by the IRS and the United States Department of the Treasury on December 30, 2020 (the "162(m) Regulations"), Viant Technology Inc. will not be permitted to claim a deduction for the distributive share of compensation expense of Viant Technology LLC allocated to it to the extent that such distributive share, plus the amount of any compensation paid directly by Viant Technology Inc., exceeds \$1,000,000 with respect to a covered employee, even if Viant Technology LLC, rather than Viant Technology Inc., pays the compensation. The 162(m) Regulations were effective upon publication of final regulations in the Federal Register but apply to any deduction for compensation that is otherwise allowable for a taxable year ending on or after December 20, 2019. However, the 162(m) Regulations do not apply to compensation paid pursuant to a written binding contract in effect on December 20, 2019 that is not materially modified after that date. Accordingly, to the extent that Viant Technology Inc. is disallowed a deduction for its distributive share of compensation expense under Section 162(m) of the Code, it may result in additional U.S. federal income tax liability for Viant Technology Inc. and/or reduce cash available for distribution to Viant Technology Inc.'s stockholders or for the payment of other expenses and obligations of Viant Technology Inc.

Future changes to tax laws or our effective tax rate could materially and adversely affect our company and reduce net returns to our stockholders.

Our tax treatment is subject to the enactment of, or changes in, tax laws, regulations and treaties, or the interpretation thereof, tax policy initiatives and reforms under consideration and the practices of tax authorities in various jurisdictions, including those related to the Base Erosion and Profit Shifting Project of the Organisation for Economic Co-Operation and Development (“OECD”), the European Commission’s state aid investigations and other initiatives. Such changes may include (but are not limited to) the taxation of operating income, investment income, dividends received or (in the specific context of withholding tax) dividends paid, or the taxation of partnerships and other passthrough entities. In addition, the Group of Twenty, the OECD, the U.S.

Congress and Treasury Department and other government agencies in jurisdictions where we and our affiliates do business have focused on issues related to the taxation of multinational corporations, including, but not limited to, transfer pricing, country-by-country reporting and base erosion. As a result, the tax laws in the United States and in jurisdictions which we do business could change on a prospective or retroactive basis, and any such changes could have an adverse effect on our worldwide tax liabilities, business, financial condition and results of operations. We are unable to predict what tax reform may be proposed or enacted in the future or what effect such changes would have on our business, but such changes, to the extent they are brought into tax legislation, regulations, policies or practices, could affect our financial position and overall or effective tax rates in the future in countries where we have operations, reduce post-tax returns to our stockholders, and increase the complexity, burden and cost of tax compliance.

Our businesses are subject to income taxation in the United States. Tax rates may be subject to significant change. If our effective tax rate increases, our operating results and cash flow could be adversely affected. Our effective income tax rate can vary significantly between periods due to a number of complex factors including, but not limited to, projected levels of taxable income in each jurisdiction, tax audits conducted and settled by various tax authorities, and adjustments to income taxes upon finalization of income tax returns.

We may be required to pay additional taxes because of the U.S. federal partnership audit rules and potentially also state and local tax rules.

Under the U.S. federal partnership audit rules, subject to certain exceptions, audit adjustments to items of income, gain, loss, deduction, or credit of an entity (and any holder’s share thereof) is determined, and taxes, interest, and penalties attributable thereto, are assessed and collected, at the entity level. Viant Technology LLC (or any of its applicable subsidiaries or other entities in which Viant Technology LLC directly or indirectly invests that are treated as partnerships for U.S. federal income tax purposes) may be required to pay additional taxes, interest and penalties as a result of an audit adjustment, and Viant Technology Inc., as a member of Viant Technology LLC (or such other entities), could be required to indirectly bear the economic burden of those taxes, interest, and penalties even though we may not otherwise have been required to pay additional corporate-level taxes as a result of the related audit adjustment. Audit adjustments for state or local tax purposes could similarly result in Viant Technology LLC (or any of its applicable subsidiaries or other entities in which Viant Technology LLC directly or indirectly invests) being required to pay or indirectly bear the economic burden of state or local taxes and associated interest, and penalties.

Under certain circumstances, Viant Technology LLC or an entity in which Viant Technology LLC directly or indirectly invests may be eligible to make an election to cause members of Viant Technology LLC (or such other entity) to take into account the amount of any understatement, including any interest and penalties, in accordance with such member’s share in Viant Technology LLC in the year under audit. We will decide whether or not to cause Viant Technology LLC to make this election; however, there are circumstances in which the election may not be available and, in the case of an entity in which Viant Technology LLC directly or indirectly invests, such decision may be outside of our control. If Viant Technology LLC or an entity in which Viant Technology LLC directly or indirectly invests does not make this election, the then-current members of Viant Technology LLC (including Viant Technology Inc.) could economically bear the burden of the understatement.

If Viant Technology LLC were to become a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes, Viant Technology Inc. and Viant Technology LLC might be subject to potentially significant tax inefficiencies, and Viant Technology Inc. would not be able to recover payments previously made by it under the Tax Receivable Agreement, even if the corresponding tax benefits were subsequently determined to have been unavailable due to such status.

We intend to operate such that Viant Technology LLC does not become a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes. A “publicly traded partnership” is an entity that otherwise would be treated as a partnership for U.S. federal income tax purposes, the interests of which are traded on an established securities market or readily tradable on a secondary market or the substantial equivalent thereof. Under certain circumstances, exchanges of Viant Technology LLC units pursuant to the Viant Technology LLC Operating Agreement or other transfers of Viant Technology LLC units could cause Viant Technology LLC to be treated like a publicly traded partnership. From time to time the U.S. Congress has considered legislation to change the tax treatment of partnerships and there can be no assurance that any such legislation will not be enacted or if enacted will not be adverse to us.

If Viant Technology LLC were to become a publicly traded partnership taxable as a corporation for U.S. federal income tax purposes, significant tax inefficiencies might result for Viant Technology Inc. and Viant Technology LLC, including as a result of Viant Technology Inc.’s inability to file a consolidated U.S. federal income tax return with Viant Technology LLC. In addition, Viant Technology Inc. may not be able to realize tax benefits covered under the Tax Receivable Agreement and would not be able to recover any payments previously made by it under the Tax Receivable Agreement, even if the corresponding tax benefits (including any claimed increase in the tax basis of Viant Technology LLC’s assets) were subsequently determined to have been unavailable.

Risks Related to Ownership of Our Common Stock

The market price of our Class A common stock has been and may continue to be volatile or may decline regardless of our operating performance, and you could lose all or part of your investment.

The market price of equity securities of technology companies has historically experienced high levels of volatility. The market price of our Class A common stock has been and may continue to fluctuate significantly in response to numerous factors, some of which are beyond our control and may not be related to our operating performance, including:

- announcements of new offerings, products, services or technologies, commercial relationships, acquisitions or other events by us or our competitors;
- price and volume fluctuations in the overall stock market from time to time;
- significant volatility in the market price and trading volume of technology companies in general and of companies in the digital advertising industry in particular;
- fluctuations in the trading volume of our shares or the size of our public float;
- actual or anticipated changes or fluctuations in our operating results;
- whether our operating results meet the expectations of securities analysts or investors;
- actual or anticipated changes in the expectations of investors or securities analysts;
- litigation involving us, our industry, or both;
- regulatory developments in the United States, foreign countries, or both;
- general economic conditions and trends;

- major catastrophic events;
- lockup releases or sales of large blocks of our Class A common stock;
- departures of key employees; or
- an adverse impact on the Company from any of the other risks cited in this Annual Report.

In addition, if the stock market for technology companies, or the stock market generally, experiences a loss of investor confidence, the trading price of our Class A common stock could decline for reasons unrelated to our business, operating results or financial condition. Stock prices of many technology companies have fluctuated in a manner unrelated or disproportionate to the operating performance of those companies. The trading price of our Class A common stock might also decline in reaction to events that affect other companies in our industry even if these events do not directly affect us. In the past, stockholders have filed securities class action litigation following periods of market volatility. If we were to become involved in securities litigation, it could subject us to substantial costs, divert resources and the attention of management from our business, and adversely affect our business.

Sales of substantial blocks of our Class A common stock into the public market, or the perception that such sales might occur, could cause the market price of our Class A common stock to decline.

Sales of substantial blocks of our Class A common stock into the public market, or the perception that such sales might occur, could cause the market price of our Class A common stock to decline and may make it more difficult for you to sell your Class A common stock at a time and price that you deem appropriate. As of March 19, 2021, we had 11,500,000 shares of Class A common stock outstanding. All of the shares of Class A common stock sold in the IPO are freely tradable without restrictions or further registration under the Securities Act of 1933, as amended, or the Securities Act, except for any shares held by our “affiliates” as defined in Rule 144 under the Securities Act.

Subject to certain exceptions, we, all of our directors and officers and all of the other holders of our capital stock and securities convertible into, or exchangeable for, our capital stock have agreed not to offer, sell or agree to sell, directly or indirectly, any shares of Class A common stock without the permission of BofA Securities for a period of 180 days from February 9, 2021. When the applicable lock-up period expires, we, our directors and officers and locked-up equityholders will be able to sell shares into the public market.

The underwriters may, in their sole discretion, permit our directors and officers and locked-up equityholders to sell shares prior to the expiration of the restrictive provisions contained in the “lock-up” agreements with the underwriters.

Pursuant to the Registration Rights Agreement, and subject to the lock-up agreements described above, holders of our Class B common stock have rights to require us to file registration statements covering the sale of shares of Class A common stock issuable upon exchange of Class B common stock or to include such shares in registration statements that we may file for ourselves or other stockholders. We also intend to register the offer and sale of all shares of common stock that we may issue under our equity compensation plans.

The market price of our Class A common stock could decline as a result of the sale of substantial blocks of our Class A common stock into the public market, or the perception that such sales might occur.

We are a “controlled company” within the meaning of the listing standards of the Nasdaq Global Select Market (“Nasdaq”) and, as a result, qualify for, and rely on, exemptions from certain corporate governance requirements. You do not have the same protections afforded to stockholders of companies that are subject to such requirements.

The Vanderhook Parties control a majority of the voting power of our outstanding common stock. As a result, we qualify as a “controlled company” within the meaning of the corporate governance standards of Nasdaq. Under these rules, a listed company of which more than 50% of the voting power with respect to the election of directors is held by an individual, group or another company is a “controlled company” and may elect not to comply with certain corporate governance requirements, including the requirement that (i) a majority of our board of directors consist of independent directors, (ii) director nominees be selected or recommended to the board entirely by independent directors and (iii) the compensation committee be composed entirely of independent directors.

We rely on some or all of these exemptions. We also rely on the transition period with respect to the composition of the audit committee available under the Nasdaq rules. As a result, at least initially, we will not have a majority of independent directors, our audit committee and our compensation committee will not consist entirely of independent directors and our directors may not be nominated or selected entirely by independent directors. Accordingly, you may not have the same protections afforded to stockholders of companies that are subject to all of the corporate governance requirements of Nasdaq.

Insiders have substantial control over our company, which could limit your ability to influence the outcome of key decisions, including a change of control.

Through their ownership of Class B common stock, the Vanderhook Parties control 74.9% of the voting power of our common stock in the election of directors. This control will limit or preclude your ability to influence corporate matters for the foreseeable future. These stockholders will be able to influence or control matters requiring approval by our stockholders, including the election of directors and the approval of mergers, acquisitions or other extraordinary transactions. Their interests may differ from yours and they may vote in a manner that is adverse to your interests. This control may deter, delay or prevent a change of control of our company, deprive our stockholders of an opportunity to receive a premium for their Class A common stock as part of a sale of our company and may ultimately affect the market price of our Class A common stock.

We cannot assure you that an active trading market for our Class A common stock will be sustained, and we cannot predict the market price at which our Class A common stock will trade in the future.

Our common stock is currently listed on the Nasdaq under the symbol “DSP”. We cannot assure you that an active trading market for our Class A common stock will be sustained. We cannot predict the market price at which our Class A common stock will trade in the future. The lack of an active market may impair the value of your shares, your ability to sell your shares at the time you wish to sell them and the prices that you may obtain for your shares. An inactive market may also impair our ability to raise capital by selling our Class A common stock and our ability to acquire other companies, products or technologies by using our Class A common stock as consideration.

We do not intend to pay dividends for the foreseeable future and, as a result, your ability to achieve a return on your investment will depend on appreciation in the price of our Class A common stock.

We do not intend to pay any cash dividends in the foreseeable future. We anticipate that we will retain all of our future earnings for use in the development of our business and for general corporate purposes. Any determination to pay dividends in the future will be at the discretion of our board of directors and the terms of our current and future debt arrangements. Accordingly, investors must rely on sales of their Class A common stock after price appreciation, which may never occur, as the only way to realize any future gains on their investments.

The requirements of being a public company may strain our resources, divert our management's attention and affect our ability to attract and retain qualified board members.

As a public company, we are subject to the reporting requirements of the Exchange Act, and are required to comply with the applicable requirements of the Sarbanes-Oxley Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act, the listing requirements of Nasdaq, and other applicable securities rules and regulations. Compliance with these rules and regulations increase our legal and financial compliance costs, make some activities more difficult, time-consuming or costly and increase demand on our systems and resources. Among other things, the Exchange Act requires that we file annual, quarterly and current reports with respect to our business and operating results and maintain effective disclosure controls and procedures and internal controls over financial reporting. Significant resources and management oversight are required to maintain and, if required, improve our disclosure controls and procedures and internal controls over financial reporting to meet this standard. As a result, management's attention may be diverted from other business concerns, which could harm our business and operating results. Although we have already hired additional employees to comply with these requirements, we may need to hire even more employees in the future, which will increase our costs and expenses.

Being a public company and these new rules and regulations also make it more expensive for us to obtain director and officer liability insurance, and we accept reduced coverage or incur substantially higher costs to obtain coverage. These factors could also make it more difficult for us to attract and retain qualified members of our board of directors, particularly to serve on our audit committee and compensation committee, and qualified executive officers.

Reduced reporting and disclosure requirements applicable to us as an emerging growth company could make our Class A common stock less attractive to investors.

We are an emerging growth company (an "EGC") as defined in the Jumpstart Our Business Startups Act of 2012 (the "JOBS Act") and, for as long as we continue to be an EGC, we may choose to continue to take advantage of exemptions from various reporting requirements applicable to other public companies. Consequently, we are not required to have our independent registered public accounting firm audit our internal control over financial reporting under Section 404 of the Sarbanes-Oxley Act, and we are subject to reduced disclosure obligations regarding executive compensation in our periodic reports and proxy statements and exemptions from the requirements of holding a nonbinding advisory vote on executive compensation and stockholder approval of any golden parachute payments not previously approved. In addition, the JOBS Act provides that an EGC can take advantage of an extended transition period for complying with new or revised accounting standards. We have elected to take advantage of the extended transition period. As a result, our financial statements may not be comparable to companies that comply with new or revised accounting pronouncements as of the dates such pronouncements are effective for public companies. We could be an EGC for up to five years following the completion of the IPO. We will cease to be an EGC upon the earliest of: (i) the end of the fiscal year following the fifth anniversary of the IPO, (ii) the first fiscal year after our annual gross revenue is \$1.07 billion or more, (iii) the date on which we have, during the previous three-year period, issued more than \$1 billion in nonconvertible debt securities or (iv) the end of any fiscal year in which the market value of our Class A common stock held by non-affiliates exceeded \$700 million as of the end of the second quarter of that fiscal year. We cannot predict whether investors will find our Class A common stock less attractive if we choose to rely on these exemptions. If some investors find our Class A common stock less attractive as a result of any choices to reduce future disclosure, there may be a less active trading market for our Class A common stock, and the price of our Class A common stock may be more volatile.

If we fail to maintain or implement effective internal controls, we may not be able to report financial results accurately or on a timely basis, or to detect fraud, which could have a material adverse effect on our business and the per share price of our Class A common stock.

The Sarbanes-Oxley Act requires, among other things, that we maintain effective disclosure controls and procedures, and internal control over financial reporting. We are continuing to develop and refine our disclosure controls and other procedures that are designed to ensure that information required to be disclosed by us in the reports that we will file with the SEC is recorded, processed, summarized and reported within the time periods specified in SEC rules and forms. We are also continuing to improve our internal control over financial reporting. We have expended, and anticipate that we will continue to expend, significant resources in order to maintain and improve the effectiveness of our disclosure controls and procedures and internal control over financial reporting.

Our current controls and any new controls that we develop may become inadequate because of changes in conditions in our business. Further, weaknesses in our disclosure controls or our internal control over financial reporting may be discovered in the future. In connection with the audit of our 2018 and 2019 consolidated financial statements, we identified a material weakness in our internal controls caused by the misapplication of accounting principles related to the timing of depreciation of software development costs capitalized and unrecorded disposals of decommissioned software projects. We have remediated this material weakness, which we believe has addressed the underlying causes of this issue. We implemented additional controls around identifying and determining the appropriate timing for which capitalized software development costs should be reclassified from work-in-process to placed-in-service and begin depreciation and ultimately decommissioned, if applicable. Any failure to develop or maintain effective controls, or any difficulties encountered in their implementation or improvement, could harm our operating results or cause us to fail to meet our reporting obligations and may result in a restatement of our financial statements for prior periods. Any failure to implement and maintain effective internal control over financial reporting could also adversely affect the results of management reports and independent registered public accounting firm audits of our internal control over financial reporting that we are or will be required to include in our periodic reports that will be filed with the SEC. Ineffective disclosure controls and procedures, and internal control over financial reporting could also cause investors to lose confidence in our reported financial and other information, which would likely have a negative effect on the market price of our Class A common stock. In addition, if we are unable to continue to meet these requirements, we may not be able to remain listed on Nasdaq.

We are not currently required to comply with the SEC rules that implement Section 404 of the Sarbanes-Oxley Act, and are therefore not required to make a formal assessment of the effectiveness of our internal control over financial reporting for that purpose. We will be required to provide an annual management report on the effectiveness of our internal control over financial reporting commencing with our second annual report on Form 10-K. Our independent registered public accounting firm is not required to audit the effectiveness of our internal control over financial reporting until after we are no longer an EGC. At such time, our independent registered public accounting firm may issue a report that is adverse in the event it is not satisfied with the level at which our internal control over financial reporting is documented, designed or operating.

Any failure to maintain effective disclosure controls and internal control over financial reporting could have a material and adverse effect on our business and operating results, and cause a decline in the market price of our Class A common stock.

If securities or industry analysts do not publish research or reports about our business, or publish inaccurate or unfavorable research reports about our business, our share price and trading volume could decline.

The trading market for our Class A common stock partially depends on the research and reports that securities or industry analysts publish about us or our business. We do not have any control over these analysts.

If one or more of the analysts who cover us should downgrade our shares or change their opinion of our business prospects, our share price would likely decline. If one or more of these analysts ceases coverage of our company or fails to regularly publish reports on us, we could lose visibility in the financial markets, which could cause our share price or trading volume to decline.

Our charter documents and Delaware law could discourage takeover attempts and other corporate governance changes.

Our certificate of incorporation and bylaws contain provisions that could delay or prevent a change in control of our company. These provisions could also make it difficult for stockholders to elect directors that are not nominated by the current members of our board of directors or take other corporate actions, including effecting changes in our management. These provisions include the following provisions that:

- provide that our board of directors will be classified into three classes with staggered, three-year terms and that directors may only be removed for cause after a Triggering Event (as defined herein);

- permit the board of directors to establish the number of directors and fill any vacancies and newly created directorships;
- provide that, after a Triggering Event, vacancies on our board of directors may be filled only by a majority of directors then in office, even though less than a quorum;
- prohibit cumulative voting in the election of directors;
- require super-majority voting to amend our certificate of incorporation and bylaws;
- authorize the issuance of “blank check” preferred stock that our board of directors could use to implement a stockholder rights plan;
- eliminate the ability of our stockholders to call special meetings of stockholders;
- specify that special meetings of our stockholders can be called only by our board of directors, the chairman of our board of directors, or our chief executive officer with the concurrence of a majority of our board of directors;
- prohibit stockholder action by written consent after a Triggering Event, which requires all stockholder actions to be taken at a meeting of our stockholders;
- restrict the forum for certain litigation against us to Delaware or federal courts;
- permit our board of directors to alter our bylaws without obtaining stockholder approval;
- reflect the dual class structure of our common stock, as discussed above; and
- establish advance notice requirements for nominations for election to our board of directors or for proposing matters that can be acted upon by stockholders at annual stockholder meetings.

In addition, as a Delaware corporation, we are subject to Section 203 of the Delaware General Corporation Law. These provisions may prohibit large stockholders, in particular those owning 15% or more of our outstanding voting stock, from merging or combining with us for a period of time. In addition, our credit facility includes, and other debt instruments we may enter into in the future may include, provisions entitling the lenders to demand immediate repayment of all borrowings upon the occurrence of certain change of control events relating to our company, which also could discourage, delay or prevent a business combination transaction.

Our amended and restated certificate of incorporation includes an exclusive forum clause, which could limit our stockholders’ ability to obtain a favorable judicial forum for disputes with us.

Our amended and restated certificate of incorporation provides that the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for any complaint asserting any internal corporate claims, including claims in the right of the Company that are based upon a violation of a duty by a current or former director, officer, employee or stockholder in such capacity, or as to which the Delaware General Corporation Law confers jurisdiction upon the Court of Chancery. In addition, our amended and restated certificate of incorporation provides that the federal district courts of the United States will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act. We note, however, that there is uncertainty as to whether a court would enforce this provision and that investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder. Section 22 of the Securities Act creates concurrent jurisdiction for state and federal courts over all suits brought to enforce any duty or liability created by the Securities Act or the rules and regulations thereunder. This forum selection provision will not apply to claims brought to enforce a duty or liability created by the Exchange Act.

This choice of forum provision may limit a stockholder's ability to bring a claim in other judicial forums for disputes with us or our directors, officers or other employees, which may discourage lawsuits against us and our directors, officers and other employees in jurisdictions other than Delaware, or federal courts, in the case of claims arising under the Securities Act. Alternatively, if a court were to find the choice of forum provision contained in our amended and restated certificate of incorporation to be inapplicable or unenforceable in an action, we may incur additional costs associated with resolving such action in other jurisdictions, which could have a material adverse effect on our business, financial condition or results of operations.

Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock is deemed to have notice of and consented to the foregoing provisions. The exclusive forum clause may limit our stockholders' ability to obtain a favorable judicial forum for disputes with us.

General Risk Factors

The market in which we participate is intensely competitive, and we may not be able to compete successfully with our current or future competitors.

We operate in a highly competitive and rapidly changing industry that is subject to changing technology and customer demands and that includes many companies providing competing solutions. With the introduction of new technologies and the influx of new entrants into the market, we expect competition to persist and intensify in the future, which could harm our ability to increase revenue and maintain profitability. New technologies and methods of buying advertising present a dynamic competitive challenge, as market participants offer multiple new products and services aimed at capturing advertising spend.

We compete with smaller, privately-held companies, with public companies such as The Trade Desk, and with divisions of large, well-established companies such as Google. Our current and potential competitors may have significantly more financial, technical, marketing and other resources than we have, allowing them to devote greater resources to the development, promotion, sale and support of their products and services. They may also have more extensive customer bases and broader supplier relationships than we have. As a result, these competitors may be better able to respond quickly to new technologies, develop deeper marketer relationships or offer services at lower prices. Increased competition may result in reduced pricing for our platform, increased sales and marketing expense, longer sales cycles or a decrease of our market share, any of which could negatively affect our revenue and future operating results and our ability to grow our business. These companies may also have greater brand recognition and longer histories than we have and may actively seek to serve our market and have the power to significantly change the nature of the marketplace to their advantage. Some of our larger competitors, particularly those that are divisions of large companies, have substantially broader product offerings and may leverage their relationships based on other products or incorporate functionality into existing products to gain business in a manner that may discourage customers from using our platform, including through selling at zero or negative margins or product bundling with other services they provide at reduced prices. Customers may prefer to purchase advertising from social medial platforms or other closed platforms, which they cannot acquire through our platform. Potential customers may also prefer to purchase from their existing platform rather than a new platform regardless of product performance or features. These larger competitors often have broader product lines and market focus and may therefore not be as susceptible to downturns in a particular market. We may also experience negative market perception as a result of being a smaller company than our larger competitors.

In addition, we derive a significant portion of our revenue from advertising in the desktop and mobile and connected TV channels, which are rapidly evolving, highly competitive, complex and fragmented. We face significant competition in these markets which we expect will intensify in the future. While fewer of our competitors currently have capability in other channels such as linear TV, streaming audio and digital billboard channels, we also expect to face additional competition in those channels in the future.

Our future success depends on the continuing efforts of our key employees, including Tim Vanderhook and Chris Vanderhook, and our ability to attract, hire, retain and motivate highly skilled employees in the future.

We are a founder-led business and our future success depends on the continuing efforts of our executive officers and other key employees, including Tim Vanderhook, our chief executive officer, and Chris Vanderhook, our chief operating officer. We rely on the leadership, knowledge and experience that our executive officers provide. They foster our corporate culture, which has been instrumental to our ability to attract and retain new talent. We also rely on employees in our engineering, technical, product development, support and sales teams to attract and retain key customers.

The market for talent in our key areas of operations, including California, is intensely competitive, which could increase our costs to attract and retain talented employees. As a result, we may incur significant costs to attract and retain employees, including significant expenditures related to salaries and benefits and compensation expenses related to equity awards, and we may lose new employees to our competitors or other companies before we realize the benefit of our investment in recruiting and training them. We have at times experienced employee turnover. Because of the complexity of our platform, new employees often require significant training and, in many cases, take significant time before they achieve full productivity. Our account managers, for instance, need to be trained quickly on the features of our platform since failure to offer high-quality support may adversely affect our relationships with our customers.

Employee turnover, including changes in our management team, could disrupt our business. None of our founders or other key employees has an employment agreement for a specific term, and any of our employees may terminate his or her employment with us at any time. The loss of one or more of our executive officers, especially our two founders, or our inability to attract and retain highly skilled employees could have an adverse effect on our business, operating results and financial condition.

Failure to manage our growth effectively could cause our business to suffer and have an adverse effect on our business, operating results and financial condition.

We have experienced significant growth in a short period of time. To manage our growth effectively, we must continually evaluate and evolve our organization. We must also manage our employees, operations, finances, technology and development and capital investments efficiently. Our efficiency, productivity and the quality of our platform and customer service may be adversely impacted if we do not train our new personnel, particularly our sales and support personnel, quickly and effectively, or if we fail to appropriately coordinate across our organization. Additionally, our rapid growth may place a strain on our resources, infrastructure and ability to maintain the quality of our platform. You should not consider our revenue growth and levels of profitability in recent periods as indicative of future performance. In future periods, our revenue or profitability could decline or grow more slowly than we expect. Failure to manage our growth effectively could cause our business to suffer and have an adverse effect on our operating results and financial condition.

Seasonal fluctuations in advertising activity could have a material impact on our revenue, cash flow and operating results.

Our revenue, cash flow, operating results and other key operating and performance metrics may vary from quarter to quarter due to the seasonal nature of our customers' spending on advertising campaigns. For example, in prior years, customers tended to devote more of their advertising budgets to the fourth calendar quarter to coincide with consumer holiday spending. In contrast, the first quarter of the calendar year has typically been the slowest in terms of advertising spend. These patterns may or may not hold true during the COVID-19 pandemic. Political advertising could also cause our revenue to increase during election cycles and decrease during other periods, making it difficult to predict our revenue, cash flow, and operating results, all of which could fall below our expectations.

Future acquisitions, strategic investments or alliances could disrupt our business and harm our business, operating results and financial condition.

We have engaged in acquisitions to grow our business. To the extent we find suitable and attractive acquisition candidates and business opportunities in the future, we may continue to acquire other complementary businesses, products and technologies and enter into joint ventures or similar strategic relationships. We have no present commitments or agreements to enter into any such acquisitions or make any such investments. However, if we identify an appropriate acquisition candidate, we may not be successful in negotiating the terms or financing of the acquisition, and our due diligence may fail to identify all of the problems, liabilities or other shortcomings or challenges of an acquired business, product or technology, including issues related to intellectual property, product quality or architecture, regulatory compliance practices, revenue recognition or other accounting practices, tax liabilities, privacy or cybersecurity issues or employee or customer issues. There is no certainty that we will be able to successfully integrate the services, products and personnel of any acquired business into our operations. In addition, any future acquisitions, joint ventures or similar relationships may cause a disruption in our ongoing business and distract our management. Further, we may be unable to realize the revenue improvements, cost savings and other intended benefits of any such transaction. Acquisitions involve numerous other risks, any of which could harm our business, including:

- regulatory hurdles;
- failure of anticipated benefits to materialize;
- diversion of management time and focus from operating our business to addressing acquisition integration challenges;
- retention of employees from the acquired company;
- cultural challenges associated with integrating employees from the acquired company into our organization;
- integration of the acquired company's accounting, management information, human resources and other administrative systems;
- the need to implement or improve controls, procedures and policies at a business that prior to the acquisition may have lacked effective controls, procedures and policies;
- coordination of product development and sales and marketing functions;
- liability for activities of the acquired company before the acquisition, including known and unknown liabilities; and
- litigation or other claims in connection with the acquired company, including claims from terminated employees, users, former stockholders or other third parties.

Failure to appropriately mitigate these risks or other issues related to such strategic investments and acquisitions could result in reducing or completely eliminating any anticipated benefits of transactions, and harm our business generally. Future acquisitions could also result in dilutive issuances of our equity securities, the incurrence of debt, contingent liabilities, amortization expenses or the impairment of goodwill, any of which could harm our business, operating results and financial condition.

Our management team has limited experience managing a public company.

Most members of our management team have limited or no experience managing a publicly-traded company, interacting with public company investors, and complying with the increasingly complex laws, rules and regulations that govern public companies. There are significant obligations we will now be subject to relating to reporting, procedures and internal controls, and our management team may not successfully or efficiently manage our transition to being a public company. These new obligations and added scrutiny will require significant attention from our management and could divert their attention away from the day-to-day management of our business, which could adversely affect our business, operating results and financial condition.

Our corporate culture has contributed to our success and, if we are unable to maintain it as we grow, our business, operating results and financial condition could be harmed.

We have experienced and may continue to experience rapid expansion of our employee ranks. We had 289 employees in the United States as of December 31, 2020. We believe our corporate culture has been critical to our success and we have invested substantial time and resources in building our team within our company culture. However, as our organization grows, it may be difficult to maintain our culture, which could reduce our ability to innovate and operate effectively and proactively focus on and pursue our corporate objectives. The failure to maintain the key aspects of our culture as our organization grows could result in decreased employee satisfaction, increased difficulty in attracting top talent, increased turnover and degraded quality of customer service, all of which are important to our success and to the effective execution of our business strategy. In the event we are unable to maintain our corporate culture as we grow to scale, our business, operating results and financial condition could be harmed.

We may not be able to secure additional financing on favorable terms, or at all, to meet our future capital needs, which may in turn impair our growth.

We intend to continue to grow our business, which may require additional capital to develop new features or enhance our platform, improve our operating infrastructure, finance working capital requirements or acquire complementary businesses and technologies. Accordingly, we may need to engage in additional equity or debt financings to secure additional capital. If we raise additional funds through future issuances of equity or convertible debt securities, our existing stockholders could suffer significant dilution, and any new equity securities we issue could have rights, preferences and privileges superior to those of holders of our Class A common stock. Any debt financing that we secure in the future could involve restrictive covenants relating to our capital raising activities and other financial and operational matters, which may make it more difficult for us to obtain additional capital and to pursue business opportunities. If we are unable to secure additional funding on favorable terms, or at all, when we require it, our ability to continue to grow our business to react to market conditions could be impaired and our business may be harmed.

We are a party to a revolving credit agreement, which contains a number of covenants that may restrict our current and future operations and could adversely affect our ability to execute business needs.

Our credit agreement with PNC Bank, National Association (the “Loan Agreement”) contains a number of covenants that limit our ability and our subsidiaries’ ability to, among other things, incur indebtedness, create liens, make investments, merge with other companies, dispose of our assets, prepay other indebtedness and make dividends and other distributions. The terms of our Loan Agreement may restrict our current and future operations and could adversely affect our ability to finance our future operations or capital needs or to execute business strategies in the means or manner desired. In addition, complying with these covenants may make it more difficult for us to successfully execute our business strategy, invest in our growth strategy and compete against companies who are not subject to such restrictions. The Loan Agreement also contains a financial covenant that requires us to maintain a minimum fixed charge coverage ratio of 1.40 to 1 when undrawn availability under the Loan Agreement is less than 25%. We may not be able to generate sufficient cash flow or sales to meet the financial covenant or pay the principal or interest under the Loan Agreement.

If we are unable to comply with our payment requirements, our lender may accelerate our obligations under our Loan Agreement and foreclose upon the collateral, or we may be forced to sell assets, restructure our indebtedness or seek additional equity capital, which would dilute our stockholders' interests. If we fail to comply with our covenants under the Loan Agreement, it could result in an event of default under the agreement and our lender could make the entire debt immediately due and payable. If this occurs, we might not be able to repay our debt or borrow sufficient funds to refinance it. Even if new financing is available, it may not be on terms that are acceptable to us.

Interest rates under our Loan Agreement are based partly on LIBOR, the London interbank offered rate, which is the basic rate of interest used in lending between banks on the London interbank market and is widely used as a reference for setting the interest rate on loans globally. ICE Benchmark Administration, the administrator of LIBOR, will cease the publication of certain tenors of U.S. dollar LIBOR after December 31, 2021, and plans to cease the publication of all other tenors of U.S. dollar LIBOR after June 30, 2023. It is unclear if new methods of calculating LIBOR will be established such that it continues to exist after 2023. The U.S. Federal Reserve has begun publishing a Secured Overnight Funding Rate which is currently intended to serve as an alternative reference rate to LIBOR. If the method for calculation of LIBOR changes, if LIBOR is no longer available, or if lenders have increased costs due to changes in LIBOR, we may suffer from potential increases in interest rates on our borrowings. Further, we may need to renegotiate our Loan Agreement or any other borrowings that utilize LIBOR as a factor in determining the interest rate to replace LIBOR with the new standard that is established.

There is no guarantee that our PPP Loan will be forgiven in whole or in part, and we could be subject to audit or enforcement action related to the PPP Loan.

In April 2020, we received loan proceeds in the amount of approximately \$6.035 million (the "PPP Loan") from PNC Bank, as lender, under the Paycheck Protection Program ("PPP"), established as part of the Coronavirus Aid, Relief and Economic Security ("CARES") Act, which provides economic relief to businesses in response to the COVID-19 pandemic. We used the proceeds to support payroll costs, rent and utilities in accordance with the relevant terms and conditions of the CARES Act. The PPP Loan bears interest at an annual rate of 1.0% and matures on April 11, 2022. Under the terms of the CARES Act, all or a portion of the principal of the PPP Loan may be forgiven. Such forgiveness will be determined, subject to limitations, based on the use of the PPP Loan proceeds for payroll costs, mortgage interest payments, lease payments or utility payments. We expect to apply for forgiveness of the PPP Loan, but we cannot provide any assurance that we will be eligible for loan forgiveness or that any amount of the PPP Loan will ultimately be forgiven.

No interest or principal will be due during the first fifteen months after April 11, 2020, although interest will continue to accrue over this fifteen-month deferral period. In the event that any amounts are not forgiven, such unforgiven amounts shall be payable in equal monthly installments over the remaining term of the facility. The promissory note evidencing the PPP Loan contains customary events of default relating to, among other things, payment defaults, breach of representations and warranties, or other provisions of the promissory note. The occurrence of an event of default may trigger the immediate repayment of all amounts outstanding, collection of all amounts owing from the Company, and/or filing suit and obtaining a judgment against the Company.

The PPP Loan is subject to the terms and conditions applicable to loans administered by the Small Business Administration (the "SBA") under the CARES Act, which is subject to revisions and changes by the SBA and Congress. Given that we received more than \$2.0 million under our PPP Loan, we will be subject to an audit by the SBA. We believe that we satisfied all eligibility criteria for the PPP Loan, and that our receipt of the PPP Loan was consistent with the broad objectives of the PPP of the CARES Act. The certification regarding necessity described above did not at the time contain any objective criteria and continues to be subject to interpretation. If, despite our good-faith belief that we satisfied all eligibility requirements for the PPP Loan, we are later determined to have violated any of the laws or governmental regulations that apply to us in connection with the PPP Loan or it is otherwise determined that we were ineligible to receive the PPP Loan, we could be subject to civil, criminal and administrative penalties or adverse publicity. Any such events could consume significant financial and management resources and could have a material adverse effect on our business, results of operations and financial condition.

Item 1B. Unresolved Staff Comments.

None.

Item 2. Properties.

Our headquarters are located in Irvine, California, where we occupy facilities totaling approximately 47,000 square feet under a lease that expires in June 2022. As of December 31, 2020, we have 9 other office spaces across the United States. These offices are leased, and we do not own any real property. We believe that our current facilities are adequate to meet our current needs.

Item 3. Legal Proceedings.

From time to time, we are involved in various legal proceedings arising from the normal course of business activities. We are not currently a party to any litigation the outcome of which, we believe, if determined adversely to us, would individually or taken together have a material adverse effect on our business, operating results, cash flows, or financial condition. Defending any such proceedings is costly and can impose a significant burden on management and employees. The results of any current or future litigation cannot be predicted with certainty, and regardless of the outcome, litigation can have an adverse impact on us because of defense and settlement costs, diversion of management resources, and other factors.

Item 4. Mine Safety Disclosures.

Not applicable.

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

Market Information and Holders of Record

Our Class A common stock has been listed on Nasdaq under the symbol “DSP” since February 10, 2021. There is no market for our Class B common stock. Each share of Class B common stock has no economic rights but entitles its holders to one vote on all matters to be voted on by the shareholders generally.

As of March 19, 2021, there was approximately 1 stockholder of record of our Class A common stock and 4 holders of record of our Class B common stock.

Dividend Policy

We have not paid any cash dividends on our Class A common stock and have no present intention to pay cash dividends on our common stock. Any determination to pay dividends to holders of our common stock will be at the discretion of our board of directors and will depend upon many factors, including our financial condition, results of operations, projections, liquidity, earnings, legal requirements, restrictions in our existing and any future debt and other factors that our board of directors deems relevant.

Use of Proceeds from our Initial Public Offering

On February 12, 2021, we completed our IPO, pursuant to which we issued and sold an aggregate of 11,500,000 shares of common stock (inclusive of 1,500,000 shares pursuant to the underwriters’ option to purchase additional shares) at the IPO price of \$25.00 per share. The aggregate gross proceeds to the Company from our IPO were \$250.0 million and the net proceeds were \$232.5 million after deducting underwriting discounts and commissions of \$17.5 million. The offer and sale of the shares of common stock in the IPO were registered pursuant to registration statements on Form S-1 (File Nos. 333-252117 and 333-252907), which the SEC declared effective on February 9, 2021. No offering expenses were paid directly or indirectly to any of our directors or officers (or their associates) or persons owning 10% or more of any class of our equity securities or to any other affiliates. The underwriters for our IPO were BofA Securities, Inc., UBS Securities LLC, Canaccord Genuity LLC, JMP Securities LLC, Needham & Company, LLC and Raymond James & Associates, Inc.

There has been no material change in the intended use of proceeds from our IPO as described in our final prospectus filed with the SEC pursuant to Rule 424(b)(4) on February 10, 2021.

Item 6. Selected Financial Data.

The following table sets forth selected financial information and other data of Viant Technology Inc. and Viant Technology LLC on a historical basis. Viant Technology LLC is considered our predecessor for accounting purposes and accordingly, for all periods presented prior to February 12, 2021, our financial statements represent the financial statements of the predecessor. The following selected consolidated statements of operations data for the years ended December 31, 2020, 2019 and 2018 and the selected consolidated balance sheet data as of December 31, 2020, 2019, and 2018 have been derived from the audited consolidated financial statements of Viant Technology LLC. Our historical results and growth rates are not necessarily indicative of results or growth rates to be expected in future periods.

You should read the following information in conjunction with “*Management’s Discussion and Analysis of Financial Condition and Results of Operations*,” “*Certain Relationships and Related Transactions, and Director Independence*” and our consolidated financial statements and related notes thereto included elsewhere in this Annual Report.

	Year Ended December 31,		
	2020	2019	2018
(in thousands, except per unit data and number of customers)			
Consolidated Statements of Operations Data:			
Revenue	\$ 165,251	\$ 164,892	\$ 108,355
Operating expenses(1):			
Platform operations	88,260	94,060	74,344
Sales and marketing	28,887	29,027	26,766
Technology and development	8,698	9,240	9,585
General and administrative	17,639	19,770	18,326
Total operating expenses	143,484	152,097	129,021
Income (loss) from operations	21,767	12,795	(20,666)
Total other expense, net	1,129	2,871	4,869
Net income (loss)	<u>\$ 20,638</u>	<u>\$ 9,924</u>	<u>\$ (25,535)</u>
Earnings (loss) per unit—basic(2)	<u>\$ 20.64</u>	<u>\$ 31.31</u>	<u>\$ (137.28)</u>
Earnings (loss) per unit—diluted(2)	<u>\$ 20.64</u>	<u>\$ 27.37</u>	<u>\$ (137.28)</u>
Other Key Operating and Financial Performance Metrics(3)			
Revenue ex-TAC	\$ 110,516	\$ 104,440	\$ 64,526
Adjusted EBITDA	\$ 31,782	\$ 24,655	\$ (7,534)
Net income as a percentage of gross profit	27%	14%	N/A
Adjusted EBITDA as a percentage of revenue ex-TAC	29%	24%	N/A
Number of Active Customers(4)	264	277	267
Average revenue ex-TAC per Active Customer(4)	\$ 419	\$ 377	\$ 242

	As of December 31,		
	2020	2019	2018
(in thousands)			
Consolidated Balance Sheet Data:			
Cash	\$ 9,629	\$ 4,815	\$ 2,655
Accounts receivable, net	89,767	68,083	48,497
Total assets	133,520	106,857	86,662
Accounts payable	29,763	20,480	17,752
Total debt	23,535	17,500	65,955
Total liabilities	105,903	84,152	124,859
Convertible preferred units	7,500	7,500	45,000
Total members’ equity (deficit)	20,117	15,205	(83,197)

- (1) Unit-based compensation expense, depreciation expense and amortization expense included above was as follows:

	Year Ended December 31,		
	2020	2019	2018
	(in thousands)		
Unit-based compensation expense:			
Platform operations	\$ —	\$ 42	\$ 25
Sales and marketing	—	44	26
Technology and development	—	82	49
General and administrative	—	922	547
Total unit-based compensation expense	<u>\$ —</u>	<u>\$ 1,090</u>	<u>\$ 647</u>

	Year Ended December 31,		
	2020	2019	2018
	(in thousands)		
Depreciation and amortization expense:			
Platform operations	\$ 7,338	\$ 7,535	\$ 8,067
Sales and marketing	—	—	—
Technology and development	1,608	1,537	1,314
General and administrative	1,160	1,083	1,247
Total depreciation and amortization expense	<u>\$ 10,106</u>	<u>\$ 10,155</u>	<u>\$ 10,628</u>

See Note 4, Note 5 and Note 9 to our consolidated financial statements included elsewhere in this Annual Report for more information regarding depreciation expense, amortization expense and unit-based compensation expense, respectively.

- (2) See Note 2 to our audited consolidated financial statements for a description of the earnings (loss) per unit—basic and diluted computations.
- (3) For a detailed discussion of our key operating and financial performance metrics and a reconciliation of revenue ex-TAC, Adjusted EBITDA, and Adjusted EBITDA as a percentage of revenue ex-TAC to the most directly comparable financial measures calculated in accordance with GAAP, see “*Management’s Discussion and Analysis of Financial Condition and Results of Operation—Key Operating and Financial Performance Metrics—Use of Non-GAAP Financial Measures.*”
- (4) We define an Active Customer as a customer that had total aggregate revenue ex-TAC of at least \$5,000 through our platform during the previous twelve months. We define average revenue ex-TAC per Active Customer as revenue ex-TAC for the trailing twelve month period presented divided by Active Customers. For a detailed discussion of average revenue ex-TAC per Active Customer and Active Customers, see “*Management’s Discussion and Analysis of Financial Condition and Results of Operation—Key Operating and Financial Performance Metrics—Number of Active Customers and Average Revenue ex-TAC per Active Customer.*”

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

The following management’s discussion and analysis of our financial condition and results of operations should be read in conjunction with, and is qualified in its entirety by reference to, the section entitled “Selected Financial Data” and the consolidated financial statements and the related notes included within this Annual Report. This Annual Report, including the historical consolidated financial data discussed below, reflects the historical results of operations and financial position of Viant Technology LLC, our predecessor for accounting purposes, prior to the corporate reorganization and IPO. This discussion and analysis contains forward-looking statements that involve risks and uncertainties which could cause our actual results to differ materially from those anticipated in these forward-looking statements, including, but not limited to, risks and uncertainties discussed under the heading “Forward-Looking Statements” and “Risk Factors” and discussed elsewhere in this Annual Report. Additionally, our historical results are not necessarily indicative of the results that may be expected for any period in the future.

The following primarily discusses 2020 and 2019 items and year over year comparisons between 2020 and 2019. Discussions of the year ended December 31, 2018 items and comparisons between the year ended December 31, 2019 and the year ended December 31, 2018 can be found in “Management’s Discussion and Analysis of Financial Condition and Results of Operations” included in our prospectus dated February 9, 2021, filed with the U.S. Securities and Exchange Commission on February 11, 2021.

Overview

We are an advertising software company. Our software enables the programmatic purchase of advertising, which is the electronification of the advertising buying process. Programmatic advertising is rapidly taking market share from traditional ad sales channels, which require more staffing, offer less transparency and involve higher costs to buyers.

Our demand side platform (“DSP”), Adelphic, is an enterprise software platform that is used by marketers and their advertising agencies to centralize the planning, buying and measurement of their advertising media across most channels. Through our technology, a marketer can easily buy ads on desktop, mobile, connected TV, linear TV, streaming audio and digital billboards.

Viant was founded in 1999 by Tim, Chris and Russ Vanderhook who continue to lead our company today. Viant has been at the forefront of digital advertising technology since its inception and has demonstrated its ability to grow, thrive, and innovate as competitors have come and gone. In 2011, Viant acquired the social network website Myspace.com. In 2011, Tim and Chris Vanderhook started Xumo, a connected TV streaming service, which was acquired by Comcast Corp. in 2020. In 2015, Viant completed its first people-based integration. Viant remained independent until 2016, when Time Inc. acquired a 60% interest in Viant through its subsidiary, the Former Holdco. That interest was later acquired by Meredith Corporation when it acquired Time Inc. in 2018. In 2017, the Company purchased Adelphic, a DSP. Since the Adelphic acquisition, the Company has materially transformed from a full-service provider of digital advertising solutions into a leading DSP that enables marketers and their advertising agencies to centralize the planning, buying and measurement of their media investments using a people-based framework. Viant has grown from a business operating from a home office to a company with nearly 300 employees in 10 offices throughout the U.S. In 2019, Viant entered into the 2019 Former Holdco transaction that resulted in the retirement of the Former Holdco’s interest in Viant and the Vanderhook Parties acquired that 60% interest in the Company, allowing it to once again become an independent company. Viant completed its IPO on February 12, 2021.

We serve marketers and their advertising agencies by enabling them to plan, buy and measure programmatic campaigns. We provide an easy-to-use self-service programmatic platform that delivers transparency and control. Our platform offers customers unique visibility across a variety of advertising channels with the ability to create customized audience segments leveraging our people-based and strategic partner data to reach target audiences at scale. Our people-based approach is in contrast to the inefficient approach of cookie-based tracking. People-based data enables marketers to use first-party data for both the targeting and measurement of their ad campaigns in a manner that we believe is more accurate than utilizing a cookie-based approach.

We make our platform available through different pricing options to tailor to multiple client types and customer needs. These options consist of a percentage of spend option, a subscription option and a fixed CPM pricing option. CPM refers to a payment option in which customers pay a price for every 1,000 impressions an ad receives. Customers can enter into master service agreements (“MSAs”) with us that enable them to use our platform on a self-service basis to execute their advertising campaigns. We generate revenue when the platform is used on a self-service basis by charging a platform fee that is either a percentage of spend or a flat monthly subscription fee, as well as fees for additional features such as data and advanced reporting. We also offer our customers the ability to use our services to aid them in data management, media execution and advanced reporting. When customers utilize our services, we generate revenue by charging a (1) separate service fee that represents a percentage of spend in addition to the platform fee; (2) a flat monthly fee covering services in connection with data management and advanced reporting; or (3) a fixed CPM that is inclusive of media, other direct costs and services. We believe that offering a multitude of pricing options provides our customers greater flexibility and access to our platform. Some of our pricing options are relatively new to the market and are not yet material to our business from a financial perspective.

Our financial results include:

- Revenue of \$165.3 million and \$164.9 million for the years ended December 31, 2020 and 2019, respectively, representing an increase of 0.2%;
- Revenue ex-TAC of \$110.5 million and \$104.4 million for the years ended December 31, 2020 and 2019, respectively, representing an increase of 6%;
- Net income of \$20.6 million and \$9.9 million for the years ended December 31, 2020 and 2019, respectively, representing an increase of 108%; and
- Adjusted EBITDA of \$31.8 million and \$24.7 million for the years ended December 31, 2020 and 2019, respectively, representing an increase of 29%.

Revenue ex-TAC and Adjusted EBITDA are non-GAAP measures. For a detailed discussion of our key operating and financial performance metrics and a reconciliation of revenue ex-TAC and Adjusted EBITDA to the most directly comparable financial measures calculated in accordance with GAAP, see “—Key Operating and Financial Performance Metrics—Use of Non-GAAP Financial Measures.”

Factors Affecting Our Performance

COVID-19

In March 2020, the World Health Organization characterized the coronavirus (“COVID-19”) a pandemic, and in March 2020, the President of the United States declared the COVID-19 outbreak a national emergency. COVID-19 has spread across the globe during 2020 and has impacted economic activity worldwide.

The challenges posed by the COVID-19 pandemic on the global economy increased significantly as the first quarter of 2020 progressed and have continued throughout 2020. In response to COVID-19, national and local governments around the world have instituted certain measures, including travel bans, prohibitions on group events and gatherings, shutdowns of certain businesses, curfews, shelter-in-place orders and recommendations to practice social distancing. The Company instituted temporary salary reductions in the second and third quarters of 2020 due to COVID-19. In the fourth quarter of 2020, normal salaries were reinstated and the Company paid employees for the amounts by which their salaries had been reduced in the second and third quarters of 2020. Certain marketers in industries such as travel and tourism, retail and automotive, decreased or paused their advertising spend as a response to the economic uncertainty. As a result, our revenue and Adjusted EBITDA have been negatively impacted during 2020 as a result of the COVID-19 pandemic. In addition, as a result of our temporary salary reductions in the second and third quarters, our personnel costs temporarily decreased. The ultimate impact of COVID-19 on the Company’s results of operations, financial condition and cash flows is dependent on future developments, including the duration of the pandemic and the related length of its impact on the global economy, which are uncertain and cannot be predicted at this time. See “Risk Factors—The effects of the ongoing COVID-19 pandemic and other sustained adverse market events have had, and could in the future have, an adverse impact on our business, operating results and financial condition” for further discussion of the potential impacts of the COVID-19 pandemic on our business.

Attract, Retain and Grow our Customer Base

Our recent growth has been driven by expanding the usage of our platform by our existing customers as well as adding new customers. We believe that our customers value our solutions, as our average revenue ex-TAC per Active Customer has increased from \$377,000 per Active Customer to \$419,000 per Active Customer, an increase of \$42,000 or 11.1%, from the year ended December 31, 2019 to the year ended December 31, 2020. The number of Active Customers decreased by 13 customers or 4.7%, from the year ended December 31, 2019 to the year ended December 31, 2020. We review changes in usage of our platform as represented by changes in aggregate spend on the platform as a metric of customer engagement. Platform spend, which we previously referred to in our registration statement on Form S-1 as ‘platform usage’ is represented by aggregate spend on the platform and increased by 17% for the year ended December 31, 2020. For a detailed discussion of our key operating metrics including the definition of Active Customers, see “—Key Operating and Financial Performance Metrics—Use of Non-GAAP Financial Measures.”

We continue to add functionality to our platform to encourage our customers to increase their usage of our platform. We believe many advertisers are in the early stages of moving a greater percentage of their advertising budgets to programmatic channels. By providing solutions for the planning, buying and measuring of their media spend across channels, we believe that we are well positioned to capture the increase in programmatic budgets. Further, we intend to continue to grow our marketing efforts to increase awareness of our Adelphic platform and highlight the advantages of our people-based framework as cookie-based options become increasingly limited. As a result, future revenue growth depends upon our ability to retain our existing customers and increase their usage of our platform as well as add new customers.

Investment in Growth

We believe that the advertising market is in the early stages of a secular shift towards programmatic advertising. We plan to invest for long-term growth. We anticipate that our operating expenses will increase significantly in the foreseeable future as we invest in platform operations and technology and development to enhance our product capabilities including identity resolution and the integration of new advertising channels, and in sales and marketing to acquire new customers and increase our customers’ usage of our platform. We believe that these investments will contribute to our long-term growth, although they may have a negative impact on our profitability in the near-term.

Growth of the Digital Advertising Market and Macroeconomics Factors

We expect to continue to benefit from overall adoption of programmatic advertising by marketers and their agencies. Any material change in the growth rate of digital advertising or the rate of adoption of programmatic, including expansion of new programmatic channels, could affect our performance. Recent years have shown that advertising spend is closely tied to advertisers’ financial performance and a downturn, either generally or in one or more of the industries in which our customers operate, could adversely impact the digital advertising market and our operating results.

Seasonality

In the advertising industry, companies commonly experience seasonal fluctuations in revenue. For example, many marketers allocate the largest portion of their budgets to the fourth quarter of the calendar year in order to coincide with increased holiday purchasing. Historically, the fourth quarter has reflected our highest level of advertising activity for the year. We generally expect the subsequent first quarter to reflect lower activity levels, but this trend may be masked due to the continued growth of our business. In addition, historical seasonality may not be predictive of future results given the potential for changes in advertising buying patterns and consumer activity due to the COVID-19 pandemic. We expect our revenue to continue to fluctuate based on seasonal factors that affect the advertising industry as a whole.

Components of Our Results of Operations

We have one primary business activity and operate in a single operating and reportable segment.

Revenue

We generate revenue by providing marketers and their advertising agencies with the ability to plan, buy and measure their digital advertising campaigns using our people-based DSP. We maintain agreements with customers in the form of MSAs (in connection with the percentage of spend and monthly subscription pricing options, as well as in instances where we charge our customers a flat monthly fee for services in connection with data management and advanced reporting) and IOs (in connection with the fixed CPM pricing option) which set out the terms of the relationship and use of our platform.

We recognize revenue when we transfer control of promised services directly to our customers in an amount that reflects the consideration to which we expect to be entitled in exchange for those services. For the percentage of spend pricing option, we recognize revenue at the point in time when a purchase by the customer occurs through our platform. For the monthly subscription pricing option, we recognize subscription fees as revenue over time on a ratable basis over the term of the agreement. In both instances, revenue is reported net of amounts incurred and payable to suppliers for the cost of advertising media, third-party data and other add-on features (collectively, “traffic acquisition costs” or “TAC”) since we arrange for the transfer of TAC from the supplier to the customer through the use of our platform and do not control such features prior to transfer to the customer. For data management and advanced reporting services, we recognize revenue over time on a ratable basis over the term of the agreement.

For the fixed CPM pricing option, we recognize revenue at the point in time when the advertising impressions are delivered to the customer. This revenue is reported gross of any amounts incurred and payable to suppliers for TAC, since we control such features prior to transfer to the customer.

We expect the portion of our revenue derived from the percentage of spend and monthly subscription pricing options to increase in the aggregate over time, which would reduce the percentage of revenue that the Company recognizes on a gross basis in connection with the fixed CPM pricing option.

See “Critical Accounting Policies and Estimates—Revenue Recognition” for a description of our revenue recognition policies.

Operating Expenses

We classify our operating expenses into the following four categories. Each expense category includes overhead such as rent and occupancy charges, which is allocated based on headcount.

Platform Operations. Platform operations expense represents our cost of revenues, which consists of TAC, hosting costs, personnel costs, depreciation of capitalized software development costs related to our platform, customer support costs and allocated overhead. TAC recorded in platform operations consist of amounts incurred and payable to suppliers for costs associated with our fixed CPM pricing option. Personnel costs within platform operations include salaries, bonuses, unit-based compensation expense and employee benefit costs primarily attributable to personnel who directly support our platform.

Other than TAC, many of the costs included in platform operations expense do not increase or decrease proportionately with increases or decreases in our revenue. We expect platform operations expenses to increase in future periods, including as a result of stock based compensation expense and depreciation of capitalized software development costs as we continue to invest in the development of our platform to add new features and functions, increase the number of advertising media and data suppliers, ramp up the volume of advertising spend on our platform resulting in increased volumes of transactions, and hire additional personnel to support our customers.

Sales and Marketing. Sales and marketing expense consists primarily of personnel costs, including salaries, bonuses, unit-based compensation expense, employee benefit costs and commissions for our sales personnel. Sales and marketing expense also includes costs for market development programs, advertising, promotional and other marketing activities and allocated overhead. Commissions are expensed as incurred.

Our sales and marketing organization focuses on marketing our platform to increase its adoption by existing and new customers. As a result, we expect sales and marketing expenses to increase in future periods, including as a result of stock based compensation expense. Sales and marketing expense as a percentage of revenue may fluctuate from period to period based on revenue levels and the timing of our investments in our sales and marketing functions as these investments may vary in scope and scale over time.

Technology and Development. Technology and development expense consists primarily of personnel costs, including salaries, bonuses, unit-based compensation expense and employee benefit costs associated with the ongoing development and maintenance of our platform and allocated overhead. Technology and development costs are expensed as incurred, except to the extent that such costs are associated with software development that qualifies for capitalization, which are then recorded as capitalized software included in property, equipment and software, net, on the consolidated balance sheet. We record depreciation expense for capitalized software development costs not related to our platform within technology and development expense.

We believe that continued investment in our platform is critical to attaining our strategic objectives and long-term growth. We therefore expect technology and development expense to increase as we continue to invest in the development of our platform to support and maintain additional features and functions, increase the number of advertising media and data suppliers, and ramp up the volume of advertising spend on our platform.

General and Administrative. General and administrative expense consists primarily of personnel costs, including salaries, bonuses, unit-based compensation expense and employee benefit costs associated with our executive, accounting, finance, legal, human resources and other administrative personnel. Additionally, this includes accounting, legal and other professional services fees, insurance expense, bad debt expense and allocated overhead.

We expect to continue to invest in corporate infrastructure and incur additional expenses associated with our operation as a public company, including increased legal and accounting costs, investor relations costs, higher insurance premiums and compliance costs associated with developing the requisite infrastructure required for internal controls over financial reporting. As a result, we expect general and administrative expenses to increase in future periods, including as a result of stock based compensation expense.

Total Other Expense, Net

Interest Expense, Net. Interest expense, net is primarily related to our long-term debt and revolving credit facility.

Other Expense (Income), Net. Other expense (income), net consists primarily of foreign currency exchange gains and losses and miscellaneous expenses not attributable to operations. During the year ended December 31, 2019, other expense (income), net primarily related to a gain on the dissolution of our UK subsidiary.

Results of Operations

The following tables set forth our consolidated results of operations, our consolidated results of operations as a percentage of revenue, and the impact of unit-based compensation expense, depreciation expense and amortization expense on each operating expense line item for the years ended December 31, 2020 and 2019:

	Year Ended December 31,	
	2020	2019
	(in thousands)	
Consolidated Statements of Operations Data:		
Revenue	\$ 165,251	\$ 164,892
Operating expenses(1):		
Platform operations	88,260	94,060
Sales and marketing	28,887	29,027
Technology and development	8,698	9,240
General and administrative	17,639	19,770
Total operating expenses	<u>143,484</u>	<u>152,097</u>
Income from operations	21,767	12,795
Total other expense, net	1,129	2,871
Net income	<u>\$ 20,638</u>	<u>\$ 9,924</u>

	Year Ended December 31,	
	2020	2019
	(% of revenue*)	
Consolidated Statements of Operations Data:		
Revenue	100%	100%
Operating expenses:		
Platform operations	53%	57%
Sales and marketing	17%	18%
Technology and development	5%	6%
General and administrative	11%	12%
Total operating expenses	<u>87%</u>	<u>92%</u>
Income from operations	13%	8%
Total other expense, net	1%	2%
Net income	<u>12%</u>	<u>6%</u>

* Percentages may not sum due to rounding

(1) Unit-based compensation expense, depreciation expense, and amortization expense included above were as follows:

	Year Ended December 31,	
	2020	2019
	(in thousands)	
Unit-based compensation expense:		
Platform operations	\$ —	\$ 42
Sales and marketing	—	44
Technology and development	—	82
General and administrative	—	922
Total unit-based compensation expense	<u>\$ —</u>	<u>\$ 1,090</u>

	Year Ended December 31,	
	2020	2019
	(in thousands)	
Depreciation expense:		
Platform operations	\$ 6,638	\$ 6,832
Sales and marketing	—	—
Technology and development	1,608	1,537
General and administrative	631	554
Total depreciation expense	<u>\$ 8,877</u>	<u>\$ 8,923</u>

	Year Ended December 31,	
	2020	2019
	(in thousands)	
Amortization expense:		
Platform operations	\$ 700	\$ 703
Sales and marketing	—	—
Technology and development	—	—
General and administrative	529	529
Total amortization expense	<u>\$ 1,229</u>	<u>\$ 1,232</u>

Comparison of the Years Ended December 31, 2020 and 2019

Revenue

	Year Ended December 31,		Change	
	2020	2019	\$	%
	(in thousands, except for percentages)			
Revenue	\$ 165,251	\$ 164,892	\$ 359	0.2%

Revenue increased by \$0.4 million, or 0.2% during the year ended December 31, 2020 compared to the year ended December 31, 2019. The minimal increase in revenue was primarily due to adverse effects of the COVID-19 pandemic. Certain marketers in industries such as travel and tourism, retail and automotive decreased or paused their advertising spending as a response to the economic uncertainty created by the COVID-19 pandemic. Despite the negative impacts of the COVID-19 pandemic, we have continued to experience increased customer usage of our platform, particularly in the percentage of spend pricing option, and continuing demand for our people-based advertising products and services. Platform spend, as represented by aggregate spend on the platform, increased by 17% in the comparative periods.

Platform Operations

	Year Ended December 31,		Change	
	2020	2019	\$	%
	(in thousands, except for percentages)			
Traffic acquisition costs	\$ 54,735	\$ 60,452	\$ (5,717)	(9%)
Other platform operations	33,525	33,608	(83)	(0%)
Total platform operations	<u>\$ 88,260</u>	<u>\$ 94,060</u>	<u>\$ (5,800)</u>	<u>(6%)</u>
Platform operations as a percentage of revenue	53%	57%		

Platform operations expense decreased by \$5.8 million, or 6%, during the year ended December 31, 2020 compared to the year ended December 31, 2019. This is primarily comprised of a \$5.7 million decrease in TAC associated with our fixed CPM pricing option due to a shift in mix of platform spend toward our percentage of spend pricing option. Other platform operations remained consistent from the prior year and included a \$0.3 million decrease in third-party hosting services due to concerted efforts to increase the efficiency of our cloud infrastructure.

Sales and Marketing

	Year Ended December 31,		Change	
	2020	2019	\$	%
	(in thousands, except for percentages)			
Sales and marketing	\$ 28,887	\$ 29,027	\$ (140)	(0.5%)
Percentage of revenue	17%	18%		

Sales and marketing expense decreased by \$0.1 million, or 0.5%, during the year ended December 31, 2020 compared to the year ended December 31, 2019. The change in sales and marketing expense was primarily due to a \$1.7 million increase in personnel costs associated with salesforce headcount increases offset by a \$1.8 million decrease in travel and entertainment costs as a result of the COVID-19 pandemic.

Technology and Development

	Year Ended December 31,		Change	
	2020	2019	\$	%
	(in thousands, except for percentages)			
Technology and development	\$ 8,698	\$ 9,240	\$ (542)	(6%)
Percentage of revenue	5%	6%		

Technology and development expense decreased by \$0.5 million, or 6%, during the year ended December 31, 2020 compared to the year ended December 31, 2019. The decrease in technology and development expense was attributable to a \$0.3 million decrease in allocated overhead primarily due to the reduction of rent expense related to the relocation of our corporate headquarters in 2019. Additionally, the amount of overhead allocated to technology and development expense decreased as a result of salesforce headcount increases which increased at a higher rate than other departments.

General and Administrative

	Year Ended December 31,		Change	
	2020	2019	\$	%
	(in thousands, except for percentages)			
General and administrative	\$ 17,639	\$ 19,770	\$ (2,131)	(11%)
Percentage of revenue	11%	12%		

General and administrative expense decreased by \$2.1 million, or 11%, during the year ended December 31, 2020 compared to the year ended December 31, 2019. The decrease in general and administrative expense was primarily due to a \$1.2 million decrease in bad debt expense resulting from recoveries of bad debt in the current year, a \$0.9 million decrease in unit-based compensation expense, and a \$1.0 million decrease in legal and consulting services expense related to costs incurred in connection with the 2019 Former Holdco transaction. These decreases were offset by a \$0.8 million increase in accounting fees.

Total Other Expense, Net

	Year Ended December 31,		Change	
	2020	2019	\$	%
	(in thousands, except for percentages)			
Total other expense, net	\$ 1,129	\$ 2,871	\$ (1,742)	(61%)
Percentage of revenue	1%	2%		

Total other expense, net decreased by \$1.7 million, or 61%, during the year ended December 31, 2020 compared to the year ended December 31, 2019. The decrease in total other expense, net was primarily due to a \$2.9 million decrease in interest expense as a result of the lower interest rates and principal outstanding on our revolving credit facility in the current year compared to the long term debt owed to the Former Holdco in the prior year. This decrease was offset by a net increase related to a \$0.9 million gain on the dissolution of our UK subsidiary in 2019.

Quarterly Results of Operations

The following table sets forth our unaudited quarterly consolidated statements of operations data for each of the quarters in the years ended December 31, 2020 and 2019. The information for each of these quarters has been prepared on a basis consistent with our audited consolidated financial statements and, in our opinion, includes all adjustments, consisting only of normal recurring adjustments necessary for the fair presentation of the financial information contained in those statements. The following unaudited consolidated quarterly financial data should be read in conjunction with our annual consolidated financial statements and the related notes included elsewhere in this Annual Report. These quarterly results are not necessarily indicative of our operating results for a full year or any future period.

	Three Months Ended							
	December 31, 2020	September 30, 2020	June 30, 2020	March 31, 2020	December 31, 2019	September 30, 2019	June 30, 2019	March 31, 2019
	(in thousands, except per unit data)							
Revenue	\$ 56,461	\$ 40,205	\$ 30,425	\$ 38,160	\$ 51,954	\$ 38,855	\$ 41,788	\$ 32,295
Operating expenses ⁽¹⁾ :								
Platform operations	25,944	20,124	18,589	23,603	28,710	22,291	23,415	19,644
Sales and marketing	9,494	6,521	5,742	7,130	8,277	7,042	6,954	6,754
Technology and development	2,618	1,946	1,984	2,150	2,585	2,442	2,216	1,997
General and administrative	5,231	3,861	3,891	4,656	6,597	4,195	4,299	4,679
Total operating expenses	43,287	32,452	30,206	37,539	46,169	35,970	36,884	33,074
Income (loss) from operations	13,174	7,753	219	621	5,785	2,885	4,904	(779)
Total other expense, net	313	275	249	292	375	388	1,119	989
Net income (loss)	\$ 12,861	\$ 7,478	\$ (30)	\$ 329	\$ 5,410	\$ 2,497	\$ 3,785	\$ (1,768)
Earnings (loss) per unit—basic ⁽²⁾	\$ 12.86	\$ 7.48	\$ (0.08)	\$ 0.33	\$ 23.46	\$ 2.97	\$ 4.50	\$ (7.37)
Earnings (loss) per unit—diluted ⁽²⁾	\$ 12.86	\$ 7.48	\$ (0.08)	\$ 0.33	\$ 22.85	\$ 2.50	\$ 3.79	\$ (7.37)
Non-GAAP earnings (loss) per unit—basic ⁽³⁾	\$ 12.86	\$ 7.48	\$ (0.08)	\$ 0.33	\$ 5.55	\$ 2.97	\$ 4.50	\$ (7.37)
Non-GAAP earnings (loss) per unit—diluted ⁽³⁾	\$ 12.86	\$ 7.48	\$ (0.08)	\$ 0.33	\$ 5.41	\$ 2.50	\$ 3.79	\$ (7.37)

	Three Months Ended							
	December 31, 2020	September 30, 2020	June 30, 2020	March 31, 2020	December 31, 2019	September 30, 2019	June 30, 2019	March 31, 2019
	(as a percentage of revenue*)							
Revenue	100%	100%	100%	100%	100%	100%	100%	100%
Operating expenses:								
Platform operations	46%	50%	61%	62%	55%	57%	56%	61%
Sales and marketing	17%	16%	19%	19%	16%	18%	17%	21%
Technology and development	5%	5%	7%	6%	5%	6%	5%	6%
General and administrative	9%	10%	13%	12%	13%	11%	10%	14%
Total operating expenses	77%	81%	99%	98%	89%	93%	88%	102%
Income (loss) from operations	23%	19%	1%	2%	11%	7%	12%	(2)%
Total other expense, net	1%	1%	1%	1%	1%	1%	3%	3%
Net income (loss)	23%	19%	0%	1%	10%	6%	9%	(5)%

* Percentages may not sum due to rounding

(1) Unit-based compensation expense, depreciation expense, and amortization expense included above were as follows:

	Three Months Ended							
	December 31, 2020	September 30, 2020	June 30, 2020	March 31, 2020	December 31, 2019	September 30, 2019	June 30, 2019	March 31, 2019
	(in thousands)							
Unit-based compensation expense:								
Platform operations	\$ —	\$ —	\$ —	\$ —	\$ 24	\$ 6	\$ 6	\$ 6
Sales and marketing	—	—	—	—	25	7	6	6
Technology and development	—	—	—	—	47	11	12	12
General and administrative	—	—	—	—	528	133	131	130
Total unit-based compensation expense	\$ —	\$ —	\$ —	\$ —	\$ 624	\$ 157	\$ 155	\$ 154
Depreciation expense:								
Platform operations	\$ 1,579	\$ 1,619	\$ 1,678	\$ 1,762	\$ 1,704	\$ 1,728	\$ 1,726	\$ 1,674
Sales and marketing	—	—	—	—	—	—	—	—
Technology and development	402	403	402	401	399	391	381	366
General and administrative	163	171	153	144	141	137	131	145
Total depreciation expense	\$ 2,144	\$ 2,193	\$ 2,233	\$ 2,307	\$ 2,244	\$ 2,256	\$ 2,238	\$ 2,185
Amortization expense:								
Platform operations	\$ 175	\$ 175	\$ 175	\$ 175	\$ 175	\$ 174	\$ 176	\$ 178
Sales and marketing	—	—	—	—	—	—	—	—
Technology and development	—	—	—	—	—	—	—	—
General and administrative	133	132	132	132	133	132	132	132
Total amortization expense	\$ 308	\$ 307	\$ 307	\$ 307	\$ 308	\$ 306	\$ 308	\$ 310

See Note 4, Note 5 and Note 9 to our consolidated financial statements included elsewhere in this Annual Report for more information regarding depreciation expense, amortization expense and unit-based compensation expense, respectively.

- (2) See Note 2 to our consolidated financial statements for a description of the earnings (loss) per unit—basic and diluted computations.
- (3) For a reconciliation of Non-GAAP earnings (loss) per unit—basic and diluted to the most directly comparable financial measure calculated in accordance with GAAP, see “Key Operating and Financial Performance Metrics—Use of Non-GAAP Financial Measures.”

Adjusted EBITDA

The following table sets forth a reconciliation of net income (loss) to Adjusted EBITDA for the periods presented:

	Three Months Ended							
	December 31, 2020	September 30, 2020	June 30, 2020	March 31, 2020	December 31, 2019	September 30, 2019	June 30, 2019	March 31, 2019
	(in thousands)							
Net income (loss)	\$ 12,861	\$ 7,478	\$ (30)	\$ 329	\$ 5,410	\$ 2,497	\$ 3,785	\$ (1,768)
Add back:								
Interest expense, net	249	264	244	281	555	1,147	1,130	1,116
Depreciation and amortization expense	2,452	2,500	2,540	2,614	2,552	2,562	2,546	2,495
Unit-based compensation expense	—	—	—	—	624	157	155	154
2019 Former Holdco transaction expense	—	—	—	—	401	50	—	20
UK subsidiary closure	—	—	—	—	(174)	(760)	—	1
Adjusted EBITDA	\$ 15,562	\$ 10,242	\$ 2,754	\$ 3,224	\$ 9,368	\$ 5,653	\$ 7,616	\$ 2,018

The following table presents the reconciliation of net income as a percentage of gross profit to Adjusted EBITDA as a percentage of revenue ex-TAC for the periods presented:

	Three Months Ended							
	December 31, 2020	September 30, 2020	June 30, 2020	March 31, 2020	December 31, 2019	September 30, 2019	June 30, 2019	March 31, 2019
	(in thousands, except for percentages)							
Gross profit	\$ 30,517	\$ 20,081	\$ 11,836	\$ 14,557	\$ 23,244	\$ 16,564	\$ 18,373	\$ 12,651
Net income (loss)	\$ 12,861	\$ 7,478	\$ (30)	\$ 329	\$ 5,410	\$ 2,497	\$ 3,785	\$ (1,768)
Net income as a percentage of gross profit	42%	37%	0%	2%	23%	15%	21%	N/A
Revenue ex-TAC (1)	\$ 39,135	\$ 27,995	\$ 20,045	\$ 23,341	\$ 32,843	\$ 25,033	\$ 26,388	\$ 20,176
Adjusted EBITDA (2)	\$ 15,562	\$ 10,242	\$ 2,754	\$ 3,224	\$ 9,368	\$ 5,653	\$ 7,616	\$ 2,018
Adjusted EBITDA as a percentage of revenue ex-TAC	40%	37%	14%	14%	29%	23%	29%	10%

(1) For a reconciliation of revenue ex-TAC to the most directly comparable financial measure calculated in accordance with GAAP, see “—Revenue ex-TAC.”

(2) For a reconciliation of Adjusted EBITDA to the most directly comparable financial measure calculated in accordance with GAAP, see “—Adjusted EBITDA.”

Revenue ex-TAC

The following table sets forth a reconciliation of revenue to gross profit to revenue ex-TAC for the periods presented:

	Three Months Ended							
	December 31, 2020	September 30, 2020	June 30, 2020	March 31, 2020	December 31, 2019	September 30, 2019	June 30, 2019	March 31, 2019
	(in thousands)							
Revenue	\$ 56,461	\$ 40,205	\$ 30,425	\$ 38,160	\$ 51,954	\$ 38,855	\$ 41,788	\$ 32,295
Less: Platform operations	(25,944)	(20,124)	(18,589)	(23,603)	(28,710)	(22,291)	(23,415)	(19,644)
Gross profit	\$ 30,517	\$ 20,081	\$ 11,836	\$ 14,557	\$ 23,244	\$ 16,564	\$ 18,373	\$ 12,651
Add back: Other platform operations	8,618	7,914	8,209	8,784	9,599	8,469	8,015	7,525
Revenue ex-TAC	\$ 39,135	\$ 27,995	\$ 20,045	\$ 23,341	\$ 32,843	\$ 25,033	\$ 26,388	\$ 20,176

Key Operating and Financial Performance Metrics

Use of Non-GAAP Financial Measures

We monitor the key operating and financial performance metrics set forth below to help us evaluate growth trends, establish budgets, measure the effectiveness of our sales and marketing efforts and assess our operational efficiencies. This Annual Report includes financial measures defined as non-GAAP financial measures by the SEC. These non-GAAP measures include revenue ex-TAC and Adjusted EBITDA, which are discussed immediately following the table below, along with the operational performance measure Active Customers. These measures are not calculated in accordance with GAAP.

	Year Ended December 31,		Change (%)
	2020	2019	
Operating and Financial Performance Metrics			
Revenue ex-TAC	\$ 110,516	\$ 104,440	6%
Adjusted EBITDA	\$ 31,782	\$ 24,655	29%
Adjusted EBITDA as a percentage of revenue ex-TAC	29%	24%	
Number of Active Customers ⁽¹⁾	264	277	(5%)
Average revenue ex-TAC per Active Customer ⁽¹⁾	\$ 419	\$ 377	11%
Non-GAAP earnings (loss) per unit—basic	\$ 20.64	\$ 11.35	82%
Non-GAAP earnings (loss) per unit—diluted	\$ 20.64	\$ 9.92	108%

- (1) We define an Active Customer as a customer that had total aggregate revenue ex-TAC of at least \$5,000 through our platform during the previous twelve months. We define average revenue ex-TAC per Active Customer as revenue ex-TAC for the trailing twelve month period presented divided by Active Customers. For a detailed discussion of average revenue ex-TAC per Active Customer and Active Customers, see “—Number of Active Customers and Average Revenue ex-TAC per Active Customer.”

Revenue ex-TAC

Revenue ex-TAC is a non-GAAP financial measure. Gross profit is the most comparable GAAP measurement, which is calculated as revenue less platform operations. In calculating revenue ex-TAC, we add back other platform operations expense to gross profit. Revenue ex-TAC is a key profitability measure used by our management and board to understand and evaluate our operating performance and trends, develop short-and long-term operational plans and make strategic decisions regarding the allocation of capital. In particular, we believe that revenue ex-TAC can provide a useful measure of period-to-period comparisons for all pricing options within our business. Accordingly, we believe that this measure provides useful information to investors and the market in understanding and evaluating our operating results in the same manner as our management and board.

Our use of revenue ex-TAC has limitations as an analytical tool and you should not consider it in isolation or as a substitute for analysis of our financial results as reported under GAAP. A potential limitation of this non-GAAP financial measure is that other companies, including companies in our industry which have similar business arrangements, may define revenue ex-TAC differently, which may make comparisons difficult. Because of these and other limitations, you should consider our non-GAAP measures only as supplemental to other GAAP-based financial performance measures, including revenue, gross profit, net income (loss) and cash flows.

The following table presents the calculation of gross profit and reconciliation of gross profit to revenue ex-TAC for the years ended December 31, 2020 and 2019:

	Year Ended December 31,	
	2020	2019
	(in thousands)	
Revenue	\$ 165,251	\$ 164,892
Less: Platform operations	(88,260)	(94,060)
Gross profit	76,991	70,832
Add back: Other platform operations	33,525	33,608
Revenue ex-TAC	<u>\$ 110,516</u>	<u>\$ 104,440</u>

Adjusted EBITDA

Adjusted EBITDA is a non-GAAP financial measure defined by us as net income (loss), the most comparable GAAP measurement, before interest expense, net, depreciation expense, amortization expense, unit-based compensation expense, and certain other items that are not related to our core operations such as restructuring charges, transaction expenses associated with the 2019 Former Holdco transaction described in Note 7 to our consolidated financial statements, and expenses or benefits related to the dissolution of our UK subsidiary.

Adjusted EBITDA and Adjusted EBITDA as a percentage of revenue ex-TAC are key measures used by our management and board to understand and evaluate our core operating performance and trends, to prepare and approve our annual budget and to develop short-and long-term operational plans. In particular, we believe that the exclusion of the amounts eliminated in calculating Adjusted EBITDA can provide a useful measure for period-to-period comparisons of our business. Adjusted EBITDA as a percentage of our non-GAAP metric, revenue ex-TAC, is used by our management and board to evaluate Adjusted EBITDA relative to our profitability after costs that are directly variable to revenues, which comprise traffic acquisition costs. Accordingly, we believe that Adjusted EBITDA and Adjusted EBITDA as a percentage of revenue ex-TAC provide useful information to investors and the market in understanding and evaluating our operating results in the same manner as our management and board.

Our use of Adjusted EBITDA and Adjusted EBITDA as a percentage of revenue ex-TAC has limitations as an analytical tool, and you should not consider these measures in isolation or as a substitute for analysis of our financial results as reported under GAAP. Some of these potential limitations include:

- other companies, including companies in our industry which have similar business arrangements, may report Adjusted EBITDA or Adjusted EBITDA as a percentage of revenue ex-TAC, or similarly titled measures but calculate them differently, which reduces their usefulness as comparative measures.
- although depreciation and amortization expense are non-cash charges, the assets being depreciated and amortized may have to be replaced in the future, and Adjusted EBITDA does not reflect cash capital expenditure requirements for such replacements or for new capital expenditure requirements; and
- Adjusted EBITDA does not reflect changes in, or cash requirements for, our working capital needs or the potentially dilutive impact of unit-based compensation.

Because of these and other limitations, you should consider our non-GAAP measures only as supplemental to other GAAP-based financial performance measures, including revenue, net income (loss) and cash flows. The following table presents the reconciliation of net income to Adjusted EBITDA for the years ended December 31, 2020 and 2019:

	<u>Year Ended December 31,</u>	
	<u>2020</u>	<u>2019</u>
	(in thousands)	
Net income	\$ 20,638	\$ 9,924
Add back:		
Interest expense, net	1,038	3,948
Depreciation and amortization expense	10,106	10,155
Unit-based compensation expense	—	1,090
2019 Former Holdco transaction expense	—	471
UK subsidiary closure	—	(933)
Adjusted EBITDA	<u>\$ 31,782</u>	<u>\$ 24,655</u>

The following table presents the reconciliation of net income as a percentage of gross profit to Adjusted EBITDA as a percentage of revenue ex-TAC for the years ended December 31, 2020 and 2019:

	<u>Year Ended December 31,</u>	
	<u>2020</u>	<u>2019</u>
	(in thousands, except for percentages)	
Gross profit	\$ 76,991	\$ 70,832
Net income	\$ 20,638	\$ 9,924
Net income as a percentage of gross profit	<u>27%</u>	<u>14%</u>
Revenue ex-TAC ⁽¹⁾	\$ 110,516	\$ 104,440
Adjusted EBITDA ⁽²⁾	<u>\$ 31,782</u>	<u>\$ 24,655</u>
Adjusted EBITDA as a percentage of revenue ex-TAC	<u>29%</u>	<u>24%</u>

(1) For a reconciliation of revenue ex-TAC to the most directly comparable financial measure calculated in accordance with GAAP, see “—Revenue ex-TAC.”

(2) For a reconciliation of Adjusted EBITDA to the most directly comparable financial measure calculated in accordance with GAAP, see “—Adjusted EBITDA.”

Non-GAAP earnings (loss) per unit

Non-GAAP earnings (loss) per unit is a non-GAAP financial measure defined by us as earnings (loss) per unit, the most comparable GAAP measurement, adjusted for certain non-recurring, infrequent, and unusual transactions that are not reasonably likely to recur within two years nor have similar transactions occurred within the prior two years. Non-GAAP earnings (loss) per unit adjusts GAAP earnings (loss) per unit for the impacts of the 2019 Former Holdco transaction, namely, the deemed contribution of 2016 convertible preferred unit interest by Former Holdco and the deemed dividend related to the beneficial conversion feature recognized upon issuance of 2019 convertible preferred units. See Note 8 to our consolidated financial statements for further information. We believe that the exclusion of such amounts in calculating Non-GAAP earnings (loss) per unit can provide a useful measure for period-to-period comparisons of our business.

Our use of Non-GAAP earnings (loss) per unit has limitations as an analytical tool, and you should not consider it in isolation or as a substitute for analysis of our financial results as reported under GAAP. Some of these potential limitations include:

- other companies, including companies in our industry which have similar business arrangements, may report Non-GAAP earnings (loss) per unit or similarly titled measures, but calculate them differently, which reduces their usefulness as comparative measures;
- although the deemed contribution referred to above is non-cash in nature, Non-GAAP earnings (loss) per unit does not reflect the effective contribution of capital by the Former Holdco upon retirement of 2016 convertible preferred units and its impact on net income attributable to all unitholders and net income attributable to common unitholders; and
- although the deemed dividend referred to above is non-cash in nature, Non-GAAP earnings (loss) per unit does not reflect the implied discount on issuance of 2019 convertible preferred units and its impact on net income attributable to all unitholders and net income attributable to common unitholders.

Because of these and other limitations, you should consider our non-GAAP measures only as supplemental to other GAAP-based financial performance measures, including earnings (loss) per unit. The following table presents the reconciliation of earnings (loss) per unit to Non-GAAP earnings (loss) per unit for the year and three months ended December 31, 2019. Earnings (loss) per unit was not adjusted for any other periods presented.

	Year Ended December 31, 2019			Three Months Ended December 31, 2019		
	Earnings (Loss) per Unit	Adjustments	Non-GAAP Earnings (Loss) per Unit	Earnings (Loss) per Unit	Adjustments	Non-GAAP Earnings (Loss) per Unit
	(in thousands, except unit data)			(in thousands, except unit data)		
<u>Numerator</u>						
Net income	\$ 9,924	\$ —	\$ 9,924	\$ 5,410	\$ —	\$ 5,410
Deemed contribution of 2016 convertible preferred unit interest	45,000	(45,000)	—	45,000	(45,000)	—
Deemed dividend upon issuance of 2019 convertible preferred units	(27,558)	27,558	—	(27,558)	27,558	—
Adjusted net income attributable to all unitholders	27,366	(17,442)	9,924	22,852	(17,442)	5,410
Less: Undistributed earnings attributable to participating securities	(18,787)	11,974	(6,813)	(14,078)	10,745	(3,333)
Net income attributable to common unitholders	<u>\$ 8,579</u>	<u>\$ (5,468)</u>	<u>\$ 3,111</u>	<u>\$ 8,774</u>	<u>\$ (6,697)</u>	<u>\$ 2,077</u>
<u>Denominator</u>						
Weighted average common units outstanding—basic	274	—	274	374	—	374
Weighted average units outstanding—diluted	1,000	—	1,000	1,000	—	1,000
Basic earnings per unit	<u>\$ 31.31</u>	<u>\$ (19.96)</u>	<u>\$ 11.35</u>	<u>\$ 23.46</u>	<u>\$ (17.91)</u>	<u>\$ 5.55</u>
Diluted earnings per unit	<u>\$ 27.37</u>	<u>\$ (17.45)</u>	<u>\$ 9.92</u>	<u>\$ 22.85</u>	<u>\$ (17.44)</u>	<u>\$ 5.41</u>

Number of Active Customers and Average Revenue ex-TAC per Active Customer

Number of Active Customers and average revenue ex-TAC per Active Customer are operational metrics. We define an Active Customer as a customer that had total aggregate revenue ex-TAC of at least \$5,000 through our platform during the previous twelve months. We define average revenue ex-TAC per Active Customer as revenue ex-TAC for the trailing twelve month period presented divided by Active Customers. For purposes of this definition, a customer that operates under any of our pricing options that equals or exceeds the aforementioned revenue ex-TAC threshold is considered an Active Customer. We believe that the total number of Active Customers and average revenue ex-TAC per Active Customer are important measures of our ability to increase revenue and the effectiveness of our sales force, although we expect these measures to fluctuate based on the seasonality in our business. Customers that generated less than \$5,000 in revenue ex-TAC in the trailing twelve month period were not material in the aggregate in any period.

Liquidity and Capital Resources

As of December 31, 2020, we had cash of \$9.6 million and working capital, consisting of current assets less current liabilities, of \$24.2 million. We believe our existing cash, cash flow from operations, and undrawn availability under our credit facility will be sufficient to meet our working capital requirements for at least the next 12 months.

Viant Technology Inc. is a holding company with no operations of its own. Accordingly, upon completion of the IPO, Viant Technology Inc. is dependent on distributions from Viant Technology LLC, including payments under the Tax Receivable Agreement, to pay its taxes and other expenses. The Loan Agreement, as defined below, imposes, and any future credit facilities may impose, limitations on the ability of Viant Technology LLC or Viant Technology Inc. to pay dividends to third parties.

Revolving Credit Facility

On October 31, 2019, we entered into an asset-based revolving credit and security agreement with PNC Bank (the "Loan Agreement"). The Loan Agreement provides a senior secured revolving credit facility of up to \$40.0 million with a maturity date of October 31, 2024. The Loan Agreement is collateralized by security interests in substantially all of our assets.

Advances under the Loan Agreement bear interest through maturity at a variable rate based upon our selection of either, a Domestic Rate or a LIBOR rate, plus an applicable margin ("Domestic Rate Loans" and "LIBOR Rate Loans"). The Domestic Rate is defined as a fluctuating interest rate equal to the greater of (1) the base commercial lending rate of PNC Bank, (2) the overnight federal funds rate plus 0.50% and (3) the Daily LIBOR Rate plus 1.00%. The applicable margin through December 31, 2020 was equal to 2.00% for Domestic Rate Loans and 4.00% for LIBOR Rate Loans. The effective weighted average interest rate as of December 31, 2020 was 4.15%. The applicable margin commencing January 1, 2021 is between 1.50% to 2.25% for Domestic Rate Loans and between 3.50% and 4.25% for LIBOR Rate Loans based on maintaining certain undrawn availability ratios. The facility fee for undrawn amounts under the Loan Agreement is 0.375% per annum. We will also be required to pay customary letter of credit fees, as necessary.

The Loan Agreement contains customary conditions to borrowings, events of default and covenants, including covenants that restrict our ability to sell assets, make changes to the nature of the business, engage in mergers or acquisitions, incur, assume or permit to exist additional indebtedness and guarantees, create or permit to exist liens, pay dividends, issue equity instruments, make distributions or redeem or repurchase capital stock or make other investments, and engage in transactions with affiliates. The Loan Agreement also requires that we maintain compliance with a minimum Fixed Charge Coverage Ratio (as defined in the Loan Agreement) of 1.40 to 1.00 at any time undrawn availability under the Loan Agreement is less than 25%. As of December 31, 2020, we are in compliance with all covenants.

Cash Flows

The following table summarizes our cash flows for the years ended December 31, 2020 and 2019:

	Year Ended December 31,	
	2020	2019
	(in thousands)	
Consolidated Statements of Cash Flows Data		
Cash flows provided by operating activities	\$ 18,875	\$ 13,033
Cash flows used in investing activities	(7,841)	(7,813)
Cash flows used in financing activities	(6,220)	(3,061)
Effect of exchange rate changes on cash	—	1
Increase in cash	<u>\$ 4,814</u>	<u>\$ 2,160</u>

Operating Activities

Our cash flows from operating activities are primarily influenced by growth in our operations, increases or decreases in collections from our customers and related payments to our suppliers of advertising media and data. Cash flows from operating activities have been affected by changes in our working capital, particularly changes in accounts receivable, accounts payable and accrued liabilities. The timing of cash receipts from customers and payments to suppliers can significantly impact our cash flows from operating activities. We typically pay suppliers in advance of collections from our customers. Our collection and payment cycles can vary from period to period. In addition, we expect seasonality to impact cash flows from operating activities on a quarterly basis.

We compute our average days sales outstanding (“DSO”) as of a given month end based on a weighted average of outstanding accounts receivable. Specifically, the DSO is calculated by multiplying the percentage of accounts receivable outstanding for each monthly billing period by the number of days outstanding related to each billing period and then summing the weighted days outstanding. Historically, our DSOs have fluctuated over time. If our DSOs increase significantly, and we are unable to borrow against these receivables on commercially acceptable terms, our working capital availability could be reduced, and as a consequence our results of operations and financial condition would be adversely impacted.

We compute our days payable outstanding (“DPO”) as of a given month end by dividing our trade payables (including accrued liabilities) by the average daily cost of media, data, other direct costs and certain operating expenses over the last four months.

The following table summarizes the DSO and DPO for the periods presented.

	As of December 31,	
	2020	2019
	(in days)	
DSO	64	93
DPO	62	76

Our average DSO was 64 and 93 days and our average DPO was 62 and 76 days as of December 31, 2020 and 2019, respectively. The majority of our revenue is sourced through advertising agencies that pay us after they have received payment from the advertiser, increasing our DSO. We remit payment for media, data and other direct costs purchased through our platform before receiving payment from the advertising agency typically resulting in a DPO that is lower than our DSO. The year over year decrease in our DSO reflects our continued focus to lower our DSO through collection efforts. As our operating cash flows increased year over year, we were able to decrease our DPO correspondingly.

During the year ended December 31, 2020, cash provided by operating activities of \$18.9 million resulted primarily from net income of \$20.6 million and noncash add back adjustments to net income of \$10.1 million for depreciation and amortization, offset by a \$1.7 million decrease in deferred revenue, a decrease in net working capital (excluding deferred revenue and other liabilities) of \$9.3 million, and a decrease in other liabilities of \$0.4 million.

During the year ended December 31, 2019, cash provided by operating activities of \$13.0 million resulted primarily from net income of \$9.9 million, noncash add back adjustments to net income of \$10.2 million for depreciation and amortization offset by a \$4.6 million decrease in deferred revenue, a decrease in net working capital (excluding deferred revenue and other liabilities) of \$3.2 million, and a decrease in other liabilities of \$1.0 million.

Investing Activities

Our primary investing activities have consisted of capital expenditures to develop our software in support of enhancing our technology platform and purchases of property and equipment in support of our expanding headcount as a result of our growth. We capitalize certain costs associated with creating and enhancing internally developed software related to our technology infrastructure that are recorded within property, equipment and software, net. These costs include personnel and related employee benefit expenses for employees who are directly associated with and who devote time to software development projects. Purchases of property and equipment and capitalized software development costs may vary from period-to-period due to the timing of the expansion of our operations, the addition of headcount and our software development cycles. As a result of capitalization of stock based compensation expense in future periods and the growth of our business, we expect our capital expenditures and our investment activity to continue to increase.

During the year ended December 31, 2020, cash used in investing activities of \$7.8 million resulted from \$7.4 million of investments in capitalized software and \$0.4 million of purchases of property and equipment.

During the year ended December 31, 2019, cash used in investing activities of \$7.8 million resulted from \$7.4 million of investments in capitalized software and \$0.4 million of purchases of property and equipment.

Financing Activities

Our financing activities consisted primarily of proceeds from borrowings and repayments of our debt, issuances of our equity and payments of member distributions. Net cash provided by or used in financing activities has been and will be used to finance our operations, capital expenditures, platform development and rapid growth.

During the year ended December 31, 2020, cash used in financing activities of \$6.2 million resulted primarily from \$6.0 million of proceeds from the PPP Loan offset by \$5.5 million in payments of member tax distributions, \$5.0 million in payments of member dividends, and \$1.7 million in payment of offering costs associated with our IPO.

During the year ended December 31, 2019, cash used in financing activities of \$3.1 million resulted primarily from the settlement of long-term debt from a related party of \$28.6 million offset by \$17.5 million of borrowings on our line of credit, \$7.5 million from the issuance of the 2019 convertible preferred units and \$0.5 million of borrowings on long term debt from a related party. See Note 7 to our consolidated financial statements for more information on related party transactions with the Former Holdco.

Off-Balance Sheet Arrangements

We do not have any relationships with other entities or financial partnerships, such as entities often referred to as structured finance or special purpose entities established for the purpose of facilitating off-balance sheet arrangements or other contractually narrow or limited purposes. We did not have any other off-balance sheet arrangements as of December 31, 2020 other than operating leases and the indemnification agreements described in Note 11 to our consolidated financial statements.

Contractual Obligations

Our principal commitments consist of our debt obligations and non-cancelable leases for our various office facilities. In certain cases, the terms of the lease agreements provide for rental payments on a graduated basis.

We have made no significant contractual guarantees for the benefit of third parties. However, in the ordinary course of business, we may provide indemnifications of varying scope and terms to customers, vendors, lessors, business partners and other parties with respect to certain matters, including, but not limited to, losses arising out of breach of such agreements, services to be provided by us or from intellectual property infringement claims made by third parties. In addition, we have entered into indemnification agreements with directors and certain officers and employees that will require us, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors, officers or employees. No demands have been made upon us to provide indemnification under such agreements and thus, there are no claims that we are aware of that could have a material effect on our consolidated financial statements. Accordingly, no amounts for any obligation have been recorded as of December 31, 2020.

Critical Accounting Policies and Estimates

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

An accounting policy is deemed to be critical if it requires an accounting estimate to be made on assumptions about matters that are highly uncertain at the time the estimate is made, if different estimates reasonably could have been used, or if changes in the estimate that are reasonably possible could materially impact the financial statements. We believe that the assumptions and estimates associated with the evaluation of revenue recognition criteria, including the determination of revenue recognition net versus gross assessment in our revenue arrangements, the assumptions used in the valuation models to determine the fair value of common units and unit-based compensation expense, and internal-use software have the greatest potential impact on our consolidated financial statements. Therefore, we consider these to be our critical accounting policies and estimates.

Revenue Recognition

We derive our revenue by providing agencies and brands the ability to plan, buy and measure their digital advertising campaigns using our platform. Our platform enables marketers to reach their target audience across desktop, mobile, connected TV, linear TV, streaming audio and digital billboards.

We apply a five-step approach, as defined in Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) 606, Revenue from Contracts with Customers, in determining the amount and timing of revenue to be recognized:

- Identification of a contract with a customer;
- Identification of the performance obligations in the contract;
- Determination of the transaction price;
- Allocation of the transaction price to the performance obligations in the contract; and
- Recognition of revenue when or as the performance obligations are satisfied.

We make our software platform available through different pricing options to tailor to multiple client types and customer needs. These options consist of a percentage of spend option, a monthly subscription pricing option and a fixed CPM pricing option. Customers can use our software platform on a self-service basis to execute their advertising campaigns. We generate revenue when the software platform is used on a self-service basis by charging a platform fee that is either a percentage of spend or a flat monthly subscription fee as well as fees for additional features such as data and advanced reporting. We also offer our customers the ability to use our services to aid in data management, media execution and advanced reporting. When customers utilize our services, we generate revenue by charging a (1) separate service fee that represents a percentage of spend in addition to the platform fee; (2) a flat monthly fee covering services in connection with data management and advanced reporting; or (3) a fixed CPM that is inclusive of media, other direct costs and services. Some of the aforementioned offerings are relatively new to the market and are not yet material to our business from a financial perspective.

We maintain agreements with our customers in the form of MSAs in connection with the percentage of spend and monthly subscription pricing options, as well as in instances where we charge our customers a flat monthly fee for services in connection with data management and advanced reporting, and IOs in connection with the fixed CPM pricing option, which set out the terms of the relationship and use of our software platform. The nature of our performance obligations is to enable customers to plan, buy and measure advertising campaigns using our platform and provide campaign execution services as requested.

For the percentage of spend pricing option, we typically bill customers a platform fee, and in certain instances an additional service fee, which is based on a specified percentage of the customer's purchases through the platform, as well as fees for additional features such as data and advanced reporting, plus the cost of TAC. We recognize revenue at the point in time when a purchase by the customer occurs through our software platform. For the monthly subscription pricing option, we bill customers a platform fee represented by a fixed monthly subscription amount, as well as fees for additional features such as data and advanced reporting, plus the cost of TAC. We recognize subscription fees for customers accessing our platform as revenue over time on a ratable basis over the term of the agreement. In both instances, revenue is reported net of TAC since we arrange for the transfer of TAC from the supplier to the customer through the use of our platform and do not control such features prior to transfer to the customer. As it relates to the TAC in these pricing options, we do not have primary responsibility for meeting customer specifications and do not have discretion in establishing the price. For data management and advanced reporting services, we typically bill a fixed monthly fee and recognize revenue over time on a ratable basis over the term of the agreement.

For the fixed CPM pricing option, we typically bill customers a fixed CPM price based on advertising impressions delivered through the platform. We recognize revenue at the point in time when the advertising impressions are delivered. This revenue is reported gross of any amounts incurred and payable to suppliers for TAC, since we control such features prior to transfer to the customer. As it relates to TAC in this pricing option, we have the primary responsibility for meeting customer specifications and have discretion in establishing the price.

Unit-Based Compensation

We record compensation expense for all common unit awards granted to our employees, which is measured and recognized on a graded-vesting attribution basis over the requisite service period based on the fair value of the units at the grant date.

During the periods covered by the consolidated financial statements included in this Annual Report, we were a privately held company with no active public market for our common units. Therefore, in determining the fair value of unit-based awards, we relied in part on valuations prepared by an independent third party. The independent third party performed the valuations in a manner consistent with the American Institute of Certified Public Accountants Practice Aid, Valuation of Privately-Held Company Equity Securities Issued as Compensation ("Practice Aid"). In determining the fair value of our units, we considered all objective and subjective factors that we believed to be relevant, including our best estimate of our business condition, prospects and operating performance at the valuation date. There are significant judgments and estimates inherent in these valuations. These judgments and estimates include assumptions regarding our future operating performance, industry growth, average revenue ex-TAC per customer, and the timing of a potential initial public offering or other liquidity event.

For additional information regarding unit-based compensation and the assumptions used for determining the fair value of unit awards see Note 2 and Note 9 to our consolidated financial statements.

Internal-Use Software

We capitalize certain costs associated with creating and enhancing internally developed software. These costs include personnel and related employee benefits expenses for employees who are directly associated with and who devote time to software development projects. Software development costs that do not qualify for capitalization are expensed as incurred and recorded in technology and development expense in the consolidated statements of operations and comprehensive income (loss).

Software development activities typically consist of three stages: (1) the planning phase; (2) the application and infrastructure development stage; and (3) the post implementation stage. Costs incurred in the planning and post implementation phases, including costs associated with training and repairs and maintenance of the developed technologies, are expensed as incurred. We capitalize costs associated with software developed when the preliminary project stage is completed, management implicitly or explicitly authorizes and commits to funding the project and it is probable that the project will be completed and perform as intended. Costs incurred in the application and infrastructure development phases, including significant enhancements and upgrades, are capitalized. Capitalization ends once a project is substantially complete and the software is ready for its intended purpose, at which point the software begins to be depreciated over its estimated useful life.

JOBS Act Accounting Election

On April 5, 2012, the JOBS Act was signed into law. The JOBS Act contains provisions that, among other things, reduce certain reporting requirements for qualifying public companies. As an “emerging growth company,” the Company may, under Section 7(a)(2)(B) of the Securities Act, delay adoption of new or revised accounting standards applicable to public companies until such standards would otherwise apply to private companies. An “emerging growth company” is one with less than \$1.07 billion in annual sales, has less than \$700 million in market value of our shares of common stock held by non-affiliates and issues less than \$1 billion of non-convertible debt over a three year period. We may take advantage of this extended transition period until the first to occur of the date that we (i) are no longer an “emerging growth company” or (ii) affirmatively and irrevocably opt out of this extended transition period.

We have elected to take advantage of the benefits of this extended transition period. Until the date that we are no longer an “emerging growth company” or affirmatively and irrevocably opt out of the exemption provided by Securities Act Section 7(a)(2)(B), upon issuance of a new or revised accounting standard that applies to our consolidated financial statements and that has a different effective date for public and private companies, the Company will disclose the date on which adoption is required for non-emerging growth companies and the date on which we will adopt the recently issued accounting standard. As part of this election, we are delaying the adoption of accounting guidance related to leases and implementation costs incurred in cloud computing arrangements that currently applies to public companies. We are assessing the impact this guidance will have on our financial statements. See Note 2 to our consolidated financial statements for additional information.

Recently Issued Accounting Pronouncements

For information regarding recently issued accounting pronouncements, see Note 2 to our consolidated financial statements.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk

Our operations are primarily within the United States, and we are exposed to market risks in the ordinary course of our business, including the effects of interest rate changes, foreign currency fluctuations and inflation.

Interest Rate Risk

We are exposed to market risk from changes in interest rates on our Loan Agreement, which accrues interest at a variable rate. We have not used any derivative financial instruments to manage our interest rate risk exposure. Based upon the principal balance owed on our revolving credit facility as of December 31, 2020, a hypothetical one percentage point increase or decrease in the interest rate under our revolving credit facility would result in a corresponding increase or decrease in interest expense of approximately \$0.2 million annually.

Inflation Risk

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

Item 8. Financial Statements and Supplementary Data

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REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Stockholders and the Board of Directors of Viant Technology Inc.:

Opinion on the Financial Statements

We have audited the accompanying balance sheets of Viant Technology Inc. (the “Company”) as of December 31, 2020 and October 9, 2020, and the related notes (collectively referred to as the “financial statement”). In our opinion, the financial statement presents fairly, in all material respects, the financial position of the Company as of December 31, 2020 and October 9, 2020, in conformity with accounting principles generally accepted in the United States of America.

Basis for Opinion

This financial statement is the responsibility of the Company’s management. Our responsibility is to express an opinion on the Company’s financial statement based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

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

Our audits included performing procedures to assess the risks of material misstatement of the financial statement, 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 financial statement. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statement. We believe that our audits provide a reasonable basis for our opinion.

/s/ Deloitte & Touche LLP

Costa Mesa, California
March 23, 2021

We have served as the Company’s auditor since 2020.

**VIANT TECHNOLOGY INC.
BALANCE SHEETS**

	<u>As of December 31,</u> <u>2020</u>	<u>As of October 9,</u> <u>2020</u>
Assets		
Cash	\$ 1	\$ 1
Total assets	<u>\$ 1</u>	<u>\$ 1</u>
Stockholder's equity		
Common stock, \$0.001 par value; 1,000 shares authorized, issued and outstanding	\$ 1	\$ 1
Total stockholder's equity	<u>\$ 1</u>	<u>\$ 1</u>

**VIANT TECHNOLOGY INC.
NOTES TO BALANCE SHEETS**

1. Organization and Nature of the Business

Viant Technology Inc. (the “Company”) was incorporated in the State of Delaware on October 9, 2020 (inception). The initial stockholder of the Company is Four Brothers 2 LLC (“Parent”) which holds all of the shares of common stock authorized, issued and outstanding. The Company was incorporated for the purpose of completing an initial public offering (“IPO”) and related transactions in order to carry on the business of Viant Technology LLC. As the managing member of Viant Technology LLC, the Company is expected to operate and control all of the business and affairs of Viant Technology LLC. Refer to Note 3 for further information regarding the IPO.

2. Summary of Significant Accounting Policies

Basis of Presentation

The accompanying balance sheets have been prepared in accordance with generally accepted accounting principles in the United States of America (“GAAP”). The preparation of the financial statement in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the financial statement. As there has been no activity for this entity during the reportable period, separate statements of operations, changes in stockholder’s equity and cash flows have not been presented. The Company’s year end is December 31.

On the date of incorporation, the sole stockholder, Parent, acquired 1,000 shares of common stock for cash consideration of \$0.001 per share, or total cash consideration of \$1.

Offering Costs

In connection with the IPO, Viant Technology LLC incurred accounting, legal and other costs, which were reimbursed by the Company upon the consummation of the IPO. Such costs will be recorded as a reduction to stockholder’s equity and recorded against the proceeds from the offering.

Organization Costs

Organization costs were expensed as incurred. Such costs are comprised of the legal and professional fees associated with the formation of the Company.

3. Subsequent Events

The Company has assessed subsequent events through the date of this report and has concluded the following required disclosure in the financial statement.

Initial Public Offering and Tax Receivable Agreement

On February 9, 2021, the Company’s Form S-1 was declared effective by the SEC related to the IPO of its Class A common stock. The closing date of the IPO was February 12, 2021, and in connection with the closing, the following actions were taken:

- The Company amended and restated its certificate of incorporation, under which the Company is authorized to issue up to 450,000,000 shares of Class A common stock, up to 150,000,000 shares of Class B common stock, and up to 10,000,000 shares of preferred stock;
- The limited liability company agreement of Viant Technology LLC was amended and restated (as amended and restated, the “Viant Technology LLC Agreement”) to, among other things, provide for Class A units and Class B units and appoint the Company as the sole managing member of Viant Technology LLC;

- The Viant Technology LLC Agreement classifies the interests acquired by the Company as Class A units and reclassified the interests held by the continuing members of Viant Technology LLC as Class B units, and permits the continuing members of Viant Technology LLC to exchange Class B units for shares of Class A common stock on a one-for-one basis or, at the election of Viant Technology LLC, for cash. Immediately following such reclassification, the continuing members held 48,935,559 Class B units. For each membership unit of Viant Technology LLC that is reclassified as a Class B unit, the Company issued one corresponding share of our Class B common stock to the continuing members, or 48,935,559 shares of Class B common stock in total;
- The Company issued and sold 10,000,000 shares of its Class A common stock to the underwriters at an initial public offering price of \$25.00 per share, for gross proceeds of \$250.0 million before deducting underwriting discounts and commissions of \$17.5 million;
- The Company used the net proceeds of \$232.5 million to acquire 10,000,000 newly issued Class A units of Viant Technology LLC at a per-unit price equal to the per-share price paid by the underwriters for shares of our Class A common stock;
- The Company entered into a Tax Receivable Agreement (the “Tax Receivable Agreement”) for the benefit of the continuing members of Viant Technology LLC, pursuant to which the Company will pay them 85% of the amount of the net cash tax savings, if any, that the Company realizes (or, under certain circumstances, is deemed to realize) as a result of increases in tax basis (and certain other tax benefits) resulting from (i) the Company’s acquisition of Viant Technology LLC units in the IPO and in future exchanges and (ii) any payments the Company makes under the Tax Receivable Agreement;
- The underwriters exercised their option to purchase 1,500,000 additional shares of Class A common stock from the selling stockholders. The Company did not receive any proceeds from the sale of shares by the selling stockholders. Pursuant to such exercise, the selling stockholders exchanged the corresponding number of Class B units for the shares of Class A common stock, the corresponding number of shares of Class B common stock were automatically retired, and 1,500,000 Class A units were issued to the Company;
- Due to the exchange of Class B units for shares of Class A common stock by the selling stockholders in connection with the IPO, the Company recognized a deferred tax asset of approximately \$11.1 million and an other long-term liability of approximately \$9.9 million, assuming (i) no material changes in relevant tax law and (ii) that the Company has sufficient taxable income in each year to realize on a current basis the increased depreciation, amortization and other tax benefits that are subject of the Tax Receivable Agreement.
- The Class B stockholders and Class A stockholders will initially have 80.5% and 19.5%, respectively, of the combined voting power of the Company’s common stock. The Class A common stock outstanding will represent 100% of the rights of the holders of all classes of the Company’s outstanding common stock to share in distributions from the Company, except for the right of Class B stockholders to receive the par value of the Class B common stock upon our liquidation, dissolution or winding up or an exchange of Class B units.
- The Company entered into a Registration Rights Agreement with the Class B stockholders to provide for certain rights and restrictions after the IPO.

Immediately following the closing of the IPO, Viant Technology LLC is the predecessor of the Company for financial reporting purposes. The Company is a holding company, and its sole material asset is its equity interest in Viant Technology LLC. As the sole managing member of Viant Technology LLC, the Company operates and controls all of the business and affairs of Viant Technology LLC. This reorganization is accounted for as a reorganization of entities under common control. As a result, the consolidated financial statements of the Company will recognize the assets and liabilities received in the reorganization at their historical carrying amounts, as reflected in the historical consolidated financial statements of Viant Technology LLC. The Company will consolidate Viant Technology LLC on its consolidated financial statements and record a noncontrolling interest related to the Class B units held by the Class B stockholders on its consolidated balance sheet and statement of operations.

2021 Long Term Incentive Plan (“2021 LTIP”)

Immediately prior to the closing of the IPO, the Company’s board of directors adopted the 2021 LTIP to replace Viant Technology LLC’s 2020 Equity Based Incentive Compensation Plan (“Phantom Unit Plan”). The aggregate maximum number of shares of the Company’s Class A common stock that may be issued pursuant to stock awards under the 2021 LTIP, or the Share Reserve, is 11,787,112 shares of Class A common stock. The Share Reserve will automatically increase on January 1 of each year commencing on January 1, 2022 and ending with a final increase on January 1, 2031 in an amount equal to 5% of the total number of shares of capital stock outstanding on December 31st of the preceding calendar year; provided, however, that the Company’s board of directors may provide that there will not be a January 1st increase in the Share Reserve in a given year or that the increase will be less than 5% of the shares of capital stock outstanding on the preceding December 31st.

Upon adoption of the 2021 LTIP, approximately 6.2 million restricted stock units (“RSUs”) were granted to certain employees with a grant date fair value of \$155 million and approximately 2.2 million RSUs will vest upon expiration of the 180 day lock-up period. Approximately \$83.5 million of stock-based compensation expense will be recognized during 2021 and the remainder over a weighted average period of 2.1 years.

REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Unitholders and the Managing Member of Viant Technology LLC:

Opinion on the Financial Statements

We have audited the accompanying consolidated balance sheets of Viant Technology LLC and subsidiaries (the "Company") as of December 31, 2020 and 2019, the related consolidated statements of operations and comprehensive income (loss), convertible preferred units and members' equity (deficit), and cash flows, for each of the three years in the period ended December 31, 2020, and the related notes (collectively referred to as the "financial statements"). In our opinion, the financial statements 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.

Basis for Opinion

These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the Company's financial statements based on our audits. We are a public accounting firm registered with the Public Company Accounting Oversight Board (United States) (PCAOB) and are required to be independent with respect to the Company in accordance with the U.S. federal securities laws and the applicable rules and regulations of the Securities and Exchange Commission and the PCAOB.

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

Our audits included performing procedures to assess the risks of material misstatement of the 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 financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that our audits provide a reasonable basis for our opinion.

/s/ Deloitte & Touche LLP

Costa Mesa, California
March 23, 2021

We have served as the Company's auditor since 2020.

VIAV TECHNOLOGY LLC
CONSOLIDATED BALANCE SHEETS
(In thousands, except unit data)

	As of December 31,	
	2020	2019
Assets		
Current assets:		
Cash	\$ 9,629	\$ 4,815
Accounts receivable, net of allowances	89,767	68,083
Prepaid expenses and other current assets	4,487	1,892
Total current assets	103,883	74,790
Property, equipment, and software, net	13,829	14,924
Intangible assets, net	3,015	4,243
Goodwill	12,422	12,422
Other assets	371	478
Total assets	<u>\$ 133,520</u>	<u>\$ 106,857</u>
Liabilities, convertible preferred units and members' equity		
Liabilities		
Current liabilities:		
Accounts payable	\$ 29,763	\$ 20,480
Accrued liabilities	24,677	22,697
Accrued compensation	9,711	8,387
Current portion of long-term debt	3,353	—
Current portion of deferred revenue	2,725	5,261
Accrued member tax distributions	6,878	1,700
Other current liabilities	2,549	2,536
Total current liabilities	79,656	61,061
Long-term debt	20,182	17,500
Long-term portion of deferred revenue	5,612	4,769
Other long-term liabilities	453	822
Total liabilities	105,903	84,152
Commitments and contingencies (Note 11)		
Convertible preferred units		
2019 convertible preferred units, no par value; 600,000 units authorized, issued and outstanding as of December 31, 2020 and 2019; liquidation preference of \$5,444 and \$7,628 as of December 31, 2020 and 2019, respectively	7,500	7,500
Members' equity		
Common units, no par value; 400,000 units authorized, issued and outstanding as of December 31, 2020 and 2019	—	—
Additional paid-in capital	92,187	92,187
Accumulated deficit	(72,070)	(76,982)
Total members' equity	20,117	15,205
Total liabilities, convertible preferred units and members' equity	<u>\$ 133,520</u>	<u>\$ 106,857</u>

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

VIANT TECHNOLOGY LLC
CONSOLIDATED STATEMENTS OF OPERATIONS AND COMPREHENSIVE INCOME (LOSS)
(In thousands, except per unit data)

	Year Ended December 31,		
	2020	2019	2018
Revenue	\$ 165,251	\$ 164,892	\$ 108,355
Operating expenses:			
Platform operations	88,260	94,060	74,344
Sales and marketing	28,887	29,027	26,766
Technology and development	8,698	9,240	9,585
General and administrative	17,639	19,770	18,326
Total operating expenses	<u>143,484</u>	<u>152,097</u>	<u>129,021</u>
Income (loss) from operations	21,767	12,795	(20,666)
Interest expense, net	1,038	3,948	4,362
Other expense (income), net	91	(1,077)	507
Total other expense, net	<u>1,129</u>	<u>2,871</u>	<u>4,869</u>
Net income (loss)	<u>\$ 20,638</u>	<u>\$ 9,924</u>	<u>\$ (25,535)</u>
Foreign currency translation adjustments	—	19	81
Comprehensive income (loss)	<u>\$ 20,638</u>	<u>\$ 9,943</u>	<u>\$ (25,454)</u>
Earnings (loss) per unit:			
Basic	\$ 20.64	\$ 31.31	\$ (137.28)
Diluted	\$ 20.64	\$ 27.37	\$ (137.28)
Weighted-average units outstanding:			
Basic	400	274	186
Diluted	1,000	1,000	186

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

VIANT TECHNOLOGY LLC
CONSOLIDATED STATEMENTS OF CONVERTIBLE PREFERRED UNITS AND MEMBERS' EQUITY (DEFICIT)
(In thousands)

	Convertible Preferred Units		Common Units		Additional Paid-In Capital	Accumulated Deficit	Cumulative Translation Adjustment	Total Members' Equity (Deficit)
	Units	Amount	Units	Amount				
Balance as of January 1, 2018	600	\$ 45,000	100	\$ —	\$ 1,381	\$ (59,671)	\$ (100)	\$ (58,390)
Unit-based compensation					647			647
Vesting of common units			140	—				—
Foreign currency translation adjustments							81	81
Net loss						(25,535)		(25,535)
Balance as of December 31, 2018	600	45,000	240	—	2,028	(85,206)	(19)	(83,197)
Unit-based compensation					1,090			1,090
Vesting of common units			160	—				—
Foreign currency translation adjustments							19	19
Retirement of 2016 convertible preferred units held by related party	(600)	(45,000)			45,000			45,000
Forgiveness of long-term debt and accrued interest with related party, net of transaction costs					44,069			44,069
Issuance of 2019 convertible preferred units to a related party	600	7,500			—			—
Beneficial conversion feature on 2019 convertible preferred units					27,558			27,558
Deemed dividend related to beneficial conversion feature on 2019 convertible preferred units					(27,558)			(27,558)
Accrued member tax distributions						(1,700)		(1,700)
Net income						9,924		9,924
Balance as of December 31, 2019	600	7,500	400	—	92,187	(76,982)	—	15,205
Accrued member tax distributions						(10,726)		(10,726)
Member dividends						(5,000)		(5,000)
Net income						20,638		20,638
Balance as of December 31, 2020	600	\$ 7,500	400	\$ —	\$ 92,187	\$ (72,070)	\$ —	\$ 20,117

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

VIANT TECHNOLOGY LLC
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)

	Year Ended December 31,		
	2020	2019	2018
Cash flows from operating activities:			
Net income (loss)	\$ 20,638	\$ 9,924	\$ (25,535)
Adjustments to reconcile net income (loss) to net cash provided by operating activities:			
Depreciation and amortization	10,106	10,155	10,628
Unit-based compensation	—	1,090	647
Provision for (recovery of) doubtful accounts	(584)	613	512
Loss on disposal of assets	61	13	411
Changes in operating assets and liabilities:			
Accounts receivable	(21,099)	(20,200)	14,873
Prepaid expenses and other assets	(252)	(467)	897
Accounts payable	8,995	2,745	(4,811)
Accrued liabilities	1,736	15,827	(5,983)
Accrued compensation	1,323	(1,107)	(979)
Deferred revenue	(1,694)	(4,607)	10,571
Other liabilities	(355)	(953)	2,232
Net cash provided by operating activities	18,875	13,033	3,463
Cash flows from investing activities:			
Purchases of property and equipment	(434)	(423)	(389)
Capitalized software development costs	(7,407)	(7,390)	(8,384)
Net cash used in investing activities	(7,841)	(7,813)	(8,773)
Cash flows from financing activities:			
Proceeds from borrowings on line of credit	—	17,500	—
Proceeds from borrowings on debt with related party	—	500	5,000
Proceeds from Paycheck Protection Program Loan	6,035	—	—
Repayments of debt with related party	—	(25,000)	(2,432)
Proceeds from issuance of 2019 convertible preferred units to a related party	—	7,500	—
Transaction costs paid on behalf of related party	—	(3,561)	—
Payment of member tax distributions	(5,547)	—	—
Payment of member dividends	(5,000)	—	—
Payment of offering costs	(1,708)	—	—
Net cash provided by (used in) financing activities	(6,220)	(3,061)	2,568
Effect of exchange rate changes on cash	—	1	(6)
Net increase (decrease) in cash	4,814	2,160	(2,748)
Cash at beginning of period	4,815	2,655	5,403
Cash at end of period	\$ 9,629	\$ 4,815	\$ 2,655
Supplemental disclosure of cash flow information:			
Cash paid for interest	\$ 1,065	\$ 12	\$ 2,233
Supplemental disclosure of non-cash investing and financing activities:			
Additions of property and equipment paid by landlord pursuant to tenant improvement allowance	—	355	506
Retirement of 2016 convertible preferred units with related party	—	45,000	—
Forgiveness of long-term debt and accrued interest by related party	—	47,630	—
Beneficial conversion feature and deemed dividend related to 2019 convertible preferred units	—	27,558	—
Accrued member tax distributions	6,878	1,700	—
Deferred offering costs recorded in accounts payable and accrued liabilities	529	—	—

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

Notes to Consolidated Financial Statements**1. Nature of Operations**

Viant Technology LLC (the “Company,” “we,” “us,” “our” or “Viant”) is a Delaware limited liability company headquartered in Irvine, California with offices located throughout the United States. The Company operates a demand side platform (“DSP”), Adelphic, an enterprise software platform that is used by marketers and their advertising agencies to centralize the planning, buying and measurement of their advertising across channels, including desktop, mobile, connected TV, linear TV, streaming audio and digital billboards.

In February 2017, Viant completed the acquisition of Adelphic. The combination of the Adelphic platform with Viant’s extensive inventory and data partner integrations and identity resolution capabilities established the Company’s unique omnichannel people-based DSP.

On September 15, 2019, the Company’s co-founders entered into a Unit Repurchase Agreement (the “Agreement”) with the Company and Viant Technology Holding Inc. (the “Former Holdco”) pursuant to which the Company retired all outstanding convertible preferred units of the Company held by the Former Holdco, which represented a 60.0% ownership interest in the Company (the “2019 Former Holdco transaction”). This transaction was completed on October 31, 2019. Refer to Note 7 for more information, including with respect to the presentation of this transaction within the consolidated financial statements.

2. Basis of Presentation and Summary of Significant Accounting Policies***Basis of Presentation and Principles of Consolidation***

The accompanying consolidated financial statements are prepared in accordance with accounting principles generally accepted in the United States of America (“GAAP”) and include the operations of the Company and its wholly owned subsidiaries. All intercompany transactions have been eliminated in consolidation.

Use of Estimates

The preparation of consolidated financial statements in conformity with GAAP requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosures of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenue and expenses during the reporting period.

On an on-going basis, management evaluates its estimates, primarily those related to revenue recognition, allowances for doubtful accounts, the useful lives of capitalized software development costs and other property, equipment and software, assumptions used in the impairment analyses of long-lived assets and goodwill, deferred revenue, accrued liabilities and assumptions used in the fair valuation of equity-based payment arrangements. These estimates are based on historical data and experience, as well as various other factors that management believes to be reasonable under the circumstances, the results of which form the basis for making judgments about the carrying amount of assets and liabilities that are not readily apparent from other sources. Actual results may differ from these estimates under different assumptions or conditions.

As of December 31, 2020, the impact of the COVID-19 pandemic on our business continues to evolve. As a result, many of our estimates and assumptions consider macro-economic factors in the market, which require increased judgment and carry a higher degree of variability and volatility. As events continue to evolve and additional information becomes available, our estimates may change materially in future periods.

Segment Information

The Company has a single reportable operating segment which operates an enterprise software platform, Adelphic, that enables marketers and their advertising agencies to automate and centralize the planning, buying and measurement of their video, audio and display ads across all channels, including desktop, mobile, connected TV, linear TV, streaming audio and digital billboards in the United States. In reaching this conclusion, management considers the definition of the chief operating decision maker (“CODM”), how the business is defined by the CODM, the nature of the information provided to the CODM and how that information is used to make operating decisions, allocate resources and assess performance. The Company’s CODM is comprised of the chief executive officer and chief operating officer. The results of operations provided to and analyzed by the CODM are at the consolidated level and accordingly, key resource decisions and assessment of performance are performed at the consolidated level. The Company assesses its determination of operating segments at least annually.

Revenue Recognition

The Company generates its revenue by providing marketers and advertising agencies with the ability to plan, buy and measure their digital advertising campaigns using its people-based DSP, Adelphic. Our platform enables marketers to reach their target audience across desktop, mobile, connected TV, linear TV, streaming audio and digital billboards.

The Company applies a five-step approach as defined in Financial Accounting Standards Board (“FASB”) Accounting Standards Codification (“ASC”) 606, Revenue from Contracts with Customers (“ASC 606”), in determining the amount and timing of revenue to be recognized:

- Identification of a contract with a customer;
- Identification of the performance obligations in the contract;
- Determination of the transaction price;
- Allocation of the transaction price to the performance obligations in the contract; and
- Recognition of revenue when or as the performance obligations are satisfied.

We make our software platform available through different pricing options to tailor to multiple customer types and customer needs. These options consist of a percentage of spend option, a monthly subscription pricing option and a fixed cost per mille (“CPM”) pricing option. CPM refers to a payment option in which customers pay a price for every 1,000 impressions an ad receives. Customers can use our software platform on a self-service basis to execute their advertising campaigns. We generate revenue when the software platform is used on a self-service basis by charging a platform fee that is either a percentage of spend or a flat monthly subscription fee as well as fees for additional features such as data and advanced reporting. We also offer our customers the ability to use our services to aid in data management, media execution and advanced reporting. When customers utilize our services, we generate revenue by charging a (1) separate service fee that represents a percentage of spend in addition to the platform fee; (2) a flat monthly fee covering services in connection with data management and advanced reporting; or (3) a fixed CPM that is inclusive of media, other direct costs and services. Some of the aforementioned offerings are relatively new to the market and are not yet material to our business from a financial perspective.

We maintain agreements with our customers in the form of master service agreements (“MSA”) in connection with the percentage of spend and monthly subscription pricing options, as well as instances where we charge our customers a flat monthly fee for services in connection with data management and advanced reporting, and insertion orders (“IO”) in connection with the fixed CPM pricing option, which set out the terms of the relationship and use of our software platform. The nature of our performance obligations is to enable customers to plan, buy and measure advertising campaigns using our platform and provide campaign execution services as requested.

For the percentage of spend pricing option, we typically bill customers a platform fee, and in certain instances an additional service fee, which is based on a specified percentage of the customer's purchases through the platform as well as fees for additional features such as data and advanced reporting, plus the cost of TAC, as defined below. We recognize revenue at the point in time when a purchase by the customer occurs through our platform. For the monthly subscription pricing option, we bill customers a platform fee represented by a fixed subscription amount, as well as fees for additional features such as data and advanced reporting, plus the cost of TAC. We recognize subscription fees as revenue over time on a ratable basis over the term of the agreement. In both instances, revenue is reported net of amounts incurred and payable to suppliers for the cost of advertising inventory, third-party data and other add-on features (collectively, "traffic acquisition costs" or "TAC") since we arrange for the transfer of such costs from the supplier to the customer through the use of our software platform and do not control such features prior to transfer to the customer. As it relates to TAC in these pricing options, we do not have primary responsibility for meeting customer specifications and do not have discretion in establishing the price. For data management and advanced reporting services, we typically bill a fixed monthly fee and recognize revenue over time on a ratable basis over the term of the agreement.

For the fixed CPM pricing option, we typically bill customers a fixed CPM price based on advertising impressions delivered through the platform. We recognize revenue at the point in time when the advertising impressions are delivered. In certain cases, we also provide third party data segments and measurement reporting, which are recognized at the point in time they are delivered to the customer. This revenue is reported gross of any amounts incurred and payable to suppliers for TAC, since we control such features prior to transfer to the customer. As it relates to TAC in this pricing option, we have the primary responsibility for meeting customer specifications and have discretion in establishing the price.

The Company invoices its customers on a monthly basis for all pricing options. Invoice payment terms, negotiated on a customer-by-customer basis, are typically 30 to 60 days. Advertising agency customers typically have sequential liability terms, which means payments are not due to the Company from its advertising agency customer until the advertising agency customer has received payment from its customer, the advertiser.

There are no contract assets recorded on the consolidated balance sheets because the Company's right to any unbilled consideration for performance obligations satisfied is only conditional upon the passage of time. Contract liabilities, or deferred revenue, are recorded for amounts that are collected in advance of the satisfaction of performance obligations. These liabilities are classified as current if the respective performance obligations are anticipated to be satisfied during the succeeding 12-month period per the terms of the contract, and the remaining portion is recorded as non-current deferred revenue in the consolidated balance sheets.

ASC 606 provides various optional practical expedients. The Company elected the use of the practical expedient relating to the disclosure of remaining performance obligations within a contract and will not disclose remaining performance obligations for contracts with an original expected duration of one year or less.

Operating Expenses

We classify our operating expenses into the following four categories. Each expense category includes overhead such as rent and occupancy charges, which is allocated based on headcount.

Platform Operations. Platform operations expense represents our cost of revenues, which consists of TAC, hosting costs, personnel costs, depreciation of capitalized software development costs related to our platform, customer support costs and allocated overhead. TAC recorded in platform operations consists of amounts incurred and payable to suppliers for costs associated with our fixed CPM pricing option. Personnel costs within platform operations include salaries, bonuses, unit-based compensation expense and employee benefit costs primarily attributable to personnel who directly support our platform.

Sales and Marketing. Sales and marketing expense consists primarily of personnel costs, including salaries, bonuses, unit-based compensation expense, employee benefit costs and commissions for our sales personnel. Sales and marketing expense also includes costs for market development programs, advertising, promotional and other marketing activities and allocated overhead. Commissions are expensed as incurred.

The Company incurred advertising costs of \$1.2 million, \$1.0 million, and \$0.7 million for the years ended December 31, 2020, 2019 and 2018, respectively, related to the promotion of the Company, its brands, products and services to potential customers. Advertising costs are expensed as incurred and recorded in sales and marketing expense within the consolidated statements of operations and comprehensive income (loss).

Technology and Development. Technology and development expense consists primarily of personnel costs, including salaries, bonuses, unit-based compensation expense and employee benefit costs associated with the ongoing development and maintenance of our software platform and allocated overhead. Technology and development costs are expensed as incurred, except to the extent that such costs are associated with software development that qualifies for capitalization, which are then recorded as capitalized software development costs included in property, equipment and software, net, on the consolidated balance sheets. We record depreciation expense for capitalized software not related to our platform within technology and development expense.

General and Administrative. General and administrative expense consists primarily of personnel costs, including salaries, bonuses, unit-based compensation expense and employee benefit costs associated with our executive, accounting, finance, legal, human resources, and other administrative personnel. Additionally, this includes accounting, legal and other professional services fees, insurance expense, bad debt expense and allocated overhead.

Unit-Based Compensation

The Company adopted the Limited Liability Company Agreement (the “Viant Technology LLC Agreement”) on October 4, 2016, under which it issued common unit awards, subject to vesting and other terms, to certain executives of the Company and to Viant Technology Equity Plan LLC, which issued incentive units in the form of profit interests to certain employees of the Company. The Company records compensation expense for all common unit awards and incentive units granted to employees of the Company, which is measured and recognized on a graded-vesting attribution basis over the requisite service period based on the fair value of the awards at the grant date. The Company has elected the accounting policy to account for forfeitures within unit-based compensation expense when they occur.

During the periods covered by these consolidated financial statements, the Company was privately held with no active public market for our common units. Therefore, in determining the fair value of equity-based awards, the Company utilized valuations prepared by an independent third party. The independent third party performed the valuations in a manner consistent with the American Institute of Certified Public Accountants Practice Aid, Valuation of Privately-Held Company Equity Securities Issued as Compensation (“Practice Aid”). In conducting the valuations, the Company considered all objective and subjective factors that it believed to be relevant in the valuation conducted, including management’s best estimate of our business condition, prospects and operating performance at the valuation dates. There are significant judgments and estimates inherent in these valuations. These judgments and estimates include assumptions regarding our future operating performance, industry growth, average selling price, and the timing of a potential initial public offering or other liquidity event.

The Company determined the fair value of equity awards using a combination of the market and income approach. The market approach and the income approach are both acceptable valuation methods in accordance with the Practice Aid. There are two general methodologies under the market approach: (i) guideline public company method, and (ii) guideline merged and acquired company method. Both methods generate a marketable equity fair value indication using market-based information available to market participants. Under the income approach, the enterprise value can be estimated using the discounted cash flow method, which involves estimating the future cash flows of a business for a discrete period and discounting them to their present value.

As provided in the Practice Aid, there are several approaches for allocating enterprise value of a privately held company to the outstanding equity of the Company. The Company selected the Option Pricing Model (“OPM”) which treats common equity and preferred equity as call options on the enterprise’s value. The exercise prices associated with these call options vary according to the liquidation preference of the preferred equity, the preferred equity conversion price, the exercise prices of common equity options and other features of a company’s equity capital structure.

Earnings (Loss) Per Unit

Basic earnings (loss) per unit is calculated by dividing the earnings (loss) attributable to common unitholders by the number of weighted-average common units outstanding. The Company applies the two-class method to allocate earnings between common and convertible preferred units.

Diluted earnings (loss) per unit adjusts the basic earnings (loss) per unit attributable to common unitholders and the weighted-average number of units of common units outstanding for the potential dilutive impact of common units, using the treasury-stock method, and convertible preferred units using the as-if-converted method. Diluted earnings (loss) per unit considers the impact of potentially dilutive securities except in periods in which there is a loss because the inclusion of the potential common units would have an anti-dilutive effect.

Cash

The carrying amounts reflected in the consolidated balance sheets for cash approximate the fair value, consisting of cash on hand and at the bank.

Accounts Receivable, Net of Allowances

Accounts receivable are recorded at the invoiced amount, net of an allowance for doubtful accounts, and are unsecured and do not bear interest. The Company performs credit evaluations of its customers and certain advertisers when the Company's agreements with its customers contain sequential liability terms that provide that the customer payments are not due to the Company until the customer has received payment from its customers (advertisers). The allowance for doubtful accounts is based on the best estimate of the amount of probable credit losses in existing accounts receivable. The allowance for doubtful accounts is determined based on historical collection experience and the review in each period of the status of the then-outstanding accounts receivable, while taking into consideration current customer information, subsequent collection history and other relevant data. Account balances are charged off against the allowance when the Company believes it is probable the receivable will not be recovered. Recoveries of accounts receivable previously written off are recorded when received.

The following table presents changes in the allowance for doubtful accounts:

	<u>Year Ended December 31,</u>	
	<u>2020</u>	<u>2019</u>
	(in thousands)	
Beginning balance	\$ 1,528	\$ 1,340
Provision for (recovery of) doubtful accounts	(584)	613
Write-offs, net of recoveries	(609)	(425)
Ending balance	<u>\$ 335</u>	<u>\$ 1,528</u>

Deferred Offering Costs

Deferred offering costs consist primarily of accounting, legal, and other costs related to our IPO. Upon consummation of the IPO which occurred in February 2021, the deferred offering costs will be reclassified to stockholders' equity of Viant Technology Inc and recorded against the proceeds from the offering. The Company capitalized \$2.2 million of deferred offering costs within prepaid expenses and other current assets in the consolidated balance sheet as of December 31, 2020. No offering costs were capitalized as of December 31, 2019.

Property, Equipment and Software, Net

Property, equipment and software are recorded at historical cost, less accumulated depreciation. Depreciation is computed using the straight-line method based upon the following estimated useful lives:

	<u>Years</u>
Computer equipment	3-5
Purchased software	3
Capitalized software development costs	3
Furniture, fixtures and office equipment	10
Leasehold improvements	*

* Leasehold improvements are depreciated on a straight-line basis over the term of the lease, or the useful life of the assets, whichever is shorter.

Repair and maintenance costs are charged to expense as incurred, while replacements and improvements are capitalized. When assets are retired or otherwise disposed of, the cost and related accumulated depreciation are removed from the accounts and any resulting gain or loss is recorded in other expense (income), net within the consolidated statements of operations and comprehensive income (loss).

Capitalized Software Development Costs

The Company capitalizes certain costs associated with creating and enhancing internally developed software related to the Company's technology infrastructure and such costs are recorded within property, equipment and software, net. These costs include personnel and related employee benefit expenses for employees who are directly associated with and who devote time to software development projects. Software development costs that do not qualify for capitalization are expensed as incurred and recorded in technology and development expense in the consolidated statements of operations and comprehensive income (loss).

Software development activities typically consist of three stages: (1) the planning phase; (2) the application and infrastructure development stage; and (3) the post implementation stage. Costs incurred in the planning and post implementation phases, including costs associated with training and repairs and maintenance of the developed technologies, are expensed as incurred. The Company capitalizes costs associated with software developed when the preliminary project stage is completed, management implicitly or explicitly authorizes and commits to funding the project and it is probable that the project will be completed and perform as intended. Costs incurred in the application and infrastructure development phases, including significant enhancements and upgrades, are capitalized. Capitalization ends once a project is substantially complete and the software is ready for its intended purpose. Software development costs are depreciated using a straight-line method over the estimated useful life, commencing when the software is ready for its intended use. The straight-line recognition method approximates the manner in which the expected benefit will be derived.

Capitalized Interest

The Company capitalizes interest on borrowings related to eligible capital expenditures including development costs related to internal use software which is recorded within property, equipment and software, net. Capitalized interest is added to the cost of the qualified assets and depreciated over the estimated useful lives of the assets.

Impairment of Long-Lived Assets

Long-lived assets consist of property, equipment and software and intangible assets with estimable useful lives subject to depreciation and amortization. The Company reviews long-lived assets for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset or asset group may not be recoverable. Recoverability of an asset or asset group to be held and used is measured by a comparison of the carrying amount of an asset or asset group to the estimated undiscounted future cash flows expected to be generated by the asset or asset group. If the carrying amount of the asset or asset group exceeds its estimated future cash flows, an impairment charge is recognized in the amount by which the carrying amount of the asset or asset group exceeds the fair value of the asset or asset group.

Goodwill

Goodwill is tested at least annually for impairment as of the first day of the fourth fiscal quarter, or more frequently if indicators of impairment exist during the fiscal year. Events or circumstances which could trigger an impairment review include a significant adverse change in legal factors or in the business climate, loss of key customers, an adverse action or assessment by a regulator, unanticipated competition, a loss of key personnel, significant changes in the manner of the Company's use of the acquired assets or the strategy for the Company's overall business, significant negative industry or economic trends, or significant underperformance relative to expected historical or projected future results of operations. The Company assesses its conclusion regarding reporting units in conjunction with its annual goodwill impairment test and has determined that it has one reporting unit for the purposes of allocating and testing goodwill.

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

Paycheck Protection Program Loan

On April 14, 2020, the Company received the proceeds from a loan in the amount of approximately \$6.0 million (the "PPP Loan") from PNC Bank, as lender, pursuant to the Paycheck Protection Program ("PPP") of the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act"). The Company accounted for the PPP Loan as a financial liability in accordance with ASC Topic 470, Debt. Accordingly, the PPP Loan was recognized within long-term debt and current portion of long-term debt in the Company's consolidated balance sheet. In addition, related accrued interest is included within accrued liabilities in the Company's consolidated balance sheet. Refer to Note 7 for additional information.

Fair Value of Financial Instruments

The framework for measuring fair value and related disclosure requirements about fair value measurements are provided in ASC 820, Fair Value Measurement ("ASC 820"). This pronouncement defines fair value as the price that would be received to sell an asset or paid to transfer a liability (an exit price) in the principal or most advantageous market for the asset or liability in an orderly transaction between market participants on the measurement date. The fair value hierarchy prescribed by ASC 820 contains three input levels as follows:

- **Level 1:** Unadjusted quoted prices in active markets for identical assets or liabilities accessible to the reporting entity at the measurement date.
- **Level 2:** Other than quoted prices included in Level 1 inputs that are observable for the asset or liability, either directly or indirectly, for substantially the full term of the asset or liability.

- **Level 3:** Unobservable inputs for the asset or liability used to measure fair value to the extent that observable inputs are not available, thereby allowing for situations in which there is little, if any, market activity for the asset or liability at the measurement date.

The carrying amounts of the Company's cash, accounts receivable, accounts payable, accrued compensation and accrued liabilities approximate fair value due to the short-term nature of these instruments.

Financial Instruments Not Recorded at Fair Value on a Recurring Basis

Certain financial instruments, including debt, are not measured at fair value on a recurring basis in the consolidated balance sheets. The fair value of debt was estimated using primarily level 2 inputs including quoted market prices or discounted cash flow analyses, based on estimated incremental borrowing rates for similar types of borrowing arrangements.

Assets and Liabilities Recorded at Fair Value on a Non-Recurring Basis

Certain assets and liabilities, including goodwill and intangible assets, are subject to measurement at fair value on a non-recurring basis if there are indicators of impairment or if they are deemed to be impaired as a result of an impairment review.

There were no assets or liabilities measured at fair value using Level 3 inputs for the periods presented.

Leases

Rent expense on operating leases of \$4.2 million, \$4.7 million and \$4.6 million for the years ended December 31, 2020, 2019 and 2018, respectively, is recorded on a straight-line basis over the lease term. The difference between cash payments for rent and the expense recorded is reported as current and non-current deferred rent in the accompanying consolidated balance sheets. The current portion of deferred rent of \$0.4 million and \$0.4 million as of December 31, 2020 and 2019, respectively, is included in other current liabilities. The non-current portion of deferred rent of \$0.5 million and \$0.8 million as of December 31, 2020 and 2019, respectively, is included in other long-term liabilities.

Concentration of Risk

Financial instruments that potentially subject the Company to concentration of credit risk consist principally of cash and accounts receivable. The Company maintains its cash with financial institutions and its cash levels exceed the Federal Deposit Insurance Corporation (FDIC) federally insured limits. Accounts receivable include amounts due from customers with principal operations primarily in the United States.

As of December 31, 2020, one individual customer accounted for 13.7% of consolidated accounts receivable. As of December 31, 2019, no individual customers accounted for more than 10% of consolidated accounts receivable. For the years ended December 31, 2020, 2019 and 2018, no individual customers accounted for more than 10% of consolidated revenue. For the year ended December 31, 2020, two advertising agency holding companies represented 13.3% and 13.2% of revenue, respectively. For the year ended December 31, 2019, two advertising agency holding companies represented 16.6% and 12.6% of revenue, respectively. For the year ended December 31, 2018, two advertising agency holding companies represented 18.7% and 11.8% of revenue, respectively. As of December 31, 2020, three suppliers accounted for 15.5%, 11.5%, and 10.9% of consolidated accounts payable and accrued liabilities, respectively. As of December 31, 2019, no individual suppliers accounted for more than 10% of consolidated accounts payable and accrued liabilities.

Foreign Currency Transactions and Translation

The Company's UK subsidiary had a non-U.S. dollar functional currency. The UK subsidiary was dissolved in 2019. The Company translates assets and liabilities of non-U.S. dollar functional currency subsidiaries into U.S. dollars using exchange rates in effect at the end of each period and members' equity at historical rates. Revenue and expenses for the subsidiary are translated using rates that approximate those in effect during the period. Foreign currency gains and losses from translation are recorded in cumulative translation adjustment within the consolidated balance sheets.

The Company remeasures monetary assets or liabilities denominated in currencies other than the functional currency using exchange rates prevailing on the balance sheet date, and non-monetary assets and liabilities at historical rates.

Foreign currency remeasurement and transaction gains and losses are included in other expense (income), net within the consolidated statements of operations and comprehensive income (loss) and were de minimis during the years ended December 31, 2020, 2019 and 2018.

Related Party Relationships

The Company's previously outstanding long-term debt was a long-term promissory note owed to the Former Holdco, a related party who previously held a 60% equity interest in the Company prior to the 2019 Former Holdco transaction. The Former Holdco's outstanding units of the Company were retired in conjunction with the Company's settlement of the promissory note on October 31, 2019, in accordance with the Unit Repurchase Agreement between the Company, the Former Holdco and other parties thereto. As of December 31, 2019, no outstanding amounts remained under the promissory note, and the Former Holdco was no longer a related party of the Company. Refer to Note 7, Note 8 and Note 13 for further information.

Four Brothers 2 LLC, the holder of the 2019 convertible preferred units as of December 31, 2020 and 2019, is controlled by the Company's co-founders, Tim Vanderhook and Chris Vanderhook, and therefore is considered a related party. Refer to Note 7, Note 8 and Note 13 for further information.

Income Taxes

The Company is a limited liability company that is treated as a partnership for federal income tax purposes and does not pay income taxes on its taxable income. Its taxable income or loss is included in the taxable income of its members. In addition, the members are liable for federal and state taxes on the Company's taxable income. The Company may disburse funds necessary to satisfy the members' estimated tax liabilities. Amounts estimated to be disbursed to members to satisfy the members' estimated tax liabilities have been recorded to accrued member tax distributions and represent a reduction in members' equity.

Recent Issued Accounting Pronouncements

On April 5, 2012, the Jumpstart Our Business Startups Act (the "JOBS Act") was signed into law. The JOBS Act contains provisions that, among other things, reduce certain reporting requirements for qualifying public companies. As an "emerging growth company," the Company may, under Section 7(a)(2)(B) of the Securities Act, delay adoption of new or revised accounting standards applicable to public companies until such standards would otherwise apply to private companies. An "emerging growth company" is one with less than \$1.07 billion in annual sales, has less than \$700 million in market value of its shares of common stock held by non-affiliates and issues less than \$1 billion of non-convertible debt over a three year period. The Company may take advantage of this extended transition period until the first to occur of the date that it (i) is no longer an "emerging growth company" or (ii) affirmatively and irrevocably opts out of this extended transition period.

The Company has elected to take advantage of the benefits of this extended transition period. Until the date that the Company is no longer an “emerging growth company” or affirmatively and irrevocably opts out of the exemption provided by Securities Act Section 7(a)(2)(B), upon issuance of a new or revised accounting standard that applies to its consolidated financial statements and that has a different effective date for public and private companies, the Company will disclose the date on which it will adopt the recently issued accounting standard. As part of this election, we are delaying the adoption of accounting guidance related to leases and implementation costs incurred in cloud computing arrangements that currently applies to public companies. We are assessing the impact this guidance will have on our financial statements.

In February 2016, the FASB issued Accounting Standards Update (“ASU”) No. 2016-02, Leases (Topic 842), which requires an entity to recognize right-of-use assets and lease liabilities on its balance sheet and disclose key information about leasing arrangements. The guidance offers specific accounting guidance for a lessee, lessor, and sale and leaseback transactions. Lessees and lessors are required to disclose qualitative and quantitative information about leasing arrangements to enable a user of the financial statements to assess the amount, timing and uncertainty of cash flows arising from leases. Leases will be classified as either finance or operating, with the classification affecting the pattern of expense recognition in the income statement. In March 2019, the FASB issued ASU No. 2019-01 which made further targeted improvements including clarification regarding the determination of fair value of lease assets and liabilities and statement of cash flows and presentation guidance. In June 2020, FASB issued ASU 2020-05, which extended the effective date of this guidance for non-public entities to fiscal years beginning after December 15, 2021. The guidance is effective for the Company’s annual reporting period beginning after December 15, 2021. The Company is currently assessing the impact this guidance will have on the consolidated financial statements.

In June 2016, the FASB issued ASU No. 2016-13, Financial Instruments—Credit Losses (Topic 326). ASU 2016-13 revises the impairment model to utilize an expected loss methodology in place of the currently used incurred loss methodology, which will result in more timely recognition of losses on financial instruments, including, but not limited to, available for sale debt securities and accounts receivable. The guidance is effective for the Company’s annual reporting period beginning after December 15, 2022. The Company does not expect the adoption of this ASU to have a material impact on the consolidated financial statements.

In August 2018, the FASB issued ASU No. 2018-13, Fair Value Measurement—Disclosure Framework (Topic 820). The updated guidance modifies the disclosure requirements for fair value measurements by removing, modifying, or adding certain disclosures. This guidance is effective for annual reporting periods beginning after December 15, 2019, including interim periods within that reporting period. Early adoption is permitted for any removed or modified disclosures. The Company adopted this ASU on January 1, 2020, and the adoption of this ASU did not have a material impact on the consolidated financial statements.

In September 2018, the FASB issued ASU No. 2018-15, Intangibles—Goodwill and Other—Internal-Use Software (Subtopic 350-40): Customer’s Accounting for Implementation Costs Incurred in a Cloud Computing Arrangement That Is a Service Contract (a consensus of the FASB Emerging Issues Task Force), which aligns the requirements for capitalizing implementation costs incurred in a hosting arrangement that is a service contract with the requirements for capitalizing implementation costs incurred to develop or obtain internal-use software. Early adoption is permitted and can be applied prospectively to all implementation costs incurred after the date of adoption or retrospectively. This guidance is effective for the Company annual reporting period beginning after December 15, 2020. The Company does not expect the adoption of this ASU to have a material impact on the consolidated financial statements.

In October 2020, the FASB issued ASU No. 2020-10, Codification Improvements, which updates various codification topics by clarifying disclosure requirements to align with the SEC’s regulations. The guidance is effective for the Company’s annual reporting period beginning after December 15, 2021. The Company is currently assessing the impact this guidance will have on the consolidated financial statements.

3. Revenue

The Company adopted the new revenue recognition accounting standard, ASC 606, effective January 1, 2018 on a full retrospective basis. Refer to Note 2 of these notes to our consolidated financial statements for a description of our ASC 606 revenue recognition accounting policies. Although the Company maintains agreements with its customers in multiple contractual forms, the overall promise within each of the contract types is to provide customers the ability to plan, buy and measure their digital advertising campaigns using our platform.

For purposes of disaggregation of revenue, for the years ended December 31, 2020, 2019 and 2018, the Company recognized \$4.6 million, \$6.2 million and \$6.3 million, respectively, for over time performance obligations and \$160.6 million, \$158.7 million and \$102.1 million, respectively, for point in time performance obligations. Remaining performance obligations for contracts with an original expected duration of greater than one year amounted to \$9.2 million and \$10.9 million as of December 31, 2020 and 2019, respectively, which primarily relate to deferred revenue and data management and advanced reporting services. As of December 31, 2020 and 2019, \$3.6 million and \$6.2 million, respectively, is expected to be recognized within one year, with the remaining amounts expected to be recognized thereafter.

Contract Liabilities

The follow table summarizes the changes in deferred revenue balances:

	Year Ended December 31,	
	2020	2019
	(in thousands)	
Beginning balance	\$ 10,030	\$ 14,636
Recognition of deferred revenue	(1,693)	(4,606)
Deferral of revenue	—	—
Ending balance	<u>\$ 8,337</u>	<u>\$ 10,030</u>

The revenue recognized from the contract liabilities consisted of the Company satisfying performance obligations during the normal course of business. Deferred revenue that is anticipated to be recognized during the succeeding 12-month period is recorded in current portion of deferred revenue and the remaining amount is recorded as non-current portion of deferred revenue within the consolidated balance sheets.

4. Property, Equipment and Software, Net

Major classes of property, equipment and software were as follows:

	As of December 31,	
	2020	2019
	(in thousands)	
Capitalized software development costs	\$ 43,627	\$ 36,865
Computer equipment	1,575	1,198
Purchased software	32	513
Furniture, fixtures and office equipment	1,087	1,204
Leasehold improvements	2,115	2,108
Total property, equipment and software	48,436	41,888
Less: Accumulated depreciation	(34,607)	(26,964)
Total property, equipment and software, net	<u>\$ 13,829</u>	<u>\$ 14,924</u>

Depreciation expense recorded in the consolidated statements of operations and comprehensive income (loss) was as follows:

	Year Ended December 31,		
	2020	2019	2018
	(in thousands)		
Platform operations	\$ 6,638	\$ 6,832	\$ 6,441
Sales and marketing	—	—	—
Technology and development	1,608	1,537	1,314
General and administrative	631	554	718
Total	\$ 8,877	\$ 8,923	\$ 8,473

Interest cost recorded in the consolidated balance sheets and consolidated statements of operations and comprehensive income (loss) was as follows:

	Year Ended December 31,	
	2020	2019
	(in thousands)	
Amount charged to expense	\$ 1,055	\$ 4,105
Amount capitalized within property, equipment and software, net	31	44
Total interest cost	\$ 1,087	\$ 4,149

5. Goodwill and Intangible Assets, Net

The Company's goodwill balance of \$12.4 million as of December 31, 2020 and 2019, was recorded as part of the Company's February 2017 acquisition of Adelphic. The goodwill balance was determined based on the excess of the purchase price paid over the fair value of the identifiable net assets acquired, and represents its future revenue and earnings potential and certain other assets acquired that do not meet the recognition criteria, such as assembled workforce.

The Company performed an impairment test of its goodwill as of the first day of the fourth fiscal quarter in accordance with its accounting policy. The results of this test indicated that the Company's goodwill was not impaired. No goodwill impairment was recorded for the years ended December 31, 2020, 2019 or 2018.

Intangible assets primarily consist of acquired developed technology, customer relationships, trade names and trademarks resulting from business combinations and acquired patent intangible assets, which are recorded at acquisition-date fair value, less accumulated amortization. The Company determines the appropriate useful life of its intangible assets by performing an analysis of expected cash flows of the acquired assets. Intangible assets are amortized over their estimated useful lives using a straight-line method, which approximates the pattern in which the economic benefits are consumed. No impairment was recorded for intangible assets or other long lived assets during the years ended December 31, 2020, 2019 or 2018.

The balances of intangibles assets and accumulated amortization are as follows:

	Remaining Weighted Average Useful Life (in years)	As of December 31, 2020		
		Gross Amount	Accumulated Amortization (in thousands)	Net Carrying Amount
Developed technology	2.1	\$ 4,927	\$ (3,469)	\$ 1,458
Customer relationships	3.1	2,300	(1,287)	1,013
Trademarks/tradenames	4.2	1,400	(856)	544
Total		\$ 8,627	\$ (5,612)	\$ 3,015

	Remaining Weighted Average Useful Life (in years)	As of December 31, 2019		
		Gross Amount	Accumulated Amortization	Net Carrying Amount
		(in thousands)		
Developed technology	3.1	\$ 4,927	\$ (2,769)	\$ 2,158
Customer relationships	4.1	2,300	(958)	1,342
Trademarks/tradenames	4.8	1,400	(657)	743
Total		\$ 8,627	\$ (4,384)	\$ 4,243

Amortization expense recorded in the consolidated statements of operations and comprehensive income (loss) was as follows:

	Year Ended December 31,		
	2020	2019	2018
	(in thousands)		
Platform operations	\$ 700	\$ 703	\$ 1,626
Sales and marketing	—	—	—
Technology and development	—	—	—
General and administrative	529	529	529
Total	\$ 1,229	\$ 1,232	\$ 2,155

Estimated future amortization of intangible assets as of December 31, 2020 is as follows:

Year ended December 31,	(in thousands)
2021	\$ 1,230
2022	1,119
2023	467
2024	107
2025	80
Thereafter	12
Total	\$ 3,015

6. Accrued Liabilities

The Company's accrued liabilities consisted of the following:

	As of December 31,	
	2020	2019
	(in thousands)	
Accrued traffic acquisition costs	\$ 22,667	\$ 18,707
Other accrued liabilities	2,010	3,990
Total accrued liabilities	\$ 24,677	\$ 22,697

7. Long-Term Debt and Revolving Credit Facility

The Company's debt and revolving credit facilities consisted of the following:

	As of December 31,	
	2020	2019
	(in thousands)	
Revolving credit facility	\$ 17,500	\$ 17,500
Paycheck Protection Program Loan	6,035	—
Total debt	23,535	17,500
Less: Current portion of long-term debt	(3,353)	—
Total long-term debt	<u>\$ 20,182</u>	<u>\$ 17,500</u>

As of December 31, 2020, the current portion of long-term debt related to the PPP Loan. The carrying value of debt as of December 31, 2020 and 2019 approximated its fair value.

2019 Former Holdco Transaction

On March 2, 2016, the Company entered into a secured loan agreement with its related party, the Former Holdco, which at that time was a 60% stakeholder of the Company. The notes accrued interest at a rate of 7% per year, payable quarterly. Any interest not paid when due was compounded as a component of the principal amount then outstanding. The notes were subject to an original maturity of March 2, 2021, unless earlier purchased, redeemed or otherwise settled.

On October 4, 2016, certain members of the Company and the Former Holdco entered into a put/call agreement in which certain employees received the right, but not the obligation to cause the Former Holdco to purchase all or a portion of the employees' unrestricted common units beginning on March 31, 2019 and on each annual anniversary of that date. The Company was not a party to this put/call agreement and did not account for this agreement within its consolidated financial statements. No call or put rights were exercised during the years ended December 31, 2019 or 2018.

On September 15, 2019, the Company's co-founders entered into a Unit Repurchase Agreement (the "Agreement") in connection with the 2019 Former Holdco transaction with the Former Holdco to repay a portion of the outstanding principal amount, to cancel any remaining loan obligations, cancel all outstanding put/call options and to retire the outstanding equity interest in the Company held by the Former Holdco.

Under the terms of the Agreement, on October 31, 2019, the Company paid the Former Holdco \$25.0 million, deemed the "purchase price," toward the repayment in full of principal, interest or other amounts owed by the Company to the Former Holdco and its affiliates. Additionally, the Company paid approximately \$3.5 million for professional service fees associated with the transaction paid on behalf of the Former Holdco. In return, the Former Holdco, on behalf of itself and its affiliates, cancelled and forgave any additional amounts owed by the Company pursuant to the March 2, 2016 loan agreement or any other loans. The Agreement also resulted in the termination of all outstanding put/call agreements. Upon closing of this transaction, the Former Holdco's ownership in the Company was automatically transferred to the Company.

In accordance with the Agreement, the purchase price consisted of \$17.5 million of cash generated from the execution of the PNC Bank line of credit and \$7.5 million of cash received from the sale of the 2019 convertible preferred units to Four Brothers 2 LLC, representing 100% of the Company's outstanding convertible preferred units. As a result of this transaction, along with the payment of approximately \$3.5 million in professional services paid on behalf of the Former Holdco, the Company settled \$72.6 million of outstanding principal and accrued interest on the long-term promissory note and recorded additional paid-in capital of \$47.6 million representing the forgiveness of outstanding debt and \$45.0 million representing the retirement of the 2016 convertible preferred units resulting from the cancellation of the Company's equity interest held by the Former Holdco.

Revolving Credit Facility

On October 31, 2019, the Company entered into an asset-based revolving credit and security agreement with PNC Bank (the “Loan Agreement”). The Loan Agreement provides a senior secured revolving credit facility of up to \$40.0 million with a maturity date of October 31, 2024. The Loan Agreement is collateralized by security interests in substantially all of the Company’s assets.

Advances under the Loan Agreement bear interest through maturity at a variable rate based upon, at the Company’s option, an annual rate of either a Domestic Rate or a LIBOR rate, plus an applicable margin (“Domestic Rate Loans” and “LIBOR Rate Loans”). The Domestic Rate is defined as a fluctuating interest rate equal to the greater of (1) the base commercial lending rate of PNC Bank, (2) the overnight federal funds rate plus 0.50% and (3) the Daily LIBOR Rate plus 1.00%. The applicable margin through December 31, 2020 was equal to 2.00% for Domestic Rate Loans and 4.00% for LIBOR Rate Loans. The effective weighted average interest rate as of December 31, 2020 and 2019 was 4.15% and 5.92%, respectively. The applicable margin commencing January 1, 2021 is between 1.50% to 2.25% for Domestic Rate Loans and between 3.50% and 4.25% for LIBOR Rate Loans based on the Company maintaining certain undrawn availability ratios. The facility fee for undrawn amounts under the Loan Agreement is 0.375% per annum. The Company will also be required to pay customary letter of credit fees, as necessary.

As of December 31, 2020 and 2019, the Company had an outstanding debt balance of \$17.5 million under the Loan Agreement and availability was \$22.5 million.

The Loan Agreement contains customary conditions to borrowings, events of default and covenants, including covenants that restrict the Company’s ability to sell assets, make changes to the nature of the business, engage in mergers or acquisitions, incur, assume or permit to exist additional indebtedness and guarantees, create or permit to exist liens, pay dividends, issue equity instruments, make distributions or redeem or repurchase capital stock or make other investments, and engage in transactions with affiliates. The Loan Agreement also requires the Company to maintain compliance with a minimum Fixed Charge Coverage Ratio (as defined in the Loan Agreement) of 1.40 to 1.00 when undrawn availability under the Loan Agreement is less than 25%. As of December 31, 2020 and 2019, the Company was in compliance with all covenants.

PPP Loan

On April 14, 2020, the Company received the proceeds from the PPP Loan in the amount of approximately \$6.0 million from PNC Bank, as lender, pursuant to the PPP of the CARES Act. The PPP Loan, which is evidenced by a note dated April 11, 2020, bears interest at an annual rate of 1.0% and matures on April 11, 2022. No interest or principal is due during the first fifteen months after April 11, 2020, although interest will continue to accrue over this fifteen-month deferral period. The PPP Loan may be prepaid without penalty, at the option of the Company, at any time prior to maturity. The promissory note evidencing the PPP Loan contains customary events of default relating to, among other things, payment defaults, breach of representations and warranties, or other provisions of the promissory note. The occurrence of an event of default may trigger the immediate repayment of all amounts outstanding, collection of all amounts owing from the Company, and/or filing suit and obtaining a judgment against the Company.

Proceeds from loans granted under the CARES Act are to be used for payroll, costs to continue employee group health care benefits, rent, utilities and certain other qualified costs (collectively, “qualifying expenses”). The Company has used the PPP Loan proceeds for qualifying expenses. The Company’s borrowings under the PPP Loan may be eligible for loan forgiveness if used for qualifying expenses incurred during the “covered period,” as defined in the CARES Act, except that the amount of loan forgiveness is limited to the amount of qualifying expenses incurred during the 24-week period commencing on the loan effective date. In addition, the amount of any loan forgiveness may be reduced if there is a decrease in the average number of full-time equivalent employees of the Company during the covered period, compared to the comparable period in the prior calendar year. In the event that any amounts are not forgiven, such unforgiven amounts shall be payable in equal monthly installments over the remaining term of the facility. The Company expects to apply for forgiveness of the PPP Loan.

8. Convertible Preferred Units and Common Units

2016 and 2019 Convertible Preferred Units

Pursuant to the Unit Repurchase Agreement completed on October 31, 2019, the 600,000 2016 convertible preferred units representing the Former Holdco’s ownership interest were retired by the Company, and the Company sold 600,000 2019 convertible preferred units to Four Brothers 2 LLC.

The 2016 convertible preferred units held by the Former Holdco had a liquidation preference of \$190.65 per unit. Each preferred unit was convertible at the option of the holder at any time into one common unit by written notice to the Company.

The liquidation preference provisions of the 2016 convertible preferred units held by the Former Holdco were considered contingent redemption provisions because there were certain elements that were not solely within the control of the Company, such as a change in control of the Company. Accordingly, the Company has presented these 2016 convertible preferred units within the mezzanine portion of the accompanying consolidated balance sheets.

The 2019 convertible preferred units held by Four Brothers 2 LLC have a liquidation preference equal to the initial capital contribution plus an annual preferred return available to the holders only upon liquidation, which is calculated on a daily basis by multiplying the accrued stated value of the unit on the first day of each calendar quarter by 0.028% (10% divided by 360). The accrued stated value is calculated as \$12.50 per preferred unit plus the accrued return. Each preferred unit may be converted at the option of the holder at any time into one common unit by written notice to the Company.

The liquidation preference provisions of the 2019 convertible preferred units held by Four Brothers 2 LLC are considered contingent redemption provisions because there are certain elements that are not solely within the control of the Company, such as a change in control of the Company. Accordingly, the Company has presented the 2019 convertible preferred stock within the mezzanine portion of the accompanying consolidated balance sheets.

The 2019 convertible preferred units were issued at an implied discount of \$27.6 million, representing a beneficial conversion feature recorded in additional paid-in capital of the same amount. A beneficial conversion feature is measured as the difference between the effective conversion price of the 2019 convertible preferred units, \$12.50 per unit, and the fair value of the common units into which the preferred units are convertible at issuance, \$58.43 per unit. Since the 2019 convertible preferred units are perpetual in that they have no stated maturity date and are immediately convertible at any time, the discount upon issuance was immediately and fully amortized as a deemed dividend on the issuance date.

The fair value of common units was derived using the Black-Scholes-Merton option valuation model, which incorporated a combination of the market approach and income approach weighted at 50% to each approach. The valuation model requires the Company to make assumptions and judgments regarding the variables used in the calculation. These variables include the expected term, expected volatility, expected risk-free interest rate and other relevant inputs. Expected term is based on the estimated liquidation event occurrence.

Expected volatility is based on 3.25-year historical volatility of guideline companies commensurate with the time period. The expected risk-free rate is based on the yield of 3-year U.S. Treasury notes as of the valuation date.

The following outlines the option valuation assumptions used in the fair value calculation of common units:

Risk-free interest rate	2.28%
Volatility	70%
Expected term	< 2 years
Discount for lack of marketability	29%

Common Units

There were 400,000 common units authorized, issued and outstanding as of December 31, 2020 and 2019. Distributions to members, as determined and approved by the board, are made to holders of preferred and common units in proportion to their holdings of common units then outstanding on an as-converted basis. All profit and loss allocations, including those made as a result of a capital transaction, will be made pursuant to the provisions of the Viant Technology LLC Agreement.

Member Dividend Distributions

In October 2020, the Company's board of managers declared and approved a distribution of \$5.0 million to the holders of preferred and common units in accordance with the provisions of the Viant Technology LLC Agreement, resulting in payment of \$3.0 million to the preferred unitholders and \$2.0 million to the common unitholders.

9. Incentive Units

Employees and other service providers are eligible to be granted profit interests in the form of common units under an equity incentive plan or other arrangement approved by the board. The recipients of the common units are not required to make any capital contributions in exchange for their units.

The board determines the terms of each grant including vesting requirements. Incentive units generally vest over a four-year period from the date of grant.

The following table summarizes the incentive unit activity for the periods presented:

	Year Ended December 31,		
	2020	2019	2018
Incentive units outstanding, beginning of period	—	160,000	300,000
Granted	—	4,000	4,685
Forfeited	—	(4,000)	(4,685)
Vested	—	(160,000)	(140,000)
Incentive units outstanding, end of period	—	—	160,000

The weighted average grant date fair value for all units granted, forfeited, vested and outstanding as presented in the table above was \$7.80 per unit. As of December 31, 2019, the Company had recognized all unit-based compensation expense related to incentive units.

In accordance with the terms of the Viant Technology LLC Agreement, any common units that fail to vest or are forfeited shall be reallocated to the Company's two executive directors, provided the executive directors remain employed by the Company or its affiliates. In 2019 and 2018, certain grantees forfeited 4,000 units and 4,685 units, respectively, that were then reallocated to the Company's executive directors in accordance with the terms of the Viant Technology LLC Agreement.

In conjunction with the unit repurchase and long-term debt settlement discussed in Note 7, all unvested incentive units immediately vested on October 31, 2019 and the Company recognized \$0.6 million of accelerated unit-based compensation expense on that date. As of December 31, 2020 and 2019, all 400,000 incentive units were vested and outstanding.

Unit-based compensation expense recorded in the consolidated statements of operations and comprehensive income (loss) was as follows:

	Year Ended December 31,		
	2020	2019	2018
	(in thousands)		
Platform operations	\$ —	\$ 42	\$ 25
Sales and marketing	—	44	26
Technology and development	—	82	49
General and administrative	—	922	547
Total	\$ —	\$ 1,090	\$ 647

The valuation of common unit awards incorporated the income approach and the market approach in determining the fair value. The Company applied a 50% weight to each approach, utilized the OPM to allocate value to different classes of equity. The following outlines the option valuation assumptions used in the fair value calculation of common units:

Risk-free interest rate	0.9%
Volatility	55.4%
Expected Term	2.5 years
Discount for lack of marketability	55%

Phantom Unit Plan

On January 1, 2020, the Company formalized the 2020 Equity Based Incentive Compensation Plan (the “Phantom Unit Plan”), under which the Company is authorized to issue 12,500,000 phantom units. Upon the occurrence of a liquidation event, the units will participate in any increase in the fair value of the entity above the stated distribution threshold of \$100 million. The units vest on a quarterly basis over four years, and all units granted to an employee, whether vested or unvested, automatically forfeit upon termination of employment for any reason. Based on the terms of the Phantom Unit Plan and unit award grants, no compensation cost has been recorded in the consolidated statement of operations and comprehensive income (loss) for the year ended December 31, 2020. The Phantom Unit Plan was terminated in connection with the IPO which occurred on February 12, 2021. See Note 14 for additional information.

10. Earnings (Loss) Per Unit

Basic and diluted earnings (loss) per unit is presented in conformity with the two-class method required for participating securities and multiple classes of units. Based on the terms of the respective operating agreements, the Company considers the 2016 and 2019 convertible preferred units to be participating securities.

For any period in which the Company records net income, undistributed earnings allocated to the convertible preferred units are subtracted from net income in determining earnings attributable to common unitholders. For periods in which the Company recognizes a net loss, undistributed losses are allocated only to common units as the convertible preferred units do not contractually participate in the Company’s losses. Basic earnings (loss) per unit is computed by dividing the earnings (loss) attributable to common unitholders by the number of weighted-average common units outstanding during the period. As participating securities, the convertible preferred units are excluded from basic weighted-average common units outstanding.

For the purpose of calculating basic earnings (loss) per unit for the year ended December 31, 2019, the Company adjusted net income for the deemed contribution related to the retirement of the 2016 convertible preferred units on October 31, 2019 and the deemed dividend upon issuance of the 2019 convertible preferred units on October 31, 2019. The first adjustment is a deemed capital contribution and represents the difference between the fair value of consideration transferred for the convertible preferred units and the carrying amount of the convertible preferred units on the Company's balance sheet on the transaction date. The second adjustment is a deemed dividend to the 2019 convertible preferred unitholders and represents the full amortization of the discount related to the beneficial conversion feature upon issuance of the 2019 convertible preferred units. The discount is calculated as the difference between the fair value of the common units and the effective conversion price of the 2019 convertible preferred units. Refer to Note 7 and Note 8 for additional information.

Diluted earnings (loss) per unit represents net income (loss) attributable to all unitholders divided by the weighted-average number of units outstanding, inclusive of the convertible preferred units using the as-if-converted method and the incentive common units using the treasury stock method, if dilutive. For the year ended December 31, 2020, there were no potential dilutive units related to incentive common units as they were all issued as of the beginning of the year. The potential dilutive units related to the convertible preferred units were included in the computation of dilutive earnings per unit. For the year ended December 31, 2019, the potential dilutive units related to the convertible preferred units and incentive common units were included in the computation of diluted earnings per unit. For the year ended December 31, 2018, the potential dilutive units related to the convertible preferred units and incentive common units were not included in the computation of diluted loss per unit as the effect of including these units in the calculation would have been anti-dilutive.

The undistributed earnings have been allocated based on the participation rights of the convertible preferred and common units as if the earnings for the year have been distributed. As the participation in distributed and undistributed earnings is identical for both classes, the distributed and undistributed earnings are allocated on a proportionate basis.

Basic and diluted earnings (loss) per unit and the weighted-average units outstanding have been computed for all periods shown below to give effect to payments of dividends to unitholders during 2020, issuances of common units, the retirement of the 2016 convertible preferred units and the issuance of the 2019 convertible preferred units. The reconciliations of the numerators and denominators of the basic and diluted earnings (loss) per share computations are as follows:

	Year Ended December 31,		
	2020	2019	2018
(in thousands, except per unit data)			
<u>Numerator</u>			
Net income (loss)	\$ 20,638	\$ 9,924	\$ (25,535)
Deemed contribution of 2016 convertible preferred unit interest	—	45,000	—
Deemed dividend upon issuance of 2019 convertible preferred units	—	(27,558)	—
Adjusted net income (loss) attributable to all unitholders	\$ 20,638	\$ 27,366	\$ (25,535)
Less: Dividend paid to preferred unitholders	(3,000)	—	—
Adjusted net income (loss) attributable to common unitholders	17,638	27,366	(25,535)
Less: Dividend paid to common unitholders	(2,000)	—	—
Undistributed earnings (loss) attributable to all unitholders	15,638	27,366	(25,535)
Less: Undistributed earnings attributable to participating securities	(9,383)	(18,787)	—
Earnings (loss) attributable to common unitholders	\$ 6,255	\$ 8,579	\$ (25,535)
<u>Denominator</u>			
Weighted average common units outstanding—basic	400	274	186
Effect of dilutive securities:			
Convertible preferred units	600	600	—
Incentive common units	—	126	—
Weighted average units outstanding—diluted	1,000	1,000	186
<u>Earnings (loss) per unit—basic</u>			
Distributed earnings (loss) per unit—basic	\$ 5.00	\$ —	\$ —
Undistributed earnings (loss) per unit—basic	15.64	31.31	(137.28)
Total earnings (loss) per unit—basic	\$ 20.64	\$ 31.31	\$ (137.28)
<u>Earnings (loss) per unit—diluted</u>			
Total earnings (loss) per unit—diluted	\$ 20.64	\$ 27.37	\$ (137.28)
Anti-dilutive units excluded from diluted earnings (loss) per unit:			
Convertible preferred units	—	—	600
Incentive common units	—	—	214
Total units excluded from diluted earnings (loss) per unit	—	—	814

11. Commitments and Contingencies

Lease Commitments

Future minimum payments under the Company's non-cancelable operating leases, which are primarily related to building leases, as of December 31, 2020 are as follows:

Year Ended December 31,	(in thousands)
2021	\$ 3,552
2022	2,002
2023	991
2024	124
2025 and thereafter	—
Total minimum payments	<u>\$ 6,669</u>

Legal Matters

From time to time, the Company is subject to various legal proceedings and claims, either asserted or unasserted, that arise in the ordinary course of business. Although the outcome of the various legal proceedings and claims cannot be predicted with certainty, management does not believe that any of these proceedings or other claims will have a material effect on the Company's business, financial condition, results of operations or cash flows.

12. Guarantees and Indemnities

The Company has made no significant contractual guarantees for the benefit of third parties. However, in the ordinary course of business, the Company may provide indemnifications of varying scope and terms to customers, vendors, lessors, business partners and other parties with respect to certain matters, including, but not limited to, losses arising out of breach of such agreements, services to be provided by the Company or from intellectual property infringement claims made by third parties. In addition, the Company has entered into indemnification agreements with directors and certain officers and employees that will require the Company, among other things, to indemnify them against certain liabilities that may arise by reason of their status or service as directors, officers or employees. The Company is not aware of indemnification claims that could have a material effect on the Company's consolidated financial statements. Accordingly, no amounts for any obligation have been recorded as of December 31, 2020 and 2019.

13. Related Parties

The Company derives a small percentage of its revenue from Meredith Corporation and its subsidiaries ("Meredith Corporation"), which previously held equity interests in the Company through the Former Holdco. The Company also purchases certain inventory from Meredith Corporation. These purchases and sales are made under standard customer agreements that outline the terms of the transactions. As discussed in Note 7, the Company retired all outstanding shares held by this related party on October 31, 2019 and, as of such date, Meredith Corporation ceased to be a related party to the Company. Accordingly, the Company has excluded all transactions with Meredith Corporation subsequent to October 31, 2019 from the amounts disclosed below. There were no purchases, sales or amounts due to or from Four Brothers 2 LLC as of and for the years ended December 31, 2020 or 2019.

The Company recorded no revenue from its transactions with related parties during year ended December 31, 2020, and \$3.7 million and \$5.0 million during the years ended December 31, 2019 and 2018, respectively. The Company recorded no purchases from related parties during year ended December 31, 2020, and \$0.3 million and \$0.7 million during the years ended December 31, 2019 and 2018, respectively.

As of December 31, 2020 and 2019, no amounts were due to or due from related parties.

14. Subsequent Events

The Company has assessed subsequent events through the date of this report and has concluded the following required disclosure in the consolidated financial statements.

Initial Public Offering

On February 9, 2021, the Form S-1 of Viant Technology Inc. was declared effective by the SEC related to the IPO of its Class A common stock. The closing date of the IPO was February 12, 2021, and in connection with the closing, the following actions were taken as it relates to the Company:

- Viant Technology Inc. amended and restated its certificate of incorporation, under which Viant Technology Inc. is authorized to issue up to 450,000,000 shares of Class A common stock, up to 150,000,000 shares of Class B common stock, and up to 10,000,000 shares of preferred stock;
- The limited liability company agreement of the Company was amended and restated (the “Amended and Restated Viant Technology LLC Agreement”) to, among other things, provide for Class A units and Class B units and appoint Viant Technology Inc. as the sole managing member of the Company;
- The Amended and Restated Viant Technology LLC Agreement classifies the interests acquired by Viant Technology Inc. as Class A units and reclassified the interests held by the continuing members of the Company as Class B units, and permits the continuing members of the Company to exchange Class B units for shares of Class A common stock on a one-for-one basis or, at the election of the Company, for cash. Immediately following such reclassification, the continuing members held 48,935,559 Class B units. For each membership unit of the Company that is reclassified as a Class B unit, Viant Technology Inc. issued one corresponding share of its Class B common stock to the continuing members, or 48,935,559 shares of Class B common stock in total;
- Viant Technology Inc. issued and sold 10,000,000 shares of its Class A common stock to the underwriters at an initial public offering price of \$25.00 per share, for gross proceeds of \$250.0 million before deducting underwriting discounts and commissions of \$17.5 million;
- Viant Technology Inc. used the net proceeds of \$232.5 million to acquire 10,000,000 newly issued Class A units of the Company at a per-unit price equal to the per-share price paid by the underwriters for shares of its Class A common stock;
- The underwriters exercised their option to purchase 1,500,000 additional shares of Class A common stock from the selling stockholders. Viant Technology Inc. did not receive any proceeds from the sale of shares by the selling stockholders. Pursuant to such exercise, the selling stockholders exchanged the corresponding number of Class B units for the shares of Class A common stock, the corresponding number of shares of Class B common stock were automatically retired, and 1,500,000 Class A units were issued to Viant Technology Inc.;

Immediately following the closing of the IPO, the Company is the predecessor of Viant Technology Inc. for financial reporting purposes. Viant Technology Inc. is a holding company, and its sole material asset is its equity interest in the Company. As the sole managing member of the Company, Viant Technology Inc. operates and controls all of the business and affairs of the Company. This reorganization is accounted for as a reorganization of entities under common control. As a result, the consolidated financial statements of Viant Technology Inc. will recognize the assets and liabilities received in the reorganization at their historical carrying amounts, as reflected in the historical consolidated financial statements of the Company.

Phantom Unit Plan

In connection with the IPO, the Company’s Phantom Unit Plan was replaced in conjunction with the adoption of the Viant Technology Inc. 2021 Long Term Incentive Plan.

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

None.

Item 9A. Controls and Procedures.***Evaluation of Disclosure Controls and Procedures***

Our management, with the participation of our CEO and CFO, has evaluated the effectiveness of our disclosure controls and procedures (as defined in Rules 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934, as amended (the “Exchange Act”), as of the end of the period covered by this Annual Report. Based on such evaluation, our CEO and CFO have concluded that as of December 31, 2020, our disclosure controls and procedures are designed at a reasonable assurance level and are effective to provide reasonable assurance that information we are required to disclose in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in the rules and forms of the SEC, and that such information is accumulated and communicated to our management, including our CEO and CFO, as appropriate, to allow timely decisions regarding required disclosure.

Management's Report on Internal Control Over Financial Reporting

This Annual Report does not include a report of management's assessment regarding internal control over financial reporting or an attestation of our independent registered public accounting firm as permitted in this transition period under the rules of the SEC for newly public companies.

Changes in Internal Control over Financial Reporting

There was no change in our internal control over financial reporting (as defined in Rules 13a-15(d) and 15d-15(d) under the Exchange Act) during the period covered by this Annual Report that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Limitations on the Effectiveness of Disclosure Controls and Procedures

Our management, including our Chief Executive Officer and Chief Financial Officer, does not expect that our disclosure controls and procedures or internal control over financial reporting will prevent all errors and all fraud. A control system, no matter how well designed and implemented, can provide only reasonable, not absolute, assurance that the control system's objectives will be met. Further, the design of a control system must reflect the fact that there are resource constraints and the benefits of controls must be considered relative to their costs. Because of the inherent limitations in all control systems, no evaluation of controls can provide absolute assurance that all control issues within a company are detected. The inherent limitations include the realities that judgments in decision-making can be faulty and that breakdowns can occur because of simple errors or mistakes. Controls can also be circumvented by the individual acts of some persons, by collusion of two or more people, or by management override of the controls. Because of the inherent limitations in a cost-effective control system, misstatements due to error or fraud may occur and may not be detected. 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.

Item 9B. Other Information.

None.

PART III

Item 10. Directors, Executive Officers and Corporate Governance.

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

Name	Age	Position
Tim Vanderhook	40	Chief Executive Officer; Director, Chairman
Chris Vanderhook	42	Chief Operating Officer; Director
Larry Madden	56	Chief Financial Officer
Max Valdes	66	Director
Elizabeth Williams	45	Director

Our Executive Officers

Tim Vanderhook has served as our chief executive officer since October 9, 2020 and has served on our board of directors since October 16, 2020 and has served as chairman of our board of directors since February 2021. He has served as the chief executive officer and board member of Viant Technology LLC since he co-founded the Viant Technology business in 1999. Mr. Vanderhook's qualifications to serve on the board of directors include his digital advertising expertise and innovation, and his experience as our chief executive officer for over 20 years, which contributes valuable management and technological expertise to the board's collective knowledge.

Chris Vanderhook has served as our chief operating officer since October 9, 2020 and has served on our board of directors since October 16, 2020. He has served as the chief operating officer and board member of Viant Technology LLC since he co-founded the Viant Technology business in 1999. Mr. Vanderhook's qualifications to serve on the board of directors include his extensive experience in the digital advertising industry, and his experience as our chief operating officer for over 20 years, which contributes valuable management expertise to the board's collective knowledge. Mr. Vanderhook received a BS degree in Business Administration at the Marshall School of Business from the University of Southern California.

Larry Madden has served as our chief financial officer since October 9, 2020 and has served as the chief financial officer of Viant Technology LLC since September 2012. Before joining Viant Technology LLC, Mr. Madden served as chief financial officer of a number of media and technology companies starting in 1995. Mr. Madden has extensive public company experience, including as chief financial officer of two Nasdaq-listed companies and as a board member of a third Nasdaq-listed company. Mr. Madden started his career at Ernst & Young where he spent nearly eight years. Mr. Madden is a CPA (inactive) and earned an MBA in finance and strategic management from New York University.

Our Directors

Please see “— *Our Executive Officers*” above for the biographical information of Tim Vanderhook and Chris Vanderhook.

Max Valdes has served on our board of directors since February 9, 2021 and is chair of the audit committee. Mr. Valdes is a former Chief Financial Officer and Executive Vice President of First American Financial Corporation, a New York Stock Exchange-listed company. Prior to his retirement, Mr. Valdes held numerous financial positions over his 25 years at First American Financial Corporation, including Controller and Chief Accounting Officer. He currently serves on the board of directors and audit committee of First American Trust Company. Mr. Valdes brings a significant level of financial and management expertise to the board of directors. This experience also provides insight regarding public company reporting matters, as well as an understanding of the process of an audit committee's interactions with the board of directors and management. Mr. Valdes is a CPA and earned a BA degree in Business Administration at the California State University, Fullerton.

Elizabeth Williams has served on our board of directors since February 9, 2021 and is chair of the compensation committee. Ms. Williams has served as Chief Executive Officer of Drybar Holdings, LLC, an owner of hair salons providing blowouts and hair styling products and accessories, since June 2020. Previously, Ms. Williams was President of Taco Bell International from January 2018 to January 2020, Chief Financial Officer of Taco Bell Corp. from October 2013 to January 2018, and Vice President, Financial Planning & Analysis of Taco Bell Corp. from 2011 to 2013. Ms. Williams currently serves on the board of directors and audit committee of Stitch Fix, Inc., a Nasdaq-listed company. Ms. Williams's experience leading a global business and service on other public company boards brings important insight and guidance to the board regarding its responsibilities as a public company, as well as best practices in corporate governance. Ms. Williams earned a BA degree in Business Administration from University of Texas in Austin and an MBA from the Kellogg School of Management at Northwestern University.

Family Relationships

Tim Vanderhook and Chris Vanderhook are brothers. No other family relationship exists by or among our executive officers.

Controlled Company Exemption

Through their ownership of Class B common stock, the Vanderhook Parties control 74.9% of the voting power of our common stock in the election of directors. Accordingly, we have availed ourselves of the "controlled company" exception available under Nasdaq rules, which eliminates certain requirements, such as the requirements that a company have a majority of independent directors on its board of directors, that compensation of executive officers be determined, or recommended to the board of directors for determination, by a compensation committee composed solely of independent directors, and that director nominees be selected, or recommended for the board of directors' selection, by a nominations committee composed solely of independent directors. In the event that we cease to be a controlled company, we will be required to comply with these provisions within the transition periods specified in the applicable rules. These exemptions do not modify the independence requirements for our audit committee, and we intend to comply with the applicable requirements of the SEC and Nasdaq with respect to our audit committee within the applicable time frame.

Director Independence

The board of directors has determined that each of Max Valdes and Elizabeth Williams is an "independent director" as such term is defined by the applicable rules and regulations of Nasdaq. As allowed under the applicable rules and regulations of the SEC and Nasdaq, we intend to appoint a third independent director within a year after the closing of our IPO.

Board Composition

Our board of directors consists of four directors. In accordance with our amended and restated certificate of incorporation and bylaws, the number of directors on our board of directors will be determined from time to time by the board of directors but shall not be less than three persons nor more than eleven persons.

Each director is to hold office until the next election of the class for which such director shall have been chosen and until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. Vacancies and newly created directorships on the board of directors may be filled at any time by the remaining directors or our stockholders, provided that, after the Vanderhook Parties cease to beneficially own a majority of the combined voting power of our common stock (the "Triggering Event"), vacancies on our board of directors, whether resulting from an increase in the number of directors or the death, removal or resignation of a director, will be filled only by our board of directors and not by stockholders.

Our amended and restated certificate of incorporation provides that the board of directors will be divided into three classes of directors, with staggered three-year terms, with the classes to be as nearly equal in number as possible. As a result, approximately one-third of the board of directors will be elected each year. The classification

of directors has the effect of making it more difficult for stockholders to change the composition of the board of directors. Our Class I director is Max Valdes, our Class II director is Chris Vanderhook, and our Class III directors are Tim Vanderhook and Elizabeth Williams.

Board Leadership Structure

Our board of directors has designated Tim Vanderhook to serve as chairman of the board. Our board of directors believes that it should maintain flexibility to select the chairman of our board of directors and adjust our board leadership structure from time to time. Our board of directors determined that having our chief executive officer also serve as the chairman of our board of directors provides us with optimally effective leadership and is in our best interests and those of our stockholders. Mr. Vanderhook co-founded and has led our company since its inception. Our board of directors believes that Mr. Vanderhook's strategic vision for our business, his in-depth knowledge of our platform and operations, the ad tech industry, and his experience serving as our chief executive officer since our inception make him well qualified to serve as both chairman of our board of directors and chief executive officer.

The role given to the lead independent director helps ensure a strong independent and active board of directors. In 2021, our board of directors appointed Max Valdes to serve as our lead independent director. As lead independent director, Mr. Valdes will preside over periodic meetings of our independent directors, serve as a liaison between the chairperson of our board of directors and the independent directors, and perform such additional duties as our board of directors may otherwise determine and delegate.

Role of our Board in Risk Oversight

We face a number of risks, including those described under the section titled "Risk Factors" included elsewhere in this Annual Report. Our board of directors believes that risk management is an important part of establishing, updating and executing on the Company's business strategy. Our board of directors, as a whole and at the committee level, has oversight responsibility relating to risks that could affect the corporate strategy, business objectives, compliance, operations and the financial condition and performance of the Company. Our board of directors focuses its oversight on the most significant risks facing the Company and on its processes to identify, prioritize, assess, manage and mitigate those risks. Our board of directors and its committees receive regular reports from members of the Company's senior management on areas of material risk to the Company, including strategic, operational, financial, legal and regulatory risks. While our board of directors has an oversight role, management is principally tasked with direct responsibility for management and assessment of risks and the implementation of processes and controls to mitigate their effects on the Company.

Board Committees

We have three board committees: an audit committee, a compensation committee and a nominating and corporate governance committee.

Audit Committee

The primary responsibilities of our audit committee are to oversee the accounting and financial reporting processes of our company, and to oversee the internal and external audit processes. The audit committee also assists the board of directors in fulfilling its oversight responsibilities by reviewing the financial information provided to stockholders and others, and the system of internal controls established by management and the board of directors. The audit committee oversees the independent auditors, including their independence and objectivity. However, committee members will not act as professional accountants or auditors, and their functions are not intended to duplicate or substitute for the activities of management, or the independent auditors. The audit committee is empowered to retain independent legal counsel and other advisors as it deems necessary or appropriate to assist it in fulfilling its responsibilities, and to approve the fees and other retention terms of its advisors.

Max Valdes, Elizabeth Williams and Tim Vanderhook are the members of our audit committee. The board of directors has determined that Mr. Valdes qualifies as an "audit committee financial expert" as such term is defined

under the rules of the SEC implementing Section 407 of the Sarbanes-Oxley Act of 2002, or Sarbanes-Oxley, and that each of Mr. Valdes and Ms. Williams is an “independent” director for purposes of Rule 10A-3 of the Exchange Act and under the listing standards of Nasdaq. Accordingly, we are relying on the phase-in provisions of Rule 10A-3 of the Exchange Act and Nasdaq transition rules applicable to companies completing an initial public offering, and we plan to have an audit committee comprised solely of independent directors that are independent for purposes of serving on an audit committee within one year of our listing. We believe that the functioning of our audit committee complies with the applicable requirements of the SEC and Nasdaq.

Compensation Committee

The primary responsibilities of our compensation committee are to periodically review and approve the compensation and other benefits for our employees, officers and independent directors. This includes reviewing and approving corporate goals and objectives relevant to the compensation of our executive officers in light of those goals and objectives, and setting compensation for these officers based on those evaluations. Our compensation committee also administers and has discretionary authority over the issuance of equity awards under our equity incentive plans. The compensation committee may delegate authority to review and approve the compensation of our employees to certain of our executive officers, including with respect to awards made under our equity incentive plans. Even where the compensation committee does not delegate authority, our executive officers will typically make recommendations to the compensation committee regarding compensation to be paid to our employees and the size of equity grants under our equity incentive plans.

Elizabeth Williams and Chris Vanderhook are the members of our compensation committee. Because we are a “controlled company” under the rules of Nasdaq, our compensation committee is not required to be fully independent, although if such rules change in the future or we no longer meet the definition of a controlled company under the current rules, we will adjust the composition of the compensation committee accordingly in order to comply with such rules.

Nominating and Corporate Governance Committee

Our nominating and corporate governance committee oversees all aspects of our corporate governance functions. The committee makes recommendations to our board of directors regarding director candidates and assists our board of directors in determining the composition of our board of directors and its committees. Tim Vanderhook and Chris Vanderhook are the members of our nominating and corporate governance committee. Because we are a “controlled company” under the rules of Nasdaq, our nominating and corporate governance committee is not required to be fully independent, although if such rules change in the future or we no longer meet the definition of a controlled company under the current rules, we will adjust the composition of the nominating and corporate governance committee accordingly in order to comply with such rules.

Code of Conduct and Ethics

Our board of directors has adopted a code of conduct and ethics that establishes the standards of ethical conduct applicable to all directors, officers and employees of our company. The code addresses, among other things, conflicts of interest, compliance with disclosure controls and procedures and internal control over financial reporting, corporate opportunities and confidentiality requirements. The audit committee is responsible for applying and interpreting our code of conduct and ethics in situations where questions are presented to it. We expect that any amendments to the code or any waivers of its requirements applicable to our principal executive, financial or accounting officer, or controller will be disclosed on our website at www.viantinc.com. Information contained on our website or linked therein or otherwise connected thereto does not constitute part of nor is it incorporated by reference into the registration statement on Form S-1 (No. 333-252117).

Compensation Committee Interlocks and Insider Participation

Our compensation committee is composed Elizabeth Williams and Chris Vanderhook. None of our executive officers currently serves, or has served during the last completed fiscal year, as a member of the board of directors, or as a member of the compensation or similar committee, of any entity that has one or more executive officers who

served on our board of directors. For a description of the transactions between us and members of the compensation committee, and entities affiliated with such members, see the transactions described under the section entitled “*Certain Relationships and Related Person Transactions.*”

Item 11. Executive Compensation.

We are providing compensation disclosure that satisfies the requirements applicable to EGCs, as defined in the JOBS Act. As an EGC, we disclose the compensation of our principal executive officer and the two most highly compensated executive officers other than our principal executive officer.

Summary Compensation Table

The following table sets forth the compensation earned during the years ended December 31, 2019 and 2020 by our principal executive officer and our next two most highly compensated executive officers, who collectively comprise our named executive officers.

Name and principal position	Year	Salary (\$)	Bonus (\$)	Total (\$)
Tim Vanderhook	2020	700,000	700,000	1,400,000
<i>Chief Executive Officer & Co-Founder</i>	2019	700,000	700,000	1,400,000
Chris Vanderhook	2020	700,000	700,000	1,400,000
<i>Chief Operating Officer & Co-Founder</i>	2019	700,000	700,000	1,400,000
Larry Madden	2020	645,840	200,000	845,840
<i>Chief Financial Officer</i>	2019	645,840	264,584	910,424

Executive Compensation Arrangements

We do not have any employment or change in control arrangements with our named executive officers other than Mr. Madden. We entered into an employment agreement with Mr. Madden on March 27, 2017, which was subsequently amended on November 15, 2018 (the “Madden Employment Agreement”). The agreement provides for an initial base salary and an annual bonus opportunity. Such bonus is in the Company’s sole and absolute discretion and conditioned on Mr. Madden remaining employed through the end of the applicable annual bonus period. Subject to Mr. Madden’s execution and delivery of a general release of claims against the Company, Mr. Madden is entitled to base salary continuation for a period of 12 months in the event his employment is terminated by the Company without Cause or due to his resignation for Good Reason (each as defined in the Madden Employment Agreement). Mr. Madden is also eligible to receive COBRA continuation coverage at company-cost for a period of twelve months following such a termination of employment.

Upon a change in control, our equity and non-equity incentive plans provide for accelerated vesting of outstanding awards held by participants, including our named executive officers. We do not currently expect to enter into employment, severance or change in control arrangements with our named executive officers.

Common Units in Viant Technology LLC and the Equity Plan LLC

Prior to the IPO, Messrs. Vanderhook and Vanderhook have each had been issued common units in Viant Technology LLC. These common units were full-value awards that were previously subject to time-based vesting conditions. Such vesting conditions lapsed in connection with Viant Technology LLC’s retirement of 600,000 common units from the Former Holdco in 2019. In connection with the IPO, Class B units of Viant Technology LLC and shares of Class B common stock of Viant Technology Inc. were issued in exchange for these previously issued units.

Certain of our employees, including Mr. Madden, were granted common units by the Viant Technology Equity Plan LLC (the “Equity Plan LLC.”) Such units were issued to certain of our directors, officers, employees and consultants in consideration for bona fide services provided to us. Common units issued by the Equity Plan LLC are considered “profits interests” within the meaning of U.S. federal and state tax rules. Recipients of such units are

not immediately entitled upon grant to receive distributions upon a liquidation. Instead, the holders of such units are entitled to receive an allocation of a portion of our profits arising after the date of the grant and, subject to vesting conditions, distributions made out of a portion of our profits arising after the grant date of such units.

Prior to the IPO, each common unit of the Equity Plan LLC corresponded to a common unit of Viant Technology LLC granted to the Equity Plan LLC by Viant Technology LLC. In connection with the IPO, Class B units of Viant Technology LLC and shares of Class B common stock of Viant Technology Inc. were issued to Equity Plan LLC in exchange for these previously issued units. The common units issued by the Equity Plan LLC to our service providers that will remain outstanding will represent an indirect interest in the Class B units of Viant Technology LLC and the Class B common stock of Viant Technology Inc. held by Equity Plan LLC

Viant Technology LLC 2020 Equity Based Incentive Compensation Plan

Mr. Madden was granted 1,000,000 phantom units under the Viant Technology LLC 2020 Equity Based Incentive Compensation Plan (the “Phantom Unit Plan”). The Phantom Unit Plan provides for grants of phantom units to employees, officers, and directors of Viant Technology LLC. Each phantom unit provides a participant with a contractual right to receive a payment with respect to his or her vested phantom units upon the consummation of a “Deemed Liquidation Event.” The value of each phantom unit is based on the amount that a hypothetical member who holds common units in Viant Technology LLC would receive in connection with a Deemed Liquidation Event in excess of the distribution threshold applicable to the phantom unit. Such distribution threshold is established at the time of grant. We replaced awards under this plan with awards issued pursuant to the 2021 LTIP in connection with the IPO.

Viant Technology Inc. 2021 Long-Term Incentive Plan

Our board of directors adopted the 2021 LTIP, a new omnibus long-term incentive plan, and the 2021 LTIP was approved by our stockholders in connection with our IPO. We granted under the 2021 LTIP equity awards in connection with our Phantom Unit Plan consisting of restricted stock units (“RSUs”) to certain employees, including certain of our named executive officers, as well as equity awards consisting of RSUs to certain of our non-employee directors, with an aggregate grant date fair value of \$155 million. Mr. Madden received 510,000 RSUs as replacement of his interests in the Phantom Unit Plan. A portion of these RSUs will be vested at the time of release of the lock-up agreements entered into in connection with our IPO and the remainder of the RSUs will continue to vest following grant, subject to continued employment through the applicable vesting date.

Purpose. The 2021 LTIP is intended to help the Company secure and retain the services of eligible award recipients, provide incentives for such persons to exert maximum efforts for the success of the Company and its affiliates and provide a means by which the eligible recipients may benefit from increases in the value of our common stock.

Eligibility. Equity awards, including RSUs, may be granted to employees, including officers, non-employee directors, and consultants of the Company and its affiliates. Only our employees and those of our affiliates are eligible to receive incentive stock options.

Types of Equity Awards. The 2021 LTIP provides for the grant of incentive stock options within the meaning of Section 422 of the Code, nonqualified stock options, stock appreciation rights (“SARs”), restricted stock awards (“RSAs”), RSUs and performance stock awards.

Authorized Shares. Subject to adjustment for certain dilutive or related events, the aggregate maximum number of shares of our Class A common stock that may be issued pursuant to stock awards under the 2021 LTIP, or the Share Reserve, is 11,787,112 shares of Class A common stock. The Share Reserve will automatically increase on January 1 of each year commencing on January 1, 2022 and ending with a final increase on January 1, 2031 in an amount equal to 5% of the total number of shares of capital stock outstanding on December 31st of the preceding calendar year; provided, however, that our board of directors may provide that there will not be a January 1st increase in the Share Reserve in a given year or that the increase will be less than 5% of the shares of capital stock outstanding on the preceding December 31st.

The Share Reserve will not be reduced if an award or any portion thereof (i) expires, is canceled, is forfeited or otherwise terminates without all of the shares covered by such award having been issued or (ii) is settled in cash. If any shares of common stock issued under an equity award are forfeited back to, or repurchased by, the Company, such shares will revert to and again be made available for issuance under the 2021 LTIP. Any shares retained or reacquired by the Company in satisfaction of tax withholding obligations, as consideration for the exercise or purchase price of an equity award, or with the proceeds paid by the participant under the terms of an equity award, will also again become available for issuance under the 2021 LTIP. If the Company repurchases shares of Class A common stock with stock option exercise or stock purchase proceeds, such shares will be added to the Share Reserve.

Shares issued under the 2021 LTIP may consist of authorized but unissued or reacquired Class A common stock of the Company, including shares repurchased by the Company on the open market or otherwise or shares classified as treasury shares.

Plan Administration. Our board of directors has the authority to administer the 2021 LTIP, including the powers to: (i) determine who will be granted equity awards and what type of equity award, when and how each equity award will be granted, the provisions of each equity award (which need not be identical), the number of shares or cash value subject to an equity award and the fair market value applicable to an equity award; (ii) construe and interpret the 2021 LTIP and equity awards granted thereunder and establish, amend and revoke rules and regulations for administration of the 2021 LTIP and equity awards, including the ability to correct any defect, omission or inconsistency in the 2021 LTIP or any equity award document; (iii) settle all controversies regarding the 2021 LTIP and equity awards granted thereunder; (iv) accelerate or extend, in whole or in part, the time during which an equity award may be exercised or vested or at which cash or shares may be issued; (v) suspend or terminate the 2021 LTIP; (vi) amend the 2021 LTIP; (vii) submit any amendment to the 2021 LTIP for stockholder approval; (viii) approve forms of award documents for use under the 2021 LTIP and to amend the terms of any one or more outstanding equity awards; (ix) generally exercise such powers and perform such acts as the board of directors may deem necessary or expedient to promote the best interests of the Company and that are not in conflict with the provisions of the 2021 LTIP or any equity award documents; and (x) adopt procedures and sub-plans as are necessary or appropriate.

Subject to the provisions of the 2021 LTIP, our board of directors may delegate all or some of the administration of the 2021 LTIP to a committee of one or more directors and may delegate to one or more officers the authority to designate employees who are not officers to be recipients of options and SARs (and, to the extent permitted by applicable law, other equity awards) and, to the extent permitted by applicable law, to determine the terms of such equity awards and the number of shares of Class A common stock to be subject to such equity awards granted to such employees. Unless otherwise provided by the board of directors, delegation of authority by the board of directors to a committee or an officer will not limit the authority of the board. All determinations, interpretations and constructions made by the board (or another authorized committee or officer exercising powers delegated by the board) in good faith will be final, binding and conclusive on all persons. Pursuant to the provisions of the 2021 LTIP, the board will delegate administration of the 2021 LTIP to the compensation committee.

Stock Options. A stock option may be granted as an incentive stock option or a nonqualified stock option. The option exercise price may not be less than the fair market value of the stock subject to the option on the date the option is granted or, with respect to incentive stock options, less than 110% of the fair market value if the recipient owns stock possessing more than 10% of the total combined voting power of all classes of stock of the Company or any affiliate unless the option was granted pursuant to an assumption or substitution for another option in a manner satisfying the provisions of Section 409A and, if applicable, Section 424(a) of the Code. Options will not be exercisable after the expiration of ten years from the date of grant (or five years, in the case of an incentive stock option issued to a stockholder possessing more than 10% of the total combined voting power of all classes of stock of the Company or any affiliate). Each equity award agreement will set forth the number of shares subject to each option. The purchase price of any shares acquired pursuant to an option may be payable in cash, check, bank draft, money order, net exercise or as otherwise determined by the board and set forth in the award agreement, including through an irrevocable commitment by a broker to pay over such amount from a sale of the shares issuable under the option and the delivery of previously owned shares. The vesting schedule applicable to any option, including any performance conditions, will be as set forth in the equity award agreement.

Stock Appreciation Rights. A SAR is a right that entitles the participant to receive, in cash or shares of stock or a combination thereof, as determined by the board, value equal to or otherwise based on the excess of (i) the fair market value of a specified number of shares at the time of exercise over (ii) the exercise price of the right, as established by the board on the date of grant. Upon exercising a SAR, the participant is entitled to receive the amount by which the fair market value of the stock at the time of exercise exceeds the exercise price of the SAR. The exercise price of each SAR may not be less than the fair market value of the stock subject to the equity award on the date the SAR is granted, unless the SAR was granted pursuant to an assumption of or substitution for another option in a manner satisfying the provisions of Section 409A of the Code. SARs will not be exercisable after the expiration of ten years from the date of grant. Each equity award agreement will set forth the number of shares subject to the SAR. The vesting schedule applicable to any SAR, including any performance conditions, will be as set forth in the equity award agreement.

Provisions Applicable to Both Options and SARs

Transferability. The board may, in its sole discretion, impose limitations on the transferability of options and SARs. Unless the board provides otherwise, an option or SAR will not be transferable except by will or the laws of descent and distribution and will be exercisable during the lifetime of a participant only by such participant. The board may permit transfer of an option or SAR in a manner not prohibited by applicable law. Subject to approval by the board, an option or SAR may be transferred pursuant to the terms of a domestic relations order or similar instrument or pursuant to a beneficiary designation. An option or SAR may also be transferred to certain family members or trusts in accordance with the provisions of the 2021 LTIP.

Termination of Service. Except as otherwise provided in an applicable award document or other agreement between a participant and the Company or any affiliate, upon a termination for any reason other than for cause or due to death or disability, a participant may exercise his or her option or SAR (to the extent such award was exercisable as of the date of termination) for a period of three (3) months following the termination date or, if earlier, until the expiration of the term of such equity award. Upon a termination due to a participant's disability, unless otherwise provided in an applicable award or other agreement, the participant may exercise his or her option or SAR (to the extent that such equity award was exercisable as of the date of termination) for a period of twelve (12) months following the termination date or, if earlier, until the expiration of the term of such equity award. Upon a termination due to a participant's death, unless otherwise provided in an applicable award or other agreement, the participant's estate may exercise the option or SAR (to the extent such award was exercisable as of the termination date) for a period of twelve (12) months following the termination date or, if earlier, until the expiration of the term of such equity award. Unless provided otherwise in an equity award or other agreement, an option or SAR will terminate on the date that a participant is terminated for cause and the participant will not be permitted to exercise such equity award.

Awards Other Than Options and SARs

Restricted Stock Awards and Restricted Stock Units. RSAs are awards of shares, the grant, issuance, retention, vesting and/or transferability of which is subject during specified periods of time to such conditions (including continued employment) and terms as the board deems appropriate. RSUs are equity awards denominated in units under which the issuance of shares (or cash payment in lieu thereof) is subject to such conditions (including continued employment) and terms as the board deems appropriate. Each equity award document evidencing a grant of RSAs or RSUs will set forth the terms and conditions of each equity award, including vesting and forfeiture provisions, transferability and, if applicable, right to receive dividends or dividend equivalents.

Performance Stock Awards. A performance stock award is an equity award that is payable contingent upon the attainment during a performance period of certain performance goals. A performance stock award may, but need not, require the completion of a specified period of service. The length of any performance period, the applicable performance goals, and the measurement of whether and to what degree such performance goals have been attained will be as determined by the compensation committee or the board. The compensation committee or the board retains the discretion to reduce or eliminate the compensation or economic benefit upon the attainment of any performance goals and to define the manner of calculating the performance criteria it selects to use for a performance period.

Certain Adjustments. In the event of any change in the capitalization of the Company, the board will appropriately and proportionately adjust: (i) the class(es) and maximum number of securities subject to the 2021 LTIP; (ii) the class(es) and maximum number of securities that may be issued pursuant to the exercise of incentive stock options; and (iii) the class(es) and number of securities or other property and value (including price per share of stock) subject to outstanding equity awards. The board will make such adjustments, and its determination will be final, binding, and conclusive. Unless provided otherwise in an equity award or other agreement, in the event of a dissolution or liquidation of the Company, all outstanding equity awards (other than equity awards consisting of vested and outstanding shares of Company common stock not subject to a forfeiture condition or the Company's right of repurchase) will terminate immediately prior to the completion of such dissolution or liquidation, and the shares of common stock subject to the Company's repurchase rights or subject to forfeiture may be repurchased or reacquired by the Company notwithstanding the fact that the holder of such equity award is providing continuous service; provided, however, that the board may, in its sole discretion, provide that some or all equity awards will become fully vested, exercisable and/or no longer subject to repurchase or forfeiture (to the extent not already expired or terminated) before the dissolution or liquidation is completed but contingent upon its completion.

Change in Control. Unless provided otherwise in an equity award agreement or other agreement between us or an affiliate and the participant, in the event of Change in Control (as defined in the 2021 LTIP), our board of directors will take one or more of the following actions with respect to each outstanding equity award, contingent upon the closing or completion of the Change in Control:

- (i) arrange for the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company) to assume or continue the equity award or to substitute a similar equity award for the award (including, but not limited to, an award to acquire the same consideration per share paid to the stockholders of the Company pursuant to the Change in Control);
- (ii) arrange for the assignment of any reacquisition or repurchase rights held by us in respect of common stock issued pursuant to the equity award to the surviving corporation or acquiring corporation (or the surviving or acquiring corporation's parent company);
- (iii) accelerate the vesting, in whole or in part, of the equity award (and, if applicable, the time at which the equity award may be exercised) to a date prior to the effective time of such Change in Control as determined by our board of directors, with such equity award terminating if not exercised (if applicable) at or prior to the effective time of the Change in Control, and with such exercise reversed if the Change in Control does not become effective;
- (iv) arrange for the lapse, in whole or in part, of any reacquisition or repurchase rights held by us with respect to the equity award;

- (v) cancel or arrange for the cancellation of the equity award, to the extent not vested or not exercised prior to the effective time of the Change in Control, in exchange for such cash consideration, if any, as our board of directors, in its reasonable determination, may consider appropriate as an approximation of the value of the canceled equity award; and
- (vi) cancel or arrange for the cancellation of the equity award, to the extent not vested or not exercised prior to the effective time of the Change in Control, in exchange for a payment equal to the excess, if any, of (A) the value in the Change in Control of the property the participant would have received upon the exercise of the equity award immediately prior to the effective time of the Change in Control, over (B) any exercise price payable by such holder in connection with such exercise.

Our board of directors need not take the same action or actions with respect to all equity awards or portions thereof or with respect to all participants and may take different actions with respect to the vested and unvested portions of an equity award. In the absence of any affirmative determination by our board of directors at the time of a Change in Control, each outstanding equity award will be assumed or an equivalent equity award will be substituted by such successor corporation or a parent or subsidiary of such successor corporation (“Successor Corporation”) unless the Successor Corporation does not agree to assume the equity award or to substitute an equivalent equity award, in which case the vesting of such equity award will accelerate in its entirety (along with, if applicable, the time at which the equity award may be exercised) to a date prior to the effective time of such Change in Control as our board of directors will determine (or, if our board of directors does not determine such a date, to the date that is five (5) days prior to the effective date of the Change in Control), with such award terminating if not exercised (if applicable) at or prior to the effective time of the Change in Control, and with such exercise reversed if the Change in Control does not become effective.

Acceleration of Equity Awards upon a Change in Control. An equity award may be subject to additional acceleration of vesting and exercisability upon or after a Change in Control as may be provided in the award agreement for such award or as may be provided in any other written agreement between us or an affiliate and the participant, but in the absence of such provision, no such acceleration will occur.

Termination and Amendment. Our board of directors or the compensation committee may suspend or terminate the 2021 LTIP at any time. No incentive stock options may be granted under the 2021 LTIP after the tenth anniversary of the date our board of directors adopted the 2021 LTIP. No equity awards may be granted under the 2021 LTIP while the 2021 LTIP is suspended or after it is terminated.

We filed with the SEC a registration statement on Form S-8 covering the Class A common stock issuable under the 2021 LTIP. Shortly thereafter, we made a grant of RSUs or other equity awards under the 2021 LTIP to our active employees. Because we value our culture, a significant component of which is our broad employee equity ownership, we believe this grant will further align the interests of our non-management employees with those of our stockholders.

Federal Income Tax Consequences Relating to Equity Awards Granted Pursuant to the 2021 LTIP

The following discussion addresses certain federal income tax consequences relating to equity awards that may be granted under the 2021 LTIP. This discussion does not cover federal employment tax or other federal tax consequences that may be associated with the 2021 LTIP, nor does it cover state, local or non-U.S. taxes.

Incentive Stock Options (“ISOs”). There are no federal income tax consequences when an ISO is granted. A participant will also generally not recognize taxable income when an ISO is exercised, provided that the participant was our employee during the entire period from the date of grant until the date the ISO was exercised. If the participant terminates service before exercising the ISO, the employment requirement will still be met if the ISO is exercised within three months of the participant’s termination of employment for reasons other than death or disability, within one year of termination of employment due to disability, or before the expiration of the ISO in the event of death. Upon a sale of the shares, the participant realizes a long-term capital gain (or loss), equal to the difference between the sales price and the exercise price of the shares, if he or she sells the shares at least two years after the ISO grant date and has held the shares for at least one year. If the participant disposes of the shares before the expiration of these periods, then he or she recognizes ordinary income at the time of the sale (or other disqualifying disposition) equal to the lesser of (i) the gain he or she realized on the sale, and (ii) the difference between the exercise price and the fair market value of the shares on the exercise date. We receive a corresponding tax deduction in the same amount that the participant recognizes as income. If the employment requirement described above is not met, the tax consequences related to NQSOs, discussed below, will apply.

Nonqualified Stock Options (“NQSOs”). In general, a participant has no taxable income at the time a NQSO is granted but realizes income at the time he or she exercises a NQSO, in an amount equal to the excess of the fair market value of the shares at the time of exercise over the exercise price. We receive a corresponding tax deduction in the same amount that the participant recognizes as income. Any gain or loss recognized upon a subsequent sale or exchange of the shares is generally treated as capital gain or loss for which we are not entitled to a deduction.

SARs. A participant has no taxable income at the time a SAR is granted but realizes income at the time he or she exercises a SAR, in an amount equal to the excess of the fair market value of the shares at the time of exercise over the fair market value of the shares on the date of grant to which the SAR relates. We receive a corresponding tax deduction in the same amount that the participant recognizes as income. If a participant receives shares when he or she exercises a SAR, any gain or loss recognized upon a subsequent sale or exchange of the shares is generally treated as capital gain or loss for which we are not entitled to a deduction.

Restricted Stock Awards (including Performance Stock Awards). Unless a participant makes an election to accelerate the recognition of income to the date of grant as described below, the participant will not recognize income at the time an RSA is granted. When the restrictions lapse, the participant will recognize ordinary income equal to the fair market value of the shares as of that date, less any amount paid for the stock, and we will be allowed a corresponding tax deduction at that time. If the participant timely files an election under Section 83(b) of the Code, the participant will recognize ordinary income as of the date of grant equal to the fair market value of the shares as of that date, less any amount the participant paid for the shares, and we will be allowed a corresponding tax deduction at that time. Any gain or loss recognized upon a subsequent sale or exchange of the shares is generally treated as capital gain or loss for which we are not entitled to a deduction.

Restricted Stock Units (including Performance Stock Units). A participant does not recognize income at the time a RSU is granted. When shares are delivered to a participant under a RSU, the participant will recognize ordinary income in an amount equal to the fair market value of the shares on the date of delivery, and we will be allowed a corresponding tax deduction at that time. Any gain or loss recognized upon a subsequent sale or exchange of the shares is generally treated as capital gain or loss for which we are not entitled to a deduction.

Dividend Equivalents. A participant recognizes ordinary income on the date on which dividend equivalents are paid and we are entitled to a corresponding deduction at that time.

Tax Withholding. When a participant recognizes ordinary income with respect to exercise of a stock option or SAR, vesting of restricted stock (or granting of such award, if the participant makes an 83(b) election), delivery of shares under a RSU award, or upon the payment of dividend equivalents, federal tax regulations require that we collect income taxes at withholding rates.

Code Section 162(m) and 409A. Section 162(m) of the Code denies a federal income tax deduction for certain compensation in excess of \$1,000,000 per year paid to certain executive employees. Section 409A of the Code provides additional tax rules governing nonqualified deferred compensation, which may impose additional taxes on participants for certain types of nonqualified deferred compensation that is not in compliance with Section 409A. The 2021 LTIP is designed to prevent awards from being subject to the requirements of Section 409A.

Director Compensation

Our policy is to not pay director compensation to directors who are also our employees. We intend to establish compensation practices for our non-employee directors. Such compensation may be paid in the form of cash, equity or a combination of both. We may also pay additional fees to the chairs of each committee of the board of directors. All directors will be reimbursed for reasonable costs and expenses incurred in attending meetings of our board of directors.

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

The following table presents information concerning the beneficial ownership of the shares of our Class A common stock and Class B common stock as of the date of this Annual Report by (1) each person known to us to beneficially own more than 5% of the outstanding shares of our Class A common stock or our Class B common stock, (2) each of our directors and named executive officers and (3) all of our directors and executive officers as a group.

The number of shares of Class A common stock listed in the table below represents shares of Class A common stock directly owned, and assumes no exchange of Class B units for Class A common stock. Each Class B stockholder is entitled to have their Class B units exchanged for Class A common stock on a one-for-one basis, or, at our election, for cash. In connection with the IPO, we issued to each Class B stockholder one share of Class B common stock for each Class B unit it beneficially owns. As a result, the number of shares of Class B common stock listed in the first table below correlates to the number of Class B units each Class B stockholder beneficially owns.

Beneficial ownership is determined under the rules of the SEC and generally includes voting or investment power over securities. Except in cases where community property laws apply or as indicated in the footnotes to this table, we believe that each stockholder identified in the table possesses sole voting and investment power over all shares of common stock shown as beneficially owned by the stockholder. As of the date hereof, none of the stockholders listed below holds any options or warrants that are exercisable or exercisable within 60 days of the date of this Annual Report. The address of each individual or entity listed below is c/o Viant Technology Inc., 2722 Michelson Drive, Suite 100, Irvine, CA 92612.

Name of Beneficial Owner	Class A	Class B	Total
	Common Stock Number	Common Stock Number	Voting Power %
Named Executive Officers and Directors:			
Tim Vanderhook ⁽¹⁾	—	7,833,774	13.3%
Chris Vanderhook ⁽²⁾	—	7,833,774	13.3%
Larry Madden ⁽³⁾	—	—	—
Max Valdes	750	—	—
Elizabeth Williams	25,000	—	—
All executive officers and directors as a group (5 persons)	25,750	15,667,548	26.6%
Other 5% Beneficial Owners:			
Four Brothers 2 LLC ⁽⁴⁾	—	28,451,103	48.3%
Viant Technology Equity Plan LLC	—	3,316,908	5.6%

- (1) Mr. Vanderhook also holds a one-third interest in Four Brothers 2 LLC, representing an economic interest in an additional 9,483,701 shares of Class B common stock and Class B common units of Viant Technology LLC. Voting and investment decisions by Four Brothers 2 LLC require approval of a majority-in-interest of the members of Four Brothers 2 LLC, and accordingly no individual has voting or investment control over the shares held by Four Brothers 2 LLC.
- (2) Mr. Vanderhook also holds a one-third interest in Four Brothers 2 LLC, representing an economic interest in an additional 9,483,701 shares of Class B common stock and Class B common units of Viant Technology LLC. Voting and investment decisions by Four Brothers 2 LLC require approval of a majority-in-interest of the members of Four Brothers 2 LLC and accordingly no individual has voting or investment control over the shares held by Four Brothers 2 LLC.
- (3) Mr. Madden holds a 14.4 percent interest in Viant Technology Equity Plan LLC, representing an economic interest in 474,356 shares of Class B common stock and Class B common units of Viant Technology LLC. Mr. Madden does not have voting or investment control over Viant Technology Equity Plan LLC.

- (4) Each of Tim Vanderhook, Chris Vanderhook and Russ Vanderhook holds a one-third interest in Four Brothers 2 LLC, representing an economic interest in 9,483,701 shares of Class B common stock and Class B common units of Viant Technology LLC. Voting and investment decisions by Four Brothers 2 LLC require approval of a majority-in-interest of the members of Four Brothers 2 LLC and accordingly no individual has voting or investment control over the shares held by Four Brothers 2 LLC.

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

Other than compensation arrangements, including employment, termination of employment and change in control arrangements, with our directors and executive officers, including those discussed in the sections titled “*Management*” and “*Executive Compensation*,” the following is a description of certain relationships and transactions since January 1, 2018, involving our directors, executive officers, beneficial holders of more than 5% of our capital stock, or entities affiliated with them.

The following are summaries of certain provisions of our related party agreements, which are qualified in their entirety by reference to all of the provisions of such agreements. Because these descriptions are only summaries of the applicable agreements, they do not necessarily contain all of the information that you may find useful. We therefore encourage you to review the agreements in their entirety. Copies of the agreements (or forms of the agreements) have been filed as exhibits to the registration statement on Form S-1 (No. 333-252117), and are available electronically on the website of the SEC at www.sec.gov.

Tax Receivable Agreement

The members of Viant Technology LLC (not including Viant Technology Inc.) may exchange their Class B units for shares of Viant Technology Inc.’s Class A common stock on a one-for-one basis or, at our election, for cash. Any beneficial holder exchanging Class B units must ensure that the applicable corresponding number of shares of Class B common stock are delivered to us for cancellation as a condition of exercising its right to exchange Class B units for shares of our Class A common stock or, at our election, for cash. As a result of this initial purchase and any subsequent exchanges, we will become entitled to a proportionate share of the existing tax basis of the assets of Viant Technology LLC. In addition, Viant Technology LLC will have in effect an election under Section 754 of the Code for the taxable year of the offering and each taxable year in which an exchange occurs, which is expected to result in increases to the tax basis of the tangible and intangible assets of Viant Technology LLC which will be allocated to Viant Technology Inc. These increases in tax basis are expected to increase Viant Technology Inc.’s depreciation and amortization deductions for tax purposes and create other tax benefits and may also decrease gains (or increase losses) on future dispositions of certain assets and therefore may reduce the amount of tax that Viant Technology Inc. would otherwise be required to pay.

Viant Technology Inc. entered into the Tax Receivable Agreement with Viant Technology LLC, continuing members of Viant Technology LLC and the TRA Representative on February 9, 2021. The Tax Receivable Agreement provides for payment by us to certain continuing members of Viant Technology LLC (not including Viant Technology Inc.) of 85% of the amount of the net cash tax savings, if any, that we realizes (or, under certain circumstances, are deemed to realize) as a result of increases in tax basis (and utilization of certain other tax benefits) resulting from (i) Viant Technology Inc.’s acquisition of Viant Technology LLC units from pre-IPO members of Viant Technology LLC in connection with the IPO and in future exchanges and (ii) any payments we make under the Tax Receivable Agreement (including tax benefits related to imputed interest).

We will retain the benefit of the remaining 15% of these net cash tax savings. The obligations under the Tax Receivable Agreement are our obligations and not obligations of Viant Technology LLC. For purposes of the Tax Receivable Agreement, the benefit deemed realized by us will be computed by comparing our U.S. federal, state and local income tax liability to the amount of such U.S. federal, state and local taxes that we would have been required to pay had we not been able to utilize any of the benefits subject to the Tax Receivable Agreement. The actual tax benefits we realize may differ from tax benefits calculated under the Tax Receivable Agreement as a result of the use of certain assumptions in the Tax Receivable Agreement, including the use of an assumed weighted-average state and local income tax rate to calculate tax benefits. In addition, the Viant Technology LLC Agreement provides that Viant Technology LLC may elect to apply an allocation method with respect to certain of Viant Technology LLC investment assets that are held at the time of the closing of the IPO that is expected to result in the future, solely for tax purposes, in certain items of loss being specially allocated to us and corresponding items of gain being specially allocated to the other members of Viant Technology LLC.

The term of the Tax Receivable Agreement will continue until all tax benefits that are subject to the Tax Receivable Agreement have been utilized or have expired, unless we exercise our right to terminate the Tax Receivable Agreement (or the Tax Receivable Agreement is terminated due to a change in control or our breach of a material obligation thereunder), in which case, we will be required to make the termination payment specified in the Tax Receivable Agreement, as specified below. We expect that all of the intangible assets, including goodwill, of Viant Technology LLC allocable to Viant Technology LLC units acquired or deemed acquired by us from existing members of Viant Technology LLC will be amortizable for tax purposes.

Estimating the amount and timing of payments that may be made under the Tax Receivable Agreement is by its nature imprecise, insofar as the calculation of amounts payable depends on a variety of factors and future events. The actual increase in tax basis and utilization of tax attributes, as well as the amount and timing of any payments under the agreement, will vary depending upon a number of factors, including:

- the timing of purchases or future exchanges—for instance, the increase in any tax deductions will vary depending on the fair market value, which may fluctuate over time, of the depreciable or amortizable assets of Viant Technology LLC at the time of each purchase of units from the continuing members of Viant Technology LLC;
- the price of shares of our Class A common stock at the time of the purchase or exchange—the tax basis increase in the assets of Viant Technology LLC is directly related to the price of shares of our Class A common stock at the time of the purchase or exchange;
- the extent to which such purchases or exchanges are taxable—if the exchange is not taxable for any reason, increased tax deductions will not be available;
- the amount of the exchanging unitholder's tax basis in its units at the time of the relevant exchange;
- the amount, timing and character of our income—we expect that the Tax Receivable Agreement will require Viant Technology Inc. to pay 85% of the net cash tax savings as and when deemed realized. If we do not have taxable income during a taxable year, we generally will not be required (absent a change in control or other circumstances requiring an early termination payment) to make payments under the Tax Receivable Agreement for that taxable year because no benefit will have been realized. However, any tax benefits that do not result in net cash tax savings in a given tax year may generate tax attributes that may be used to generate net cash tax savings in previous or future taxable years. The use of any such tax attributes will generate net cash tax savings that will result in payments under the Tax Receivable Agreement; and
- U.S. federal, state and local tax rates in effect at the time that we realize the relevant tax benefits.

In addition, the amount of each continuing member's tax basis in its Viant Technology LLC units at the time of the exchange, the depreciation and amortization periods that apply to the increases in tax basis, the timing and amount of any earlier payments that we may have made under the Tax Receivable Agreement and the portion of our payments under the Tax Receivable Agreement that constitute imputed interest or give rise to depreciable or amortizable tax basis are also relevant factors.

We have the right to terminate the Tax Receivable Agreement, in whole or in part, at any time. The Tax Receivable Agreement provides that if (i) we exercise our right to early termination of the Tax Receivable Agreement in whole (that is, with respect to all benefits due to all beneficiaries under the Tax Receivable Agreement) or in part (that is, with respect to some benefits due to all beneficiaries under the Tax Receivable Agreement), (ii) we experience certain changes in control, (iii) the Tax Receivable Agreement is rejected in certain bankruptcy proceedings, (iv) we fail (subject to certain exceptions) to make a payment under the Tax Receivable Agreement within 180 days after the due date or (v) we materially breach our obligations under the Tax Receivable Agreement, we will be obligated to make an early termination payment to the beneficiaries under the Tax Receivable Agreement equal to the present value of all payments that would be required to be paid by us under the Tax Receivable Agreement. The amount of such payments will be determined on the basis of certain assumptions in the Tax Receivable Agreement, including (i) the assumption that we would have enough taxable income to fully utilize the tax benefit resulting from the tax assets which are the subject of the Tax Receivable Agreement, (ii) the assumption that any item of loss deduction or credit generated by a basis adjustment or imputed interest arising in a taxable year preceding the taxable year that includes an early termination will be used by us ratably from such taxable year through the earlier of (x) the scheduled expiration of such tax item or (y) 15 years; (iii) the assumption that any non-amortizable assets are deemed to be disposed of in a fully taxable transaction on the fifteenth anniversary of the earlier of the basis adjustment and the early termination date; (iv) the assumption that U.S. federal, state and local tax rates will be the same as in effect on the early termination date, unless scheduled to change; and (v) the assumption that any units (other than those held by us) outstanding on the termination date are deemed to be exchanged for an amount equal to the market value of the corresponding number of shares of Class A common stock on the termination date. The amount of the early termination payment is determined by discounting the present value of all payments that would be required to be paid by us under the Tax Receivable Agreement at a rate equal to the lesser of (a) 6.5% and (b) the SOFR plus 400 basis points. The payments that we will be required to make under the Tax Receivable Agreement are expected to be substantial.

See “Risk Factors—Risks Relating to Governmental Regulation and Tax Matters—In certain circumstances, payments under the Tax Receivable Agreement may be accelerated and/or significantly exceed the actual tax benefits, if any, that Viant Technology Inc. actually realizes.”

Decisions made in the course of running our business, such as with respect to mergers and other forms of business combinations that constitute changes in control, may influence the timing and amount of payments we make under the Tax Receivable Agreement in a manner that does not correspond to our use of the corresponding tax benefits. In these situations, our obligations under the Tax Receivable Agreement could have a substantial negative effect on our liquidity and could have the effect of delaying, deferring or preventing certain mergers, asset sales, other forms of business combinations or other changes of control.

Payments are generally due under the Tax Receivable Agreement within a specified period of time following the filing of our tax return for the taxable year with respect to which the payment obligation arises, although interest on such payments will begin to accrue at a rate of SOFR plus 300 basis points from the due date (without extensions) of such tax return. Late payments generally accrue interest at a rate of SOFR plus 500 basis points. Because of our structure, our ability to make payments under the Tax Receivable Agreement is dependent on the ability of Viant Technology LLC to make distributions to us. The ability of Viant Technology LLC to make such distributions will be subject to, among other things, restrictions in the agreements governing our debt. If we are unable to make payments under the Tax Receivable Agreement for any reason, such payments will be deferred and will accrue interest until paid.

Additionally, we shall be required to indemnify and reimburse the TRA Representative for all costs and expenses, including legal and accounting fees and any other costs arising from claims in connection with the TRA Representative’s duties under the Tax Receivable Agreement, provided, the TRA Representative has acted reasonably and in good faith in incurring such expenses and costs.

Payments under the Tax Receivable Agreement will be based on the tax reporting positions that we determine. Although we are not aware of any material issue that would cause the IRS to challenge a tax basis increase, Viant Technology Inc. will not, in the event of a successful challenge, be reimbursed for any payments previously made under the Tax Receivable Agreement (although Viant Technology Inc. would reduce future amounts otherwise payable to a holder of rights under the Tax Receivable Agreement to the extent such holder has received excess payments). No assurance can be given that the IRS will agree with our tax reporting positions, including the allocation of value among our assets. In addition, the required final and binding determination that a holder of rights under the Tax Receivable Agreement has received excess payments may not be made for a number of years following commencement of any challenge, and we will not be permitted to reduce our payments under the Tax Receivable Agreement until there has been a final and binding determination, by which time sufficient subsequent payments under the Tax Receivable Agreement may not be available to offset prior payments for disallowed benefits. As a result, in certain circumstances, payments could be made under the Tax Receivable Agreement significantly in excess of the benefit that we actually realize in respect of the increases in tax basis (and utilization of certain other tax benefits) resulting from (i) our acquisition of Viant Technology LLC units from continuing members of Viant Technology LLC in future exchanges and (ii) any payments Viant Technology Inc. makes under the Tax Receivable Agreement. We may not be able to recoup those payments, which could adversely affect our financial condition and liquidity.

The obligation to make payments under the Tax Receivable Agreement generally will be senior to any similar obligation under any tax receivable agreement that may be entered into in the future. No holder of rights under the Tax Receivable Agreement (including the right to receive payments) may transfer its rights to another person without the written consent of Viant Technology Inc., except that all such rights may be transferred to another person to the extent that the corresponding Viant Technology LLC units are transferred in accordance with the Viant Technology LLC Agreement.

Viant Technology LLC Agreement

In connection with the IPO, the members of Viant Technology LLC amended and restated the Viant Technology LLC Agreement. In its capacity as the sole managing member, Viant Technology Inc. controls all of Viant Technology LLC's business and affairs. We hold all of the Class A units of Viant Technology LLC. Holders of Class A units and Class B units are generally entitled to one vote per unit with respect to all matters as to which members are entitled to vote under the Viant Technology LLC Agreement. Class A units and Class B units will have the same economic rights per unit.

Any time we issue a share of Class A common stock for cash, the net proceeds we receive will be promptly used to acquire a Class A unit unless used to settle an exchange of a Class B unit for cash. Any time we issue a share of Class A common stock upon an exchange of a Class B unit or settles such an exchange for cash, as described below, we will contribute the exchanged unit to Viant Technology LLC and Viant Technology LLC will issue to Viant Technology Inc. a Class A unit. If we issue other classes or series of equity securities (other than pursuant to our incentive compensation plans), Viant Technology LLC will issue to Viant Technology Inc. an equal amount of equity securities of Viant Technology LLC with designations, preferences and other rights and terms that are substantially the same as Viant Technology Inc.'s newly issued equity securities. If at any time we issue a share of its Class A common stock pursuant to our 2021 LTIP or other equity plan, we will contribute to Viant Technology LLC all of the proceeds we receive (if any) and Viant Technology LLC will issue to Viant Technology Inc. an equal number of its Class A units, having the same restrictions, if any, as are attached to the shares of Class A common stock issued under the plan. If we repurchase, redeem or retire any shares of Class A common stock (or equity securities of other classes or series), Viant Technology LLC will, immediately prior to such repurchase, redemption or retirement, repurchase, redeem or retire an equal number of Class A units (or its equity securities of the corresponding classes or series) held by Viant Technology Inc., upon the same terms and for the same consideration, as the shares of our Class A common stock (or equity securities of such other classes or series) are repurchased, redeemed or retired. In addition, membership units of Viant Technology LLC, as well as our common stock, will be subject to equivalent stock splits, dividends, reclassifications and other subdivisions. In the event we acquire Class A units without issuing a corresponding number of shares of Class A common stock, we will make appropriate adjustments to the exchange ratio of Class B units to Class A common stock.

We have the right to determine when distributions will be made to holders of units and the amount of any such distributions, other than with respect to tax distributions as described below. If a distribution is authorized, except as described below, such distribution will be made to the holders of Class A units and Class B units on a pro rata basis in accordance with the number of units held by such holder.

The holders of units, including us, will incur U.S. federal, state and local income taxes on their proportionate share of any taxable income of Viant Technology LLC. Net profits and net losses of Viant Technology LLC will generally be allocated to holders of units (including Viant Technology Inc.) on a pro rata basis in accordance with the number of units held by such holder; however, under applicable tax rules, Viant Technology LLC will be required to allocate net taxable income disproportionately to its members in certain circumstances. The Viant Technology LLC Agreement will provide for quarterly cash distributions, which we refer to as “tax distributions,” to the holders of the units generally equal to the taxable income allocated to each holder of units (with certain adjustments) multiplied by an assumed tax rate. Generally, these tax distributions will be computed based on our estimate of the net taxable income of Viant Technology LLC allocable per unit (based on the member which is allocated the largest amount of taxable income on a per unit basis) multiplied by an assumed tax rate equal to the highest combined U.S. federal and applicable state and local tax rate applicable to any natural person residing in, or corporation doing business in Los Angeles, California that is taxable on that income (taking into account certain other assumptions, and subject to adjustment to the extent that state and local taxes are deductible for U.S. federal income tax purposes). The Viant Technology LLC Agreement will generally require tax distributions to be pro rata based on the ownership of Viant Technology LLC units, however, if the amount of tax distributions to be made exceeds the amount of funds available for distribution, Viant Technology Inc. shall receive a tax distribution calculated using the corporate tax rate, before the other members receive any distribution and the balance, if any, of funds available for distribution shall be distributed first to the other members pro rata in accordance with their assumed tax liabilities (also using the corporate tax rate), and then to all members (including Viant Technology Inc.) pro rata until each member receives the full amount of its tax distribution using the individual tax rate. Viant Technology LLC will also make non-pro rata payments to us to reimburse it for corporate and other overhead expenses (which payments from Viant Technology LLC will not be treated as distributions under the Viant Technology LLC Agreement). Notwithstanding the foregoing, no distribution will be made pursuant to the Viant Technology LLC Agreement to any unitholder if such distribution would violate applicable law or result in Viant Technology LLC or any of its subsidiaries being in default under any material agreement.

The Viant Technology LLC Agreement provides that Viant Technology LLC may elect to apply an allocation method with respect to certain of its investment assets that are held at the time of the IPO that is expected to result in the future, solely for tax purposes, in certain items of loss being specially allocated to us and corresponding items of gain being specially allocated to the other members of Viant Technology LLC. In conjunction herewith, the Tax Receivable Agreement provides that we will pay over to the certain other members of Viant Technology LLC 85% of the net tax savings to Viant Technology Inc. attributable to those tax losses.

The Viant Technology LLC Agreement provides that it may generally be amended, supplemented, waived or modified by us in our sole discretion without the approval of any other holder of units, except in the case of amendments that would modify the limited liability of a member or increase the obligation of a member to make capital contributions, adversely affect the right of a member to receive distributions or cause Viant Technology LLC to be treated as a corporation for tax purposes.

The Viant Technology LLC Agreement also entitles certain continuing members (and certain permitted transferees thereof) to exchange their Class B units together with an equal number of shares of Class B common stock, for shares of Class A common stock on a one-for-one basis or, at our election, for cash. The exchange ratio is subject to appropriate adjustment by us in the event Class A units are issued to us without issuance of a corresponding number of shares of Class A common stock or in the event of certain reclassifications, reorganizations, recapitalizations or similar transactions.

The Viant Technology LLC Agreement permits the Class B unitholders to exercise their exchange rights subject to certain reasonable timing procedures and other conditions. The Viant Technology LLC Agreement provides that an owner will not have the right to exchange Class B units if we determine that such exchange would be prohibited by law or regulation or would violate other agreements with the us, Viant Technology LLC or any of our subsidiaries to which the Viant Technology LLC unitholder is subject. We intend to impose additional restrictions on exchanges that we determine to be necessary or advisable so that Viant Technology LLC is not treated as a “publicly traded partnership” for U.S. federal income tax purposes.

The Viant Technology LLC Agreement also provides for mandatory exchanges under certain circumstances, including at our option, if the number of units outstanding (other than those held by us) is less than a minimum percentage and in our discretion, with the consent of holders of at least 50% of the outstanding Class B units.

Any beneficial holder exchanging Class B units must ensure that the applicable corresponding number of shares of Class B common stock are delivered to us for retirement as a condition of exercising its right to exchange Class B units for shares of our Class A common stock, or, at our election, for cash.

Registration Rights Agreement

In connection with the IPO, we entered into the Registration Rights Agreement with the Vanderhook Parties and the Equity Plan LLC. This agreement provides these holders with certain registration rights whereby, at any time following the lockup period described in the S-1 filed in connection with our IPO, they will have the right to require us to register under the Securities Act the shares of Class A common stock issuable upon exchange of Class B units. The Registration Rights Agreement also provides for piggyback registration rights for the holders party thereto, subject to certain conditions and exceptions.

Limitations on Liability and Executive Officer and Director Indemnification Agreements

Our directors and officers will not be personally liable for our debts, obligations or liabilities, whether that liability or obligation arises in contract, tort or otherwise, solely by reason of being a director or an officer of us. In addition, our amended and restated bylaws require us to indemnify our executive officers and directors to the fullest extent permitted by law, subject to limited exceptions. We have entered into indemnification agreements with each of our executive officers and directors that provide, in general, that we will indemnify them to the fullest extent permitted by law in connection with their service to us or on our behalf.

Review and Approval of Related Person Transactions

We have implemented a written policy pursuant to which the audit committee will review and approve transactions with our directors, officers and holders of more than 5% of our voting securities and their affiliates. Prior to approving any transaction with a related party, the audit committee will consider the material facts as to the related party's relationship with us or interest in the transaction. Related person transactions will not be approved unless the audit committee has approved of the transaction. We did not have a formal review and approval policy for related person transactions at the time of any transaction described above.

Director Independence

The board of directors has determined that Max Valdes and Elizabeth Williams are "independent directors" as such term is defined by the applicable rules and regulations of Nasdaq. As allowed under the applicable rules and regulations of the SEC and Nasdaq, we intend to appoint a third independent director within a year after the closing of our IPO.

Item 14. Principal Accounting Fees and Services.

The following table sets forth the aggregate fees for professional service provided by our independent registered public accounting firm, Deloitte & Touche LLP, for the year ended December 31, 2020:

	(in thousands)	
Audit Fees(1)	\$	1,612
Audit-Related Fees		—
Tax Fees(2)		224
All Other Fees		—
Total	\$	1,836

- (1) Audit fees consist of the fees for professional services rendered for the audits of our annual financial statements, review of our quarterly financial statements and filing of our registration statements, including our Registration Statement on Form S-1 related to our initial public offering for which we have engaged Deloitte & Touche LLP.
- (2) Tax fees consist of the fees for professional services rendered in connection with tax compliance, tax advisory, and tax planning.

The audit committee has adopted a pre-approval policy under which the audit committee approves in advance all audit and permissible non-audit services to be performed by the independent accountants (subject to a *de minimis* exception). These services may include audit services, audit-related services, tax services, and other non-audit services. As part of its pre-approval policy, the audit committee considers whether the provision of any proposed non-audit services is consistent with the SEC's rules on auditor independence. In accordance with its pre-approval policy, the audit committee has pre-approved certain specified audit and non-audit services to be provided by our independent auditor. If there are any additional services to be provided, a request for pre-approval must be submitted to the audit committee for its consideration under the policy. The audit committee generally pre-approves particular services or categories of services on a case-by-case basis. Finally, in accordance with the pre-approval policy, the audit committee has delegated pre-approval authority to the chair of the audit committee. The chair must report any pre-approval decisions to the audit committee at its next meeting.

PART IV

Item 15. Exhibits, Financial Statement Schedules.

(a) The following documents are filed as a part of this report:

(1) Financial Statements

See Index to Consolidated Financial Statements at Part II Item 8 “Financial Statements and Supplementary Data.”

(2) Financial Statement Schedules

The financial statement schedules are omitted as they are either not applicable or the information required is presented in the financial statements and notes thereto under Part II Item 8. “Financial Statements and Supplementary Data.”

(3) Exhibits:

Exhibit Index

Exhibit Number	Description
3.1*	<u>Amended and Restated Certificate of Incorporation of Viant Technology Inc.</u>
3.2*	<u>Amended and Restated Bylaws of Viant Technology Inc.</u>
4.1*	<u>Description of Securities.</u>
10.1*	<u>Second Amended and Restated Limited Liability Company Agreement of Viant Technology LLC, dated as of February 9, 2021.</u>
10.2*	<u>Amendment No. 1 to Second Amended and Restated Limited Liability Company Agreement of Viant Technology LLC, dated as of February 12, 2021.</u>
10.3*	<u>Tax Receivable Agreement, by and among Viant Technology Inc., Viant Technology LLC, each of the TRA Holders, and the TRA Representative, dated as of February 9, 2021.</u>
10.4*	<u>Registration Rights Agreement, by and among Viant Technology Inc. and the parties thereto, dated as of February 9, 2021.</u>
10.5	<u>Form of Indemnification Agreement entered into with Directors and Executive Officers (incorporated by reference to Exhibit 10.4 to the Company's registration statement on S-1 filed on February 1, 2021).</u>
10.6	<u>Revolving Credit and Security Agreement and Guaranty dated October 31, 2019 with PNC Bank, National Association as agent and the lenders party thereto (incorporated by reference to Exhibit 10.5 to the Company's registration statement on S-1 filed on February 1, 2021).</u>
10.7	<u>First Amendment to Revolving Credit and Security Agreement and Guaranty dated April 13, 2020 with PNC Bank, National Association as agent and the lenders party thereto (incorporated by reference to Exhibit 10.6 to the Company's registration statement on S-1 filed on February 1, 2021).</u>
10.8	<u>Second Amendment to Revolving Credit and Security Agreement and Guaranty dated April 30, 2020 with PNC Bank, National Association as agent and the lenders party thereto (incorporated by reference to Exhibit 10.7 to the Company's registration statement on S-1 filed on February 1, 2021).</u>
10.9	<u>Third Amendment to Revolving Credit and Security Agreement and Guaranty dated May 29, 2020 with PNC Bank, National Association as agent and the lenders party thereto (incorporated by reference to Exhibit 10.8 to the Company's registration statement on S-1 filed on February 1, 2021).</u>
10.10	<u>Fourth Amendment to Revolving Credit and Security Agreement and Guaranty dated January 29, 2021 with PNC Bank, National Association as agent and the lenders party thereto (incorporated by reference to Exhibit 10.9 to the Company's registration statement on S-1 filed on February 1, 2021).</u>
10.11	<u>Viant Technology Inc. 2021 Long-Term Incentive Plan (incorporated by reference to Exhibit 99.1 to the Company's registration statement on S-8 filed on February 9, 2021).</u>
10.12	<u>Viant Technology LLC 2020 Equity Based Incentive Compensation Plan (incorporated by reference to Exhibit 10.12 to the Company's registration statement on S-1 filed on February 1, 2021).</u>
10.13	<u>Employment Agreement, dated March 27, 2017, by and between Viant Technology LLC and Larry Madden (incorporated by reference to Exhibit 10.13 to the Company's registration statement on S-1 filed on February 1, 2021).</u>
10.14	<u>Limited Liability Company Agreement of Viant Technology Equity Plan LLC, dated as of March 15, 2017 (incorporated by reference to Exhibit 10.14 to the Company's registration statement on S-1 filed on February 1, 2021).</u>
21.1	<u>Subsidiaries of the Registrant (incorporated by reference to Exhibit 21.1 to the Company's registration statement on S-1 filed on February 1, 2021).</u>
23.1*	<u>Consent of Deloitte & Touche LLP, independent registered public accounting firm, as to Viant Technology Inc.</u>
23.2*	<u>Consent of Deloitte & Touche LLP, independent registered public accounting firm, as to Viant Technology LLC.</u>
31.1*	<u>Certification of Principal Executive Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u>
31.2*	<u>Certification of Principal Financial Officer Pursuant to Rules 13a-14(a) and 15d-14(a) under the Securities Exchange Act of 1934, as Adopted Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.</u>

32.1* [Certification of Principal Executive Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.](#)

32.2* [Certification of Principal Financial Officer Pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.](#)

* Filed herewith.

Item 16. Form 10-K Summary

None.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, the Registrant has duly caused this Report to be signed on its behalf by the undersigned, thereunto duly authorized.

Viant Technology Inc.

Date: March 23, 2021

By: /s/ Tim Vanderhook

Tim Vanderhook
Chief Executive Officer and Chairman

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, this Report has been signed below by the following persons on behalf of the Registrant in the capacities and on the dates indicated.

<u>Name</u>	<u>Title</u>	<u>Date</u>
<u> /s/ Tim Vanderhook </u> Tim Vanderhook	Chief Executive Officer and Chairman <i>(principal executive officer)</i>	March 23, 2021
<u> /s/ Larry Madden </u> Larry Madden	Chief Financial Officer <i>(principal financial and accounting officer)</i>	March 23, 2021
<u> /s/ Chris Vanderhook </u> Chris Vanderhook	Chief Operating Officer and Director	March 23, 2021
<u> /s/ Max Valdes </u> Max Valdes	Director	March 23, 2021
<u> /s/ Elizabeth Williams </u> Elizabeth Williams	Director	March 23, 2021

AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

OF

**VIANT TECHNOLOGY INC.
(a Delaware corporation)**

(Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware (the “DGCL”))

VIANT TECHNOLOGY INC., a corporation organized and existing under the provisions of the DGCL, DOES HEREBY CERTIFY:

FIRST: That the name of the corporation is Viant Technology Inc. (the “Corporation”), and that the Corporation was originally incorporated pursuant to the DGCL on October 9, 2020.

SECOND: The Corporation’s Certificate of Incorporation (the “Original Certificate of Incorporation”) was filed with the Secretary of State of the State of Delaware on October 9, 2020.

THIRD: This Amended and Restated Certificate of Incorporation has been duly adopted pursuant to Sections 242 and 245 of the DGCL.

FOURTH: The Original Certificate of Incorporation is hereby amended and restated in its entirety as follows:

**ARTICLE I
NAME**

The name of the corporation is Viant Technology Inc.

**ARTICLE II
AGENT**

The address of the Corporation’s registered office in the State of Delaware is 1209 Orange Street, Wilmington, New Castle County, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

**ARTICLE III
PURPOSE**

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

**ARTICLE IV
STOCK**

Section 4.1 Authorized Stock. The total number of shares of all classes of capital stock which the Corporation shall have authority to issue is 610,000,000, of which 450,000,000 shall be designated as Class A Common Stock, par value \$0.001 per share (the "Class A Common Stock"), 150,000,000 shall be designated as Class B Common Stock, par value \$0.001 per share (the "Class B Common Stock"), and together with the Class A Common Stock, the "Common Stock"), and 10,000,000 shall be designated as Preferred Stock, par value \$0.001 per share (the "Preferred Stock").

Section 4.2 Common Stock.

(a) Except as otherwise expressly provided herein or as required by the DGCL, the holders of shares of Class A Common Stock, as such, and Class B Common Stock shall vote together as one class on all matters (including the election of directors) submitted to a vote of the stockholders of the Corporation. Except as otherwise expressly provided herein or required by the DGCL, each holder of Class A Common Stock shall be entitled to one vote for each share of Class A Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote and each holder of Class B Common Stock shall be entitled to one vote for each share of Class B Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote; provided, however, that, except as otherwise required by law, holders of Common Stock, as such, shall not be entitled to vote on any amendment to this Certificate of Incorporation, including any certificate of designations relating to any series of Preferred Stock (each hereinafter referred to as a "Preferred Stock Designation"), that relates solely to the terms of one or more outstanding series of Preferred Stock if the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Certificate of Incorporation (including any Preferred Stock Designation).

(b) Dividends. Subject to the rights of the holders of any outstanding series of Preferred Stock, the holders of shares of Class A Common Stock shall be entitled to receive dividends to the extent permitted by law when, as and if declared by the Board of Directors. Except as otherwise provided under this Certificate of Incorporation, dividends and other distributions shall not be declared or paid in respect of Class B Common Stock.

(c) Liquidation. Upon the dissolution, liquidation or winding up of the Corporation, subject to the rights of the holders of any outstanding series of Preferred Stock, the holders of shares of Class A Common Stock shall be entitled to receive the assets of the Corporation available for distribution to its stockholders ratably in proportion to the number of shares held by them. Holders of shares of Class B Common Stock shall not be entitled to receive any assets upon dissolution, liquidation or winding up of the Corporation.

Section 4.3 Preferred Stock. The Preferred Stock may be issued from time to time in one or more series. Subject to limitations prescribed by law and the provisions of this Article IV (including any Preferred Stock Designation), the Board of Directors is hereby authorized to provide by resolution and by causing the filing of a Preferred Stock Designation for the issuance of the shares of Preferred Stock in one or more series, and to establish from time to time the number of shares to be included in each such series, and to fix the designations, powers, preferences, and relative, participating, optional or other rights, if any, and the qualifications, limitations or restrictions, if any, of the shares of each such series.

Section 4.4 No Class Vote on Changes in Authorized Number of Shares of Stock. Subject to the rights of the holders of any outstanding series of Preferred Stock, the number of authorized shares of Common Stock or Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of at least a majority of the voting power of the stock outstanding and entitled to vote thereon, voting as a single class, irrespective of the provisions of Section 242(b)(2) of the DGCL.

Section 4.5 No Redemption; Cancellation. The Common Stock is not redeemable. The Class B Common Stock will be automatically cancelled upon the exchange of a Class B Unit (as defined herein) for a share of Class A Common Stock (or payment of the cash equivalent in respect thereof) on and subject to the terms and conditions contemplated by Article XII of the Second Amended and Restated Limited Liability Company Agreement of Viant Technology LLC, as the same may be amended, modified, supplemented and/or restated from time to time (the "LLC Agreement").

Section 4.6 No Preemptive, Subscription or Conversion Rights. No holder of shares of Common Stock, solely by virtue of such holder's status as such, shall be entitled to preemptive, subscription or conversion rights.

Section 4.7 Exchange.

(a) Viant Technology LLC ("Viant LLC") has issued units designated as "Class B Units" (each, a "Class B Unit") pursuant to the terms and subject to the conditions of the LLC Agreement. Each holder of Class B Units is referred to herein as a "Class B Holder."

(b) Pursuant to and subject to the terms of the LLC Agreement, each Class B Holder has the right to surrender a Class B Unit to Viant LLC, together with the surrender of one share of Class B Common Stock to the Company, in exchange for the issuance of one fully paid and nonassessable share of Class A Common Stock (or payment of the cash equivalent in respect thereof) on and subject to the terms and conditions set forth herein and in the LLC Agreement.

Section 4.8 Retirement of Class B Common Stock. If any outstanding share of Class B Common Stock shall cease to be held by a concurrent holder of a Class B Unit (including a transferee of a Class B Unit), such share shall automatically and without further action on the part of the Corporation or any holder of Class B Common Stock be transferred to the Corporation and upon such transfer shall be automatically retired and shall thereupon be restored to the status of an authorized but unissued share of Class B Common Stock of the Corporation.

Section 4.9 Further Issuances of Class B Common Stock. No shares of Class B Common Stock shall be issued at any time after the filing and effectiveness of this Certificate of Incorporation except to a Class B Holder in a number necessary to maintain a one-to-one ratio between the number of Class B Units and the number of shares of Class B Common Stock outstanding.

Section 4.10 Reservation of Stock. The Corporation will at all times reserve and keep available out of its authorized but unissued shares of Class A Common Stock, solely for the purpose of effecting the exchange of Class B Units, such number of shares of Class A Common Stock as will from time to time be sufficient to effect the exchange of all outstanding Class B Units for Class A Common Stock.

Section 4.11 Protective Provisions. So long as any shares of Class B Common Stock remain outstanding, the Corporation will not, whether by merger, consolidation or otherwise, amend, alter, repeal or waive Section 4.7, Section 4.10, this Section 4.11 or Section 4.12 (or adopt any provision inconsistent therewith), without first obtaining the approval of the holders of a majority of the then-outstanding shares of Class B Common Stock, voting as a separate class, in addition to any other vote required by the DGCL, this Certificate of Incorporation or the Corporation's Bylaws, as the same may be amended or restated from time to time (the "Bylaws").

Section 4.12 Reclassifications, Mergers and Other Transactions.

(a) If the Corporation in any manner subdivides, combines or reclassifies the outstanding shares of Class A Common Stock or Class B Common Stock, the outstanding shares of the other such class shall, concurrently therewith, be subdivided, combined, or reclassified in the same proportion and manner such that the same proportionate equity ownership between the holders of outstanding Class A Common Stock and Class B Common Stock on the record date for such subdivision, combination or reclassification is preserved, unless different treatment of the shares of each such class is approved by (i) the holders of a majority of the outstanding Class A Common Stock and (ii) the holders of a majority of the outstanding Class B Common Stock, each of (i) and (ii) voting as separate classes. In the event of any such subdivision, combination or reclassification, the Corporation shall cause Viant LLC to make corresponding changes to the Class A Units and Class B Units to give effect to such subdivision, combination or reclassification.

(b) The Corporation shall not consolidate, merge, combine or consummate any other transaction in which shares of Class A Common Stock are exchanged for or converted into other stock or securities, or the right to receive cash and/or any other property, unless in connection with any such consolidation, merger, combination or other transaction each share of Class B Common Stock and/or Class B Unit shall be entitled to be exchanged for or converted into the same kind and amount of stock or securities, cash and/or any other property, as the case may be, into which or for which each share of Class A Common Stock is exchanged or converted; provided, that the consideration for each share of Class B Common Stock and/or Class B Unit shall be deemed the same kind and amount into which or for which each share of Class A Common Stock is exchanged or converted, so long as any differences in the kind and amount of stock or securities, cash and/or any other property are intended (as determined by the

Board of Directors in good faith) to maintain the relative voting power of each share of Class B Common Stock relative to each share of Class A Common Stock; provided, further, that the foregoing provisions of this Section 4.12(b) shall not apply to any action or transaction (including any consolidation, merger or combination) approved by (A) the holders of a majority of the outstanding Class A Common Stock, and (B) the holders of a majority of the outstanding Class B Common Stock, each of (A) and (B) voting as separate classes.

ARTICLE V BOARD OF DIRECTORS

Section 5.1 Number. Except as otherwise provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation), the Board of Directors shall consist of not fewer than 3 nor more than 11 directors, the exact number to be determined from time to time solely by resolution of the Board of Directors.

Section 5.2 Classification.

(a) Except as may be otherwise provided with respect to directors elected by the holders of any series of Preferred Stock provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation) (the “Preferred Stock Directors”), the Board of Directors shall be divided into three classes, as nearly equal in number as possible, designated Class I, Class II and Class III. Class I directors shall initially serve until the first annual meeting of stockholders following the initial effectiveness of this Section 5.2; Class II directors shall initially serve until the second annual meeting of stockholders following the initial effectiveness of this Section 5.2; and Class III directors shall initially serve until the third annual meeting of stockholders following the initial effectiveness of this Section 5.2. Commencing with the first annual meeting of stockholders following the initial effectiveness of this Section 5.2, directors of each class the term of which shall then expire shall be elected to hold office for a three-year term and until the election and qualification of their respective successors in office. In case of any increase or decrease, from time to time, in the number of directors (other than Preferred Stock Directors), the number of directors in each class shall be apportioned as nearly equal as possible. The Board of Directors is authorized to assign members of the Board of Directors already in office to Class I, Class II or Class III, with such assignment becoming effective as of the initial effectiveness of this Section 5.2.

(b) Prior to any time that Tim Vanderhook, Chris Vanderhook and Four Brothers 2 LLC collectively cease to beneficially own a majority of the combined voting power of the Common Stock (the “Triggering Event”), subject to the rights of the holders of any outstanding series of Preferred Stock, and unless otherwise required by law, newly created directorships resulting from any increase in the authorized number of directors and any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause may be filled by the affirmative vote of (i) a majority of the remaining directors then in office, even though less than a quorum of the Board of Directors, or by the sole remaining director or (ii) at least a majority of the voting power of the stock outstanding and entitled to vote thereon. Any director so chosen shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall have been duly elected and qualified.

(c) After the Triggering Event, subject to the rights of the holders of any outstanding series of Preferred Stock, and unless otherwise required by law, newly created directorships resulting from any increase in the authorized number of directors and any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall be filled solely by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum of the Board of Directors, or by the sole remaining director. Any director so chosen shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall have been duly elected and qualified.

(d) No decrease in the authorized number of directors shall shorten the term of any incumbent director.

(e) Prior to the Triggering Event, any director, or the entire Board of Directors, may be removed, with or without cause, by the affirmative vote of at least a majority of the voting power of the stock outstanding and entitled to vote thereon; provided, however, that whenever the holders of any class or series are entitled to elect one or more directors by this Certificate of Incorporation (including any Preferred Stock Designation), with respect to the removal without cause of a director or directors so elected, the vote of the holders of the outstanding shares of that class or series and not the vote of the outstanding shares as a whole shall apply.

(f) After the Triggering Event, any director, or the entire Board of Directors, may be removed from office at any time, but only for cause and only by the affirmative vote of at least a majority of the voting power of the stock outstanding and entitled to vote thereon.

(g) During any period when the holders of any series of Preferred Stock have the right to elect additional directors as provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation), and upon commencement and for the duration of the period during which such right continues: (i) the then otherwise total authorized number of directors of the Corporation shall automatically be increased by such number of directors that the holders of any series of Preferred Stock have a right to elect, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions; and (ii) each Preferred Stock Director shall serve until such Preferred Stock Director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to his or her earlier death, disqualification, resignation or removal. Except as otherwise provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation), whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to said provisions, the terms of office of all Preferred Stock Directors elected by the holders of such Preferred Stock, or elected to fill any vacancies resulting from the death, resignation, disqualification or removal of such additional directors, shall forthwith terminate (in which case each such Preferred Stock Director shall cease to be qualified as a director and shall cease to be a director) and the total authorized number of directors of the Corporation shall be automatically reduced accordingly.

Section 5.3 Powers. Except as otherwise required by the DGCL or as provided in this Certificate of Incorporation (including any Preferred Stock Designation), the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors.

Section 5.4 Election; Annual Meeting of Stockholders.

(a) Ballot Not Required. The directors of the Corporation need not be elected by written ballot unless the Bylaws of the Corporation so provide.

(b) Notice. Advance notice of nominations for the election of directors, and of business other than nominations, to be proposed by stockholders for consideration at a meeting of stockholders of the Corporation shall be given in the manner and to the extent provided in or contemplated by the Bylaws of the Corporation.

(c) Annual Meeting. The annual meeting of stockholders, for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held at such place, if any, either within or without the State of Delaware, on such date, and at such time as the Board of Directors shall fix.

ARTICLE VI STOCKHOLDER ACTION

Prior to the Triggering Event, except as otherwise provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation), any action required or permitted to be taken at any annual or special meeting of the stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote by consent in accordance with Section 228 of the DGCL.

After the Triggering Event, except with respect to actions required or permitted to be taken solely by holders of Preferred Stock pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation), no action that is required or permitted to be taken by the stockholders of the Corporation may be effected by consent of stockholders in lieu of a meeting of stockholders.

ARTICLE VII SPECIAL MEETINGS OF STOCKHOLDERS

Except as otherwise required by law, and except as otherwise provided for or fixed pursuant to the provisions of Article IV hereof (including any Preferred Stock Designation), a special meeting of the stockholders of the Corporation may be called at any time only by or at the direction of the Board of Directors, the Chairman of the Board of Directors or the Chief Executive Officer with the concurrence of a majority of the Board of Directors. Only such business shall be conducted at a special meeting of stockholders as shall have been specified in the notice for such meeting.

**ARTICLE VIII
EXISTENCE**

The Corporation shall have perpetual existence.

**ARTICLE IX
AMENDMENT**

Section 9.1 Amendment of Certificate of Incorporation. The Corporation reserves the right at any time, and from time to time, to amend, alter, change or repeal any provision contained in this Certificate of Incorporation (including any Preferred Stock Designation), and other provisions authorized by the laws of the State of Delaware at the time in force may be added or inserted, in the manner now or hereafter prescribed by the laws of the State of Delaware, and all powers, preferences and rights of any nature conferred upon stockholders, directors or any other persons by and pursuant to this Certificate of Incorporation (including any Preferred Stock Designation) in its present form or as hereafter amended are granted subject to this reservation; provided, however, that except as otherwise provided in this Certificate of Incorporation (including any provision of a Preferred Stock Designation that provides for a greater or lesser vote) and in addition to any other vote required by law, the affirmative vote of at least 66 $\frac{2}{3}$ % of the voting power of the stock outstanding and entitled to vote thereon, voting together as a single class, shall be required to adopt, amend or repeal, or adopt any provision of this Certificate of Incorporation.

Section 9.2 Amendment of Bylaws. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, but subject to the terms of any series of Preferred Stock then outstanding, the Board of Directors is expressly authorized to adopt, amend or repeal the Bylaws of the Corporation. Except as otherwise provided in this Certificate of Incorporation (including the terms of any Preferred Stock Designation that require an additional vote) or the Bylaws of the Corporation, and in addition to any requirements of law, the affirmative vote of at least 66 $\frac{2}{3}$ % of the voting power of the stock outstanding and entitled to vote thereon, voting together as a single class, shall be required for the stockholders to adopt, amend or repeal, or adopt any provision inconsistent with, any provision of the Bylaws of the Corporation.

**ARTICLE X
LIABILITY OF DIRECTORS**

Section 10.1 No Personal Liability. To the fullest extent permitted by the DGCL as the same exists or as may hereafter be amended, no director of the Corporation shall be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.

Section 10.2 Amendment or Repeal. Any amendment, repeal or elimination of this Article X, or the adoption of any provision of the Certificate of Incorporation inconsistent with this Article X, shall not affect its application with respect to an act or omission by a director occurring before such amendment, adoption, repeal or elimination.

ARTICLE XI
FORUM FOR ADJUDICATION OF DISPUTES

Section 11.1 Forum. Unless the Corporation, in writing, selects or consents to the selection of an alternative forum: (a) the sole and exclusive forum for any complaint asserting any internal corporate claims (as defined below), to the fullest extent permitted by law, and subject to applicable jurisdictional requirements, shall be the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have, or declines to accept, jurisdiction, another state court or a federal court located within the State of Delaware); and (b) the sole and exclusive forum for any complaint asserting a cause of action arising under the Securities Act of 1933, as amended, to the fullest extent permitted by law, shall be the federal district courts of the United States of America. For purposes of this Article XI, internal corporate claims means claims, including claims in the right of the Corporation that are based upon a violation of a duty by a current or former director, officer, employee or stockholder in such capacity, or as to which the DGCL confers jurisdiction upon the Court of Chancery. Notwithstanding anything herein to the contrary, and for the avoidance of doubt, this Article XI shall not apply to suits brought to enforce a duty or liability created by the Securities Exchange Act of 1934, as amended. Any person or entity purchasing or otherwise acquiring or holding any interest in shares of stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XII.

Section 11.2 Enforceability. If any provision of this Article XI shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law, the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of this Article XI (including, without limitation, each portion of any sentence of this Article XI containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) and the application of such provision to other persons or entities or circumstances shall not in any way be affected or impaired thereby.

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IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be executed by a duly authorized officer of the Corporation, this 9th day of February, 2021.

VIANT TECHNOLOGY INC.

By: /s/ Larry Madden
Name: Larry Madden
Title: Chief Financial Officer

SIGNATURE PAGE TO AMENDED AND RESTATED CERTIFICATE OF INCORPORATION

AMENDED AND RESTATED BYLAWS

OF

VIANT TECHNOLOGY INC.

(a Delaware corporation)

ARTICLE I
CORPORATE OFFICES

Section 1.1 Registered Office. The registered office of the Corporation shall be fixed in the Amended and Restated Certificate of Incorporation (the "Certificate of Incorporation") of the Corporation.

Section 1.2 Other Offices. The Corporation may also have an office or offices, and keep the books and records of the Corporation, except as otherwise required by law, at such other place or places, either within or without the State of Delaware, as the Corporation may from time to time determine or the business of the Corporation may require.

ARTICLE II
MEETINGS OF STOCKHOLDERS

Section 2.1 Annual Meeting. The annual meeting of stockholders, for the election of directors to succeed those whose terms expire and for the transaction of such other business as may properly come before the meeting, shall be held at such place, if any, either within or without the State of Delaware, on such date, and at such time as the Board of Directors shall fix. The Board of Directors may postpone, reschedule or cancel any annual meeting of stockholders previously scheduled by the Board of Directors.

Section 2.2 Special Meeting.

Except as otherwise required by law, and except as otherwise provided for or fixed pursuant to the Certificate of Incorporation, including any certificate of designations relating to any series of Preferred Stock (each hereinafter referred to as a "Preferred Stock Designation"), a special meeting of the stockholders of the Corporation may be called at any time only by or at the direction of the Board of Directors, the Chairman of the Board of Directors or the Chief Executive Officer with the concurrence of a majority of the Board of Directors. The Board of Directors may postpone, reschedule or cancel any special meeting of stockholders previously scheduled by the Board of Directors. Only such business shall be conducted at a special meeting of stockholders as shall have been specified in the notice for such meeting.

Section 2.3 Notice of Stockholders' Meetings.

(a) Whenever stockholders are required or permitted to take any action at a meeting, notice of the place, if any, date, and time of the meeting of stockholders, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for determining the stockholders entitled to notice of the meeting), the means of

remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting and, if the meeting is to be held solely by means of remote communications, the means for accessing the list of stockholders contemplated by Section 2.5 of these Bylaws, shall be given. The notice shall be given not less than 10 nor more than 60 days before the date on which the meeting is to be held, to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting, except as otherwise provided by law, the Certificate of Incorporation (including any Preferred Stock Designation) or these Bylaws. In the case of a special meeting, the purpose or purposes for which the meeting is called also shall be set forth in the notice.

(b) Except as otherwise required by law, notice may be given in writing directed to a stockholder's mailing address as it appears on the records of the Corporation and shall be given: (i) if mailed, when notice is deposited in the U.S. mail, postage prepaid; and (ii) if delivered by courier service, the earlier of when the notice is received or left at such stockholder's address.

(c) So long as the Corporation is subject to the Securities and Exchange Commission's proxy rules set forth in Regulation 14A under the Securities Exchange Act of 1934 (the "Exchange Act"), notice shall be given in the manner required by such rules. To the extent permitted by such rules, notice may be given by electronic transmission directed to the stockholder's electronic mail address, and if so given, shall be given when directed to such stockholder's electronic mail address unless the stockholder has notified the Corporation in writing or by electronic transmission of an objection to receiving notice by electronic mail or such notice is prohibited by Section 232(e) of the General Corporation Law of the State of Delaware (the "DGCL"). If notice is given by electronic mail, such notice shall comply with the applicable provisions of Sections 232(a) and 232(d) of the DGCL.

(d) Notice may be given by other forms of electronic transmission with the consent of a stockholder in the manner permitted by Section 232(b) of the DGCL and shall be deemed given as provided therein.

(e) An affidavit that notice has been given, executed by the Secretary of the Corporation, Assistant Secretary or any transfer agent or other agent of the Corporation, shall be *prima facie* evidence of the facts stated in the notice in the absence of fraud. Notice shall be deemed to have been given to all stockholders who share an address if notice is given in accordance with the "householding" rules set forth in Rule 14a-3(e) under the Exchange Act and Section 233 of the DGCL.

(f) When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the place, if any, date and time thereof, and the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; provided, however, that if the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board of Directors shall fix a new record date for notice of such adjourned meeting in accordance with Section 7.6(a), and shall give notice of the adjourned

meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

Section 2.4 Organization.

(a) Unless otherwise determined by the Board of Directors, meetings of stockholders shall be presided over by the Chairman of the Board of Directors, or in his or her absence, by the Chief Executive Officer or, in his or her absence, by another person designated by the Board of Directors. The Secretary of the Corporation, or in his or her absence, an Assistant Secretary, or in the absence of the Secretary and all Assistant Secretaries, a person whom the chairman of the meeting shall appoint, shall act as secretary of the meeting and keep a record of the proceedings thereof.

(b) The date and time of the opening and the closing of the polls for each matter upon which the stockholders shall vote at a meeting of stockholders shall be announced at the meeting. The Board of Directors may adopt such rules and regulations for the conduct of any meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of the meeting shall have the authority to adopt and enforce such rules and regulations for the conduct of any meeting of stockholders and the safety of those in attendance as, in the judgment of the chairman, are necessary, appropriate or convenient for the conduct of the meeting. Rules and regulations for the conduct of meetings of stockholders, whether adopted by the Board of Directors or by the chairman of the meeting, may include, without limitation, establishing: (i) an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies and such other persons as the chairman of the meeting shall permit; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; (v) limitations on the time allotted for consideration of each agenda item and for questions and comments by participants; (vi) regulations for the opening and closing of the polls for balloting and matters which are to be voted on by ballot (if any); and (vii) procedures (if any) requiring attendees to provide the Corporation advance notice of their intent to attend the meeting. Subject to any rules and regulations adopted by the Board of Directors, the chairman of the meeting may convene and, for any or no reason, from time to time, adjourn and/or recess any meeting of stockholders pursuant to Section 2.7. The chairman of the meeting, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall have the power to declare that a nomination or other business was not properly brought before the meeting if the facts warrant (including if a determination is made, pursuant to Section 2.10(c)(i) of these Bylaws, that a nomination or other business was not made or proposed, as the case may be, in accordance with Section 2.10 of these Bylaws), and if such chairman should so declare, such nomination shall be disregarded or such other business shall not be transacted.

Section 2.5 List of Stockholders. The Corporation shall prepare, at least 10 days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting; provided, however, that if the record date for determining the stockholders entitled to vote is less than 10 days before the date of the meeting, the list shall reflect the stockholders entitled to vote as of the 10th day before the meeting date. Such list shall be arranged in

alphabetical order and shall show the address of each stockholder and the number of shares registered in the name of each stockholder. Nothing in this Section 2.5 shall require the Corporation to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting at least 10 days prior to the meeting: (a) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of meeting; or (b) during ordinary business hours at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting. Except as otherwise required by law, the stock ledger shall be the only evidence as to who are the stockholders entitled to examine the list of stockholders required by this Section 2.5 or to vote in person or by proxy at any meeting of stockholders.

Section 2.6 Quorum. Except as otherwise required by law, the Certificate of Incorporation (including any Preferred Stock Designation) or these Bylaws, at any meeting of stockholders, a majority of the voting power of the stock outstanding and entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business; provided, however, that where a separate vote by a class or series or classes or series is required, a majority of the voting power of the stock of such class or series or classes or series outstanding and entitled to vote on that matter, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to such matter. If a quorum is not present or represented at any meeting of stockholders, then the chairman of the meeting, or a majority of the voting power of the stock present in person or represented by proxy at the meeting and entitled to vote thereon, shall have power to adjourn or recess the meeting from time to time in accordance with Section 2.7, until a quorum is present or represented. Subject to applicable law, if a quorum initially is present at any meeting of stockholders, the stockholders may continue to transact business until adjournment or recess, notwithstanding the withdrawal of enough stockholders to leave less than a quorum, but if a quorum is not present at least initially, no business other than adjournment or recess may be transacted.

Section 2.7 Adjourned or Recessed Meeting. Any annual or special meeting of stockholders, whether or not a quorum is present, may be adjourned or recessed for any or no reason from time to time by the chairman of the meeting, subject to any rules and regulations adopted by the Board of Directors pursuant to Section 2.4(b). Any such meeting may be adjourned for any or no reason (and may be recessed if a quorum is not present or represented) from time to time by a majority of the voting power of the stock present in person or represented by proxy at the meeting and entitled to vote thereon. At any such adjourned or recessed meeting at which a quorum is present, any business may be transacted that might have been transacted at the meeting as originally called.

Section 2.8 Voting; Proxies.

(a) Except as otherwise required by law or the Certificate of Incorporation (including any Preferred Stock Designation), each holder of stock of the Corporation entitled to vote at any meeting of stockholders shall be entitled to one vote for each share of such stock held of record by such holder that has voting power upon the subject matter in question.

(b) Except as otherwise required by law, the Certificate of Incorporation (including any Preferred Stock Designation), these Bylaws or any law, rule or regulation applicable to the Corporation or its securities, at each meeting of stockholders at which a quorum is present, all corporate actions to be taken by vote of the stockholders shall be authorized by the affirmative vote of at least a majority of the voting power of the stock present in person or represented by proxy and entitled to vote on the subject matter, and where a separate vote by a class or series or classes or series is required, if a quorum of such class or series or classes or series is present, such act shall be authorized by the affirmative vote of at least a majority of the voting power of the stock of such class or series or classes or series present in person or represented by proxy and entitled to vote on the subject matter. Voting at meetings of stockholders need not be by written ballot.

(c) Every stockholder entitled to vote for directors, or on any other matter, shall have the right to do so either in person or by one or more persons authorized to act for such stockholder by proxy, but no such proxy shall be voted or acted upon after three years from its date, unless the proxy provides for a longer period. A proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by delivering to the Secretary of the Corporation a revocation of the proxy or an executed new proxy bearing a later date.

Section 2.9 Submission of Information by Director Nominees.

(a) To be eligible to be a nominee for election or re-election as a director of the Corporation, a person must deliver to the Secretary of the Corporation at the principal executive offices of the Corporation the following information:

(i) a written representation and agreement, which shall be signed by such person and pursuant to which such person shall represent and agree that such person: (A) consents to serving as a director if elected and to being named in the Corporation's proxy statement and form of proxy as a nominee, and currently intends to serve as a director for the full term for which such person is standing for election; (B) is not and will not become a party to any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity: (1) as to how the person, if elected as a director, will act or vote on any issue or question that has not been disclosed to the Corporation; or (2) that could limit or interfere with the person's ability to comply, if elected as a director, with such person's fiduciary duties under applicable law; (C) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect

to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director or nominee that has not been disclosed to the Corporation; and (D) if elected as a director, will comply with all of the Corporation's corporate governance, conflict of interest, confidentiality, and stock ownership and trading policies and guidelines, and any other Corporation policies and guidelines applicable to directors (which will be promptly provided following a request therefor); and

(ii) all completed and signed questionnaires prepared by the Corporation (including those questionnaires required of the Corporation's directors and any other questionnaire the Corporation determines is necessary or advisable to assess whether a nominee will satisfy any qualifications or requirements imposed by the Certificate of Incorporation or these Bylaws, any law, rule, regulation or listing standard that may be applicable to the Corporation, and the Corporation's corporate governance policies and guidelines) (all of the foregoing, "Questionnaires"). The Questionnaires will be promptly provided following a request therefor.

(b) A nominee for election or re-election as a director of the Corporation shall also provide to the Corporation such other information as it may reasonably request. The Corporation may request such additional information as necessary to permit the Corporation to determine the eligibility of such person to serve as a director of the Corporation, including information relevant to a determination whether such person can be considered an independent director.

(c) Notwithstanding any other provision of these Bylaws, if a stockholder has submitted notice of an intent to nominate a candidate for election or re-election as a director pursuant to Section 2.10, the Questionnaires described in Section 2.9(a)(ii) above and the additional information described in Section 2.9(b) above shall be considered timely if provided to the Corporation promptly upon request by the Corporation, but in any event within five business days after such request, and all information provided pursuant to this Section 2.9 shall be deemed part of the stockholder's notice submitted pursuant to Section 2.10.

Section 2.10 Notice of Stockholder Business and Nominations.

(a) Annual Meeting.

(i) Nominations of persons for election to the Board of Directors and the proposal of business other than nominations to be considered by the stockholders may be made at an annual meeting of stockholders only: (A) pursuant to the Corporation's notice of meeting (or any supplement thereto); (B) by or at the direction of the Board of Directors (or any authorized committee thereof); or (C) by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 2.10(a) is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 2.10(a). For the avoidance of doubt, the foregoing clause (C) shall be the exclusive means for a stockholder to make nominations or propose other business at an annual meeting of stockholders (other than a proposal included in the Corporation's proxy statement pursuant to and in compliance with Rule 14a-8 under the Exchange Act).

(ii) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to clause (C) of the foregoing paragraph, the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation and, in the case of business other than nominations, such business must be a proper subject for stockholder action. To be timely, a stockholder's notice must be delivered to the Secretary at the principal executive offices of the Corporation not later than the close of business (as defined in Section 2.10(c)(ii) below) on the 90th day nor earlier than the close of business on the 120th day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 30 days after such anniversary date, or if no annual meeting was held in the preceding year, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the date on which public announcement (as defined in Section 2.10(c)(ii) below) of the date of such meeting is first made by the Corporation. In no event shall an adjournment or recess of an annual meeting, or a postponement of an annual meeting for which notice of the meeting has already been given to stockholders or a public announcement of the meeting date has already been made, commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. The number of nominees a stockholder may nominate for election at the annual meeting (or in the case of a stockholder giving the notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at the annual meeting on behalf of the beneficial owner) shall not exceed the number of directors to be elected at such annual meeting. For purposes of this Section 2.10, the 2021 annual meeting of stockholders shall be deemed to have been held on May 30, 2021. Such stockholder's notice shall set forth:

(A) as to each person whom the stockholder proposes to nominate for election or re-election as a director: (1) all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to and in accordance with Regulation 14A under the Exchange Act; and (2) the information required to be submitted by nominees pursuant to Section 2.9(a)(i) above and all completed and signed Questionnaires described in Section 2.9(a)(ii) above, which will be promptly provided following a request therefor;

(B) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the Bylaws of the Corporation, the language of the proposed amendment), the reasons for conducting such business at the meeting and any substantial interest (within the meaning of Item 5 of Schedule 14A under the Exchange Act) in such business of such stockholder and the beneficial owner (within the meaning of Section 13(d) of the Exchange Act), if any, on whose behalf the proposal is made;

(C) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination is made or the other business is proposed:

(1) the name and address of such stockholder, as they appear on the Corporation's books, and the name and address of such beneficial owner;

(2) the class or series and number of shares of stock of the Corporation which are owned of record by such stockholder and such beneficial owner as of the date of the notice, and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of the class or series and number of shares of stock of the Corporation owned of record by the stockholder and such beneficial owner as of the record date for the meeting; and

(3) a representation that the stockholder (or a qualified representative of the stockholder) intends to appear at the meeting to make such nomination or propose such business;

(D) as to the stockholder giving the notice or, if the notice is given on behalf of a beneficial owner on whose behalf the nomination is made or the other business is proposed, as to such beneficial owner, and if such stockholder or beneficial owner is an entity, as to each director, executive, managing member or control person of such entity (any such individual or control person, a “control person”):

(1) the class or series and number of shares of stock of the Corporation which are beneficially owned (as defined in Section 2.10(c)(ii) below) by such stockholder or beneficial owner and by any control person as of the date of the notice, and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of the class or series and number of shares of stock of the Corporation beneficially owned by such stockholder or beneficial owner and by any control person as of the record date for the meeting;

(2) a description of any agreement, arrangement or understanding with respect to the nomination or other business between or among such stockholder, beneficial owner or control person and any other person, including, without limitation any agreements that would be required to be disclosed pursuant to Item 5 or Item 6 of Exchange Act Schedule 13D (regardless of whether the requirement to file a Schedule 13D is applicable) and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting;

(3) a description of any agreement, arrangement or understanding (including, without limitation, any derivative or short positions, profit interests, options, hedging transactions, and borrowed or loaned shares) that has been entered into as of the date of the stockholder’s notice by, or on behalf of, such stockholder, beneficial owner or control person, the effect or intent of which is to mitigate loss, manage risk or benefit from changes in the share price of any class or series of the Corporation’s stock, or maintain, increase or decrease the voting power of the stockholder, beneficial owner or control person with respect to securities of the Corporation, and a representation that the stockholder will notify the Corporation in writing within five business days after the record date for such meeting of any such agreement, arrangement or understanding in effect as of the record date for the meeting;

(4) a representation whether the stockholder or the beneficial owner, if any, will engage in a solicitation with respect to the nomination or other

business and, if so, the name of each participant in such solicitation (as defined in Item 4 of Schedule 14A under the Exchange Act) and whether such person intends or is part of a group which intends to deliver a proxy statement and/or form of proxy to holders of shares representing at least 50% of the voting power of the stock entitled to vote generally in the election of directors in the case of a nomination, or holders of at least the percentage of the Corporation's stock required to approve or adopt the business to be proposed in the case of other business.

(iii) Notwithstanding anything in Section 2.10(a)(ii) above or Section 2.10(b) below to the contrary, if the record date for determining the stockholders entitled to vote at any meeting of stockholders is different from the record date for determining the stockholders entitled to notice of the meeting, a stockholder's notice required by this Section 2.10 shall set forth a representation that the stockholder will notify the Corporation in writing within five business days after the record date for determining the stockholders entitled to vote at the meeting, or by the opening of business on the date of the meeting (whichever is earlier), of the information required under clauses (ii)(C)(2) and (ii)(D)(1)-(3) of this Section 2.10(a), and such information when provided to the Corporation shall be current as of the record date for determining the stockholders entitled to vote at the meeting.

(iv) This Section 2.10(a) shall not apply to a proposal proposed to be made by a stockholder if the stockholder has notified the Corporation of his or her intention to present the proposal at an annual or special meeting only pursuant to and in compliance with Rule 14a-8 under the Exchange Act and such proposal has been included in a proxy statement that has been prepared by the Corporation to solicit proxies for such meeting.

(v) Notwithstanding anything in this Section 2.10(a) to the contrary, in the event that the number of directors to be elected to the Board of Directors at an annual meeting is increased and there is no public announcement by the Corporation naming all of the nominees for director or specifying the size of the increased Board of Directors made by the Corporation at least 10 days prior to the last day a stockholder may deliver a notice in accordance with Section 2.10(a)(ii) above, a stockholder's notice required by this Section 2.10(a) shall also be considered timely, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not later than the close of business on the 10th day following the day on which such public announcement is first made by the Corporation.

(b) Special Meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting: (i) by or at the direction of the Board of Directors (or any authorized committee thereof); or (ii) provided that one or more directors are to be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 2.10(b) is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting and upon such election and who delivers notice thereof in writing setting forth the information required by Section 2.10(a) above and provides the additional information required by Section 2.9 above. In the event the Corporation calls a special meeting of stockholders for the purpose of electing one or more directors to the Board of Directors, any stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the

Corporation's notice of meeting, if the notice required by this Section 2.10(b) shall be delivered to the Secretary at the principal executive offices of the Corporation not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the 10th day following the date on which public announcement of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting is first made by the Corporation. The number of nominees a stockholder may nominate for election at the special meeting (or in the case of a stockholder giving the notice on behalf of a beneficial owner, the number of nominees a stockholder may nominate for election at the annual meeting on behalf of such beneficial owner) shall not exceed the number of directors to be elected at such special meeting. In no event shall an adjournment, recess or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(c) General.

(i) Except as otherwise required by law, only such persons who are nominated in accordance with the procedures set forth in this Section 2.10 shall be eligible to be elected at any meeting of stockholders of the Corporation to serve as directors and only such other business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 2.10. Except as otherwise required by law, each of the Board of Directors or the chairman of the meeting shall have the power to determine whether a nomination or any other business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Section 2.10 (including whether a stockholder or beneficial owner solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in compliance with such stockholder's representation as required by clause (a)(ii)(D)(4) of this Section 2.10). If any proposed nomination or other business is not in compliance with this Section 2.10, then except as otherwise required by law, the chairman of the meeting shall have the power to declare that such nomination shall be disregarded or that such other business shall not be transacted. Notwithstanding the foregoing provisions of this Section 2.10, unless otherwise required by law, or otherwise determined by the Board of Directors or the chairman of the meeting, if the stockholder does not provide the information required under Section 2.9 or clauses (a)(ii)(C)(2) and (a)(ii)(D)(1)-(3) of this Section 2.10 to the Corporation within the time frames specified herein, any such nomination shall be disregarded and any such other business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. Notwithstanding the foregoing provisions of this Section 2.10, unless otherwise required by law, or otherwise determined by the Board of Directors or the chairman of the meeting, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or other business (whether pursuant to the requirements of these Bylaws or in accordance with Rule 14a-8 under the Exchange Act), such nomination shall be disregarded and such other business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. To be considered a qualified representative of a stockholder pursuant to the preceding sentence, a person must be a duly authorized officer, manager or partner of such stockholder or authorized by a writing executed by such stockholder (or a reliable reproduction of the writing) delivered to the Corporation prior to the making of such nomination or proposal at

such meeting (and in any event not fewer than five days before the meeting) stating that such person is authorized to act for such stockholder as proxy at the meeting of stockholders.

(ii) For purposes of this Section 2.10, the “close of business” shall mean 6:00 p.m. local time at the principal executive offices of the Corporation on any calendar day, whether or not the day is a business day, and a “public announcement” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Exchange Act. For purposes of clause (a)(ii)(D)(1) of this Section 2.10, shares shall be treated as “beneficially owned” by a person if the person beneficially owns such shares, directly or indirectly, for purposes of Section 13(d) of the Exchange Act and Regulations 13D and 13G thereunder or has or shares pursuant to any agreement, arrangement or understanding (whether or not in writing): (A) the right to acquire such shares (whether such right is exercisable immediately or only after the passage of time or the fulfillment of a condition or both); (B) the right to vote such shares, alone or in concert with others; and/or (C) investment power with respect to such shares, including the power to dispose of, or to direct the disposition of, such shares.

(iii) Nothing in this Section 2.10 shall be deemed to affect any rights of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Certificate of Incorporation (including any Preferred Stock Designation).

Section 2.11 Action by Written Consent.

(a) Prior to any time that Tim Vanderhook, Chris Vanderhook and Four Brothers 2 LLC collectively cease to beneficially own a majority of the combined voting power of the Common Stock (the “Triggering Event”), except as otherwise provided for or fixed pursuant to the Certificate of Incorporation (including any Preferred Stock Designation), any action required or permitted to be taken at any annual or special meeting of stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote, if a consent or consents, setting forth the action so taken, are signed by the holders of the outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. To be effective, such a consent must be delivered to the Corporation in accordance with Section 228(d) of the DGCL; provided, however, that the Corporation has not designated, and shall not designate, any information processing system for receiving such consents. No consent shall be effective to take the corporate action referred to therein unless consents signed by a sufficient number of holders to take action are delivered to the Corporation in accordance with this Section 2.11 within 60 days of the first date on which a consent is so delivered to the Corporation. Any person executing a consent may provide, whether through instruction to an agent or otherwise, that such a consent shall be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made, if evidence of such instruction or provision is provided to the Corporation. Unless otherwise provided, any such consent shall be revocable prior to its becoming effective.

(b) Prior to the Triggering Event, prompt notice of the taking of the corporate action without a meeting by less than unanimous consent shall be given to those stockholders

who have not consented and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for notice of such meeting had been the date that consents signed by a sufficient number of stockholders to take the action were delivered to the Corporation in accordance with this Section 2.11.

(c) After the Triggering Event, except with respect to actions required or permitted to be taken solely by holders of Preferred Stock pursuant to the Certificate of Incorporation (including any Preferred Stock Designation), no action that is required or permitted to be taken by the stockholders of the Corporation may be effected by consent of stockholders in lieu of a meeting of stockholders.

Section 2.12 Inspectors of Election. Before any meeting of stockholders, the Corporation may, and shall if required by law, appoint one or more inspectors of election to act at the meeting and make a written report thereof. Inspectors may be employees of the Corporation. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the chairman of the meeting may, and shall if required by law, appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. Inspectors need not be stockholders. No director or nominee for the office of director at an election shall be appointed as an inspector at such election.

Such inspectors shall:

- (a) determine the number of shares outstanding and the voting power of each, the number of shares represented at the meeting, the existence of a quorum, and the validity of proxies and ballots;
- (b) determine and retain for a reasonable period a record of the disposition of any challenges made to any determination by the inspectors;
- (c) count and tabulate all votes and ballots; and
- (d) certify their determination of the number of shares represented at the meeting, and their count of all votes and ballots.

Section 2.13 Meetings by Remote Communications. The Board of Directors may, in its sole discretion, determine that a meeting of stockholders shall not be held at any place, but may instead be held solely by means of remote communication in accordance with Section 211(a)(2) of the DGCL. If authorized by the Board of Directors in its sole discretion, and subject to such guidelines and procedures as the Board of Directors may adopt, stockholders and proxyholders not physically present at a meeting of stockholders may, by means of remote communication: (a) participate in a meeting of stockholders; and (b) be deemed present in person and vote at a meeting of stockholders whether such meeting is to be held at a designated place or solely by means of remote communication, provided that: (i) the Corporation shall implement reasonable measures to verify that each person deemed present and permitted to vote at the meeting by means of remote communication is a stockholder or proxyholder; (ii) the Corporation shall

implement reasonable measures to provide such stockholders and proxyholders a reasonable opportunity to participate in the meeting and to vote on matters submitted to the stockholders, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with such proceedings; and (iii) if any stockholder or proxyholder votes or takes other action at the meeting by means of remote communication, a record of such vote or other action shall be maintained by the Corporation.

Section 2.14 Delivery to the Corporation. Whenever this Article II requires one or more persons (including a record or beneficial owner of stock) to deliver a document or information to the Corporation or any officer, employee or agent thereof (including any notice, request, questionnaire, revocation, representation or other document or agreement), the Corporation shall not be required to accept delivery of such document or information unless the document or information is in writing exclusively (and not in an electronic transmission) and delivered exclusively by hand (including, without limitation, overnight courier service) or by certified or registered mail, return receipt requested.

ARTICLE III DIRECTORS

Section 3.1 Powers. Except as otherwise required by the DGCL or as provided in the Certificate of Incorporation (including any Preferred Stock Designation), the business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authorities these Bylaws expressly confer upon it, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by law, the Certificate of Incorporation (including any Preferred Stock Designation) or these Bylaws required to be exercised or done by the stockholders.

Section 3.2 Number and Election. Except as otherwise provided for or fixed pursuant to the Certificate of Incorporation (including any Preferred Stock Designation), the Board of Directors shall consist of not fewer than 3 nor more than 11 directors, the exact number to be determined from time to time solely by resolution of the Board of Directors.

At any meeting of stockholders at which directors are to be elected, directors shall be elected by a plurality of the votes cast.

Directors need not be stockholders unless so required by the Certificate of Incorporation (including any Preferred Stock Designation) or these Bylaws, wherein other qualifications for directors may be prescribed.

Section 3.3 Vacancies and Newly Created Directorships.

(a) Prior to the Triggering Event, subject to the rights of the holders of any outstanding series of Preferred Stock, and unless otherwise required by law, newly created directorships resulting from any increase in the authorized number of directors and any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause may be filled by the affirmative vote of (a) a majority of the remaining directors then in office, even though less than a quorum, or by the sole remaining director or (b) at least a majority of the voting power of the stock outstanding and entitled to vote thereon, and

any director so chosen shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall have been duly elected and qualified.

(b) After the Triggering Event, subject to the rights of the holders of any outstanding series of Preferred Stock, and unless otherwise required by law, newly created directorships resulting from any increase in the authorized number of directors and any vacancies in the Board of Directors resulting from death, resignation, retirement, disqualification, removal from office or other cause shall be filled solely by the affirmative vote of a majority of the remaining directors then in office, even though less than a quorum, or by the sole remaining director, and any director so chosen shall hold office until the next election of the class for which such director shall have been chosen and until his or her successor shall have been duly elected and qualified.

(c) No decrease in the authorized number of directors shall shorten the term of any incumbent director.

Section 3.4 Resignations and Removal.

(a) Any director may resign at any time upon notice given in writing or by electronic transmission to the Board of Directors, the Chairman of the Board of Directors or the Secretary of the Corporation. Such resignation shall take effect upon delivery, unless the resignation specifies a later effective date or time or an effective date or time determined upon the happening of an event or events. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

(b) Prior to the Triggering Event, any director, or the entire Board of Directors, may be removed, with or without cause, by the affirmative vote of at least a majority of the voting power of the stock outstanding and entitled to vote thereon; provided, however, that whenever the holders of any class or series are entitled to elect one or more directors by the Certificate of Incorporation (including any Preferred Stock Designation), with respect to the removal without cause of a director or directors so elected, the vote of the holders of the outstanding shares of that class or series and not the vote of the outstanding shares as a whole shall apply.

(c) After the Triggering Event, except for such additional directors, if any, as are elected by the holders of any series of Preferred Stock as provided for or fixed pursuant to the Certificate of Incorporation (including any Preferred Stock Designation), any director, or the entire Board of Directors, may be removed from office at any time, but only for cause and only by the affirmative vote of at least 66 $\frac{2}{3}$ % of the voting power of the stock outstanding and entitled to vote thereon.

Section 3.5 Regular Meetings. Regular meetings of the Board of Directors shall be held at such place or places, within or without the State of Delaware, on such date or dates and at such time or times, as shall have been established by the Board of Directors and publicized among all directors. A notice of each regular meeting shall not be required.

Section 3.6 Special Meetings. Special meetings of the Board of Directors for any purpose or purposes may be called at any time by the Chairman of the Board of Directors, the

Chief Executive Officer or a majority of the directors then in office. The person or persons authorized to call special meetings of the Board of Directors may fix the place, within or without the State of Delaware, date and time of such meetings. Notice of each such meeting shall be given to each director, if by mail, addressed to such director at his or her residence or usual place of business, at least five days before the day on which such meeting is to be held, or shall be sent to such director by electronic transmission, or be delivered personally or by telephone, in each case at least 24 hours prior to the time set for such meeting. A notice of special meeting need not state the purpose of such meeting, and, unless indicated in the notice thereof, any and all business may be transacted at a special meeting.

Section 3.7 Participation in Meetings by Conference Telephone. Members of the Board of Directors, or of any committee thereof, may participate in a meeting of such Board of Directors or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and such participation shall constitute presence in person at such meeting.

Section 3.8 Quorum and Voting. Except as otherwise required by law, the Certificate of Incorporation or these Bylaws, a majority of the total number of directors then authorized (hereinafter referred to as the “Whole Board”) shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, and the vote of a majority of the directors present at a duly held meeting at which a quorum is present shall be the act of the Board of Directors. The chairman of the meeting or a majority of the directors present may adjourn the meeting to another time and place whether or not a quorum is present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

Section 3.9 Board of Directors Action by Written Consent Without a Meeting. Unless otherwise restricted by the Certificate of Incorporation or these Bylaws, any action required or permitted to be taken at any meeting of the Board of Directors, or any committee thereof, may be taken without a meeting, provided that all members of the Board of Directors or committee, as the case may be, consent in writing or by electronic transmission to such action. After an action is taken, the consent or consents relating thereto shall be filed with the minutes or proceedings of the Board of Directors or committee in the same paper or electronic form as the minutes are maintained. Any person (whether or not then a director) may provide, whether through instruction to an agent or otherwise, that a consent to action shall be effective at a future time (including a time determined upon the happening of an event), no later than 60 days after such instruction is given or such provision is made and such consent shall be deemed to have been given at such effective time so long as such person is then a director and did not revoke the consent prior to such time. Any such consent shall be revocable prior to its becoming effective.

Section 3.10 Chairman of the Board. The Chairman of the Board shall preside at meetings of stockholders (unless otherwise determined by the Board of Directors) and at meetings of directors and shall perform such other duties as the Board of Directors may from time to time determine. If the Chairman of the Board is not present at a meeting of the Board of Directors, another director chosen by the Board of Directors shall preside.

Section 3.11 Rules and Regulations. The Board of Directors shall adopt such rules and regulations not inconsistent with the provisions of law, the Certificate of Incorporation or these Bylaws for the conduct of its meetings and management of the affairs of the Corporation as the Board of Directors shall deem proper.

Section 3.12 Fees and Compensation of Directors. Unless otherwise restricted by the Certificate of Incorporation, directors may receive such compensation, if any, for their services on the Board of Directors and its committees, and such reimbursement of expenses, as may be fixed or determined by resolution of the Board of Directors.

Section 3.13 Emergency Bylaws. This Section 3.13 shall be operative during any emergency condition as contemplated by Section 110 of the DGCL (an "Emergency"), notwithstanding any different or conflicting provisions in these Bylaws, the Certificate of Incorporation or the DGCL. In the event of any Emergency, or other similar emergency condition, as a result of which a quorum of the Board of Directors or a standing committee of the Board of Directors cannot readily be convened for action, the director or directors in attendance at a meeting of the Board of Directors or a standing committee thereof shall constitute a quorum. Such director or directors in attendance may further take action to appoint one or more of themselves or other directors to membership on any standing or temporary committees of the Board of Directors as they shall deem necessary and appropriate. Except as the Board may otherwise determine, during any Emergency, the Corporation and its directors and officers, may exercise any authority and take any action or measure contemplated by Section 110 of the DGCL.

ARTICLE IV COMMITTEES

Section 4.1 Committees of the Board of Directors. The Board of Directors may designate one or more committees, each such committee to consist of one or more of the directors of the Corporation. The Board of Directors may designate one or more directors as alternate members of any committee to replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members present at any meeting and not disqualified from voting, whether or not he, she or they constitute a quorum, may unanimously appoint another member of the Board of Directors to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent permitted by law and provided in the resolution of the Board of Directors establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matters: (a) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by the DGCL to be submitted to stockholders for approval; or (b) adopting, amending or repealing any bylaw of the Corporation. All committees of the Board of Directors shall keep minutes of their meetings and shall report their proceedings to the Board of Directors when requested or required by the Board of Directors.

Section 4.2 Meetings and Action of Committees. Unless the Board of Directors provides otherwise by resolution, any committee of the Board of Directors may adopt, alter and repeal such rules and regulations not inconsistent with the provisions of law, the Certificate of Incorporation or these Bylaws for the conduct of its meetings as such committee may deem proper. A majority of the directors then serving on a committee shall constitute a quorum for the transaction of business by the committee except as otherwise required by law, the Certificate of Incorporation or these Bylaws, and except as otherwise provided in a resolution of the Board of Directors; provided, however, that in no case shall a quorum be less than one-third of the directors then serving on the committee. Unless the Certificate of Incorporation, these Bylaws or a resolution of the Board of Directors requires a greater number, the vote of a majority of the members of a committee present at a meeting at which a quorum is present shall be the act of the committee.

ARTICLE V OFFICERS

Section 5.1 Officers. The officers of the Corporation shall consist of a Chief Executive Officer, a Chief Operating Officer, a Chief Financial Officer, a Secretary, a Treasurer, a Controller (the “Designated Officers”) and may consist of a Chief Operating Officer and one or more Vice Presidents and such other officers as the Board of Directors may from time to time determine, each of whom shall be elected by the Board of Directors, each to have such authority, functions or duties as set forth in these Bylaws or as determined by the Board of Directors. Each Designated Officer and any Chief Operating Officer shall be elected by the Board of Directors and shall hold office for such term as may be prescribed by the Board of Directors and until such person’s successor shall have been duly elected and qualified, or until such person’s earlier death, disqualification, resignation or removal. Any other officer may be elected by the Board or appointed by the Chief Executive Officer. Any number of offices may be held by the same person; provided, however, that no officer shall execute, acknowledge or verify any instrument in more than one capacity if such instrument is required by law, the Certificate of Incorporation or these Bylaws to be executed, acknowledged or verified by two or more officers. The Board of Directors may require any officer, agent or employee to give security for the faithful performance of his or her duties.

Section 5.2 Compensation. The salaries of the officers of the Corporation and the manner and time of the payment of such salaries shall be fixed and determined by the Board of Directors or by a duly authorized officer and may be altered by the Board of Directors from time to time as it deems appropriate, subject to the rights, if any, of such officers under any contract of employment.

Section 5.3 Removal, Resignation and Vacancies. Any officer of the Corporation elected by the Board may be removed, with or without cause, by the Board of Directors, without prejudice to the rights, if any, of such officer under any contract to which it is a party. Any other officer of the Corporation may be removed, with or without cause, by the Board of Directors or by a duly authorized officer, without prejudice to the rights, if any, of such officer under any contract to which it is a party. Any officer may resign at any time upon notice given in writing or by electronic transmission to the Corporation, without prejudice to the rights, if any, of the Corporation under any contract to which such officer is a party. If any vacancy occurs in any

office of the Corporation, the Board of Directors may elect a successor to fill such vacancy for the remainder of the unexpired term and until a successor shall have been duly elected and qualified.

Section 5.4 Chief Executive Officer. The Chief Executive Officer shall have general supervision and direction of the business and affairs of the Corporation, shall be responsible for corporate policy and strategy, and shall report directly to the Board of Directors. Unless otherwise provided in these Bylaws or determined by the Board of Directors, all other officers of the Corporation shall report directly to the Chief Executive Officer or as otherwise determined by the Chief Executive Officer. The Chief Executive Officer, if not the Chairman of the Board of Directors, shall, if present and in the absence of the Chairman of the Board of Directors, preside at meetings of the stockholders.

Section 5.5 Chief Operating Officer. The Chief Operating Officer shall have general responsibility for the management and control of the operations of the Corporation. The Chief Operating Officer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors or the Chief Executive Officer may from time to time determine.

Section 5.6 Chief Financial Officer. The Chief Financial Officer shall exercise all the powers and perform the duties of the office of the chief financial officer and in general have overall supervision of the financial operations of the Corporation. The Chief Financial Officer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors, the Chief Executive Officer or the Chief Operating Officer may from time to time determine.

Section 5.7 Vice Presidents. Each Vice President shall have such powers and duties as shall be prescribed by his or her superior officer, the Chief Executive Officer or the Chief Operating Officer. A Vice President shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors, the Chief Executive Officer, the Chief Operating Officer or another duly authorized officer may from time to time determine.

Section 5.8 Treasurer. The Treasurer shall supervise and be responsible for all the funds and securities of the Corporation, the deposit of all monies and other valuables to the credit of the Corporation in depositories of the Corporation, borrowings and compliance with the provisions of all indentures, agreements and instruments governing such borrowings to which the Corporation is a party, the disbursement of funds of the Corporation and the investment of its funds, and in general shall perform all of the duties incident to the office of the Treasurer. The Treasurer shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors, the Chief Executive Officer, the Chief Operating Officer or the Chief Financial Officer may from time to time determine.

Section 5.9 Controller. The Controller shall be the chief accounting officer of the Corporation. The Controller shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors, the Chief

Executive Officer, the Chief Operating Officer, the Chief Financial Officer or the Treasurer may from time to time determine.

Section 5.10 Secretary. The powers and duties of the Secretary are: (i) to act as Secretary at all meetings of the Board of Directors, of the committees of the Board of Directors and of the stockholders and to record the proceedings of such meetings in a book or books to be kept for that purpose; (ii) to see that all notices required to be given by the Corporation are duly given and served; (iii) to act as custodian of the seal of the Corporation and affix the seal or cause it to be affixed to all certificates of stock of the Corporation and to all documents, the execution of which on behalf of the Corporation under its seal is duly authorized in accordance with the provisions of these Bylaws; (iv) to have charge of the books, records and papers of the Corporation and see that the reports, statements and other documents required by law to be kept and filed are properly kept and filed; and (v) to perform all of the duties incident to the office of Secretary. The Secretary shall, when requested, counsel with and advise the other officers of the Corporation and shall perform such other duties as the Board of Directors, the Chief Executive Officer or the Chief Operating Officer may from time to time determine.

Section 5.11 Additional Matters. The Chief Executive Officer and the Chief Financial Officer of the Corporation shall have the authority to designate employees of the Corporation to have the title of Vice President, Assistant Vice President, Assistant Treasurer or Assistant Secretary. Any employee so designated shall have the powers and duties determined by the officer making such designation. The persons upon whom such titles are conferred shall not be deemed officers of the Corporation unless elected by the Board of Directors.

Section 5.12 Checks; Drafts; Evidences of Indebtedness. From time to time, the Board of Directors shall determine the method, and designate (or authorize officers of the Corporation to designate) the person or persons who shall have authority, to sign or endorse all checks, drafts, other orders for payment of money and notes, bonds, debentures or other evidences of indebtedness that are issued in the name of or payable by the Corporation, and only the persons so authorized shall sign or endorse such instruments.

Section 5.13 Corporate Contracts and Instruments; How Executed. Except as otherwise provided in these Bylaws, the Board of Directors may determine the method, and designate (or authorize officers of the Corporation to designate) the person or persons who shall have authority to enter into any contract or execute any instrument in the name of and on behalf of the Corporation. Such authority may be general or confined to specific instances. Unless so authorized, or within the power incident to a person's office or other position with the Corporation, no person shall have any power or authority to bind the Corporation by any contract or engagement or to pledge its credit or to render it liable for any purpose or for any amount.

Section 5.14 Signature Authority. Unless otherwise determined by the Board of Directors or otherwise provided by law or these Bylaws, contracts, evidences of indebtedness and other instruments or documents of the Corporation may be executed, signed or endorsed: (i) by the Chief Executive Officer or the Chief Operating Officer; or (ii) by the Chief Financial Officer, any Vice President, Treasurer, Secretary or Controller, in each case only with regard to such instruments or documents that pertain to or relate to such person's duties or business functions.

Section 5.15 Action with Respect to Securities of Other Corporations or Entities. The Chief Executive Officer or any other officer of the Corporation authorized by the Board of Directors or the Chief Executive Officer is authorized to vote, represent, and exercise on behalf of the Corporation all rights incident to any and all shares or other equity interests of any other corporation or entity or corporations or entities, standing in the name of the Corporation. The authority herein granted may be exercised either by such person directly or by any other person authorized to do so by proxy or power of attorney duly executed by the person having such authority.

Section 5.16 Delegation. The Board of Directors may from time to time delegate the powers or duties of any officer to any other officers or agents, notwithstanding the foregoing provisions of this Article V.

ARTICLE VI INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

Section 6.1 Right to Indemnification.

(a) Each person who was or is a party or is threatened to be made a party to, or was or is otherwise involved in, any action, suit, arbitration, alternative dispute resolution mechanism, investigation, inquiry, judicial, administrative or legislative hearing, or any other threatened, pending or completed proceeding, whether brought by or in the right of the Corporation or otherwise, including any and all appeals, whether of a civil, criminal, administrative, legislative, investigative or other nature (hereinafter a “proceeding”), by reason of the fact that he or she is or was a director or an officer of the Corporation or while a director or officer of the Corporation is or was serving at the request of the Corporation as a director, officer, employee, agent or trustee of another corporation or of a partnership, joint venture, trust or other enterprise, including service with respect to an employee benefit plan (hereinafter an “indemnitee”), or by reason of anything done or not done by him or her in any such capacity, shall be indemnified and held harmless by the Corporation to the fullest extent authorized by the DGCL, as the same exists or may hereafter be amended, against all expense, liability and loss (including attorneys’ fees, judgments, fines, ERISA excise taxes, penalties and amounts paid in settlement by or on behalf of the indemnitee) actually and reasonably incurred by such indemnitee in connection therewith, all on the terms and conditions set forth in these Bylaws; provided, however, that, except as otherwise required by law or provided in Section 6.4 with respect to suits to enforce rights under this Article VI, the Corporation shall indemnify any such indemnitee in connection with a proceeding, or part thereof, voluntarily initiated by such indemnitee (including claims and counterclaims, whether such counterclaims are asserted by: (i) such indemnitee; or (ii) the Corporation in a proceeding initiated by such indemnitee) only if such proceeding, or part thereof, was authorized or ratified by the Board of Directors or the Board of Directors otherwise determines that indemnification or advancement of expenses is appropriate.

(b) To receive indemnification under this Article VI, an indemnitee shall submit a written request to the Secretary of the Corporation. Such request shall include documentation or information that is necessary to determine the entitlement of the indemnitee to indemnification and that is reasonably available to the indemnitee. Upon receipt by the

Secretary of the Corporation of such a written request, unless indemnification is required by Section 6.3, the entitlement of the indemnitee to indemnification shall be determined by the following person or persons who shall be empowered to make such determination, as selected by the Board of Directors (except with respect to clause (v) of this Section 6.1(b)): (i) the Board of Directors by a majority vote of the directors who are not parties to such proceeding, whether or not such majority constitutes a quorum; (ii) a committee of such directors designated by a majority vote of such directors, whether or not such majority constitutes a quorum; (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the indemnitee; (iv) the stockholders of the Corporation; or (v) in the event that a change of control (as defined below) has occurred, by independent legal counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the indemnitee. The determination of entitlement to indemnification shall be made and, unless a contrary determination is made, such indemnification shall be paid in full by the Corporation not later than 60 days after receipt by the Secretary of the Corporation of a written request for indemnification. For purposes of this Section 6.1(b), a “change of control” will be deemed to have occurred if, with respect to any particular 24-month period, the individuals who, at the beginning of such 24-month period, constituted the Board of Directors (the “incumbent board”), cease for any reason to constitute at least a majority of the Board of Directors; provided, however, that any individual becoming a director subsequent to the beginning of such 24-month period whose election, or nomination for election by the stockholders of the Corporation, was approved by a vote of at least a majority of the directors then comprising the incumbent board shall be considered as though such individual were a member of the incumbent board, but excluding, for this purpose, any such individual whose initial assumption of office occurs as a result of an actual or threatened election contest with respect to the election or removal of directors or other actual or threatened solicitation of proxies or consents by or on behalf of a person other than the Board of Directors.

Section 6.2 Right to Advancement of Expenses.

(a) In addition to the right to indemnification conferred in Section 6.1, an indemnitee shall, to the fullest extent permitted by law, also have the right to be paid by the Corporation the expenses (including attorneys’ fees) incurred in defending any proceeding in advance of its final disposition (hereinafter an “advancement of expenses”); provided, however, that an advancement of expenses shall be made only upon delivery to the Corporation of an undertaking (hereinafter an “undertaking”), by or on behalf of such indemnitee, to repay all amounts so advanced if it shall ultimately be determined by final judicial decision of a court of competent jurisdiction from which there is no further right to appeal (hereinafter a “final adjudication”) that such indemnitee is not entitled to be indemnified for such expenses under this Article VI or otherwise.

(b) To receive an advancement of expenses under this Section 6.2, an indemnitee shall submit a written request to the Secretary of the Corporation. Such request shall reasonably evidence the expenses incurred by the indemnitee and shall include or be accompanied by the undertaking required by Section 6.2(a). Each such advancement of expenses shall be made within 20 days after the receipt by the Secretary of the Corporation of a written request for advancement of expenses.

(c) Notwithstanding the foregoing Section 6.2(a), the Corporation shall not make or continue to make advancements of expenses to an indemnitee (except by reason of the fact that the indemnitee is or was a director of the Corporation, in which event this Section 6.2(c) shall not apply) if a determination is reasonably made that the facts known at the time such determination is made demonstrate clearly and convincingly that the indemnitee acted in bad faith or in a manner that the indemnitee did not reasonably believe to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal proceeding, that the indemnitee had reasonable cause to believe his or her conduct was unlawful. Such determination shall be made: (i) by the Board of Directors by a majority vote of directors who are not parties to such proceeding, whether or not such majority constitutes a quorum; (ii) by a committee of such directors designated by a majority vote of such directors, whether or not such majority constitutes a quorum; or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion to the Board of Directors, a copy of which shall be delivered to the indemnitee.

Section 6.3 Indemnification for Successful Defense. To the extent that an indemnitee has been successful on the merits or otherwise in defense of any proceeding (or in defense of any claim, issue or matter therein), such indemnitee shall be indemnified under this Section 6.3 against expenses (including attorneys' fees) actually and reasonably incurred in connection with such defense. Indemnification under this Section 6.3 shall not be subject to satisfaction of a standard of conduct, and the Corporation may not assert the failure to satisfy a standard of conduct as a basis to deny indemnification or recover amounts advanced, including in a suit brought pursuant to Section 6.4 (notwithstanding anything to the contrary therein); provided, however, that, any indemnitee who is not a current or former director or officer (as such term is defined in the final sentence of Section 145(c)(1) of the DGCL) shall be entitled to indemnification under Section 6.1 and this Section 6.3 only if such indemnitee has satisfied the standard of conduct required for indemnification under Section 145(a) or Section 145(b) of the DGCL.

Section 6.4 Right of Indemnitee to Bring Suit. In the event that a determination is made that the indemnitee is not entitled to indemnification or if payment is not timely made following a determination of entitlement to indemnification pursuant to Section 6.1(b), if a request for indemnification under Section 6.3 is not paid in full by the Corporation within 60 days after a written request has been received by the Secretary of the Corporation, or if an advancement of expenses is not timely made under Section 6.2(b), the indemnitee may at any time thereafter bring suit against the Corporation in a court of competent jurisdiction in the State of Delaware seeking an adjudication of entitlement to such indemnification or advancement of expenses. If successful in whole or in part in any such suit, or in a suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the indemnitee shall be entitled to be paid also the expense of prosecuting or defending such suit to the fullest extent permitted by law. In any suit brought by the indemnitee to enforce a right to indemnification hereunder (but not in a suit brought by the indemnitee to enforce a right to an advancement of expenses) it shall be a defense that the indemnitee has not met any applicable standard of conduct for indemnification set forth in Section 145(a) or Section 145(b) of the DGCL. Further, in any suit brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the Corporation shall be entitled to recover such expenses upon a final adjudication that the indemnitee has not met any applicable standard of

conduct for indemnification set forth in Section 145(a) or Section 145(b) of the DGCL. Neither the failure of the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or its stockholders) to have made a determination prior to the commencement of such suit that indemnification of the indemnitee is proper in the circumstances because the indemnitee has met such applicable standard of conduct, nor an actual determination by the Corporation (including its directors who are not parties to such action, a committee of such directors, independent legal counsel or its stockholders) that the indemnitee has not met such applicable standard of conduct, shall create a presumption that the indemnitee has not met the applicable standard of conduct or, in the case of such a suit brought by the indemnitee, be a defense to such suit. In any suit brought by the indemnitee to enforce a right to indemnification or to an advancement of expenses hereunder, or brought by the Corporation to recover an advancement of expenses pursuant to the terms of an undertaking, the burden of proving that the indemnitee is not entitled to be indemnified, or to such advancement of expenses, under applicable law, this Article VI or otherwise shall be on the Corporation.

Section 6.5 Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Article VI shall not be exclusive of any other right which any person may have or hereafter acquire under any law, agreement, vote of stockholders or disinterested directors, provisions of a certificate of incorporation or bylaws, or otherwise.

Section 6.6 Insurance. The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.

Section 6.7 Indemnification of Employees and Agents of the Corporation. The Corporation may, to the extent and in the manner permitted by law, and to the extent authorized from time to time, grant rights to indemnification and to the advancement of expenses to any employee or agent of the Corporation.

Section 6.8 Nature of Rights. The rights conferred upon indemnitees in this Article VI shall be contract rights and such rights shall continue as to an indemnitee who has ceased to be a director or officer and shall inure to the benefit of the indemnitee's heirs, executors and administrators. Any amendment, alteration or repeal of this Article VI that adversely affects any right of an indemnitee or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment, alteration or repeal.

Section 6.9 Settlement of Claims. Notwithstanding anything in this Article VI to the contrary, the Corporation shall not be liable to indemnify any indemnitee under this Article VI for any amounts paid in settlement of any proceeding effected without the Corporation's written consent, which consent shall not be unreasonably withheld.

Section 6.10 Subrogation. In the event of payment under this Article VI, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of the indemnitee (excluding insurance obtained on the indemnitee's own behalf), and the

indemnatee shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable the Corporation effectively to bring suit to enforce such rights.

Section 6.11 Severability. If any provision or provisions of this Article VI shall be held to be invalid, illegal or unenforceable as applied to any person or entity or circumstance for any reason whatsoever, then, to the fullest extent permitted by law: (a) the validity, legality and enforceability of such provision in any other circumstance and of the remaining provisions of this Article VI (including, without limitation, all portions of any paragraph of this Article VI containing any such provision held to be invalid, illegal or unenforceable, that are not by themselves invalid, illegal or unenforceable) and the application of such provision to other persons or entities or circumstances shall not in any way be affected or impaired thereby; and (b) to the fullest extent possible, the provisions of this Article VI (including, without limitation, all portions of any paragraph of this Article VI containing any such provision held to be invalid, illegal or unenforceable, that are not themselves invalid, illegal or unenforceable) shall be construed so as to give effect to the intent of the parties that the Corporation provide protection to the indemnatee to the fullest extent set forth in this Article VI.

ARTICLE VII CAPITAL STOCK

Section 7.1 Certificates of Stock. The shares of the Corporation shall be represented by certificates; provided, however, that the Board of Directors may provide by resolution or resolutions that some or all of any or all classes or series of stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate until such certificate is surrendered to the Corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the Corporation by any two authorized officers of the Corporation, including, without limitation, the Chief Executive Officer, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, the Controller, the Secretary, or an Assistant Treasurer or Assistant Secretary certifying the number of shares owned by such holder in the Corporation. Any or all such signatures may be facsimiles. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate has ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 7.2 Special Designation on Certificates. If the Corporation is authorized to issue more than one class of stock or more than one series of any class, then the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights shall be set forth in full or summarized on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock; provided, however, that, except as otherwise provided in Section 202 of the DGCL, in lieu of the foregoing requirements there may be set forth on the face or back of the certificate that the Corporation shall issue to represent such class or series of stock a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Within a reasonable time after the issuance or transfer of uncertificated stock, the registered owner thereof shall be given a notice, in writing or by electronic transmission, containing the information required to be set forth or stated on certificates pursuant to this Section 7.2 or Section 151, 156, 202(a) or 218(a) of the DGCL or with respect to this Section 7.2 and Section 151 of the DGCL a statement that the Corporation will furnish without charge to each stockholder who so requests the powers, the designations, the preferences, and the relative, participating, optional or other special rights of each class of stock

or series thereof and the qualifications, limitations or restrictions of such preferences and/or rights. Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

Section 7.3 Transfers of Stock. Transfers of shares of stock of the Corporation shall be made only on the books of the Corporation upon authorization by the registered holder thereof or by such holder's attorney thereunto authorized by a power of attorney duly executed and filed with the Secretary of the Corporation or a transfer agent for such stock, and if such shares are represented by a certificate, upon surrender of the certificate or certificates for such shares properly endorsed or accompanied by a duly executed stock transfer power and the payment of any taxes thereon; provided, however, that the Corporation shall be entitled to recognize and enforce any lawful restriction on transfer.

Section 7.4 Lost Certificates. The Corporation may issue a new share certificate or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate or the owner's legal representative to give the Corporation a bond (or other adequate security) sufficient to indemnify it against any claim that may be made against it (including any expense or liability) on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares. The Board of Directors may adopt such other provisions and restrictions with reference to lost certificates, not inconsistent with applicable law, as it shall in its discretion deem appropriate.

Section 7.5 Registered Stockholders. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

Section 7.6 Record Date for Determining Stockholders.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjourned meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than 60 nor less than 10 days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the

time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjourned meeting; provided, however, that the Board of Directors may fix a new record date for the determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change, conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 60 days prior to such action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

(c) Prior to the Triggering Event, unless otherwise restricted by the Certificate of Incorporation (including any Preferred Stock Designation), in order that the Corporation may determine the stockholders entitled to express consent to corporate action without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than 10 days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to express consent to corporate action without a meeting, when no prior action of the Board of Directors is required by law, shall be the first date on which a signed consent setting forth the action taken or proposed to be taken was delivered to the Corporation in accordance with Section 2.11. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to express consent to corporate action without a meeting, if prior action by the Board of Directors is required by law, shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 7.7 Regulations. To the extent permitted by applicable law, the Board of Directors may make such additional rules and regulations as it may deem expedient concerning the issue, transfer and registration of shares of stock of the Corporation.

Section 7.8 Waiver of Notice. Whenever notice is required to be given under any provision of the DGCL or the Certificate of Incorporation or these Bylaws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting,

except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, the Board of Directors or a committee of the Board of Directors need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate of Incorporation or these Bylaws.

ARTICLE VIII GENERAL MATTERS

Section 8.1 Fiscal Year. The fiscal year of the Corporation shall begin on the first day of January of each year and end on the last day of December of the same year, or shall extend for such other 12 consecutive months as the Board of Directors may designate.

Section 8.2 Corporate Seal. The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary of the Corporation. If and when so directed by the Board of Directors or a committee thereof, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary or Assistant Treasurer.

Section 8.3 Reliance upon Books, Reports and Records. Each director and each member of any committee designated by the Board of Directors shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books of account or other records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers or employees, or committees of the Board of Directors so designated, or by any other person as to matters which such director or committee member reasonably believes are within such other person's professional or expert competence and who has been selected with reasonable care by or on behalf of the Corporation.

Section 8.4 Subject to Law and Certificate of Incorporation. All powers, duties and responsibilities provided for in these Bylaws, whether or not explicitly so qualified, are qualified by the Certificate of Incorporation (including any Preferred Stock Designation) and applicable law.

Section 8.5 Electronic Signatures, etc. Except as otherwise required by the Certificate of Incorporation (including as otherwise required by any Preferred Stock Designation) or these Bylaws (including, without limitation, as otherwise required by Section 2.14), any document, including, without limitation, any consent, agreement, certificate or instrument, required by the DGCL, the Certificate of Incorporation (including any Preferred Stock Designation) or these Bylaws to be executed by any officer, director, stockholder, employee or agent of the Corporation may be executed using a facsimile or other form of electronic signature to the fullest extent permitted by applicable law. All other contracts, agreements, certificates or instruments to be executed on behalf of the Corporation may be executed using a facsimile or other form of electronic signature to the fullest extent permitted by applicable law. The terms "electronic mail," "electronic mail address," "electronic signature" and "electronic transmission" as used herein shall have the meanings ascribed thereto in the DGCL.

**ARTICLE IX
AMENDMENTS**

Section 9.1 Amendments. In furtherance and not in limitation of the powers conferred by the laws of the State of Delaware, the Board of Directors is expressly authorized to adopt, amend or repeal these Bylaws. Except as otherwise provided in the Certificate of Incorporation (including the terms of any Preferred Stock Designation that provides for a greater or lesser vote) or these Bylaws, and in addition to any other vote required by law, the affirmative vote of at least 66 $\frac{2}{3}$ % of the voting power of the stock outstanding and entitled to vote thereon, voting together as a single class, shall be required for the stockholders to adopt, amend or repeal, or adopt any provision inconsistent with, any provision of these Bylaws.

The foregoing Bylaws were adopted by the Board of Directors effective February 9, 2021.

DESCRIPTION OF THE REGISTRANT'S SECURITIES REGISTERED PURSUANT TO SECTION 12 OF THE SECURITIES EXCHANGE ACT OF 1934

The following is a brief description of the material provisions of the capital stock of Viant Technology Inc. (“we,” “us,” “our,” and the “Company”). As of December 31, 2020, our Class A common stock is the only class of our securities registered pursuant to Section 12 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). The following description of our capital stock does not purport to be complete and is subject to and qualified in its entirety by our amended and restated certificate of incorporation and our amended and restated bylaws, each of which are filed as exhibits the Annual Report on Form 10-K, of which this exhibit is a part, and the applicable provisions of Delaware law. We encourage you to read our amended and restated certificate of incorporation and our amended and restated bylaws and the applicable provisions of Delaware law for more information.

General

Our authorized capital stock consists of 450,000,000 shares of Class A common stock, \$0.001 par value per share (“Class A common stock”), 150,000,000 shares of Class B common stock, \$0.001 par value per share (“Class B common stock”), and 10,000,000 shares of “blank check” preferred stock, \$0.001 par value per share.

Common Stock

We have two classes of common stock: Class A and Class B, each of which has one vote per share. Holders of our Class A common stock and Class B common stock vote together as a single class on all matters presented to our stockholders for their vote or approval, except as provided in our amended and restated certificate of incorporation or as otherwise required by applicable law. Pursuant to our amended and restated certificate of incorporation, we may not amend, alter, repeal or waive the provisions of our amended and restated certificate of incorporation that relate to the terms of our capital stock without the approval of the holders of a majority of the then outstanding shares of our Class B common stock, voting as a class. Holders of the Class A common stock and Class B common stock, as the case may be, would also have a separate class vote if we subdivide, combine or reclassify shares of the other class without concurrently subdividing, combining or reclassifying shares of such class in a proportional manner. Pursuant to the Delaware General Corporation Law (“DGCL”), the holders of the outstanding shares of a class shall be entitled to vote as a class upon a proposed amendment, whether or not entitled to vote thereon by the certificate of incorporation, if the amendment would increase or decrease the par value of the shares of such class or alter or change the powers, preferences, or special rights of the shares of such class so as to affect them adversely.

Class A common stock

Voting. Holders of our Class A common stock are entitled to one vote for each share held of record on all matters submitted to a vote of stockholders. Stockholders do not have the ability to cumulate votes for the election of directors.

Dividends. Holders of our Class A common stock are entitled to receive dividends when and if declared by our board of directors out of funds legally available therefor, subject to any statutory or contractual restrictions on the payment of dividends and to any restrictions on the payment of dividends imposed by the terms of any outstanding preferred stock.

Dissolution and Liquidation. Upon our dissolution or liquidation or the sale of all or substantially all of our assets, after payment in full of all amounts required to be paid to creditors and to the holders of preferred stock having liquidation preferences, if any, the holders of our Class A common stock will be entitled to receive pro rata our remaining assets available for distribution.

No Preemptive Rights. Holders of our Class A common stock do not have preemptive, subscription, redemption or conversion rights.

Issuance of Additional Class A Common Stock. We may issue additional shares of Class A common stock from time to time, subject to applicable provisions of our amended and restated certificate of incorporation, amended and restated bylaws and Delaware law. We are obligated to issue Class A common stock (subject to the transfer and exchange restrictions set forth in the Viant Technology LLC Agreement) to Class B unitholders who exchange their Class B units of Viant Technology LLC for shares of our Class A common stock on a one-for-one basis (unless we elect to satisfy such exchange for cash). When a Class B unit is exchanged for a share of our Class A common stock, the corresponding share of our Class B common stock will automatically be retired.

Class B common stock

Voting. Holders of our Class B common stock are entitled to one vote for each share held of record on all matters submitted to a vote of stockholders. Stockholders do not have the ability to cumulate votes for the election of directors.

Dividends. Holders of our Class B common stock are not entitled to dividends in respect of their shares of Class B common stock.

Dissolution and Liquidation. Upon our dissolution or liquidation or the sale of all or substantially all of our assets, the holders of our Class B common stock will not be entitled to receive any distributions.

No Preemptive Rights. Holders of our Class B common stock do not have preemptive, subscription, redemption or conversion rights. The Class B common stock is subject to automatic retirement upon an exchange of a Class B unit of Viant Technology LLC for a share of Class A common stock.

Issuance of Additional Class B Common Stock. No additional issuance of shares of Class B common stock will occur, except to holders of Class B units as necessary to maintain a one-to-one ratio between the number of Class B units and the number of shares of Class B common stock outstanding, including in connection with a stock split, stock dividend, reclassification or similar transaction. In connection with an exchange of a Class B unit for Class A common stock, the corresponding share of Class B common stock will automatically be retired.

Preferred Stock

Our amended and restated certificate of incorporation provides that our board of directors has the authority, without further action by the stockholders, to issue up to 10,000,000 shares of preferred stock. Our board of directors is able to issue preferred stock in one or more series and determine the rights, preferences, privileges, qualifications and restrictions granted to or imposed upon our preferred stock, including dividend rights, conversion rights, voting rights, rights and terms of redemption, liquidation preferences and sinking fund terms, any or all of which may be greater than the rights of our common stock. Issuances of preferred stock could adversely affect the voting power of holders of our common stock and reduce the likelihood that holders of our common stock will receive dividend payments and payments upon liquidation. Any issuance of preferred stock could also have the effect of decreasing the market price of our common stock and could delay, deter or prevent a change in control of our company. Our board of directors does not presently have any plans to issue shares of preferred stock.

Limitations on Directors' Liability

Our governing documents limit the liability of, and require us to indemnify, our directors to the fullest extent permitted by the DGCL. The DGCL permits a corporation to limit or eliminate a director's personal liability to the corporation or the holders of its capital stock for breaches of directors' fiduciary duties as directors. This limitation is generally unavailable for acts or omissions by a director which (i) were not in good faith, (ii) were the result of intentional misconduct or a knowing violation of law, (iii) the director derived an improper personal benefit from (such as a financial profit or other advantage to which the director was not legally entitled) or (iv) breached the director's duty of loyalty. The DGCL also prohibits limitations on director liability under Section 174 of the DGCL, which relates to certain unlawful dividend declarations and stock repurchases. Our amended and restated certificate of incorporation and amended and restated bylaws include provisions that eliminate, to the extent allowable under the DGCL, the personal liability of directors or officers for monetary damages for actions taken as a director or

officer, as the case may be. Our amended and restated certificate of incorporation and amended and restated bylaws also provide that we must indemnify and advance reasonable expenses to our directors and officers to the fullest extent authorized by the DGCL. We are also expressly authorized to carry directors' and officers' insurance for our directors, officers and certain employees for certain liabilities. We maintain insurance that insures our directors and officers against certain losses and which insures us against our obligations to indemnify the directors and officers.

There is currently no pending litigation or proceeding involving any of our directors, officers or employees for which indemnification is being sought.

Exclusive Forum Clause

Our amended and restated certificate of incorporation provides that, unless we select or consent in writing to the selection of another forum, the Court of Chancery of the State of Delaware (or, if the Court of Chancery does not have jurisdiction, another state court or a federal court located within the State of Delaware) shall be the exclusive forum for any "internal corporate claims," as defined in our amended and restated certificate of incorporation. It is possible that a court could find our exclusive forum provision to be inapplicable or unenforceable. Although we believe this provision benefits us by providing increased consistency in the application of Delaware law in the types of lawsuits to which it applies, the provision may have the effect of discouraging lawsuits against our directors and officers. In addition, our amended and restated certificate of incorporation provides that the federal district courts of the United States will be the exclusive forum for resolving any complaint asserting a cause of action arising under the Securities Act of 1933, as amended (the "Securities Act"). We note, however, that there is uncertainty as to whether a court would enforce this provision and that investors cannot waive compliance with the federal securities laws and the rules and regulations thereunder. Section 22 of the Securities Act creates concurrent jurisdiction for state and federal courts over all suits brought to enforce any duty or liability created by the Securities Act or the rules and regulations thereunder. This forum selection provisions does not apply to claims brought to enforce a duty or liability created by the Exchange Act.

Any person or entity purchasing or otherwise acquiring any interest in shares of our capital stock is deemed to have notice of and consented to the foregoing provisions.

Delaware Takeover Statute

We are subject to Section 203 of the DGCL, an anti-takeover statute. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years following the time the person became an interested stockholder, unless (with certain exceptions) the business combination or the transaction in which the person became an interested stockholder is approved in a prescribed manner. Generally, a "business combination" includes a merger, asset or stock sale or other transaction resulting in a financial benefit to the interested stockholder. Generally, an "interested stockholder" is a person who, together with affiliates and associates, owns (or within three years prior to the determination of interested stockholder status, did own) 15% or more of a corporation's voting stock. The existence of this provision would be expected to have an anti-takeover effect with respect to transactions not approved in advance by the board of directors, including discouraging attempts that might result in a premium over the market price for the shares of common stock held by stockholders.

Provisions of Our Certificate of Incorporation and Bylaws to be Adopted and Delaware Law That May Have an Anti-Takeover Effect

Provisions of the DGCL and our amended and restated certificate of incorporation and amended and restated bylaws could make it more difficult to acquire our company by means of a tender offer, a proxy contest or otherwise, or to remove incumbent officers and directors. These provisions, summarized below, are intended to discourage coercive takeover practices and inadequate takeover bids and to encourage persons seeking to acquire control of us to first negotiate with our board of directors. We believe that the benefits of these provisions outweigh the disadvantages of discouraging certain takeover or acquisition proposals because, among other things, negotiation of these proposals could result in an improvement of their terms and enhance the ability of our board of directors to maximize stockholder value. However, these provisions may delay, deter or prevent a merger or acquisition of us

that a stockholder might consider is in its best interest, including those attempts that might result in a premium over the prevailing market price of our common stock.

Classified Board of Directors

Our amended and restated certificate of incorporation provides that our board of directors is divided into three classes of directors, with the classes as nearly equal in number as possible, designated Class I, Class II and Class III. Class I directors initially serve until the first annual meeting of stockholders following the effectiveness of our amended and restated certificate of incorporation; Class II directors initially serve until the second annual meeting of stockholders following the effectiveness of our amended and restated certificate of incorporation; and Class III directors shall initially serve until the third annual meeting of stockholders following the effectiveness of our amended and restated certificate of incorporation. Commencing with the first annual meeting of stockholders thereafter, directors of each class the term of which shall then expire shall be elected to hold office for a three-year term. The classification of directors has the effect of making it more difficult for stockholders to change the composition of our board of directors. Our amended and restated certificate of incorporation provides that the number of directors will be fixed from time to time exclusively pursuant to a resolution adopted by the board of directors, but must consist of not less than three nor more than eleven directors.

Removal of Directors; Vacancies

Our amended and restated certificate of incorporation and amended and restated bylaws provides that until Tim Vanderhook, Chris Vanderhook and Four Brothers 2 LLC cease to beneficially own a majority of the combined voting power of our common stock (the "Triggering Event"), any director may be removed with or without cause by the affirmative vote of a majority of our outstanding shares of common stock. Our amended and restated certificate of incorporation and amended and restated bylaws provides that after a Triggering Event, any director may only be removed for cause by the affirmative vote of at least 66 2/3% of the voting power of our outstanding shares of common stock. Each director is to hold office until the next election of the class for which such director shall have been chosen and until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. Vacancies and newly created directorships on the board of directors may be filled at any time by the remaining directors or our stockholders, provided that, after a Triggering Event, vacancies on our board of directors, whether resulting from an increase in the number of directors or the death, removal or resignation of a director, will be filled only by our board of directors and not by stockholders.

No Cumulative Voting

The DGCL provides that a stockholder's right to vote cumulatively in the election of directors does not exist unless the certificate of incorporation specifically provides otherwise. Our amended and restated certificate of incorporation does not provide for cumulative voting.

Requirements for Advance Notification of Stockholder Meetings, Nominations and Proposals

Our amended and restated bylaws provides that special meetings of the stockholders may be called only by or at the direction of the board of directors, the chairperson of our board or the chief executive officer with the concurrence of a majority of the board of directors. Our amended and restated bylaws prohibit the conduct of any business at a special meeting other than as specified in the notice for such meeting. These provisions may have the effect of deferring, delaying or discouraging hostile takeovers, or changes in control or management of our company.

Our amended and restated bylaws establish advance notice procedures with respect to stockholder proposals and the nomination of candidates for election as director. In order for any matter to be "properly brought" before a meeting, a stockholder will have to comply with such advance notice procedures and provide us with certain information. Our amended and restated bylaws allow the chairman of the meeting of stockholders to adopt rules and regulations for the conduct of meetings which may have the effect of precluding the conduct of certain business at a meeting if such rules and regulations are not followed. These provisions may also defer, delay or discourage a

potential acquirer from conducting a solicitation of proxies to elect the acquirer's own slate of directors or otherwise attempting to influence or obtain control of our company.

Supermajority Voting for Amendments to Our Governing Documents

Any amendment to our amended and restated certificate of incorporation will require the affirmative vote of at least 66 2/3% of the voting power of all shares of our common stock then outstanding. Our amended and restated certificate of incorporation and amended and restated bylaws provide that the board of directors is expressly authorized to adopt, amend or repeal our bylaws and that our stockholders may amend our bylaws only with the approval of at least 66 2/3% of the voting power of all shares of our common stock then outstanding.

Stockholder Action by Written Consent

The DGCL permits any action required to be taken at any annual or special meeting of the stockholders to be taken without a meeting, without prior notice and without a vote if a consent or consents in writing, setting forth the action so taken, is signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares of stock entitled to vote thereon were present and voted, unless the certificate of incorporation provides otherwise. Our amended and restated certificate of incorporation and amended and restated bylaws precludes stockholder action by written consent after the date of the Triggering Event.

Authorized but Unissued Shares

Our authorized but unissued shares of common stock and preferred stock are available for future issuance without stockholder approval. The DGCL does not require stockholder approval for any issuance of authorized shares. However, the applicable stock exchange listing requirements require stockholder approval of certain issuances equal to or exceeding 20% of the then-outstanding voting power or the then-outstanding number of shares of common stock. No assurances can be given that our shares will remain so listed. We may use additional shares for a variety of corporate purposes, including future public offerings to raise additional capital, corporate acquisitions and employee benefit plans. As discussed above, our board of directors has the ability to issue preferred stock with voting rights or other preferences, without stockholder approval. The existence of authorized but unissued shares of common stock and preferred stock could render more difficult or discourage an attempt to obtain control of our company by means of a proxy contest, tender offer, merger or otherwise.

Limitations on Liability and Indemnification of Officers and Directors

The limitation of liability and indemnification provisions in our amended and restated certificate of incorporation and amended and restated bylaws may discourage stockholders from bringing a lawsuit against directors for breach of their fiduciary duties. These provisions may also have the effect of reducing the likelihood of derivative litigation against directors and officers, even though such an action, if successful, might otherwise benefit us and our stockholders. In addition, stockholder investment may be adversely affected to the extent we pay the settlement costs and damage awards against directors and officers pursuant to these indemnification provisions.

Transfer Agent and Registrar

The Transfer Agent and Registrar for our Class A common stock is American Stock Transfer & Trust Company, LLC.

Listing

Our Class A common stock is listed on Nasdaq under the symbol "DSP."

**SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF
VIANT TECHNOLOGY LLC
a Delaware limited liability company
dated as of February 9, 2021**

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**SECOND AMENDED AND RESTATED
LIMITED LIABILITY COMPANY AGREEMENT
OF VIANT TECHNOLOGY LLC**

THIS SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (this “Agreement”) of VIANT TECHNOLOGY LLC, a Delaware limited liability company (the “Company”), dated as of February 9, 2021, is entered into by and among Tim Vanderhook, Chris Vanderhook, Four Brothers 2 LLC, and Viant Technology Equity Plan LLC (the “Initial Members”), and Viant Technology Inc., a Delaware corporation (the “Managing Member”).

WHEREAS, the Company was formed as a limited liability company pursuant to the Delaware Limited Liability Company Act, 6 Del. C. §§ 18-101, et seq. (as it may be amended from time to time, and any successor to such statute, the “Act”), under the name “TI Newco LLC” by the filing of a Certificate of Formation (the “Initial Certificate of Formation”) of the Company in the office of the Secretary of State of the State of Delaware on March 2, 2016 (the “Formation Date”);

WHEREAS, an amendment to the Initial Certificate of Formation (together with any further amendments, the “Certificate of Formation”) changing the Company’s name to Viant Technology LLC was filed with the Secretary of State of the State of Delaware on March 2, 2016;

WHEREAS, Tim Vanderhook, Chris Vanderhook, Viant Technology Equity Plan LLC, and Viant Technology Holding Inc. entered into a limited liability agreement of the Company on October 4, 2016 (the “Initial Agreement”);

WHEREAS, pursuant to a Unit Repurchase Agreement, dated September 15, 2019, by and among the Company, Viant Technology Holding Inc., Tim Vanderhook, and Chris Vanderhook, the Company redeemed all of the Preferred Units held by Viant Technology Holding Inc., terminating Viant Technology Holding Inc.’s Membership Interest in the Company;

WHEREAS, upon the withdrawal of Viant Technology Holding Inc., the Company and the Initial Members amended and restated the Initial Agreement on October 31, 2019 (the “First Amended and Restated Agreement”);

WHEREAS, on February 9, 2021, the Managing Member issued shares of its Class B Common Stock to the Initial Members in connection with its initial public offering of shares of its Class A Common Stock (the “IPO”);

WHEREAS, the Managing Member will contribute the net proceeds of the IPO to the Company in exchange for Class A Common Units, and the Managing Member will be admitted to the Company as Managing Member;

WHEREAS, the Managing Member and the Company will engage or have engaged in certain other transactions described in the registration statement on Form S-1 filed in connection with the IPO (collectively, the “IPO Reorganization”); and

WHEREAS, the Initial Members now desire to approve and document the actions described in these recitals and to amend and restate the First Amended and Restated Agreement to read in its entirety as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Agreement, intending to be legally bound, agree as follows:

ARTICLE I

GENERAL PROVISIONS

Section 1.1 Formation and Continuation. The Company is a limited liability company previously formed and continued pursuant to the provisions of the Act and upon the terms and subject to the conditions set forth in this Agreement. Except as expressly provided in this Agreement to the contrary, the rights and obligations of the Members and the administration and termination of the Company shall be governed by the Act. The Certificate of Formation and all actions taken or to be taken by any employee of Gibson, Dunn & Crutcher LLP and any other person who executed and filed or who executes and files, after the date of this Agreement, the Certificate of Formation are hereby adopted and ratified, or authorized, as the case may be.

Section 1.2 Name. The name of the Company is “Viant Technology LLC.” The Company may also conduct business at the same time under one or more fictitious names if the Managing Member determines that such is in the best interests of the Company. The Company may change its name, from time to time, in accordance with Law.

Section 1.3 Principal Place of Business; Other Places of Business. The principal business office of the Company is located at 2722 Michelson Drive, Suite 100, Irvine, California 92612, or such other place within or outside the State of Delaware as the Managing Member may from time to time designate. The Company may maintain offices and places of business at such other place or places within or outside the State of Delaware as the Managing Member deems advisable.

Section 1.4 Designated Agent for Service of Process. So long as required by the Act, the Company shall continuously maintain a registered office and a designated and duly qualified agent for service of process on the Company in the State of Delaware. The address of the registered office of the Company in the State of Delaware shall be as set forth in the Certificate of Formation. The Company’s registered agent for service of process at such address shall also be as set forth in the Certificate of Formation.

Section 1.5 Term. The term of the Company commenced on the Formation Date and shall continue until the Company is dissolved in accordance with the Act or this Agreement. Notwithstanding the dissolution of the Company, the existence of the Company shall continue until its termination pursuant to this Agreement or as otherwise provided in the Act.

Section 1.6 No State Law Partnership. The Members intend that the Company shall not be a partnership (including a limited partnership) or joint venture, and that no Member shall be an

agent, partner or joint venturer of any other Member, for any purposes other than for U.S. federal, state, and local tax purposes, and this Agreement shall not be construed to suggest otherwise. Each Member hereby acknowledges and agrees that, except as expressly provided herein, in performing its obligations or exercising its rights under this Agreement, it is acting independently and is not acting in concert with, on behalf of, as agent for, or as joint venturer of, any other Member. Other than in respect of the Company, nothing contained in this Agreement shall be construed as creating a corporation, association, joint stock company, business trust, or organized group of Persons, whether incorporated or not, among or involving any Member or its Affiliates, and nothing in this Agreement shall be construed as creating or requiring any continuing relationship or commitment as between such parties other than as specifically set forth in this Agreement.

Section 1.7 Business Purpose. The Company may carry on any Lawful business, purpose or activity in which a limited liability company may be engaged under Law.

Section 1.8 Powers. Subject to the limitations set forth in this Agreement, the Company will possess and may exercise all of the powers and privileges granted to it by the Act, by any other Law, or by this Agreement, together with all powers incidental thereto, so far as such powers are necessary or convenient to the conduct, promotion or attainment of the purposes of the Company set forth in Section 1.7.

Section 1.9 Certificates; Filings. The Certificate of Formation was previously filed on behalf of the Company in the office of the Secretary of State of the State of Delaware as required by the Act. The Managing Member may execute and file any duly authorized amendments to the Certificate of Formation from time to time in a form prescribed by the Act. The Managing Member shall also cause to be made, on behalf of the Company, such additional filings and recordings as the Managing Member shall deem necessary or advisable. If requested by the Managing Member, the Members shall promptly execute all certificates and other documents consistent with the terms of this Agreement necessary for the Managing Member to accomplish all filing, recording, publishing, and other acts as may be appropriate to comply with all requirements for (a) the formation and operation of a limited liability company under the Laws of the State of Delaware, (b) if the Managing Member deems it advisable, the operation of the Company as a limited liability company, in all jurisdictions in which the Company proposes to operate, and (c) all other filings required (or determined by the Managing Member to be necessary or appropriate) to be made by the Company.

Section 1.10 Representations and Warranties by the Members.

(a) No Conflict. Each Member that is an individual (including each Additional Member or Substituted Member as a condition to becoming an Additional Member or a Substituted Member) represents and warrants to, and covenants with, each other Member that (i) the execution of this Agreement and the consummation of the transactions contemplated by this Agreement to be performed by such Member will not result in a breach or violation of, or a default under, any material agreement by which such Member or any of such Member's property is bound, or any statute, regulation, order or other Law to which such Member is subject and (ii) this Agreement is binding upon, and enforceable against, such Member in accordance with its terms.

(b) Organization and Qualification; Authority. Each Member that is not an individual (including each Additional Member or Substituted Member as a condition to becoming an Additional Member or a Substituted Member) represents and warrants to, and covenants with, each other Member that (i) the execution of this Agreement and all transactions contemplated by this Agreement to be performed by it have been duly authorized by all necessary action, including that of its general partner(s), managing member(s), committee(s), trustee(s), beneficiaries, directors and/or stockholder(s) (as the case may be) as required, (ii) the execution of this Agreement and consummation of such transactions will not result in a breach or violation of, or a default under, its partnership or operating agreement, trust agreement, charter or bylaws (as the case may be), any material agreement by which such Member or any of such Member's properties or any of its partners, members, beneficiaries, trustees or stockholders (as the case may be) is or are bound, or any statute, regulation, order or other Law to which such Member or any of its partners, members, trustees, beneficiaries or stockholders (as the case may be) is or are subject, and (iii) this Agreement is binding upon, and enforceable against, such Member in accordance with its terms.

(c) Securities Laws. Each Member (including each Additional Member or Substituted Member as a condition to becoming an Additional Member or Substituted Member) represents and warrants that it is an "accredited investor" as defined in Rule 501 promulgated under the Securities Act and represents, warrants, and agrees that it has acquired and continues to hold its interest in the Company for its own account for investment purposes only and not for the purpose of, or with a view toward, the resale or distribution of all or any part thereof, and not with a view toward selling or otherwise distributing such interest or any part thereof at any particular time or under any predetermined circumstances. Each Member further represents and warrants that it is a sophisticated investor, able and accustomed to handling sophisticated financial matters for itself, and that it has a sufficiently high net worth that it does not anticipate a need for the funds that it has invested in the Company in what it understands to be a speculative and illiquid investment.

(d) Survival of Representations and Warranties. The representations and warranties contained in Sections 1.10(a), 1.10(b), and 1.10(c) shall survive the execution and delivery of this Agreement by each Member (and, in the case of an Additional Member or a Substituted Member, the admission of such Additional Member or Substituted Member as a Member in the Company), and the dissolution, liquidation, and termination of the Company.

(e) No Representations as to Performance. Each Member (including each Additional Member or Substituted Member as a condition to becoming an Additional Member or Substituted Member) hereby acknowledges that no representations as to potential profit, cash flows, funds from operations or yield, if any, in respect of the Company or the Managing Member have been made by any Member or any employee or representative or Affiliate of any Member, and that projections and any other information, including financial and descriptive information and documentation, that may have been in any manner submitted to such Member shall not constitute any representation or warranty of any kind or nature, express or implied.

(f) Modification of Representations and Warranties. The Managing Member may permit the modification of any of the representations and warranties contained in Sections 1.10(a), 1.10(b), and 1.10(c), as applicable, to any Member (including any Additional Member or Substituted Member or any transferee of either) *provided*, that such representations and warranties, as modified, shall be set forth in either (i) a Unit Designation applicable to the Units held by such Member or (ii) a separate writing addressed to the Company.

ARTICLE II

UNITS; CAPITAL CONTRIBUTIONS

Section 2.1 Units.

(a) Generally. The interests of the Members in the Company are divided into, and represented by, the Units, each having the rights and obligations specified in this Agreement.

(b) Classes. The Units are initially divided into:

(i) “Class A Common Units,” which are issuable to the Managing Member and such other persons as the Managing Member shall determine; and

(ii) “Class B Common Units,” which are issuable to the Members (other than the Managing Member) in the IPO Reorganization and as otherwise provided in this Agreement. Each Class B Common Unit shall be associated with a share of Class B Common Stock issued to the holder of the Class B Common Unit.

(iii) Other Classes of Units. The Company may issue additional Units or create additional classes, series, sub-classes, or sub-series of Units in accordance with this Agreement.

Section 2.2 Capital Contributions of the Members; No Deficit Restoration Obligation.

(a) Capital Contributions. The Members made, shall be treated as having made, or have agreed to make, Capital Contributions to the Company and were issued the Common Units indicated on Annex A. Except as provided by Law or in this Agreement, the Members shall have no obligation or, except as otherwise provided in this Agreement or with the prior written consent of the Managing Member, right to make any other Capital Contributions or any loans to the Company.

(b) No Deficit Restoration Obligation. No Member shall have an obligation to make any contribution to the capital of the Company as the result of a deficit balance in its Capital Account, and any such deficit shall not be considered a Debt owed to the Company or to any other Person for any purpose whatsoever.

Section 2.3 No Interest; No Return. No Member shall be entitled to interest on its Capital Contribution or on such Member's Capital Account balance. Except as provided by this Agreement, any Unit Designation, or by Law, no Member shall have any right to demand or receive a withdrawal or the return of its Capital Contribution from the Company. Except to the extent provided in this Agreement or in any Unit Designation, no Member shall have priority over any other Member as to distributions, the return of Capital Contributions, or the allocation of Net Profits and Net Losses.

Section 2.4 Issuances of Additional Units. Subject to the rights of any Member set forth in a Unit Designation:

(a) General. The Company may issue additional Units, for any Company purpose, at any time or from time to time, to the Members (including the Managing Member) or to any other Person, and may admit any such Person as an Additional Member for such consideration and on such terms and conditions as shall be established by the Company. Any additional Units may be issued in one or more classes, or one or more series of any of such classes, with such designations, preferences, conversion or other rights, voting powers, restrictions, rights to distributions, qualifications and terms and conditions of redemption (including rights that may be senior or otherwise entitled to preference over existing Units) as shall be determined by the Company and set forth in a written document attached to and made an exhibit to this Agreement, which exhibit shall be an amendment to this Agreement and shall be incorporated into this Agreement by reference (each, a “Unit Designation”). Upon the issuance of any additional Unit, the Managing Member shall amend the Register and the books and records of the Company as appropriate to reflect such issuance. Except to the extent specifically set forth in any Unit Designation, a Unit of any class or series other than a Common Unit shall not entitle the holder thereof to vote on, or consent to, any matter.

(b) Issuances to the Managing Member. No additional Units shall be issued to the Managing Member unless:

(i) The additional Units are issued to all Members holding Common Units in proportion to their respective Percentage Interests in the Common Units;

(ii) The additional Units are (x) Class A Common Units issued in connection with an issuance of Class A Common Stock or issued with appropriate adjustments to the Exchange Rate in accordance with Section 12.4, (y) Class B Common Units issued in connection with an issuance of Class B Common Stock, or (z) Equivalent Units (other than Common Units) issued in connection with an issuance of Preferred Stock, New Securities, or other interests in the Managing Member (other than Common Stock), and, in each case, the Managing Member contributes to the Company the net proceeds received in connection with the issuance of such Common Stock, Preferred Stock, New Securities, or other interests in the Managing Member;

(iii) There is a recapitalization of the stock of the Managing Member;

(iv) The additional Units are issued upon the conversion, redemption or exchange of Debt, Units or other securities issued by the Company; or

(v) The additional Units are issued in accordance with the express terms of the other provisions of this Article II.

(c) Issuances of Class B Common Units. No additional Class B Common Units shall be issued except (i) in the event of a recapitalization of the Capital Stock of the Managing Member, including any stock split, stock dividend, reclassification or similar transaction, or (ii) if a corresponding number of shares of Class B Common Stock is also issued by the Managing Member to the holder of such Class B Common Units.

(d) No Preemptive Rights. Except as expressly provided in this Agreement or in any Unit Designation, no Person shall have any preemptive, preferential, participation or similar right or rights to subscribe for or acquire any Membership Interest.

Section 2.5 Additional Funds and Additional Capital Contributions

(a) General. The Company may, at any time and from time to time, determine that it requires additional funds (“Additional Funds”) for the acquisition or development of additional Assets, for the redemption of Units, or for such other purposes as the Company may determine. Additional Funds may be obtained by the Company in any manner provided in, and in accordance with, the terms of this Section 2.5 without the approval of any Member or any other Person.

(b) Additional Capital Contributions. The Company may obtain any Additional Funds by accepting Capital Contributions from any Members or other Persons. In connection with any such Capital Contribution, the Company is hereby authorized from time to time to issue additional Units (as set forth in Section 2.4 above) in consideration for such Capital Contribution, and, if appropriate, the Percentage Interests of the Members shall be adjusted to reflect the issuance of such additional Units.

(c) Loans by Third Parties. The Company may obtain any Additional Funds by incurring Debt payable to any Person (other than, except as contemplated in Section 2.5(d), the Managing Member) upon such terms as the Company determines appropriate, including making such Debt convertible, redeemable, or exchangeable for Units; *provided, however*, that the Company shall not incur any such Debt if any Member would be personally liable for the repayment of all or any portion of such Debt (unless that Member agrees otherwise).

(d) Loans by Managing Member. The Managing Member, on behalf of the Company, may obtain any Additional Funds by causing the Company to incur Debt payable to the Managing Member if (i) the Debt is, to the extent permitted by Law, on substantially the same terms and conditions (including interest rate, repayment schedule, and conversion, redemption, repurchase and exchange rights) as any Debt incurred by or on behalf of the Managing Member for the purpose of providing funds to the Company, the net proceeds of which are lent to the Company to provide such Additional Funds, or (ii) the Debt is on terms and conditions no less favorable to the Company than would be available to the Company from any third party.

(e) Issuance of Securities by the Managing Member.

(i) Unless otherwise agreed to by the Members, after the completion of the IPO and the initial issuance of the Class B Common Stock by the Managing Member, except in the case of a Liquidity Offering for purposes of a Cash Settlement, the Managing Member shall not issue any additional Capital Stock or New Securities unless the Managing Member contributes the net proceeds received from the issuance of such additional Capital Stock or New Securities (as the case may be) and from the exercise of the rights contained in any such additional Capital Stock or New Securities to the Company in exchange for (i) in the case of an issuance of Class A Common Stock, Class A Common Units, (ii) in the case of an issuance of Class B Common Stock, Class B Common Units, or (iii) in the case of an issuance of Preferred Stock or New Securities,

Equivalent Units. If at any time any Preferred Stock or New Securities are issued that are convertible into or exercisable for Class A Common Stock or another security of the Managing Member, then upon any such conversion or exercise, the corresponding Equivalent Unit shall be similarly exercised or otherwise converted, as applicable, and an equivalent number of Class A Common Units or other Equivalent Units of the Company. It is the intent of the parties that the Managing Member will always own Units equivalent to its outstanding Capital Stock, except as provided pursuant to Section 12.4, and the parties hereby acknowledge that the Managing Member may make reasonable adjustments to its own capitalization, subject to applicable Law and the terms of any such outstanding Capital Stock, in order to effect such parity.

(ii) If the Managing Member issues any additional Capital Stock or New Securities and contributes the net proceeds, if any, received from such issuance to the Company, the Company is authorized to issue a number of Common Units or Equivalent Units to the Managing Member equal to the number of shares of Capital Stock or New Securities so issued, in accordance with this Section 2.5(e) without any further act, approval or vote of any Member or any other Person. For the avoidance of doubt, New Securities that are derivative securities issued under any Incentive Compensation Plan of the Managing Member shall not require issuance of Equivalent Units by the Company until such time as such derivative securities are exercised and subsequently issued.

(f) Reimbursement of Issuance Expenses. If the Managing Member issues additional Capital Stock or New Securities and subsequently contributes the net proceeds received from such issuance to the Company, then the Company shall reimburse or assume (on an after-tax basis) the Managing Member's expenses associated with such issuance, including any underwriting discounts or commissions.

(g) Repurchase or Redemption of Capital Stock. If, at any time, any shares of Capital Stock or New Securities are repurchased, redeemed or otherwise retired (whether by exercise of a put or call, automatically or by means of another arrangement) by the Managing Member, then the Managing Member shall cause the Company, immediately prior to such repurchase, redemption or retirement of such Capital Stock or New Securities, to redeem, repurchase or otherwise retire a corresponding number of Class A Units, Class B Units or Equivalent Units held by the Managing Member, upon the same terms and for the same consideration as the Capital Stock or New Securities to be repurchased, redeemed or retired. Notwithstanding any provision to the contrary in this Agreement, the Company shall not make any repurchase or redemption if such repurchase or redemption would violate any applicable Law.

ARTICLE III

DISTRIBUTIONS

Section 3.1 General Distributions. Subject to the terms of any Unit Designation, the Company shall distribute an amount of Available Cash when, as, and if determined by the Managing Member to the Members *pro rata* in accordance with their Common Units.

Section 3.2 Tax Distributions.

(a) Generally. If the amount distributed to a Member pursuant to Section 3.1 in respect of a Fiscal Year is less than that Member's Assumed Tax Liability, the Company shall distribute an amount of Available Cash to the Members such that each Member receives distributions of Available Cash in respect of each Fiscal Year in an amount at least equal to the Member's Assumed Tax Liability for such Fiscal Year (each such distribution, a "Tax Distribution"). Any Tax Distribution made to a Member under this Section 3.2(a) shall be treated as an advance against, and shall reduce, future amounts otherwise distributable to such Member under Section 3.1. Except as provided in Section 3.2(d), all Tax Distributions shall be made *pro rata* in accordance with Units.

(b) Calculation of Assumed Tax Liability. For purposes of calculating the amount of each Member's Tax Distributions under Section 3.2(a), a Member's "Assumed Tax Liability" means an amount equal to the product of:

(i) the sum of (A) the net taxable income and gain allocated to that Member for U.S. federal income tax purposes in the Fiscal Year and (B) to the extent (x) determined by the Company in its sole discretion and (y) attributable to the Company, the amount the Member is required to include in income by reason of Code sections 707(c) (but not including guaranteed payments for services within the meaning of Code section 707(c)), 951(a), and 951A(a); *multiplied by*

(ii) the highest combined effective U.S. federal, state, and local marginal rate of tax applicable to an individual resident in Los Angeles, California (unless otherwise determined by the Company) for the Fiscal Year (such tax rate, the "Assumed Tax Rate").

The calculation required by this Section 3.2(b) shall be made (i) taking into account (w) the character of the income or gain and (x) any limitations on, or the availability of, deductions and net operating losses, and disregarding (y) the effect of any special basis adjustments under Code section 743(b) and (z) the effect of the allocations required under Code section 704(c)(1)(A) (and the principles thereof).

(c) Timing of Tax Distributions. If reasonably practicable, the Company shall make distributions of the estimated Tax Distributions in respect of a Fiscal Year on a quarterly basis to facilitate the payment of quarterly estimated income taxes, taking into account amounts previously distributed by reason of this Section 3.2. Not later than sixty (60) Business Days after the end of the Fiscal Year, the Company shall make a final Tax Distribution in an amount sufficient to fulfill the Company's obligations under Section 3.2(a).

(d) Impact of Insufficient Available Cash. If the amount of Tax Distributions to be made exceeds the amount of the Available Cash, the Tax Distribution to which each Member is entitled shall be reduced in accordance with the provisions of this Section 3.2(d) (each Member's share of that reduction, the "Tax Distribution Shortfall Amount"). Cash available for distribution as a Tax Distribution shall first be distributed to the Managing Member in an amount equal to the full amount of its Tax Distribution (calculated by substituting the words "a corporation doing

business” for “an individual resident” in the definition of “Assumed Tax Rate”). The balance, if any, of cash available for distribution as a Tax Distribution shall be distributed:

(i) First, to the Members (other than the Managing Member) *pro rata* in accordance with their Units in an amount such that each such Member has received distributions pursuant to this Section 3.2(b) not less than their Assumed Tax Liability (calculated by substituting the words “a corporation doing business” for “an individual resident” in the definition of “Assumed Tax Rate”); and

(ii) Thereafter, the balance, if any, to the Members (including the Managing Member) *pro rata* in accordance with their Units until each Member has received the full amount of its Tax Distribution calculated in accordance with Section 3.2(b).

Any Tax Distribution Shortfall Amounts will be carried forward to subsequent Fiscal Years and will be distributed when and to the extent that the Company has sufficient Available Cash, and distribution of any Tax Distribution Shortfall Amounts shall for all purposes of this Agreement be treated as having been made and reduce future amounts due to each Member under Section 3.1.

(e) No Tax Distributions on Liquidation. No Tax Distributions shall be made in connection with the liquidation of the Company or a Member’s Interest in the Company.

Section 3.3 Distributions in Kind. No Member may demand to receive property other than cash as provided in this Agreement. The Company may make a distribution in kind of Assets to the Members, and if a distribution is made both in cash and in kind, such distribution shall be made so that, to the fullest extent practical, the percentage of the cash and any other Assets distributed to each Member entitled to such distribution is identical.

Section 3.4 Amounts Withheld. Each Member acknowledges and agrees that the Company may be required by Law to deduct and withhold taxes or to fulfill other similar obligations of such Member on any amount paid, distributed, disbursed, or allocated by the Company to that Member, including upon liquidation, and any transferee of a Member’s interest or a Substituted Member shall, by reason of such Transfer or substitution, acknowledge, and agree to any such withholding by the Company, including withholding to discharge obligations of the Company with respect to prior distributions, allocations, or an Imputed Underpayment Share (to the extent not otherwise borne by the transferor Member pursuant to Section 7.5). All amounts withheld pursuant to this Section 3.4 shall, except as otherwise determined by the Company pursuant to Section 7.5(c)(ii), be treated as amounts distributed to such Person pursuant to the provision of this Agreement that would have applied if such amount had actually been distributed.

Section 3.5 Distributions to Reflect Additional Units. If the Company issues additional Units pursuant to the provisions of Article II, subject to the provisions of any a Unit Designation, the Managing Member is authorized to make such revisions to this Article III and to Article VI as it determines are reasonably necessary or desirable to reflect the issuance of such additional Units, including making preferential distributions to certain classes of Units.

Section 3.6 Other Distribution Rules.

(a) Transfers. From and after the Transfer of a Unit, distributions (including Tax Distributions) made to the transferor Member, along with any withholding or deduction in respect of any such distribution, shall be treated as having been made to the transferee unless otherwise determined by the Company.

(b) Record Date for Distributions. The Company may designate a Record Date for purposes of calculating and giving effect to distributions. All distributions shall be made to the holders of record as of the applicable Record Date.

(c) Over-Distributions. If the Company distributes to a Member more than the amount to which the Member is entitled (e.g., by reason of an accounting error), the Member shall, upon written notice of the over-distribution delivered to the Member within one year of the over-distribution, promptly return the over-distribution to the Company. For the avoidance of doubt, this Section 3.6(c) applies to any distribution made under this Agreement.

(d) Reimbursements of Preformation Capital Expenditures. To the extent a distribution (or deemed distribution resulting from a reduction in a Member's share of Company liabilities for federal tax purposes) would otherwise be treated as proceeds in a sale under Code section 707(a)(2)(B), the Members intend such actual or deemed distribution to reimburse preformation capital expenditures under Treas. Reg. § 1.707-4(d) to the maximum extent permitted by Law.

(e) Limitation on Distributions. Notwithstanding any provision to the contrary contained in this Agreement, neither the Company nor the Managing Member on behalf of the Company shall make a distribution to any Member if such distribution would violate the Act or other Law, or to the extent such distribution would result in the Company or any of its Subsidiaries being in default under any material agreement.

ARTICLE IV

MANAGEMENT AND OPERATIONS

Section 4.1 Management.

(a) Authority of Managing Member. Except as otherwise provided in this Agreement, the Managing Member shall have full, exclusive, and complete discretion to manage and control the business and affairs of the Company, to make all decisions affecting the business and affairs of the Company, and to do or cause to be done any and all acts, at the expense of the Company, as the Managing Member deems necessary or appropriate to accomplish the purposes and direct the affairs of the Company. The Managing Member shall have the exclusive power and authority to bind the Company, except and to the extent that such power is expressly delegated in writing to any other Person by the Managing Member, and such delegation shall not cause the Managing Member to cease to be a Member or the Managing Member of the Company. The Managing Member shall be an agent of the Company's business, and the actions of the Managing Member taken in such capacity and in accordance with this Agreement shall bind the Company. The Managing Member shall at all times be a Member of the Company. The Managing Member

may not be removed by the Members, with or without cause, except with the consent of the Managing Member. Any determinations to be made by the Company pursuant to this Agreement shall be made by the Managing Member, subject to the rights of any Member set forth in Section 4.1(g).

(b) Determinations to be Made by Managing Member. The determination as to any of the following matters, made by or at the direction of the Managing Member consistent with the Act and this Agreement, shall be final and conclusive and shall be binding upon the Company and every Member:

- (i) the Assets available for distribution or the redemption of Units at any time;
- (ii) the amount and timing of any distribution;
- (iii) the amount, purpose, time of creation, increase or decrease, alteration, or cancellation of any reserves or charges and the propriety thereof;
- (iv) the Fair Market Value, or any sale, bid or asked price to be applied in determining the Fair Market Value, of any Asset;
- (v) any matter relating to the acquisition, holding, and disposition of any Asset; or
- (vi) any other matter relating to the business and affairs of the Company as required or permitted by Law, this Agreement, or otherwise to be determined by the Managing Member.

(c) Appointment of Officers. The Managing Member may, from time to time, appoint such officers and establish such management and/or advisory boards or committees of the Company as the Managing Member deems necessary or advisable, each of which shall have such powers, authority, and responsibilities as are delegated in writing by the Managing Member from time to time. Each such officer and/or board or committee member shall serve at the pleasure of the Managing Member.

(d) Major Transactions. Except as otherwise expressly provided in this Agreement or required by any non-waivable provision of the Act or other Law, no Member (acting in such capacity) other than the Managing Member shall (x) have any right to vote on or consent to any other matter, act, decision or document involving the Company or its business or any other matter, or (y) take part in the day-to-day management, or the operation or control, of the business and affairs of the Company. Without limiting the generality of the foregoing, the Managing Member may cause the Company, without the consent or approval of any other Member, to enter into any of the following in one or a series of related transactions: (i) any merger, (ii) any acquisition, (iii) any consolidation, (iv) any sale, lease or other transfer or conveyance of Assets, (v) any recapitalization or reorganization of outstanding securities, (vi) any merger, sale, lease, spin-off, exchange, transfer or other disposition of a Subsidiary, division or other business, (vii) any issuance of Debt or equity securities (subject to any limitations expressly provided for herein) or (viii) any incurrence of Debt. Except to the extent expressly delegated in writing by the

Managing Member, no Member or Person other than the Managing Member shall be an agent for the Company or have any right, power or authority to transact any business in the name of the Company or to act for or on behalf of or to bind the Company.

(e) Bankruptcy. Only the Managing Member may commence a voluntary case on behalf of, or an involuntary case against, the Company under a chapter of Title 11 U.S.C. by the filing of a “petition” (as defined in 11 U.S.C. 101(42)) with the United States Bankruptcy Court. Any such petition filed by any other Member, to the fullest extent permitted by Law, shall be deemed an unauthorized and bad faith filing and all parties to this Agreement shall use their best efforts to cause such petition to be dismissed.

(f) Amendment of Agreement. Subject to the rights of any Member set forth in a Unit Designation and Section 4.1(g), the Managing Member shall have the power, without the Consent of a Majority-in-Interest of the Members or the consent or approval of any Member, to amend this Agreement as may be required to facilitate or implement any of the following purposes:

(i) To add to the obligations of the Managing Member or surrender any right or power granted to the Managing Member or any Affiliate of the Managing Member for the benefit of the Members;

(ii) To reflect a change that is of an inconsequential nature or does not adversely affect the Members in any material respect, or to cure any ambiguity, correct or supplement any provision in this Agreement not inconsistent with Law or with other provisions, or make other changes with respect to matters arising under this Agreement that will not be inconsistent with Law or with the provisions of this Agreement;

(iii) To satisfy any requirements, conditions, or guidelines contained in any order, directive, opinion, ruling or regulation of a federal or state agency or contained in federal or state Law;

(iv) To reflect the admission, substitution, or withdrawal of Members, the Transfer of any Membership Interest, this issuance of additional Units, or the termination of the Company in accordance with this Agreement, and to amend the Register in connection with such admission, substitution, withdrawal, or Transfer;

(v) To set forth or amend the designations, preferences, conversion or other rights, voting powers, restrictions, limitations as to distributions, qualifications or terms or conditions of redemption of any additional Units issued pursuant to Article II;

(vi) If the Company is the Surviving Company in any Termination Transaction, to modify Section 12.1 or any related definitions to provide the holders of interests in such Surviving Company rights that are consistent with Section 8.7(b)(iii); and

(vii) To reflect any other modification to this Agreement as is reasonably necessary or appropriate for the business or operations of the Company or the Managing Member and that does not violate Section 4.1(g).

(g) Certain Actions Requiring Member Consent. Notwithstanding anything in Article XI to the contrary, this Agreement shall not be amended, and no action may be taken by the Managing Member, without the consent of each Member adversely affected thereby, if any, if such amendment or action would:

(i) Modify the limited liability of a Member or increase the obligation of a Member to make a Capital Contribution to the Company;

(ii) Adversely alter the rights of any Member to receive the distributions to which such Member is entitled pursuant to Article III or Section 10.3(a)(iii);

(iii) Convert the Company into a corporation or would cause the Company to be classified as a corporation for federal income tax purposes (other than in connection with a Termination Transaction); or

(iv) Amend this Section 4.1(g);

provided, however, that, with respect to clauses (ii), (iii), and (iv), the consent of any Member adversely affected shall not be required for any amendment or action that affects all Members holding the same class or series of Units on a uniform or *pro rata* basis, if approved by a Majority-in-Interest of the Members of such class or series. If some, but not all, of the Members consent to an action or amendment, the Company may, in its discretion, make such amendment or action effective only as to the Members that consented to it, to the extent it is practicable to do so.

Section 4.2 Tax Actions. All Tax Actions not expressly reserved for the Members shall be made, taken, or determined by the Managing Member.

Section 4.3 Compensation and Reimbursement of Managing Member.

(a) General. The Managing Member shall not receive any fees from the Company for its services in administering the Company, except as otherwise provided in this Agreement.

(b) Reimbursement of Managing Member. The Company shall be liable for, and shall reimburse the Managing Member on an after-tax basis at such intervals as the Managing Member may determine, for all

(i) overhead, administrative expenses, insurance and reasonable legal, accounting and other professional fees and expenses of the Managing Member;

(ii) expenses of the Managing Member incidental to being a public reporting company;

(iii) reasonable fees and expenses related to the IPO or any subsequent public offering of equity securities of the Managing Member (without duplicating any provisions of Section 2.5(f)) or private placement of equity securities of the Managing Member, whether or not consummated;

(iv) franchise and similar taxes of the Managing Member and other fees and expenses in connection with the maintenance of the existence of the Managing Member;

(v) customary compensation and benefits payable by the Managing Member, and indemnities provided by the Managing Member on behalf of, the officers, directors, and employees of the Managing Member; and

(vi) reasonable expenses paid by Managing Member on behalf of the Company; *provided, however*, that the amount of any reimbursement shall be reduced by any interest earned by the Managing Member with respect to bank accounts or other instruments or accounts held by it on behalf of the Company as permitted pursuant to Section 4.4. Such reimbursements shall be in addition to any reimbursement of the Managing Member as a result of indemnification pursuant to Section 4.7.

Section 4.4 Outside Activities.

(a) Limitation on Outside Activities of Managing Member. Without the consent of a Majority-in-Interest of the Members, the Managing Member shall not directly or indirectly enter into or conduct any business, other than in connection with, (i) the ownership, acquisition and disposition of Membership Interests, (ii) the management of the business of the Company and its Subsidiaries, (iii) its operation as a reporting company with a class (or classes) of securities registered under the Exchange Act, (iv) the offering, sale, syndication, private placement or public offering of stock, bonds, securities or other interests, (v) financing or refinancing of any type related to the Company or its Assets or activities, and (vi) such activities as are incidental thereto. Without the consent of a Majority-in-Interest of the Members, the Managing Member is not permitted to own any assets other than (x) Units in the Company (ii) assets necessary to its activities referred to in the preceding sentence or (iii) cash and cash equivalents and other assets that are incidental to its operations as a holding company and compliance with applicable law, rules and regulation. Nothing contained in this Section 4.4 shall be construed to prohibit the Managing Member from executing guarantees or other credit support of Company Debt. For the avoidance of doubt, the provisions of this Section 4.4 shall restrict only the Managing Member and its Subsidiaries (other than the Company and its Subsidiaries) and shall not restrict the other Members or any Affiliate of the other Members (other than the Managing Member). The Managing Member and any Affiliates of the Managing Member may acquire Membership Interests and shall be entitled to exercise all rights of a Member relating to such Membership Interests.

(b) Outside Activities of Members. Subject to any agreements entered into pursuant to Section 4.5 and any other agreements entered into by a Member or any of its Affiliates with the Managing Member, the Company or a Subsidiary (including any employment agreement), any Member, or any officer, director, employee, agent, trustee, Affiliate, member or stockholder of any Member, shall be entitled to and may have business interests and engage in business activities in addition to those relating to the Company, including business interests and activities that are in direct or indirect competition with the Company or that are enhanced by the activities of the Company. None of the Members, the Company or any Person shall have any rights by virtue of this Agreement or the relationship established hereby in any business ventures of any other Member or Person, and such Person shall have no obligation pursuant to this Agreement, subject

to Section 4.5 and any other agreements entered into by a Member or its Affiliates with the Managing Member, the Company or a Subsidiary, to offer any interest in any such business ventures to the Company, any Member, or any such other Person.

Section 4.5 Transactions with Affiliates.

(a) Lending and Borrowing. The Company may lend funds to the Managing Member, or to Subsidiaries of the Company or other Persons in which the Company has an equity investment, and such Persons may borrow funds from the Company, on terms and conditions determined by the Managing Member.

(b) Company Transfers to Affiliated Entities. Subject to the provisions of Section 4.4, the Company may transfer Assets to joint ventures, limited liability companies, partnerships, corporations, business trusts or other business entities in which it is or thereby becomes a participant upon such terms and subject to such conditions consistent with this Agreement and Law.

(c) Transfers from the Managing Member to the Company. The Managing Member and its Affiliates may sell, transfer or convey any property to the Company, directly or indirectly, on terms and conditions no less favorable to the Company in the aggregate than would be available from unaffiliated third parties as determined by the Managing Member.

(d) Employee Benefit Plans. The Managing Member may propose and adopt on behalf of the Employee benefit plans funded by the Company for the benefit of employees of the Managing Member, the Company, Subsidiaries of the Company or any Affiliate of any of them in respect of services performed, directly or indirectly, for the benefit of the Managing Member, the Company or any of the Company's Subsidiaries.

Section 4.6 Limitation on Liability.

(a) General. To the fullest extent permitted by Law, no Indemnitee, in such capacity, shall be liable to the Company, any Member or any of their respective Affiliates, for any losses sustained or liabilities incurred as a result of any act or omission of such Person if (i) either (A) the Indemnitee, at the time of such action or inaction, determined in good faith that its, his or her course of conduct was in, or not opposed to, the best interests of the Company or (B) in the case of inaction by the Indemnitee, the Indemnitee did not intend its, his or her inaction to be harmful or opposed to the best interests of the Company and (ii) the action or inaction did not constitute fraud or willful misconduct by the Indemnitee.

(b) Action in Good Faith. An indemnified Person acting under this Agreement shall not be liable to the Company for its, his or her good faith reliance on the provisions of this Agreement. The provisions of this Agreement, to the extent that they expand, restrict, or eliminate the duties and liabilities of such Persons otherwise existing at Law or in equity, are agreed by the Members to replace fully and completely such other duties and liabilities of such Persons. Whenever in this Agreement the Managing Member or any officer or director of the Managing Member is permitted or required to make a decision or take an action (i) in its "sole discretion" or "discretion" or under a similar grant of authority or latitude, in making such decisions, such Person shall be entitled to take into account its own interests as well as the interests of the Members as a

whole or (ii) in its “good faith” or under another expressed standard, such Person shall act under such express standard and shall not be subject to any other or different standards.

(c) Outside Counsel. The Managing Member may consult with legal counsel, accountants and financial or other advisors, and any act or omission suffered or taken by the Managing Member on behalf of the Company or in furtherance of the interests of the Company in good faith in reliance upon and in accordance with the advice of such counsel, accountants or financial or other advisors will be full justification for any such act or omission, and the Managing Member will be fully protected in so acting or omitting to act so long as such counsel or accountants or financial or other advisors were selected with reasonable care.

Section 4.7 Indemnification.

(a) General. The Company shall indemnify and hold harmless each Indemnitee (and such Person’s heirs, successors, assigns, executors or administrators) to the full extent permitted by Law in accordance with the provisions of Article VI of the Amended and Restated Bylaws of the Managing Member as if such provisions were set forth herein, *mutatis mutandis*.

(b) Non-Exclusivity of Rights. The rights to indemnification and to the advancement of expenses conferred in this Section 4.7 shall not be exclusive of any other right which any person may have or hereafter acquire under any law, agreement, vote of stockholders or disinterested directors, provisions of a certificate of incorporation or bylaws, or otherwise.

(c) Nature of Rights. The rights conferred upon Indemnitees in this Section 4.7 shall be contract rights and such rights shall continue as to an Indemnitee who has ceased to be the Managing Member, an Affiliate of the Managing Member, the Tax Representative, the Designated Individual or an officer or director of the Managing Member, the Company or their respective Affiliates. Any amendment, alteration or repeal of this Section 4.7 or of Article VI of the Amended and Restated Bylaws of the Managing Member that adversely affects any right of an Indemnitee or its successors shall be prospective only and shall not limit or eliminate any such right with respect to any proceeding involving any occurrence or alleged occurrence of any action or omission to act that took place prior to such amendment, alteration or repeal.

ARTICLE V

BOOKS AND RECORDS

Section 5.1 Books and Records.

(a) General. The Company shall maintain in its principal business office, or any other place as may be determined by the Company, the books and records of the Company.

(b) Specific Records. In particular, the Company shall maintain:

(i) A register containing the name, address, and number and class of Units (including Equivalent Units) of each Member, and such other information as the Managing Member may deem necessary or desirable (as may be amended or updated from time to time, the “Register”). The Register shall not be deemed part of this Agreement. The Managing Member

shall from time to time update the Register as necessary to ensure the Register is accurate, including as a result of any sales, exchanges, or other Transfers, or any redemptions, issuances, or similar events involving Units. Except as required by Law, no Member shall be entitled to receive a copy of the information set forth in the Register relating to any Member other than itself.

(ii) A copy of the Certificate of Formation and this Agreement and all amendments thereto.

Section 5.2 Financial Accounts. At all times during the continuance of the Company, the Company shall prepare and maintain separate books of account for the Company for financial reporting purposes, on an accrual basis, in accordance with United States generally accepted accounting principles, consistently applied.

Section 5.3 Inspection; Confidentiality. The Managing Member may keep confidential from the Members (or any of them) for such period of time as the Managing Member determines to be reasonable, any information (a) that the Managing Member believes to be in the nature of trade secrets, (b) the disclosure of which the Managing Member in good faith believes is not in the best interests of the Company or the Managing Member, or (c) that the Company or the Managing Member is required by Law, agreement, or customary commercial practice to keep confidential. Subject to the provisions of the previous sentence, the Members (personally or through an authorized representative) may, for purposes reasonably related to their respective interests in the Company, examine and copy (at their own cost and expense) the books and records of the Company at all reasonable business hours upon reasonable prior notice.

Section 5.4 Information to be Provided by Managing Member to Members. The Company shall deliver (or otherwise make accessible) to each Member a copy of any information mailed or delivered electronically to all of the common stockholders of the Managing Member as soon as practicable after such mailing.

ARTICLE VI

ALLOCATIONS

Section 6.1 Allocations Generally. Each Fiscal Year, after adjusting each Member's Capital Account for all contributions and distributions with respect to such Fiscal Year and after giving effect to the allocations under Section 6.2 for the Fiscal Year, Net Profits and Net Losses shall be allocated among the Members in a manner such that, after such allocations have been made, each Member's Capital Account balance (which may be a positive, negative, or zero balance) will equal (proportionately) (a) the amount that would be distributed to each such Member, determined as if the Company were to (i) sell all of its Assets for their Asset Values, (ii) satisfy all of its liabilities in accordance with their terms with the proceeds from such sale (limited, with respect to Nonrecourse Liabilities, to the Asset Values of the Assets securing such liabilities), and (iii) distribute the remaining proceeds pursuant to the applicable provision of this Agreement, minus (b) the sum of (x) such Member's share of the Company Minimum Gain and Member Nonrecourse Debt Minimum Gain and (y) the amount, if any (without duplication of any amount included under clause (x)), that such Member is obligated (or is deemed for U.S. tax purposes to

be obligated) to contribute, in its capacity as a Member, to the capital of the Company as of the last day of such Fiscal Year.

Section 6.2 Priority Allocations.

(a) Minimum Gain Chargeback, Qualified Income Offset, and Stop Loss Provisions. Each of (i) the “minimum gain chargeback” provision of Treas. Reg. § 1.704-2(f), (ii) the “chargeback of partner nonrecourse debt minimum gain” provision of Treas. Reg. § 1.704-2(i)(4), (iii) the “qualified income offset” provision in Treas. Reg. § 1.704-1(b)(2)(ii)(d), and (iv) the requirement in Treas. Reg. § 1.704-1(b)(2)(ii)(d)(3) that an allocation “not cause or increase a deficit balance” in a Member’s Capital Account is hereby incorporated by reference as a part of this Agreement. The Company shall make such allocations as are necessary to comply with those provisions and shall make any determinations with respect to such allocations (to the extent consistent with clauses (i) – (iv) of the preceding sentence).

(b) Nonrecourse Deductions. Nonrecourse Deductions for any Fiscal Year shall be allocated to the Members in accordance with their Units, unless otherwise determined by the Company.

(c) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any Fiscal Year shall be specially allocated to the Member who bears the economic risk of loss (within the meaning of Treas. Reg. § 1.752-2) with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Treas. Reg. § 1.704-2(i)(l).

(d) Special Basis Adjustments. To the extent an adjustment to the adjusted tax basis of any Company Asset, pursuant to Code section 734(b) or Code section 743(b) is required, pursuant to Treas. Reg. §§ 1.704-1(b)(2)(iv)(m)(2) or 1.704-1(b)(2)(iv)(m)(4), to be taken into account in determining Capital Accounts as the result of a distribution to a Member in complete liquidation of such Member’s interest in the Company, the amount of such adjustment to Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the Asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Members in accordance with their interests in the Company in the event Treas. Reg. § 1.704-1(b)(2)(iv)(m)(2) applies, or to the Member to whom such distribution was made in the event Treas. Reg. § 1.704-1(b)(2)(iv)(m)(4) applies.

(e) Ameliorative Allocations. Any allocations made (as well as anticipated reversing or offsetting regulatory allocations to be made) pursuant to Section 6.2(a)-(d) shall be taken into account in computing subsequent allocations pursuant to this Agreement, so that the net amount for any item so allocated and all other items allocated to each Member pursuant to this Agreement shall be equal, to the extent possible, to the net amount that would have been allocated to each Member pursuant to the provisions of this Agreement if those allocations had not occurred.

Section 6.3 Other Allocation Rules.

(a) In General. Except as otherwise provided in this Section 6.3, for income tax purposes under the Code and the Regulations, each Company item of income, gain, loss, deduction, and credit (collectively, “Tax Items”) shall be allocated among the Members in the

same manner as its correlative item of income, gain, loss, deduction, and credit (as calculated for purposes of allocating Net Profits or Net Loss) is allocated pursuant to Section 6.1 and Section 6.2.

(b) Section 704(c) Allocations. Notwithstanding the provisions of Section 6.3(a) to the contrary, in accordance with Code section 704(c)(1)(A) (and the principles of those provisions) and Treas. Reg. § 1.704-3, Tax Items with respect to any property contributed to the capital of the Company, or after Company property has been revalued under Treas. Reg. § 1.704-1(b)(2)(iv)(f) or (s), shall, solely for U.S. federal, state and local tax purposes, be allocated among the Members so as to take into account any variation between the adjusted basis of such Company property to the Company for U.S. federal income tax purposes and its value as so determined at the time of the contribution or revaluation of Company property. The Company shall use the “traditional method” with respect to (i) any property contributed to the Company before the IPO and (ii) “reverse section 704(c) allocations” (within the meaning of Treas. Reg. § 1.704-3(a)(6)) arising before or in connection with the IPO. With respect to property contributed or section 704(c) amounts arising from revaluations made after the IPO, the Company may use any method permitted under Treas. Reg. § 1.704-3. Allocations pursuant to Section 6.3(a) and this Section 6.3(b) are solely for U.S. federal, state, and local tax purposes and shall not affect, or in any way be taken into account in computing, any Member’s Capital Account or share of profit, loss, or other items, pursuant to any provision of this Agreement.

(c) Allocations in Respect of Varying Interests. If any Member’s interest in the Company varies (within the meaning of Code section 706(d)) within a Fiscal Year, whether by reason of a Transfer of a Unit, redemption of a Unit by the Company, or otherwise, Net Profits and Net Losses for that Fiscal Year will be allocated so as to take into account such varying interests in accordance with Code section 706(d) using the daily proration method and/or such other permissible method, methods, or conventions selected by the Company.

(d) Timing and Amount of Allocations of Net Profits and Net Loss. Net Profits and Net Loss of the Company shall be determined and allocated with respect to each Fiscal Year as of the end of each such year, or at such other time or times determined by the Company.

(e) Modification of Allocations. The allocations set forth in Section 6.1 and Section 6.2 are intended to comply with certain requirements of the Regulations. The Company shall be authorized to make, in its reasonable discretion, appropriate modifications to the allocations of Net Profits and Net Losses pursuant to this Agreement in order to comply with Code section 704 or applicable Regulations. Notwithstanding any provision of this Agreement to the contrary, if the Company reasonably determines an allocation other than the allocations that would otherwise be made pursuant to this Agreement would more appropriately reflect the Members’ interests in the Company, the Company may in its discretion make appropriate adjustments to such allocations.

(f) Allocation of Liabilities Under Code Section 752. Notwithstanding anything in this Agreement to the contrary, no Member will take, or permit any Affiliate to take, any action that would change the allocation of liabilities for purposes of Code section 752 without the consent of the Company.

ARTICLE VII

TAX MATTERS

Section 7.1 Provision of Information.

(a) Information to Be Provided by Company to Members. No later than thirty (30) days after the filing by the Company of the Company's federal tax return (Federal Form 1065), the Company shall provide to each Member a copy of Schedule K-1 of Federal Form 1065 reporting that Member's allocable share of items of income, gain, loss, deduction, or credit for such Fiscal Year, and such additional information as is required to be provided on the Schedule K-1 or as such Member may reasonably request for tax purposes, each as determined by the Company. The Member hereby consents to receive each Schedule K-1 in respect of the Member's LLC Interest in the Company through electronic delivery.

(b) Information to Be Provided by Members to Company.

(i) Notice of Audit or Tax Examination. Each Member shall notify the Company within five (5) days after receipt of any notice regarding an audit or tax examination of the Company and upon any request for material information related to the Company by U.S. federal, state, local, or other tax authorities.

(ii) Other Relevant Tax Information. Each Member shall provide to the Company upon request tax basis information about Assets contributed by it to the Company and such other tax information as reasonably requested by the Company and necessary for it to prepare its financial reports or any tax returns and such other information and/or tax forms as the Company reasonably requests.

(c) No Right to Member Tax Returns. Notwithstanding anything to the contrary in this Agreement or any right to information under the Act, with respect to the financial statements or tax returns of a Member or its Affiliates, none of the Company, the other Members, such other Member's Affiliates or any of their respective representatives, will be entitled to review such financial statements or tax returns for any purpose, including in connection with any proceeding or other dispute (whether involving the Company, between the Members, or involving any other Persons).

Section 7.2 Tax Elections. The Company shall have in effect (and shall cause each Subsidiary that is classified as a partnership for U.S. federal income tax purposes to have in effect) an election pursuant to Code section 754 (and any similar provisions of applicable U.S. state or local law) for the Company for the Fiscal Year that includes the date of the IPO and each Fiscal Year in which a sale or exchange (whether partial or complete) occurs. The Company shall determine whether to make any other available election pursuant to the Code or Regulations that is not otherwise expressly provided for in this Agreement, and the Members hereby consent to all such elections.

Section 7.3 Company Tax Returns. The Company shall use reasonable best efforts to cause to be prepared and timely filed (taking into account available extensions) all federal, state, and local, and non-U.S. tax returns of the Company for each year for which such returns are

required to be filed and shall determine the appropriate treatment of each Tax Item of the Company and make all other determinations with respect to such tax returns.

Section 7.4 Tax Representative.

(a) Appointment and Replacement of Tax Representative.

(i) Tax Representative. The Company shall act as the Tax Representative, but the Company may designate another Person to act as the Tax Representative and may remove, replace, or revoke the designation of that Person, or require that Person to resign. For taxable years beginning on or before December 31, 2017, and for any jurisdiction with respect to which the Company cannot serve as the Tax Representative, however, the Managing Member shall act as the Tax Representative, unless otherwise determined by the Company.

(ii) Designated Individual. If the Tax Representative is not an individual, the Company shall appoint a “designated individual” for each taxable year (as described in Treas. Reg. § 301.6223-1(b)(3)(ii)) (a “Designated Individual”).

(iii) Approval by Members. Each Member agrees to execute, certify, acknowledge, deliver, swear to, file, and record at the appropriate public offices such documents as may be deemed necessary or appropriate to evidence the appointments described in Section 7.4(a)(i) and Section 7.4(a)(ii), including statements required to be filed with the tax returns of the Company in order to effect the designation of the Tax Representative or Designated Individual (and any successor).

(b) Authority of the Tax Representative; Delegation of Authority. The Tax Representative shall have all of the rights, duties, powers, and obligations provided for under the Code, Regulations, or other applicable guidance; *provided*, that, that if a Person other than the Company is the Tax Representative, the Tax Representative shall in all cases act solely at the direction of the Company. The Tax Representative may delegate its authority under this Section 7.4(b) to a Designated Individual who shall in all cases act solely at the direction of the Company.

(c) Costs and Indemnification of Tax Representative and Designated Individual. Without duplication of the provisions of Section 4.3(b), the Company shall pay, or to the extent the Tax Representative or Designated Individual pays, indemnify and reimburse, to the fullest extent permitted by Law, the Tax Representative or Designated Individual for all costs and expenses, including legal and accounting fees (as such fees are incurred) and any claims incurred in connection with any tax audit or judicial review proceeding with respect to the tax liability of the Company.

Section 7.5 Tax Audits.

(a) Determinations with Respect to Audits and Other Tax Controversies. Except to the extent otherwise required by applicable Tax Law (including Code section 6241(11)), the Company (acting directly and/or through the Tax Representative or Designated Individual) shall have the sole authority to make all decisions and determinations with respect to, and shall have sole authority with respect to the conduct of, tax audits or other tax controversies with respect to the Company, and any action taken by the Company (acting directly and/or through the Tax

Representative or Designated Individual) in connection with any such audits or controversies shall be binding upon the Company and the Members and former Members.

(b) Determinations with Respect to Elections. The Company may make the election “out” under Code section 6221(b) if such an election is available, unless otherwise determined by the Company. If the Company does not make the election described in the preceding sentence, the Company (acting directly and/or through the Tax Representative or Designated Individual) shall have the sole authority to determine whether to cause the Company to make a Push Out Election with respect to any adjustment that could result in an imputed underpayment (within the meaning of Code section 6225) (an “Imputed Underpayment”).

(c) Responsibility for Payment of Tax; Former Members.

(i) Imputed Underpayment Share. To the extent the Company is liable for any Imputed Underpayment, the Company shall determine the liability of the Members for a share of such Imputed Underpayment, taking into account the Members’ Units and the status and actions of the Members (including those described in Code section 6225(c)) (such share, an “Imputed Underpayment Share”).

(ii) Payment of Imputed Underpayment Share. The Company may (A) require a Member who is liable for an Imputed Underpayment Share to pay the amount of its Imputed Underpayment Share to the Company within ten (10) days after the date on which the Company notifies the Member (and in the manner required by the notice) and/or (B) reduce future distributions to the Member, such that the amount determined under clause (A) and (B) equals the Member’s Imputed Underpayment Share. If a Member fails to pay any amount that it is required to pay the Company in respect of an Imputed Underpayment Share within such ten (10) day period, that amount shall be treated as a loan to the Member, bearing interest at ten percent (10%) annually (which interest shall increase the Member’s Imputed Underpayment Share). Such loan shall be repayable upon demand by the Company. If the Member fails to repay the loan upon demand, the full balance of the loan shall be immediately due (including accrued but unpaid interest) and the Company shall have the right to collect the balance in any manner it determines, including by reducing future distributions to that Member *provided, however*, that no Member may have any Imputed Underpayment Share treated as a loan to the extent it would violate Section 402 of the Sarbanes-Oxley Act of 2002. Any Member not permitted to treat its Imputed Underpayment Share as a loan due to the provisions of the previous sentence shall pay any Imputed Underpayment Share within ten (10) days after the date of the notice referred to in the first sentence of this Section 7.5(c)(ii).

Section 7.6 No Independent Actions or Inconsistent Positions. Except as required by Law or previously authorized in writing by the Company (which authorization may be withheld in the sole discretion of the Company) no Member shall (i) independently act with respect to tax matters (including, but not limited to, audits, litigation and controversies) affecting or arising from the Company, or (ii) treat any Company item inconsistently on such Member’s income tax return with the treatment of the item on the Company’s tax return and/or the Schedule K-1 (or other written information statement) provided to such Member. Solely to the extent required by Law, this Section 7.6 shall not apply with respect to any “special enforcement matter” described in Code section 6241(11).

Section 7.7 United States Person. Each Member represents and covenants that, for U.S. federal income tax purposes, it is and will at all times remain a “United States Person,” within the meaning of Code section 7701, or is a disregarded entity the assets of which are treated as owned by a United States Person under Treas. Reg. §§ 301.7701-1, 301.7701-2, and 301.7701-3.

Section 7.8 State, Local, and Non-U.S. Tax Law. The provisions of this Agreement with respect to U.S. federal income tax shall apply, *mutatis mutandis*, with respect to any similar provisions of state, local, or non-U.S. tax law as determined by the Company.

Section 7.9 Survival of Obligations. For purposes of this Article VII, the term “Member” shall include a former Member to the extent determined by the Company. The rights and obligations of each Member and former Member under this Article VII shall survive the Transfer by such Member of its Units (or withdrawal by a Member or redemption of a Member’s Units) and the dissolution of the Company until ninety (90) days after the applicable statute of limitations. Section 7.4, Section 7.5, and this Section 7.9 shall not be amended without the prior written consent of any Member or former Member that would be adversely impacted by such amendment.

Section 7.10 Taxes Other Than U.S. Federal Income Taxes. The provisions of this Agreement with respect to U.S. federal income tax shall apply, *mutatis mutandis*, with respect to any similar provisions of state, local, or non-U.S. tax law as determined by the Company.

Section 7.11 Tax Classification. The parties intend that the Company shall be classified as a partnership for United States federal, state, and local tax purposes. The parties intend that the Subsidiaries of the Company shall be classified either as disregarded entities or as partnerships for United States federal, state, and local tax purposes. No Person shall take any action inconsistent with such classifications.

Section 7.12 Accounting and Fiscal Year. Unless otherwise determined by the Company or required by Code section 706, the fiscal year of the Company (the “Fiscal Year”) shall be June 30, 2020 to June 30, 2021, July 1, 2021 to December 31, 2021 and then for each subsequent fiscal year, shall be the period commencing on January 1 of each calendar year and ending on December 31 of the same calendar year, or, in the case of the first and last Fiscal Years of the Company, the fraction thereof commencing on the date of this Agreement or ending on the date on which the winding-up of the Company is completed, as the case may be.

Section 7.13 Capital Accounts. The Company or Managing Member shall establish and maintain a capital account for each Member in accordance with Treas. Reg. § 1.704-1(b)(2)(iv) (each, a “Capital Account”). The Company may maintain Capital Account sub-accounts for different classes of Units, and any provisions of this Agreement pertaining to Capital Account maintenance shall apply, *mutatis mutandis*, to those sub-accounts.

ARTICLE VIII

UNIT TRANSFERS AND MEMBER WITHDRAWALS

Section 8.1 Transfer Generally Prohibited. No Units shall be Transferred, in whole or in part, except in accordance with the terms and conditions set forth in this Article VIII. Any

Transfer or purported Transfer of a Unit not made in accordance with this Article VIII shall be null and void *ab initio*. Membership Interests shall not be subject to the claims of any creditor, to any spouse for alimony or support, or to legal process, and may not be voluntarily or involuntarily alienated or encumbered except as may be specifically provided for in this Agreement.

Section 8.2 Conditions Generally Applicable to All Transfers. All Transfers are subject to the satisfaction of the following conditions:

(a) Transfers by Members Other than the Managing Member:

(i) Consent of Managing Member. No Member that is not the Managing Member shall Transfer any portion of its Membership Interest to any transferee without the consent of the Managing Member unless such Transfer is pursuant to a Related Party Transfer.

(ii) Assumption of Obligations. The transferee shall assume, by operation of Law or express agreement, all of the obligations of the transferor Member under this Agreement with respect to such Transferred Membership Interest, and no such Transfer (other than pursuant to a statutory merger or consolidation pursuant to which all obligations and liabilities of the transferor Member are assumed by a successor corporation by operation of Law) shall relieve the transferor Member of its obligations under this Agreement without the approval of the Managing Member. Any transferee, whether or not admitted as a Substituted Member, shall take subject to the obligations of the transferor Member under this Agreement. Unless admitted as a Substituted Member, no transferee, whether by a voluntary Transfer, by operation of Law or otherwise, shall have any rights under this Agreement.

(b) Transfers by the Managing Member.

(i) Consent of Members. The Managing Member may not Transfer any of its Units without the consent of a Majority-in-Interest of the Members, except in connection with an Applicable Sale or Termination Transaction approved by the Board of Directors.

(ii) Transfer to Subsidiary. Subject to compliance with the other provisions of this Article VIII, the Managing Member may Transfer all of its Units at any time to any Person that is, at the time of such Transfer, a direct or indirect wholly owned Subsidiary of the Managing Member without the consent of any Member and may designate the transferee to become the new Managing Member for all purposes of this Agreement.

(c) Other Restrictions on Transfer. In addition to any other restrictions on Transfer in this Agreement, no Member may Transfer a Unit (including by way of acquisition of Units by the Managing Member, or any other acquisition of Units by the Company) if the Company determines:

(i) Based on the advice of nationally recognized tax counsel, such Transfer would create a material risk of the Company being classified as an association taxable as a corporation for U.S. federal, state, or local income tax purposes; *provided*, that a Transfer by a Member or its Affiliates shall not be prohibited under this Section 8.2(c)(i) if the Member (or its Affiliate) obtains a tax opinion from nationally recognized tax counsel that the Transfer will not

result in the Company being classified as an association taxable as a corporation for U.S. federal, state, or local income tax purposes;

(ii) That the Transfer would be to any Person or entity who lacks the legal right, power or capacity to own a Membership Interest;

(iii) That the Transfer would be in violation of Law;

(iv) That the Transfer would be of any fractional or component portion of a Unit or Membership Interest, such as the Capital Account, or rights to distributions, separate and apart from all other components of a Unit;

(v) That the Transfer would create a material risk that the Company would become, with respect to any employee benefit plan subject to Title I of ERISA, a “party-in-interest” (as defined in ERISA Section 3(14)) or a “disqualified Person” (as defined in Code section 4975(c));

(vi) Based on the advice of counsel, that the Transfer would create a material risk that any portion of the Assets would constitute assets of any employee benefit plan pursuant to Department of Labor Reg. § 2510.2-101;

(vii) That the Transfer would require the registration of such Membership Interest pursuant to any applicable federal or state securities Laws;

(viii) Based on advice of counsel, that such Transfer would create a material risk that the Company would become a reporting company under the Exchange Act; or

(ix) Based on the advice of counsel, that the Transfer would subject the Company to regulation under the Investment Company Act of 1940, the Investment Advisors Act of 1940 or ERISA, each as amended.

Section 8.3 Drag-Along Rights.

(a) General. If at any time the Managing Member and/or its Affiliates (excluding, for purposes of this Section 8.3, the Company and its Subsidiaries) desire to Transfer in one or more transactions a sufficient portion of its and/or their Units (or any beneficial interest therein) to constitute a change of Control of the Company in an arm’s-length transaction to a bona fide third party that is not an Affiliate of the Managing Member (an “Applicable Sale”), the Managing Member may require each other Member to sell the same ratable share of its Membership Interests as is being sold by the Managing Member and such Affiliates (based upon the total Membership Interests held by the Managing Member and its Affiliates at such time) on the same terms and conditions (“Drag-Along Right”). The Managing Member may in its sole discretion elect to cause the Managing Member and/or the Company to structure the Applicable Sale as a merger or consolidation or as a sale of the Company’s Assets. No Member shall have any dissenters’ rights, appraisal rights or similar rights in connection with any Applicable Sale, and no Member may object to any subsequent liquidation or other distribution of the proceeds from an Applicable Sale that is a sale of Assets. Each Member agrees to consent to, and raise no objections against, an Applicable Sale. In the event of the exercise by the Managing Member of

its Drag-Along Right pursuant to this Section 8.3, each Member shall take all reasonably necessary and desirable actions approved by the Managing Member in connection with the consummation of the Applicable Sale, including the execution of such agreements and such instruments and other actions reasonably necessary to provide customary and reasonable representations, warranties, indemnities, covenants, conditions and other agreements relating to such Applicable Sale and to otherwise effect the transaction; *provided, however*, that (A) such Members shall not be required to give disproportionately greater or more onerous representations, warranties, indemnities, or covenants than the Managing Member or its Affiliates, (B) such Members shall not be obligated to bear any share of the out-of-pocket expenses, costs, or fees (including attorneys' fees) incurred by the Company or its Affiliates in connection with such Applicable Sale unless and to the extent that such expenses, costs, and fees were incurred for the benefit of the Company or all of its Members, (C) such Members shall not be obligated or otherwise responsible for more than their proportionate shares of any indemnities or other liabilities incurred by the Company and the Members as sellers in respect of such Applicable Sale, and (D) any indemnities or other liabilities approved by the Managing Member shall be limited, in respect of each Member, to such Member's share of the proceeds from the Applicable Sale.

(b) Notice. At least five (5) Business Days before consummation of an Applicable Sale, the Managing Member shall (i) provide the Members written notice (the "Applicable Sale Notice") of the Applicable Sale, which notice shall contain (A) the name and address of the third-party purchaser, (B) the proposed purchase price, terms of payment, and other material terms and conditions of the purchaser's offer, together with a copy of any binding agreement with respect to the Applicable Sale and (C) notification of whether the Managing Member has elected to exercise its Drag-Along Right and (ii) promptly notify the Members of all proposed changes to the material terms and keep the Members reasonably informed as to all material terms relating to the Applicable Sale or contribution, and promptly deliver to the Members copies of all final material agreements relating to the Applicable Sale not already provided in accordance with this Section 8.3(b) or otherwise. The Managing Member shall provide the Members written notice of the termination of an Applicable Sale within five (5) Business Days following such termination, which notice shall state that the Applicable Sale Notice served with respect to such Applicable Sale is rescinded.

Section 8.4 Substituted Members.

(a) Admission as Member. A transferee of Units of a Member may be admitted as a Substituted Member only with the consent of the Company; *provided, however*, that a Related-Party Transferee shall be admitted as a Substituted Member without the consent of the Company, subject to compliance with Section 8.4(b). The failure or refusal by the Company to permit a transferee of Units to become a Substituted Member shall not give rise to any cause of action against the Company or the Managing Member. A transferee who has been admitted as a Substituted Member in accordance with this Article VIII shall have all the rights and powers and be subject to all the restrictions and liabilities of a Member under this Agreement.

(b) Documents to be Provided by Transferee. No transferee shall be admitted as a Substituted Member until and unless it furnishes to the Managing Member (i) evidence of acceptance, in form and substance satisfactory to the Managing Member, of all the terms, conditions and applicable obligations of this Agreement, (ii) a counterpart signature page to this

Agreement executed by such transferee and (iii) such other documents and instruments as the Managing Member may require to effect such transferee's admission as a Substituted Member.

(c) Amendment of Books and Records. In connection with, and as evidence of, the admission of a Substituted Member, the Managing Member or Company shall amend the Register and the books and records of the Company to reflect the name, address and number of Units of such Substituted Member and to eliminate or adjust, if necessary, the name, address and number of Units of the predecessor of such Substituted Member.

Section 8.5 Company Right to Call Membership Interests. Beginning on the date on which the aggregate Percentage Interests of the Members (other than the Managing Member and its Subsidiaries) are less than ten (10) percent, the Company shall have the right, but not the obligation, from time to time and at any time to redeem all (but not less than all) outstanding Class B Common Units by treating each Member as an Exchangeable Unit Member who has delivered an Elective Exchange Notice pursuant to Section 12.1(b) in respect of all of such Exchangeable Unit Member's Class B Common Units. The Company shall exercise this right by giving notice to an Exchangeable Unit Member stating that the Company has elected to exercise its rights under this Section 8.5. The notice given by the Company to an Exchangeable Unit Member pursuant to this Section 8.5 shall be treated as if it were an Elective Exchange Notice delivered to the Company by such Exchangeable Unit Member. For purposes of this Section 8.5, the provisions of Article VI shall apply except to the extent otherwise determined by the Company.

Section 8.6 Withdrawal.

(a) Permissible Withdrawals. Subject to any Unit Designation, no Member may withdraw from the Company other than:

(i) As a result of a Permitted Transfer of all of such Member's Units in accordance with this Article VIII with respect to which the transferee becomes a Substituted Member;

(ii) Pursuant to an acquisition by the Managing Member of all of its Membership Interests;

(iii) With the consent of the Company.

(b) Consequences of Withdrawal. Any Member who Transfers all of its Units in a Transfer (i) permitted pursuant to this Article VIII where such transferee was admitted as a Substituted Member or (ii) to the Managing Member, whether or not pursuant to Section 12.1, shall cease to be a Member but shall continue to have the obligations of a former Member that are expressly set forth in this Agreement.

Section 8.7 Restrictions on Termination Transactions.

(a) General. Except as provided in Section 8.7(b), neither the Company nor the Managing Member shall engage in, or cause or permit, a Termination Transaction.

(b) Consent. The Company or Managing Member may engage in, cause, or permit a Termination Transaction only if one of the following conditions is satisfied:

(i) A Majority-in-Interest of the Members gives Consent;

(ii) In connection with any such Termination Transaction, each holder of Common Units (other than the Managing Member and its wholly owned Subsidiaries) will receive, or will have the right to elect to receive, for each Common Unit an amount of cash, securities or other property equal to the greatest amount of cash, securities or other property paid to a holder of one share of Class A Common Stock in consideration of one share of Class A Common Stock pursuant to the terms of such Termination Transaction; *provided*, that if, in connection with such Termination Transaction, a purchase, tender or exchange offer shall have been made to and accepted by the holders of a majority of the outstanding Class A Common Stock, each holder of Common Units (other than the Managing Member and its wholly owned Subsidiaries) will receive, or will have the right to elect to receive, the greatest amount of cash, securities or other property which such holder of Common Units would have received had it exercised its right to Exchange pursuant to Article XII and received Class A Common Stock in exchange for its Common Units immediately prior to the expiration of such purchase, tender or exchange offer and had thereupon accepted such purchase, tender or exchange offer and then such Termination Transaction shall have been consummated; or

(iii) All of the following conditions are met: (1) substantially all of the Assets directly or indirectly owned by the Company before the announcement of the Termination Transaction are, immediately after the Termination Transaction, owned directly or indirectly by the Company or another limited partnership or limited liability company that is the survivor of a merger, consolidation or combination of assets with the Company (in each case, the “Surviving Company”); (2) the Surviving Company is classified as a partnership for U.S. federal income tax purposes and each of its Subsidiaries is classified as a partnership or a disregarded entity for U.S. federal income tax purposes; (3) the rights of such Members with respect to the Surviving Company (including pursuant to a Tax Receivable Agreement) are at least as favorable as those of Members holding Common Units immediately before the consummation of such transaction (except to the extent that any such rights are consistent with clause (4) of this Section 8.7(b)(iii)) and as those applicable to any other limited partners or non-managing members of the Surviving Company; and (4) such rights include the right to cause their interests in the Surviving Company to be redeemed at any time or times for cash in an amount equal to the Fair Market Value of such interest at the time of redemption, as determined at least once every calendar quarter by an independent appraisal firm of recognized national standing retained by the Surviving Company.

Section 8.8 Incapacity. If a Member is subject to Incapacity, the executor, administrator, trustee, committee, guardian, conservator, or receiver of such Member’s estate shall have the same rights as the Incapacitated Member possessed to Transfer its Units. The Incapacity of a Member, in and of itself, shall not dissolve or terminate the Company.

Section 8.9 Withholding With Respect to a Transfer of Units. A Member making a Transfer permitted by this Agreement shall, unless otherwise determined by the Company, (i) have delivered to the Company an affidavit of non-foreign status with respect to such transferor Member that satisfies the requirements of Code section 1446(f)(2) or other documentation establishing a

valid exemption from withholding pursuant to Code section 1446(f) or (ii) ensure that, contemporaneously with the Transfer, the transferee of such interest properly withholds and remits to the IRS the amount of tax required to be withheld upon the Transfer by Code section 1446(f) (and promptly provide evidence to the Company of such withholding and remittance). In connection with any such Transfer, the transferor Member and transferee of such interest shall agree to jointly and severally indemnify and hold harmless the Company against any loss (including taxes, interest, penalties, and any related expenses) arising out of any failure to comply with the provisions of this Section 8.9.

ARTICLE IX

ADMISSION OF MEMBERS

Section 9.1 Members; Admission of Additional Members.

(a) Requirements for Admission. A Person (other than a then-existing Member) who makes a Capital Contribution to the Company in exchange for Units and in accordance with this Agreement shall be admitted to the Company as an Additional Member only upon furnishing to the Managing Member (i) evidence of acceptance, in form and substance satisfactory to the Managing Member, of all of the terms and conditions of this Agreement, including the power of attorney granted in Section 13.1, (ii) a counterpart signature page to this Agreement executed by such Person, and (iii) such other documents or instruments as may be required by the Managing Member in order to effect such Person's admission as an Additional Member. In connection with, and as evidence of, the admission of an Additional Member, the Managing Member shall amend the Register and the books and records of the Company to reflect the name, address, number and type of Units of such Additional Member.

(b) Consent of Company Required. Notwithstanding anything to the contrary in this Section 9.1, no Person shall be admitted as an Additional Member without the consent of the Company. The admission of any Person as an Additional Member shall become effective on the date determined by the Company (but in no case earlier than the satisfaction of all the conditions set forth in Section 9.1(a)).

Section 9.2 Limit on Number of Members. Unless otherwise permitted by the Managing Member, no Person shall be admitted to the Company as an Additional Member if the effect of such admission would be to cause the Company to have a number of Members (including as Members for this purpose those Persons indirectly owning an interest in the Company through another partnership, a limited liability company, a subchapter S corporation or a grantor trust) that would (i) cause the Company to become a reporting company under the Exchange Act or (ii) result in the Company at any time during its taxable year having more than 100 members, within the meaning of Treas. Reg. § 1.7704-1(h)(1)(ii) (taking into account Treas. Reg. § 1.7704-1(h)(3)).

ARTICLE X

DISSOLUTION, LIQUIDATION AND TERMINATION

Section 10.1 Dissolution Generally.

(a) Dissolution Only in Accordance with this Agreement. The Company shall not be dissolved by the substitution of Members or the admission of Additional Members in accordance with the terms of this Agreement. The Company may be dissolved, liquidated and terminated only pursuant to the provisions of this Article X, and the Members hereby irrevocably waive any and all other rights they may have to cause a dissolution of the Company or a sale or partition of any or all of the Company's Assets.

(b) Termination of Members. The death, retirement, resignation, expulsion, Bankruptcy, insolvency or dissolution of a Member or the occurrence of any other event that terminates the continued membership of a Member in the Company shall not in and of itself cause dissolution of the Company.

Section 10.2 Events Causing Dissolution.

(a) Actions by Members. No Member shall take any action to dissolve, terminate or liquidate the Company or to require apportionment, appraisal or partition of the Company or any of its Assets, or to file a bill for an accounting, except as specifically provided in this Agreement, and each Member, to the fullest extent permitted by Law, waives any rights to take any such actions under Law, including any right to petition a court for judicial dissolution under Section 18-802 of the Act.

(b) Liquidating Events. The Company shall be dissolved and its affairs shall be wound up upon the occurrence of any of the following events (each, a "Liquidating Event"):

(i) an election to dissolve the Company made by the Managing Member, with the Consent of a Majority-in-Interest of the Members;

(ii) the expiration of forty-five (45) days after the sale or other disposition of all or substantially all Assets; or

(iii) any other event which results in a mandatory dissolution under the Act.

Section 10.3 Distribution upon Dissolution.

(a) Order of Distributions. Upon the dissolution of the Company pursuant to Section 10.2, the Managing Member (or, in the event that the Managing Member has dissolved, become Bankrupt or ceased to operate, any Person elected by a Majority-in-Interest of the Members (the Managing Member or such other Person, the "Liquidator")) shall be responsible for overseeing the winding up and dissolution of the Company and shall take full account of the Company's Assets and liabilities, and the Company's Assets shall be liquidated as promptly as is consistent with obtaining the fair value thereof, and the proceeds therefrom (which may, to the

extent determined by the Managing Member, include shares of stock in the Managing Member) shall be applied and distributed in the following order:

(i) First, to the satisfaction of all of the Company's Debts and liabilities to creditors, including Members who are creditors (other than with respect to liabilities owed to Members in satisfaction of liabilities for previously declared distributions), whether by payment or the making of reasonable provision for payment thereof;

(ii) Second, to the satisfaction of all of the Company's liabilities to the Members in satisfaction of liabilities for previously declared distributions, whether by payment or the making of reasonable provision for payment thereof; and

(iii) The balance, if any, to the Members, in the same order of priorities provided for in Article III.

(b) Discretion of Liquidator and Managing Member.

(i) Notwithstanding the provisions of Section 10.3(a) that require liquidation of the Assets, but subject to the order of priorities set forth therein, if prior to or upon dissolution of the Company, the Liquidator determines that an immediate sale of part or all of the Company's Assets would be impractical or would cause undue loss to the Members, the Liquidator may, in its sole and absolute discretion, defer for a reasonable time the liquidation of any Assets except those necessary to satisfy liabilities of the Company (including to those Members as creditors) and/or distribute to the Members, in lieu of cash, as tenants in common and in accordance with the provisions of Section 10.3(a), undivided interests in such Company Assets as the Liquidator deems not suitable for liquidation. Any such distributions in kind shall be subject to such conditions relating to the disposition and management of such properties as the Liquidator deems reasonable and equitable and to any agreements governing the operation of such properties at such time. The Liquidator shall determine the Fair Market Value of any property distributed in kind using such reasonable method of valuation as it may adopt.

(ii) In the sole and absolute discretion of the Managing Member, a *pro rata* portion of the distributions that would otherwise be made to the Members pursuant to this Article X may be:

A) Distributed to a trust established for the benefit of the Managing Member and the Members for the purpose of liquidating Company Assets, collecting amounts owed to the Company, and paying any contingent or unforeseen liabilities or obligations of the Company or of the Managing Member arising out of or in connection with the Company and/or Company activities. The assets of any such trust shall be distributed to the Members, from time to time, in the reasonable discretion of the Managing Member, in the same proportions and amounts as would otherwise have been distributed to the Members pursuant to this Agreement; or

B) Withheld or escrowed to provide a reasonable reserve for Company liabilities (contingent or otherwise) and to reflect the unrealized portion of any installment obligations owed to the Company, *provided* that such withheld or escrowed amounts shall be distributed to the Members in the manner and order of priority set forth in Section 10.3(a) as soon as practicable.

Section 10.4 Rights of Members. Except as otherwise provided in this Agreement and subject to the rights of any Member set forth in a Unit Designation, (a) each Member shall look solely to the Assets for the return of its Capital Contribution, (b) no Member shall have the right or power to demand or receive property other than cash from the Company, and (c) no Member shall have priority over any other Member as to the return of its Capital Contributions, distributions, or allocations.

Section 10.5 Termination. The Company shall terminate when all of the Assets, after payment of or due provision for all Debts, liabilities, and obligations of the Company, have been distributed to the Members in the manner provided for in this Article X and the Certificate of Formation shall have been cancelled in the manner required by the Act.

ARTICLE XI

PROCEDURES FOR ACTIONS AND CONSENTS OF MEMBERS; AMENDMENTS; MEETINGS

Section 11.1 Actions and Consents of Members. The actions requiring Consent of any Member pursuant to this Agreement or otherwise pursuant to Law are subject to the procedures set forth in this Article XI.

Section 11.2 Amendments. Except as otherwise required or permitted by this Agreement (including Section 4.1(f)), amendments to this Agreement must be approved by the Managing Member and a Majority-in-Interest of the Members. Upon obtaining any such Consent, or any other Consent required by this Agreement, and without further action or execution by any other Person, including any Member, (i) any amendment to this Agreement may be implemented and reflected in a writing executed solely by the Managing Member, and (ii) the Members shall be deemed a party to and bound by such amendment of this Agreement.

Section 11.3 Procedures for Meetings and Actions of the Members.

(a) Time; Quorum; Consent. Meetings of the Members may be called only by the Managing Member and shall state the nature of the business to be transacted. Notice of any such meeting shall be given to all Members entitled to act at the meeting not less than two (2) days nor more than ninety (90) days prior to the date of such meeting. Members may vote in Person or by proxy at such meeting. Unless approval by a different number or proportion of the Members is required by this Agreement or any Unit Designation, the affirmative vote of a Majority-in-Interest of the Members shall be sufficient to approve such proposal at a meeting of the Members. Whenever the Consent of any Members is permitted or required under this Agreement, such Consent may be given at a meeting of Members or in accordance with the procedure prescribed in Section 11.3(b).

(b) Written Consents. Any action requiring the Consent of any Member or a group of Members pursuant to this Agreement or that is required or permitted to be taken at a meeting of the Members may be taken without a meeting if a Consent in writing or by electronic transmission setting forth the action so taken or consented to is given by Members whose affirmative vote would be sufficient to approve such action or provide such Consent at a meeting

of the Members. Such Consent may be in one instrument or in several instruments and shall have the same force and effect as the affirmative vote of such Members at a meeting of the Members. Such Consent shall be filed with the Managing Member. An action so taken shall be deemed to have been taken at a meeting held on the effective date so certified. For purposes of obtaining a Consent in writing or by electronic transmission, the Managing Member may require a response within a reasonable specified time, but not less than two (2) days after receipt of notice, and failure to respond in such time period shall constitute a Consent that is consistent with the Managing Member's recommendation with respect to the proposal; *provided, however*, that an action shall become effective at such time as requisite Consents are received even if prior to such specified time.

(c) Proxy. Each Member entitled to act at a meeting of Members may authorize any Person or Persons to act for it by proxy on all matters in which a Member is entitled to participate, including waiving notice of any meeting, or voting or participating at a meeting. Each proxy must be signed by the Member or its attorney-in-fact. No proxy shall be valid after the expiration of eleven (11) months from the date thereof unless otherwise provided in the proxy (or there is receipt of a proxy authorizing a later date). Every proxy shall be revocable at the pleasure of the Member executing it, such revocation to be effective upon the Company's receipt of written notice of such revocation from the Member executing such proxy, unless such proxy states that it is irrevocable and is coupled with an interest.

(d) Record Date for Meetings. The Managing Member may set, in advance, a Record Date for the purpose of determining the Members (i) entitled to Consent to any action, (ii) entitled to receive notice of or vote at any meeting of the Members or (iii) in order to make a determination of Members for any other proper purpose. Any such date shall not be before the close of business on the day the Record Date is fixed and shall be not more than ninety (90) days and, in the case of a meeting of the Members, not less than two (2) days, before the date on which the meeting is to be held. If no Record Date is fixed, the Record Date for the determination of Members entitled to notice of or to vote at a meeting of the Members shall be at the close of business on the day on which the notice of the meeting is sent, and the Record Date for any other determination of Members shall be the effective date of such Member action, distribution or other event. When a determination of the Members entitled to vote at any meeting of the Members has been made as provided in this section, such determination shall apply to any adjournment thereof.

(e) Conduct of Meetings. Each meeting of Members shall be conducted by the Managing Member or such other Person as the Managing Member may appoint pursuant to such rules for the conduct of the meeting as the Managing Member or such other Person deems appropriate.

(f) Waivers. Any time period for notice with respect to meetings or consents of the Members may be waived by a Member as to such Member.

ARTICLE XII

EXCHANGE RIGHTS

Section 12.1 Elective and Mandatory Exchanges.

(a) Elective Exchanges. An Exchangeable Unit Member shall have the right, from time to time, to surrender Exchangeable Units, along with an equivalent number of shares of Class B Common Stock (in each case, free and clear of all liens, encumbrances, rights of first refusal and similar restrictions, except for those arising under this Agreement) to the Company or the Managing Member and to thereby cause the Company or the Managing Member to deliver to that Exchangeable Unit Member (or its designee) the Exchange Consideration as set forth in Section 12.3 (an “Elective Exchange”). Exchangeable Unit Members shall not have the right to effect an Elective Exchange for less than any Minimum Exchangeable Amount established from time to time by the Managing Member or at times to not permitted by the Policies established from time to time by the Managing Member, in each case without the consent of the Managing Member or as otherwise provided in this Agreement. The Managing Member shall have the authority to set and amend any Minimum Exchangeable Amount and establish and amend Policies in its reasonable discretion taking into account reasonable and appropriate liquidity interests of Exchangeable Unit Members.

(b) Exchange Notice. An Exchangeable Unit Member shall exercise its right to an Elective Exchange by delivering to the Company, with a contemporaneous copy delivered to the Managing Member, in each case during normal business hours at the principal executive offices of the Company and the Managing Member, respectively, a written election of exchange in respect of the Exchangeable Units to be exchanged (an “Elective Exchange Notice”), duly executed by such the Exchangeable Unit Member. An Elective Exchange Notice must be delivered at least one week before the proposed Elective Exchange Date or such other date as may be specified in the Policies then in effect, unless otherwise consented by the Managing Member.

(i) An Exchangeable Unit Member may specify, in an applicable Elective Exchange Notice, that the Elective Exchange is to be contingent (including as to timing) upon the occurrence of any transaction or event, including the consummation of a purchase by another Person (whether in a tender or exchange offer, an underwritten offering, change of control transaction or otherwise) of shares of Class A Common Stock or any merger, consolidation or other business combination. The failure of such contingency to occur shall terminate all of the Exchangeable Unit Member’s, Company’s and Managing Member’s rights and obligations arising from that particular Elective Exchange Notice, and all actions taken to effect the Elective Exchange contemplated by that Elective Exchange Notice shall be deemed rescinded.

(ii) After the Elective Exchange Notice and corresponding Certificates have been delivered to the Managing Member, and unless such Exchangeable Unit Member timely has delivered a Retraction Notice pursuant to Section 12.1(b)(iii) or the Company or Managing Member, as applicable, has refused to honor the request in full pursuant to Section 12.2(c), the Company or Managing Member, as applicable, will effect the Elective Exchange in accordance with the Policies and inform the Exchangeable Unit Member of the effective date of such Elective Exchange (the “Elective Exchange Date”).

(iii) Notwithstanding any provisions of this Agreement to the contrary, if there is a five percent (5%) or greater drop in the reported closing trading price of a share of Class A Common Stock on the principal U.S. securities exchange or automated or electronic quotation system on which the Class A Common Stock trades after the delivery of an Elective Exchange Notice and prior to 5:00 p.m., Pacific time, on the Business Day immediately prior to the applicable Elective Exchange Date (the “Retraction Deadline”), an Exchangeable Unit Member may withdraw or amend its Elective Exchange Notice, in whole or in part, by giving written notice at any time prior to the Retraction Deadline (a “Retraction Notice”) to the Company (with a copy to the Managing Member) specifying (A) the number of withdrawn Exchangeable Units and an equivalent number of shares of Class B Common Stock and (B) the number of Exchangeable Units and an equivalent number of shares of Class B Common Stock as to which the Elective Exchange Notice remains in effect. The timely delivery of a Retraction Notice indicating an entire withdrawal of the Elective Exchange Notice shall terminate all of the Exchangeable Unit Member’s, Company’s and Managing Member’s rights and obligations arising from that particular Elective Exchange Notice, and all actions taken to effect the Elective Exchange contemplated by that Elective Exchange Notice shall be deemed rescinded.

(c) Mandatory Exchange Events. Units are subject to Mandatory Exchange in each of the following circumstances:

(i) pursuant to Section 8.5; or

(ii) in the discretion of the Managing Member, with the consent of Members whose Class B Units represent fifty percent (50%) of the Class B Units of all Members in the aggregate, all Members may be required to exchange all Class B Units then held by the Members.

(d) Mandatory Exchange Mechanics. Upon the occurrence of either of the circumstances set out in Section 12.1(c) the Managing Member may exercise its right to cause a mandatory exchange of a Member’s Exchangeable Units and an equivalent number of shares of Class B Common Stock (a “Mandatory Exchange”) by delivering to each Member a written notice pursuant to the notice provisions in Section 13.6 (a “Mandatory Exchange Notice”) specifying the basis for the Mandatory Exchange, the Exchangeable Units of the Company to which the Mandatory Exchange applies, and the effective date of such Mandatory Exchange (the “Mandatory Exchange Date”), which shall be no earlier than ten (10) Business Days after delivery of the Mandatory Exchange Notice. The Member receiving the Mandatory Exchange Notice shall use its best efforts to deliver to the Certificates representing the applicable Exchangeable Units and shares of Class B Common Stock no later than the Mandatory Exchange Date. Upon the Mandatory Exchange Date, the Company will effect the Mandatory Exchange in accordance with the Policies.

Section 12.2 Additional Terms Applying to Exchanges.

(a) Concurrent Exchange of Class B Common Stock. No Exchange of Class B Common Units may be made without a concurrent Exchange of an equivalent number of shares of Class B Common Stock. Any shares of Class B Common Stock surrendered in an Exchange shall automatically be deemed retired without any action on the part of any Person, including the

Managing Member. Any such retired shares of Class B Common Stock shall no longer be outstanding, all rights with respect to such shares shall automatically cease and terminate, and such shares shall return to the status of authorized but unissued shares of the Managing Member.

(b) Authority of Board of Directors to Limit or Deny Exchange. The Board of Directors (or a committee thereof to which the Board of Directors has delegated such authority) may, in its sole discretion, deny or limit, in whole or in part, any Exchange that fails to comply with any requirements therefor or limitations with respect thereto that the Company, the Managing Member, or the Board of Directors may have established, or that, if effected, would adversely affect the Managing Member or the Company as determined by the Board of Directors (or a committee thereof to which the Board of Directors has delegated such authority) in its sole discretion. In particular, an Exchangeable Unit Member shall not be entitled to an Exchange, and the Company and the Managing Member shall have the right to refuse to honor any request for an Exchange, at any time or during any period if the Company or the Managing Member determines, after consultation with counsel, that such Exchange (x) would be prohibited by law or regulation (including, without limitation, the unavailability of a registration of such Exchange under the Securities Act or an exemption from the registration requirements thereof) or (y) would not be permitted under any agreement with the Company, the Managing Member or any of their subsidiaries to which the applicable Exchangeable Unit Member is party or (solely in the case of an Exchange requested by an officer, director or other personnel of the Company, the Managing Member or any of their subsidiaries) any written policies of the Managing Member related to restrictions on trading applicable to its officers, directors or other personnel.

(c) Publicly Traded Partnership. Notwithstanding anything contrary to the advice of counsel, if the Managing Member determines that an Exchange would pose a material risk that the Company would become a “publicly traded partnership” under Code section 7704, the Exchange shall be null and void.

(d) Rights of Exchangeable Unit Member. On an Exchange Date, all rights of the Exchangeable Unit Member as a holder of the Exchangeable Units and shares of Class B Common Stock that are subject to the Exchange shall cease, and, unless the Company or Managing Member, as applicable, has elected Cash Settlement as to all Exchangeable Units tendered, such Exchangeable Unit Member (or its designee) shall be treated for all purposes as having become the record holder of the shares of Class A Common Stock to be received by the Exchangeable Unit Member in respect of such Exchange.

(e) Right of Managing Member to Acquire Exchangeable Units. The Managing Member shall have the right but not the obligation (in lieu of the Company) to have the Managing Member acquire Exchangeable Units and an equivalent number of shares of Class B Common Stock directly from an Exchangeable Unit Member for the elected Exchange Consideration.

(f) Expenses(g) . Except as otherwise agreed by the Company, the Managing Member and an Exchangeable Unit Member, the Company, the Managing Member, and each Exchangeable Unit Member shall bear their own expenses in connection with the consummation of any Exchange, whether or not any such Exchange is ultimately consummated, except that the Managing Member shall bear any transfer taxes, stamp taxes or duties, or other similar taxes in

connection with, or arising by reason of, any Exchange; *provided, however*, that if any shares of Class A Common Stock are to be delivered pursuant to an Elective Exchange in a name other than that of the Member that requested the Exchange (or The Depository Trust Company or its nominee for the account of a participant of The Depository Trust Company that will hold the shares for the account of such Member) or the Cash Settlement is to be paid to a Person other than the Exchangeable Unit Member that requested the Exchange, then such Member or the Person in whose name such shares are to be delivered or to whom the Cash Settlement is to be paid shall pay to the Managing Member the amount of any transfer taxes, stamp taxes or duties, or other similar taxes in connection with, or arising by reason of, such Exchange or shall establish to the reasonable satisfaction of the Managing Member that such tax has been paid or is not payable.

(g) Limitation. For the avoidance of doubt, in the event that the Company or the Managing Member consolidates, merges, combines or consummates any other transaction in which shares of Class A Common Stock are exchanged for or converted into other stock or securities, or the right to receive cash and/or any other property, no Minimum Exchangeable Amount or Policies or other provisions of this Article XII shall limit the right of any Exchangeable Unit Member to effect an Elective Exchange in order to receive Class A Common Stock in advance of consummation of any such consolidation, merger or other such transaction unless in connection with any such consolidation, merger, combination or other transaction each share of Class B Common Stock and/or Class B Unit shall be entitled to be exchanged for or converted into the same kind and amount of stock or securities, cash and/or any other property, as the case may be, into which or for which each share of Class A Common Stock is exchanged or converted; provided, that the consideration for each share of Class B Common Stock and/or Class B Unit shall be deemed the same kind and amount into which or for which each share of Class A Common Stock is exchanged or converted, so long as any differences in the kind and amount of stock or securities, cash and/or any other property are intended (as determined by the Board of Directors in good faith) to maintain the relative voting power of each share of Class B Common Stock relative to each share of Class A Common Stock; provided, further, that the foregoing provisions of this Section 12.2(g) shall not apply to any action or transaction (including any consolidation, merger or combination) approved by a Majority-in-Interest of the Members.

Section 12.3 Exchange Consideration.

(a) Generally. The Managing Member has the right, in its sole discretion, to elect the form of Exchange Consideration with respect to any Exchange. On an Exchange Date, provided the Exchangeable Unit Member has satisfied its obligations under Section 12.1(b)(i), the Managing Member shall deliver or cause to be delivered the Exchange Consideration to such Exchangeable Unit Member (or its designee), at the address set forth on the applicable Exchange Notice. If the Managing Member elects a Cash Settlement, the Managing Member shall only be obligated to contribute to the Company (or, if the Managing Member elects to settle directly pursuant to Section 12.2(e), settle directly for an amount equal to), an amount in respect of such Cash Settlement equal to the net proceeds (after deduction of any underwriters' discounts and commissions) from the sale by the Managing Member of a number of shares of Class A Common Stock equal to the number of Exchangeable Units being Exchanged for such Cash Settlement. Except as otherwise required by Law, the Managing Member shall, for U.S. federal income tax purposes, be treated as paying an appropriate portion of the selling expenses described in the previous sentence as agent for and on behalf of the Exchangeable Unit Member.

(b) Notice of Intended Exchange Consideration. At least two (2) Business Days before the Exchange Date, the Managing Member shall give written notice (the “Contribution Notice”) to the Company (with a copy to the Exchangeable Unit Member) of its intended Exchange Consideration; *provided*, that if the Managing Member does not timely deliver a Contribution Notice, the Managing Member shall be deemed to have elected to settle the Exchange with shares of Class A Common Stock.

(c) Settlement Through Depository Trust Company. To the extent the Class A Common Stock is settled through the facilities of The Depository Trust Company, the Managing Member or the Company will, upon the written instruction of an Exchangeable Unit Member, deliver the shares of Class A Common Stock deliverable to such Exchangeable Unit Member through the facilities of The Depository Trust Company to the account of the participant of The Depository Trust Company designated by such Exchangeable Unit Member in the Exchange Notice.

(d) Obligations of Managing Member and Company. Upon any Exchange, the Managing Member or the Company, as applicable, shall take such actions as (A) may be required to ensure that such Member receives the shares of Class A Common Stock and/or the Cash Settlement that such Exchangeable Unit Member is entitled to receive in connection with such Exchange pursuant to Section 12.3(a), and (B) may be reasonably within its control that would cause such Exchange to be treated for purposes of the Tax Receivable Agreement as an “Exchange” (as such term is defined in the Tax Receivable Agreement).

Section 12.4 Adjustment. To the extent that the Managing Member acquires additional Class A Units without issuing a corresponding number of additional shares of Class A Common Stock to maintain parity, the Managing Member shall make appropriate adjustments to the Exchange Rate to give effect to such parity. To the extent not reflected in an adjustment to the Exchange Rate, if there is any reclassification, reorganization, recapitalization or other similar transaction in which the Class A Common Stock is converted or changed or exchanged into or for another security, securities or other property, then, upon any subsequent Exchange, an Exchangeable Unit Member shall be entitled to receive the amount of such security, securities or other property that such Exchangeable Unit Member would have received if such Exchange had occurred immediately prior to the effective date of such reclassification, reorganization, recapitalization or other similar transaction, taking into account any adjustment as a result of any subdivision (by any split, distribution or dividend, reclassification, reorganization, recapitalization or otherwise) or combination (by reverse split, reclassification, recapitalization or otherwise) of such security, securities or other property that occurs after the effective time of such reclassification, reorganization, recapitalization or other similar transaction. For the avoidance of doubt, if there is any reclassification, reorganization, recapitalization or other similar transaction in which the Class A Common Stock is converted or changed or exchanged into or for another security, securities or other property, this Section 12.4 shall continue to be applicable, *mutatis mutandis*, with respect to such security or other property.

Section 12.5 Class A Common Stock to be Issued.

(a) Class A Common Stock Reserve. The Managing Member shall at all times reserve and keep available out of its authorized but unissued Class A Common Stock, solely for

the purpose of issuance upon an Exchange, such number of shares of Class A Common Stock as shall be deliverable under this Agreement upon all such Exchanges; *provided, however*, that the Managing Member may satisfy its obligations in respect of any such Exchange by delivery of unencumbered purchased shares of Class A Common Stock (which may or may not be held in the treasury of the Managing Member or any subsidiary thereof).

(b) Rule 16(b) Exemption. The Managing Member has taken and will take all such steps as may be required to cause to qualify for exemption under Rule 16b-3(d) or (e), as applicable, under the Exchange Act, and be exempt for purposes of Section 16(b) under the Exchange Act, any acquisitions or dispositions of equity securities of the Managing Member (including derivative securities with respect thereto) and any securities that may be deemed to be equity securities or derivative securities of the Managing Member for such purposes that result from the transactions contemplated by this Agreement, by each director or officer of the Managing Member (including directors-by-deputization) who may reasonably be expected to be subject to the reporting requirements of Section 16(a) of the Exchange Act with respect to the Managing Member upon the registration of any class of equity security of the Managing Member pursuant to Section 12 of the Exchange Act.

(c) Validity of Class A Common Stock. The Managing Member covenants that all shares of Class A Common Stock issued upon an Exchange will, upon issuance, be validly issued, fully paid and non-assessable and not subject to any preemptive right of stockholders of the Managing Member or to any right of first refusal or other right in favor of any Person.

Section 12.6 Withholding.

(a) Withholding of Cash or Class A Common Stock Permitted. If the Company or the Managing Member shall be required to withhold any amounts by reason of any federal, state, local or foreign tax laws or regulations in respect of any Exchange, the Company or the Managing Member, as the case may be, shall be entitled to take such action as it deems appropriate in order to ensure compliance with such withholding requirements, including, at its option, withholding cash from the Cash Settlement or shares of Class A Common Stock with a Fair Market Value equal to the amount of any taxes that the Company or the Managing Member, as the case may be, may be required to withhold with respect to such Exchange. To the extent that amounts are (or property is) so withheld and paid over to the appropriate taxing authority, such withheld amounts (or property) shall be treated for all purposes of this Agreement as having been paid (or delivered) to the applicable Member.

(b) Notice of Withholding. If the Company or the Managing Member determines that any amounts by reason of any federal, state, local or foreign tax laws or regulations are required to be withheld in respect of any Exchange, the Company or the Managing Member, as the case may be, shall use commercially reasonable efforts to promptly notify the Exchangeable Unit Member and shall consider in good faith any positions or alternative arrangements that such Member raises (reasonably in advance of the date on which the Company or the Managing Member believes withholding is required) as to why withholding is not required or that may avoid the need for such withholding, *provided*, that none of the Company or the Managing Member is required to incur additional costs as a result of such obligation, and this Section 12.6(b) shall not in any manner

limit the authority of the Company or the Managing Member to withhold taxes with respect to an Exchangeable Unit Member pursuant to Section 12.6(a).

(c) Reimbursement of Taxes by Exchangeable Unit Member. If, within the two-year period beginning at the start of the date of an Exchange, (i) the Managing Member withholds or otherwise pays any amount on account of taxes in respect of exchanged Units, which amount is attributable to the two-year period ending at the end of the date of such Exchange, and (ii) the Managing Member or any person other than the Exchangeable Unit Member otherwise would bear the economic burden of such withholding or other payment (including by reason of such amount being treated as having been distributed to the Managing Member in respect of the exchanged Units pursuant to Section 3.4), the Exchangeable Unit Member shall, upon notice by the Company and/or the Managing Member, promptly reimburse the Company and/or the Managing Member for such amount; *provided, however*, that the Exchangeable Unit Member's reimbursement obligation under this Section 12.6(c) shall not exceed the amount of cash and Fair Market Value (determined as of the date of receipt) of other consideration received by the Exchangeable Unit Member in connection with such Exchange. Unless otherwise required by Law, any amount paid by an Exchangeable Unit Member pursuant to this Section 12.6(c) shall be treated as an adjustment to the proceeds received by the Exchangeable Unit Member in respect of the applicable Exchange. The Company and the Managing Member shall have the right to reduce any amounts due to such Exchangeable Unit Member from the Managing Member or any of its Affiliates by the amount owed by such Exchangeable Unit Member under this Section 12.6(c).

Section 12.7 Tax Treatment. Unless otherwise required by Law, each Exchange with the Managing Member or the Company shall be treated as a direct exchange between the Managing Member and the Member for U.S. federal and applicable state and local income tax purposes. It is intended that each any Exchange be treated as a taxable exchange for U.S. federal and applicable state and local income tax purposes except as otherwise agreed to in writing by the Exchangeable Unit Member and the Managing Member or required by Law.

Section 12.8 Contribution of the Managing Member. In connection with any Exchange between a Member and the Company, the Managing Member shall contribute to the Company the shares of Class A Common Stock and/or Cash Settlement that the Member is entitled to receive in such Exchange. Unless the Member has timely delivered a Retraction Notice as provided in Section 12.1(b)(iii), on the Exchange Date (i) the Managing Member shall make a capital contribution to the Company (in the form of the Exchange Consideration that the Member is entitled to receive in such Exchange) required under this Section 12.8 and (ii) the Company shall issue to the Managing Member a number of Class A Common Units equal to the number of Exchangeable Units surrendered by the Member.

Section 12.9 Apportionment of Distributions. Distributions with a Record Date (as described in Section 3.6) on or before the Exchange Date shall be made to the Exchangeable Unit Member.

ARTICLE XIII

MISCELLANEOUS

Section 13.1 Conclusive Nature of Determinations. All determinations, interpretations, calculations, adjustments and other actions of the Managing Member, the Company, the Board of Directors (or a committee to which the Board of Directors has delegated such authority) or a designee of any of the foregoing that are within such Person's authority under this Agreement shall be binding and conclusive on a Member absent manifest error. In connection with any such determination, interpretation, calculation, adjustment or other action, the Managing Member, the Company, the Board of Directors (or a committee to which the Board of Directors has delegated such authority) or the designee of any of the foregoing shall be entitled to resolve any ambiguity with respect to the manner in which such determination, interpretation, calculation, adjustment or other action is to be made or taken, and shall be entitled to interpret the provisions of this Agreement in such a manner as such Person determines to be fair and equitable, and such resolution or interpretation shall be binding and conclusive on a Member absent manifest error.

Section 13.2 Company Counsel. THE COMPANY, THE MANAGING MEMBER AND AFFILIATED ENTITIES MAY BE REPRESENTED BY THE SAME COUNSEL. THE ATTORNEYS, ACCOUNTANTS AND OTHER EXPERTS WHO PERFORM SERVICES FOR THE COMPANY MAY ALSO PERFORM SERVICES FOR THE MANAGING MEMBER AND AFFILIATES THEREOF. THE MANAGING MEMBER MAY, WITHOUT THE CONSENT OF THE MEMBERS, EXECUTE ON BEHALF OF THE COMPANY ANY CONSENT TO THE REPRESENTATION OF THE COMPANY THAT COUNSEL MAY REQUEST PURSUANT TO THE NEW YORK RULES OF PROFESSIONAL CONDUCT OR SIMILAR RULES IN ANY OTHER JURISDICTION. THE COMPANY HAS INITIALLY SELECTED GIBSON, DUNN & CRUTCHER LLP ("COMPANY COUNSEL") AS LEGAL COUNSEL TO THE COMPANY. EACH MEMBER ACKNOWLEDGES THAT COMPANY COUNSEL DOES NOT REPRESENT ANY MEMBER IN ITS CAPACITY AS SUCH IN THE ABSENCE OF A CLEAR AND EXPLICIT WRITTEN AGREEMENT TO SUCH EFFECT BETWEEN SUCH MEMBER AND COMPANY COUNSEL (AND THEN ONLY TO THE EXTENT SPECIALLY SET FORTH IN SUCH AGREEMENT), AND THAT IN ABSENCE OF ANY SUCH AGREEMENT COMPANY COUNSEL SHALL OWE NO DUTIES TO ANY MEMBER. EACH MEMBER FURTHER ACKNOWLEDGES THAT, WHETHER OR NOT COMPANY COUNSEL HAS IN THE PAST REPRESENTED OR IS CURRENTLY REPRESENTING SUCH MEMBER WITH RESPECT TO OTHER MATTERS, UNLESS OTHERWISE EXPRESSLY AGREED BY COMPANY COUNSEL, COMPANY COUNSEL HAS NOT REPRESENTED THE INTERESTS OF ANY MEMBER IN THE PREPARATION AND/OR NEGOTIATION OF THIS AGREEMENT.

Section 13.3 Appointment of Managing Member as Attorney-in-Fact.

(a) Execution of Documents. Each Member, including each Additional Member and Substituted Member that is a Member, irrevocably makes, constitutes and appoints the Managing Member, any Liquidator, and authorized officers and attorneys-in-fact of each, and each of those acting singly, in each case with full power of substitution, as its true and Lawful attorney-in-fact with full power and authority in its name, place and stead to execute, acknowledge,

deliver, swear to, file and record at the appropriate public offices such documents as may be necessary or appropriate to carry out the provisions of this Agreement, including:

(i) All certificates and other instruments (including counterparts of this Agreement), and all amendments thereto, that the Managing Member deems appropriate to form, qualify, continue or otherwise operate the Company as a limited liability company (or other entity in which the Members will have limited liability comparable to that provided in the Act) in the jurisdictions in which the Company may conduct business or in which such formation, qualification or continuation is, in the opinion of the Managing Member, necessary or desirable to protect the limited liability of the Members.

(ii) All amendments to this Agreement adopted in accordance with the terms of this Agreement, and all instruments that the Managing Member deems appropriate in accordance with the terms of this Agreement.

(iii) All conveyances of Company Assets and other instruments that the Managing Member reasonably deems necessary in order to complete a dissolution and termination of the Company pursuant to this Agreement.

(b) Power and Interest. The appointment by all Members of the Managing Member as attorney-in-fact shall be deemed to be a power coupled with an interest in recognition of the fact that each of the Members under this Agreement will be relying upon the power of the Managing Member to act as contemplated by this Agreement in any filing and other action by it on behalf of the Company, shall survive the Incapacity of any Person hereby giving such power and the Transfer of all or any portion of such Person's Membership Interest, and shall not be affected by the subsequent Incapacity of the principal.

Section 13.4 Entire Agreement. This Agreement, together with that certain Registration Rights Agreement dated February 9, 2021 by and among the Managing Member and the stockholders of the Managing Member party thereto, as amended, supplemented or restated, in each case in accordance with its terms and the other documents contemplated hereby and thereby, constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and fully supersedes any and all prior or contemporaneous agreements or understandings between the parties hereto pertaining to the subject matter hereof, including the Existing Agreement.

Section 13.5 Further Assurances. Each of the parties hereto does hereby covenant and agree on behalf of itself, its successors, and its assigns, without further consideration, to prepare, execute, acknowledge, file, record, publish, and deliver such other instruments, documents and statements, and to take such other action as may be required by Law or reasonably necessary to effectively carry out the intent and purposes of this Agreement.

Section 13.6 Notices. Any notice, consent, payment, demand, or communication required or permitted to be given by any provision of this Agreement shall be in writing and shall be (a) delivered personally to the Person or to an officer of the Person to whom the same is directed, (b) sent by facsimile, overnight mail or registered or certified mail, return receipt requested, postage prepaid, or (c) (except with respect to notice to the Company or the Managing Member)

sent by email, with electronic, written or oral confirmation of receipt, in each case addressed as follows:

- (i) if to the Company or the Managing Member:

c/o Viant Technology Inc.
2722 Michelson Drive, Suite 100
Phone: (949) 861-8888
Email: lmadden@viantinc.com
Attention: Chief Financial Officer

With a copy (which shall not constitute notice) to:

Gibson, Dunn & Crutcher LLP
3161 Michelson Drive
Irvine, CA 92612
Phone: (949) 351-3923
Fax: (949) 475-4673
Attention: John M. Williams III

or to such other address as the Company may from time to time specify by notice to the Members;

- (ii) if to any Member, to:

the address, email, or facsimile number of such Member set forth in the records of the Company.

Any such notice shall be deemed to be delivered, given and received for all purposes as of: (A) the date so delivered, if delivered personally, (B) upon receipt, if sent by facsimile or email, or (C) on the date of receipt or refusal indicated on the return receipt, if sent by registered or certified mail, return receipt requested, postage and charges prepaid and properly addressed.

Section 13.7 Governing Law. This Agreement, including its existence, validity, construction, and operating effect, and the rights of each of the parties hereto, shall be governed by and construed in accordance with the Laws of the State of Delaware without regard to otherwise governing principles of conflicts of Law.

Section 13.8 Jurisdiction and Venue. The parties hereto agree that any suit, Action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby (whether brought by any party or any of its Affiliates or against any party or any of its Affiliates) shall be brought in the Delaware Chancery Court or, if such court shall not have jurisdiction, any federal court located in the State of Delaware or other Delaware state court (the "Selected Courts"), and each of the parties hereby irrevocably consents to the jurisdiction of the Selected Courts (and of the appropriate appellate courts therefrom) in any such suit, Action or proceeding and irrevocably waives, to the fullest extent permitted by Law, any objection that it may now or hereafter have to the laying of the venue of any such suit, Action or proceeding in any such court or that any such suit, Action or

proceeding brought in any such court has been brought in an inconvenient forum. Process in any such suit, Action or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any Selected Court. Without limiting the foregoing, each party agrees that service of process on such party in the manner provided for notice in Section 13.6 shall be deemed effective service of process on such party.

Section 13.9 Equitable Remedies. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with its specific terms or was otherwise breached. It is accordingly agreed that the parties hereto shall be entitled to an injunction or injunctions and other equitable remedies to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any of the Selected Courts, this being in addition to any other remedy to which they are entitled at Law or in equity. Any requirements for the securing or posting of any bond with respect to such remedy are hereby waived by each of the parties hereto. Each party further agrees that, in the event of any Action for an injunction or other equitable remedy in respect of such breach or enforcement of specific performance, it will not assert the defense that a remedy at Law would be adequate.

Section 13.10 Construction. This Agreement shall be construed as if all parties hereto prepared this Agreement.

Section 13.11 Counterparts. This Agreement may be executed in any number of counterparts, and each such counterpart shall for all purposes be deemed an original, and all such counterparts shall together constitute but one and the same agreement.

Section 13.12 Third-Party Beneficiaries. Except as provided in Section 4.7, nothing in this Agreement, express or implied, is intended or shall be construed to give any Person other than the parties hereto (or their respective legal representatives, successors, heirs and distributees) any legal or equitable right, remedy or claim under or in respect of any agreement or provision contained herein, it being the intention of the parties hereto that this Agreement is for the sole and exclusive benefit of such parties (or such legal representatives, successors, heirs and distributees) and for the benefit of no other Person.

Section 13.13 Binding Effect. Except as otherwise expressly provided herein, all of the terms and provisions of this Agreement shall be binding on, shall inure to the benefit of and shall be enforceable by the Members, their heirs, executors, administrators, successors and all other Persons hereafter holding, having or receiving an interest in the Company, whether as Substituted Members or otherwise.

Section 13.14 Severability. If any provision of this Agreement as applied to any party or to any circumstance shall be adjudged by a court to be void, unenforceable or inoperative as a matter of Law, then the same shall in no way affect any other provision in this Agreement, the application of such provision in any other circumstance or with respect to any other party, or the validity or enforceability of the Agreement as a whole.

Section 13.15 Survival. The provisions of Section 4.6, Section 4.7, Section 7.9, Section 13.1, Section 13.3, Section 13.4, Section 13.5, Section 13.6, Section 13.7 and Section 13.8 (and

this Section 13.15) (and any other provisions of this Agreement necessary for the effectiveness of the enumerated sections) shall survive the termination of the Company and/or the termination of this Agreement.

ARTICLE XIV

DEFINED TERMS

Section 14.1 Definitions. Unless otherwise indicated to the contrary, the following definitions shall be applied to the terms used in this Agreement:

“Act” is defined in the recitals of this Agreement.

“Additional Funds” is defined in Section 2.5(a).

“Additional Member” means a Person who is admitted to the Company as a Member pursuant to the Act and Section 9.1, who is shown as such on the books and records of the Company, and who has not ceased to be a Member pursuant to the Act and this Agreement.

“Adjusted Capital Account” means, with respect to any Member, the amount of such Member’s Capital Account as of the end of the relevant Fiscal Year, after giving effect to the following adjustments:

(i) credit to such Capital Account any amounts that such Member is obligated to restore (whether pursuant to this Agreement or otherwise by operation of Law) upon liquidation of such Member’s Membership Interest or that such Member is deemed to be obligated to restore pursuant to the penultimate sentence of each of Treas. Reg. § 1.704-2(g)(1) or 1.704-2(i)(5); and

(ii) debit to such Capital Account the items described in Treas. Reg. § 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The foregoing definition of “Adjusted Capital Account” is intended to comply with the provisions of Treas. Reg. § 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

“Affiliate” means, with respect to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person; *provided, however*, that (i) none of the Members or their parent companies or Affiliates shall be deemed to be an Affiliate of any other Member or its parent company or Affiliates and (ii) none of the Members or their parent companies or Affiliates shall be deemed to be an Affiliate of the Company or any of its Affiliates.

“Agreement” means this Amended and Restated Limited Liability Company Agreement of Viant Technology LLC, together with the Schedules and Exhibits hereto, as now or hereafter amended, restated, modified, supplemented, or replaced.

“Applicable Sale” is defined in Section 8.3(a).

“Applicable Sale Notice” is defined in Section 8.3(b).

“Asset Value” means, with respect to any Asset, the adjusted basis of such Asset for federal income tax purposes; *provided, however*, that:

(i) the initial Asset Value of any Asset (other than cash) contributed or deemed contributed by a Member to the Company shall be the gross Fair Market Value of such Asset as determined by the Company;

(ii) the Asset Values of all Assets shall be adjusted to equal their respective gross Fair Market Values as determined by the Company as of the following times: (A) the acquisition of an additional interest in the Company by any new or existing Member, in exchange for more than a *de minimis* Capital Contribution; (B) the distribution by the Company to a Member of more than a *de minimis* amount of property as consideration for an interest in the Company; (C) the liquidation of the Company within the meaning of Treas. Reg. § 1.704-1(b)(2)(ii)(g); (D) the grant of an interest in the Company (other than a *de minimis* interest) as consideration for the provision of services to the benefit of the Company by an existing Member acting in a Member capacity or by a new Member acting in a Member capacity or in anticipation of becoming a Member; or (E) any other instance in which such adjustment is permitted under Treas. Reg. § 1.704-1(b)(2)(iv); *provided, however*, that any adjustment pursuant to clauses (A), (B), (D), or (E) above shall be made only if the Company determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members in the Company;

(iii) the Asset Value of any Asset distributed to any Member shall be the gross Fair Market Value of such Asset on the date of distribution, as determined by the Company; and

(iv) the Asset Values of all Assets shall be increased (or decreased) to reflect any adjustments to the adjusted basis of such Assets pursuant to Code section 734(b) or Code section 743(b), but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Treas. Reg. § 1.704-1(b)(2)(iv)(m); *provided, however*, that Asset Values shall not be adjusted pursuant to this paragraph (iv) to the extent that the Company determines that an adjustment pursuant to paragraph (ii) of this definition of Asset Value is necessary or appropriate in connection with a transaction that would otherwise result in an adjustment pursuant to this paragraph (iv).

If the Asset Value of an Asset has been determined or adjusted to paragraph (i), (ii), or (iv) of this definition of Asset Value, then such Asset Value shall thereafter be adjusted by the Depreciation taken into account with respect to such Asset for purposes of computing Net Profits and Net Losses.

“Assets” means any assets and property of the Company.

“Assumed Tax Liability” is defined in Section 3.2(b).

“Assumed Tax Rate” is defined in Section 3.2(b)(ii).

“Available Cash” means, after taking into account amounts determined by the Managing Member to be reasonably necessary or advisable to be retained by the Company to meet actual or anticipated, direct or indirect, expenses, capital investments, working capital needs or liabilities (actual, contingent or otherwise) of the Company, including the payment of any Imputed Underpayment or for the operation of the business of the Company, or to create reasonable reserves for any of the foregoing, cash (in United States dollars) of the Company that the Board of Directors determines is available for distribution to the Members.

“Bankruptcy” means, with respect to any Person, the occurrence of any event specified in Section 18-304 of the Act with respect to such Person, and the term “Bankrupt” has a correlative meaning.

“Board of Directors” means the Board of Directors of the Managing Member.

“Business Day” means any weekday, excluding any legal holiday observed pursuant to United States federal or California State Law or regulation.

“Capital Account” is defined in Section 7.13.

“Capital Contribution” means, with respect to any Member, the aggregate amount of money and the initial Asset Value of property (other than money) in such form as may be permitted by the Act that the Member contributes (or is treated as contributing) to the Company.

“Capital Stock” means a share of any class or series of stock of the Managing Member now or hereafter authorized.

“Cash Settlement” means immediately available funds in U.S. dollars in an amount equal to the product of (x) the number of shares of Class A Common Stock that would otherwise be delivered to a Member in an Exchange, multiplied by (y) the price per share, net of underwriting discounts and commissions, at which Class A Common Stock is issued by the Managing Member in an underwritten offering or block trade commenced in anticipation of the applicable Exchange (a “Liquidity Offering”); or (z) if no such Liquidity Offering occurs within sixty (60) days after the receipt of the Exchange Notice, the arithmetic average of the volume weighted average prices for a share of Class A Common Stock on the principal U.S. securities exchange or automated or electronic quotation system on which the Class A Common Stock trades, as reported by *The Wall Street Journal* or its successor, for each of the three (3) consecutive full Business Days ending on and including the last full Business Day immediately prior to the Exchange Date, in each case subject to appropriate and equitable adjustment for any stock splits, reverse splits, stock dividends or similar events affecting the Class A Common Stock. If the Class A Common Stock no longer trades on a securities exchange or automated or electronic quotation system, then the amount specified in clause (y) shall be determined in good faith by a committee of the Board of Directors composed of a majority of the directors of the Managing Member that do not have an interest in the Exchangeable Units and shares of Class B Common Stock being Exchanged.

“Certificate of Formation” is defined in the recitals of this Agreement.

“Certificates” means (A) any certificates representing Exchangeable Units, (B) if applicable, any stock certificates representing the shares of Class B Common Stock required to be

surrendered in connection with an Exchange of Class B Common Units, and (C) such other information, documents or instruments as either the Managing Member or the Company (or the Managing Member's transfer agent) may reasonably require in connection with an Exchange. If any certificate or other document referenced in the immediately preceding sentence is alleged to be lost, stolen or destroyed, the Exchangeable Unit Member shall cooperate with and respond to the reasonable requests of the Managing Member and the Company (or the Managing Member's transfer agent), and if required by the Managing Member or the Company furnish an affidavit of loss and/or an indemnity against any claim that may be made against the Managing Member or the Company on account of the alleged loss, theft or destruction of such certificate or other document.

"Class A Common Stock" means the Class A common stock of the Managing Member, \$0.001 par value per share.

"Class A Common Unit" has the meaning set forth in Section 2.1(b)(i).

"Class B Common Stock" means the Class B Common Stock of the Managing Member, \$0.001 par value per share.

"Class B Common Unit" has the meaning set forth in Section 2.1(b)(ii).

"Code" means the Internal Revenue Code of 1986, as amended. All references in this Agreement to sections of the Code shall include any corresponding provision or provisions of succeeding Law.

"Common Stock" means the Class A Common Stock or the Class B Common Stock (and shall not include any additional series or class of the Managing Member's common stock created after the date of this Agreement).

"Common Unit" means a Class A Common Unit or Class B Common Unit.

"Company" is defined in the preamble to this Agreement.

"Company Counsel" is defined in Section 13.2.

"Company Minimum Gain" has the meaning set forth as "partnership minimum gain" in Treas. Reg. § 1.704-2(b)(2) and is computed in accordance with Treas. Reg. § 1.704-2(d).

"Consent" means the consent to, approval of, or vote in favor of a proposed action by a Member given in accordance with Article XI.

"Contribution Notice" is defined in Section 12.3(b).

"control" including the terms "controlled by" and "under common control with," means with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, as trustee or executor, as general partner or managing member, by contract or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the Board of Directors or similar body governing the affairs of such Person.

“Controlled Entity” means, as to any Person, (i) any corporation of which all the outstanding voting stock of which is owned by such Person or such Person’s Family Members or Controlled Entities, (ii) any trust, whether or not revocable, of which such Person or such Person’s Family Members or Controlled Entities are the sole beneficiaries, (iii) any partnership of which such Person or a Controlled Entity of such Person is the managing partner and in which such Person or such Person’s Family Members or Controlled Entities hold partnership interests representing all of such partnership’s capital and profits and (iv) any limited liability company of which such Person or a Controlled Entity of such Person is the manager or managing member and in which such Person or such Person’s Family Members or Controlled Entities hold Membership Interests representing all of such limited liability company’s capital and profits.

“*de minimis*” shall mean an amount small enough as to make not accounting for it commercially reasonable or accounting for it administratively impractical, in each case as determined by the Managing Member.

“Debt” means, as to any Person, as of any date of determination, (i) all indebtedness of such Person for borrowed money or for the deferred purchase price of property or services; (ii) all amounts owed by such Person to banks or other Persons in respect of reimbursement obligations under letters of credit, surety bonds and other similar instruments guaranteeing payment or other performance of obligations by such Person; and (iii) obligations of such Person as lessee under capital leases.

“Depreciation” means, for each Fiscal Year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable for federal income tax purposes with respect to an asset for such Fiscal Year or other period; *provided, however*, that if the Asset Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such Fiscal Year or other period, Depreciation shall be determined in accordance with Treas. Reg. § 1.704-1(b)(2) (iv)(g)(3) or Treas. Reg. § 1.704-3(d)(2), as appropriate.

“Designated Individual” is defined in Section 7.4(a)(ii).

“Drag-Along Right” is defined in Section 8.3(a).

“Elective Exchange” is defined in Section 12.1(a).

“Elective Exchange Notice” is defined Section 12.1(b).

“Employee” means an employee or other service provider (including a director, adviser or consultant) of the Company or an employee or other service provider (including a director, adviser or consultant) of a Subsidiary of the Company, if any.

“Equivalent Units” means Units with preferences, conversion and other rights (other than voting rights), restrictions, limitations as to dividends and other distributions, qualifications, terms and conditions of redemption (the “Terms”) that are (a) relative to the Common Units and the other classes and series of Units that correspond to classes and series of Capital Stock, and (b) substantially the same as (or corresponding to) the Terms that any new Capital Stock or New Securities have relative to the Common Stock and other classes and series of Capital Stock or New Securities. The foregoing shall not apply to matters such as voting for members of the Board of

Directors that are not applicable to the Company. In comparing the economic rights of any Preferred Stock with the economic rights of any Units, the effect of taxes may be taken into account.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“Exchange” means any Elective Exchange or Mandatory Exchange.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and any successor statute thereto, and the rules and regulations of the SEC promulgated thereunder.

“Exchange Consideration” shall mean, in the case of any Exchange, (x) the number of shares of Class A Common Stock that is equal to the product of the number of Exchangeable Units surrendered in the Exchange multiplied by the Exchange Rate (the “Stock Consideration”), (y) the Cash Settlement, plus, in the case of an Exchange of Class B Common Units under either sub-clause (x) or (y), an amount that is equal to \$0.001 multiplied by the number of shares of Class B Common Stock included in the Exchange, or (z) a combination of the Stock Consideration and the Cash Settlement.

“Exchange Date” means an Elective Exchange Date or Mandatory Exchange Date.

“Exchange Rate” means, in respect of any Exchange, a ratio, expressed as a fraction, the numerator of which shall be the number of shares of Class A Common Stock outstanding immediately before the Exchange and the denominator of which shall be the number of Class A Common Units owned by the Managing Member immediately before the Exchange. On the date of this Agreement, the Exchange Rate shall be 1, subject to adjustment pursuant to Section 12.4.

“Exchangeable Unit” means each Class B Common Unit.

“Exchangeable Unit Member” means each Member, other than the Managing Member and any of its wholly owned Subsidiaries, that holds a Class B Common Unit.

“Existing Agreement” is defined in the recitals of this Agreement.

“Fair Market Value” of Units or other property, means the cash price that a third party would pay to acquire all of such Units (computed on a fully diluted basis after giving effect to the exercise of any and all outstanding conversion rights, exchange rights, warrants and options) or other property, as the case may be, in an arm’s-length transaction. Unless otherwise determined by the Company, the following assumptions will be made when determining the Fair Market Value of Units:

(a) that the Company was being sold in a manner reasonably designed to solicit all possible participants and permit all interested Persons an opportunity to participate and to achieve the best value reasonably available to the Members at the time; and

(b) that all existing circumstances are taken into account, including the terms and conditions of all agreements (including this Agreement) to which the Company is then a party or by which it is otherwise benefited or affected, determined.

“Family Members” means, as to a Person that is an individual, such Person’s spouse, ancestors (whether by blood or by adoption), descendants (whether by blood or by adoption), brothers and sisters (whether by blood or by adoption) and *inter vivos* or testamentary trusts of which only such Person and his spouse, ancestors (whether by blood or by adoption), descendants (whether by blood or by adoption), brothers and sisters (whether by blood or adoption) are beneficiaries.

“First Amended and Restated Agreement” is defined in the recitals of this Agreement.

“Fiscal Year” has the meaning set forth in Section 7.12.

“Formation Date” is defined in the recitals of this Agreement.

“Imputed Underpayment” is defined in Section 7.5(b).

“Imputed Underpayment Share” is defined in Section 7.5(c)(i).

“Incapacity” or “Incapacitated” means, (i) as to any Member who is an individual, death, total physical disability or entry by a court of competent jurisdiction adjudicating such Member incompetent to manage his or her Person or his or her estate; (ii) as to any Member that is a corporation or limited liability company, the filing of a certificate of dissolution, or its equivalent, for the corporation or the revocation of its charter; (iii) as to any Member that is a partnership, the dissolution and commencement of winding up of the partnership; (iv) as to any Member that is an estate, the distribution by the fiduciary of the estate’s entire interest in the Company; (v) as to any trustee of a trust that is a Member, the termination of the trust (but not the substitution of a new trustee); or (vi) as to any Member, the Bankruptcy of such Member.

“Incentive Compensation Plan” means any plan, agreement or other arrangement that provides for the grant or issuance of equity or equity-based awards and that is now in effect or is hereafter adopted by the Company or the Managing Member for the benefit of any of their respective employees or other service providers (including directors, advisers and consultants), or the employees or other services providers (including directors, advisers and consultants) of any of their respective Affiliates or Subsidiaries.

“Indemnitee” means the Managing Member, each Affiliate of the Managing Member, the Tax Representative, the Designated Individual and each officer or director of the Managing Member, the Company or their respective Affiliates, in all cases in such capacity.

“Initial Certificate of Formation” is defined in the recitals of this Agreement.

“Initial Members” is defined in the preamble to this Agreement.

“IPO” is defined in the recitals of this Agreement.

“IPO Reorganization” is defined in the recitals of this Agreement.

“IRS” means the United States Internal Revenue Service, or, if applicable, a state or local taxing agency.

“Junior Unit” means a fractional share of the Membership Interests of a particular class or series that the Managing Member has authorized pursuant to Section 2.4 that has distribution rights, or rights upon liquidation, winding up, and dissolution, that are inferior or junior to the Common Units.

“Law” means any applicable statute, Law, ordinance, regulation, rule, code, executive order, injunction, judgment, decree or order of any governmental authority. The term “Lawful” has a correlative meaning.

“Liquidating Event” is defined in Section 10.2(b).

“Liquidator” is defined in Section 10.3(a).

“Majority-in-Interest of the Members” means Members (excluding the Managing Member) entitled to vote on or consent to any matter holding more than fifty percent (50%) of all outstanding Units held by all Members (excluding the Managing Member) entitled to vote on or consent to such matter.

“Managing Member” is defined in the preamble to this Agreement.

“Mandatory Exchange” is defined in Section 12.1(d).

“Mandatory Exchange Date” is defined in Section 12.1(d).

“Mandatory Exchange Notice” is defined in Section 12.1(d).

“Member” means any Person named as a member of the Company on Annex A to this Agreement (as amended from time to time) and any Person admitted as an Additional Member of the Company or a Substitute Member of the Company, in each case, in such Person’s capacity as a member of the Company, until such time as such Person has ceased to be a Member.

“Member Nonrecourse Debt” has the meaning given to the term “partner nonrecourse debt” in Treas. Reg. § 1.704-2(b)(4).

“Member Nonrecourse Debt Minimum Gain” means, with respect to each Member Nonrecourse Debt, an amount equal to the Company Minimum Gain that would result if such Member Nonrecourse Debt were treated as a Nonrecourse Liability, determined in accordance with Treas. Reg. § 1.704-2(i)(3).

“Member Nonrecourse Deductions” has the meaning given to the term “partner nonrecourse deduction” in Treas. Reg. §§ 1.704-2(i)(1) and 1.704-2(i)(2).

“Membership Interest” means, with respect to any Member, such Member’s entire undivided economic interest in the Company, including rights to allocations and distributions of the Company and any right of such Member to the return of Capital Contributions and any interest thereon.

“Minimum Exchangeable Amount” means Exchangeable Units estimated to have a fair value of any minimum amount established by the Managing Member pursuant to Section 12.1, provided that all of the Exchangeable Units held by such Exchangeable Unit Member shall never be deemed to be lower than the Minimum Exchangeable Amount.

“Net Profits” and “Net Losses” mean, for each Fiscal Year or other period, an amount equal to the Company’s taxable income or loss for such Fiscal Year or other period, determined in accordance with Code section 703(a) and, where appropriate, (but including in taxable income or loss, for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Code section 703(a)(1)), with the following adjustments:

(i) any income of the Company exempt from federal income tax and not otherwise taken into account in computing Net Profits or Net Losses pursuant to this definition shall be added to such taxable income or loss;

(ii) any expenditures of the Company described in Code section 705(a)(2)(B) (or treated as expenditures described in Code section 705(a)(2)(B) pursuant to Treas. Reg. § 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing Net Profits or Net Losses pursuant to this definition shall be subtracted from such taxable income or loss;

(iii) in the event the Asset Value of any Asset of the Company is adjusted in accordance with paragraph (ii) or paragraph (iii) of the definition of “Asset Value,” the amount of such adjustment shall be taken into account as gain or loss from the disposition of such Asset for purposes of computing Net Profits or Net Losses;

(iv) gain or loss resulting from any disposition of any Asset with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Asset Value of the Asset disposed of, notwithstanding that the adjusted tax basis of such Asset differs from its Asset Value;

(v) in lieu of the Depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year;

(vi) to the extent an adjustment to the adjusted tax basis of any Asset pursuant to Code section 734(b) is required pursuant to Treas. Reg. § 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining Capital Accounts as a result of a distribution other than in liquidation of a Member’s interest in the Company, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of the Asset) or loss (if the adjustment decreases the basis of the Asset) from the disposition of the Asset and shall be taken into account for purposes of computing Net Profits and Net Losses; and

(vii) notwithstanding any other provision of this definition of Net Profits and Net Losses, any items that are specially allocated pursuant to Section 6.2 and Section 6.3 shall not be taken into account in computing Net Profits or Net Losses, but shall be determined by applying rules analogous to those set forth in paragraphs (i) through (vi) above; and

(viii) where appropriate, references to Net Profits and Net Losses shall refer to specific items of income, gain, loss, deduction, and credit comprising or otherwise comprising Net Profits or Net Losses.

“New Securities” means any equity security as defined in Rule 3a11-1 under the Securities Exchange Act of 1934, as amended, excluding grants under the Incentive Compensation Plans, including (i) rights, options, warrants, or convertible or exchangeable securities that entitle the holder thereof to subscribe for or purchase, convert such securities into, or exchange such securities for, Common Stock or Preferred Stock and (ii) any Debt issued by the Managing Member that provides any of the rights described in clause (i).

“Nonrecourse Deductions” has the meaning set forth in Treas. Reg. § 1.704-2(b)(1).

“Nonrecourse Liability” has the meaning set forth in Treas. Reg. § 1.752-1(a)(2).

“Percentage Interest” means, with respect to each Member, as to any class or series of relevant Membership Interests, the fraction, expressed as a percentage, the numerator of which is the aggregate number of Units of such class or series held by such Member and the denominator of which is the total number of Units of such class or series held by all Members. If not otherwise specified, “Percentage Interest” shall be deemed to refer to Common Units.

“Permitted Transfer” means any Transfer permitted under Article VIII.

“Permitted Transferee” means any recipient of a Permitted Transfer.

“Person” means an individual, corporation, partnership, limited liability company, limited liability partnership, joint venture, syndicate, person, trust, association, organization or other entity, including any governmental authority, and including any successor, by merger or otherwise, of any of the foregoing.

“Policies” means the policies set by the Managing Member from time to time (including policies intended to ensure (a) administrative management matters, (b) orderly liquidity for Exchangeable Unit Members, (c) compliance with Laws restricting the trading in securities while in possession of material nonpublic information), and (d) compliance with tax Laws and Regulations.

“Preferred Stock” means shares of preferred stock of the Managing Member now or hereafter authorized or reclassified that has dividend rights, or rights upon liquidation, winding up and dissolution, that are superior or prior to the Common Stock.

“Preferred Unit” mean Units designated as “Preferred Units” in the Company having the rights and obligations specified in this Agreement.

“Push Out Election” means the election under Code section 6226 (or any similar provision of state or local law) to “push out” an adjustment to the Members or former Members, including filing IRS Form 8988 (Election for Alternative to Payment of the Imputed Underpayment), or any successor or similar form, and taking any other action necessary to give effect to such election.

“Qualified Transferee” means an “accredited investor,” as defined in Rule 501 promulgated under the Securities Act.

“Record Date” means the record date established by the Company for the purpose of determining the Members entitled to notice of or to vote at any meeting of Members or to consent to any matter, or to receive any distribution or the allotment of any other rights, or in order to make a determination of Members for any other proper purpose, which, in the case of a record date fixed for the determination of Members entitled to receive any distribution, shall (unless otherwise determined by the Company) generally be the same as the record date established by the Managing Member for a distribution to the Members of its Capital Stock of some or all of its portion of such distribution.

“Register” is defined in Section 5.1(b)(i).

“Registration Rights Agreement” means the Registration Rights Agreement, effective on or about the date hereof, among the Managing Member and the other persons party thereto, as the same may be amended, modified, supplemented or restated from time to time.

“Regulations” means the income tax regulations, including temporary regulations and, to the extent taxpayers are permitted to rely on them, proposed regulations, promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations). References to “Treas. Reg. §” are to the sections of the Regulations.

“Related-Party Transfer” means a Transfer by a Member of all or part of its Membership Interest to any Related-Party Transferee.

“Related-Party Transferee” means, with respect to a Member, any Family Member or Controlled Entity of the Member.

“Retraction Deadline” is defined in Section 12.1(b)(iii).

“Retraction Notice” is defined in Section 12.1(b)(iii).

“SEC” means the Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Selected Courts” is defined in Section 13.8.

“Subsidiary” means, with respect to any Person, any corporation or other entity of which a majority of (i) the voting power of the voting equity securities or (ii) the outstanding equity interests is owned, directly or indirectly, by such Person.

“Substituted Member” means a Person who is admitted as a Member to the Company pursuant to Section 8.4.

“Surviving Company” is defined Section 8.7(b)(iii).

“Tax Action” means any tax-related action, decision, or determination (or failure to take an available tax-related action, decision, or determination) by or with respect to the Company or any Subsidiary of the Company, including, without limitation and for the avoidance of doubt, (i) pursuant to discretion granted to the Company or the Company under the terms of this Agreement (or any agreement related to the Company), (ii) by a Tax Representative or Designated Individual, (iii) with respect to the settlement of any tax-related audit or proceeding, (iv) with respect to preparation and filing of any tax return of the Company or any Subsidiary of the Company, (v) any modification to the allocations pursuant to Section 6.2 or Section 6.3, or any determination made by the Company pursuant to (or other action taken in accordance with) Article IV.

“Tax Distribution” is defined in Section 3.2(a).

“Tax Distribution Shortfall Amount” is defined in Section 3.2(d).

“Tax Items” is defined in Section 6.3(a).

“Tax Receivable Agreement” means the Tax Receivable Agreement, dated as of February 9, 2021, entered into by and among the Managing Member, the Company, each of the parties thereto identified as a “Member” and each of the successors and assigns thereto, and any other similar tax receivable (or comparable) agreements entered after the date of this Agreement.

“Tax Representative” means, as applicable, and including the Designated Individual as context requires, (a) the Member or other Person (including the Company) designated as the “partnership representative” of the Company under Code section 6223, (b) the Member designated as the “tax matters partner” for the Company under Code section 6231(a)(7) (as in effect before 2018 and before amendment by Title XI of the Bipartisan Budget Act of 2015, H.R. 1314, Public Law No. 114-74), and/or (c) the Member or other Person serving in a similar capacity under any similar provisions of state, local or non-U.S. Laws, in each case, acting solely at the direction of the Company to the maximum extent permitted under Law.

“Termination Transaction” means any direct or indirect Transfer of all or any portion of the Managing Member’s Membership Interest in connection with, or the other occurrence of, (a) merger, consolidation or other combination involving the Managing Member, on the one hand, and any other Person, on the other, (b) a sale, lease, exchange or other transfer of all or substantially all of the assets of the Managing Member not in the ordinary course of its business, whether in a single transaction or a series of related transactions, (c) a reclassification, recapitalization or change of the outstanding Class A Common Stock (other than a change in par value, or from par value to no par value, or as a result of a stock split or reverse stock split, stock dividend or similar subdivision), (d) the adoption of any plan of liquidation or dissolution of the Managing Member, or (e) a Transfer of all or any portion of the Managing Member’s Membership Interest (other than to a wholly owned Affiliate).

“Terms” is defined in the definition of “Equivalent Units.”

“Transfer” means, in respect of any Units, property or other assets, any sale, assignment, hypothecation, lien, encumbrance, transfer, distribution or other disposition thereof or of a participation therein, or other conveyance of legal or beneficial interest therein, including rights to

vote and to receive dividends or other income with respect thereto, or any short position in a security or any other action or position otherwise reducing risk related to ownership through hedging or other derivative instruments, whether voluntarily or by operation of Law, or any agreement or commitment to do any of the foregoing.

“Unit” means a fractional share of the Membership Interests in the Company, which may be a Class A Common Unit, a Class B Common Unit, or a Preferred Unit, and shall be deemed to include any equity security received in connection with any recapitalization, merger, consolidation, or other reorganization, or by way of any distribution in respect of Units, in any such case, after the date of this Agreement.

“Unit Designation” is defined in Section 2.4(a).

Section 14.2 Interpretation. In this Agreement and in the exhibits hereto, except to the extent that the context otherwise requires:

- Agreement;
- (a) the headings are for convenience of reference only and shall not affect the interpretation of this Agreement;
 - (b) defined terms include the plural as well as the singular and vice versa;
 - (c) words importing gender include all genders;
 - (d) a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been or may from time to time be amended, extended, re-enacted or consolidated and to all statutory instruments or orders made under it;
 - (e) any reference to a “day” or a “Business Day” means the whole of such day, being the period of 24 hours running from midnight to midnight;
 - (f) references to Articles, Sections, subsections, clauses and Exhibits are references to Articles, Sections, subsections, clauses and Exhibits to, this Agreement;
 - (g) the words “including” and “include” and other words of similar import shall be deemed to be followed by the phrase “without limitation”; and
 - (h) unless otherwise specified, references to any party to this Agreement or any other document or agreement shall include its successors and permitted assigns.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first written above.

By: /s/ Tim Vanderhook
Name: Tim Vanderhook

By: /s/ Chris Vanderhook
Name: Chris Vanderhook

FOUR BROTHERS 2 LLC

By: /s/ Tim Vanderhook
Name: Tim Vanderhook
Title: Member

VIANT TECHNOLOGY EQUITY PLAN LLC

By: /s/ Tim Vanderhook
Name: Tim Vanderhook
Title: Member

VIANT TECHNOLOGY INC.

By: /s/ Tim Vanderhook
Name: Tim Vanderhook
Title: Chief Executive Officer

ANNEX A: INITIAL COMMON UNITS

<u>Member</u>	<u>Units</u>
Viant Technology Inc. 2722 Michelson Drive, Suite 100 Irvine, CA 92612	0 Class A Units
Tim Vanderhook c/o Viant Technology Inc. 2722 Michelson Drive, Suite 100 Irvine, CA 92612	8,084,399 Class B Units
Chris Vanderhook c/o Viant Technology Inc. 2722 Michelson Drive, Suite 100 Irvine, CA 92612	8,084,399 Class B Units
Four Brothers 2 LLC c/o Viant Technology Inc. 2722 Michelson Drive, Suite 100 Irvine, CA 92612	29,361,335 Class B Units
Viant Technology Equity Plan LLC c/o Viant Technology Inc. 2722 Michelson Drive, Suite 100 Irvine, CA 92612	3,405,426 Class B Units

**AMENDMENT NO. 1
TO
SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT
OF
VIANT TECHNOLOGY LLC**

This AMENDMENT NO. 1 TO THE SECOND AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT OF VIANT TECHNOLOGY LLC (this "Amendment") is made as of February 12, 2021 by Viant Technology Inc., a Delaware corporation ("Managing Member"), as Managing Member. Capitalized terms used but not otherwise defined in this Amendment shall have the meanings given to such terms in that certain Second Amended and Restated Limited Liability Company Agreement (the "Agreement") of Viant Technology LLC, a Delaware limited liability company (the "Company"), dated as of February 9, 2021, by and among the Managing Member and Tim Vanderhook, Chris Vanderhook, Four Brothers 2 LLC, and Viant Technology Equity Plan LLC.

RECITALS

WHEREAS, pursuant to Section 4.1(f) of the Agreement, the Managing Member has the power to amend the Agreement as may be required to reflect a change that does not adversely affect the Members in any material respect and with respect to matters arising under the Agreement that will not be inconsistent with Law or the provisions of the Agreement; and

WHEREAS, the Managing Member, now desires to amend the Agreement as set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Managing Member hereby agrees as follows:

1. The following Section 13.16 is hereby added after Section 13.15:

"Section 13.16 Pledge of Membership Interests. The pledge of any membership interests in the Company by the Managing Member shall not, except as otherwise provided in the loan documents underlying such pledge (the "Loan Documents"), cause the Managing Member to cease to be a member or to cease to have the power to exercise any rights or powers as Managing Member and, except as provided in such Loan Documents, the secured party under the Loan Documents (the "Secured Party") shall not have any liability solely as a result of such pledge. Without limiting the foregoing, the right of such Secured Party to enforce its rights and remedies under such Loan Documents hereby is acknowledged and any such action taken in accordance therewith shall be valid and effective for all purposes under this Agreement. Any assignment, sale or other disposition of the membership interests in the Company by such Secured Party pursuant to any such Loan Documents in connection with the exercise of any such Secured Party's rights and

powers thereunder shall be valid and effective for all purposes, including, without limitation, under Section 18-702 of the Delaware Limited Liability Company Act and this Agreement, to transfer all right, title and interest of the Managing Member hereunder to itself, any other lender or any other person (each an “Assignee”) in accordance with such Loan Documents and applicable law (including, without limitation, the rights to participate in the management of the business and the business affairs of the Company, to share profits and losses, to receive distributions and to receive allocations of income, gain, loss, deduction, credit or similar items), and such Assignee shall be a member of the Company with all rights and powers of a member and the Managing Member shall cease to be a member. Further, no lender or any such Assignee shall be liable for the obligations of the Managing Member assignor to make contributions. The Managing Member, which is the sole Managing Member of the Company, approves all of the foregoing and the Managing Member agrees that no further approval shall be required for the exercise of any rights or remedies under such collateral documentation.”

2. Annex A to the Agreement is hereby amended and replaced in its entirety with Exhibit A hereto to give effect to the IPO, including the underwriters’ exercise of their option to purchase additional shares from the selling stockholders.

3. The Agreement is hereby amended to the fullest extent necessary to effect all of the matters contemplated by this Amendment. Except as specifically provided for in this Amendment, the provisions of the Agreement shall remain in full force and effect.

4. The execution, delivery and effectiveness of this Amendment shall not operate (a) as an amendment or modification of any provision, right or obligation of any Member under the Agreement except as specifically set forth in this Amendment or (b) as a waiver or consent to any subsequent action or transaction.

5. This Amendment shall be construed and enforced in accordance with and governed by the laws of the State of Delaware, without regard to the principles of conflicts of laws thereof.

[Signature page follows]

IN WITNESS WHEREOF, the undersigned has duly executed this Agreement as of the date and year first above written.

**VIANT TECHNOLOGY INC.,
a Delaware corporation**

By: /s/ Larry Madden

Name: Larry Madden

Title: Chief Financial Officer

[Signature Page – Amendment to LLC Agreement of Viant Technology LLC]

Exhibit A

ANNEX A: INITIAL COMMON UNITS

<u>Member</u>	<u>Units</u>
Viant Technology Inc. 2722 Michelson Drive, Suite 100 Irvine, CA 92612	11,500,000 Class A Units
Tim Vanderhook c/o Viant Technology Inc. 2722 Michelson Drive, Suite 100 Irvine, CA 92612	7,833,774 Class B Units
Chris Vanderhook c/o Viant Technology Inc. 2722 Michelson Drive, Suite 100 Irvine, CA 92612	7,833,774 Class B Units
Four Brothers 2 LLC c/o Viant Technology Inc. 2722 Michelson Drive, Suite 100 Irvine, CA 92612	28,451,103 Class B Units
Viant Technology Equity Plan LLC c/o Viant Technology Inc. 2722 Michelson Drive, Suite 100 Irvine, CA 92612	3,316,908 Class B Units

TAX RECEIVABLE AGREEMENT (EXCHANGES)

dated as of

February 9, 2021

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TAX RECEIVABLE AGREEMENT (EXCHANGES)

This TAX RECEIVABLE AGREEMENT (EXCHANGES) (this “**Agreement**”), dated as of February 9, 2021, is entered into by and among Viant Technology Inc., a Delaware corporation (Viant Technology Inc. and any of its Subsidiaries classified as a corporation for U.S. federal income tax purposes, and any successor thereto, the “**Corporation**”), Viant Technology LLC, a Delaware limited liability company that is classified as a partnership for U.S. federal income tax purposes (the “**Company**”), each of the TRA Holders, and the TRA Representative.

RECITALS

WHEREAS, the TRA Holders hold units of membership interest in the Company (“**Units**”);

WHEREAS, the Corporation is the managing member of the Company;

WHEREAS, the Company and the Corporation have undertaken the transactions described in the registration statement on Form S-1 publicly filed with the Securities and Exchange Commission on January 15, 2021 (Registration No. 333-252117), as amended before the date of this Agreement, including the initial public offering of shares of Class A common stock (the “**Class A Shares**”) by the Corporation (the “**IPO**”);

WHEREAS, the Units, if any, other than those owned by the Corporation, are exchangeable with the Company or the Corporation in certain circumstances for Class A Shares and/or cash pursuant to the exchange provisions of the Second Amended and Restated Limited Liability Company Agreement of the Company (the “**LLC Agreement**”) (each such exchange by a TRA Holder, an “**Exchange**,” and the date of any Exchange, an “**Exchange Date**”);

WHEREAS, each of the Company and any of its direct or indirect Subsidiaries classified as partnerships for United States federal income tax purposes shall have in effect an election under section 754 of the Code for each Taxable Year in which an Exchange occurs, which election is intended to result in an adjustment to the tax basis of the assets owned by the Company and such Subsidiaries, solely with respect to the Corporation;

WHEREAS, the liability of the Corporation in respect of Taxes may be reduced by the Tax Assets;

WHEREAS, the parties to this Agreement desire to make certain arrangements with respect to the benefits attributable to the effect of the Tax Assets on the liability for Taxes of the Corporation;

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth in this Agreement, and intending to be legally bound hereby, the undersigned parties agree as follows:

ARTICLE I
DETERMINATION OF REALIZED TAX BENEFIT

Section 1.01 Realized Tax Benefit and Realized Tax Detriment. Except as otherwise expressly provided in this Agreement, the parties intend that, for a Taxable Year, the excess, if any, of (a) the Hypothetical Tax Liability over the Actual Tax Liability (the “**Realized Tax Benefit**”) or (b) the Actual Tax Liability over the Hypothetical Tax Liability (the “**Realized Tax Detriment**”) shall measure the decrease or increase (respectively) in the Actual Tax Liability for such Taxable Year that is attributable to the Tax Assets, determined using a “with and without” methodology (that is, treating the Tax Assets as the last tax attributes used in such Taxable Year). If all or a portion of the Actual Tax Liability for the Taxable Year arises as a result of an audit by a Taxing Authority of any Taxable Year, such liability shall not be included in determining the Realized Tax Benefit or Realized Tax Detriment unless and until there has been a Determination.

Section 1.02 Assumptions, Conventions, and Principles for Calculation. The Actual Tax Liability shall be the tax liability of the Corporation as reflected on the relevant Corporate Tax Return, using such reasonable methods as the Corporation determines; provided that the Corporation shall use the following assumptions, conventions, and principles in making the determination:

(a) Treatment of Tax Benefit Payments. Tax Benefit Payments (other than amounts accounted for as Imputed Interest) shall (i) be treated as positive (or upward) purchase price adjustments that give rise to further Basis Adjustments to Adjusted Assets for the Corporation and (ii) have the effect of creating additional Basis Adjustments to Adjusted Assets for the Corporation in the year of payment, and, as a result, such additional Basis Adjustments shall be incorporated into the current year calculation and into future year calculations, as appropriate.

(b) Imputed Interest. The Actual Tax Liability shall take into account the deduction of the portion of each Tax Benefit Payment that is accounted for as Imputed Interest under the Code due to the characterization of such Tax Benefit Payments as additional consideration payable by the Corporation for the Units acquired in an Exchange.

(c) Carryovers and Carrybacks. Carryovers or carrybacks of any Tax Items attributable to the Tax Assets shall be considered to be subject to the rules of the Code and the Treasury Regulations governing the use, limitation and expiration of carryovers or carrybacks of the relevant type. If a carryover or carryback of any Tax Item includes a portion that is attributable to a Tax Asset and another portion that is not, the portion attributable to the Tax Asset shall be considered to be used in accordance with the “with and without” methodology.

(d) State and Local Taxes. For purposes of calculating the Actual Tax Liability with respect to a Taxable Year, it shall be assumed that the Corporation’s state and local Tax liability (the “**Assumed SALT Liability**”) equals the product of (i) the taxable income and gain determined for the Taxable Year in accordance with this

Agreement and (ii) five percent (5%) or such other percentage as the Company reasonably determines from time to time reflects its blended state and local tax rate (using the apportionment factors set forth on the relevant Corporate Tax Returns for that Taxable Year unless otherwise determined by the Corporation after consultation with the TRA Representative).

(e) Treatment of State and Local and Non-United States Taxes. The provisions of this Agreement, including the assumption, conventions, and principles with respect to the determination of income and gain, shall apply to state and local and non-United States tax matters *mutatis mutandis*.

Section 1.03 Procedures Relating to Calculation of Tax Benefits.

(a) Preparation and Delivery of Exchange Basis Schedule and Tax Benefit Schedule.

(i) Exchange Basis Schedule. Within 120 days after the filing of the U.S. federal income Tax Return of the Company for each Taxable Year in which any Exchange has occurred, the Corporation shall deliver to the TRA Representative a schedule (the “**Exchange Basis Schedule**”) that shows, in reasonable detail, (A) the actual common tax basis of the Adjusted Assets as of each Exchange Date, (B) the Basis Adjustment with respect to the Adjusted Assets as a result of the Exchanges effected in such Taxable Year and all prior Taxable Years ending after the date of this Agreement, calculated (1) in the aggregate and (2) with respect to Exchanges by each TRA Holder, (C) the period or periods, if any, over which the common tax basis of the Adjusted Assets are amortizable and/or depreciable, and (D) the period or periods, if any, over which each Basis Adjustment is amortizable and/or depreciable.

(ii) Tax Benefit Schedule. Within 120 days after the filing of the U.S. federal income Tax Return of the Corporation for any Taxable Year ending after the date of this Agreement, the Corporation shall provide to the TRA Representative either (A) a schedule showing, in reasonable detail, the calculation of the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year (a “**Tax Benefit Schedule**”), or, (B) if there is no Realized Tax Benefit or Realized Tax Detriment for that Taxable Year, notice to that effect.

(iii) Supporting Material; Review Right. Each time the Corporation delivers to a TRA Representative an Exchange Basis Schedule or a Tax Benefit Schedule, including any Amended Schedule delivered pursuant to Section 1.03(c), the Corporation shall also deliver to the TRA Representative schedules and work papers providing reasonable detail regarding the preparation of the schedule and a Supporting Letter confirming the calculations and allow the TRA Representative reasonable access, at no cost to the TRA Representative, to the appropriate representatives at the Corporation and, if applicable, the Advisory Firm in connection with a review of such schedules or workpapers.

(iv) Provision of Information to TRA Holders. Upon the reasonable request of a TRA Holder, the TRA Representative shall provide to that TRA Holder, in a reasonably prompt manner, such information that the TRA Representative receives pursuant to this Agreement (including the schedules described in this Section 1.03), but only to the extent that the TRA Representative determines that such information is relevant and relates to that TRA Holder.

(b) Objection to, and Finalization of, Exchange Basis Schedule and Tax Benefit Schedule. Each Exchange Basis Schedule or Tax Benefit Schedule, including any Amended Schedule delivered pursuant to Section 1.03(c), shall become final and binding on all parties unless the TRA Representative, within 30 days after receiving an Exchange Basis Schedule or a Tax Benefit Schedule, provides the Corporation with notice of a material objection to such schedule made in good faith (an “**Objection Notice**”). If the Corporation and the TRA Representative are unable to successfully resolve the issues raised in the Objection Notice within 30 days after receipt by the Corporation of the Objection Notice, the Corporation and the TRA Representative shall employ the dispute resolution procedures as described in Section 6.08 of this Agreement (the “**Dispute Resolution Procedures**”).

(c) Amendment of Exchange Basis Schedule and Tax Benefit Schedule. After finalization of an Exchange Basis Schedule or a Tax Benefit Schedule in accordance with Section 1.03(b), any Exchange Basis Schedule or Tax Benefit Schedule may be amended from time to time by the Corporation (i) to correct material inaccuracies in any such schedule, (ii) to reflect a material change in the Realized Tax Benefit or Realized Tax Detriment for such Taxable Year attributable to either a carryback or carryforward of a Tax Item to such Taxable Year or to an amended Tax Return filed with respect to such Taxable Year, (iii) to adjust the Exchange Basis Schedule to take into account payments made pursuant to this Agreement, (iv) to comply with the Arbitrators’ determination under the Dispute Resolution Procedures, or (v) in connection with a Determination affecting such schedule (such schedule, an “**Amended Schedule**”). Any Amended Schedule shall be subject to the finalization procedures set forth in Section 1.03(b) and the Dispute Resolution Procedures set forth in Section 6.08.

ARTICLE II TAX BENEFIT PAYMENTS

Section 2.01 Payments.

(a) General Rule. The Corporation shall pay to each TRA Holder for each Taxable Year the Tax Benefit Payment that is attributable to that TRA Holder at the times set forth in Section 2.01(c). For purposes of this Section 2.01(a), the amount of a Tax Benefit Payment that is attributable to a TRA Holder shall be determined by multiplying (i) the aggregate Tax Benefit Payment for the Taxable Year that arose directly or indirectly as a result of any Exchange by any TRA Holder or as a result of any payments under this Agreement to any TRA Holder by (ii) a fraction (x) the numerator of which is the aggregate amount of all Tax Benefit Items available for use in the Taxable Year that arose directly or indirectly as a result of an Exchange by the TRA Holder or as

a result of payments to such TRA Holder under this Agreement and (y) the denominator of which is the aggregate amount of all Tax Benefit Items available for use in the Taxable Year that arose directly or indirectly as a result of any Exchange by any TRA Holder or as a result of any payments under this Agreement to any TRA Holder.

(b) Determination of Tax Assets. The Tax Assets shall be determined separately with respect to each separate Exchange, on a Unit-by-Unit basis by reference to the Exchange of a Unit and the resulting Tax Assets with respect to the Corporation.

(c) Timing of Tax Benefit Payments. The Corporation shall make each Tax Benefit Payment not later than 10 days after a Tax Benefit Schedule delivered to the TRA Representative becomes final in accordance with Section 1.03(b). The Corporation may, but is not required to, make one or more estimated payments at other times during the Taxable Year and reduce future payments so that the total amount paid to a TRA Holder in respect of a Taxable Year equals the amount calculated with respect to such Taxable Year pursuant to Section 2.01(a).

(d) Optional Cap on Payments. Notwithstanding any provision of this Agreement to the contrary, any TRA Holder may elect with respect to any Exchange to limit the aggregate Tax Benefit Payments made to such TRA Holder in respect of that Exchange to a specified dollar amount, a specified percentage of the amount realized by the TRA Holder with respect to the Exchange, or a specified portion of the Basis Adjustment with respect to the Adjusted Assets as a result of the Exchange. The TRA Holder shall exercise its rights under the preceding sentence by including a notice of its desire to impose such a limit and the specified limitation and such other details as may be reasonably necessary (including whether such limitation includes the Additional Amounts in respect of any such Exchange) in the Exchange Notice delivered in accordance with the Exchange Agreement.

Section 2.02 No Duplicative Payments. The provisions of this Agreement are not intended to, and shall not be construed to, result in duplicative payment of any amount (including interest) required under this Agreement.

Section 2.03 Proportionate Payments; Other Tax Receivable Agreements.

(a) Tax Assets under Other Tax Receivable Agreements. For purposes of determining the amount of any payment under this Agreement, the Tax Assets with respect to all Other Tax Receivable Agreements shall be disregarded. For the avoidance of doubt, and notwithstanding anything to the contrary in this Agreement, in performing the “with and without” calculation described in Section 1.01 the Tax Assets with respect to this Agreement shall be treated as used before any Tax Assets with respect to any Other Tax Receivable Agreements are treated as used in the applicable Taxable Year.

(b) Order of Payments. If for any reason (including, but not limited to, the lack of sufficient Available Cash to satisfy the Corporation’s obligations to make all Tax Benefit Payments due in a particular Taxable Year under this Agreement and the Other Tax Receivable Agreements) the Corporation does not fully satisfy its obligations to

make all payments due under this Agreement and the Other Tax Receivable Agreements in a particular Taxable Year, then (i) the TRA Holders shall receive payments under this Agreement in respect of such Taxable Year in the same proportion as they would have received if the Corporation had been able to fully satisfy its payment obligations, without favoring one TRA Holder over the other TRA Holders, and (ii) no payment under this Agreement or the Other Tax Receivable Agreements shall be made in respect of any subsequent Taxable Year until all such payments under this Agreement in respect of the current and all prior Taxable Years have been made in full. Any Other Tax Receivable Agreement shall include such provisions as may be necessary to give effect to this Section 2.03.

Section 2.04 No Escrow or Clawback; Reduction of Future Payments. No amounts due to a TRA Holder under this Agreement shall be escrowed, and no TRA Holder shall be required to return any portion of any Tax Benefit Payment previously made to it. No TRA Holder shall be required to make a payment to the Corporation on account of any Realized Tax Detriment. If a TRA Holder receives amounts in excess of its entitlements under this Agreement (including as a result of an audit adjustment or Realized Tax Detriment), future payments under this Agreement shall be reduced until the amount received by the TRA Holder equals the amount the TRA Holder would have received had it not received the amount in excess of such entitlements.

ARTICLE III TERMINATION

Section 3.01 Early Termination Events.

(a) Early Termination Election by Corporation. The Corporation may terminate the rights under this Agreement with respect to all or a portion of the Units held (including those previously Exchanged) by all TRA Holders at any time by (A) delivering an Early Termination Notice as provided in Section 3.02(a) and (B) paying the Early Termination Payment as provided in Section 3.03(a). If the Corporation terminates the rights under this Agreement with respect to less than all of the Units held (or previously held and Exchanged), such termination shall be made among the TRA Holders in such manner that it results in each TRA Holder receiving the same proportion of the Early Termination Payment made at that time as each TRA Holder would have received had the Corporation terminated all of the rights of the TRA Holders under this Agreement at that time.

(b) Deemed Early Termination.

(i) Deemed Early Termination Event. If there is a Material Uncured Breach of this Agreement with respect to a TRA Holder or a Change of Control (each, a “**Deemed Early Termination Event**”), (A) the Corporation (or the TRA Representative (with a copy to the Corporation)) shall deliver to the applicable TRA Holder(s) an Early Termination Notice as provided in Section 3.02(a), and (B) all obligations under this Agreement with respect to the applicable TRA Holder(s) shall be accelerated.

(ii) Payment upon Deemed Early Termination Event. The amount payable to the applicable TRA Holder as a result of that acceleration shall equal the sum of:

(A) an Early Termination Payment calculated with respect to such TRA Holder(s) pursuant to this ARTICLE III as if an Early Termination Notice had been delivered on the date of the Deemed Early Termination Event using the Valuation Assumptions but substituting the phrase “the date of the Deemed Early Termination Event” in each place where the phrase “Early Termination Date” appears;

(B) any Tax Benefit Payment agreed to by the Corporation and such TRA Holder(s) as due and payable but unpaid as of the date of a breach; and

(C) any Tax Benefit Payment due to such TRA Holder(s) for the Taxable Year ending with or including the date of the breach (except to the extent that any amounts described in clauses (B) or (C) are included in the amount payable upon early termination).

(iii) Waiver of Deemed Early Termination. A TRA Holder may elect to waive the acceleration of obligations under this Agreement triggered by a Deemed Early Termination Event by submitting a waiver in writing to the Corporation within 30 days after the date of the Early Termination Notice. If a TRA Holder elects to waive the acceleration of obligations pursuant to the preceding sentence, this Agreement shall continue to apply with respect to that TRA Holder as though no Deemed Early Termination Event had occurred, and, if there are any due and unpaid amounts with respect to that TRA Holder, the Corporation shall pay those amounts to the TRA Holder in the manner provided in this Agreement.

Section 3.02 Early Termination Notice and Early Termination Schedule.

(a) Notice; Schedule.

(i) Delivery of Early Termination Notice and Early Termination Schedule. If the Corporation chooses to exercise its right of early termination under Section 3.01(a) above, or if there is a Deemed Early Termination Event under Section 3.01(b) above, the Corporation shall deliver to each TRA Holder whose rights are being terminated (A) a notice (an “**Early Termination Notice**”) specifying (x) such early termination and (y) the date on which the termination of rights is to be effective (the “**Early Termination Date**”), which date shall be not less than 30 days and not more than 120 days after the date of the Early Termination Notice, and (B) a schedule showing in reasonable detail the calculation of the Early Termination Payment with respect to each TRA Holder (the “**Early Termination Schedule**”). The Early Termination Notice shall be delivered within 30 days after the Corporation elects to terminate this Agreement or there is a Deemed Early Termination Event.

(ii) Finalization of Early Termination Schedule; Disputes. The applicable Early Termination Schedule delivered to a TRA Holder pursuant to Section 3.02(a)(i) shall become final and binding on the Corporation and such TRA Holder unless that TRA Holder, within 30 days after receiving the Early Termination Schedule, provides the Corporation with notice of a material objection to such schedule made in good faith (“**Material Objection Notice**”). If the Corporation and such TRA Holder are unable to successfully resolve the issues raised in the Material Objection Notice within 30 days after receipt by the Corporation of the Material Objection Notice, the Corporation and the TRA Holder shall employ the Dispute Resolution Procedures set forth in Section 6.08.

(iii) Withdrawal of Early Termination Notice. The Corporation may withdraw an Early Termination Notice before the Early Termination Payment is due and payable to any applicable TRA Holder(s).

(b) Amendment of Early Termination Schedule. After finalization of an Early Termination Schedule in accordance with Section 3.02(a)(ii), any Early Termination Schedule may be amended by the Corporation at any time before the Early Termination Payment is made (i) in connection with a Determination affecting such schedule, (ii) to correct material inaccuracies in any such schedule, or (iii) to comply with the Arbitrators’ determination under Section 6.08. Any amendment shall be subject to the procedures of Section 3.02(a)(ii) and the Dispute Resolution Procedures set forth in Section 6.08.

Section 3.03 Early Termination Payment.

(a) Amount and Timing of Early Termination Payment. The payment due to a TRA Holder in connection with an early termination described in Section 3.01(a) (the “**Early Termination Payment**”) shall be an amount equal to the present value, discounted at the Early Termination Rate as of the Early Termination Date, of all Tax Benefit Payments that the Corporation would be required to pay to the TRA Holder beginning from the Early Termination Date and assuming that the Valuation Assumptions are applied. Not later than 10 days after an Early Termination Schedule delivered to a TRA Holder becomes final in accordance with Section 3.02(a)(ii), the Corporation shall pay to the TRA Holder the Early Termination Payment due to that TRA Holder.

(b) Effect of Early Termination Payment. Upon payment of the Early Termination Payment by the Corporation under Section 3.03, neither the TRA Holder nor the Corporation shall have any further rights or obligations under this Agreement in respect of the Units (including those previously Exchanged) with respect to which the rights under this Agreement have been terminated in accordance with Section 3.01, other than for any (i) payment under this Agreement that is due and payable but has not been paid as of the Early Termination Notice and (ii) Tax Benefit Payment due for the Taxable Year ending with or including the date of the Early Termination Notice (except to the extent that the amount described in clause (ii) is included in the Early Termination Payment). For the avoidance of doubt, if an Exchange occurs after the Corporation has made an Early Termination Payments with respect to all Units (including those previously Exchanged), the Corporation shall have no obligations under this Agreement with respect to such Exchange other than any obligations described in clause (i) or (ii) of the preceding sentence.

**ARTICLE IV
SUBORDINATION AND LATE PAYMENTS**

Section 4.01 Subordination. Any Tax Benefit Payment or Early Termination Payment required to be paid by the Corporation to a TRA Holder under this Agreement shall rank subordinate and junior in right of payment to any principal, interest or other amounts due and payable in respect of any current or future obligations in respect of indebtedness for borrowed money of the Corporation and its Subsidiaries and shall, except as otherwise provided in this Agreement with respect to Other Tax Receivable Agreements, rank *pari passu* with all current or future unsecured obligations of the Corporation that are not principal, interest or other amounts due and payable in respect of any current or future obligations in respect of indebtedness for borrowed money of the Corporation and its Subsidiaries and shall be senior to equity interests in the Corporation.

Section 4.02 Late Payments by the Corporation. The amount of all or any portion of any amount due under the terms of this Agreement that is not paid to any TRA Holder when due shall be payable, together with any interest thereon computed at the Default Rate commencing from the date on which such payment was due and payable. Notwithstanding the preceding sentence, the Default Rate shall not apply (and the Agreed Rate shall apply) to any late payment that is late solely as a result of (a) a prohibition, restriction or covenant under any credit agreement, loan agreement, note, indenture or other agreement governing indebtedness of the Company or any of its Subsidiaries or the Corporation or (b) restrictions under applicable law.

Section 4.03 Manner of Payment. All payments required to be made to a TRA Holder pursuant to this Agreement will be made by electronic payment to a bank account previously designated and owned by such TRA Holder or, if no such account has been designated, by check payable to such TRA Holder.

**ARTICLE V
PREPARATION OF TAX RETURNS; COVENANTS**

Section 5.01 No Participation by TRA Holder in the Corporation's and the Company's Tax Matters.

(a) General Rule. Except as otherwise provided in this **ARTICLE V**, the Corporation shall have full responsibility for, and sole discretion over, all Tax matters concerning the Corporation and the Company, including, without limitation, the preparation, filing and amending of any Tax Return and defending, contesting or settling any issue pertaining to Taxes.

(b) Notification of TRA Representative. The Corporation shall notify the TRA Representative of, and keep the TRA Representative reasonably informed with respect to, the portion of any audit of the Corporation and the Company by a Taxing Authority the outcome of which is reasonably expected to affect the TRA Holders' rights and obligations under this Agreement.

Section 5.02 Consistency. The Corporation and the TRA Holders agree to report and cause to be reported for all purposes, including U.S. federal, state, local and foreign tax purposes and financial reporting purposes, all tax-related items (including without limitation the Basis Adjustment and each Tax Benefit Payment) in a manner consistent with that specified by the Corporation in any schedule provided by or on behalf of the Corporation under this Agreement unless the Corporation or a TRA Holder receives a written opinion from an Advisory Firm that reporting in such manner will result in an imposition of penalties pursuant to the Code. Any Dispute concerning such written opinion shall be subject to the Dispute Resolution Procedures set forth in Section 6.08.

Section 5.03 Cooperation. Each TRA Holder shall (a) furnish to the Corporation in a timely manner such information, documents and other materials, not to include such TRA Holder's personal Tax Returns, as the Corporation may reasonably request for purposes of making any determination or computation necessary or appropriate under this Agreement, preparing any Tax Return or contesting or defending any audit, examination or controversy with any Taxing Authority, (b) make itself available to the Corporation and its representatives to provide explanations of documents and materials and such other information as the Corporation or its representatives may reasonably request in connection with any of the matters described in clause (a) of this Section 5.03, and (c) reasonably cooperate in connection with any such matter. The Corporation shall reimburse each TRA Holder for any reasonable and documented third-party costs and expenses incurred by the TRA Holder in complying with this Section 5.03.

Section 5.04 Section 754 Election. The Corporation shall (i) ensure that, on and after the date of this Agreement and continuing throughout the term of this Agreement, the Company and each of its Subsidiaries that is classified as a partnership for U.S. federal income Tax purposes shall have in effect an election pursuant to section 754 of the Code (and any similar provisions of applicable U.S. state or local law) and (ii) use commercially reasonable efforts to ensure that, on and after the date of this Agreement and continuing throughout the term of this Agreement, any entity in which the Company holds a direct or indirect interest that is classified as a partnership for U.S. federal income Tax purposes that is not a "Subsidiary" as defined in this Agreement will have in effect an election pursuant to Section 754 of the Code (and any similar provisions of applicable U.S. state or local law).

Section 5.05 Available Cash. The Corporation shall use commercially reasonable efforts to ensure that it has sufficient Available Cash to make all payments due under this Agreement, including using commercially reasonable efforts to cause the Company to make distributions to the Corporation to make such payments so long as such distributions do not violate (a) a prohibition, restriction or covenant under any credit agreement, loan agreement, note, indenture or other agreement governing indebtedness of the Company or any of its Subsidiaries or the Corporation or (b) restrictions under applicable law.

ARTICLE VI
MISCELLANEOUS

Section 6.01 Notices. All notices, requests, claims, demands and other communications with respect to this Agreement shall be in writing and shall be deemed duly given and received (a) on the date of delivery if delivered personally, or by e-mail if sent on a Business Day (or otherwise on the next Business Day) or (b) on the first Business Day following the date of dispatch if delivered by a nationally recognized next-day courier service. All notices under this Agreement shall be delivered as set forth below, or pursuant to such other instructions as may be designated in writing by the party to receive such notice:

if to the Corporation, to:

Viant Technology Inc.
2722 Michelson Drive, Suite 100
Irvine, CA 92612
Phone (949) 861-8888
Attention: Larry Madden, CFO
E-mail: lmadden@viantinc.com

with a copy to:

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166-0193
Phone: +1.212.351.2340
Fax: +1.212.351.5220
Attention: Eric Sloan and John Williams
E-mail: esloan@gibsondunn.com
jwilliams@gibsondunn.com

if to the Company, to:

Viant Technology LLC
2722 Michelson Drive, Suite 100
Irvine, CA 92612
Phone (949) 861-8888
Attention: Larry Madden, CFO
E-mail: lmadden@viantinc.com

with a copy to:

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166-0193
Phone: +1.212.351.2340
Fax: +1.212.351.5220
Attention: Eric Sloan and John Williams
E-mail: esloan@gibsondunn.com

if to the TRA Representative, to:

the address provided to the Corporation at the time of the TRA Representative's appointment in accordance with the definition of "TRA Representative."

if to the TRA Holder(s), to:

the address set forth for such TRA Holder in the records of the Company.

Any party may change its address by giving the other party written notice of its new address, fax number, or e-mail address in the manner set forth in this [Section 6.01](#).

Section 6.02 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart. This Agreement may be executed in two or more counterparts by manual, electronic or facsimile signature, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of an executed signature page to this Agreement by electronic transmission or facsimile transmission shall be as effective as delivery of a manually signed counterpart of this Agreement.

Section 6.03 Entire Agreement. The provisions of this Agreement, the LLC Agreement and the other writings referred to herein or delivered pursuant hereto which form a part hereof contain the entire agreement among the parties hereto with respect to the subject matter hereof and supersede all prior oral and written agreements and memoranda and undertakings among the parties hereto with regard to such subject matter. Except as expressly provided herein, this Agreement does not create any rights, claims or benefits inuring to any person that is not a party hereto nor create or establish any third party beneficiary hereto.

Section 6.04 Governing Law. This Agreement shall be governed by, and construed in accordance with, the law of the state of Delaware (and, to the extent applicable, federal law), without regard to the conflicts of laws principles thereof that would mandate the application of the laws of another jurisdiction.

Section 6.05 Severability. If any provision of this Agreement, or the application of such provision to any Person or circumstance or in any jurisdiction, shall be held to be invalid or unenforceable to any extent, (i) the remainder of this Agreement shall not be affected thereby, and each other provision hereof shall be valid and enforceable to the fullest extent permitted by law, (ii) as to such Person or circumstance or in such jurisdiction such provision shall be reformed to be valid and enforceable to the fullest extent permitted by law and (iii) the application of such provision to other Persons or circumstances or in other jurisdictions shall not be affected thereby. In addition, if any court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable as written, each Person party hereto shall take all necessary action to cause this Agreement to be amended so as to provide, to the maximum extent reasonably possible, that the purposes of the Agreement can be realized, and to modify this Agreement to the minimum extent reasonably possible.

Section 6.06 Assignment; Amendments; Waiver of Compliance; Successors and Assigns.

(a) Assignment. No TRA Holder may, directly or indirectly, assign or otherwise transfer its rights under this Agreement to any person without the express prior written consent of the Corporation, such consent not to be unreasonably withheld, conditioned, or delayed; provided, however, that, the Corporation may withhold, condition, or delay its consent in its sole discretion to any transfer by a TRA Holder (i) if the TRA Holder is an original signatory to this Agreement and that TRA Holder seeks to transfer a portion of its rights, in the aggregate, to more than three transferees, and (ii) if the TRA Holder is not an original signatory to this Agreement and that TRA Holder seeks to transfer less than all of its rights. Notwithstanding the provisions of the preceding sentence, to the extent Units are transferred in accordance with the terms of the LLC Agreement, the transferring TRA Holder may assign to the transferee all, but not less than all, of that TRA Holder's rights under this Agreement with respect to such transferred Units, but only if such transferee executes and delivers a joinder to this Agreement agreeing to become a "TRA Holder" for all purposes of this Agreement (except as otherwise provided in such joinder), with such joinder being, in form and substance, reasonably satisfactory to the Corporation.

(b) Amendments.

(i) General Rule. No provision of this Agreement may be amended unless such amendment is approved in writing by the Corporation, the Company, and the TRA Holders who would be entitled to receive at least two-thirds of the Early Termination Payments payable to all TRA Holders (as determined by the Corporation) if the Corporation had exercised its right of early termination under Section 3.01(a) on the date of the most recent Exchange prior to such amendment (excluding, for purposes of this sentence, all payments made to any TRA Holder pursuant to this Agreement since the date of such most recent Exchange).

(ii) Amendments with Disproportionate Adverse Effect. Notwithstanding the provisions of Section 6.06(b)(i), if a proposed amendment would have a disproportionate adverse effect on the payments one or more TRA Holders will or may receive under this Agreement, such amendment shall not be effective unless at least two-thirds of the TRA Holders who would be disproportionately adversely affected (with such two-thirds threshold being measured as set forth in Section 6.06(b)(i)) consent in writing to that amendment.

(c) Waiver of Compliance. Except as otherwise provided in this Agreement, any failure of any of the parties to comply with any obligation, covenant, agreement or condition herein may be waived by the party entitled to the benefits thereof only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

(d) Successors and Assigns. Except as otherwise provided herein, all of the terms and provisions of this Agreement shall be binding upon, shall inure to the benefit of and shall be enforceable by the respective successors and permitted assigns of the parties hereto. The Corporation shall require and cause any direct or indirect successor (whether by purchase, merger, consolidation, division, conversion or otherwise) to all or substantially all of the business or assets of the Corporation, by written agreement, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Corporation would be required to perform if no such succession had taken place.

Section 6.07 Titles and Subtitles. The titles of the sections and subsections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement.

Section 6.08 Dispute Resolution.

(a) Disputes as to Interpretation and Calculations. Any Dispute as to the interpretation of, or calculations required by, this Agreement shall be resolved by the Corporation in its sole discretion; provided, that such resolution shall reflect a reasonable interpretation of the provisions of this Agreement, consistent with the goal that the provisions of this Agreement result in the TRA Holders receiving eighty-five percent (85%) of the Cumulative Net Realized Tax Benefit and the Additional Amount thereon.

(b) Dispute Resolution; Arbitration. Except for the matters in Section 6.08(a), the parties shall negotiate in good faith to resolve any dispute, controversy, or claim arising out of or in connection with this Agreement, or the interpretation, breach, termination or validity thereof (“**Dispute**”). To the extent any Dispute is not resolved through good faith negotiations, Disputes shall be finally resolved by arbitration before a panel of three independent tax lawyers at major law firms who are resident in Los Angeles, California and are mutually acceptable to the parties (the “**Arbitrators**”). The Arbitrators, with the consent of the parties, may, or, at the direction of the parties, shall, delegate some or all of the issues under dispute (including Disputes under Section 1.03, Section 2.01(c) or Section 5.02) to a nationally recognized accounting firm selected by the Arbitrators and agreed to by the parties. Notwithstanding anything to the contrary in this Agreement, the TRA Representative shall represent the interests of any TRA Holder(s) in any Dispute and no TRA Holder shall individually have the right to participate in any proceeding.

(c) Selection of Arbitrators; Timing. There shall be three Arbitrators who shall be appointed by the parties within 20 days of receipt by a party of a copy of the demand for arbitration. The Corporation shall appoint one arbitrator and the TRA Representative shall appoint one arbitrator (with the appointment being subject, in each case, to the reasonable objection of the other party), and the parties shall jointly appoint the third arbitrator. If any of the Arbitrators is not appointed within 20 days, and the parties have not agreed to extend the 20-day time period, such arbitrator shall be appointed by JAMS in accordance with the listing, striking and ranking procedure in the JAMS Comprehensive Arbitration Rules and Procedures, with each party being given a

limited number of strikes, except for cause. Any arbitrator appointed by JAMS shall be a retired judge or a practicing attorney with no less than fifteen years of experience with corporate and partnership tax matters and an experienced arbitrator. In rendering an award, the Arbitrators shall be required to follow the laws of the state of Delaware, notwithstanding any Delaware choice-of-law rules. The costs of arbitration shall be split equally between the parties.

(d) Arbitration Award; Damages; Attorney Fees. The arbitral award shall be in writing and shall state the findings of fact and conclusions of law on which it is based. The Arbitrators shall not be permitted to award punitive, non-economic, or any non-compensatory damages. The award shall be final and binding upon the parties and shall be the sole and exclusive remedy between the parties regarding any claims, counterclaims, issues, or accounting presented to the Arbitrators. Judgment upon the award may be entered in any court having jurisdiction over any party or any of its assets. Any costs or fees (including all attorneys' fees and expenses) incident to enforcing the award shall be charged against the party resisting such enforcement. Each party shall bear its own attorneys fees incurred in the underlying arbitration.

(e) Confidentiality. All Disputes shall be resolved in a confidential manner. The Arbitrators shall agree to hold any information received during the arbitration in the strictest of confidence and shall not disclose to any non-party the existence, contents or results of the arbitration or any other information about such arbitration. The parties to the arbitration shall not disclose any information about the evidence adduced or the documents produced by the other party in the arbitration proceedings or about the existence, contents or results of the proceeding except as may be required by law, regulatory or governmental authority or as may be necessary in an action in aid of arbitration or for enforcement of an arbitral award. Before making any disclosure permitted by the preceding sentence (other than private disclosure to financial regulatory authorities), the party intending to make such disclosure shall use reasonable efforts to give the other party reasonable written notice of the intended disclosure and afford the other party a reasonable opportunity to protect its interests.

(f) Discovery. Barring extraordinary circumstances (as determined in the sole discretion of the Arbitrators), discovery shall be limited to pre-hearing disclosure of documents that each side shall present in support of its case, and non-privileged documents essential to a matter of import in the proceeding for which a party has demonstrated a substantial need. The parties agree that they shall produce to each other all such requested non-privileged documents, except documents objected to and with respect to which a ruling has been or shall be sought from the Arbitrators. The parties agree that information from the Corporate Tax Return (including by way of a redacted Corporate Tax Return) shall be sufficient, and that the Corporation shall not be compelled to produce any unredacted Tax Returns. There will be no depositions or live witness testimony.

Section 6.09 Indemnification of the TRA Representative. The Corporation shall pay, or to the extent the TRA Representative pays, indemnify and reimburse, to the fullest extent permitted by applicable law, the TRA Representative for all costs and expenses, including legal and accounting fees (as such fees are incurred) and any other costs arising from claims in connection with the TRA Representative's duties under this Agreement; provided, that the TRA Representative must have acted reasonably and in good faith in incurring such expenses and costs.

Section 6.10 Withholding. The Corporation shall be entitled to deduct and withhold from any payment payable pursuant to this Agreement such amounts, if any, as the Corporation is required to deduct and withhold with respect to the making of such payment under the Code, or any provision of state, local or foreign tax law. To the extent that amounts are so withheld and are (or, when due, will be) paid over to the appropriate Taxing Authority by the Corporation, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the TRA Holder. Each TRA Holder shall provide such necessary tax forms, in form and substance reasonably acceptable to the Corporation, as the Corporation may request from time to time. Before any withholding is made pursuant to this Section 6.10, the Corporation shall use commercially reasonable efforts to (a) notify a TRA Holder and (b) cooperate with such TRA Holder to avoid such withholding, unless the TRA Holder has failed to comply with the provisions of the preceding sentence.

Section 6.11 Admission of the Corporation into a Consolidated Group; Transfers of Corporate Assets.

(a) Admission of the Corporation into a Consolidated Group. If the Corporation is or becomes a member of an affiliated or consolidated group of corporations that files a consolidated income Tax Return pursuant to sections 1501 et seq. of the Code or any corresponding provisions of state, local or foreign law (a “**Consolidated Group**”), then: (i) the provisions of this Agreement shall be applied with respect to the group as a whole; and (ii) Tax Benefit Payments, Early Termination Payments and other applicable items in this Agreement shall be computed with reference to the consolidated taxable income of the group as a whole.

(b) Transfers of Assets by Corporation.

(i) General Rule. If the Company or any of its Subsidiaries or the Corporation transfers one or more assets to a corporation with which the transferor does not file a consolidated Tax Return pursuant to section 1501 et. seq. of the Code, then, for purposes of calculating the amount of any payment due under this Agreement, the transferor shall be treated as having disposed of such asset(s) in a fully taxable transaction on the date of the transfer.

(ii) Rules of Application. For purposes of this Section 6.11(b):

(A) Except as provided in Section 6.11(b)(ii)(B), the consideration deemed to be received by the transferor in the transaction shall be deemed to equal the fair market value of the transferred asset(s) (taking into account the principles of section 7701(g) of the Code);

(B) The consideration deemed to be received by the transferor in exchange for a partnership interest shall be deemed to equal the fair market value of the partnership interest increased by any liabilities (as defined in Treasury Regulation § 1.752-1(a)(4)) of the partnership allocated to the transferor with regard to such transferred interest under section 752 of the Code immediately after the transfer; and

(C) A transfer to a “corporation” (other than the Corporation) includes a transfer to any entity or arrangement classified as a corporation for U.S. federal income tax purposes, and “partnership” includes any entity or arrangement classified as a partnership for U.S. federal income tax purposes.

Section 6.12 Confidentiality.

(a) General Rule. Each TRA Holder and assignee acknowledges and agrees that the information of the Corporation is confidential and, except in the course of performing any duties as necessary for the Corporation and its Affiliates, as required by law or legal process or to enforce the terms of this Agreement, shall keep and retain in the strictest confidence and not disclose to any Person any confidential matters or information of the Corporation, its Affiliates and successors and the other TRA Holders acquired pursuant to this Agreement, including marketing, investment, performance data, credit and financial information and other business affairs of the Corporation, its Affiliates and successors and the other TRA Holders.

(b) Exceptions. This Section 6.12 shall not apply to (i) any information that has been made publicly available by the Corporation or any of its Affiliates, becomes public knowledge (except as a result of an act of such TRA Holder in violation of this Agreement) or is generally known to the business community and (ii) the disclosure of information to the extent necessary for a TRA Holder to prepare and file his or her Tax Returns, to respond to any inquiries regarding such Tax Returns from any Taxing Authority or to prosecute or defend any action, proceeding or audit by any Taxing Authority with respect to such Tax Returns. Notwithstanding anything to the contrary in this Section 6.12, each TRA Holder and assignee (and each employee, representative or other agent of such TRA Holder or assignee, as applicable) may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of (x) the Corporation, the Company, the TRA Holders and their Affiliates and (y) any of their transactions, and all materials of any kind (including opinions or other tax analyses) that are provided to the TRA Holders relating to such tax treatment and tax structure.

(c) **Enforcement.** If a TRA Holder or assignee commits a breach, or threatens to commit a breach, of any of the provisions of this Section 6.12, the Corporation shall have the right and remedy to have the provisions of this Section 6.12 specifically enforced by injunctive relief or otherwise by any court of competent jurisdiction without the need to post any bond or other security, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to the Corporation or any of its Affiliates or the other TRA Holders and that money damages alone shall not provide an adequate remedy to such Persons. Such rights and remedies shall be in addition to, and not in lieu of, any other rights and remedies available at law or in equity.

Section 6.13 **LLC Agreement.** For U.S. federal income Tax purposes, to the extent this Agreement imposes obligations upon the Company or a member of the Company, this Agreement shall be treated as part of the LLC Agreement as described in section 761(c) of the Code and sections 1.704-1(b)(2)(ii)(h) and 1.761-1(c) of the Treasury Regulations.

Section 6.14 **Joinder.** The Company shall have the power and authority (but not the obligation) to permit any Person who becomes a member of the Company to execute and deliver a joinder to this Agreement promptly upon acquisition of membership interests in the Company by such Person, and such Person shall be treated as a “TRA Holder” for all purposes of this Agreement.

Section 6.15 **Survival.** If this Agreement is terminated pursuant to ARTICLE III, this Agreement shall become void and of no further force and effect, except for the provisions set forth in Section 6.04, Section 6.08, Section 6.12, and this Section 6.15.

ARTICLE VII DEFINITIONS

As used in this Agreement, the terms set forth in this ARTICLE VII shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined).

“**Actual Tax Liability**” means, with respect a Taxable Year, the liability of the Corporation for taxes as reflected on the relevant Corporate Tax Return, calculated and modified in accordance with Section 1.02.

“**Additional Amount**” for a given Taxable Year shall be the additional amount (calculated in the same manner as interest) payable on the Net Tax Benefit for such Taxable Year calculated at the Agreed Rate from the due date (without extensions) for filing the Corporate Tax Return with respect to Taxes for the most recently ended Taxable Year until the date on which the payment is required to be made. In the case of a Tax Benefit Payment made in respect of an Amended Schedule, the “**Additional Amount**” shall equal the additional amount (calculated in the same manner as interest) payable on the Net Tax Benefit for such Taxable Year calculated at the Agreed Rate from the date of such Amended Schedule becoming final in accordance with Section 1.03(b) until the date on which the payment is required to be made, reduced to account for any payment of Additional Amount made in respect of the original Tax Benefit Schedule. Except to the extent that it is treated as Imputed Interest, the Additional Amount shall be treated as additional consideration for Tax purposes.

“**Adjusted Asset**” means any asset with respect to which a Basis Adjustment is made.

“**Advisory Firm**” means any accounting firm or any law firm, in each case, that is nationally recognized as being expert in Tax matters and that is agreed to by the Board.

“**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with, such first Person.

“**Agreed Rate**” means the Secured Overnight Financing Rate, as reported by the *Wall Street Journal* (“**SOFR**”) plus 300 basis points.

“**Agreement**” is defined in the preamble of this Agreement.

“**Amended Schedule**” is defined in Section 1.03(c) of this Agreement.

“**Arbitrators**” is defined in Section 6.08(b) of this Agreement.

“**Assumed SALT Liability**” is defined in Section 1.02(d).

“**Available Cash**” means all cash and cash equivalents of the Corporation on hand, less (i) the amount of cash reserves reasonably established in good faith by the Corporation to provide for the proper conduct of business of the Corporation (including paying creditors) and (ii) any amount the Corporation cannot pay to a TRA Holder by reason of (A) a prohibition, restriction or covenant under any credit agreement, loan agreement, note, indenture or other agreement governing indebtedness of the Company or any of its Subsidiaries or the Corporation or (B) restrictions under applicable law.

“**Basis Adjustment**” means any adjustment under sections 732, 734(b), 743(b), or 1012 of the Code (as applicable) as a result of an Exchange by a TRA Holder.

“**Beneficial Ownership**” (including correlative terms) shall have the meaning ascribed to that term in Rule 13d-3 promulgated under the Securities Exchange Act of 1934.

“**Board**” means the board of directors of the Corporation.

“**Business Day**” means any day other than a Saturday, Sunday or any other day on which commercial banks located in New York City, New York are authorized or required to close.

“**Change of Control**” means the occurrence of any of the following events:

(a) any Person or any group of Persons acting together which would constitute a “group” for purposes of Section 13(d) of the Securities Exchange Act of 1934, or any successor provisions thereto, excluding any Qualified Transferee or any group of Qualified Transferees, becomes the Beneficial Owner, directly or indirectly, of securities of the Corporation representing more than fifty percent (50%) of the combined voting power of the Corporation’s then outstanding voting securities; or

(b) the following individuals cease for any reason to constitute a majority of the directors of the Corporation then serving: (i) individuals who, on the IPO Date, constitute the Board, and (ii) any new director (other than a director whose initial assumption of office is in connection with an actual or threatened election contest, including but not limited to a consent solicitation) whose appointment by the Board or nomination for election by the Corporation's shareholders was approved or recommended by a vote of at least two-thirds (2/3) of the directors then still in office who either were directors on the IPO Date or whose appointment or nomination for election was previously so approved or recommended by the directors referred to in this clause (ii); or

(c) there is consummated a merger or consolidation of the Corporation or any direct or indirect Subsidiary of the Corporation with any other corporation or other entity, and, immediately after the consummation of such merger or consolidation, either (i) the members of the Board immediately prior to the merger or consolidation do not constitute at least a majority of the board of directors of the company surviving the merger or, if the surviving company is a Subsidiary, the ultimate parent thereof, or (ii) all of the Persons who were the respective Beneficial Owners of the voting securities of the Corporation immediately prior to such merger or consolidation do not Beneficially Own, directly or indirectly, more than fifty percent (50%) of the combined voting power of the then-outstanding voting securities of the Person resulting from such merger or consolidation; or

(d) the shareholders of the Corporation approve a plan of complete liquidation or dissolution of the Corporation, or there is consummated an agreement or series of related agreements for the sale or other disposition, directly or indirectly, by the Corporation of all or substantially all of the Corporation's assets, other than the sale or other disposition by the Corporation of all or substantially all of the Corporation's assets to an entity, more than fifty percent (50%) of the combined voting power of the voting securities of which are Beneficially Owned by shareholders of the Corporation in substantially the same proportions as their Beneficial Ownership of such securities of the Corporation immediately before such sale.

“**Class A Shares**” is defined in the recitals of this Agreement.

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

“**Company**” is defined in the preamble to this Agreement.

“**Consolidated Group**” is defined in Section 6.11(a).

“**Control**” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“**Corporate Tax Return**” means a Tax Return of the Corporation.

“**Corporation**” is defined in the preamble of this Agreement.

“Cumulative Net Realized Tax Benefit” for a Taxable Year means the excess, if any, of (a) the cumulative amount of Realized Tax Benefits for all Taxable Years of the Corporation, including such Taxable Year, over (b) the cumulative amount of Realized Tax Detriments, if any, for the same period. The Realized Tax Benefit and Realized Tax Detriment for each Taxable Year shall be determined based on the most recent Tax Benefit Schedule or Amended Schedule, if any, in existence at the time of such determination.

“day” means a calendar day.

“Deemed Early Termination Event” is defined in Section 3.01(b)(i) of this Agreement.

“Default Rate” means SOFR plus 500 basis points.

“Depreciation” means depreciation, amortization, or other similar deductions for recovery of cost or basis.

“Determination” shall have the meaning ascribed to such term in section 1313(a) of the Code or similar provision of state or local tax law, as applicable, or any other event (including the execution of a Form 870-AD) that finally and conclusively establishes the amount of any liability for Tax.

“Dispute” is defined in Section 6.08(b) of this Agreement.

“Dispute Resolution Procedures” is defined in Section 1.03(b) of this Agreement.

“Early Termination Date” is defined in Section 3.02(a)(i).

“Early Termination Notice” is defined in Section 3.02(a)(i) of this Agreement.

“Early Termination Payment” is defined in Section 3.03(a) of this Agreement.

“Early Termination Rate” means the lesser of (i) 6.5% and (ii) SOFR plus 400 basis points.

“Early Termination Schedule” is defined in Section 3.02(a)(i) of this Agreement.

“Exchange” is defined in the recitals of this Agreement, and “Exchanged” and “Exchanging” shall have correlative meanings.

“Exchange Basis Schedule” is defined in Section 1.03(a)(i) of this Agreement.

“Exchange Date” is defined in the recitals of this Agreement.

“Exchange Notice” is defined in Section 2.1(a)(ii) of the Exchange Agreement.

“Hypothetical Tax Liability” means, with respect to any Taxable Year, the amount that would be the liability for Taxes of the Corporation if such liability were calculated using the same methods, elections, conventions and similar practices used on the relevant Corporate Tax Return (and/or Tax Return of the Company), as determined in accordance with Section 1.02, except that all Tax Assets shall be disregarded. For the avoidance of doubt, the Assumed SALT Liability used to determine the Hypothetical Tax Liability shall be calculated by disregarding all Tax Assets.

“**Imputed Interest**” means any interest imputed under sections 1272, 1274, or 483 or other provision of the Code with respect to the Corporation’s payment obligations under this Agreement.

“**IPO**” is defined in the recitals of this Agreement.

“**IPO Date**” means the date of the IPO.

“**LLC Agreement**” is defined in the recitals of this Agreement.

“**Market Value**” means the closing price of the Class A Shares on the applicable Exchange Date on the national securities exchange or interdealer quotation system on which the Class A Shares are then traded or listed, as reported by the *Wall Street Journal*; provided, that if the closing price is not reported by the *Wall Street Journal* for the applicable Exchange Date, then the “Market Value” means the closing price of the Class A Shares on the Business Day immediately preceding such Exchange Date on the national securities exchange or interdealer quotation system on which the Class A Shares are then traded or listed, as reported by the *Wall Street Journal*; provided, further, that if the Class A Shares are not then listed on a national securities exchange or interdealer quotation system, “Market Value” means the cash consideration paid for Class A Shares, or the fair market value of the other property delivered for Class A Shares, as determined by the Board in good faith.

“**Material Objection Notice**” is defined in Section 3.02 of this Agreement.

“**Material Uncured Breach**” means the occurrence of any of the following events:

- (a) the Corporation fails to make any payment required by this Agreement within 180 days after the due date for that payment (except for a failure to make any payment due pursuant to this Agreement as a result of a lack of Available Cash);
- (b) this Agreement is rejected in a case commenced under the Bankruptcy Code and the Corporation does not cure the rejection within 90 days after such rejection; or
- (c) the Corporation breaches any of its material obligations under this Agreement other than an event described in clause (a) or (b) with respect to one or more TRA Holders and the Corporation does not cure such breach within 90 days after receipt of notice of such breach from such TRA Holder(s).

“**Net Tax Benefit**” means, for each Taxable Year, the amount equal to the excess, if any, of eighty-five percent (85%) of the Cumulative Net Realized Tax Benefit as of the end of such Taxable Year over the total amount of payments previously made under Section 2.01, excluding payments attributable to any Additional Amount.

“**Objection Notice**” is defined in Section 1.03(a) of this Agreement.

“**Other Tax Receivable Agreements**” means any tax receivable agreements entered into after the date of this Agreement by the Corporation with respect to Units.

“**Person**” means any individual, corporation, firm, partnership, joint venture, limited liability company, estate, trust, business association, organization, governmental entity, or other entity.

“**Qualified Transferee**” is defined in Section 9.2 of the LLC Agreement.

“**Realized Tax Benefit**” is defined in Section 1.01

“**Realized Tax Detriment**” is defined in Section 1.01.

“**SOFR**” is defined in the definition of “Agreed Rate.”

“**Subsidiaries**” means, with respect to any Person, as of any date of determination, any other Person as to which such Person, owns, directly or indirectly, or otherwise Controls more than 50% of the voting shares or other similar interests or the sole general partner interest or managing member or similar interest of such Person.

“**Supporting Letter**” means a letter prepared by the Corporation, one or more of its employees, or an Advisory Firm that states that the relevant schedules to be provided to the TRA Representative pursuant to Section 1.03(a)(iii) were prepared in a manner that is consistent with the terms of this Agreement and, to the extent not expressly provided in this Agreement, on a reasonable basis in light of the facts and law in existence on the date such schedules were delivered by the Corporation to the TRA Representative.

“**Tax Assets**” means (a) the Basis Adjustments, (b) Imputed Interest, and (c) any other item of loss, deduction or credit, including carrybacks and carryforwards, attributable to any item described in clauses (a) and (b) of this definition.

“**Tax Benefit Items**” means

(a) a deduction to the Corporation for Depreciation arising in respect of one or more Basis Adjustments;

(b) a reduction in gain or increase in loss to the Corporation upon the disposition of an Adjusted Asset that arises in respect of one or more Basis Adjustments;

(c) a deduction to the Corporation of Imputed Interest that arises in respect of payments under this Agreement made to a TRA Holder; or

(d) any other item of loss, deduction or credit, including carrybacks and carryforwards, attributable to any item described in clauses (a) – (c) of this definition.

“**Tax Benefit Payment**” means, for each Taxable Year, an amount, not less than zero, equal to the sum of the Net Tax Benefit and the Additional Amount.

“**Tax Benefit Schedule**” is defined in Section 1.03(a)(ii) of this Agreement.

“**Tax Items**” means any item of income, gain, loss, deduction, or credit.

“Tax Return” means any return, declaration, report or similar statement required to be filed with respect to Taxes (including any attached schedules), including, without limitation, any information return, claim for refund, amended return and declaration of estimated Tax.

“Taxable Year” means, for the Corporation or the Company, as the case may be, a taxable year as defined in section 441(b) of the Code or comparable section of state or local tax law, as applicable, ending on or after the closing date of the IPO.

“Taxes” means any and all U.S. federal, state, and local taxes, assessments, or similar charges that are based on or measured with respect to net income or profits (including any franchise taxes based on or measured with respect to net income or profits), and any interest, penalties, or additions related to such amounts imposed in respect thereof under applicable law.

“Taxes of the Corporation” means the Taxes of the Corporation and/or the Company, but only with respect to Taxes imposed on the Company and allocable to the Corporation for such Taxable Year.

“Taxing Authority” means any domestic, federal, national, state, county, or municipal or other local government, any subdivision, agency, commission or authority thereof, or any quasi-governmental body exercising any taxing authority or any other authority exercising Tax regulatory authority.

“TRA Holder” means any Person (other than the Corporation, its Subsidiaries, and the TRA Representative, solely in their capacity as TRA Representative) that is a party to this Agreement.

“TRA Representative” means Jessica Schilling or, if she is unable or unwilling to serve as the TRA Representative, David Sincich or, if he is unable or unwilling to serve as the TRA Representative, Larry Madden. If none of Jessica Schilling, David Sincich or Larry Madden is able or willing to serve as the TRA Representative, or if the Corporation determines in good faith that it is in the TRA Holders’ best interests to replace the then-serving TRA Representative, the Corporation shall notify the TRA Holders and give them 45 days to elect a new TRA Representative by majority vote based on Units held directly or indirectly by the TRA Holders (or such TRA Holder’s predecessor(s)) immediately before the IPO Date. The Corporation shall have the right (but not the obligation) to determine the rules and procedures that will govern the election process. If the TRA Holders are unable to elect a TRA Representative within 45 days of receipt of notice from the Corporation, the Corporation shall appoint a TRA Holder to serve as the TRA Representative. For the avoidance of doubt, there shall be only one TRA Representative at any time. Solely for the purposes of this definition, the term “TRA Holder” shall mean the Persons who are TRA Holders under both this Agreement and the Other Tax Receivable Agreements.

“Treasury Regulations” means the final, temporary, and proposed regulations under the Code promulgated from time to time (including corresponding provisions and succeeding provisions) as in effect for the relevant taxable period.

“Units” is defined in the recitals of this Agreement.

“Valuation Assumptions” means, as of an Early Termination Date, the assumptions that

(e) in each Taxable Year ending on or after such Early Termination Date, the Corporation will have taxable income sufficient to fully use the Tax Assets arising in such Taxable Year;

(f) any items of loss, deduction or credit generated by a Basis Adjustment or Imputed Interest arising in a Taxable Year preceding the Taxable Year that includes an Early Termination Date will be used by the Corporation ratably from such Taxable Year through the earlier of (i) the scheduled expiration of such Tax Item or (ii) 15 years;

(g) if, at the Early Termination Date, there are Units that have not been Exchanged, then each such Unit shall be deemed to be Exchanged for the Market Value of the Class A Shares on the Early Termination Date;

(h) any non-amortizable assets are deemed to be disposed of in a fully taxable transaction for U.S. federal income Tax purposes on the fifteenth anniversary of the earlier of the Basis Adjustment and the Early Termination Date; and

(i) the federal income tax rates and state and local income tax rates that will be in effect for each such Taxable Year will be those specified for each such Taxable Year by the Code and other law as in effect on the Early Termination Date, taking into account any scheduled or imminent tax rate increases. For the avoidance of doubt, an “imminent” tax rate increase is one for which both the amount and the effective time can be determined with reasonable accuracy.

[Signature page follows]

In witness whereof, the undersigned have executed this Agreement as of the date first set forth above.

THE CORPORATION:

Viant Technology Inc.

By: /s/ Larry Madden
Name: Larry Madden
Title: Chief Financial Officer

THE COMPANY:

Viant Technology LLC

By: Viant Technology Inc., as
Managing Member

By: /s/ Larry Madden
Name: Larry Madden
Title: Chief Financial Officer

TRA HOLDERS:

/s/ Tim Vanderhook

Tim Vanderhook

/s/ Chris Vanderhook

Chris Vanderhook

Four Brothers 2 LLC

By: */s/ Tim Vanderhook*

Name: Tim Vanderhook

Title: Member

Viant Technology Equity Plan LLC

By: */s/ Tim Vanderhook*

Name: Tim Vanderhook

Title: Manager

TRA REPRESENTATIVE:

/s/ Jessica Schilling

Jessica Schilling

REGISTRATION RIGHTS AGREEMENT

BY AND AMONG

VARIANT TECHNOLOGY INC.

AND

CERTAIN STOCKHOLDERS

DATED AS OF FEBRUARY 9, 2021

REGISTRATION RIGHTS AGREEMENT

This REGISTRATION RIGHTS AGREEMENT (as it may be amended from time to time in accordance with the terms hereof, the “Agreement”), dated as of February 9, 2021, is made by and among:

- i. Viant Technology Inc., a Delaware corporation (the “Corporation”);
- ii. Each Person executing this Agreement on the signature pages hereto (collectively, together with their Permitted Transferees that become party hereto, the “Holders”).

RECITALS

WHEREAS, the Corporation, Viant Technology LLC, a Delaware limited liability company (the “Company”), and the Holders have effected, or will effect in connection with the closing of the initial public offering (the “IPO”) of the Corporation’s Class A common stock, par value \$0.001 per share (the “Class A Common Stock”), a series of reorganization transactions (collectively, the “Reorganization Transactions”);

WHEREAS, after giving effect to the Reorganization Transactions, the Holders Beneficially Own or will Beneficially Own (x) shares of Class A Common Stock and/or (y) shares of the Corporation’s Class B common stock, par value \$0.001 per share (the “Class B Common Stock” and, together with the Class A Common Stock, the “Common Stock”) and Class B units in the Company (“Class B Units”), which Class B Units, subject to certain conditions, are exchangeable from time to time for shares of Class A Common Stock pursuant to the terms of the Second Amended and Restated Limited Liability Company Agreement of the Company (as may be further amended from time to time, the “Company Agreement”); and

WHEREAS, the parties believe that it is in each of their best interests to set forth their agreements regarding registration rights following the IPO.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises, covenants and agreements of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I

EFFECTIVENESS

- 1.1 Effectiveness. This Agreement shall become effective upon the Closing.

ARTICLE II
DEFINITIONS

2.1 Definitions. As used in this Agreement, the following terms shall have the following meanings:

“Adverse Disclosure” means public disclosure of material non-public information that, in the good faith judgment of the Board of Directors: (i) would be required to be made in any Registration Statement filed with the SEC by the Corporation so that such Registration Statement, from and after its effective date, does not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; (ii) would reasonably be expected to adversely affect or interfere with any material financing or other material transaction under consideration by the Corporation; or (iii) would not be required to be made at such time but for the filing, effectiveness or continued use of such Registration Statement.

“Affiliate” means, with respect to any specified Person, any Person that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with, such specified Person. As used in this definition, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise.

“Agreement” shall have the meaning set forth in the preamble.

“Beneficial Ownership” has the same meaning given to it in Section 13(d) under the Exchange Act and the rules thereunder, except that, for purposes of this Agreement, no Person shall Beneficially Own any shares of Common Stock to be issued upon the exercise of options, warrants, restricted stock units or similar rights granted pursuant to the Corporation’s equity compensation plans, unless and until such shares are actually issued. The terms “Beneficially Own” and “Beneficial Owner” shall have correlative meanings.

“Board of Directors” means the board of directors of the Corporation.

“Business Day” means any calendar day other than a Saturday, Sunday or other day on which commercial banks in New York, New York or Los Angeles, California are authorized or required to close.

“Class A Common Stock” shall have the meaning set forth in the recitals.

“Class B Common Stock” shall have the meaning set forth in the recitals.

“Class B Units” shall have the meaning set forth in the recitals.

“Closing” means the closing of the IPO.

“Closing Registrable Securities” means the total number of Registrable Securities as of the Closing, as adjusted for stock splits, recapitalizations and similar transactions.

“Common Stock” shall have the meaning set forth in the recitals.

“Demand Notice” shall have the meaning set forth in Section 3.1(c).

“Demand Registration” shall have the meaning set forth in Section 3.1(a)(i).

“Demand Registration Request” shall have the meaning set forth in Section 3.1(a)(i).

“Exchange” means the exchange of Class B Units, together with an equal number of shares of Class B Common Stock, for shares of Class A Common Stock or cash consideration, as applicable, pursuant to the terms of the Company Agreement.

“Exchange Act” means the Securities Exchange Act of 1934, as amended.

“FINRA” means the Financial Industry Regulatory Authority, Inc.

“Holder” shall have the meaning set forth in the Recitals.

“IPO” shall have the meaning set forth in the Recitals.

“Issuer Free Writing Prospectus” means an issuer free writing prospectus, as defined in Rule 433 under the Securities Act, relating to an offer of the Registrable Securities.

“Loss” shall have the meaning set forth in Section 3.9(a).

“Participation Conditions” shall have the meaning set forth in Section 3.2(b).

“Permitted Transferee” means any Person to whom a Class B Unit Holder has validly transferred Class B Units in accordance with, and not in contravention of, the Company Agreement.

“Person” means an individual, a corporation, a partnership, a limited liability company, a trust, an unincorporated organization, a government or any department or agency thereof or any entity similar to any of the foregoing.

“Piggyback Notice” shall have the meaning set forth in Section 3.3(a).

“Piggyback Registration” shall have the meaning set forth in Section 3.3(a).

“Potential Takedown Participant” shall have the meaning set forth in Section 3.2(b).

“Pro Rata Portion” means, with respect to each Holder requesting that its shares be registered or sold, a number of such shares equal to the aggregate number of Registrable Securities requested to be registered (excluding any shares to be registered or sold for the account of the Corporation) multiplied by a fraction, the numerator of which is the aggregate number of Registrable Securities then held by such Holder, and the denominator of which is the

aggregate number of Registrable Securities then held by all Holders requesting that their Registrable Securities be registered or sold.

“Prospectus” means (i) the prospectus included in any Registration Statement, all amendments and supplements to such prospectus, including post-effective amendments and supplements, and all other material incorporated by reference in such prospectus, and (ii) any Issuer Free Writing Prospectus.

“Public Offering” means the offer and sale of Registrable Securities for cash pursuant to an effective Registration Statement under the Securities Act (other than a Registration Statement on Form S-4 or Form S-8 or any successor form).

“Qualified Holder” means any of (a) any Person party to this Agreement Beneficially Owning at least _____ Registrable Securities (as such number may be adjusted in respect of any stock dividend, stock split, combination of shares, recapitalization, merger, consolidation or other reorganization), or (b) any Holder that is an executive officer of the Corporation (within the meaning of Rule 3b-7 under the Exchange Act) or a member of the Board of Directors of the Corporation.

“Registrable Securities” means (i) all shares of Class A Common Stock that are not then subject to vesting or forfeiture to the Corporation, (ii) all shares of Class A Common Stock issued or issuable upon exercise, conversion or exchange of any option, warrant or convertible security (including shares of Class A Common Stock issuable upon an Exchange) not then subject to vesting or forfeiture to the Corporation and (iii) all shares of Class A Common Stock directly or indirectly issued or then issuable with respect to the securities referred to in clauses (i) or (ii) above by way of unit or stock dividend or unit or stock split, or in connection with a combination of units or shares, recapitalization, merger, consolidation or other reorganization. As to any particular Registrable Securities, such securities shall cease to be Registrable Securities when (w) a Registration Statement with respect to the sale of such securities shall have become effective under the Securities Act and such securities shall have been disposed of in accordance with such Registration Statement, (x) such securities shall have been transferred pursuant to Rule 144, (y) such Holder is able to immediately sell such securities (including all shares of Class A Common Stock issuable upon Exchange, subject to the conditions on Exchange set forth in Article XII of the Company Agreement) under Rule 144 without any volume or manner of sale restrictions thereunder, as determined in the reasonable opinion of the Corporation (it being understood that a written opinion of the Corporation’s outside legal counsel to the effect that such securities may be so offered and sold, and that any restrictive legends on the securities may be removed, shall be conclusive evidence this clause has been satisfied), or (z) such securities shall have ceased to be outstanding.

“Registration” means registration under the Securities Act of the offer and sale of shares of Class A Common Stock under a Registration Statement. The terms “register,” “registered” and “registering” shall have correlative meanings.

“Registration Expenses” shall have the meaning set forth in Section 3.8.

“Registration Statement” means any registration statement of the Corporation filed with, or to be filed with, the SEC under the Securities Act, including the related Prospectus, amendments and supplements to such registration statement (including pre- and post-effective amendments) and all exhibits and material incorporated by reference in such registration statement, other than a registration statement (and related Prospectus) filed on Form S-4 or Form S-8 or any successor forms thereto.

“Reorganization Transactions” shall have the meaning set forth in the recitals.

“Representatives” means, with respect to any Person, any of such Person’s officers, directors, employees, agents, attorneys, accountants, actuaries, consultants, equity financing partners or financial advisors or other Person associated with, or acting on behalf of, such Person.

“Rule 144” means Rule 144 under the Securities Act (or any successor rule).

“S-3 ASR Supplement” shall have the meaning set forth in Section 3.2(a).

“SEC” means the United States Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933, as amended, and any successor thereto, and any rules or regulations promulgated thereunder, all as the same shall be in effect from time to time.

“Selling Stockholder Information” shall have the meaning set forth in Section 3.9(a).

“Shelf Registration” means any Registration pursuant to Rule 415 under the Securities Act.

“Shelf Registration Request” shall have the meaning set forth in Section 3.1(a)(ii).

“Shelf Registration Statement” means a Registration Statement filed with the SEC pursuant to Rule 415 under the Securities Act.

“Shelf Takedown Notice” shall have the meaning set forth in Section 3.2(b).

“Shelf Takedown Request” shall have the meaning set forth in Section 3.2(a).

“Suspension” shall have the meaning set forth in Section 3.1(f).

“Trading Day” means a day on which the principal U.S. securities exchange on which the Class A Common Stock is listed or admitted to trading is open for the transaction of business (unless such trading shall have been suspended for the entire day) or, if the Class A Common Stock is not listed or admitted to trading on such an exchange, “Trading Day” shall mean a Business Day.

“Transfer” means, with respect to any Registrable Security, any interest therein, or any other securities or equity interests relating thereto, a direct or indirect transfer, sale, exchange,

assignment, pledge, hypothecation or other encumbrance or other disposition thereof, including the grant of an option or other right, whether directly or indirectly, whether voluntarily, involuntarily, by operation of law, pursuant to judicial process or otherwise. “Transferred” shall have a correlative meaning.

“Underwritten Offering” means an underwritten offering, including any bought deal or block sale to a financial institution conducted as an Underwritten Offering.

“Underwritten Shelf Takedown” means an Underwritten Offering pursuant to an effective Shelf Registration Statement.

“WKSI” means any Securities Act registrant that is a well-known seasoned issuer as defined in Rule 405 under the Securities Act at the most recent eligibility determination date specified in paragraph (2) of that definition.

2.2 Other Interpretive Provisions.

(i) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms.

(ii) The words “hereof”, “herein”, “hereunder” and similar words refer to this Agreement as a whole and not to any particular provision of this Agreement; and any subsection and section references are to this Agreement unless otherwise specified.

(iii) The term “including” is not limiting and means “including without limitation.”

(iv) The captions and headings of this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.

(v) Whenever the context requires, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms.

ARTICLE III

REGISTRATION RIGHTS

The Corporation will perform and comply, and cause each of its subsidiaries to perform and comply, with such of the following provisions as are applicable to them. Each Holder will perform and comply with such of the following provisions as are applicable to such Holder.

3.1 Demand Registration.

(a) Request for Demand Registration.

(i) Following the first anniversary of the Closing date of the IPO, any Qualified Holder shall have the right, for itself or together with one or more other Qualified Holders, to make a written request from time to time (a “Demand Registration”

Request”) to the Corporation for Registration of all or part of the Registrable Securities held by that Qualified Holder (a “Demand Registration”).

(ii) Each Demand Registration Request shall specify (x) the aggregate amount of Registrable Securities proposed to be registered, (y) the intended method or methods of disposition thereof, and (z) whether the Demand Registration Request is for an Underwritten Offering or a Shelf Registration (a “Shelf Registration Request”).

(iii) If a Demand Registration Request is for a Shelf Registration, and the Corporation is eligible to file a Registration Statement on Form S-3, the Corporation shall promptly file with the SEC a Shelf Registration Statement on Form S-3 pursuant to Rule 415 under the Securities Act relating to the offer and sale of Registrable Securities by the Holders from time to time in accordance with the methods of distribution elected by the Qualified Holders Beneficially Owning a majority of Registrable Securities participating in the Registration, subject to all applicable provisions of this Agreement.

(iv) If the Demand Registration Request is for a Shelf Registration and the Corporation is not eligible to file a Registration Statement on Form S-3, the Corporation shall promptly file with the SEC a Shelf Registration Statement on Form S-1 or any other form that the Corporation is then permitted to use pursuant to Rule 415 under the Securities Act (or such other Registration Statement as the Board of Directors may determine to be appropriate) relating to the offer and sale of Registrable Securities by the Holders from time to time in accordance with the methods of distribution elected by the Qualified Holders Beneficially Owning a majority of Registrable Securities participating in the Registration.

(v) If on the date of the Shelf Registration Request the Corporation is a WKSI, then any Shelf Registration Statement may (if the Board of Directors determines it to be appropriate to do so) include an unspecified amount of Registrable Securities to be sold by unspecified Holders. If on the date of the Shelf Registration Request the Corporation is not a WKSI, then the Shelf Registration Request shall specify the aggregate amount of Registrable Securities to be registered.

(b) Limitation on Registrations. The Corporation shall not be obligated to take any action to effect any Demand Registration if (i) a Demand Registration or Piggyback Registration was declared effective or an Underwritten Offering was consummated by either the Corporation or any Holders within the preceding 90 days; (ii) the Corporation has filed another Registration Statement (other than on Form S-8 or Form S-4 or any successor thereto) that has not yet become effective; or (iii) the value of the Registrable Securities proposed to be sold by the initiating Qualified Holders, together with the Registrable Securities proposed to be sold by other Holders, is not reasonably expected (in the good faith judgment of the Board of Directors) to yield net proceeds of at least \$25 million, or in the case of an Underwritten Offering, of at least \$50 million. No Demand Registration Request may cover Registrable Securities that are issuable upon Exchange under and pursuant to the terms of the Company Agreement if the Company Agreement would not, on the date of the Demand Registration Request, then permit such Exchange, except with the approval of the Corporation’s Board of Directors.

(c) Demand Notice. Promptly upon receipt of a Demand Registration Request pursuant to Section 3.1(a) (but in no event more than ten Business Days thereafter), the Corporation shall deliver a written notice (a “Demand Notice”) of the Demand Registration Request to all other Holders offering each such Holder the opportunity to include in the Demand Registration that number of Registrable Securities as the Holder may request in writing. Subject to Sections 3.1(g) and 3.1(h), the Corporation shall include in the Demand Registration all such Registrable Securities with respect to which the Corporation has received written requests for inclusion therein within five Business Days after the date that the Demand Notice was delivered.

(d) Demand Withdrawal. Each Holder that has requested the inclusion of Registrable Securities in a Registration (other than a Registration in connection with a Public Offering) pursuant to Section 3.1(c) may withdraw all or any portion of its Registrable Securities from that Registration at any time prior to the effectiveness of the applicable Registration Statement by delivering written notice to the Corporation. Upon receipt of a notice or notices withdrawing (i) all of the Registrable Securities included in that Registration Statement by the Holder(s) or (ii) a number of such Registrable Securities so as to cause the expected net proceeds to fall below the applicable threshold set forth in Section 3.1(b), the Corporation shall cease all efforts to secure effectiveness of the applicable Registration Statement or amend the applicable Registration Statement to exclude the withdrawn Registrable Securities.

(e) Effectiveness.

(i) The Corporation shall use commercially reasonable efforts to cause any Registration Statement filed by it pursuant to this Agreement to become effective as promptly as practicable, subject to all applicable provisions of this Agreement.

(ii) The Corporation shall use commercially reasonable efforts to keep any Shelf Registration Statement filed on Form S-3 continuously effective under the Securities Act to permit the Prospectus forming a part of it to be usable by Holders until the earlier of: (A) the date as of which all Registrable Securities have been sold pursuant to that Shelf Registration Statement or another Registration Statement filed under the Securities Act (but in no event prior to the applicable period referred to in Section 4(a)(3) of the Securities Act and Rule 174 thereunder); (B) the date as of which no Holder whose Registrable Securities are registered on such Form S-3 holds Registrable Securities; (C) any date reasonably determined by the Board of Directors of the Corporation to be appropriate, excluding any date that is fewer than 180 days after the effectiveness of the Registration Statement; or (D) the third anniversary of the effectiveness of the Registration Statement.

(iii) If the Registration Statement filed is a Shelf Registration Statement on any form other than Form S-3, or if the Registration Statement is filed in connection with an Underwritten Offering, the Corporation shall use commercially reasonable efforts to keep the Registration Statement effective for a period of at least 180 days after the effective date thereof, such other period as the underwriters for any Underwritten Offering may determine to be appropriate, or such shorter period during which all Registrable Securities included in the Registration Statement have actually been sold; provided that such period shall be extended for a period of time equal to the period the

Holders of Registrable Securities may be required to refrain from selling any securities included in the Registration Statement at either the request of the Corporation or an underwriter of the Corporation pursuant to the provisions of this Agreement.

(f) Delay in Filing; Suspension of Registration. If the filing, initial effectiveness or continued use of a Registration Statement at any time would require the Corporation to make an Adverse Disclosure, the Corporation may, upon giving prompt written notice of such action to the Holders, delay the filing or initial effectiveness of, or suspend use of, the Registration Statement (a “Suspension”); provided, however, that the Corporation shall use all commercially reasonable efforts to avoid exercising a Suspension (i) for a period exceeding 60 days on any one occasion or (ii) for an aggregate of more than 120 days in any 12-month period. In the case of a Suspension, the Holders agree to suspend use of the applicable Prospectus in connection with any sale or purchase, or offer to sell or purchase, Registrable Securities, upon receipt of the notice referred to above. The Corporation shall immediately notify the Holders in writing upon the termination of any Suspension. Such notice shall be confidential information of the Corporation and each Holder shall not disclose to any Person the fact of the Suspension except as required by applicable law, rule or regulation. The Corporation shall, if necessary, amend or supplement the Prospectus so it does not contain any untrue statement or omission and furnish to the Holders such numbers of copies of the Prospectus as so amended or supplemented as the Holders may reasonably request. The Corporation shall, if necessary, supplement or amend the Registration Statement, if required by the registration form used by the Corporation for the Registration Statement or by the instructions applicable to such registration form or by the Securities Act or the rules or regulations promulgated thereunder or as may reasonably be requested by the Holders of a majority of Registrable Securities that are included in such Registration Statement.

(g) Priority of Securities Registered Pursuant to Shelf Registrations. If the Board of Directors of the Corporation concludes in good faith that the number of securities requested to be included in a Shelf Registration exceeds the number that can be sold without being likely to have an adverse effect on the price, timing or distribution of the securities offered or the market for the securities offered, then the securities to be included in such Registration shall be (i) first, allocated to each Holder that has requested to participate in such Registration an amount equal to the lesser of (x) the number of such Registrable Securities requested to be registered or sold by such Holder, and (y) a number of such shares equal to such Holder’s Pro Rata Portion, and (ii) second, and only if all the securities referred to in clause (i) have been included, the number of other securities that, in the opinion of such managing underwriter or underwriters can be sold without having such adverse effect. If a cutback pursuant to this Section 3.1(g) or Section 3.1(h) would cause an applicable dollar threshold set forth in Section 3.1(b)(iii) not to be met with respect to the Demand Registration, Section 3.1(b)(iii) shall not apply to that Demand Registration.

(h) Priority of Securities in Underwritten Offerings. If the managing underwriter or underwriters of any proposed Underwritten Offering advise the Corporation in writing that, in its or their opinion, the number of securities requested to be included in the proposed offering exceeds the number that can be sold in that offering without being likely to have an adverse effect on the price, timing or distribution of the securities offered or the market for the securities offered, the number of Registrable Securities to be included shall be (i) first,

allocated to each Holder that has requested to participate in such Underwritten Offering an amount equal to the lesser of (x) the number of such Registrable Securities requested to be registered or sold by such Holder, and (y) a number of such shares equal to such Holder's Pro Rata Portion, and (ii) second, and only if all securities referred to in clause (i) have been included, the number of other securities that, in the opinion of such managing underwriter or underwriters, can be sold without having such adverse effect.

(i) Conditions to Participation. No Person may participate in any Underwritten Offering hereunder unless that Person agrees to sell the Registrable Securities it desires to have covered by the applicable Registration Statement on the basis provided in any underwriting arrangements in customary form and completes and executes all questionnaires, powers of attorney, indemnities, underwriting agreements, and other documents required under the terms of the underwriting arrangements; provided that no Person shall be required to make representations and warranties other than those related to title and ownership of their shares and as to the accuracy and completeness of statements made in a Registration Statement, Prospectus, offering circular, or other document in reliance upon and conformity with written information furnished to the Corporation or the managing underwriter by such Person.

(j) Resale Rights. In the event that a Holder that is a partnership, limited liability company, trust or similar entity requests to participate in a Registration pursuant to this Section 3.1 in connection with a distribution of Registrable Securities to its partners, members or beneficiaries, the Registration shall provide for resale by such partners, members or beneficiaries, if approved by the Board of Directors.

3.2 Shelf Takedowns.

(a) At any time the Corporation has an effective Shelf Registration Statement with respect to Registrable Securities, a Qualified Holder, by notice to the Corporation specifying the intended method or methods of disposition thereof, may make a written request (a "Shelf Takedown Request") that (i) the Corporation effect an Underwritten Shelf Takedown of all or a portion of such Qualified Holder's Registrable Securities that are registered on such Shelf Registration Statement, and as soon as practicable thereafter or (ii) if the Corporation is a WKSI and has filed a Registration Statement on Form S-3ASR, the Corporation file a prospectus supplement with respect to the resale of Registrable Securities held by the Qualified Holder (the "S-3 ASR Supplement"), the Corporation shall amend or supplement the Shelf Registration Statement as necessary for such purpose, subject to all applicable provisions of this Agreement.

(b) Promptly upon receipt of a Shelf Takedown Request (but in no event more than two Business Days thereafter (or such shorter period as may be reasonably requested in connection with an underwritten "block trade") for any Underwritten Shelf Takedown, the Corporation shall deliver a notice (a "Shelf Takedown Notice") to each other Holder with Registrable Securities covered by the applicable Registration Statement, or to all other Holders if such Registration Statement is undesignated (each a "Potential Takedown Participant"). The Shelf Takedown Notice shall offer each such Potential Takedown Participant the opportunity to include in any Underwritten Shelf Takedown or the S-3 ASR Supplement such number of Registrable Securities as each such Potential Takedown Participant may request in writing. The Corporation shall include in the Underwritten Shelf Takedown or the S-3 ASR Supplement all

such Registrable Securities with respect to which the Corporation has received written requests for inclusion therein within three Business Days (or such shorter period as may be reasonably requested in connection with an underwritten “block trade”) after the date that the Shelf Takedown Notice has been delivered. Any Potential Takedown Participant’s request to participate in an Underwritten Shelf Takedown shall be binding on the Potential Takedown Participant; provided that each such Potential Takedown Participant that elects to participate may condition its participation on the Underwritten Shelf Takedown being completed within 10 Business Days of its acceptance at a price per share (after giving effect to any underwriters’ discounts or commissions) to such Potential Takedown Participant of not less than ninety percent (90%) (or such lesser percentage specified by such Potential Takedown Participant) of the closing price for the shares on their principal trading market on the Business Day immediately prior to such Potential Takedown Participant’s election to participate (the “Participation Conditions”). Notwithstanding the delivery of any Shelf Takedown Notice, but subject to the Participation Conditions (to the extent applicable), all determinations as to whether to complete any Underwritten Shelf Takedown and as to the timing, manner, price and other terms of any Underwritten Shelf Takedown contemplated by this Section 3.2 shall be determined by the Qualified Holders Beneficially Owning a majority of Registrable Securities participating in the Registration, subject to approval by the Corporation, which shall not be unreasonably withheld, conditioned or delayed.

3.3 Piggyback Registration.

(a) Participation. If the Corporation at any time proposes to file a Registration Statement under the Securities Act or to conduct a Public Offering with respect to any offering of its equity securities for its own account or for the account of any other Persons (other than (i) a Registration under Sections 3.1 or 3.2, (ii) a Registration on Form S-4 or Form S-8 or any successor form to such forms, (iii) a Registration of securities solely relating to an offering and sale to employees or directors of the Corporation or its subsidiaries pursuant to any employee stock plan, employee stock purchase plan, or other employee benefit plan arrangement, (iv) a Registration solely for the registration of securities issuable upon the conversion, exchange or exercise of any then outstanding security of the Corporation or (v) a Registration relating to a dividend reinvestment plan), then as soon as practicable (but in no event less than 10 Business Days prior to the proposed date of filing of such Registration Statement or, in the case of a Public Offering under a Shelf Registration Statement, the anticipated pricing or trade date), the Corporation shall give written notice (a “Piggyback Notice”) of such proposed filing or Public Offering to all Holders, and such Piggyback Notice shall offer the Holders the opportunity to register under such Registration Statement, or to sell in such Public Offering, such number of Registrable Securities as each such Holder may request in writing (a “Piggyback Registration”). The Corporation shall not be required to provide a Piggyback Notice to Holders of any Registrable Securities that are already registered pursuant to an effective Registration Statement. Subject to Section 3.3(b), the Corporation shall include in such Registration Statement or in such Public Offering as applicable, all such Registrable Securities that are requested to be included therein within five Business Days after the receipt by such Holder of any such notice; provided, however, that if at any time after giving written notice of its intention to register or sell any securities and prior to the effective date of the Registration Statement filed in connection with such Registration, or the pricing or trade date of a Public Offering under a Shelf Registration Statement, the Corporation determines for any reason not to

register or sell or to delay Registration or the sale of such securities, the Corporation shall give written notice of such determination to each Holder and, thereupon, (i) in the case of a determination not to register or sell, shall be relieved of its obligation to register or sell any Registrable Securities in connection with such Registration or Public Offering (but not from its obligation to pay the Registration Expenses in connection therewith), without prejudice, however, to the rights of any Holders entitled to request that such Registration or sale be effected as a Demand Registration under Section 3.1 or an Underwritten Shelf Takedown, as the case may be, and (ii) in the case of a determination to delay Registration or sale, in the absence of a request for a Demand Registration or an Underwritten Shelf Takedown, as the case may be, shall also be permitted to delay registering or selling any Registrable Securities. Any Holder shall have the right to withdraw all or part of its request for inclusion of its Registrable Securities in a Piggyback Registration by giving written notice to the Corporation of its request to withdraw prior to such Registration the securities being registered in such Piggyback Registration.

(b) Priority of Piggyback Registration. If the managing underwriter or underwriters of any proposed offering of Registrable Securities included in a Piggyback Registration informs the Corporation and the participating Holders in writing that, in its or their opinion, the number of securities that such Holders and any other Persons intend to include in such offering exceeds the number that can be sold in such offering without being likely to have a significant adverse effect on the price, timing or distribution of the securities offered or the market for the securities offered, then the securities to be included in such Registration shall be (i) first, one hundred percent (100%) of the securities that the Corporation proposes to sell, and (ii) second, and only if all the securities referred to in clause (i) have been included, the number of Registrable Securities that, in the opinion of such managing underwriter or underwriters, can be sold without having such adverse effect, with such number to be allocated among the Holders that have requested to participate in such Registration based on an amount equal to the lesser of (x) the number of such Registrable Securities requested to be sold by such Holder, and (y) a number of such shares equal to such Holder's Pro Rata Portion and (iii) third, and only if all of the Registrable Securities referred to in clause (ii) have been included in such Registration, any other securities eligible for inclusion in such Registration.

(c) No Effect on Other Registrations. No Registration of Registrable Securities effected pursuant to a request under this Section 3.3 shall be deemed to have been effected pursuant to Section 3.1 or shall relieve the Corporation of its obligations under Section 3.1.

3.4 Lock-Up Agreements. In connection with each Registration or sale of Registrable Securities pursuant to Section 3.1 or Section 3.3 conducted as an Underwritten Offering, each Holder agrees hereby not to, and agrees to execute and deliver a lock-up agreement with the underwriter(s) of such Public Offering restricting such Holder's right to, (a) Transfer, directly or indirectly, any equity securities of the Corporation held by such Holder or (b) enter into any swap or other arrangement that Transfers to another any of the economic consequences of ownership of such securities during the period commencing on the date of the final Prospectus relating to such Public Offering and ending on the date specified by the underwriters (such period not to exceed 90 days plus such additional period as may be requested by the Corporation or an underwriter due to regulatory restrictions on the publication or other distribution of research reports and analyst recommendations and opinions, if applicable). The terms of such

lock-up agreements shall be negotiated among the Holders, the Corporation and the underwriters and shall include customary carve-outs from the restrictions on Transfer set forth therein.

3.5 Registration Procedures.

(a) Requirements. In connection with the Corporation's obligations under Sections 3.1 and 3.3, the Corporation shall use its commercially reasonable efforts to effect such Registration and to permit the sale of such Registrable Securities in accordance with the intended method or methods of distribution thereof as expeditiously as reasonably practicable, and in connection therewith the Corporation shall use its commercially reasonable efforts to:

(i) as promptly as practicable, prepare the required Registration Statement, including all exhibits and financial statements required under the Securities Act to be filed therewith and Prospectus, and, before filing a Registration Statement or Prospectus or any amendments or supplements thereto, (x) furnish to the underwriters, if any, and to the Holders of the Registrable Securities covered by such Registration Statement, copies of all documents prepared to be filed, which documents shall be subject to the review of such underwriters and such Holders and their respective counsel, (y) make such changes in such documents concerning the Holders prior to the filing thereof as such Holders, or their counsel, may reasonably request and (z) except in the case of a Registration under Section 3.3, not file any Registration Statement or Prospectus or amendments or supplements thereto to which the Qualified Holders Beneficially Owning a majority of Registrable Securities covered by such Registration Statement, in such capacity, or the underwriters, if any, shall reasonably object;

(ii) prepare and file with the SEC such amendments and post-effective amendments to such Registration Statement and supplements to the Prospectus as may be (x) reasonably requested by the Qualified Holders Beneficially Owning a majority of Registrable Securities covered by such Registration Statement, (y) reasonably requested by any participating Holder (to the extent such request relates to information relating to such Holder), or (z) necessary to keep such Registration Statement effective for the period of time required by this Agreement, and comply with provisions of the applicable securities laws with respect to the sale or other disposition of all securities covered by such Registration Statement during such period in accordance with the intended method or methods of disposition by the sellers thereof set forth in such Registration Statement;

(iii) notify the participating Holders and the managing underwriter or underwriters, if any, and (if requested) confirm such notice in writing and provide copies of the relevant documents, as soon as reasonably practicable after notice thereof is received by the Corporation (a) when the applicable Registration Statement or any amendment thereto has been filed or becomes effective, and when the applicable Prospectus or any amendment or supplement thereto has been filed, (b) of any written comments by the SEC, or any request by the SEC or other federal or state governmental authority for amendments or supplements to such Registration Statement or such Prospectus, or for additional information (whether before or after the effective date of the Registration Statement) or any other correspondence with the SEC relating to, or which may affect, the Registration, (c) of the issuance by the SEC of any stop order suspending

the effectiveness of such Registration Statement or any order by the SEC or any other regulatory authority preventing or suspending the use of any preliminary or final Prospectus or the initiation or threatening of any proceedings for such purposes, (d) if, at any time, the representations and warranties of the Corporation in any applicable underwriting agreement cease to be true and correct in all material respects and (e) of the receipt by the Corporation of any notification with respect to the Suspension of the qualification of the Registrable Securities for offering or sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose;

(iv) promptly notify each selling Holder and the managing underwriter or underwriters, if any, when the Corporation becomes aware of the happening of any event as a result of which the applicable Registration Statement or the Prospectus included in such Registration Statement (as then in effect) contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements therein (in the case of such Prospectus or any preliminary Prospectus, in light of the circumstances under which they were made) not misleading, when any Issuer Free Writing Prospectus includes information that may conflict with the information contained in the Registration Statement, or, if for any other reason it shall be necessary during such time period to amend or supplement such Registration Statement or Prospectus in order to comply with the Securities Act and, as promptly as reasonably practicable thereafter, prepare and file with the SEC, and furnish without charge to the selling Holders and the managing underwriter or underwriters, if any, an amendment or supplement to such Registration Statement or Prospectus, which shall correct such misstatement or omission or effect such compliance;

(v) to the extent the Corporation is eligible under the relevant provisions of Rule 430B under the Securities Act, if the Corporation files any Shelf Registration Statement, include in such Shelf Registration Statement such disclosures as may be required by Rule 430B under the Securities Act (referring to the unnamed selling security holders in a generic manner by identifying the initial offering of the securities to the Holders) in order to ensure that the Holders may be added to such Shelf Registration Statement at a later time through the filing of a Prospectus supplement rather than a post-effective amendment;

(vi) prevent, or obtain the withdrawal of, any stop order or other order or notice preventing or suspending the use of any preliminary or final Prospectus;

(vii) promptly incorporate in a Prospectus supplement, Issuer Free Writing Prospectus or post-effective amendment such information as the managing underwriter or underwriters and the participating Holders agree should be included therein relating to the plan of distribution with respect to such Registrable Securities; and make all required filings of such Prospectus supplement, Issuer Free Writing Prospectus or post-effective amendment as soon as reasonably practicable after being notified of the matters to be incorporated in such Prospectus supplement, Issuer Free Writing Prospectus or post-effective amendment;

(viii) furnish to each selling Holder and each underwriter, if any, without charge, as many conformed copies as such Holder or underwriter may reasonably request of the applicable Registration Statement and any amendment or post-effective amendment or supplement thereto, including financial statements and schedules, all documents incorporated therein by reference and all exhibits (including those incorporated by reference);

(ix) deliver to each selling Holder and each underwriter, if any, without charge, as many copies of the applicable Prospectus (including each preliminary Prospectus) and any amendment or supplement thereto and such other documents as such Holder or underwriter may reasonably request in order to facilitate the disposition of the Registrable Securities by such Holder or underwriter (it being understood that the Corporation shall consent to the use of such Prospectus or any amendment or supplement thereto by each of the selling Holders and the underwriters, if any, in connection with the offering and sale of the Registrable Securities covered by such Prospectus or any amendment or supplement thereto);

(x) on or prior to the date on which the applicable Registration Statement becomes effective, use its commercially reasonable efforts to register or qualify, and cooperate with the selling Holders, the managing underwriter or underwriters, if any, and their respective counsel, in connection with the Registration or qualification of, such Registrable Securities for offer and sale under the securities or “Blue Sky” laws of each state and other jurisdiction as any such selling Holder or managing underwriter or underwriters, if any, or their respective counsel reasonably request in writing and do any and all other acts or things reasonably necessary or advisable to keep such Registration or qualification in effect for such period as required by Section 3.1, as applicable, provided that the Corporation shall not be required to qualify generally to do business in any jurisdiction where it is not then so qualified or to take any action which would subject it to taxation or general service of process in any such jurisdiction where it is not then so subject;

(xi) cooperate with the selling Holders and the managing underwriter or underwriters, if any, to facilitate the timely preparation and delivery of certificates representing Registrable Securities to be sold and not bearing any restrictive legends; and enable such Registrable Securities to be in such denominations and registered in such names as the managing underwriters may request prior to any sale of Registrable Securities to the underwriters;

(xii) cause the Registrable Securities covered by the applicable Registration Statement to be registered with or approved by such other U.S. governmental agencies or authorities as may be necessary to enable the seller or sellers thereof or the underwriter or underwriters, if any, to consummate the disposition of such Registrable Securities;

(xiii) make such representations and warranties to the Holders being registered, and the underwriters or agents, if any, in form, substance and scope as are

customarily made by issuers in public offerings similar to the offering then being undertaken;

(xiv) enter into such customary agreements (including underwriting and indemnification agreements) and take all such other actions as the participating Holders or the managing underwriter or underwriters, if any, reasonably request in order to expedite or facilitate the Registration and disposition of such Registrable Securities;

(xv) in the case of an Underwritten Offering, obtain for delivery to the underwriter or underwriters, if any, an opinion or opinions from counsel for the Corporation dated the date of the closing under the underwriting agreement, in customary form, scope and substance, which opinions shall be reasonably satisfactory to such underwriters and their counsel;

(xvi) in the case of an Underwritten Offering, obtain for delivery to the Corporation and the managing underwriter or underwriters, with copies to the Holders included in such Registration or sale, a comfort letter from the Corporation's independent certified public accountants or independent auditors (and, if necessary, any other independent certified public accountants or independent auditors of any subsidiary of the Corporation or any business acquired by the Corporation for which financial statements and financial data are, or are required to be, included in the Registration Statement) in customary form and covering such matters of the type customarily covered by comfort letters as the managing underwriter or underwriters reasonably request, dated the date of execution of the underwriting agreement and brought down to the closing under the underwriting agreement;

(xvii) cooperate with each seller of Registrable Securities and each underwriter, if any, participating in the disposition of such Registrable Securities and their respective counsel in connection with any filings required to be made with FINRA;

(xviii) comply with all applicable securities laws and, if a Registration Statement was filed, make available to its security holders, as soon as reasonably practicable, an earnings statement satisfying the provisions of Section 11(a) of the Securities Act and the rules and regulations promulgated thereunder;

(xix) provide and cause to be maintained a transfer agent and registrar for all Registrable Securities covered by the applicable Registration Statement;

(xx) cause all Registrable Securities covered by the applicable Registration Statement to be listed on each securities exchange on which any of the Corporation's equity securities are then listed or quoted and on each inter-dealer quotation system on which any of the Corporation's equity securities are then quoted.

(xxi) make available upon reasonable notice at reasonable times and for reasonable periods for inspection by any underwriter participating in any disposition to be effected pursuant to such Registration Statement and by any attorney, accountant or other agent retained by any such underwriter, all pertinent financial and other records and pertinent corporate documents and properties of the Corporation, and cause all of the

Corporation's officers, directors and employees and the independent public accountants who have certified its financial statements to make themselves available to discuss the business of the Corporation and to supply all information reasonably requested by any such Person in connection with such Registration Statement;

(xxii) in the case of an Underwritten Offering, cause the senior executive officers of the Corporation to participate in the customary "road show" presentations that may be reasonably requested by the managing underwriter or underwriters in any such offering and otherwise to facilitate, cooperate with, and participate in each proposed offering contemplated herein and customary selling efforts related thereto;

(xxiii) take no direct or indirect action prohibited by Regulation M under the Exchange Act; and

(xxiv) take all such other commercially reasonable actions as are necessary or advisable in order to expedite or facilitate the disposition of such Registrable Securities in accordance with the terms of this Agreement.

(b) Corporation Information Requests. The Corporation may require each seller of Registrable Securities as to which any Registration or sale is being effected to furnish to the Corporation such information regarding the distribution of such securities and such other information relating to such Holder and its ownership of Registrable Securities as the Corporation may from time to time reasonably request in writing, and the Corporation may exclude from such Registration or sale the Registrable Securities of any such Holder who unreasonably fails to furnish such information within a reasonable time after receiving such request. Each Holder agrees to furnish such information to the Corporation and to cooperate with the Corporation as reasonably necessary to enable the Corporation to comply with the provisions of this Agreement.

(c) Discontinuing Registration. Each Holder agrees that, upon receipt of any notice from the Corporation of the happening of any event of the kind described in Section 3.5(a)(iv), such Holder will discontinue disposition of Registrable Securities pursuant to such Registration Statement until such Holder's receipt of the copies of the supplemented or amended Prospectus contemplated by Section 3.5(a)(iv), or until such Holder is advised in writing by the Corporation that the use of the Prospectus may be resumed, and has received copies of any additional or supplemental filings that are incorporated by reference in the Prospectus, or any amendments or supplements thereto, and if so directed by the Corporation, such Holder shall deliver to the Corporation (at the Corporation's expense) all copies, other than permanent file copies then in such Holder's possession, of the Prospectus covering such Registrable Securities current at the time of receipt of such notice. In the event the Corporation shall give any such notice, the period during which the applicable Registration Statement is required to be maintained effective shall be extended by the number of days during the period from and including the date of the giving of such notice to and including the date when each seller of Registrable Securities covered by such Registration Statement either receives the copies of the supplemented or amended Prospectus contemplated by Section 3.5(a)(iv) or is advised in writing by the Corporation that the use of the Prospectus may be resumed.

3.6 Underwritten Offerings.

(a) Shelf and Demand Registrations. If requested by the underwriters for any Underwritten Offering, pursuant to a Registration or sale under Section 3.1, the Corporation shall enter into an underwriting agreement with such underwriters, such agreement to be reasonably satisfactory in substance and form to each of the Corporation, the participating Holders and the underwriters, and to contain such representations and warranties by the Corporation and such other terms as are generally prevailing in agreements of that type, including indemnities no less favorable to the recipient thereof than those provided in Section 3.9. The Holders of the Registrable Securities proposed to be distributed by such underwriters shall cooperate with the Corporation in the negotiation of the underwriting agreement and shall give consideration to the reasonable suggestions of the Corporation regarding the form thereof, and such Holders shall complete and execute all questionnaires, powers of attorney and other documents reasonably requested by the underwriters and required under the terms of such underwriting arrangements. Any such Holder shall not be required to make any representations or warranties to or agreements with the Corporation or the underwriters other than representations, warranties or agreements regarding such Holder, such Holder's title to the Registrable Securities, such Holder's intended method of distribution and any other representations to be made by the Holder as are generally prevailing in agreements of that type, and the aggregate amount of the liability of such Holder under such agreement shall not exceed such Holder's proceeds from the sale of its Registrable Securities in the offering, net of underwriting discounts and commissions but before expenses.

(b) Piggyback Registrations. If the Corporation proposes to register or sell any of its securities under the Securities Act as contemplated by Section 3.3 and such securities are to be distributed through one or more underwriters, the Corporation shall, if requested by any Holder pursuant to Section 3.3, and subject to the provisions of Section 3.3(b), use its commercially reasonable efforts to arrange for such underwriters to include on the same terms and conditions that apply to the other sellers in such Registration or sale all the Registrable Securities to be offered and sold by such Holder among the securities of the Corporation to be distributed by such underwriters in such Registration or sale. The Holders of Registrable Securities to be distributed by such underwriters shall be parties to the underwriting agreement between the Corporation and such underwriters and shall complete and execute all questionnaires, powers of attorney and other documents reasonably requested by the underwriters and required under the terms of such underwriting arrangements. Any such Holder shall not be required to make any representations or warranties to or agreements with the Corporation or the underwriters other than representations, warranties or agreements regarding such Holder, such Holder's title to the Registrable Securities, such Holder's intended method of distribution and any other representations to be made by the Holder as are generally prevailing in agreements of that type, and the aggregate amount of the liability of such Holder shall not exceed such Holder's proceeds from the sale of its Registrable Securities in the offering, net of underwriting discounts and commissions but before expenses.

(c) Selection of Underwriters; Selection of Counsel. In the case of an Underwritten Offering under Section 3.1 or Section 3.2, the managing underwriter or underwriters to administer the offering shall be determined by the Corporation; provided that

such underwriter or underwriters shall be reasonably acceptable to the Holders holding a majority of the Registrable Securities being sold.

3.7 No Inconsistent Agreements. Neither the Corporation nor any of its subsidiaries shall hereafter enter into, and neither the Corporation nor any of its subsidiaries is currently a party to, any agreement with respect to its securities that is inconsistent with the rights granted to the Holders by this Agreement.

3.8 Registration Expenses. All expenses incident to the Corporation's performance of or compliance with this Agreement shall be paid by the Corporation, including (i) all registration and filing fees, and any other fees and expenses associated with filings required to be made with the SEC or FINRA, subject to customary limitations for legal fees in connection with an Underwritten Offering, (ii) all fees and expenses in connection with compliance with any securities or "Blue Sky" laws (including reasonable fees and disbursements of counsel for the underwriters in connection with blue sky qualifications of the Registrable Securities), subject to customary limitations for legal fees in connection with an Underwritten Offering, (iii) all printing, duplicating, word processing, messenger, telephone, facsimile and delivery expenses (including expenses of printing certificates for the Registrable Securities in a form eligible for deposit with The Depository Trust Company and of printing prospectuses), (iv) all fees and disbursements of counsel for the Corporation and of all independent certified public accountants or independent auditors of the Corporation and any subsidiaries of the Corporation (including the expenses of any special audit and comfort letters required by or incident to such performance), (v) the reasonable fees and disbursements of one counsel for the Holders participating in a Registration, which counsel may be, at the Corporation's option (x) the same as counsel to the Corporation provided that the Holders of a majority of Registrable Securities participating in the Registration are not able to demonstrate that there is a legal conflict arising from such representation or (y) other counsel selected by the Corporation and approved by the Holders of a majority of Registrable Securities participating in the Registration, (vi) all fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange or quotation of the Registrable Securities on any inter-dealer quotation system, (vii) all fees and expenses of any special experts or other Persons retained by the Corporation in connection with any Registration or sale, (viii) all of the Corporation's internal expenses (including all salaries and expenses of its officers and employees performing legal or accounting duties) and (ix) all expenses related to the "road show" for any Underwritten Offering, subject to customary limitations in connection with an Underwritten Offering. All such expenses are referred to herein as "Registration Expenses." The Corporation shall not be required to pay any fees and disbursements to underwriters not customarily paid by the issuers of securities in an offering similar to the applicable offering, including underwriting discounts and commissions and transfer taxes, if any, attributable to the sale of Registrable Securities.

3.9 Indemnification.

(a) Indemnification by the Corporation. The Corporation shall indemnify and hold harmless, to the full extent permitted by law, each Holder, each shareholder, member, limited or general partner of such Holder, each of their respective Affiliates, officers, directors, shareholders, employees, advisors, and agents and each Person who controls (within the meaning of the Securities Act or the Exchange Act) such Persons, from and against any and all losses,

penalties, judgments, suits, costs, claims, damages, liabilities and expenses, joint or several (including reasonable costs of investigation and legal expenses) (each, a “Loss” and collectively “Losses”) arising out of or based upon (i) any untrue or alleged untrue statement of a material fact contained in any Registration Statement under which such Registrable Securities are registered or sold under the Securities Act (including any final, preliminary or summary Prospectus contained therein or any amendment thereof or supplement thereto or any documents incorporated by reference therein), or (ii) any omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a Prospectus or preliminary Prospectus, in light of the circumstances under which they were made) not misleading; provided, that no selling Holder shall be entitled to indemnification pursuant to this Section 3.9(a) in respect of any untrue statement or omission contained in any information relating to such selling Holder furnished in writing by such selling Holder to the Corporation specifically for inclusion in a Registration Statement and used by the Corporation in conformity therewith (such information, “Selling Stockholder Information”). This indemnity shall be in addition to any liability the Corporation may otherwise have. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Holder or any indemnified party and shall survive the Transfer of such securities by such Holder and regardless of any indemnity agreed to in the underwriting agreement that is less favorable to the Holders. The Corporation shall also indemnify underwriters, selling brokers, dealer managers and similar securities industry professionals participating in the distribution, their officers and directors and each Person who controls such Persons (within the meaning of the Securities Act and the Exchange Act) to the same extent as provided above (with appropriate modification) with respect to the indemnification of the indemnified parties.

(b) Indemnification by the Selling Holders. Each selling Holder agrees (severally and not jointly) to indemnify and hold harmless, to the fullest extent permitted by law, the Corporation, its directors and officers and each Person who controls the Corporation (within the meaning of the Securities Act or the Exchange Act) from and against any Losses resulting from (i) any untrue statement of a material fact in any Registration Statement under which such Registrable Securities were registered or sold under the Securities Act (including any final, preliminary or summary Prospectus contained therein or any amendment thereof or supplement thereto or any documents incorporated by reference therein) or (ii) any omission to state therein a material fact required to be stated therein or necessary to make the statements therein (in the case of a Prospectus or preliminary Prospectus, in light of the circumstances under which they were made) not misleading, in each case to the extent, but only to the extent, that such untrue statement or omission is contained in such selling Holder’s Selling Stockholder Information. In no event shall the liability of any selling Holder hereunder be greater in amount than the dollar amount of the proceeds from the sale of its Registrable Securities in the offering giving rise to such indemnification obligation, net of underwriting discounts and commissions but before expenses, less any amounts paid by such Holder pursuant to Section 3.9(d) and any amounts paid by such Holder as a result of liabilities incurred under the underwriting agreement, if any, related to such sale.

(c) Conduct of Indemnification Proceedings. Any Person entitled to indemnification hereunder shall (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification (provided that any delay or failure to so notify the indemnifying party shall relieve the indemnifying party of its obligations hereunder

only to the extent, if at all, that it is actually and materially prejudiced by reason of such delay or failure) and (ii) permit such indemnifying party to assume the defense of such claim with counsel reasonably satisfactory to the indemnified party; provided, however, that any Person entitled to indemnification hereunder shall have the right to select and employ separate counsel and to participate in the defense of such claim, but the fees and expenses of such counsel shall be at the expense of such Person unless (i) the indemnifying party has agreed in writing to pay such fees or expenses, (ii) the indemnifying party shall have failed to assume the defense of such claim within a reasonable time after receipt of notice of such claim from the Person entitled to indemnification hereunder and employ counsel reasonably satisfactory to such Person within a reasonable time, (iii) if such counsel is acting as counsel to both the indemnified party and the indemnifying party, the indemnified party has reasonably concluded (based upon advice of its counsel) that there may be legal defenses available to it or other indemnified parties that are different from or in addition to those available to the indemnifying party, or (iv) in the reasonable judgment of any such Person (based upon advice of its counsel) a conflict of interest may exist between such Person and the indemnifying party with respect to such claims (in which case, if the Person notifies the indemnifying party in writing that such Person elects to employ separate counsel at the expense of the indemnifying party, the indemnifying party shall not have the right to assume the defense of such claim on behalf of such Person). If the indemnifying party assumes the defense, then no indemnifying party shall, without the written consent of the indemnified party, effect the settlement or compromise of, or consent to, on behalf of the indemnified party, the entry of any judgment with respect to, any pending or threatened action or claim in respect of which an indemnified party is or could have been a party thereto and indemnification or contribution may be sought hereunder, unless such settlement, compromise or consent (i) includes an unconditional release of the indemnified party from all liability arising out of such action or claim and (ii) does not include a statement as to or an admission of fault, culpability or a failure to act, by or on behalf of any indemnified party. If such defense is not assumed by the indemnifying party, the indemnifying party will not be subject to any liability for any settlement made without its prior written consent, but such consent may not be unreasonably withheld. It is understood that the indemnifying party or parties shall not, except as specifically set forth in this Section 3.9(c), in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees, disbursements or other charges of more than one separate firm unless the employment of more than one counsel has been authorized in writing by the indemnifying party or parties.

(d) Contribution. If for any reason the indemnification provided for in Sections 3.9(a) and (b) is unavailable to an indemnified party or insufficient in respect of any Losses referred to therein (other than as a result of exceptions or limitations on indemnification contained in Sections 3.9(a) and (b)), then the indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such Loss in such proportion as is appropriate to reflect the relative fault of the indemnifying party on the one hand and the indemnified party or parties on the other hand in connection with the acts, statements or omissions that resulted in such Losses, as well as any other relevant equitable considerations. In connection with any Registration Statement filed with the SEC by the Corporation, the relative fault of the indemnifying party on the one hand and the indemnified party on the other hand shall be determined by reference to, among other things, whether any untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the indemnifying party or by the indemnified party and the parties'

relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The parties hereto agree that it would not be just or equitable if contribution pursuant to this Section 3.9(d) were determined by pro rata allocation or by any other method of allocation that does not take account of the equitable considerations referred to in this Section 3.9(d). No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation. The amount paid or payable by an indemnified party as a result of the Losses referred to in Sections 3.9(a) and (b) shall be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 3.9(d), in connection with any Registration Statement filed by the Corporation, a selling Holder shall not be required to contribute any amount in excess of the dollar amount of the proceeds from the sale of its Registrable Securities in the offering giving rise to such contribution obligation, net of underwriting discounts and commissions but before expenses, less any amounts paid by such Holder pursuant to Section 3.9(b) and any amounts paid by such Holder as a result of liabilities incurred under the underwriting agreement, if any, related to such sale. If indemnification is available under this Section 3.9, the indemnifying parties shall indemnify each indemnified party to the full extent provided in Sections 3.9(a) and (b) hereof without regard to the provisions of this Section 3.9(d). The remedies provided for in this Section 3.9 are not exclusive and shall not limit any rights or remedies which may otherwise be available to any indemnified party at law or in equity.

3.10 Rules 144 and 144A and Regulation S. The Corporation shall file the reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder (or, if the Corporation is not required to file such reports, it will, upon the request of any Holder, make publicly available such necessary information for so long as necessary to permit sales that would otherwise be permitted by this Agreement pursuant to Rule 144, Rule 144A or Regulation S under the Securities Act, as such rules may be amended from time to time or any similar rule or regulation hereafter adopted by the SEC), and it will take such further action as any Holder may reasonably request, all to the extent required from time to time to enable such Holder to sell Registrable Securities without Registration under the Securities Act in transactions that would otherwise be permitted by this Agreement and within the limitation of the exemptions provided by (i) Rule 144, Rule 144A or Regulation S under the Securities Act, as such rules may be amended from time to time, or (ii) any similar rule or regulation hereafter adopted by the SEC. Upon the request of any Holder, the Corporation will deliver to such Holder a written statement as to whether it has complied with such requirements and, if not, the specifics thereof.

3.11 Existing Registration Statements. Notwithstanding anything herein to the contrary and subject to applicable law and regulation, the Corporation may satisfy any obligation hereunder to file a Registration Statement or to have a Registration Statement become effective by a specified date by designating, by notice to the Holders, a Registration Statement that previously has been filed with the SEC or become effective, as the case may be, as the relevant Registration Statement for purposes of satisfying such obligation, and all references to any such obligation shall be construed accordingly; provided that such previously filed Registration Statement may be, and is, amended or, subject to applicable securities laws, supplemented to add the number of Registrable Securities, and, to the extent necessary, to identify as selling

stockholders those Holders demanding the filing of a Registration Statement pursuant to the terms of this Agreement. To the extent this Agreement refers to the filing or effectiveness of other Registration Statements, by or at a specified time and the Corporation has, in lieu of then filing such Registration Statements or having such Registration Statements become effective, designated a previously filed or effective Registration Statement as the relevant Registration Statement for such purposes, in accordance with the preceding sentence, such references shall be construed to refer to such designated Registration Statement, as amended or supplemented in the manner contemplated by the immediately preceding sentence.

ARTICLE IV

MISCELLANEOUS

4.1 Authority: Effect. Each party hereto represents and warrants to and agrees with each other party that the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized on behalf of such party and do not violate any agreement or other instrument applicable to such party or by which its assets are bound. This Agreement does not, and shall not be construed to, give rise to the creation of a partnership among any of the parties hereto, or to constitute any of such parties members of a joint venture or other association. The Corporation and its subsidiaries shall be jointly and severally liable for all obligations of each such party pursuant to this Agreement.

4.2 Notices. Any notices, requests, demands and other communications required or permitted in this Agreement shall be effective if in writing and (i) delivered personally, (ii) sent by facsimile or e-mail, or (iii) sent by overnight courier, in each case, addressed as follows:

If to the Corporation to:

Viant Technology Inc.
2722 Michelson Drive, Suite 100
Irvine, CA 92612
Telephone: (949) 861-8888
Attention: General Counsel

with a copy (which shall not constitute notice to the Corporation) to:

Gibson, Dunn & Crutcher LLP
555 Mission Street, Suite 300
San Francisco, CA 94105
Telephone: (415) 393-8200
Attention: Stewart McDowell

If to a Holder, to the address on file in the Corporation's records.

Notice to the holder of record of any Registrable Securities shall be deemed to be notice to the holder of such securities for all purposes hereof.

Unless otherwise specified herein, such notices or other communications shall be deemed effective (i) on the date received, if personally delivered, (ii) on the date received if delivered by facsimile or e-mail on a Business Day, or if not delivered on a Business Day, on the first Business Day thereafter and (iii) two Business Days after being sent by overnight courier. Each of the parties hereto shall be entitled to specify a different address by giving notice as aforesaid to each of the other parties hereto.

4.3 Termination and Effect of Termination. This Agreement shall terminate upon the date on which no Holder holds any Registrable Securities, except for the provisions of Sections 3.9 and 3.10, which shall survive any such termination. No termination under this Agreement shall relieve any Person of liability for breach or Registration Expenses incurred prior to termination. In the event this Agreement is terminated, each Person entitled to indemnification rights pursuant to Section 3.9 hereof shall retain such indemnification rights with respect to any matter that (i) may be an indemnified liability thereunder and (ii) occurred prior to such termination.

4.4 Permitted Transferees. The rights of a Holder hereunder may be assigned (but only with all related obligations as set forth below) in connection with a Transfer of Registrable Securities to a Permitted Transferee of that Holder. Without prejudice to any other or similar conditions imposed hereunder with respect to any such Transfer, no assignment permitted under the terms of this Section 4.4 will be effective unless the Permitted Transferee to which the assignment is being made, if not a Holder, has delivered to the Corporation a written acknowledgment and agreement in form and substance reasonably satisfactory to the Corporation that the Permitted Transferee will be bound by, and will be a party to, this Agreement. A Permitted Transferee to whom rights are transferred pursuant to this Section 4.4 may not again transfer those rights to any other Permitted Transferee, other than as provided in this Section 4.4.

4.5 Remedies. The parties to this Agreement shall have all remedies available at law, in equity or otherwise in the event of any breach or violation of this Agreement or any default hereunder. The parties acknowledge and agree that in the event of any breach of this Agreement, in addition to any other remedies that may be available, each of the parties hereto shall be entitled to specific performance of the obligations of the other parties hereto and, in addition, to such other equitable remedies (including preliminary or temporary relief) as may be appropriate in the circumstances. No delay of or omission in the exercise of any right, power or remedy accruing to any party as a result of any breach or default by any other party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of any similar breach or default occurring later; nor shall any such delay, omission or waiver of any single breach or default be deemed a waiver of any other breach or default occurring before or after that waiver.

4.6 Amendments. This Agreement may not be orally amended, modified, extended or terminated, nor shall any oral waiver of any of its terms be effective. This Agreement may be amended, modified, extended or terminated, and the provisions hereof may be waived, only by an agreement in writing signed by the Corporation and the Holders of a majority of the Registrable Securities under this Agreement; provided, however, that any amendment, modification, extension or termination that disproportionately and adversely affects any Holder

shall require the prior written consent of such Holder. Each such amendment, modification, extension or termination shall be binding upon each party hereto. In addition, each party hereto may waive any right hereunder by an instrument in writing signed by such party.

4.7 Governing Law. This Agreement and all claims arising out of or based upon this Agreement or relating to the subject matter hereof shall be governed by and construed in accordance with the domestic substantive laws of the State of Delaware without giving effect to any choice or conflict of laws provision or rule that would cause the application of the domestic substantive laws of any other jurisdiction.

4.8 Consent to Jurisdiction. Each party to this Agreement, by its execution hereof, (i) hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the State of Delaware and the County of New Castle for the purpose of any action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation arising out of or based upon this Agreement or relating to the subject matter hereof, (ii) hereby waives to the extent not prohibited by applicable law, and agrees not to assert, and agrees not to allow any of its subsidiaries to assert, by way of motion, as a defense or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that any such proceeding brought in one of the above-named courts is improper, or that this Agreement or the subject matter hereof or thereof may not be enforced in or by such court and (iii) hereby agrees not to commence or maintain any action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation arising out of or based upon this Agreement or relating to the subject matter hereof or thereof other than before one of the above-named courts or to make any motion or take any other action seeking or intending to cause the transfer or removal of any such action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation to any court other than one of the above-named courts whether on the grounds of inconvenient forum or otherwise. Notwithstanding the foregoing, to the extent that any party hereto is or becomes a party in any litigation in connection with which it may assert indemnification rights set forth in this Agreement, the court in which such litigation is being heard shall be deemed to be included in clause (i) above. Notwithstanding the foregoing, any party to this Agreement may commence and maintain an action to enforce a judgment of any of the above-named courts in any court of competent jurisdiction. Each party hereto hereby consents to service of process in any such proceeding in any manner permitted by Delaware law, and agrees that service of process by registered or certified mail, return receipt requested, at its address specified pursuant to Section 4.2 hereof is reasonably calculated to give actual notice.

4.9 WAIVER OF JURY TRIAL. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, EACH PARTY HERETO HEREBY WAIVES AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE) ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE OR ACTION, CLAIM, CAUSE OF ACTION OR SUIT (IN CONTRACT, TORT OR OTHERWISE), INQUIRY, PROCEEDING OR INVESTIGATION ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE SUBJECT MATTER HEREOF OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE TRANSACTIONS CONTEMPLATED HEREBY, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING. EACH PARTY HERETO ACKNOWLEDGES

THAT IT HAS BEEN INFORMED BY THE OTHER PARTIES HERETO THAT THIS SECTION 4.9 CONSTITUTES A MATERIAL INDUCEMENT UPON WHICH THEY ARE RELYING AND WILL RELY IN ENTERING INTO THIS AGREEMENT. ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 4.9 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

4.10 Merger; Binding Effect, Etc. This Agreement (along with the terms of the Company Agreement) constitutes the entire agreement of the parties with respect to its subject matter, supersedes all prior or contemporaneous oral or written agreements or discussions with respect to such subject matter, and shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective heirs, Representatives, successors and permitted assigns. Except as otherwise expressly provided herein, no Holder or other party hereto may assign any of its respective rights or delegate any of its respective obligations under this Agreement without the prior written consent of the other parties hereto, and any attempted assignment or delegation in violation of the foregoing shall be null and void.

4.11 Counterparts. This Agreement may be signed in counterparts (which may include counterparts delivered by any standard form of telecommunication), each of which shall be an original and all of which together shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopier, facsimile or other electronic transmission shall be effective as delivery of a manually executed counterpart thereof. The words “execution,” “signed,” “signature,” “delivery,” and words of like import in or relating to this Agreement or any document to be signed in connection with this Agreement shall be deemed to include electronic signatures, deliveries or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be, and the parties hereto consent to conduct the transactions contemplated hereunder by electronic means.

4.12 Severability. In the event that any provision hereof would, under applicable law, be invalid or unenforceable in any respect, such provision shall be construed by modifying or limiting it so as to be valid and enforceable to the maximum extent compatible with, and possible under, applicable law. The provisions hereof are severable, and in the event any provision hereof should be held invalid or unenforceable in any respect, it shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

[Signature pages follow]

IN WITNESS WHEREOF, each of the undersigned has duly executed this Agreement as of the date first above written.

Viant Technology Inc.

By: /s/ Larry Madden

Name: Larry Madden

Title: Chief Financial Officer

[Signature Page to Registration Rights Agreement]

/s/ Tim Vanderhook

Tim Vanderhook

/s/ Chris Vanderhook

Chris Vanderhook

FOUR BROTHERS 2 LLC

By: /s/ Tim Vanderhook

Name: Tim Vanderhook

Title: Member

VIANT TECHNOLOGY EQUITY PLAN LLC

By: /s/ Tim Vanderhook

Name: Tim Vanderhook

Title: Manager

[Signature Page to Registration Rights Agreement]

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement No. 333-252912 on Form S-8 of our report dated March 23, 2021, relating to the financial statement of Viant Technology Inc., appearing in this Annual Report on Form 10-K for the year ended December 31, 2020.

/s/ DELOITTE & TOUCHE LLP

Costa Mesa, California
March 23, 2021

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in Registration Statement No. 333-252912 on Form S-8 of our report dated March 23, 2021, relating to the financial statements of Viant Technology LLC, appearing in this Annual Report on Form 10-K of Viant Technology Inc. for the year ended December 31, 2020.

/s/ DELOITTE & TOUCHE LLP

Costa Mesa, California
March 23, 2021

CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO RULES 13A-14(A) AND 15D-14(A) UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002

I, Tim Vanderhook, certify that:

1. I have reviewed this Annual Report on Form 10-K of Viant Technology Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer 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)) for the registrant and have:
 - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 23, 2021

/s/ Tim Vanderhook

Tim Vanderhook

Chief Executive Officer and Chairman

CERTIFICATION OF PRINCIPAL FINANCIAL OFFICER PURSUANT TO RULES 13A-14(A) AND 15D-14(A) UNDER THE SECURITIES EXCHANGE ACT OF 1934, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002.

I, Larry Madden, certify that:

1. I have reviewed this Annual Report on Form 10-K of Viant Technology Inc.;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer 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)) for the registrant and have:
 - (a) designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - (b) evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - (c) disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
 - (a) all significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
 - (b) any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: March 23, 2021

/s/ Larry Madden

Larry Madden

Chief Financial Officer

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Viant Technology Inc. (the "Company") on Form 10-K for the fiscal year ended December 31, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Tim Vanderhook, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 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: March 23, 2021

By: /s/ Tim Vanderhook

Tim Vanderhook
Chief Executive Officer and Chairman

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

**CERTIFICATION PURSUANT TO
18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of Viant Technology Inc. (the "Company") on Form 10-K for the fiscal year ended December 31, 2020, as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Larry Madden, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 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: March 23, 2021

By: /s/ Larry Madden

Larry Madden
Chief Financial Officer

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.