

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

FORM 10-K

Annual Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the fiscal year ended December 31, 2021

Remark Holdings

Commission File Number 001-33720

Remark Holdings, Inc.

Delaware
State of Incorporation

33-1135689
IRS Employer Identification Number

800 S. Commerce St.
Las Vegas, NV 89106

Address, including zip code, of principal executive offices

702-701-9514

Registrant's telephone number, including area code

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

<u>Title of each class</u>	<u>Trading Symbol</u>	<u>Name of each exchange on which registered</u>
Common Stock, \$0.001 par value per share	MARK	The Nasdaq Stock Market LLC

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

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes

No

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes

No

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

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

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

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

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, 2021, the aggregate market value of our voting and non-voting common equity held by non-affiliates was \$175.0 million.

As of March 28, 2022, a total of 105,157,769 shares of our common stock were outstanding.

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SPECIAL NOTE REGARDING FORWARD-LOOKING STATEMENTS

The matters discussed in this Annual Report on Form 10-K (this “Form 10-K”) include “forward-looking statements” about the plans, strategies, objectives, goals or expectations of Remark Holdings, Inc. and subsidiaries (“Remark”, “we”, “us”, “our”). You will find forward-looking statements principally in the sections entitled [Risk Factors](#) and [Management’s Discussion and Analysis of Financial Condition and Results of Operations](#). Such forward-looking statements are identifiable by words or phrases indicating that Remark or management “expects,” “anticipates,” “plans,” “believes,” or “estimates,” or that a particular occurrence or event “will,” “may,” “could,” “should,” or “will likely” result, occur or be pursued or “continue” in the future, that the “outlook” or “trend” is toward a particular result or occurrence, that a development is an “opportunity,” “priority,” “strategy,” “focus,” that we are “positioned” for a particular result, or similarly-stated expectations. You should not place undue reliance on these forward-looking statements, which speak only as of the date of this report or such other report, release, presentation, or statement.

In addition to other risks and uncertainties described in connection with the forward-looking statements contained in this report and other periodic reports filed with the Securities and Exchange Commission (“SEC”), there are many important factors that could cause actual results to differ materially. Such risks and uncertainties include general business conditions, changes in overall economic conditions, our ability to integrate acquired assets, the impact of competition and other factors which are often beyond our control.

This should not be construed as a complete list of all of the economic, competitive, governmental, technological and other factors that could adversely affect our expected consolidated financial position, results of operations or liquidity. Additional risks and uncertainties not currently known to us or that we currently believe are immaterial also may impair our business, operations, liquidity, financial condition and prospects. We undertake no obligation to update or revise our forward-looking statements to reflect developments that occur or information that we obtain after the date of this report.

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PART I

ITEM 1. BUSINESS

OVERVIEW

Remark Holdings, Inc. and its subsidiaries (“Remark”, “we”, “us”, or “our”), and the variable-interest entities (“VIEs”) that Remark consolidates, constitute a diversified global technology business with leading artificial intelligence (“AI”) and data-analytics, as well as a portfolio of digital media properties.

Our innovative artificial intelligence (“AI”) and data analytics solutions continue to gain worldwide awareness and recognition through comparative testing, product demonstrations, media exposure, and word of mouth. We continue to see positive responses and increased acceptance of our software and applications in a growing number of industries. We intend to expand our business in three major regions, Asia-Pacific, North America, and Europe. The Asia-Pacific region has a fast-growth AI market with significant opportunities for our solutions. In North America, primarily in the United States, and in Europe, we see robust demand for AI products and solutions in a growing number of industries, including potential growth opportunities particularly in the workplace, schools, transportation and public safety markets, as well as economic and geopolitical conditions, particularly in international markets, could adversely affect our business. We continue to pursue large business opportunities where we can quickly deploy our software solutions in the market segments we have identified, in which we may face a number of large, well-known competitors.

Our corporate headquarters and U.S. operations are based in Las Vegas, Nevada, and we also maintain operations in London, England and Shanghai, China. The operations of the VIEs are headquartered in Chengdu, China with additional operations in Hangzhou. Our common stock, par value \$0.001 per share, is listed on the NASDAQ Capital Market under the ticker symbol MARK.

OUR BUSINESS

Corporate Structure

We are a holding company incorporated in Delaware and not a Chinese operating company. As a holding company, we conduct a significant part of our operations through our subsidiaries and through contractual arrangements with the VIEs based in China. We use the VIE structure to address challenges resulting from laws, policies and practices that may disfavor foreign-owned entities that operate within industries deemed sensitive by the Chinese government. We own 100% of the equity of a wholly foreign owned enterprise (“WFOE”), which has entered into contractual arrangements with the VIEs, which are owned by members of our management team in China and/or by third parties.

We fund the registered capital and operating expenses of the VIEs on behalf of the shareholders of the VIEs by making advances to the VIEs. We believe that we are the primary beneficiary of the VIEs because the contractual arrangements governing the relationship between the VIEs and our WFOE, which include an exclusive call option agreement, exclusive business cooperation agreement, a proxy agreement and an equity pledge agreement, enable us to (i) exercise effective control over the VIEs, (ii) receive substantially all of the economic benefits of the VIEs, and (iii) have an exclusive call option to purchase, at any time, all or part of the equity interests in and/or assets of the VIEs to the extent permitted by Chinese laws. Because these contractual arrangements with the VIEs provide us with the power to direct the activities of the VIEs, for accounting purposes we are the primary beneficiary of the VIEs and we have consolidated the financial results of the VIEs in our consolidated financial statements in accordance with U.S. generally accepted accounting principles (“GAAP”).

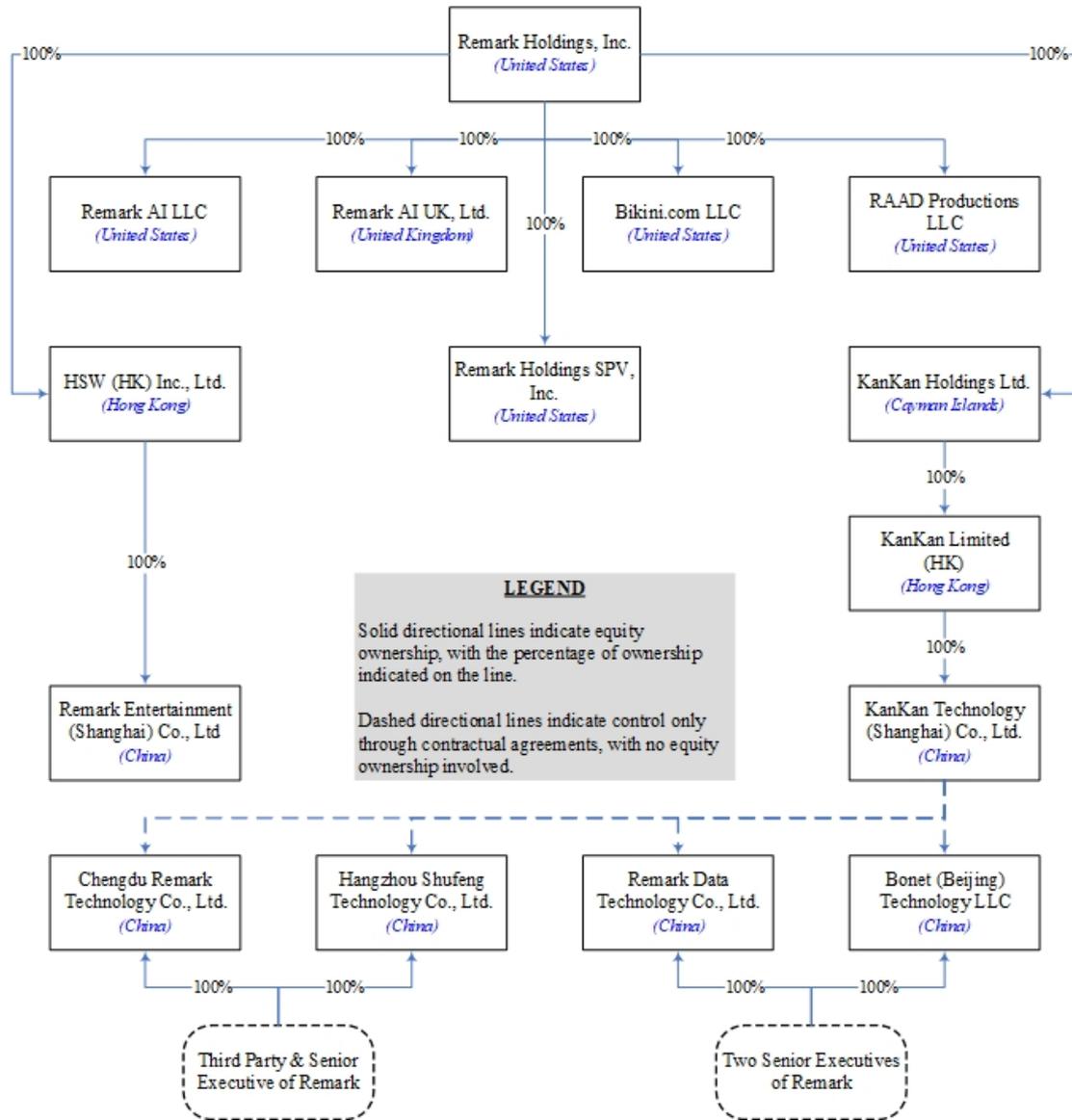
The agreements governing the VIE contractual arrangements have not been tested in a court of law. However, an article published in China Business Law Journal indicated that a China International Economic and Trade Arbitration Commission (“CIETAC”) Shanghai tribunal ruled in 2010 and 2011 in two related cases involving the contractual arrangement of an online game operating company that the contractual arrangement was void on the grounds that such arrangement violated the mandatory administrative regulations prohibiting foreign investors from investing in the online game operation business and constituted “concealing illegal intentions with a lawful form.” According to publicly available information, while the agreements entered into by the parties in the aforementioned CIETAC cases are typical VIE agreements, the PRC domestic company involved in such cases was mainly engaged in online game operation. Although the PRC foreign investment regime restricts or prohibits foreign investment in certain industries, online game operation is one of few industries where there are rules specifically prohibiting foreign investors from controlling and participating in the business indirectly through contractual

or technical support arrangements. Though the agreements in the CIETAC cases are similar to our contractual arrangements with the VIEs, we and the VIEs do not operate in the online game operation industry and, to our knowledge, the business conducted by the VIEs is not prohibited from investment from foreign investors in China. We also note that the rulings in the CIETAC cases are not binding on Chinese courts or other arbitration tribunals.

The following diagram illustrates our corporate structure, including our significant subsidiaries, and the relationship between our WFOE and the VIEs as of the date of this Form 10-K. The diagram omits certain entities which are immaterial to our results of operations and financial condition. Equity interests depicted in this diagram are 100% owned. The relationships between each of Chengdu Remark Technology Co., Ltd., Hangzhou Shufeng Technology Co., Ltd., Remark Data Technology Co., Ltd. and Bonet (Beijing) Technology LLC, which constitute the VIEs, on the one hand, and KanKan Technology (Shanghai) Co., Ltd., our WFOE, on the other hand, as illustrated in the following diagram are governed by contractual arrangements and do not constitute equity ownership.

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REMARK HOLDINGS, INC. AND SUBSIDIARIES
Entity Organizational Chart



Because we do not directly hold equity interests in the VIEs, we are subject to risks and uncertainties of the interpretations and applications of Chinese laws and regulations, including but not limited to, the validity and enforcement of the contractual arrangements among the WFOE, the VIEs and the shareholders of the VIEs. We are also subject to the risks and uncertainties about any future actions of the Chinese government in this regard that could disallow the VIE structure, which would likely result in a material change in our operations and may cause the value of our common stock to depreciate significantly or become worthless.

The contractual arrangements may not be as effective as direct ownership in providing operational control and we face contractual exposure in such arrangements. For instance, the VIEs and their shareholders could breach their contractual arrangements with us by, among other things, failing to conduct their operations in an acceptable manner or taking other actions that are detrimental to our interests. The shareholders of the VIEs may not act in the best interests of our Company or may not perform their obligations under these contracts. Such risks exist throughout the period in which we intend to operate certain portions of our business through the contractual arrangements with the VIEs. In the event that the VIEs or their shareholders fail to perform their respective obligations under the contractual arrangements, we may have to incur substantial costs and expend additional resources to enforce such arrangements. In addition, even if legal actions are taken to enforce such arrangements, there is uncertainty as to whether Chinese courts would recognize or enforce judgments of U.S. courts against us or such persons predicated upon the civil liability provisions of the securities laws of the United States or any state.

We are subject to certain legal and operational risks associated with having a significant portion of our operations in China. Chinese laws and regulations governing our current business operations, including the enforcement of such laws and regulations, are sometimes vague and uncertain and can change quickly with little advance notice. The Chinese government may intervene or influence our operations and the operations of the VIEs at any time and may exert more control over offerings conducted overseas and/or foreign investment in China-based issuers, which could result in a material change in our operations and/or the value of our securities. In addition, any actions by the Chinese government to exert more oversight and control over offerings that are conducted overseas and/or foreign investment in China-based issuers could significantly limit or completely hinder our ability to offer or continue to offer our securities to investors and cause the value of such securities to significantly decline or become worthless. Recently, the Chinese government adopted a series of regulatory actions and issued statements to regulate business operations in China, including those related to the use of variable interest entities, data security and anti-monopoly concerns. As of the date of this Form 10-K, neither we nor the VIEs have been involved in any investigations on cybersecurity review initiated by any Chinese regulatory authority, nor has any of them received any inquiry, notice or sanction. As of the date of this Form 10-K, no relevant laws or regulations in China explicitly require us to seek approval from the China Securities Regulatory Commission (the “CSRC”) for any securities listing. As of the date of this Form 10-K, neither we nor the VIEs have received any inquiry, notice, warning or sanctions regarding our planned overseas listing from the CSRC or any other Chinese governmental authorities relating to securities listings. However, since these statements and regulatory actions are newly published, official guidance and related implementation rules have not been issued. It is highly uncertain what potential impact such modified or new laws and regulations will have on our ability to conduct our business, accept investments or list or maintain a listing on a U.S. or foreign exchange.

As of the date of this Form 10-K, we and the VIEs are not required to seek permissions from the CSRC, the Cyberspace Administration of China (the “CAC”), or any other entity that is required to approve the operations of the VIEs. Nevertheless, Chinese regulatory authorities may in the future promulgate laws, regulations or implement rules that require us, our subsidiaries or the VIEs to obtain permissions from such regulatory authorities to approve the operations of the VIEs or any securities listing.

Business Model

We currently earn the majority of our revenue from sales of AI-based products and services. Excluding general and administrative expense, the primary costs we incur to earn the revenue described above include:

- software development costs, including licensing costs for third-party software
- cost of equipment related to customized AI products
- costs associated with marketing our brands

AI Business

Through the proprietary data and AI software platform we co-developed with one of the VIEs, our Remark AI business in the U.S. and the KanKan AI business operated by the VIEs in the Asia-Pacific region generate revenue by delivering AI-based computer vision products, computing devices and software-as-a-service solutions for businesses in many industries. In addition to the other work that we and the VIEs have ramped up, we and the VIEs continue partnering with top universities on research projects targeting algorithm, artificial neural network and computing architectures which we believe keeps us among the leaders

in technology development. Our research team continues to participate in various computer vision competitions at which it wins or ranks near or at the top.

We continue to market Remark AI's innovative AI-based solutions to customers in the retail, urban life cycle and workplace and food safety markets. We have also begun to expand our AI-based safety solutions to railway customers in the transportation market.

Retail Solutions. Utilizing a client's existing cameras and IoT devices placed throughout the store, Remark AI's retail solutions swiftly analyze real-time customer shopping behavior, such as time of store entry and shelf-browsing habits, and provide managers with a customer heatmap that reflects traffic patterns. Purchase history is also analyzed, leading to relevant offers for future purchase conversions, and customers for their continued loyalty through a special VIP status that brings customized promotions and coupons along with attentive customer service. Remark AI's retail solutions allow retailers and store managers to make better data-driven decisions regarding store layout, item placement, and pricing strategy, all while anonymizing customers' identities to protect their privacy.

Urban Life Cycle Solutions. We offer and have installed several solutions in what we call the urban life cycle category. Our urban life cycle solutions include our AI community system which assists in building "smart" communities by enhancing community security and safety. We also have AI solutions that help to make schools "smart" by (i) providing an accurate and convenient method for student check-in and check-out, (ii) providing an autonomous method of campus monitoring that enhances students' safety by, for example, monitoring students for elevated body temperatures that could indicate viral infections such as influenza or COVID-19, detecting trespassers, detecting dangerous behaviors or physical accidents that could result in injury, and (iii) monitoring the school kitchen for safety violations.

In traffic management, our solutions assist in monitoring traffic for various violations by automatically detecting, capturing, and obtaining evidence regarding violations such as speeding, running red lights, driving against the flow of traffic and even using counterfeit registration plates. Additionally, our solutions provide constant road-condition monitoring, providing control centers with real-time information on traffic conditions such as areas of congestion or other traffic anomalies.

Workplace and Food Safety Solutions. The monitoring and detection capabilities of our solutions ensure that workers are practicing established food safety protocols, wearing the proper personal protective equipment, and complying with local health codes. From commercial kitchens to factories to construction work zones, our safety-compliance algorithms manage regulatory functions, review hygienic and equipment status while checking and alerting management regarding violations.

Railway Safety Solutions. In railway settings, our product known as the Smart Sentry uses the SSP (safety and security platform) software, a specialized version of the software platform we developed with one of the VIEs, to provide intrusion-detection capabilities that allow customers to monitor railroad tracks, rail yards and other sensitive areas around the clock, in all weather conditions and at varying distances. The Smart Sentry, which customers can deploy as an individual unit or as a system of units, detects when pedestrians or vehicles are crossing a railway or entering the railway tracks as a train is approaching, and then alerts customer personnel to the situation so action can be taken to prevent hazardous incidents from happening. When deployed in multiple-unit systems, each Smart Sentry unit works in concert with the other units to relay warnings that give train operators sufficient time to respond to the track intrusions from miles away. Using the Smart Sentry's high-end cameras and other hardware, the SSP also gathers and analyzes data on railway traffic and weather conditions along various railways to provide valuable, actionable information to railway personnel. In the near future, we expect to add more safety features to Smart Sentry, such as the ability to detect worn or otherwise damaged track and the ability to identify stationary obstacles like fallen rocks or trees.

Biosafety Solutions. With help from one of the VIEs, we repurposed and improved our existing urban life cycle solution that we were selling to make schools in China "smart" schools to build a product line of high-quality, highly-effective thermal imaging solutions that leverage our innovative software.

We sell our Remark AI Thermal Kits to customers needing the ability to scan crowds and areas of high foot traffic for indications that certain persons with elevated temperatures may require secondary screening. Though the kits are semi-customizable, they generally consist primarily of a thermal imaging camera, a calibrating device, a computer to monitor the video feed, supporting equipment and our AI software. Once set up and calibrated, the kits scan a large number of people each minute, providing both thermally enhanced and standard video feeds that allow our customers to evaluate high volumes of people at large gatherings.

Our Remark AI rPad thermal imaging devices, usually mounted on a wall or a single-post stand, are designed for customers needing the ability to scan individuals on a one-by-one basis in situations where rapid, high-volume scanning is not necessary, such as at a customer’s office entrances where employees can be scanned as they enter for indications of an elevated temperature that may require secondary screening. In addition to thermal scanning, we can customize our AI software embedded in the rPad to perform additional safety and security functions including identifying persons for authorized entry.

Other Businesses

In 2009, we co-founded a U.S.-based venture, Sharecare, Inc. (“Legacy Sharecare”), to build a web-based platform that simplifies the search for health and wellness information. The other co-founders of Legacy Sharecare were Dr. Mehmet Oz, HARPO Productions, Discovery Communications, Jeff Arnold and Sony Pictures Television.

On July 1, 2021, Legacy Sharecare completed a business combination with Falcon Capital Acquisition Corp., a special purpose acquisition company, as a result of which the common stock of the surviving entity of such business combination (“New Sharecare”) became listed on the Nasdaq Stock Market LLC. In connection with the completion of such business combination, the shares of common stock of Legacy Sharecare that we held immediately prior to the business combination converted into cash and approximately 9.4 million shares of common stock of New Sharecare. We do not maintain a seat on the board of directors of New Sharecare.

We continue to evaluate opportunities to monetize and maximize the value of this asset for our shareholders. In addition to Data Platform Services revenue from our AI business, activities such as online merchandise sales generated from Bikini.com, our e-commerce website selling swimwear and accessories in the latest styles, also contributed to our consolidated revenue in the current-year and prior-year periods, while advertising also contributed to revenue.

Competition

We compete for business primarily on the basis of the quality and reliability of our products and services, and primarily in the AI marketplace, which is intensely competitive and rapidly evolving.

Our AI-based products and services represent a significant opportunity for us in the future. We offer AI products and we also build and deploy custom AI solutions. Our AI products compete with companies such as SenseTime, Face++, Google, GoGoVan, WeLab and others, while we compete with companies such as PricewaterhouseCoopers, Hewlett Packard, Baidu and others for business in the AI solutions market space.

Some of the companies we compete against, or may compete against in the future, may have greater brand recognition and may have significantly greater financial, marketing and other resources than we have. As a result of the potentially greater brand recognition and resources, some of our competitors may bring new products and services to market more quickly, and they may be able to adopt more aggressive pricing policies than we could adopt.

Intellectual Property

We rely upon trademark, copyright and trade secret laws in various jurisdictions, as well as confidentiality procedures and contractual provisions to protect our proprietary assets and brands. The VIEs we consolidate own 33 copyright registrations and nine AI-related patents, they have 27 AI-related patents pending in China and they are preparing several additional patent applications to file in China.

Technology

Our technologies include software applications built to run on third-party cloud hosting providers including Amazon Web Services and Alibaba located in North America and Asia. We make substantial use of off-the-shelf available open-source technologies such as Linux, PHP, MySQL, Drupal, mongoDB, Memcache, Apache, Nginx, CouchBase, Hadoop, HBase, Elasticsearch, Lua, Java, Redis, Akka and Wordpress, in addition to commercial platforms such as Microsoft, including Windows Operating Systems, SQL Server, and .NET. Such systems are connected to the Internet via load balancers, firewalls, and routers installed in multiple redundant pairs. We also utilize third-party services to geographically deliver data using major

content distribution network providers. We rely heavily on virtualization throughout our technology architecture, which enables the scaling of dozens of digital media properties in an efficient and cost-effective manner.

We use third-party cloud hosting providers to host most of our public-facing websites and applications, as well as many of our back-end business intelligence and financial systems. Each of our significant websites is designed to be fault-tolerant, with collections of application servers, typically configured in a load-balanced state, to provide additional resiliency. The infrastructure is equipped with enterprise-class security solutions to combat events such as large-scale distributed denial of service attacks. Our environment is staffed and equipped with a full-scale monitoring solution.

Governmental Regulation

The services we provide are subject to various laws and regulations. We are subject to a number of U.S. federal and state and foreign laws and regulations that affect companies conducting business on the Internet. These laws and regulations may involve privacy, rights of publicity, data protection, content regulation, intellectual property, competition, protection of minors, consumer protection, taxation or other subjects. Many of these laws and regulations are still evolving and being tested in courts and could be interpreted in ways that could harm our business. In addition, the application and interpretation of these laws and regulations often are uncertain, particularly in the new and rapidly evolving industry in which we operate. There are a number of legislative proposals pending before federal, state, and foreign legislative and regulatory bodies concerning data protection that may affect us. We incorporated the principles of the European Union (“EU”) General Data Protection Regulation (“GDPR”) into our internal data protection policy for our product development and solution implementation. In addition, we voluntarily hired an independent, authorized third party in Germany to conduct a GDPR audit of our privacy practices. The audit found that we are compliant with the GDPR principles.

We post our privacy policy and practices concerning the use and disclosure of any user data on our web properties and our distribution applications. Any failure by us to comply with posted privacy policies, federal and state regulatory requirements or foreign privacy-related laws and regulations could result in proceedings by governmental or regulatory bodies that could potentially harm our businesses, results of operations and financial condition.

Foreign data protection, privacy, and other laws and regulations can be more restrictive than those in the United States. The Chinese government has at times taken measures to restrict digital platforms, publishers or specific content themes from consumption by its citizens. We invest significant efforts into ensuring that our published content in China is consistent with our most current understanding of prevailing Chinese laws, regulations, and policies; and to date our published content in China has been met with successful distribution and no action or inquiry from the Chinese government. However, unforeseen regulatory restrictions or policy changes in China regarding digital content could have a material adverse effect on our business.

The Chinese government has not yet adopted a clear regulatory framework governing the new and rapidly-evolving artificial intelligence industry in which we operate. The Chinese government’s adoption of more stringent laws or enforcement protocols affecting participants in such industries (including, without limitation, restrictions on foreign investment, capital requirements and licensing requirements) could have a material adverse effect on our business.

Transfer of Cash or Assets

Dividend Distributions

As of the date of this Form 10-K, none of our subsidiaries or any of the consolidated VIEs have made any dividends or distributions to our Company.

We have never declared or paid dividends or distributions on our common equity. We currently intend to retain all available funds and any future consolidated earnings to fund our operations and continue the development and growth of our business; therefore, we do not anticipate paying any cash dividends.

Under Delaware law, a Delaware corporation’s ability to pay cash dividends on its capital stock requires the corporation to have either net profits or positive net assets (total assets less total liabilities) over its capital. If we determine to pay dividends on any of our common stock in the future, as a holding company, we may rely on dividends and other distributions on equity

from our WFOE for cash requirements, including the funds necessary to pay dividends and other cash contributions to our stockholders.

Our WFOE's ability to distribute dividends is based upon its distributable earnings. Current Chinese regulations permit our WFOE to pay dividends to their shareholders only out of its registered capital amount, if any, as determined in accordance with Chinese accounting standards and regulations, and then only after meeting the statutory reserve equal to 50% of registered capital. If our WFOE incurs debt in the future, the instruments governing the debt may restrict its ability to pay dividends or make other payments to us. Any limitation on the ability of our WFOE to distribute dividends or other payments to us could materially and adversely limit our ability to grow, make investments or acquisitions that could be beneficial to our businesses, pay dividends or otherwise fund and conduct our business. In addition, any cash dividends or distributions of assets by our WFOE to its stockholder are subject to a Chinese withholding tax of as much as 10%.

The Chinese government also imposes controls on the conversion of RMB into foreign currencies and the remittance of currencies out of China. Therefore, we may experience difficulties in completing the administrative procedures necessary to obtain and remit foreign currency for the payment of dividends from our profits, if any. If we are unable to receive all of the revenues from our operations through the current VIE contractual arrangements, we may be unable to pay dividends on our common stock.

For us to pay dividends to our stockholders, we will rely on payments made from the VIEs to our WFOE in accordance with the VIE contractual arrangements, and the distribution of payments from the WFOE to the Delaware holding company as dividends. Certain payments from the VIEs to the WFOE pursuant to the VIE contractual arrangements are subject to Chinese taxes, including a 6% VAT and 25% enterprise income tax.

Our Company's Ability to Settle Amounts Owed under the VIE Contractual Arrangements

Under the VIE contractual arrangements, the VIEs are obligated to make payments to our WFOE, in cash or in kind, at the WFOE's request. We will be able to settle amounts owed under the VIE contractual arrangements through dividends paid by our WFOE to our Company. Such ability may be restricted or limited as follows:

First, any payments from the VIEs to our WFOE are subject to Chinese taxes, including a 6% VAT and 25% enterprise income tax.

Second, current Chinese regulations permit our WFOE to pay dividends to their shareholders only out of its registered capital amount, if any, as determined in accordance with Chinese accounting standards and regulations, and then only after meeting the statutory reserve equal to 50% of registered capital. In addition, if our WFOE incurs debt in the future, the instruments governing the debt may restrict its ability to pay dividends or make other payments to the Delaware holding company.

Third, the Chinese government also imposes controls on the conversion of RMB into foreign currencies and the remittance of currencies out of China. Therefore, we may experience difficulties in completing the administrative procedures necessary to obtain and remit foreign currency for the payment of dividends from profits, if any

Employees

We employed 74 people as of March 28, 2022, all of which are full-time employees.

ADDITIONAL INFORMATION

We were originally incorporated in Delaware in March 2006 as HSW International, Inc., we changed our name to Remark Media, Inc. in December 2011, and as our business continued to evolve, we changed our name to Remark Holdings, Inc. in April 2017.

As soon as reasonably practicable after we electronically file such materials with, or furnish them to, the SEC, we provide free access through our website (www.remarkholdings.com) to our Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q, Current Reports on Form 8-K and all amendments to those reports filed or furnished pursuant to Section 13(a) or 15(d) of

the Securities Exchange Act of 1934, as amended (the “Exchange Act”). We do not incorporate any information found on our website into the materials we file with, or furnish to, the SEC; therefore, you should not consider any such information a part of any filing we make with the SEC. You may also obtain the reports noted above at the SEC’s website (www.sec.gov), which contains reports, proxy and information statements and other information regarding issuers that file electronically with the SEC.

ITEM 1A. RISK FACTORS

Investing in our common stock involves a high degree of risk. You should carefully consider the following risk factors, as well as the other information contained in this Form 10-K, including our consolidated financial statements and notes thereto, before deciding whether to invest in our common stock. Additional risks and uncertainties that we are unaware of may become important factors that affect us. If any of these risks actually occur, our business, financial condition or operating results may suffer, the trading price of our common stock could decline, and you may lose all or part of your investment.

Risk Factor Summary:

Our business is subject to numerous risks and uncertainties, including those highlighted in the section titled “Risk Factors” immediately following this summary. These risks include, among others, the following:

- We rely on contractual arrangements with the VIEs and their shareholders for a significant portion of our business operations. These arrangements may not be as effective as direct ownership in providing operational control. Any failure by the VIEs or their shareholders to perform their obligations under such contractual arrangements would have a material and adverse effect on our business.
- If the Chinese government determines that the contractual arrangements constituting part of the VIE structure do not comply with Chinese regulations, or if these regulations change or are interpreted differently in the future, our common stock may decline in value or become worthless if we are unable to assert our contractual control rights over the assets of the VIEs that constitute a significant portion of our operations.
- The shareholders of the VIEs may have actual or potential conflicts of interest with us, which may materially and adversely affect our business and financial condition.
- The contractual arrangements with the VIEs may be subject to scrutiny by China’s tax authorities. Any adjustment of related party transaction pricing could lead to additional taxes, and therefore substantially reduce our consolidated net income and the value of your investment.
- Changes in China’s economic, political or social conditions, as well as possible interventions and influences of any government policies and actions, could have a material adverse effect on our business and operations and the value of our common stock.
- Uncertainties with respect to the Chinese legal system could adversely affect us.
- Trading in our securities may be prohibited under the Holding Foreign Companies Accountable Act if the Public Company Accounting Oversight Board determines that it cannot inspect or fully investigate our auditors, and as a result, Nasdaq may determine to delist our securities.
- Delays in collecting amounts receivable arising from our KanKan business in China could negatively impact our results of operations and cash flows.
- The continuing impacts of COVID-19 are highly unpredictable and could be significant, and may have an adverse effect on our business and financial results.
- The artificial intelligence market is new and unproven, and it may decline or experience limited growth, which would adversely affect our ability to fully realize the potential of our AI platform.
- Laws and regulations concerning data privacy are continually evolving. Failure to comply with these laws and regulations could harm our business.

- Our continuous access to publicly-available data and to data from partners may be restricted, disrupted or terminated, which would restrict our ability to develop new products and services, or to improve existing products and services, which are based upon our AI platform.
- Our AI software and our application software are highly technical and run on very sophisticated third-party hardware platforms. If such software or hardware contains undetected errors, our AI solutions may not perform properly and our business could be adversely affected.
- The successful operation of our AI platform will depend upon the performance and reliability of the Internet infrastructure in China.
- Our outstanding senior secured loan agreements contain certain covenants that restrict our ability to engage in certain transactions and may impair our ability to respond to changing business and economic conditions.
- Our failure to meet the continued listing requirements of the Nasdaq Stock Market could result in a de-listing of our common stock.
- Our failure to timely obtain effectiveness of our resale registration statement has resulted in the imposition of liquidated damages and could restrict our ability to raise capital.
- Our products and internal systems rely on software that is highly technical, and if it contains undetected errors, our business could be adversely affected.
- Unauthorized use of our intellectual property by third parties, and the expenses incurred in protecting our intellectual property rights, may adversely affect our business.
- We may be subject to intellectual property infringement claims, which may force us to incur substantial legal expenses and, if determined adversely against us, materially disrupt our business.
- We face intense competition from larger, more established companies, and we may not be able to compete effectively, which could reduce demand for our services.
- If we do not effectively manage our growth, our operating performance will suffer and our financial condition could be adversely affected.
- We have a history of operating losses and we may not generate sufficient revenue to support our operations.
- We may not have sufficient cash to repay our outstanding senior secured indebtedness.
- Our independent registered public accounting firm’s reports for the fiscal years ended December 31, 2021 and 2020 have raised substantial doubt regarding our ability to continue as a “going concern.”
- We continue to evolve our business strategy and develop new brands, products and services, and our future prospects are difficult to evaluate.
- Our stock price has fluctuated considerably and is likely to remain volatile, and various factors could negatively affect the market price or market for our common stock.
- The concentration of our stock ownership may limit individual stockholder ability to influence corporate matters.
- A significant number of additional shares of our common stock may be issued under the terms of existing securities, which issuances would substantially dilute existing stockholders and may depress the market price of our common stock.
- Provisions in our corporate charter documents and under Delaware law could make an acquisition of Remark more difficult, which acquisition may be beneficial to stockholders.

Risks Relating to Our Corporate Structure

We rely on contractual arrangements with the VIEs and their shareholders for a significant portion of our business operations. These arrangements may not be as effective as direct ownership in providing operational control. Any failure by the VIEs or their shareholders to perform their obligations under such contractual arrangements would have a material and adverse effect on our business.

We have relied on contractual arrangements with the VIEs to operate our business in China. The revenues contributed by the VIEs constituted a majority of our total revenues for the fiscal years ended December 31, 2020 and 2021.

These contractual arrangements may not be as effective as direct ownership in providing us with control over the VIEs and we face contractual exposure in our investment in the VIEs. For instance, the VIEs and their shareholders could breach their contractual arrangements with us by, among other things, failing to conduct their operations in an acceptable manner or taking other actions that are detrimental to our interests. If we had direct ownership of the VIEs, we would be able to exercise our rights as a shareholder to effect changes in the board of directors of the VIEs, which in turn could implement changes, subject to any applicable fiduciary obligations, at the management and operational level. However, under the current VIE contractual arrangements, we rely on the performance by the VIEs and their shareholders of their obligations under the contracts to exercise control over the VIEs. The shareholders of the VIEs may not act in the best interests of our Company or may not perform their obligations under these contracts. Such risks exist throughout the period in which we intend to operate certain portions of our business through the contractual arrangements with the VIEs.

In the event that the VIEs or their shareholders fail to perform their respective obligations under the contractual arrangements, we may have to incur substantial costs and expend additional resources to enforce such arrangements. For example, if the shareholders of a VIE refuse to transfer their equity interest in the VIE to us or our designee if we exercise the purchase option pursuant to these contractual arrangements, or if they otherwise act in bad faith toward us, then we may have to take legal actions to compel them to perform their contractual obligations. In addition, if any third parties claim any interest in such shareholders' equity interests in the VIEs, our ability to exercise shareholders' rights or foreclose the share pledge according to the contractual arrangements may be impaired. If these or other disputes between the shareholders of the VIEs and third parties were to impair our control over the VIEs, our ability to consolidate the financial results of the VIEs would be affected, which would in turn result in a material adverse effect on our business, operations and financial condition.

If the Chinese government determines that the contractual arrangements constituting part of the VIE structure do not comply with Chinese regulations, or if these regulations change or are interpreted differently in the future, our common stock may decline in value or become worthless if we are unable to assert our contractual control rights over the assets of the VIEs that constitute a significant portion of our operations.

Recently, the Chinese government adopted a series of regulatory actions and issued statements to regulate business operations in China, including those related to variable interest entities. These recent statements indicate an intent by the Chinese government to exert more oversight and control over offerings that are conducted overseas and/or foreign investment in China-based issuers. As of the date of this Form 10-K, there are no relevant laws or regulations in China that prohibit our Company or any of our subsidiaries from listing or offering securities in the United States. However, since these statements and regulatory actions by the Chinese government are newly published, official guidance and related implementation rules have not been issued. Future action taken by the Chinese government could significantly limit or completely hinder our ability to offer or continue to offer securities to investors and cause the value of our common stock to significantly depreciate or become worthless. In addition, although we believe that our corporate structure and the VIE contractual arrangements comply with current applicable Chinese laws and regulations, in the event that the Chinese government determines that the contractual arrangements constituting part of the VIE structure do not comply with Chinese regulations, or if these regulations change or are interpreted differently in the future, we may be unable to assert our contractual control rights over the assets of the VIEs, and our common stock may decline in value or become worthless.

The shareholders of the VIEs may have actual or potential conflicts of interest with us, which may materially and adversely affect our business and financial condition.

As of the date of this Form 10-K, we are not aware of any conflicts between the shareholders of the VIEs and us. However, the shareholders of the VIEs may have actual or potential conflicts of interest with us in the future. These shareholders may

refuse to sign or breach, or cause the VIEs to breach, or refuse to renew, the existing contractual arrangements we have with them and the VIEs, which would have a material and adverse effect on our ability to effectively control the VIEs and receive economic benefits from the VIEs. For example, the shareholders may be able to cause our agreements with the VIEs to be performed in a manner adverse to us by, among other things, failing to remit payments due under the contractual arrangements to us on a timely basis. We cannot assure you that when conflicts of interest arise any or all of these shareholders will act in the best interests of our Company or such conflicts will be resolved in our favor. Currently, we do not have any arrangements to address potential conflicts of interest between these shareholders and our Company. If we cannot resolve any conflict of interest or dispute between us and these shareholders, we would have to rely on legal proceedings, which could result in disruption of our business and subject us to substantial uncertainty as to the outcome of any such legal proceedings.

The contractual arrangements with the VIEs may be subject to scrutiny by China's tax authorities. Any adjustment of related party transaction pricing could lead to additional taxes, and therefore substantially reduce our consolidated net income and the value of your investment.

The tax regime in China is rapidly evolving and there is significant uncertainty for Chinese taxpayers as Chinese tax laws may be interpreted in significantly different ways. China's tax authorities may assert that we or the VIEs or their shareholders are required to pay additional taxes on previous or future revenue or income. In particular, under applicable Chinese laws, rules and regulations, arrangements and transactions among related parties, such as the contractual arrangements with the VIEs, may be subject to audit or challenge by China's tax authorities. If China's tax authorities determine that any contractual arrangements were not entered into on an arm's length basis and therefore constitute a favorable transfer pricing, the China tax liabilities of the relevant subsidiaries, VIEs or the shareholders of the VIEs could be increased, which could increase our overall tax liabilities. In addition, China's tax authorities may impose interest on late payments. Our net income may be materially reduced if our tax liabilities increase. It is uncertain whether any new China laws, rules or regulations relating to VIE structures will be adopted or, if adopted, what they would provide.

If we or any of the VIEs are found to be in violation of any existing or future China laws, rules or regulations, or if we fail to obtain or maintain any of the required permits or approvals, the relevant China regulatory authorities would have broad discretion to take action in dealing with these violations or failures, including revoking the business and operating licenses of the VIEs, requiring us to discontinue or restrict our operations, restricting our right to collect revenue, blocking one or more of our websites, requiring us to restructure our operations or taking other regulatory or enforcement actions against us. The imposition of any of these measures could result in a material adverse effect on our ability to conduct all or any portion of our business operations. In addition, it is unclear what impact Chinese government actions would have on us and on our ability to consolidate the financial results of any of the VIEs in our consolidated financial statements, if Chinese governmental authorities were to find our legal structure and contractual arrangements to be in violation of Chinese laws, rules and regulations. If the imposition of any governmental actions causes us to lose our right to direct the activities of any of the VIEs or otherwise separate from any of these entities, and if we are not able to restructure our ownership structure and operations in a satisfactory manner, we would no longer be able to consolidate the financial results of the VIEs in our consolidated financial statements. Any of these events would have a material adverse effect on our business, financial condition and results of operations.

Risks Relating to Doing Business in China

Changes in China's economic, political or social conditions, as well as possible interventions and influences of any government policies and actions, could have a material adverse effect on our business and operations and the value of our common stock.

A significant portion of our operations are conducted through our WFOE and the China-based VIEs. Accordingly, our business, financial condition, results of operations and prospects may be influenced to a significant degree by political, economic, social conditions and government policies in China generally. The Chinese economy differs from the economies of most developed countries in many respects, including the level of government involvement, level of development, growth rate, control of foreign exchange and allocation of resources. Although the Chinese government has implemented measures emphasizing the utilization of market forces for economic reform, the reduction of state ownership of productive assets, and the establishment of improved corporate governance in business enterprises, a substantial portion of productive assets in China is still owned by the government. In addition, the Chinese government continues to play a significant role in regulating industry development by imposing industrial policies. The Chinese government also exercises significant control over China's economic growth through allocating resources, controlling payment of foreign currency-denominated obligations, setting monetary policy, and providing preferential treatment to particular industries or companies.

While the Chinese economy has experienced significant growth over the past decades, growth has been uneven, both geographically and among various sectors of the economy. Any adverse changes in economic conditions in China, in the policies of the Chinese government or in the laws and regulations in China could have a material adverse effect on the overall economic growth of China. Such developments could adversely affect our business and operating results, lead to reduction in demand for our services and adversely affect our competitive position. The COVID-19 pandemic had a severe and negative impact on the Chinese and global economies in 2020 and 2021. Whether this will lead to a prolonged downturn in the economy is still unknown. The Chinese government has implemented various measures to encourage economic growth and guide the allocation of resources. Some of these measures may benefit the overall Chinese economy, but may have a negative effect on us. In addition, in the past the Chinese government has implemented certain measures, including interest rate adjustment, to control the pace of economic growth. These measures may cause decreased economic activity in China, which may adversely affect our business and operating results.

Furthermore, our Company, our subsidiaries, the VIEs and our investors may face uncertainty about future actions by the government of China that could significantly affect the VIEs' financial performance and operations, including the enforceability of the VIE contractual arrangements. Chinese laws and regulations, including the enforcement of such laws and regulations, can change quickly with little advance notice. The Chinese government may intervene or influence our operations and the operations of the VIEs at any time and may exert more control over offerings conducted overseas and/or foreign investment in China-based issuers, which could result in a material change in our operations and/or the value of our securities. As of the date of this Form 10-K, neither our Company nor any of the VIEs has received or was denied permission from Chinese authorities to list on U.S. exchanges or conduct U.S. securities offerings. However, there is no guarantee that our Company or the VIEs will receive or not be denied permission from Chinese authorities to list on U.S. exchanges or conduct U.S. securities offerings in the future. China's economic, political and social conditions, as well as interventions and influences of any government policies, laws and regulations are uncertain and could have a material adverse effect on our business.

Uncertainties with respect to the Chinese legal system could adversely affect us.

The Chinese legal system is a civil law system based on written statutes. Unlike the common law system, prior court decisions under the civil law system may be cited for reference but have limited precedential value. Since these laws and regulations are relatively new and the Chinese legal system continues to rapidly evolve, the interpretations of many laws, regulations and rules are not always uniform and the enforcement of these laws, regulations and rules involves uncertainties.

In 1979, the Chinese government began to promulgate a comprehensive system of laws and regulations governing economic matters in general. The overall effect of legislation over the past three decades has significantly enhanced the protections afforded to various forms of foreign investments in China. However, China has not developed a fully integrated legal system, and recently enacted laws and regulations may not sufficiently cover all aspects of economic activities in China. In particular, the interpretation and enforcement of these laws and regulations involve uncertainties. Since Chinese administrative and court authorities have significant discretion in interpreting and implementing statutory provisions and contractual terms, it may be difficult to evaluate the outcome of administrative and court proceedings and the level of legal protection we enjoy. These uncertainties may affect our judgment on the relevance of legal requirements and our ability to enforce our contractual rights or tort claims. In addition, the regulatory uncertainties may be exploited through unmerited or frivolous legal actions or threats in attempts to extract payments or benefits from us.

Furthermore, the Chinese legal system is based in part on government policies and internal rules, some of which are not published on a timely basis or at all and may have retroactive effect. As a result, we may not be aware of our violation of any of these policies and rules until sometime after the violation. In addition, any administrative and court proceedings in China may be protracted, resulting in substantial costs and diversion of resources and management attention.

In addition, we are subject to risks and uncertainties of the interpretations and applications of Chinese laws and regulations, including but not limited to, the validity and enforcement of the VIE contractual arrangements. We are also subject to the risks and uncertainties about any future actions of the Chinese government in this regard that could disallow the VIE structure, which would likely result in a material change in our operations, and the value of our common stock may depreciate significantly or become worthless.

Trading in our securities may be prohibited under the Holding Foreign Companies Accountable Act if the Public Company Accounting Oversight Board determines that it cannot inspect or fully investigate our auditors, and as a result, Nasdaq may determine to delist our securities.

The Holding Foreign Companies Accountable Act (the “HFCA Act”) was enacted on December 18, 2020. The HFCA Act states if the SEC determines that a company has filed audit reports issued by a registered public accounting firm that has not been subject to inspection by the Public Company Accounting Oversight Board (the “PCAOB”) for three consecutive years beginning in 2021, the SEC shall prohibit such shares from being traded on a national securities exchange or in the over the counter trading market in the United States.

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

On June 22, 2021, the U.S. Senate passed a bill which, if passed by the U.S. House of Representatives and signed into law, would reduce the number of consecutive non-inspection years required for triggering the prohibitions under the HFCA Act from three years to two.

On September 22, 2021, the PCAOB adopted a final rule implementing the HFCA Act, which provides a framework for the PCAOB to use when determining, as contemplated under the HFCA Act, whether the board of directors of a company is unable to inspect or investigate completely registered public accounting firms located in a foreign jurisdiction because of a position taken by one or more authorities in that jurisdiction.

On December 2, 2021, the SEC adopted amendments to finalize rules implementing the submission and disclosure requirements in the HFCA Act. The rules apply to registrants that the SEC identifies as having filed an annual report with an audit report issued by a registered public accounting firm that is located in a foreign jurisdiction and that the PCAOB is unable to inspect or investigate completely because of a position taken by an authority in a foreign jurisdiction.

On December 16, 2021, the PCAOB issued a report on its determination that it is unable to inspect or investigate completely PCAOB-registered public accounting firms headquartered in China and in Hong Kong because of positions taken by Chinese and Hong Kong authorities in those jurisdictions. The PCAOB has made such determination as mandated under the HFCA Act. Pursuant to each annual determination by the PCAOB, the SEC will, on an annual basis, identify issuers that have used non-inspected audit firms and thus are at risk of such suspensions in the future.

Our current auditor has been inspected by the PCAOB on a regular basis, and it is therefore not subject to the determination announced by the PCAOB on December 16, 2021. However, if the PCAOB is unable to inspect the work papers of our accounting firm in the future, such lack of inspection could cause trading in our common stock to be prohibited under the HFCA Act, and as a result, an exchange may determine to delist our common stock. The delisting and the cessation of trading of our common stock, or the threat of our common stock being delisted and prohibited from being traded, may materially and adversely affect the value of your investment.

These recent developments may result in prohibitions on the trading of our common stock on the Nasdaq Capital Market, if our auditors fail to meet the PCAOB inspection requirement in time.

Delays in collecting amounts receivable arising from our KanKan business in China could negatively impact our results of operations and cash flows.

Generally, Chinese customers tend to pay their vendors on longer timelines than the timelines typically observed in U.S. commerce, while contracts in China can lack the specificity regarding timing of collection that current accounting rules in the U.S. require to record revenue from contracts with customers. The combination of longer collection times and lack of contract specificity regarding timing of collection could result in higher amounts of bad debt expense, less revenue recorded in any particular period and mismatches between the timing of our cash needs and the timing of our cash inflows that could negatively affect our reported results of operations and harm relationships with our vendors, which in turn could harm our business.

Risks Relating to Our Business and Industry

The continuing impacts of COVID-19 are highly unpredictable and could be significant, and may have an adverse effect on our business and financial results.

The global outbreak of COVID-19 has impacted our business and could continue to have a significant impact on our business. The impact of COVID-19 on our business and future financial results could include, but may not be limited to:

- lack of revenue growth or decreases in revenue due to a lack of, or at least a decline in, customer demand and (or) deterioration in the credit quality of our customers;
- a significant increase in our need for external financing to maintain operations as a result of decreased revenue;
- significant decline in the debt and equity markets, thus impacting our ability to conduct financings on terms acceptable to us; and
- the rapid and broad-based shift to a remote working environment creates inherent productivity, connectivity, and oversight challenges. Preventative measures implemented by governmental authorities in China, such as travel restrictions, shelter-in-place orders and business closures, could significantly impact the ability of our employees and vendors to work productively. In addition, the changed environment under which we are operating could have an impact on our internal controls over financial reporting as well as our ability to meet a number of our compliance requirements in a timely or quality manner.

The extent of any ongoing impact of the pandemic on our business and financial results will depend largely on future developments, including the duration and severity of any outbreaks related to new variants of COVID-19, the length of the travel restrictions and business closures imposed by domestic and foreign governments, all of which can be highly uncertain and cannot be predicted. Though improving somewhat, the situation continues to evolve and additional impacts may arise that we are not aware of currently.

The artificial intelligence market is new and unproven, and it may decline or experience limited growth, which would adversely affect our ability to fully realize the potential of our AI platform.

The artificial intelligence market is relatively new and unproven and is subject to a number of risks and uncertainties. We believe that our future success will depend in large part on the growth and acceptance of this market. The utilization of our platform by customers is still relatively new, and customers may not recognize the need for, or benefits of, our platform, which may prompt them to decide to adopt alternative products and services to satisfy their cognitive computing search and analytics requirements. Our ability to expand the market that our platform addresses depends upon a number of factors, including the cost, performance and perceived value of our platform. Market opportunity estimates are subject to significant uncertainty and are based on assumptions and estimates, including our internal analysis and industry experience. Assessing the market for our AI-based products in each of the vertical markets we compete in, or plan to compete in, is particularly difficult due to a number of factors, including limited available information and rapid evolution of the market. As a result, we may experience significant reduction in demand for our products and services due to lack of customer acceptance, technological challenges, competing products and services, decreases in spending by current and prospective customers, weakening economic conditions and other causes. If our market does not experience significant growth, or if demand for our AI-based products decreases, then our business, results of operations and financial condition will be adversely affected.

Laws and regulations concerning data privacy are continually evolving. Failure to comply with these laws and regulations could harm our business.

Our business involves collecting and retaining certain internal and external data and information including that of our customers and suppliers and third parties. The integrity and protection of such information and data are crucial to us and our business. Owners of such data and information expect that we will adequately protect their personal information. We are required by applicable privacy and data protection laws in the U.S. and internationally to keep strictly confidential the personal information that we collect, and to take adequate security measures to safeguard such information.

Our failure to comply with existing privacy or data protection laws and regulations could increase our costs, force us to change or limit the features of our AI solutions or result in proceedings or litigation against us by governmental authorities or others, any or all of which could result in significant fines or judgments against us, result in damage to our reputation, and result in negative effects on our financial condition and results of operations. Even if concerns raised by regulators, the media, or consumers about our privacy and data protection or consumer protection practices are unfounded, we could suffer damage to our reputation that causes significant negative effects on our financial condition and results of operations.

Privacy and data protection laws are rapidly changing and likely will continue to do so for the foreseeable future, which could have an impact on how we develop and customize our AI products and software. The growth and development of AI may prompt calls for more stringent consumer privacy protection laws that may impose additional burdens on companies such as ours. Any such changes would require us to devote legal and other resources to address such regulation.

For example, in the U.S., the California Consumer Privacy Act ("CCPA") became effective on January 1, 2020 and applies to processing of personal information of California residents. Other states, including Nevada, have enacted or are considering similar privacy or data protection laws that may apply to us. The U.S. government, including the Federal Trade Commission and the Department of Commerce, also continue to review the need for greater or different regulation over the collection of personal information and information about consumer behavior on the Internet and on mobile devices, and the U.S. Congress is considering a number of legislative proposals to regulate in this area. Various government and consumer agencies worldwide have also called for new regulation and changes in industry practices. For example, the GDPR became effective on May 25, 2018. GDPR would apply to us should we expand our AI business into member countries of the EU. Violations of the GDPR may result in significant penalties, and countries in the EU are still enacting national laws that correspond to certain portions of the GDPR.

In China, the PRC Criminal Law, as amended by its Amendment 7 (effective on February 28, 2009) and Amendment 9 (effective on November 1, 2015), prohibits institutions, companies and their employees from selling or otherwise illegally disclosing a citizen's personal information obtained in performing duties or providing services or obtaining such information through theft or other illegal ways. On November 7, 2016, the Standing Committee of the PRC National People's Congress issued the Cyber Security Law of the PRC (the "Cyber Security Law"), which became effective on June 1, 2017. Pursuant to the Cyber Security Law, network operators must not, without users' consent, collect their personal information, and may only collect users' personal information necessary to provide their services. Providers are also obliged to provide security maintenance for their products and services and shall comply with provisions regarding the protection of personal information as stipulated under the relevant laws and regulations.

The Civil Code of the PRC (issued by the PRC National People's Congress on May 28, 2020 and effective from January 1, 2021) provides legal basis for privacy and personal information infringement claims under the Chinese civil laws. Chinese regulators, including the CAC, the Ministry of Industry and Information Technology, and the Ministry of Public Security, have been increasingly focused on regulation in data security and data protection.

On August 20, 2021, the Standing Committee of the 13th National People's Congress of China issued the final version of the Personal Information Protection Law (the "PIPL"), which becomes effective on November 1, 2021. The PIPL imposes on China-based data processors (such as the VIEs) significant obligations with respect to, among other things, obtaining, processing and cross-border transferring personal information. The PIPL may subject a data processor to a penalty of as much as RMB50 million or 5% of the preceding year's turnover.

The Chinese regulatory requirements regarding cybersecurity are evolving. For instance, various regulatory bodies in China, including the CAC, the Ministry of Public Security and the State Administration for Market Regulation, have enforced data privacy and protection laws and regulations with varying and evolving standards and interpretations. In April 2020, the Chinese government promulgated Cybersecurity Review Measures, which came into effect on June 1, 2020. According to the Cybersecurity Review Measures, operators of critical information infrastructure must pass a cybersecurity review when purchasing network products and services which do or may affect national security.

In July 2021, the CAC and other related authorities released the draft amendment to the Cybersecurity Review Measures for public comments through July 25, 2021. The draft amendment proposes the following key changes:

- companies who are engaged in data processing are also subject to the regulatory scope;

- the CSRC is included as one of the regulatory authorities for purposes of jointly establishing the state cybersecurity review working mechanism;
- the operators (including both operators of critical information infrastructure and relevant parties who are engaged in data processing) holding more than one million users/users' (which are to be further specified) individual information and seeking a listing outside China shall file for cybersecurity review with the Cybersecurity Review Office; and
- the risks of core data, material data or large amounts of personal information being stolen, leaked, destroyed, damaged, illegally used or transmitted to overseas parties and the risks of critical information infrastructure, core data, material data or large amounts of personal information being influenced, controlled or used maliciously shall be collectively taken into consideration during the cybersecurity review process.

Currently, the draft amendment has been released for public comment only, and its implementation provisions and anticipated adoption or effective date remains substantially uncertain and may be subject to change. If the draft amendment is adopted into law in the future, we may become subject to enhanced cybersecurity review. Certain internet platforms in China have been reportedly subject to heightened regulatory scrutiny in relation to cybersecurity matters. As of the date of this Form 10-K, neither we nor any of the VIEs have been subject to heightened regulatory scrutiny with respect to cybersecurity matters, nor have we or any of the VIEs been informed by any Chinese governmental authority of any requirement that we file for a cybersecurity review. However, if we are deemed to be a critical information infrastructure operator or a company that is engaged in data processing and holds personal information of more than one million users, we could be subject to Chinese cybersecurity review.

As there remains significant uncertainty in the interpretation and enforcement of relevant Chinese cybersecurity laws and regulations, we could be subject to cybersecurity review, and if so, we may not be able to pass such review. In addition, we could become subject to enhanced cybersecurity review or investigations launched by Chinese regulators in the future. As of the date of this Form 10-K, neither we nor any of the VIEs have been involved in any investigations on cybersecurity review initiated by the CAC or any other Chinese regulatory authority, nor have we or any of the VIEs received any inquiry, notice or sanction in such respect. We believe that we are in compliance with the aforementioned regulations and policies that have been issued by the CAC.

On June 10, 2021, the Standing Committee of the National People's Congress of China (the "SCNPC") promulgated the PRC Data Security Law, which will take effect in September 2021. The PRC Data Security Law imposes data security and privacy obligations on entities and individuals carrying out data activities, and introduces a data classification and hierarchical protection system based on the importance of data in economic and social development, and the degree of harm it will cause to national security, public interests, or legitimate rights and interests of individuals or organizations when such data is tampered with, destroyed, leaked, illegally acquired or used. The PRC Data Security Law also provides for a national security review procedure for data activities that may affect national security and imposes export restrictions on certain data an information.

As of the date of this Form 10-K, we do not expect that the current Chinese laws on cybersecurity or data security, or that the PIPL would have a material adverse impact on our business operations. However, as uncertainties remain regarding the interpretation and implementation of these laws and regulations, we cannot assure you that we will comply with such regulations in all respects and we may be ordered to rectify or terminate any actions that are deemed illegal by regulatory authorities.

Our continuous access to publicly-available data and to data from partners may be restricted, disrupted or terminated, which would restrict our ability to develop new products and services, or to improve existing products and services, which are based upon our AI platform.

The success of our AI-based solutions depends substantially on our ability to continuously ingest and process large amounts of data available in the public domain and provided by our partners, and any interruption to our free access to such publicly-available data or to the data we obtain from our partners will restrict our ability to develop new products and services, or to improve existing products and services. While we have not encountered any significant disruption of such access to date, there is no guarantee that this trend will continue without costs. Public data sources may change their policies to restrict access or implement procedures to make it more difficult or costly for us to maintain access, and partners could decide to terminate our existing agreements with them. If we no longer have free access to public data, or access to data from our partners, our ability to maintain or improve existing products, or to develop new AI-based solutions may be severely limited. Furthermore, we may be

forced to pay significant fees to public data sources or to partners to maintain access, which would adversely affect our financial condition and results of operations.

Our AI software and our application software are highly technical and run on very sophisticated third-party hardware platforms. If such software or hardware contains undetected errors, our AI solutions may not perform properly and our business could be adversely affected.

Our AI-based solutions and internal systems rely on software, including software developed or maintained internally and(or) by third parties, that is highly technical and complex. In addition, our AI-based solutions and internal systems depend on the ability of such software to store, retrieve, process, and manage immense amounts of data. The software on which we rely has contained, and may now or in the future contain, undetected errors, bugs, or vulnerabilities. Some errors may only be discovered after the AI-based solution or application software has been released for external or internal use. Errors or other design defects within the software on which we rely may result in a negative experience for our customers, delay product introductions or enhancements, result in measurement or billing errors, or compromise our ability to protect our customers' data and(or) our intellectual property. Any errors, bugs, or defects discovered in the software on which we rely could result in damage to our reputation, loss of users, loss of revenue, or liability for damages, any of which could adversely affect our business and financial results.

The successful operation of our AI platform will depend upon the performance and reliability of the Internet infrastructure in China.

The successful operation of KanKan will depend on the performance and reliability of the Internet infrastructure in China. Almost all access to the Internet is maintained through state-owned telecommunication operators under the administrative control and regulatory supervision of the Ministry of Industry and Information Technology of China. In addition, the national networks in China are connected to the Internet through state-owned international gateways, which are the only channels through which a domestic user can connect to the Internet outside of China. We may not have access to alternative networks in the event of disruptions, failures or other problems with China's Internet infrastructure. In addition, the Internet infrastructure in China may not support the demands associated with continued growth in Internet usage.

The failure of telecommunications network operators to provide us with the requisite bandwidth could also interfere with the speed and availability of KanKan. We have no control over the costs of the services provided by the national telecommunications operators. If the prices that we pay for telecommunications and Internet services rise significantly, our gross margins could be adversely affected. In addition, if Internet access fees or other charges to Internet users increase, our user traffic may decrease, which in turn may cause a decrease in our revenues.

Our outstanding senior secured loan agreements contain certain covenants that restrict our ability to engage in certain transactions and may impair our ability to respond to changing business and economic conditions.

On December 3, 2021, we entered into senior secured loan agreements (the "Mudrick Loan Agreements") with certain of our subsidiaries as guarantors (the "Guarantors") and certain institutional lenders affiliated with Mudrick Capital Management, LP (collectively, "Mudrick"), pursuant to which the Mudrick extended credit to us consisting of term loans in the principal amount of \$30.0 million (the "Mudrick Loans"). The Mudrick Loans require us to satisfy various covenants, including using the proceeds from borrowings under the Mudrick Loans for general corporate purposes in a manner consistent with the identified use of proceeds previously disclosed by us to Mudrick. The Mudrick Loans also contain restrictions on our abilities to engage in certain transactions without Mudrick's consent, and may limit our ability to respond to changing business and economic conditions. The restrictions include, among other things, limitations on our ability and the ability of our subsidiaries to:

- change its name or corporate form or jurisdiction of organization;
- merge with another entity (other than an affiliate of Mudrick), consolidate, or sell or dispose of any material portion of our assets;
- sell, lease, license, convey, assign (by operation of law or otherwise), exchange or otherwise voluntarily or involuntarily transfer or dispose of any interest in any of its assets (other than upon receipt of fair consideration for

obsolete assets, trade-ins and disposition, sales or licenses in the ordinary course of business) or any portion thereof or encumber, or hypothecate, or create, incur or permit to exist any pledge, mortgage, lien, security interest, charge, encumbrance or adverse claim upon or other interest in or with respect to any of its assets (other than permitted liens); and

- directly or indirectly enter into or permit to exist any transaction with any of our affiliates (other than a wholly-owned subsidiary).

Our failure to meet the continued listing requirements of the Nasdaq Stock Market could result in a de-listing of our common stock.

On February 25, 2022, we received written notice from the Listing Qualifications Department of the Nasdaq Stock Market notifying us that, for a period of 30 consecutive business days, the bid price of our common stock closed below the minimum of \$1.00 per share required for continued listing on the Nasdaq Capital Market pursuant to Nasdaq Listing Rule 5550(a)(2). In accordance with Nasdaq Listing Rule 5810(c)(3)(A), we have 180 calendar days, or until August 24, 2022, to regain compliance with the minimum bid price requirement. If, at any time during the 180-day grace period, the closing bid price of our common stock is at least \$1.00 per share for a minimum of 10 consecutive business days, we will have regained compliance and Nasdaq will provide us with written confirmation of such.

If we fail to regain compliance before August 24, 2022, but meet the continued listing requirement for market value of publicly-held shares and all other initial listing standards for the Nasdaq Capital Market, we may be eligible for additional time to regain compliance with the minimum bid price requirement.

Our common stock will continue to be listed and traded on the Nasdaq Capital Market during the 180-day grace period, subject to our compliance with the other continued listing requirements of the Nasdaq Capital Market.

However, there can be no assurance that we will regain compliance before August 24, 2022. Even if we re-gain compliance, there can be no assurance that we will be able to continue to satisfy our continued listing requirements of the Nasdaq Capital Market going forward. Our failure to meet the continued listing requirements could result in a de-listing of our common stock. The de-listing could harm our ability to raise capital through alternative financing sources on terms acceptable to us, or at all, and may result in the potential loss of confidence by investors, customers and employees and potential loss of business development opportunities. The de-listing from Nasdaq could adversely affect our ability to raise additional financing through the public or private sale of equity securities, would significantly impact the ability of investors to trade our securities and would negatively impact the value and liquidity of our common stock.

Thus, although we may take actions to regain our compliance with Nasdaq's listing requirements, we can provide no assurance that any such action taken by us would allow our common stock to become listed again, stabilize the market price or improve the liquidity of our common stock, or prevent future non-compliance with Nasdaq's listing requirements.

Our failure to timely obtain effectiveness of our resale registration statement has resulted in the imposition of liquidated damages and could restrict our ability to raise capital.

On September 27, 2021, we entered into a securities purchase agreement (the "Armistice Purchase Agreement") with Armistice Capital Master Fund Ltd. ("Armistice Capital") pursuant to which we issued 4,237,290 shares of our common stock at a purchase price of \$1.18 per share together with warrants to purchase as many as 4,237,290 shares of our common stock at an exercise price of \$1.35 per share, subject to certain customary anti-dilution adjustments (the "Armistice Warrants").

In connection with our entry into the Armistice Purchase Agreement, we also entered into a registration rights agreement with Armistice Capital, pursuant to which we are obligated to file one or more registration statements, as necessary, to register under the Securities Act of 1933, as amended, the resale of the shares we issued to Armistice Capital and the shares underlying the Armistice Warrants (collectively, the "Armistice Registrable Securities") and to obtain effectiveness of such registration statement no later than 90 days following September 27, 2021. While we have filed a registration statement to register the resale of the Armistice Registrable Securities (the "Armistice Resale Registration Statement"), we are currently in a comment letter process with the SEC staff with respect to such registration statement. The SEC has broad discretion to determine whether any registration statement we file will be declared effective and may delay or deny the effectiveness of any such registration statement for a variety of reasons. Our ability to have declared effective by the SEC the Armistice Resale Registration

Statement will depend upon our ability to resolve the comments raised by the SEC. No assurance can be given as to when the Armistice Resale Registration Statement will become effective. As a result of the inability to obtain effectiveness of the Armistice Resale Registration Statement within the time period required by the Armistice Registration Rights Agreement, we have begun to pay liquidated damages to Armistice Capital pursuant to the provisions of the Armistice Registration Rights Agreement. We are required to continue to pay such liquidated damages (subject to a cap of \$1.0 million) until such time as the SEC has declared the Armistice Resale Registration Statement effective or until our registration obligations in the Armistice Registration Rights Agreement terminate. In addition, the Armistice Purchase Agreement restricts us from issuing additional shares of our common stock, or securities convertible into or exercisable or exchangeable for shares of common stock, for a period of 90 days following the date of effectiveness of the Armistice Resale Registration Statement, subject to certain exceptions, and restricts us from conducting an “at-the-market” offering for a period of 180 days following the date of effectiveness of the Armistice Resale Registration Statement. Such restrictions on our ability to raise capital through an equity offering could adversely affect our business and financial condition.

Our products and internal systems rely on software that is highly technical, and if it contains undetected errors, our business could be adversely affected.

Our products and internal systems rely on software, including software developed or maintained internally and/or by third parties, that is highly technical and complex. In addition, our products and internal systems depend on the ability of such software to store, retrieve, process, and manage immense amounts of data. The software on which we rely has contained, and may now or in the future contain, undetected errors, bugs, or vulnerabilities. Some errors may only be discovered after the code has been released for external or internal use. Errors or other design defects within the software on which we rely may result in a negative experience for users and marketers who use our products, delay product introductions or enhancements, result in measurement or billing errors, or compromise our ability to protect the data of our users and/or our intellectual property. Any errors, bugs, or defects discovered in the software on which we rely could result in damage to our reputation, loss of users, loss of revenue, or liability for damages, any of which could adversely affect our business and financial results.

Unauthorized use of our intellectual property by third parties, and the expenses incurred in protecting our intellectual property rights, may adversely affect our business.

We regard our copyrights, service marks, trademarks, trade secrets and other intellectual property as critical to our success. Unauthorized use of our intellectual property by third parties may adversely affect our business and reputation. We rely on trademark and copyright law, trade secret protection and confidentiality agreements with our employees, customers, business partners and others to protect our intellectual property rights. Despite our precautions, it is possible for third parties to obtain and use our intellectual property without authorization. Furthermore, the validity, enforceability and scope of protection of intellectual property in Internet related industries are uncertain and still evolving. In particular, the laws of the People’s Republic of China are uncertain or do not protect intellectual property rights to the same extent as do the laws of the United States. Moreover, litigation may be necessary in the future to enforce our intellectual property rights, to protect our trade secrets or to determine the validity and scope of the proprietary rights of others. Future litigation could result in substantial costs and diversion of resources.

We may be subject to intellectual property infringement claims, which may force us to incur substantial legal expenses and, if determined adversely against us, materially disrupt our business.

We cannot be certain that our brands and services will not infringe valid patents, copyrights or other intellectual property rights held by third parties. We cannot provide assurance that we will avoid the need to defend against allegations of infringement of third-party intellectual property rights, regardless of their merit. Intellectual property litigation is very expensive, and becoming involved in such litigation could consume a substantial portion of our managerial and financial resources, regardless of whether we win. Substantially greater resources may allow some of our competitors to sustain the cost of complex intellectual property litigation more effectively than us; we may not be able to afford the cost of such litigation.

Should we suffer an adverse outcome from intellectual property litigation, we may incur significant liabilities, we may be required to license disputed rights from third parties, or we may have to cease using the subject technology. If we are found to infringe upon third-party intellectual property rights, we cannot provide assurance that we would be able to obtain licenses to such intellectual property on commercially reasonable terms, if at all, or that we could develop or obtain alternative technology.

If we fail to obtain such licenses at a reasonable cost, such failure may materially disrupt the conduct of our business, and could consume substantial resources and create significant uncertainties. Any legal action against us or our collaborators could lead to:

- payment of actual damages, royalties, lost profits, potentially treble damages and attorneys' fees if we are found to have willfully infringed a third party's patent rights;
- injunctive or other equitable relief that may effectively block our ability to further develop, commercialize and sell our products;
- us or our collaborators having to enter into license arrangements that may not be available on commercially acceptable terms, if at all; or
- significant cost and expense, as well as distraction of our management from our business.

The negative outcomes discussed above could adversely affect our ability to conduct business, financial condition, results of operations and cash flows.

We face intense competition from larger, more established companies, and we may not be able to compete effectively, which could reduce demand for our services.

The market for the services we offer is increasingly and intensely competitive. Nearly all our competitors have longer operating histories, larger customer bases, greater brand recognition and significantly greater financial, marketing and other resources than we do. Our competitors may secure more favorable revenue arrangements with advertisers, devote greater resources to marketing and promotional campaigns, adopt more aggressive growth strategies and devote substantially more resources to website and systems development than we do. In addition, the Internet media and advertising industries continue to experience consolidation, including the acquisitions of companies offering travel and finance-related content and services and paid search services. Industry consolidation has resulted in larger, more established and well-financed competitors with a greater focus. If these industry trends continue, or if we are unable to compete in the Internet media and paid search markets, our financial results may suffer.

Additionally, larger companies may implement policies and/or technologies into their search engines or software that make it less likely that consumers can reach our websites and less likely that consumers will click-through on sponsored listings from our advertisers. The implementation of such technologies could result in a decrease in our revenues. If we are unable to successfully compete against current and future competitors, our operating results will be adversely affected.

If we do not effectively manage our growth, our operating performance will suffer and our financial condition could be adversely affected.

Substantial future growth will be required for us to realize our business objectives. To the extent we are capable of achieving this growth, it will place significant demands on our managerial, operational and financial resources. Additionally, this growth will require us to make significant capital expenditures, hire, train and manage a larger work force, and allocate valuable management resources. We must manage any such growth through appropriate systems and controls in each of these areas. If we do not manage the growth of our business effectively, our business, financial condition, results of operations and cash flows could be materially and adversely affected.

In addition, as our business grows, our technological and network infrastructure must keep in-line with our needs. Future demand is difficult to forecast and we may not be able to adequately handle large increases unless we spend substantial amounts to augment our ability to handle increased traffic. Additionally, the implementation of increased network capacity contains some execution risks and may lead to ineffectiveness or inefficiency. This could lead to a diminished experience for our consumers and advertisers and damage our reputation and relationship with them, leading to lower marketability and negative effects on our operating results. Moreover, the pace of innovative change in network technology is fast and if we do not keep up, we may lag behind competitors. The costs of upgrading and improving technology could be substantial and negatively affect our business, financial condition, results of operations and cash flows.

Risks Relating to our Company

We have a history of operating losses and we may not generate sufficient revenue to support our operations.

During the year ended December 31, 2021, and in each fiscal year since our inception, we have incurred net losses and generated negative cash flow from operations, resulting in an accumulated deficit of \$(333.0) million.

We cannot provide assurance that revenue generated from our businesses will be sufficient to sustain our operations in the long term. We have implemented measures to reduce operating costs, and we continuously evaluate other opportunities to reduce costs further. Additionally, we are working with our advisors to evaluate strategic alternatives, including the potential sale of certain non-core assets, investment assets and operating businesses. We may also need to obtain additional capital through equity financing or debt financing. Should we fail to successfully implement our plans described herein, such failure would have a material adverse effect on our business, including the possible cessation of operations.

Conditions in the debt and equity markets, as well as the volatility of investor sentiment regarding macroeconomic and microeconomic conditions (in particular, as a result of the COVID-19 pandemic, global supply chain disruptions, inflation and other cost increases, and the geopolitical conflict in Ukraine) will play primary roles in determining whether we can successfully obtain additional capital. We cannot be certain that we will be successful at raising capital, whether in an equity financing, debt financing, or by divesting of certain assets or businesses, on commercially reasonable terms, if at all. In addition, if we obtain capital by issuing equity, such transaction(s) may dilute existing stockholders.

We may not have sufficient cash to repay our outstanding senior secured indebtedness.

As of March 28, 2022, \$26.3 million of aggregate principal remained outstanding under the Mudrick Loans, which will be due and payable in full on July 31, 2022. Our available cash and other liquid assets, including the current value of our common stock in New Sharecare, are currently not sufficient to pay such obligations in full. If we do not pay the Mudrick Loans in full on the scheduled maturity date, Mudrick will have available to them all rights under the Mudrick Loan Agreements and applicable law, which include, without limitation, foreclosing on the collateral securing the Mudrick Loans. Mudrick's exercise of any such rights could have a material adverse effect on our financial condition.

Our independent registered public accounting firm's reports for the fiscal years ended December 31, 2021 and 2020 have raised substantial doubt regarding our ability to continue as a "going concern."

Our independent registered public accounting firm indicated in its report on our audited consolidated financial statements as of and for the years ended December 31, 2021 and 2020 that there is substantial doubt about our ability to continue as a going concern. A "going concern" opinion indicates that the financial statements have been prepared assuming we will continue as a going concern and do not include any adjustments to reflect the possible future effects on the recoverability and classification of assets, or the amounts and classification of liabilities that may result if we do not continue as a going concern. Therefore, you should not rely on our consolidated balance sheet as an indication of the amount of proceeds that would be available to satisfy claims of creditors, and potentially be available for distribution to stockholders, in the event of liquidation. The presence of the going concern note to our financial statements may have an adverse impact on the relationships we are developing and plan to develop with third parties as we continue the commercialization of our products and could make it difficult for us to raise additional financing, all of which could have a material adverse impact on our business and prospects and result in a significant or complete loss of your investment.

We continue to evolve our business strategy and develop new brands, products and services, and our future prospects are difficult to evaluate.

We are in varying stages of development with regard to our business, including our artificial intelligence business driven by our AI platform, so our prospects must be considered in light of the many risks, uncertainties, expenses, delays, and difficulties frequently encountered by companies in the early stages of development of business models and products. Some of such risks and difficulties include our ability to, among other things:

- manage and implement new business strategies;
- successfully commercialize and monetize our assets;
- continue to raise additional working capital;
- manage operating expenses;
- establish and take advantage of strategic relationships;
- successfully avoid diversion of management’s attention or of other resources from our existing business
- successfully avoid impairment of goodwill or other intangible assets such as trademarks or other intellectual property arising from acquisitions;
- prevent, or successfully temper, adverse market reaction to acquisitions;
- manage and adapt to rapidly changing and expanding operations;
- respond effectively to competitive developments; and
- attract, retain and motivate qualified personnel.

Because of the early stage of development of certain of our business operations, we cannot be certain that our business strategy will be successful or that it will successfully address the risks described or alluded to above. Any failure by us to successfully implement our new business plans could have a material adverse effect on our business, financial condition, results of operations and cash flows. Furthermore, growth into new areas may require changes to our cost structure, modifications to our infrastructure and exposure to new regulatory, legal and competitive risks.

If we fail to manage our growth, we may need to improve our operational, financial and management systems and processes which may require significant capital expenditures and allocation of valuable management and employee resources. As we continue to grow, we must effectively integrate, develop and motivate new employees, including employees in international markets, while maintaining the beneficial aspects of our company culture. If we do not manage the growth of our business and operations effectively, the quality of our platform and efficiency of our operations could suffer, which could harm our brand, results of operations and business.

We cannot assure you that these investments will be successful or that such endeavors will result in the realization of the full benefits of synergies, cost savings, innovation and operational efficiencies that may be possible or that we will achieve these benefits within a reasonable period of time.

Risks Relating to Our Common Stock

Our stock price has fluctuated considerably and is likely to remain volatile, and various factors could negatively affect the market price or market for our common stock.

The trading price of our common stock has been and may continue to be volatile. From January 1, 2020, through March 28, 2022, the high and low sales prices for our common stock were \$6.70 and \$0.25, respectively. The trading price of our common stock may fluctuate significantly in response to numerous factors, many of which are beyond our control, including:

- general market and economic conditions;
- the low trading volume and limited public market for our common stock;
- minimal third-party research regarding our company; and
- the current and anticipated future operating performance and equity valuation of Sharecare, in which we have a significant equity investment.

In addition, the stock market in general, and the market prices for Internet-related companies in particular, have experienced volatility that often has been unrelated to the operating performance of such companies. Such broad market and industry fluctuations may adversely affect the price of our stock, regardless of our operating performance.

A significant number of additional shares of our common stock may be issued under the terms of existing securities, which issuances would substantially dilute existing stockholders and may depress the market price of our common stock.

As of March 28, 2022, we had outstanding stock options allowing for the purchase of as many as approximately 15.3 million shares of common stock. Also outstanding were warrants we issued as part of the consideration for our acquisition of assets of China Branding Group Limited (the “CBG Acquisition” and such warrants, the “CBG Acquisition Warrants”), providing for the right to purchase 40,000 shares of common stock at a per-share exercise price of \$10.00 and warrants we issued in connection with a settlement of a legal proceeding we filed arising from the CBG Acquisition providing for the right to purchase 5,710,000 shares of common stock at a per-share exercise price of \$6.00 (the “CBG Settlement Warrants”). The CBG Acquisition Warrants and CBG Settlement Warrants are exercisable on a cashless basis only, such that they cannot be exercised for the entire amount of shares purchasable under the warrants, and they effectively cannot be exercised to purchase shares of common stock unless the applicable market value of the common stock exceeds the applicable exercise price under the terms thereof.

We also have outstanding Armistice Warrants to purchase as many as 4,237,290 shares of our common stock at an exercise price of \$1.35 per share, and warrants to purchase as many as an aggregate of 127,118 shares of our common stock at an exercise price of \$1.35 per share (the “Financial Advisor Warrants”), which we issued to A.G.P./Alliance Global Partners (“A.G.P.”) and its designees pursuant to the terms of a financial advisor agreement (the “Financial Advisor Agreement”) we entered into with A.G.P. in connection with the Armistice Purchase Agreement.

The Armistice Warrants are immediately exercisable and will expire on the five-year anniversary of the date of effectiveness of the resale registration statement we filed to register, among other things, the shares of common stock issuable upon exercise of the Armistice Warrants. However, we are prohibited from effecting an exercise of the Armistice Warrants, and the holder thereof will not have the right to exercise any portion of such warrants, to the extent that, as a result of such exercise, the warrant holder would beneficially own more than 4.99% of the outstanding shares of our common stock immediately after giving effect to the issuance of shares of issuable upon exercise of the Armistice Warrants. The Financial Advisor Warrants are immediately exercisable and will expire on the five-year anniversary of the date of issuance.

The issuance of common stock pursuant to the warrants described above would substantially dilute the proportionate ownership and voting power of existing stockholders, and their issuance, or the possibility of their issuance, may depress the market price of our common stock.

Provisions in our corporate charter documents and under Delaware law could make an acquisition of Remark more difficult, which acquisition may be beneficial to stockholders.

Provisions in our Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws, as well as provisions of the General Corporation Law of the State of Delaware (“DGCL”), which may discourage, delay or prevent a merger with, acquisition of or other change in control of Remark, even if such a change in control would be beneficial to our stockholders, include the following:

- only our Board of Directors may call special meetings of our stockholders;
- our stockholders may take action only at a meeting of our stockholders and not by written consent;
- we have authorized, undesignated preferred stock, the terms of which may be established and shares of which may be issued without stockholder approval.

Additionally, Section 203 of the DGCL prohibits a person who owns in excess of 15% of our outstanding voting stock from merging or combining with us for a period of three years after the date of the transaction in which the person acquired in excess of 15% of our outstanding voting stock, unless the merger or combination is approved in a prescribed manner. We have not opted out of the restriction under Section 203, as permitted under DGCL.

ITEM 1B. UNRESOLVED STAFF COMMENTS

Not applicable.

ITEM 2. PROPERTIES

We conduct our operations primarily from office space located in Las Vegas, Nevada, and Chengdu, China. The locations are leased pursuant to agreements expiring in March 2023 and September 2022, respectively. We also lease support offices in Shanghai and Hangzhou, China and in the Greater London region in England.

ITEM 3. LEGAL PROCEEDINGS

For information related to legal proceedings, see [Note 14](#) in the Notes to Consolidated Financial Statements, which information is incorporated herein by reference.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

PART II

ITEM 5. MARKET FOR REGISTRANT’S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

MARKET INFORMATION

Our common stock is listed on the NASDAQ Capital Market under the symbol MARK.

HOLDERS OF COMMON STOCK

We had 74 holders of record of our common stock as of March 28, 2022.

DIVIDENDS

We have never declared or paid dividends or distributions on our common equity. We currently intend to retain all available funds and any future consolidated earnings to fund our operations and continue the development and growth of our business; therefore, we do not anticipate paying any cash dividends.

UNREGISTERED SALES OF EQUITY SECURITIES

Not Applicable

ISSUER PURCHASES OF EQUITY SECURITIES

Not Applicable

ITEM 6. RESERVED

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

You should read our discussion and analysis of our financial condition and results of operations for the year ended December 31, 2021 in conjunction with our consolidated financial statements and notes thereto set forth in Part II, Item 8 of this Form 10-K. Such discussion and analysis includes forward-looking statements that involve risks and uncertainties and that are not historical facts, including statements about our beliefs and expectations. You should also read Business, Risk Factors and Special Note Regarding Forward-Looking Statements in this Form 10-K.

OVERVIEW

We and the VIEs that we consolidate constitute a diversified global technology business with leading AI and data-analytics, as well as a portfolio of digital media properties.

Corporate Structure

We are a holding company incorporated in Delaware and not a Chinese operating company. As a holding company, we conduct a significant part of our operations through our subsidiaries and through contractual arrangements with the VIEs based in China. We use the VIE structure to address challenges resulting from laws, policies and practices that may disfavor foreign-owned entities that operate within industries deemed sensitive by the Chinese government. We own 100% of the equity of a WFOE, which has entered into contractual arrangements with the VIEs, which are owned by members of our management team in China and/or by third parties.

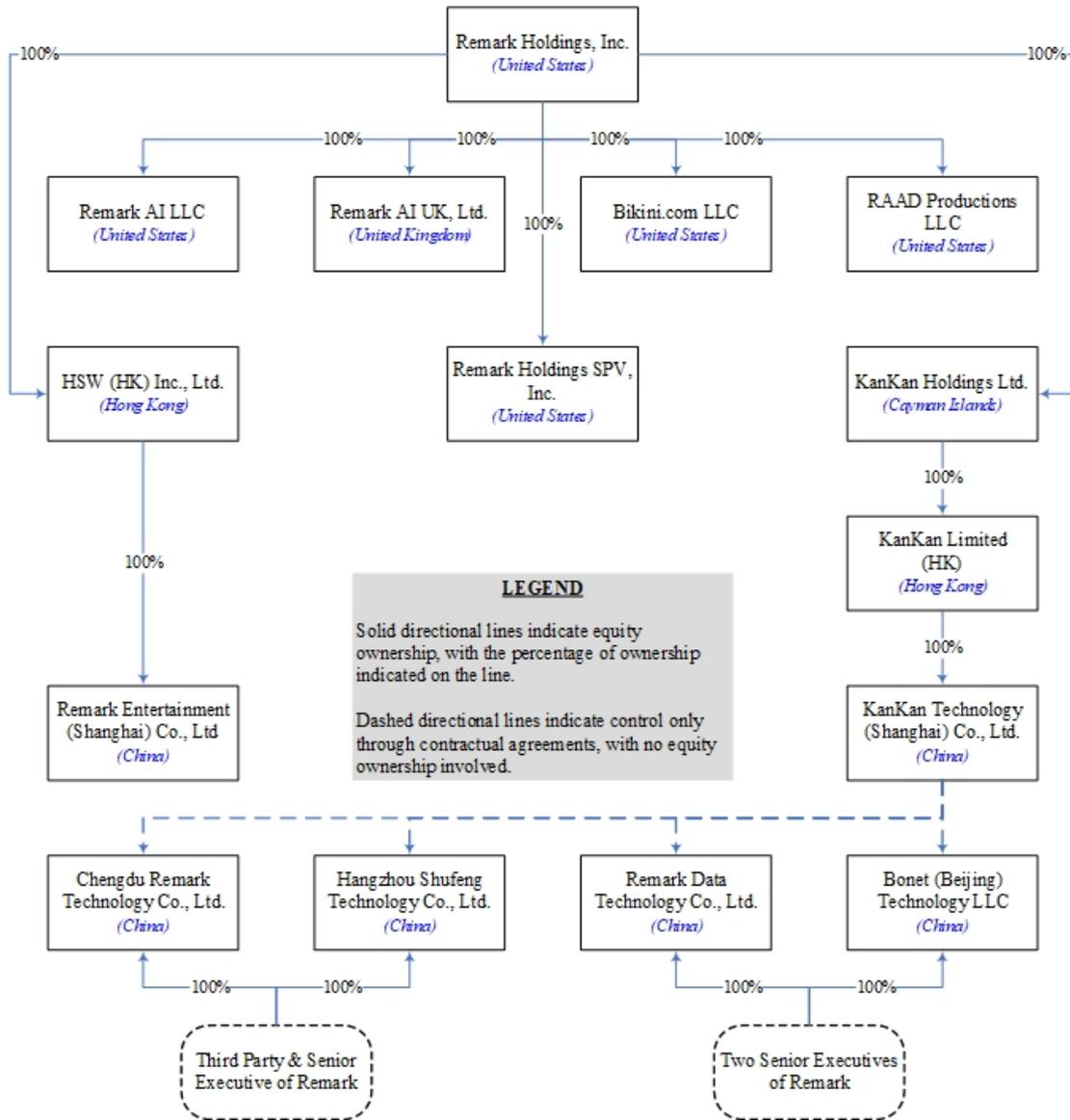
We fund the registered capital and operating expenses of the VIEs on behalf of the shareholders of the VIEs by making advances to the VIEs. We believe that we are the primary beneficiary of the VIEs because the contractual arrangements governing the relationship between the VIEs and our WFOE, which include an exclusive call option agreement, exclusive business cooperation agreement, a proxy agreement and an equity pledge agreement, enable us to (i) exercise effective control over the VIEs, (ii) receive substantially all of the economic benefits of the VIEs, and (iii) have an exclusive call option to purchase, at any time, all or part of the equity interests in and/or assets of the VIEs to the extent permitted by Chinese laws. Because these contractual arrangements with the VIEs provide us with the power to direct the activities of the VIEs, for

accounting purposes we are the primary beneficiary of the VIEs and we have consolidated the financial results of the VIEs in our consolidated financial statements in accordance with U.S. GAAP.

The agreements governing the VIE contractual arrangements have not been tested in a court of law. However, an article published in China Business Law Journal indicated that a China International Economic and Trade Arbitration Commission Shanghai tribunal ruled in 2010 and 2011 in two related cases involving the contractual arrangement of an online game operating company that the contractual arrangement was void on the grounds that such arrangement violated the mandatory administrative regulations prohibiting foreign investors from investing in the online game operation business and constituted “concealing illegal intentions with a lawful form.” According to publicly available information, while the agreements entered into by the parties in the aforementioned CIETAC cases are typical VIE agreements, the PRC domestic company involved in such cases was mainly engaged in online game operation. Although the PRC foreign investment regime restricts or prohibits foreign investment in certain industries, online game operation is one of few industries where there are rules specifically prohibiting foreign investors from controlling and participating in the business indirectly through contractual or technical support arrangements. Though the agreements in the CIETAC cases are similar to our contractual arrangements with the VIEs, we and the VIEs do not operate in the online game operation industry and, to our knowledge, the business conducted by the VIEs is not prohibited from investment from foreign investors in China. We also note that the rulings in the CIETAC cases are not binding on Chinese courts or other arbitration tribunals.

The following diagram illustrates our corporate structure, including our significant subsidiaries, and the relationship between our WFOE and the VIEs as of the date of this Form 10-K. The diagram omits certain entities which are immaterial to our results of operations and financial condition. Equity interests depicted in this diagram are 100% owned. The relationships between each of Chengdu Remark Technology Co., Ltd., Hangzhou Shufeng Technology Co., Ltd., Remark Data Technology Co., Ltd. and Bonet (Beijing) Technology LLC, which constitute the VIEs, on the one hand, and KanKan Technology (Shanghai) Co., Ltd., our WFOE, on the other hand, as illustrated in the following diagram are governed by contractual arrangements and do not constitute equity ownership.

REMARK HOLDINGS, INC. AND SUBSIDIARIES
Entity Organizational Chart



Because we do not directly hold equity interests in the VIEs, we are subject to risks and uncertainties of the interpretations and applications of Chinese laws and regulations, including but not limited to, the validity and enforcement of the contractual arrangements among the WFOE, the VIEs and the shareholders of the VIEs. We are also subject to the risks and uncertainties about any future actions of the Chinese government in this regard that could disallow the VIE structure, which would likely result in a material change in our operations and may cause the value of our common stock to depreciate significantly or become worthless.

The contractual arrangements may not be as effective as direct ownership in providing operational control and we face contractual exposure in such arrangements. For instance, the VIEs and their shareholders could breach their contractual arrangements with us by, among other things, failing to conduct their operations in an acceptable manner or taking other actions that are detrimental to our interests. The shareholders of the VIEs may not act in the best interests of our Company or may not perform their obligations under these contracts. Such risks exist throughout the period in which we intend to operate certain portions of our business through the contractual arrangements with the VIEs. In the event that the VIEs or their shareholders fail to perform their respective obligations under the contractual arrangements, we may have to incur substantial costs and expend additional resources to enforce such arrangements. In addition, even if legal actions are taken to enforce such arrangements, there is uncertainty as to whether Chinese courts would recognize or enforce judgments of U.S. courts against us or such persons predicated upon the civil liability provisions of the securities laws of the United States or any state.

Risks of Doing Business in China

We are subject to certain legal and operational risks associated with having a significant portion of our operations in China. Chinese laws and regulations governing our current business operations, including the enforcement of such laws and regulations, are sometimes vague and uncertain and can change quickly with little advance notice. The Chinese government may intervene or influence our operations and the operations of the VIEs at any time and may exert more control over offerings conducted overseas and/or foreign investment in China-based issuers, which could result in a material change in our operations and/or the value of our securities. In addition, any actions by the Chinese government to exert more oversight and control over offerings that are conducted overseas and/or foreign investment in China-based issuers could significantly limit or completely hinder our ability to offer or continue to offer our securities to investors and cause the value of such securities to significantly decline or become worthless. Recently, the Chinese government adopted a series of regulatory actions and issued statements to regulate business operations in China, including those related to the use of variable interest entities, data security and anti-monopoly concerns. As of the date of this Form 10-K, neither we nor the VIEs have been involved in any investigations on cybersecurity review initiated by any Chinese regulatory authority, nor has any of them received any inquiry, notice or sanction. As of the date of this Form 10-K, no relevant laws or regulations in China explicitly require us to seek approval from the CSRC for any securities listing. As of the date of this Form 10-K, neither we nor the VIEs have received any inquiry, notice, warning or sanctions regarding our planned overseas listing from the CSRC or any other Chinese governmental authorities relating to securities listings. However, since these statements and regulatory actions are newly published, official guidance and related implementation rules have not been issued. It is highly uncertain what potential impact such modified or new laws and regulations will have on our ability to conduct our business, accept investments or list or maintain a listing on a U.S. or foreign exchange.

As of the date of this 10-K, we and the VIEs are not required to seek permissions from the CSRC, the CAC, or any other entity that is required to approve of the operations of the VIEs. Nevertheless, Chinese regulatory authorities may in the future promulgate laws, regulations or implement rules that require us, our subsidiaries or the VIEs to obtain permissions from such regulatory authorities to approve the operations of the VIEs or any securities listing.

Transfer of Cash or Assets

Dividend Distributions

As of the date of this Form 10-K, none of our subsidiaries or any of the consolidated VIEs have made any dividends or distributions to us.

We have never declared or paid dividends or distributions on our common equity. We currently intend to retain all available funds and any future consolidated earnings to fund our operations and continue the development and growth of our business; therefore, we do not anticipate paying any cash dividends.

Under Delaware law, a Delaware corporation's ability to pay cash dividends on its capital stock requires the corporation to have either net profits or positive net assets (total assets less total liabilities) over its capital. If we determine to pay dividends on any of our common stock in the future, as a holding company, we may rely on dividends and other distributions on equity from our WFOE for cash requirements, including the funds necessary to pay dividends and other cash contributions to our stockholders.

Our WFOE's ability to distribute dividends is based upon its distributable earnings. Current Chinese regulations permit our WFOE to pay dividends to their shareholders only out of its registered capital amount, if any, as determined in accordance with Chinese accounting standards and regulations, and then only after meeting the statutory reserve equal to 50% of registered capital. If our WFOE incurs debt in the future, the instruments governing the debt may restrict its ability to pay dividends or make other payments to us. Any limitation on the ability of our WFOE to distribute dividends or other payments to us could materially and adversely limit our ability to grow, make investments or acquisitions that could be beneficial to our businesses, pay dividends or otherwise fund and conduct our business. In addition, any cash dividends or distributions of assets by our WFOE to its stockholder are subject to a Chinese withholding tax of as much as 10%.

The Chinese government also imposes controls on the conversion of RMB into foreign currencies and the remittance of currencies out of China. Therefore, we may experience difficulties in completing the administrative procedures necessary to obtain and remit foreign currency for the payment of dividends from our profits, if any. If we are unable to receive all of the revenues from our operations through the current VIE contractual arrangements, we may be unable to pay dividends on our common stock.

For us to pay dividends to our stockholders, we will rely on payments made from the VIEs to our WFOE in accordance with the VIE contractual arrangements, and the distribution of payments from the WFOE to the Delaware holding company as dividends. Certain payments from the VIEs to the WFOE pursuant to the VIE contractual arrangements are subject to Chinese taxes, including a 6% VAT and 25% enterprise income tax.

Our Company's Ability to Settle Amounts Owed under the VIE Contractual Arrangements

Under the VIE contractual arrangements, the VIEs are obligated to make payments to our WFOE, in cash or in kind, at the WFOE's request. We will be able to settle amounts owed under the VIE contractual arrangements through dividends paid by our WFOE to our Company. Such ability may be restricted or limited as follows:

First, any payments from the VIEs to our WFOE are subject to Chinese taxes, including a 6% VAT and 25% enterprise income tax.

Second, current Chinese regulations permit our WFOE to pay dividends to their shareholders only out of its registered capital amount, if any, as determined in accordance with Chinese accounting standards and regulations, and then only after meeting the statutory reserve equal to 50% of registered capital. In addition, if our WFOE incurs debt in the future, the instruments governing the debt may restrict its ability to pay dividends or make other payments to the Delaware holding company.

Third, the Chinese government also imposes controls on the conversion of RMB into foreign currencies and the remittance of currencies out of China. Therefore, we may experience difficulties in completing the administrative procedures necessary to obtain and remit foreign currency for the payment of dividends from profits, if any.

AI Business

Through the proprietary data and AI software platform we co-developed with one of the VIEs, our Remark AI business in the U.S. and the KanKan AI business operated by the VIEs in the Asia-Pacific region generate revenue by delivering AI-based computer vision products, computing devices and software-as-a-service solutions for businesses in many industries. In addition to the other work that we and the VIEs have ramped up, we and the VIEs continue partnering with top universities on research projects targeting algorithm, artificial neural network and computing architectures which we believe keeps us among the leaders in technology development. Our research team continues to participate in various computer vision competitions at which it wins or ranks near or at the top.

We continue to market Remark AI's innovative AI-based solutions to customers in the retail, urban life cycle and workplace and food safety markets. We have also begun to expand our AI-based safety solutions to railway customers in the transportation market.

Retail Solutions. Utilizing a client’s existing cameras and IoT devices placed throughout the store, Remark AI’s retail solutions swiftly analyze real-time customer shopping behavior, such as time of store entry and shelf-browsing habits, and provide managers with a customer heatmap that reflects traffic patterns. Purchase history is also analyzed, leading to relevant offers for future purchase conversions, and customers for their continued loyalty through a special VIP status that brings customized promotions and coupons along with attentive customer service. Remark AI’s retail solutions allow retailers and store managers to make better data-driven decisions regarding store layout, item placement, and pricing strategy, all while anonymizing customers’ identities to protect their privacy.

Urban Life Cycle Solutions. We offer and have installed several solutions in what we call the urban life cycle category. Our urban life cycle solutions include our AI community system which assists in building “smart” communities by enhancing community security and safety. We also have AI solutions that help to make schools “smart” by (i) providing an accurate and convenient method for student check-in and check-out, (ii) providing an autonomous method of campus monitoring that enhances students’ safety by, for example, monitoring students for elevated body temperatures that could indicate viral infections such as influenza or COVID-19, detecting trespassers, detecting dangerous behaviors or physical accidents that could result in injury, and (iii) monitoring the school kitchen for safety violations.

In traffic management, our solutions assist in monitoring traffic for various violations by automatically detecting, capturing, and obtaining evidence regarding violations such as speeding, running red lights, driving against the flow of traffic and even using counterfeit registration plates. Additionally, our solutions provide constant road-condition monitoring, providing control centers with real-time information on traffic conditions such as areas of congestion or other traffic anomalies.

Workplace and Food Safety Solutions. The monitoring and detection capabilities of our solutions ensure that workers are practicing established food safety protocols, wearing the proper personal protective equipment, and complying with local health codes. From commercial kitchens to factories to construction work zones, our safety-compliance algorithms manage regulatory functions, review hygienic and equipment status while checking and alerting management regarding violations.

Railway Safety Solutions. In railway settings, our product known as the Smart Sentry uses the SSP (safety and security platform) software, a specialized version of the software platform we developed with one of the VIEs, to provide intrusion-detection capabilities that allow customers to monitor railroad tracks, rail yards and other sensitive areas around the clock, in all weather conditions and at varying distances. The Smart Sentry, which customers can deploy as an individual unit or as a system of units, detects when pedestrians or vehicles are crossing a railway or entering the railway tracks as a train is approaching, and then alerts customer personnel to the situation so action can be taken to prevent hazardous incidents from happening. When deployed in multiple-unit systems, each Smart Sentry unit works in concert with the other units to relay warnings that give train operators sufficient time to respond to the track intrusions from miles away. Using the Smart Sentry’s high-end cameras and other hardware, the SSP also gathers and analyzes data on railway traffic and weather conditions along various railways to provide valuable, actionable information to railway personnel. In the near future, we expect to add more safety features to Smart Sentry, such as the ability to detect worn or otherwise damaged track and the ability to identify stationary obstacles like fallen rocks or trees.

Biosafety Solutions. With help from one of the VIEs, we repurposed and improved our existing urban life cycle solution that we were selling to make schools in China “smart” schools to build a product line of high-quality, highly-effective thermal imaging solutions that leverage our innovative software.

We sell our Remark AI Thermal Kits to customers needing the ability to scan crowds and areas of high foot traffic for indications that certain persons with elevated temperatures may require secondary screening. Though the kits are semi-customizable, they generally consist primarily of a thermal imaging camera, a calibrating device, a computer to monitor the video feed, supporting equipment and our AI software. Once set up and calibrated, the kits scan a large number of people each minute, providing both thermally enhanced and standard video feeds that allow our customers to evaluate high volumes of people at large gatherings.

Our Remark AI rPad thermal imaging devices, usually mounted on a wall or a single-post stand, are designed for customers needing the ability to scan individuals on a one-by-one basis in situations where rapid, high-volume scanning is not necessary, such as at a customer’s office entrances where employees can be scanned as they enter for indications of an elevated temperature that may require secondary screening. In addition to thermal scanning, we can customize our AI software embedded in the rPad to perform additional safety and security functions including identifying persons for authorized entry.

Other Businesses

In addition to our AI and data analytics solutions, we maintain a digital media portfolio which, in addition to operating businesses, includes an approximately 2.8 percent ownership in the issued stock of Sharecare, an established health and wellness platform with more than 100 million users. We continue to evaluate opportunities to monetize and maximize the value of this asset for our shareholders. In addition to Data Platform Services revenue from our AI business, activities such as online merchandise sales generated from Bikini.com, our e-commerce website selling swimwear and accessories in the latest styles, also contributed to our consolidated revenue in the current-year and prior-year periods, while advertising also contributed to revenue.

Overall Business Outlook

The innovative AI and data analytics solutions we and the VIEs sell continue to gain worldwide awareness and recognition through media exposure, comparative testing, product demonstrations and word of mouth resulting from positive customer experiences. We intend to expand our business not only in the Asia-Pacific region, where we believe there still are fast-growth AI market opportunities for our solutions, but also in the United States and Europe, where we see a tremendous number of requests for AI products and solutions in the workplace and public safety markets. However, the COVID-19 pandemic may also present challenges to our business, as could economic and geopolitical conditions in some international regions, and we do not yet know what will be the ultimate effects on our business. We continue to pursue large business opportunities, but anticipating when, or if, we can close these opportunities is difficult. Quickly deploying our software solutions in the market segments we have identified, in which we may face a number of large, well-known competitors, is also difficult.

Business Developments During 2021

During the 2021, we continued working to expand our biosafety business within the U.S., and though we expected to do so quickly, the rise in COVID-19 vaccination rates and significant decrease in new reported COVID-19 cases had a negative impact on demand for our AI-driven thermal imaging solutions. Also, the absence of a regulatory mandate for businesses to buy and implement solutions such as ours contributed to the substantial slowing of what originally was steady growth in our biosafety business.

We also stepped into the daily fantasy sports market during the second quarter of 2021 with our AI-driven data intelligence offering. Though our software helped our new customer reduce customer acquisition cost and increase its conversion rate, the customer has indefinitely ceased the marketing activities for which it used our data intelligence offering. We continue, however, to work with the VIEs to refine our product offering in expectation of new projects in this market going forward.

The initial outbreak of the COVID-19 pandemic impacted our business, as well as many others, and it has caused a broad shift towards remote working arrangements for many businesses worldwide and injected uncertainty and delay into decision-making processes for such businesses. With the spread of new variants causing renewed implementations of preventative measures including travel restrictions, closures of non-essential businesses and other quarantine measures, our business and financial results may still be adversely impacted by the COVID-19 pandemic and we are unable to predict the duration or degree of such impact with any certainty, including whether existing or new variants could lead to prolonged, more stringent or entirely new preventative measures.

The following table presents our revenue categories as a percentage of total consolidated revenue during the years ended December 31, 2021 and 2020.

	Year Ended December 31,	
	2021	2020
AI-based products and services	93 %	95 %
Advertising and other	7 %	5 %

CRITICAL ACCOUNTING POLICIES

Management's discussion and analysis of our results of operations and liquidity and capital resources is based upon our financial statements. We prepare our financial statements in conformity with U.S. GAAP. Certain of our accounting policies require that we apply significant judgment in determining the estimates and assumptions for calculating estimates. By their nature, these judgments are subject to an inherent degree of uncertainty. We use, in part, our historical experience, terms of existing contracts, observance of trends in the industry and information obtained from independent valuation experts or other outside sources to make our judgments. We cannot assure you that our actual results will conform to our estimates. We regularly evaluate these estimates and assumptions, particularly in areas we consider to be critical accounting estimates, where changes in estimates and assumptions could have a material impact on our results of operations, financial position and, generally to a lesser extent, cash flows.

Senior management and the Audit Committee of the Board of Directors have reviewed the disclosures included herein about our critical accounting estimates, and have reviewed the processes to determine those estimates.

Use of Estimates

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions which affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenue and expense during the period. Estimates incorporated into our consolidated financial statements include the estimated useful lives for depreciable and amortizable assets, the fair value of the liabilities related to certain stock warrants we issued, the fair value of stock options issued under our equity incentive plans, and the estimated cash flows we use in assessing the recoverability of long-lived assets. Actual results could differ from those estimates.

Accounting for Share-Based Compensation

For grants of restricted stock or restricted stock units, we measure fair value using the closing price of our stock on the measurement date, while we use the Black-Scholes-Merton option pricing model (the "BSM Model") to estimate the fair value of stock options and similar instruments awarded.

The BSM Model requires the following inputs:

- **Expected volatility of our stock price.** We analyze the historical volatility of our stock price utilizing daily stock price returns, and we also review the stock price volatility of certain peers. Using the information developed from such analysis and our judgment, we estimate how volatile our stock price will be over the period we expect the stock options will remain outstanding.
- **Risk-free interest rate.** We estimate the risk-free interest rate using data from the Federal Reserve Treasury Constant Maturity Instruments H.15 Release (a table of rates downloaded from the Federal Reserve website) as of the valuation date for a security with a remaining term that approximates the period over which we expect the stock options will remain outstanding.
- **Stock price, exercise price and expected term.** We use an estimate of the fair value of our common stock on the measurement date, the exercise price of the option, and the period over which we expect the stock options will remain outstanding.

We do not currently issue dividends, but if we did so, then we would also include an estimated dividend rate as an input to the BSM model. Generally speaking, the BSM model tends to be most sensitive to changes in stock price, volatility or expected term.

We measure compensation expense as of the grant date for granted equity-classified instruments and as of the settlement date for granted liability-classified instruments (meaning that we re-measure compensation expense at each balance sheet date until the settlement date occurs).

Once we measure compensation expense, we recognize it over the requisite service period (generally the vesting period) of the grant, net of forfeitures as they occur.

Impairments

Long-Lived Assets Other Than Indefinite-Lived Intangible Assets. When events or changes in circumstances indicate that the carrying amount of a long-lived asset may not be recoverable, we evaluate long-lived assets for potential impairment. We estimate the future undiscounted cash flows expected to result from the use of the asset and its eventual disposition and, if the sum of the expected undiscounted future cash flows is less than the carrying value of the asset, we recognize an impairment loss for the difference between the carrying value of the asset and its fair value.

Recently Issued Accounting Pronouncements

Please refer to [Note 2](#) in the Notes to Consolidated Financial Statements included in this report for a discussion regarding recently issued accounting pronouncements which may affect us.

RESULTS OF OPERATIONS

The following tables summarize our operating results for the year ended December 31, 2021, and the discussion following the table explains material changes in such operating results compared to the year ended December 31, 2020.

(dollars in thousands)	Year Ended December 31,		Change	
	2021	2020	Dollars	Percentage
Revenue, including \$3.8 million from China Business Partner (See Note 17)	\$ 15,990	\$ 10,145	\$ 5,845	58 %
Cost of revenue	11,455	6,422	5,033	78 %
Sales and marketing	971	1,848	(877)	(47)%
Marketing expense (recovery) - China Business Partner activity	(1,530)	1,530	(3,060)	(200)%
Technology and development	4,692	4,142	550	13 %
General and administrative	14,120	9,368	4,752	51 %
Depreciation and amortization	191	308	(117)	(38)%
Impairments	—	772	(772)	(100)%
Interest expense	(2,308)	(1,342)	(966)	72 %
Other income	(592)	—	(592)	
Change in fair value of warrant liability	123	(1,610)	1,733	(108)%
Gain on investment in marketable securities	43,642	—	43,642	
Gain on debt extinguishment	425	—	425	
Gain on lease termination	—	3,582	(3,582)	(100)%
Other gain (loss)	100	(70)	170	(243)%

Revenue and Cost of Revenue. During the year ended December 31, 2021, the primary driver of the increase in revenue was the VIEs' completion of more AI-related projects, including projects associated with the VIEs' collaboration with an unrelated entity (the "China Business Partner") to which one of the VIEs advanced \$2.4 million in 2021, than they completed in the comparable period of 2020, resulting in \$4.3 million more revenue. Our completion of an AI data intelligence project with a new customer in the U.S. also contributed \$2.8 million to the increase in revenue. A decrease of approximately \$1.1 million of revenue from our biosafety business partially offset the increases from the AI data intelligence project and from China.

An increase in cost of revenue resulting from the AI data intelligence project with a new customer in the U.S. was almost entirely offset by a decrease in cost of revenue resulting from the decline in demand related to our biosafety solutions, but the primary cause of the cost of revenue increase during the year ended December 31, 2021 was the VIEs' completion of more large projects, including projects associated with the VIE's collaboration with the China Business Partner, than they completed in the comparable period of 2020. Our recording of a reserve for inventory of \$0.6 million related to our AI-related business in the U.S. also contributed to the increase in cost of revenue.

Sales and marketing. The decrease in sales and marketing expense during the year ended December 31, 2021 resulted from changes in activity in our e-commerce business that resulted in a \$0.3 million decrease in advertising and marketing, a \$0.3 million decrease in miscellaneous expense not related to any ongoing business trends, and a \$0.2 million decrease in payroll and benefits.

Marketing expense (recovery) - China Business Partner activity. One of the VIEs advanced approximately \$1.5 million to our China Business Partner during the year ended December 31, 2020 which the VIE recorded as marketing expense because its ability to collect the amounts advanced was uncertain. As a result of the VIE's collection, subsequent to December 31, 2021, of all amounts it advanced to the China Business Partner, the VIE recorded a recovery of marketing expense during 2021.

Technology and development. During the year ended December 31, 2021, we and the VIEs increased activities to continue to improve the biosafety product line and to develop new products, including the new Smart Sentry product that we expect will first be used by railway customers, leading to a \$0.6 million increase in technology and development expense.

General and administrative. The increase in general and administrative expense during the year ended December 31, 2021 was primarily the result of a \$3.5 million increase in share-based compensation resulting almost entirely from the recognition of the stock option issuances made in July 2020 for which an accounting grant date did not occur until July 2021. Also contributing to the increase was a \$0.4 million rent expense increase mainly resulting from short-term rentals in Los Angeles, CA and Miami, FL, a \$0.3 million increase in payroll and benefits, and a \$0.2 million increase in insurance premiums reflective of industry-wide rate increases for most coverage types that we buy.

Impairments. During 2020, we impaired the investment in Beijing All-in-one Cloud Net Technology, Co. Ltd. made by one of the VIEs, resulting in an impairment charge of \$0.4 million, and we also recorded a \$0.3 million impairment of the intangible asset representing the bikini.com domain name. No impairments have been recorded during 2021.

Interest expense. We executed a note payable in February 2021 and incurred interest on such note payable through the beginning of December 2021, contributing to the increase in interest expense. In early December 2021, we executed another note payable, with a different lender, which also contributed to the increase in interest expense. Proceeds from the December 2021 note payable were used, in part, to repay the February 2021 note payable in full. The year ended December 31, 2020 included interest on debt principal that we repaid in the second quarter of 2020, resulting in a decrease in interest expense during the year ended December 31, 2021 that partially offset the increase in interest expense resulting from the new notes payable executed in 2021.

Gain on investment in marketable securities. On July 1, 2021, as the result of a business combination involving Legacy Sharecare and New Sharecare, our equity in Legacy Sharecare converted into cash and shares of publicly traded common stock of New Sharecare (see [Note 7](#) in Notes to Consolidated Financial Statements). As a result of our ownership of publicly-traded shares, we were able to remeasure our investment at fair value, resulting in a gain of \$43.6 million.

Gain on debt extinguishment. During the year ended December 31, 2021, we received notification during the third quarter of 2021 that our previously-outstanding loan under the Paycheck Protection Program had been forgiven, resulting in a gain of approximately \$0.4 million.

Gain on lease termination. During August 2020, we entered into a settlement agreement relating to the lease for our former office space in Las Vegas which we vacated during March 2020. During March 2020, we reduced right of use assets and operating lease liabilities relating to this lease, which resulted in a gain on lease termination of \$1.5 million. In addition, we recognized a further gain of \$2.0 million during August 2020, when we entered into the settlement agreement. We did not have any lease terminations during the year ended December 31, 2021.

Change in fair value of warrant liability. The change in the fair value of our warrant liability maintained a direct relationship with the change in the price of our common stock as of the balance sheet date and the expected volatility in the price of our common stock. During the year ended December 31, 2021, the decline in our stock price during the year-to-date period ending August 31, 2021, the date when we reclassified the warrants to equity, caused a large decrease in our estimate of the fair value of the warrants, but such decrease was mostly offset by an increase in our estimate of the fair value of the warrants that resulted when we increased our estimate of the expected stock price volatility input to the model we use to estimate fair value. The increase in our common stock price between December 31, 2019 and December 31, 2020 caused an increase in the fair value of our warrant liability during such period.

LIQUIDITY AND CAPITAL RESOURCES

Overview

During the year ended December 31, 2021, and in each fiscal year since our inception, we have incurred net losses which have resulted in an accumulated deficit of \$(333.0) million within stockholders' equity as of December 31, 2021. Additionally, our operations have historically used more cash than they have provided. Net cash used in operating activities was \$20.2 million during the year ended December 31, 2021. As of December 31, 2021, our cash balance was \$14.2 million.

On April 12, 2017, we issued a short-term note payable in the principal amount of \$3.0 million to a private lender in exchange for cash in the same amount. The agreement, which did not have a stated interest rate, required us to repay the note plus a fee of \$115 thousand on the maturity date of June 30, 2017. The note was accruing interest at \$500 per day on the unpaid principal until we repaid the note in full. On December 6, 2021, we repaid in full the \$1.5 million principal that remained outstanding as of that date, plus accrued interest of \$0.6 million.

On April 15, 2020, we entered into a loan agreement (the "PPP Loan") with our bank under the U.S. Small Business Administration's Paycheck Protection Program. Under the PPP Loan, we borrowed \$0.4 million with a stated interest rate of one percent for a term of two years from the initial disbursement date of April 15, 2020. On July 23, 2021, the lender of our PPP Loan notified us that the U.S. Small Business Administration had forgiven our \$0.4 million PPP Loan, plus a de minimis amount of accrued interest thereon, effective as of July 21, 2021.

On December 30, 2020, we executed a promissory note with a private lender (the "Private Lender Loan") under which we borrowed \$1.0 million. The Private Lender Loan bore interest at 10% per annum. The entire principal balance, as well as any interest accrued thereon, was due and payable in full on December 30, 2023, or such earlier date as the principal may become due and payable pursuant to the terms of the Private Lender Loan. Effective August 5, 2021, we entered into an amendment (the "Note Amendment") to the Private Lender Loan. The Note Amendment provided that effective as of August 5, 2021 (the "Conversion Date"), the outstanding principal amount of the Private Lender Loan plus all accrued but unpaid interest thereon through the Conversion Date was automatically converted into shares of our common stock at a conversion price of \$1.21 per share, resulting in the issuance of 876,493 shares of our common stock with a fair value of \$1.1 million and the recording of less than \$0.1 million of additional interest expense.

On February 10, 2021, we entered into a senior secured promissory note with Jefferson Remark Funding LLC (“JRF”), pursuant to which JRF extended credit to us consisting of a one-year term loan in the principal amount of \$5.0 million. The Note bore interest at 15% per annum, which was payable on the last business day of each calendar quarter commencing on March 31, 2021. The entire principal balance, as well as any unpaid accrued interest thereon, was due and payable in full on February 10, 2022. On December 6, 2021, we repaid in full all outstanding obligations under the note payable to JRF.

On September 29, 2021, we issued and sold to Armistice Capital 4,237,290 shares of our common stock at a purchase price of \$1.18 per share together with the Armistice Warrants to purchase as many as 4,237,290 shares of our common stock at an exercise price of \$1.35 per share, subject to certain customary anti-dilution adjustments, pursuant to the terms of the Armistice Purchase Agreement. We received net proceeds of \$4.6 million from such sale. Concurrently with the entry into the Armistice Purchase Agreement, we also entered into the Financial Advisor Agreement with A.G.P. pursuant to which we agreed to pay A.G.P. a cash fee of \$350,000 and to reimburse A.G.P. for certain legal and escrow expenses. In addition, pursuant to the terms of the Financial Advisor Agreement, on September 29, 2021, we issued to A.G.P. and its designees the Financial Advisor Warrants to purchase as many as an aggregate of 127,118 shares of our common stock at an exercise price of \$1.35 per share, subject to certain customary anti-dilution adjustments.

On December 3, 2021, we entered into the Mudrick Loan Agreements pursuant to which we incurred the Mudrick Loans in the aggregate principal amount of \$30.0 million. The Mudrick Loans bear interest at 16.5% per annum, which shall be payable on the last business day of each month commencing on December 31, 2021. All amounts outstanding under the Mudrick Loans, including all accrued and unpaid interest, will be due and payable in full on July 31, 2022. To secure the payment and performance of the obligations under the Mudrick Loan Agreements, we, together with the Guarantors, have granted to TMI Trust Company, as the collateral agent for the benefit of Mudrick, a first priority lien on, and security interest in, all assets of Remark and the Guarantors, subject to certain customary exceptions. The Mudrick Loan Agreements contain representations, warranties, events of default, indemnifications and other provisions customary for financings of this type. The occurrence of any event of default under the Mudrick Loan Agreements may result in the principal amount outstanding and unpaid interest thereon becoming immediately due and payable. In connection with our entry into the Mudrick Loan Agreements, we paid to Mudrick an upfront fee equal to 5.0% of the amount of the Mudrick Loans, which was netted against the drawdown of the Mudrick Loans and recorded as a discount of \$1.5 million, and recorded debt issuance cost totaling \$1.1 million. We are amortizing the discount on the Mudrick Loans and the debt issuance cost over the life of the Mudrick Loans.

Since 2009, we have held an interest in Legacy Sharecare. On July 1, 2021, Legacy Sharecare completed a business combination as a result of which the shares of common stock of Legacy Sharecare that we held immediately prior to the business combination converted into approximately \$2.3 million in cash and approximately 9.4 million shares of publicly-traded common stock of New Sharecare. As part of the business combination, we signed a lock-up agreement with New Sharecare, pursuant to which we have agreed not to, subject to certain exceptions, transfer, assign or sell any of our New Sharecare common stock until the earlier to occur of: (i) one year after the effective time of the business combination, and (ii) subsequent to the effective time, if the closing price of New Sharecare common stock equals or exceeds \$12.00 per share (as adjusted for stock splits, stock capitalizations, reorganizations, recapitalizations and the like) for any 20 trading days within any 30-trading day period commencing at least 150 days after the effective time of the business combination (the “Lock-up Period”). Notwithstanding the foregoing, we are permitted under the lock-up agreement to sell our shares of New Sharecare common stock (x) beginning on the 180th day after the effective time of the business combination until the 269th day following the effective time, the greater of 5% of our shares as of the effective time and 750,000 shares, and (y) beginning on the 270th day after the effective time until the expiration of the Lock-up Period, the greater of 5% of our shares as of the effective time and 750,000 shares, plus any shares that were permitted to be, but not, transferred pursuant to clause (x) above.

Our history of recurring operating losses, working capital deficiencies and negative cash flows from operating activities give rise to substantial doubt regarding our ability to continue as a going concern.

We intend to fund our future operations and meet our financial obligations through revenue growth from our AI offerings, as well as through sales of our thermal-imaging products. We cannot, however, provide assurance that revenue, income and cash flows generated from our businesses will be sufficient to sustain our operations in the twelve months following the filing of this Form 10-K. As a result, we are actively evaluating strategic alternatives including debt and equity financings and potential sales of investment assets or operating businesses.

Conditions in the debt and equity markets, as well as the volatility of investor sentiment regarding macroeconomic and microeconomic conditions (in particular, as a result of the COVID-19 pandemic, global supply chain disruptions, inflation and other cost increases, and the geopolitical conflict in Ukraine), will play primary roles in determining whether we can successfully obtain additional capital. We cannot be certain that we will be successful at raising additional capital.

A variety of factors, many of which are outside of our control, affect our cash flow; those factors include the effects of the COVID-19 pandemic, regulatory issues, competition, financial markets and other general business conditions. Based on financial projections, we believe that we will be able to meet our ongoing requirements for at least the next 12 months with existing cash, cash equivalents and cash resources, and based on the probable success of one or more of the following plans:

- develop and grow new product line(s)
- monetize existing assets
- obtain additional capital through equity issuances.

However, projections are inherently uncertain and the success of our plans is largely outside of our control. As a result, there is substantial doubt regarding our ability to continue as a going concern, and we may fully utilize our cash resources prior to March 31, 2023.

Cash Flows - Operating Activities

During the year ended December 31, 2021, we used \$2.1 million more cash in operating activities than we did during the same period of the prior year. The increase in cash used in operating activities is primarily the result of the timing of payments related to elements of working capital.

Cash Flows - Investing Activities

Investing activities during the year ended December 31, 2021 provided \$2.3 million in proceeds from the transaction in which Sharecare became a public company on July 1, 2021.

Cash Flows - Financing Activities

During the year ended December 31, 2021, we received \$5.7 million of cash proceeds from common stock issuances, whereas the same period of 2020 included stock sale proceeds of \$32.1 million. We also received debt proceeds of \$32.2 million during the year ended December 31, 2021, while we only issued \$1.4 million of debt in the same period of the prior year. The prior year period's financing activity also included repayment of \$13.8 million of debt, as well as the payment of \$0.9 million of contingent consideration related to a business combination.

Off-Balance Sheet Arrangements

We currently have no off-balance sheet arrangements.

Recently Issued Accounting Pronouncements

Please refer to [Note 2](#) in the Notes to Consolidated Financial Statements included in this report for a discussion regarding recently issued accounting pronouncements which may affect us.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Not applicable.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

We have included the required financial statements and schedules in this Form 10-K beginning on page [F-1](#).

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

We maintain a set of disclosure controls and procedures designed to provide reasonable assurance that the information we must disclose in reports we file or submit under the Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the SEC's rules and forms. We designed our disclosure controls with the objective of ensuring we accumulate and communicate this information to our management, including our principal executive officer and principal financial officer, as appropriate, to allow timely decisions regarding required disclosure.

Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness of the design and operations of our disclosure controls and procedures, as such term is defined in Rules 13a-15(e) and 15d-15(e) under Exchange Act, as of the end of the period covered by this report. Based upon that evaluation, our management, including our principal executive officer and principal financial officer, concluded that, due to the identification of the material weaknesses in our internal control over financial reporting as further described below, our disclosure controls and procedures were not effective at a reasonable assurance level as of December 31, 2021. Notwithstanding the material weaknesses in our internal control over financial reporting, the consolidated financial statements included in this Annual Report on Form 10-K fairly present, in all material respects, our financial position, results of operations and cash flows for the periods presented in conformity with accounting principles generally accepted in the United States of America.

Management's Annual Report on Internal Control over Financial Reporting

Our management is responsible for establishing and maintaining adequate internal control over financial reporting as such term is defined in Rules 13a-15(f) and 15d-15(f) under the Exchange Act. Under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, we conducted an evaluation of the effectiveness of our internal control over financial reporting as of December 31, 2021 based on the framework set forth in *Internal Control—Integrated Framework (2013)* issued by the Committee of Sponsoring Organizations of the Treadway Commission (the "COSO Framework").

Our internal control over financial reporting includes those policies and procedures that: (a) pertain to the maintenance of records that in reasonable detail accurately and fairly reflect our transactions and dispositions of our assets; (b) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with U.S. generally accepted accounting principles, and that our receipts and expenditures are being made only in accordance with authorizations of our management and directors; and (c) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use or disposition of our assets that could have a material effect on our consolidated financial statements.

A material weakness is defined as a deficiency, or a combination of deficiencies, in internal control over financial reporting, such that there is a reasonable possibility that a material misstatement of our financial statements will not be

prevented or detected on a timely basis. During 2018, management identified material weaknesses related to the sufficiency of documentation of review and approval of manual journal entries. Specifically, we failed to retain documentary evidence that we had reviewed underlying information at a sufficient level of detail. As a result, we are unable to demonstrate our effective review prior to approval of manual journal entries. Management also identified a material weakness related to insufficient documentation of our consideration of appropriate revenue recognition criteria for certain contracts arising from our Technology and Data Intelligence segment. As a result, there is a risk that we could misapply the new revenue recognition guidance and improperly recognize revenue. During 2019, management identified a material weakness related to the valuation of its e-commerce inventory. Specifically, we failed to retain documentary evidence of all inventory purchases and our evaluation of the impact of discounted sales transactions on the valuation of our inventory was insufficient. As a result, there is a risk that we could fail to properly record our e-commerce inventory at the lower of cost or net realizable value.

During our fourth quarter of 2021 and 2020 evaluations, management concluded that we did not select and develop control activities that contributed to the mitigation of risks to acceptable levels, as required by the control activities component of the COSO framework; specifically, we had not completed implementation of our remediation plan related to the material weaknesses we identified during 2018 and 2019. Such material weaknesses included deficiencies in the documentation of appropriate review and approval of manual journal entries, in our consideration of appropriate revenue recognition criteria for certain contracts arising from our business in China, and in our monitoring and activity-level controls specific to various business processes in our business in China. The failure to retain appropriate documentation of our review and approval of manual journal entries has a pervasive impact and, as such, this deficiency resulted in a risk that could have impacted virtually all financial statement account balances and disclosures. Regarding our business in China, the failure to document consideration of appropriate revenue recognition for certain contracts resulted in a risk that could have materially impacted revenue and cost of sales, while we noted deficiencies in our monitoring and activity-level controls related to processes including accounts payable, accrued liabilities, payroll and fixed assets. The deficiencies in the various business processes aggregate to a material weakness.

Based upon our evaluation, our management concluded that we did not maintain effective internal control over financial reporting as of December 31, 2021.

Changes in Internal Control over Financial Reporting

Except for the identified material weaknesses, there was no change in our internal control over financial reporting during the fiscal quarter ended December 31, 2021 that has materially affected, or is reasonably likely to materially affect, our internal control over financial reporting.

Remediation Efforts to Address the Material Weakness

We are committed to maintaining a strong internal control environment and will make remediation efforts to improve our controls. With the oversight of senior management, subsequent to December 31, 2018, a plan to remediate the underlying causes of the material weaknesses and improve the design and operating effectiveness of internal control over financial reporting and our disclosure controls was developed. Though the implementation of management's plans to remediate the material weaknesses identified in 2018 and 2019 have been slowed by various factors, including the COVID-19 pandemic, their implementation is still ongoing; therefore, their effects were not fully mitigated in 2021.

ITEM 9B. OTHER INFORMATION

None

ITEM 9C. DISCLOSURE REGARDING FOREIGN JURISDICTIONS THAT PREVENT INSPECTIONS.

Not applicable.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

We incorporate the information this item requires by referring to the information under the captions **Proposal 1: Election of Directors** in our proxy statement for our 2022 annual meeting of stockholders (“2022 Proxy Statement”), which we will file with the SEC pursuant to Regulation 14A.

ITEM 11. EXECUTIVE COMPENSATION

We incorporate the information this item requires by referring to the information under the caption **Executive Compensation** in our 2022 Proxy Statement, which we will file with the SEC pursuant to Regulation 14A.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

We incorporate the information this item requires by referring to the information under the caption **Security Ownership of Certain Beneficial Owners and Management** in our 2022 Proxy Statement, which we will file with the SEC pursuant to Regulation 14A.

Securities Authorized for Issuance Under Equity Compensation Plans

The following table presents certain information as of December 31, 2021 regarding our equity compensation plans (the 2010 Equity Incentive Plan, the 2014 Incentive Plan, and the 2017 Incentive Plan, all of which were approved by our security holders):

Plan category	Number of Common Stock Shares to be Issued upon Exercise of Outstanding Options	Weighted Average Exercise Price of Outstanding Options	Number of Securities Remaining Available for Future Issuance under Plans
Approved by security holders	14,839,020	\$ 3.30	3,610,977
Not approved by security holders	—	\$ —	—

The 2010 Equity Incentive Plan has expired, but options issued under the plan while it was active remain outstanding.

See more detailed information regarding our equity compensation plans in [Note 15](#) in the Notes to Consolidated Financial Statements in this Form 10-K.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS AND DIRECTOR INDEPENDENCE

We incorporate the information this item requires by referring to the information under the captions **Proposal 1: Election of Directors** and **Corporate Governance** in our 2022 Proxy Statement, which we will file with the SEC pursuant to Regulation 14A.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

We incorporate the information this item requires by referring to the information under the caption **Proposal 2: Ratification of Appointment of Independent Registered Public Accounting Firm** in our 2022 Proxy Statement, which we will file with the SEC pursuant to Regulation 14A.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

The following documents are filed as part of this Form 10-K:

Consolidated Financial Statements

In Part II, Item 8, we have included our consolidated financial statements, the notes thereto and the report of our Independent Registered Public Accounting Firm.

Financial Statement Schedules

We have omitted schedules required by applicable SEC accounting regulations because they are either not required under the related instructions, are inapplicable, or we present the required information in the financial statements or notes thereto.

Exhibits

We describe the exhibits filed as part of, or incorporated by reference into, this Form 10-K in the attached Exhibit Index.

[Table of Contents](#)

EXHIBIT INDEX

Exhibit Number	Description	Document	Incorporated Herein By Reference To	
			Filed On	Exhibit Number
	Amended and Restated Certificate of Incorporation	8-K	12/30/2014	3.1
	Certificate of Amendment to the Amended and Restated Certificate of Incorporation	8-K	01/12/2016	3.1
	Certificate of Amendment to the Amended and Restated Certificate of Incorporation	8-K	06/08/2016	3.1
	Certificate of Amendment to the Amended and Restated Certificate of Incorporation	8-K	04/11/2017	3.1
	Certificate of Amendment to the Amended and Restated Certificate of Incorporation	8-K	07/09/2021	3.1
	Amended and Restated Bylaws	8-K	02/13/2015	3.1
	Specimen certificate of common stock of Remark Media, Inc. (n/k/a Remark Holdings, Inc.)	10-K	03/23/2012	4.1
	Form of CBG Acquisition Warrant	8-K	09/26/2016	4.1
	Registration Rights Agreement, dated as of March 3, 2020, by and between Remark Holdings, Inc. and Aspire Capital Fund, LLC.	8-K	03/04/2020	4.1
	CBG Settlement Warrant	8-K	09/07/2021	4.1
	Investor Warrant.	8-K	09/30/2021	4.1
	Form of Financial Advisor Warrant.	8-K	09/30/2021	4.2
	Description of Registrant's Securities	10-K	03/31/2021	4.4
	2010 Equity Incentive Plan	8-K	06/21/2010	10.34
	2014 Incentive Plan, as amended January 11, 2016	8-K	01/12/2016	10.1
	2017 Incentive Plan	8-K	01/24/2018	10.1
	Common Stock Purchase Agreement, dated as of March 3, 2020, by and between Remark Holdings, Inc. and Aspire Capital Fund, LLC.	8-K	03/04/2020	10.1
	First Amendment to Common Stock Purchase Agreement, dated as of April 9, 2020, by and between Remark Holdings, Inc. and Aspire Capital Fund, LLC.	8-K	04/14/2020	10.1
	Promissory Note dated December 30, 2020, between Remark Holdings, Inc. and SVBooth Investments III.	8-K	01/06/2021	10.1
	Amendment No. 1 dated August 5, 2021, to Promissory Note dated December 30, 2020, between Remark Holdings, Inc. and SV Booth Investments III LLC.	8-K	08/10/2021	10.1
	Settlement Agreement and Mutual General Release dated as of August 31, 2021, by and among Remark Holdings, Inc., KanKan Limited, China Branding Group Limited (In Official Liquidation), acting by and through its joint official liquidators.	8-K	09/07/2021	10.1

Item Number	Description	Incorporated Herein By Reference To		
		Document	Filed On	Exhibit Number
	Securities Purchase Agreement dated September 27, 2021, between Remark Holdings, Inc. and the purchasers signatory thereto.	8-K	09/30/2021	10.1
	Registration Rights Agreement dated September 27, 2021, between Remark Holdings, Inc. and the purchasers signatory thereto.	8-K	09/30/2021	10.2
	Financial Advisor Agreement dated September 27, 2021, between Remark Holdings, Inc. and A.G.P./Alliance Global Partners.	8-K	09/30/2021	10.3
	Form of Senior Secured Loan Agreement dated December 3, 2021.	8-K	12/07/2021	10.1
	List of subsidiaries			
	Consent of Weinberg & Company			
	Certification of Chief Executive Officer pursuant to Section 302 of the Sarbanes Oxley Act of 2002.			
	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes Oxley Act of 2002.			
	Certification of Chief Executive Officer and Chief Financial Officer pursuant to Section 906 of the Sarbanes Oxley Act of 2002.			
	The following financial statements from our Annual Report on Form 10-K for the year ended December 31, 2021, formatted in Inline XBRL: (i) Consolidated Balance Sheets as of December 31, 2021 and December 31, 2020; (ii) Consolidated Statements of Operations and Comprehensive Loss for the twelve months ended months ended December 31, 2021 and 2020; (iii) Consolidated Statements of Stockholders' Deficit for the twelve months ended months ended December 31, 2021 and 2020; (iv) Consolidated Statements of Cash Flows for the twelve months ended December 31, 2021 and 2020; and (v) Notes to Consolidated Financial Statements.			
	The cover page from our Annual Report on Form 10-K for the year ended December 31, 2021, formatted in Inline XBRL (included as Exhibit 101).			

1. Management Contract or Compensation Plan or Arrangement.

ITEM 16. FORM 10-K SUMMARY

None.

SIGNATURES

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

REMARK HOLDINGS, INC.

Date: March 31, 2022

By: /s/ Kai-Shing Tao
Kai-Shing Tao
Chief Executive Officer and Chairman
(principal executive officer, principal financial officer and principal accounting officer)

POWER OF ATTORNEY

Each person whose individual signature appears below hereby authorizes and appoints Kai-Shing Tao, with full power of substitution and resubstitution and full power to act, as his or her true and lawful attorney-in-fact and agent to act in his or her name, place and stead and to execute in the name and on behalf of each person, individually and in each capacity stated below, and to file any and all amendments to this annual report on Form 10-K and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, full power and authority to do and perform each and every act and thing, ratifying and confirming all that said attorneys-in-fact and agents or any of them or their or his substitute or substitutes may lawfully do or cause to be done by virtue thereof.

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

<u>Name</u>	<u>Title</u>	<u>Date</u>
<u>/s/ Kai-Shing Tao</u> Kai-Shing Tao	Chief Executive Officer and Chairman (principal executive officer, principal financial officer and principal accounting officer)	March 31, 2022
<u>/s/ Theodore Botts</u> Theodore Botts	Director	March 31, 2022
<u>/s/ Brett Ratner</u> Brett Ratner	Director	March 31, 2022
<u>/s/ Elizabeth Xu</u> Elizabeth Xu	Director	March 31, 2022
<u>/s/ Daniel Stein</u> Daniel Stein	Director	March 31, 2022

FINANCIAL STATEMENTS

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Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Directors of
Remark Holdings, Inc.

Opinion on the Consolidated Financial Statements

We have audited the accompanying consolidated balance sheets of Remark Holdings, Inc. and its subsidiaries (the “Company”) as of December 31, 2021 and 2020, the related consolidated statements of operations, stockholders’ equity (deficit), and cash flows for the year ended December 31, 2021 and 2020, and the related notes (collectively referred to as the “consolidated financial statements”). In our opinion, the consolidated financial statements present fairly, in all material respects, the financial position of the Company as of December 31, 2021 and 2020, and the results of its operations and its cash flows for the years then ended, in conformity with accounting principles generally accepted in the United States of America.

Going Concern

The accompanying consolidated financial statements have been prepared assuming that the Company will continue as a going concern. As discussed in [Note 1](#) to the consolidated financial statements, the Company has suffered recurring losses from operations and negative cash flows from operating activities and has a negative working capital and a stockholders’ deficit that raise substantial doubt about its ability to continue as a going concern. Management’s plans in regard to these matters are also described in [Note 1](#). The consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

Basis for Opinion

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

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

Our audits included performing procedures to assess the risks of material misstatement of the consolidated financial statements, whether due to error or fraud, and performing procedures that respond to those risks. Such procedures included examining, on a test basis, evidence regarding the amounts and disclosures in the consolidated financial statements. Our audits also included evaluating the accounting principles used and significant estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that our audits provide a reasonable basis for our opinion.

Critical Audit Matters

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

Accounts receivable in China

As described further in Note 6 to the financial statements, the Company has \$11.5 million in accounts receivable from customers in China, of which \$2.6 million are past due based on their original credit terms. As of December 31, 2021, the

Company recorded an allowance for doubtful accounts of \$1.2 million for these receivables. A majority of the China accounts receivable are from sales to the Company's China Business Partner and a recurring customer, which represented 24% and 25%, respectively, of such receivables at December 31, 2021. The Company is actively working with these customers to arrange payment of the past due balances, and management expects to collect the net remaining balance outstanding of these receivables.

We identified the realization of these receivables as a critical audit matter because a high degree of auditor judgment was required to evaluate various qualitative factors used in the Company's evaluation of the realization of these receivables, including economic and business conditions in China, current operations of the customer, the financial viability and reputation of the China Business Partner and other customers, and the past collection history with customers.

Our audit procedures related to the realization of these receivables included the following, among others.

- We evaluated the reasonableness of management's methodology to determine its allowance for doubtful accounts, including testing and assessing for reasonableness of the Company's key inputs and assumptions used to estimate the realization of the receivables.
- We obtained and read operational communication, to the extent available, between the Company and these customers during calendar 2021 and 2022. We also obtained evidence of Company inquiries with the customer to collect the receivable and the customer responses.
- We confirmed with customers, or performed other procedures, to ensure that the Company's performance obligations related to the outstanding receivables had been met including delivery and acceptance by the customer as of December 31, 2021.
- We examined collections received by the Company subsequent to year end on certain of these receivables, and for those amounts yet uncollected, we verified past collection history with the customers. We also considered the viability of the customer given their size and reputation.
- We compared the Company's historical transactions with its customers to assess the Company's ability to accurately forecast collections. We also considered the traditional payment patterns and customs in China.
- We developed an independent expectation of the accounts receivable reserve and compared our independent expectation to the amount recorded in the financial statements.

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

/s/ Weinberg & Company

Weinberg & Company, P.A.
Los Angeles, California
March 31, 2022

REMARK HOLDINGS, INC. AND SUBSIDIARIES
Consolidated Balance Sheets
(dollars in thousands, except share amounts and par values)

	December 31,	
	2021	2020
Assets		
Cash	\$ 14,187	\$ 854
Trade accounts receivable, net	10,267	5,027
Inventory, net	1,346	874
Investment in marketable securities	42,349	—
Prepaid expense and other current assets	6,363	2,043
Total current assets	74,512	8,798
Property and equipment, net	357	321
Operating lease assets	194	492
Investment in unconsolidated affiliate	—	1,030
Other long-term assets	440	670
Total assets	\$ 75,503	\$ 11,311
Liabilities		
Accounts payable	\$ 10,094	\$ 8,589
Accrued expense and other current liabilities	5,963	6,660
Contract liability	576	310
Notes payable, net of unamortized discount and debt issuance cost of \$2,189 and zero at December 31, 2021 and 2020, respectively	27,811	1,500
Total current liabilities	44,444	17,059
Long-term debt	—	1,425
Operating lease liabilities, long-term	25	194
Warrant liability	—	1,725
Total liabilities	44,469	20,403
Commitments and contingencies		
Stockholders' Equity (Deficit)		
Preferred stock, \$0.001 par value; 1,000,000 shares authorized; zero issued	—	—
Common stock, \$0.001 par value; 175,000,000 shares authorized; 105,157,769 and 99,505,041 shares issued and outstanding at December 31, 2021 and 2020, respectively	105	100
Additional paid-in-capital	364,239	351,546
Accumulated other comprehensive income	(270)	(226)
Accumulated deficit	(333,040)	(360,512)
Total stockholders' equity (deficit)	31,034	(9,092)
Total liabilities and stockholders' equity (deficit)	\$ 75,503	\$ 11,311

See Notes to Consolidated Financial Statements

REMARK HOLDINGS, INC. AND SUBSIDIARIES
Consolidated Statements of Operations and Comprehensive Loss
(dollars in thousands, except per share amounts)

	Year Ended December 31,	
	2021	2020
Revenue, including \$3.8 million from China Business Partner (See Note 17)	\$ 15,990	\$ 10,145
Cost and expense		
Cost of revenue (excluding depreciation and amortization)	11,455	6,422
Sales and marketing ¹	971	1,848
Marketing expense (recovery) - China Business Partner activity	(1,530)	1,530
Technology and development ¹	4,692	4,142
General and administrative ¹	14,120	9,368
Depreciation and amortization	191	308
Impairments	—	772
Other operating expense	—	—
Total cost and expense	29,899	24,390
Operating loss	(13,909)	(14,245)
Other income (expense)		
Interest expense	(2,308)	(1,342)
Other income (expense), net	(592)	—
Change in fair value of warrant liability	123	(1,610)
Gain on investment revaluation	43,642	—
Gain on debt extinguishment	425	—
Gain on lease termination	—	3,582
Other gain (loss), net	100	(70)
Total other income, net	41,390	560
Income (loss) from before income taxes	27,481	(13,685)
Provision for income taxes	(9)	—
Net income (loss)	\$ 27,472	\$ (13,685)
Other comprehensive loss		
Foreign currency translation adjustments	(44)	1
Comprehensive income (loss)	\$ 27,428	\$ (13,684)
Weighted-average shares outstanding, basic	101,362	85,578
Weighted-average shares outstanding, diluted	101,719	85,578
Net income (loss) per share, basic	\$ 0.27	\$ (0.16)
Net income (loss) per share, diluted	\$ 0.27	\$ (0.16)
¹ Includes share-based compensation as follows:		
Sales and marketing	\$ 147	\$ 164
Technology and development	293	484
General and administrative	3,620	149

See Notes to Consolidated Financial Statements

REMARK HOLDINGS, INC. AND SUBSIDIARIES
Consolidated Statements of Stockholders' Deficit
(in thousands, except number of shares)

	Common Stock Shares	Common Stock Par Value	Additional Paid-In Capital	Accumulated Other Comprehensive Income (Loss)	Accumulated Deficit	Total
Balance at December 31, 2019	51,055,159	51	319,275	(227)	(346,827)	\$ (27,728)
Net loss	—	—	—	—	(13,685)	(13,685)
Share-based compensation	—	—	160	—	—	160
Common stock issuances	48,298,893	48	31,982	—	—	32,030
Equity instrument exercises	150,989	1	129	—	—	130
Other	—	—	—	1	—	1
Balance at December 31, 2020	99,505,041	100	351,546	(226)	(360,512)	(9,092)
Net income	—	—	—	—	27,472	27,472
Share-based compensation	—	—	4,300	—	—	4,300
Common stock and stock warrants issued for cash	4,237,290	4	4,610	—	—	4,614
Equity instrument exercises	547,945	—	1,077	—	—	1,077
Common stock issuance upon note payable conversion	876,493	1	1,104	—	—	1,105
Reclassification of warrant liability to equity	—	—	1,602	—	—	1,602
Foreign currency translation	—	—	—	(44)	—	(44)
Other	(9,000)	—	—	—	—	—
Balance at December 31, 2021	105,157,769	\$ 105	\$ 364,239	\$ (270)	\$ (333,040)	\$ 31,034

See Notes to Consolidated Financial Statements

REMARK HOLDINGS, INC. AND SUBSIDIARIES
Consolidated Statements of Cash Flows
(dollars in thousands)

	Year Ended December 31,	
	2021	2020
Cash flows from operating activities:		
Net income (loss)	\$ 27,472	\$ (13,685)
Adjustments to reconcile net loss to net cash used in operating activities:		
Change in fair value of warrant liability	(123)	1,610
Depreciation, amortization and impairments	191	308
Share-based compensation	4,060	797
Amortization of debt issuance costs and discount	880	—
Gain on lease termination	—	(3,582)
Gain on investment in marketable securities	(43,642)	—
Gain on debt extinguishment	(425)	—
Loss on disposal of long-lived assets	—	77
Loss on impairment of intangible assets, including goodwill	—	772
Financing cost of converting note payable to common stock	44	—
Provision for doubtful accounts	297	24
Other	30	269
Changes in operating assets and liabilities:		
Accounts receivable	(5,733)	(2,849)
Inventory	(473)	(874)
Prepaid expense and other assets	(4,120)	95
Operating lease assets	293	73
Accounts payable, accrued expense and other liabilities	967	(920)
Contract liability	277	(27)
Operating lease liabilities	(169)	(135)
Net cash used in operating activities	(20,174)	(18,047)
Cash flows from investing activities:		
Proceeds from investment	2,322	—
Purchases of property, equipment and software	(223)	(290)
Net cash provided by (used in) investing activities	2,099	(290)
Cash flows from financing activities:		
Proceeds from issuance of common stock, net	5,692	32,135
Proceeds from debt issuance	32,216	1,425
Repayments of debt	(6,500)	(13,781)
Payment of contingent consideration in business acquisitions	—	(860)
Net cash provided by financing activities	31,408	18,919
Net change in cash	13,333	582
Cash:		
Beginning of period	854	272
End of period	\$ 14,187	\$ 854
Supplemental cash flow information:		
Cash paid for interest	\$ 1,414	\$ —
Supplemental schedule of non-cash investing and financing activities:		
Issuance of common stock upon note payable conversion	\$ 1,105	\$ —
Reclassification of warrant liability to equity	\$ 1,602	\$ —
Reclassification of investment to marketable securities	\$ 1,030	\$ —
Offsetting of other receivables against other current liabilities	\$ —	\$ 3,060

See Notes to Consolidated Financial Statements

NOTE 1. ORGANIZATION AND BUSINESS

Organization and Business

Remark Holdings, Inc. and its subsidiaries (“Remark”, “we”, “us”, or “our”), and the variable-interest entities (“VIEs”) that Remark consolidates, constitute a diversified global technology business with leading artificial intelligence (“AI”) and data-analytics, as well as a portfolio of digital media properties. The common stock of Remark Holdings, Inc. is listed on the Nasdaq Capital Market under the ticker symbol MARK.

We and the VIEs primarily sell AI-based products and services. We recognize revenue from sales in the U.S., while the VIEs generate substantially all of their revenue from China.

Corporate Structure

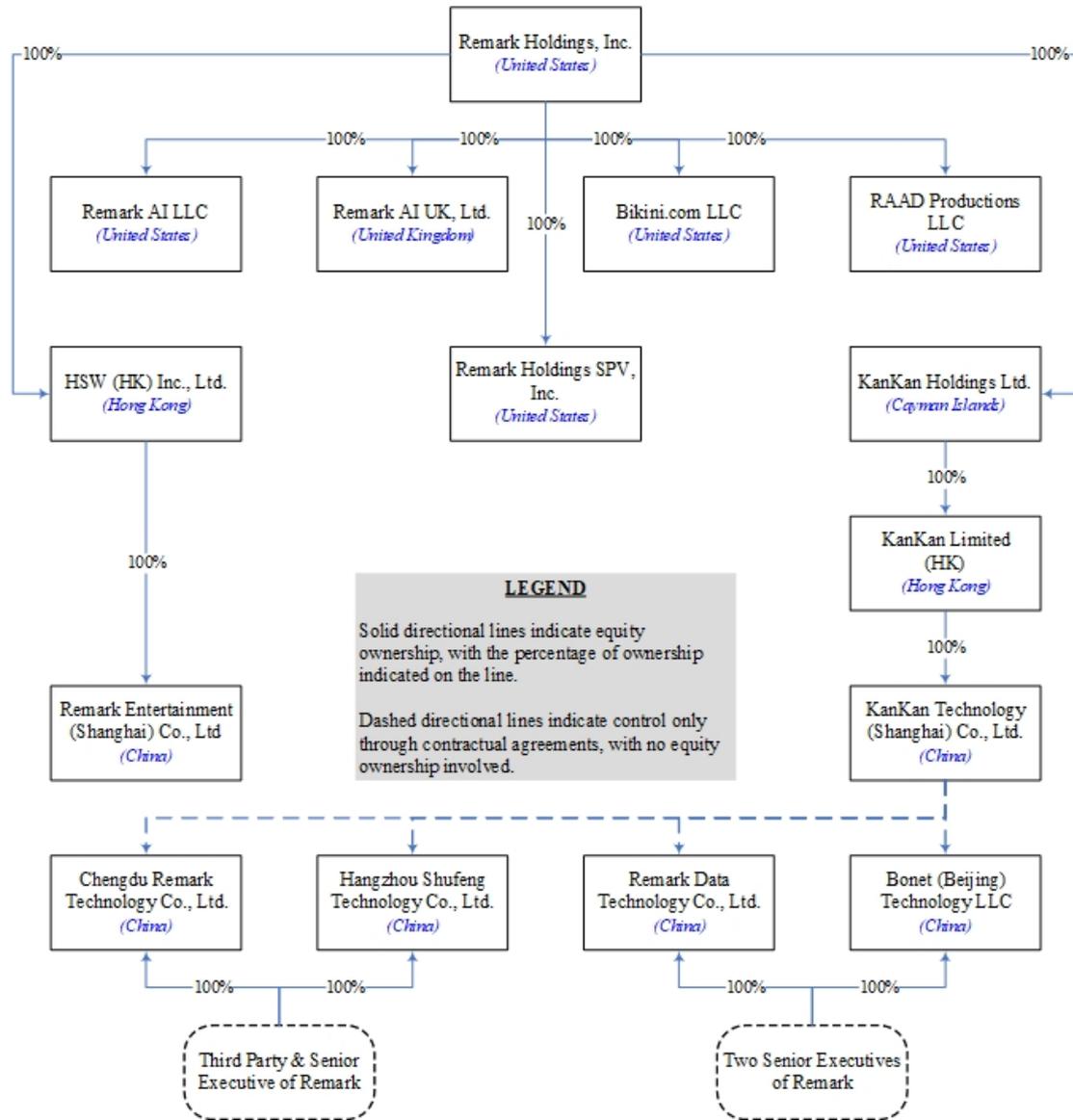
We are a holding company incorporated in Delaware and not a Chinese operating company. As a holding company, we conduct a significant part of our operations through our subsidiaries and through contractual arrangements with the VIEs based in China. We use the VIE structure to address challenges resulting from laws, policies and practices that may disfavor foreign-owned entities that operate within industries deemed sensitive by the Chinese government. We own 100% of the equity of a WFOE, which has entered into contractual arrangements with the VIEs, which are owned by members of our management team in China and/or by third parties.

We fund the registered capital and operating expenses of the VIEs on behalf of the shareholders of the VIEs by making advances to the VIEs. We believe that we are the primary beneficiary of the VIEs because the contractual arrangements governing the relationship between the VIEs and our WFOE, which include an exclusive call option agreement, exclusive business cooperation agreement, a proxy agreement and an equity pledge agreement, enable us to (i) exercise effective control over the VIEs, (ii) receive substantially all of the economic benefits of the VIEs, and (iii) have an exclusive call option to purchase, at any time, all or part of the equity interests in and/or assets of the VIEs to the extent permitted by Chinese laws. Because these contractual arrangements with the VIEs provide us with the power to direct the activities of the VIEs, for accounting purposes we are the primary beneficiary of the VIEs and we have consolidated the financial results of the VIEs in our consolidated financial statements in accordance with U.S. GAAP.

The agreements governing the VIE contractual arrangements have not been tested in a court of law. However, an article published in China Business Law Journal indicated that a China International Economic and Trade Arbitration Commission (“CIETAC”) Shanghai tribunal ruled in 2010 and 2011 in two related cases involving the contractual arrangement of an online game operating company that the contractual arrangement was void on the grounds that such arrangement violated the mandatory administrative regulations prohibiting foreign investors from investing in the online game operation business and constituted “concealing illegal intentions with a lawful form.” According to publicly available information, while the agreements entered into by the parties in the aforementioned CIETAC cases are typical VIE agreements, the PRC domestic company involved in such cases was mainly engaged in online game operation. Although the PRC foreign investment regime restricts or prohibits foreign investment in certain industries, online game operation is one of few industries where there are rules specifically prohibiting foreign investors from controlling and participating in the business indirectly through contractual or technical support arrangements. Though the agreements in the CIETAC cases are similar to our contractual arrangements with the VIEs, we and the VIEs do not operate in the online game operation industry and, to our knowledge, the business conducted by the VIEs is not prohibited from investment from foreign investors in China. We also note that the rulings in the CIETAC cases are not binding on Chinese courts or other arbitration tribunals.

The following diagram illustrates our corporate structure, including our significant subsidiaries, and the relationship between our WFOE and the VIEs as of the date of this Form 10-K. The diagram omits certain entities which are immaterial to our results of operations and financial condition. Equity interests depicted in this diagram are 100% owned. The relationships between each of Chengdu Remark Technology Co., Ltd., Hangzhou Shufeng Technology Co., Ltd., Remark Data Technology Co., Ltd. and Bonet (Beijing) Technology LLC, which constitute the VIEs, on the one hand, and KanKan Technology (Shanghai) Co., Ltd., our WFOE, on the other hand, as illustrated in the following diagram are governed by contractual arrangements and do not constitute equity ownership.

REMARK HOLDINGS, INC. AND SUBSIDIARIES
Entity Organizational Chart



Because we do not directly hold equity interests in the VIEs, we are subject to risks and uncertainties of the interpretations and applications of Chinese laws and regulations, including but not limited to, the validity and enforcement of the contractual arrangements among the WFOE, the VIEs and the shareholders of the VIEs. We are also subject to the risks and uncertainties about any future actions of the Chinese government in this regard that could disallow the VIE structure, which would likely result in a material change in our operations and may cause the value of our common stock to depreciate significantly or become worthless.

The contractual arrangements may not be as effective as direct ownership in providing operational control and we face contractual exposure in such arrangements. For instance, the VIEs and their shareholders could breach their contractual arrangements with us by, among other things, failing to conduct their operations in an acceptable manner or taking other actions that are detrimental to our interests. The shareholders of the VIEs may not act in the best interests of our Company or may not perform their obligations under these contracts. Such risks exist throughout the period in which we intend to operate certain portions of our business through the contractual arrangements with the VIEs. In the event that the VIEs or their shareholders fail to perform their respective obligations under the contractual arrangements, we may have to incur substantial costs and expend additional resources to enforce such arrangements. In addition, even if legal actions are taken to enforce such arrangements, there is uncertainty as to whether Chinese courts would recognize or enforce judgments of U.S. courts against us or such persons predicated upon the civil liability provisions of the securities laws of the United States or any state.

Risks of Doing Business in China

We are subject to certain legal and operational risks associated with having a significant portion of our operations in China. Chinese laws and regulations governing our current business operations, including the enforcement of such laws and regulations, are sometimes vague and uncertain and can change quickly with little advance notice. The Chinese government may intervene or influence our operations and the operations of the VIEs at any time and may exert more control over offerings conducted overseas and/or foreign investment in China-based issuers, which could result in a material change in our operations and/or the value of our securities. In addition, any actions by the Chinese government to exert more oversight and control over offerings that are conducted overseas and/or foreign investment in China-based issuers could significantly limit or completely hinder our ability to offer or continue to offer our securities to investors and cause the value of such securities to significantly decline or become worthless. Recently, the Chinese government adopted a series of regulatory actions and issued statements to regulate business operations in China, including those related to the use of variable interest entities, data security and anti-monopoly concerns. As of the date of this Form 10-K, neither we nor the VIEs have been involved in any investigations on cybersecurity review initiated by any Chinese regulatory authority, nor has any of them received any inquiry, notice or sanction. As of the date of this Form 10-K, no relevant laws or regulations in China explicitly require us to seek approval from the China Securities Regulatory Commission (the “CSRC”) for any securities listing. As of the date of this Form 10-K, neither we nor the VIEs have received any inquiry, notice, warning or sanctions regarding our planned overseas listing from the CSRC or any other Chinese governmental authorities relating to securities listings. However, since these statements and regulatory actions are newly published, official guidance and related implementation rules have not been issued. It is highly uncertain what potential impact such modified or new laws and regulations will have on our ability to conduct our business, accept investments or list or maintain a listing on a U.S. or foreign exchange.

As of the date of this Form 10-K, we and the VIEs are not required to seek permissions from the CSRC, the Cyberspace Administration of China (the “CAC”), or any other entity that is required to approve of the operations of the VIEs. Nevertheless, Chinese regulatory authorities may in the future promulgate laws, regulations or implement rules that require us, our subsidiaries or the VIEs to obtain permissions from such regulatory authorities to approve the operations of the VIEs or any securities listing.

Transfer of Cash or Assets

Dividend Distributions

As of the date of this Form 10-K, none of our subsidiaries or any of the consolidated VIEs have made any dividends or distributions to us.

We have never declared or paid dividends or distributions on our common equity. We currently intend to retain all available funds and any future consolidated earnings to fund our operations and continue the development and growth of our business; therefore, we do not anticipate paying any cash dividends.

Under Delaware law, a Delaware corporation’s ability to pay cash dividends on its capital stock requires the corporation to have either net profits or positive net assets (total assets less total liabilities) over its capital. If we determine to pay dividends on any of our common stock in the future, as a holding company, we may rely on dividends and other distributions on equity from our WFOE for cash requirements, including the funds necessary to pay dividends and other cash contributions to our stockholders.

Our WFOE's ability to distribute dividends is based upon its distributable earnings. Current Chinese regulations permit our WFOE to pay dividends to their shareholders only out of its registered capital amount, if any, as determined in accordance with Chinese accounting standards and regulations, and then only after meeting the statutory reserve equal to 50% of registered capital. If our WFOE incurs debt in the future, the instruments governing the debt may restrict its ability to pay dividends or make other payments to us. Any limitation on the ability of our WFOE to distribute dividends or other payments to us could materially and adversely limit our ability to grow, make investments or acquisitions that could be beneficial to our businesses, pay dividends or otherwise fund and conduct our business. In addition, any cash dividends or distributions of assets by our WFOE to its stockholder are subject to a Chinese withholding tax of as much as 10%.

The Chinese government also imposes controls on the conversion of RMB into foreign currencies and the remittance of currencies out of China. Therefore, we may experience difficulties in completing the administrative procedures necessary to obtain and remit foreign currency for the payment of dividends from our profits, if any. If we are unable to receive all of the revenues from our operations through the current VIE contractual arrangements, we may be unable to pay dividends on our common stock.

For us to pay dividends to our stockholders, we will rely on payments made from the VIEs to our WFOE in accordance with the VIE contractual arrangements, and the distribution of payments from the WFOE to the Delaware holding company as dividends. Certain payments from the VIEs to the WFOE pursuant to the VIE contractual arrangements are subject to Chinese taxes, including a 6% VAT and 25% enterprise income tax.

Our Company's Ability to Settle Amounts Owed under the VIE Contractual Arrangements

Under the VIE contractual arrangements, the VIEs are obligated to make payments to our WFOE, in cash or in kind, at the WFOE's request. We will be able to settle amounts owed under the VIE contractual arrangements through dividends paid by our WFOE to our Company. Such ability may be restricted or limited as follows:

First, any payments from the VIEs to our WFOE are subject to Chinese taxes, including a 6% VAT and 25% enterprise income tax.

Second, current Chinese regulations permit our WFOE to pay dividends to their shareholders only out of its registered capital amount, if any, as determined in accordance with Chinese accounting standards and regulations, and then only after meeting the statutory reserve equal to 50% of registered capital. In addition, if our WFOE incurs debt in the future, the instruments governing the debt may restrict its ability to pay dividends or make other payments to the Delaware holding company.

Third, the Chinese government also imposes controls on the conversion of RMB into foreign currencies and the remittance of currencies out of China. Therefore, we may experience difficulties in completing the administrative procedures necessary to obtain and remit foreign currency for the payment of dividends from profits, if any.

COVID-19

Our consolidated financial statements for the year ended December 31, 2021 were impacted by the effects of the COVID-19 pandemic, which has caused a broad shift towards remote working arrangements for many businesses worldwide and injected uncertainty and delay into decision-making processes for such businesses. Varying degrees of preventative measures are still in place in China and some other parts of the world, including travel restrictions, closures of non-essential businesses and other quarantine measures. The preventative measures have limited the operational capabilities of the VIEs, which could have a material adverse impact on our business and which have created significant uncertainties, such as the potential adverse effect of the pandemic on the economy, our vendors, our employees and customers and customer sentiment in general.

The extent of the impact of the pandemic on our business and financial results will depend largely on future developments, including the duration and severity of the pandemic, the duration of any remaining preventative measures implemented by domestic and foreign governments, the impact on capital and financial markets and the related impact on the financial circumstances of our customers, all of which are highly uncertain and cannot be predicted. The pandemic-related situation

continues to change rapidly, and additional impacts of which we are not currently aware may arise. We are closely monitoring worldwide developments and are continually assessing the potential impact on our business.

Going Concern

During the year ended December 31, 2021, and in each fiscal year since our inception, we have incurred operating losses which have resulted in an accumulated deficit of \$333.0 million within stockholders' equity as of December 31, 2021. Additionally, our operations have historically used more cash than they have provided. Net cash used in operating activities was \$20.2 million during the year ended December 31, 2021. As of December 31, 2021, our cash balance was \$14.2 million.

Our history of recurring operating losses, working capital deficiencies and negative cash flows from operating activities give rise to, and management has concluded that there is, substantial doubt regarding our ability to continue as a going concern. Our independent registered public accounting firm, in its report on our consolidated financial statements for the year ended December 31, 2021, has also expressed substantial doubt about our ability to continue as a going concern. Our consolidated financial statements do not include any adjustments that might result from the outcome of this uncertainty.

We intend to fund our future operations and meet our financial obligations through revenue growth from our AI offerings, as well as through sales of our thermal-imaging products. We cannot, however, provide assurance that revenue, income and cash flows generated from our businesses will be sufficient to sustain our operations in the twelve months following the filing of this Form 10-K. As a result, we are actively evaluating strategic alternatives including debt and equity financings and potential sales of investment assets or operating businesses.

Conditions in the debt and equity markets, as well as the volatility of investor sentiment regarding macroeconomic and microeconomic conditions (in particular, as a result of the COVID-19 pandemic global supply chain disruptions, inflation and other cost increases, and the geopolitical conflict in Ukraine), will play primary roles in determining whether we can successfully obtain additional capital. We cannot be certain that we will be successful at raising additional capital.

A variety of factors, many of which are outside of our control, affect our cash flow; those factors include the effects of the COVID-19 pandemic, regulatory issues, competition, financial markets and other general business conditions. Based on financial projections, we believe that we will be able to meet our ongoing requirements for at least the next 12 months with existing cash, cash equivalents and cash resources, and based on the probable success of one or more of the following plans:

- develop and grow new product line(s)
- monetize existing assets
- obtain additional capital through debt and/or equity issuances.

However, projections are inherently uncertain and the success of our plans is largely outside of our control. As a result, there is substantial doubt regarding our ability to continue as a going concern, and we may fully utilize our cash resources prior to March 31, 2023.

NOTE 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Consolidation

We include all of our subsidiaries and the VIEs in our consolidated financial statements, eliminating all significant intercompany balances and transactions during consolidation.

Use of Estimates

We prepare our consolidated financial statements in conformity with GAAP. While preparing our financial statements, we make estimates and assumptions that affect amounts reported and disclosed in the consolidated financial statements and accompanying notes. Accordingly, actual results could differ from those estimates. On an ongoing basis, we evaluate our

estimates, including those related to accounts receivable, share-based compensation, deferred income taxes, and inventory reserve, among other items.

The impact of the COVID-19 pandemic continues to unfold. As a result, many of our estimates and assumptions required 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.

Cash

Our cash consists of funds held in bank accounts.

We maintain cash balances in United States dollars (“USD”) and British pounds (“GBP”), while the VIEs maintain cash balances in USD, Chinese Renminbi (“RMB”) and Hong Kong dollars (“HKD”). The following table, reported in USD, disaggregates our cash balances by currency denomination (in thousands):

	December 31,	
	2021	2020
Cash denominated in:		
USD	\$ 13,278	\$ 56
RMB	259	28
GBP	644	-
HKD	6	-
Total cash	\$ 14,187	\$ 84

We maintain substantially all of our USD-denominated cash at a U.S. financial institution where the balances are insured by the Federal Deposit Insurance Corporation up to \$250,000. At times, however, our cash balances may exceed the FDIC-insured limit. As of December 31, 2021, we do not believe we have any significant concentrations of credit risk, although approximately \$13.0 million of our USD-denominated cash balance exceeded the FDIC-insured limit. Cash held by our non-U.S. subsidiaries and the VIEs is subject to foreign currency fluctuations against the USD, although such risk is somewhat mitigated because we transfer U.S. funds to China to fund local operations. If, however, the USD is devalued significantly against the RMB, our cost to further develop our business in China could exceed original estimates.

Marketable Securities

Investment in marketable securities consists of marketable equity securities. We classify marketable securities as current or noncurrent based on the nature of the securities and their availability for use in current operations. Marketable securities are stated at fair value with all realized and unrealized gains and losses recognized in our Statement of Operations. The realized and unrealized gains and losses on marketable securities are determined using the specific identification method and quoted prices in an active market.

Leases

We adopted Accounting Standards Codification Topic 842, Leases (“ASC 842”), as of January 1, 2019. When adopting ASC 842 we elected several practical expedients permitted under the transition guidance within ASC 842, which, among other things, allowed us to carry forward the historical lease classification and to avoid recording leases that had expired prior to the date of adoption. We also elected to combine the lease and non-lease components of our leases for office space (which represent the largest portion of our operating lease assets and liabilities) and not to record leases with initial terms of 12 months or less (short-term leases) on the balance sheet. We amortize the cost of short-term leases on a straight-line basis over the lease term.

Fair Value of Financial Instruments

Fair value is the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants (an exit price). When reporting the fair values of our financial instruments, we prioritize those fair value measurements into one of three levels based on the nature of the inputs, as follows:

Level 1: Valuations based on quoted prices in active markets for identical assets and liabilities;

Level 2: Valuations based on observable inputs that do not meet the criteria for Level 1, including quoted prices in inactive markets and observable market data for similar, but not identical instruments; and

Level 3: Valuations based on unobservable inputs, which are based upon the best available information when external market data is limited or unavailable.

The fair value hierarchy requires us to use observable market data, when available, and to minimize the use of unobservable inputs when determining fair value. For some products or in certain market conditions, observable inputs may not be available.

We believe the reported carrying amounts for cash, marketable securities, receivables, prepaids and other current assets, accounts payable, accrued expense and other current liabilities, and short-term debt approximate their fair values because of the short-term nature of these financial instruments.

Foreign Currency Translation

We report all currency amounts in USD. The VIEs, however, maintain their books and records in their functional currency, which is RMB.

In general, when consolidating our subsidiaries or the VIEs with non-USD functional currencies, we translate the amounts of assets and liabilities into USD using the exchange rate on the balance sheet date, and the amounts of revenue and expense are translated at the average exchange rate prevailing during the period. The gains and losses resulting from translation of financial statement amounts into USD are recorded as a separate component of accumulated other comprehensive loss within stockholders' deficit.

We used the exchange rates in the following table to translate amounts denominated in non-USD currencies as of and for the periods noted:

	<u>2021</u>	<u>2020</u>
Exchange rates at December 31st:		
GBP:USD	1.351	—
RMB:USD	0.157	0.153
HKD:USD	0.128	0.129
Average exchange rate during the twelve months ended December 31st:		
RMB:USD	0.155	0.143

Revenue Recognition

AI-Based Products

We and the VIEs generate revenue by developing AI-based products, including fully-integrated AI solutions which combine our proprietary technology with third-party hardware and software products to meet end-user specifications. Under one type of contract for our AI-based products, we provide a single, continuous service to clients who control the assets as we create them. Accordingly, we recognize the revenue over the period of time during which we provide the service. Under another type of contract, we have performance obligations to provide fully-integrated AI solutions to our customer and we recognize revenue at the point in time when each performance obligation is completed and delivered to, tested by and accepted by our customer.

We recognize revenue when we transfer control of the promised goods or services to our customers, and we recognize an amount that reflects the consideration to which we expect to be entitled in exchange for those goods or services. If there is uncertainty related to the timing of collections from our customer, which may be the case if our customer is not the ultimate end user of our goods, we consider this to be uncertainty of the customer's ability and intention to pay us when consideration is due. Accordingly, we recognize revenue only when we have transferred control of the goods or services and collectability of consideration from the customer is probable.

When customers pay us prior to when we satisfy our obligation to transfer control of promised goods or services, we record the amount that reflects the consideration to which we expect to be entitled as a contract liability until such time as we satisfy our performance obligation.

For our contracts with customers, we generally extend short-term credit policies to our customers, typically up to one year for large-scale projects.

We record the incremental costs of obtaining contracts as an expense when incurred.

We and the VIEs offer extended warranties on our products for periods of one to three years. Revenue from these extended warranties is recognized on a straight-line basis over the warranty contract term.

Other

We generate revenue from other sources, such as from advertising and marketing services, e-commerce activity in which we sell goods to our customers, or media production which involves the production of video or Internet-based content for our customers. We recognize the revenue from these contracts at the point in time when we transfer control of the good sold to the customer or when we deliver the promised promotional materials or media content. Substantially all of our contracts with customers that generate Other revenue are completed within one year or less.

Share-Based Compensation

For grants of restricted stock or restricted stock units, we measure fair value using the closing price of our stock on the measurement date, while we use the Black-Scholes-Merton option pricing model (the "BSM Model") to estimate the fair value of stock options and similar instruments awarded.

The BSM Model requires the following inputs:

- **Expected volatility of our stock price.** We analyze the historical volatility of our stock price utilizing daily stock price returns, and we also review the stock price volatility of certain peers. Using the information developed from such analysis and our judgment, we estimate how volatile our stock price will be over the period we expect the stock options will remain outstanding.
- **Risk-free interest rate.** We estimate the risk-free interest rate using data from the Federal Reserve Treasury Constant Maturity Instruments H.15 Release (a table of rates downloaded from the Federal Reserve website) as of the valuation date for a security with a remaining term that approximates the period over which we expect the stock options will remain outstanding.

- **Stock price, exercise price and expected term.** We use an estimate of the fair value of our common stock on the measurement date, the exercise price of the option, and the period over which we expect the stock options will remain outstanding.

We do not currently issue dividends, but if we did so, then we would also include an estimated dividend rate as an input to the BSM model. Generally speaking, the BSM model tends to be most sensitive to changes in stock price, volatility or expected term.

We measure compensation expense as of the grant date for granted equity-classified instruments and as of the settlement date for granted liability-classified instruments (meaning that we re-measure compensation expense at each balance sheet date until the settlement date occurs).

Once we measure compensation expense, we recognize it over the requisite service period (generally the vesting period) of the grant, net of forfeitures as they occur.

Accounts Receivable

We and the VIEs regularly evaluate the collectability of trade receivable balances based on a combination of factors such as customer credit-worthiness, past transaction history with the customer, current economic industry trends and changes in customer payment patterns. If we determine that a customer will be unable to fully meet its financial obligation, such as in the case of a bankruptcy filing or other material events impacting its business, a specific reserve for bad debt will be recorded to reduce the related receivable to the amount expected to be recovered.

Income Taxes

We recognize deferred tax assets (“DTAs”) and deferred tax liabilities (“DTLs”) to account for the effects of temporary differences between the tax basis of an asset or liability and its amount as reported in our consolidated balance sheets, using enacted tax rates expected to apply to taxable income in the years in which we expect those temporary differences to be recovered or settled. Any effect on DTAs or DTLs resulting from a change in enacted tax rates is included in income during the period that includes the enactment date.

We reduce the carrying amounts of DTAs by a valuation allowance if, based upon all available evidence (both positive and negative), we determine that it is more likely than not that such DTAs will not be realizable. Such assessment considers, among other matters, the nature, frequency and severity of current and cumulative losses, our forecasts of future profitability, tax planning strategies, the duration of statutory carryforward periods, and our experience with the utilization of operating loss and tax credit carryforwards before expiration.

We apply a recognition threshold and measurement attribute related to uncertain tax positions taken or expected to be taken on our tax returns. We recognize a tax benefit for financial reporting of an uncertain income tax position when it has a greater than 50% likelihood of being sustained upon examination by the taxing authorities. We measure the tax benefit of an uncertain tax position based on the largest benefit that has a greater than 50% likelihood of being ultimately realized, including evaluation of settlements.

Inventory

We and the VIEs use the first-in first-out method to determine the cost of our inventory, then we report inventory at the lower of cost or net realizable value. We regularly review our inventory quantities on hand and record a provision for excess and obsolete inventory based primarily on our estimated sales forecasts. At December 31, 2021 and 2020, reserve for inventory was \$1.0 million and \$0.5 million, respectively.

Advertising Expense

Advertising expense is recorded during the period in which it is incurred. We did not incur a material amount of advertising expense during the year ended December 31, 2021, but we incurred \$0.2 million during the year ended December 31, 2020.

Research and Development

Engineering cost is recorded as technology and development expense during the period in which it is incurred.

Product Warranties

We and the VIEs offer extended warranties on our products for periods of one to three years. To estimate our warranty cost, we use historical warranty claim experience and we then net such cost against the related product revenue. Warranty costs were not material for the years ended December 31, 2021 and 2020.

Property, Equipment and Software

We and the VIEs state property and equipment at cost and depreciate such assets using the straight-line method over the estimated useful lives of each asset category. For leasehold improvements, we determine amortization using the straight-line method over the shorter of the lease term or estimated useful life of the asset. We expense repairs and maintenance costs as incurred, while capitalizing betterments and capital improvements and depreciating such costs over the remaining useful life of the related asset.

We capitalize qualifying costs of computer software that we incur during the application development stage, as well as the cost of upgrades and enhancements that result in additional functionality, and we amortize such costs using the straight-line method over a period of three years, the expected period of the benefit.

Net Income (Loss) per Share

We calculate basic net income (loss) per share using the weighted-average number of common stock shares outstanding during the period. For the calculation of diluted net income (loss) per share, we give effect to all the shares of common stock that were outstanding during the period plus the number of additional common shares that would have been outstanding if all dilutive potential common shares had been issued, using the treasury stock method. Potential common shares are excluded from the computation when their effect is anti-dilutive. Dilutive potential shares of common stock consist of incremental shares of common stock issuable upon exercise of stock options and warrants.

For the years ended December 31, 2021 and 2020, there were no reconciling items related to the numerators of the net income (loss) per share calculations. The following table presents a reconciliation of the denominator of the basic net income (loss) per share calculation to that of the diluted net income (loss) per share calculation (in thousands):

	Year Ended December 31,	
	2021	2020
Weighted-average shares outstanding, basic	101,362	85,578
Incremental shares resulting from assumed exercises of in-the-money stock options	357	—
Weighted-average shares outstanding, diluted	101,719	85,578

Securities which may have affected the calculation of diluted earnings per share for the years ended December 31, 2021 and 2020 if their effect had been dilutive include 14,354,708 and 9,942,341 outstanding stock options, respectively, and 10,114,408 and 40,000 outstanding stock warrants, respectively.

Segments

Existing GAAP, which establishes a management approach to segment reporting, defines operating segments as components of an entity about which separate, discrete financial information is available for evaluation by the chief operating decision maker. We have identified our Chief Executive Officer as our chief operating decision maker, who reviews operating results to make decisions about allocating resources and assessing performance based upon only one operating segment.

Commitments and Contingencies

We record a liability for a loss contingency when we determine that it is probable that we have incurred such liability and we can reasonably estimate the amount.

Impairments

Long-Lived Assets Other Than Indefinite-Lived Intangible Assets

When events or changes in circumstances indicate that the carrying amount of a long-lived asset may not be recoverable, we evaluate long-lived assets for potential impairment, basing our testing method upon whether the assets are held for sale or held for use. For assets classified as held for sale, we recognize the asset at the lower of carrying value or fair market value less costs of disposal, as estimated based on comparable asset sales, offers received, or a discounted cash flow model. For assets held and used, we estimate the future undiscounted cash flows expected to result from the use of the asset and its eventual disposition. If the sum of the expected undiscounted future cash flows is less than the carrying value of the asset, we recognize an impairment loss for the difference between the carrying value of the asset and its fair value.

Liabilities Related to Warrants Issued

We recorded certain common stock warrants we issued at fair value and recognize the change in the fair value of such warrants as a gain or loss which we reported in the Other income (expense) section in our consolidated statement of operations. We estimated the fair value of the warrants using an option pricing model.

Recently Issued Accounting Pronouncements

In August 2020, the Financial Accounting Standards Board (“FASB”) issued Accounting Standards Update (“ASU”) No. 2020-06 (“ASU 2020-06”), *Debt—Debt with Conversion and Other Options (Subtopic 470-20) and Derivatives and Hedging—Contracts in Entity’s Own Equity (Subtopic 815-40): Accounting for Convertible Instruments and Contracts in an Entity’s Own Equity*. The ASU will simplify the accounting for convertible instruments by reducing the number of accounting models for convertible debt instruments and convertible preferred stock. Limiting the accounting models will result in fewer embedded conversion features being separately recognized from the host contract as compared with current GAAP. Convertible instruments that continue to be subject to separation models are (1) those with embedded conversion features that are not clearly and closely related to the host contract, that meet the definition of a derivative, and that do not qualify for a scope exception from derivative accounting and (2) convertible debt instruments issued with substantial premiums for which the premiums are recorded as paid-in capital. The ASU also amends the guidance for the derivatives scope exception for contracts in an entity’s own equity to reduce form-over-substance-based accounting conclusions. With regard to our financial reporting, ASU 2020-06 will be effective January 1, 2024, and early adoption is permitted, but no earlier than January 1, 2021, including interim periods within that year. We are currently evaluating what effect(s) the adoption of ASU 2020-06 may have on our consolidated financial statements, but we do not believe the impact of the ASU will be material to our financial position, results of operations and cash flows. The effect will largely depend on the composition and terms of the financial instruments at the time of adoption.

In June 2016, the FASB issued ASU 2016-13, *Measurement of Credit Losses on Financial Instruments (Topic 326)*. The ASU requires entities to use a forward-looking approach based on current expected credit losses to estimate credit losses on certain types of financial instruments, including trade receivables, which may result in the earlier recognition of allowances for

losses. With regard to our financial reporting, ASU 2016-13 will be effective beginning January 1, 2023, and early adoption is permitted. We do not believe the impact of the ASU will be material to our financial position, results of operations and cash flows.

We have reviewed all accounting pronouncements recently issued by the FASB and the SEC. The authoritative pronouncements that we have already adopted did not have a material effect on our financial condition, results of operations, cash flows or reporting thereof, and except as otherwise noted above, we do not believe that any of the authoritative pronouncements that we have not yet adopted will have a material effect upon our financial condition, results of operations, cash flows or reporting thereof.

NOTE 3. CONCENTRATIONS OF RISK

Revenue and Accounts Receivable

The disaggregation of revenue tables in [Note 4](#) demonstrate the concentration in our revenue from certain products and the geographic concentration of our business. We also have a concentration in the volume of business we transacted with customers, as during the year ended December 31, 2021, three of our customers represented about 24%, 18% and 12%, respectively, of our revenue, while during year ended December 31, 2020, our two largest customers represented about 31% and 11%, respectively, of our revenue. At December 31, 2021, accounts receivable from three of our customers represented about 25%, 24% and 10%, respectively, of our gross accounts receivable, while at December 31, 2020, accounts receivable from our largest customer represented about 38% of our gross accounts receivable.

Cost of Sales and Accounts Payable

The various hardware we purchase to fulfill our contracts with customers is not especially unique in nature. Based on our analysis, we believe that should any disruption in our current supply chain occur, a sufficient number of alternative vendors is available to us, at reasonably comparable specifications and price, such that we would not experience a material negative impact on our ability to procure the hardware we need to operate our business.

NOTE 4. REVENUE

We and the VIEs primarily sell AI-based products and services. In the U.S., that includes our Remark AI Thermal Kits and rPads, while the VIEs sell various customized products in China based upon computer vision and other technologies.

We do not include disclosures related to remaining performance obligations because substantially all our contracts with customers have an original expected duration of one year or less or, with regard to our stand-ready obligations, the amounts involved are not material.

Disaggregation of Revenue

The following table presents a disaggregation of our revenue by category of products and services (in thousands):

	Year Ended December 31,	
	2021	2020
AI-based products and services, including \$3.8 million from China Business Partner (See Note 17)	\$ 14,792	\$ 9,597
Other	1,198	548
Revenue	\$ 15,990	\$ 10,145

The following table presents a disaggregation of our revenue by country (in thousands):

	Year Ended December 31,	
	2021	2020
China	\$ 12,218	\$ 7,901
United States	3,772	2,244
Revenue	\$ 15,990	\$ 10,145

The VIEs generated substantially all of the revenue from China noted in the table above, though one of our subsidiaries generated amounts of revenue from China that were not material in each period.

Significant Judgments

When accounting for revenue we make certain judgments, such as whether we act as a principal or as an agent in transactions or whether our contracts with customers fall within the scope of current GAAP regarding revenue, that affect the determination of the amount and timing of our revenue from contracts with customers. Based on the current facts and circumstances related to our contracts with customers, none of the judgments we make involve an elevated degree of qualitative significance or complexity such that further disclosure is warranted in terms of their potential impact on the amount and timing of our revenue.

Contract Assets and Contract Liabilities

We do not currently generate material contract assets. During the year ended December 31, 2021, our contract liability changed only as a result of routine business activity.

During the year ended December 31, 2021 and 2020, the amount of revenue we recognized that was included in the beginning balance of Contract liability was not material.

During the year ended December 31, 2021 and 2020, we did not recognize revenue from performance obligations that were satisfied in previous periods.

NOTE 5. FAIR VALUE MEASUREMENTS OF CERTAIN LIABILITIES

Liabilities Related to Warrants to Purchase Common Stock

At the end of each reporting period through June 30, 2021, we had been using an option pricing model to estimate and report the fair value of liabilities related to warrants to purchase an aggregate of 5,750,000 shares of our common stock, consisting of a warrant to purchase 40,000 of our common stock that we issued and warrants to purchase 5,710,000 shares of our common stock that we were obligated to issue as part of the consideration for our acquisition (the “CBG Acquisition”) of assets of China Branding Group Limited (“CBG”) in September 2016.

On August 31, 2021 (the “CBG Settlement Effective Date”), we entered into a settlement agreement (the “CBG Settlement Agreement”) with CBG and its joint official liquidators to settle the parties’ claims against each other in the legal proceeding we filed arising from the CBG Acquisition (the “CBG Litigation”). See [Note 14](#) for a description of the parties’ claims in the CBG Litigation.

Pursuant to the terms of the CBG Settlement Agreement, in consideration for a settlement of the parties’ claims and a mutual release, we released to CBG the \$375,000 held in escrow in connection with the CBG Acquisition and issued to CBG, as of the CBG Settlement Effective Date, warrants to purchase as many as 5,710,000 shares of our common stock at a per share

exercise price of \$6.00 (the “CBG Settlement Warrants”), which warrants are exercisable for a period of five years from the CBG Settlement Effective Date. Additionally, if the closing price of our common stock is \$8.00 or greater for any five days (which may be non-consecutive) in any consecutive 30-day trading period, we have the right to cause the holder of the CBG Settlement Warrants to exercise, at our election, all or any portion of the CBG Settlement Warrants on a cashless basis at a deemed exercise price of \$8.00 per share. We evaluated the terms of the CBG Settlement Warrants and determined that they should now be classified as equity. As a result, there is no longer a liability associated with any of our outstanding warrants.

The following table presents the quantitative inputs, which we classify in Level 3 of the fair value hierarchy, used in estimating the fair value of the liability associated with the warrants issued in connection with the CBG Acquisition as of the date noted:

	December 31, 2020
Expected volatility	85.00 %
Risk-free interest rate	0.18 %
Expected remaining term (years)	2.73

When reclassifying the previously liability-classified warrants as equity on August 31, 2021, we used Level 3 inputs to our model consisting of an expected volatility of 85%, a risk-free interest rate of 0.77%, and an expected remaining term of five years.

The following table presents the change in the liability balance associated with our liability-classified warrants (in thousands):

	Year Ended December 31,	
	2021	2020
Balance at beginning of period	\$ 1,725	\$ 115
Expiration of warrants	—	(115)
Increase (decrease) in fair value of liability	(123)	1,725
Fair value of warrants reclassified to equity	(1,602)	—
Balance at end of period	\$ —	\$ 1,725

NOTE 6. TRADE ACCOUNTS RECEIVABLE

	December 31,	
	2021	2020
Gross accounts receivable balance	\$ 11,551	\$ 5,988
Allowance for bad debt	(1,284)	(961)
Accounts receivable, net	\$ 10,267	\$ 5,027

Generally, it is not unusual for Chinese entities to pay their vendors on longer timelines than the timelines typically observed in U.S. commerce. Trade receivables related to the VIEs’ AI projects, including \$2.7 million of trade receivables from projects related to work with our China Business Partner (see [Note 17](#) for more information regarding our China Business Partner and related accounting), represent 99% of our gross trade receivables.

NOTE 7. INVESTMENT

In 2009, we co-founded a U.S.-based venture, Sharecare, Inc. (“Legacy Sharecare”), to build a web-based platform that simplifies the search for health and wellness information. The other co-founders of Legacy Sharecare were Dr. Mehmet Oz, HARPO Productions, Discovery Communications, Jeff Arnold and Sony Pictures Television. At December 31, 2020, we reported our \$1.0 million investment in Legacy Sharecare as an investment in unconsolidated affiliate.

On July 1, 2021, Legacy Sharecare completed a business combination with Falcon Capital Acquisition Corp., a special purpose acquisition company, as a result of which the common stock of the surviving entity of such business combination (“New Sharecare”) became listed on the Nasdaq Stock Market LLC. In connection with the completion of such business combination, the shares of common stock of Legacy Sharecare that we held immediately prior to the business combination converted into approximately \$2.3 million in cash and approximately 9.4 million shares of common stock of New Sharecare. We do not maintain a seat on the board of directors of New Sharecare. The cash received was recorded as a realized gain on the investment as shown in the table below, and the investment is revalued at fair value at the end of each reporting period using the closing sales price of the shares on the principal securities exchange on which such shares are then traded.

As of December 31, 2021, the value of our investment in New Sharecare was \$42.3 million based upon the closing stock price of New Sharecare, an input we classify in Level 1 of the fair value hierarchy, on such date. We recorded a gain on the investment during the year ended December 31, 2021 as follows:

	2021
Realized gain	\$ 2,322
Unrealized gain	41,320
Total gain	<u>\$ 43,642</u>

NOTE 8. PREPAID EXPENSE AND OTHER CURRENT ASSETS

The following table presents the components of prepaid expense and other current assets (in thousands):

	December 31,	
	2021	2020
Receivable from China Business Partner	\$ 3,980	\$ —
Other receivables	9	8
Prepaid expense	1,558	1,877
Deposits	221	50
Other current assets	595	108
Total	<u>\$ 6,363</u>	<u>\$ 2,043</u>

NOTE 9. PROPERTY AND EQUIPMENT

Property and equipment consist of the following (in thousands, except estimated lives):

	Estimated Life (Years)	December 31,	
		2021	2020
Computers and equipment	3	1,133	1,097
Furniture and fixtures	3	42	42
Software	3	5,055	5,006
Leasehold improvements	3	196	174
Software development in progress		128	—
Total property, equipment and software		\$ 6,554	\$ 6,319
Less accumulated depreciation		(6,197)	(5,998)
Total property, equipment and software, net		\$ 357	\$ 321

For the year ended December 31, 2021 and 2020, depreciation (and amortization of software) expense was \$0.2 million and \$0.2 million, respectively.

NOTE 10. LEASES

We and the VIEs lease office space under contracts we classify as operating leases. None of our leases are financing leases.

The following table presents the detail of our lease expense, which is reported in General and administrative expense (in thousands):

	Year Ended December 31,	
	2021	2020
Operating lease expense	\$ 304	\$ 640
Short-term lease expense	982	291
Lease expense	\$ 1,286	\$ 931

We reported within operating cash flows for the year ended December 31, 2021 and 2020, \$0.2 million and \$0.6 million, respectively, of cash paid for amounts included in the measurement of operating lease liabilities.

As of December 31, 2021, our operating leases had a weighted-average remaining lease term of approximately 12 months, and we used a weighted-average discount rate of approximately 13% to measure our operating lease liabilities.

Maturity of Lease Liabilities

The following table presents information regarding the maturities of undiscounted remaining operating lease payments, with a reconciliation to the amount of the liabilities representing such payments as presented in our December 31, 2021 Consolidated Balance Sheet (in thousands):

Operating lease liabilities maturing during the next:

One year	\$	201
Two years		25
Total undiscounted cash flows	\$	226
Present value of cash flows	\$	212

Lease liabilities on balance sheet:

Short-term (included in accrued expenses)	\$	187
Long-term		25
Total lease liabilities	\$	212

Termination of Lease and Related Landlord Actions

Beginning approximately July 2019, we were not able to pay our obligations under the office lease for our former office located at 3960 Howard Hughes Parkway in Las Vegas, Nevada. On March 5, 2020, our former landlord, BRE/HC Las Vegas Property Holdings, L.L.C (the “Hughes Center Landlord”), exercised its right to terminate the lease as of such date as a result of the ongoing payment default. When we derecognized the right-of-use asset and the portion of the operating lease liability related to the original schedule of future amounts due to the Hughes Center Landlord in March 2020, we recognized a gain on lease termination of slightly more than \$1.5 million.

On April 9, 2020, the Hughes Center Landlord filed suit against us in Nevada to recover the approximately \$1.1 million of rent owed through March 5, 2020, plus damages resulting from the early termination of the lease.

As of December 31, 2019, we had accrued approximately \$2.3 million for settlement of the legal action filed by the Hughes Center Landlord. During the first quarter of 2020, prior to the Hughes Center Landlord’s termination of the lease agreement, we accrued an additional \$0.3 million, resulting in total liabilities related to this matter of \$2.6 million.

On August 3, 2020, we entered into a settlement agreement with the Hughes Center Landlord (the “Hughes Center Lease Settlement”), pursuant to which we paid only \$0.6 million to the Hughes Center Landlord in full settlement of our obligations with respect to such office lease. On November 5, 2020, the Hughes Center Landlord filed a Notice of Voluntary Dismissal with Prejudice with the District Court of Clark County, Nevada dismissing their legal action against us. The slightly more than \$2.0 million gain related to the Hughes Center Lease Settlement, in addition to the slightly more than \$1.5 million gain on lease termination we recorded in March 2020, resulted in a total gain on lease termination of approximately \$3.6 million.

Significant Judgments

When accounting for our leases, we make certain judgments, such as whether a contract contains a lease or what discount rate to use, that affect the determination of the amount of our lease assets and liabilities. Based on the current facts and circumstances related to our contracts, none of the judgments we make involve an elevated degree of qualitative significance or complexity such that further disclosure is warranted.

NOTE 11. INCOME TAX

For the year ended December 31, 2021, and 2020, we did not have a tax provision or a tax benefit to report.

The following table presents a reconciliation between the income tax benefit computed by applying the federal statutory rate and our actual income tax expense:

	Year Ended December 31,	
	2021	2020
Income tax benefit at federal statutory rate	\$ 5,771	\$ (2,874)
Change in deferred tax asset valuation allowance	(5,241)	1,670
Tax impact of warrants	(26)	338
Tax effects of:		
Statutory differences	327	1,014
R&D expense	(210)	(202)
Foreign tax rates different than U.S. federal statutory rate	68	(96)
Other permanent items	(331)	155
Deferred adjustments	99	86
Other	(466)	(91)
Income tax provision (benefit) as reported	\$ (9)	\$ —

Our 2021 and 2020 effective tax rates were significantly impacted by maintaining a valuation allowance against net deferred tax asset in all jurisdictions, both domestic and foreign, as well as permanent book-tax adjustments in foreign jurisdictions and the fact that our earnings are generated in jurisdictions with rates that differ from the US federal statutory rate.

The following table presents loss before income tax attributable to domestic and to foreign operations (in thousands):

	Year Ended December 31,	
	2021	2020
Domestic	\$ 28,036	\$ (11,289)
Foreign	(555)	(2,396)
Loss before income taxes	\$ 27,481	\$ (13,685)

Deferred Tax Assets and Liabilities

We assessed the available positive and negative evidence to estimate whether sufficient future taxable income will be generated to permit use of existing DTAs in each jurisdiction. The realization of DTAs is dependent upon the generation of future taxable income during the periods in which those temporary differences become deductible. We considered the scheduled reversal of existing deferred tax liabilities, projected future taxable income, and tax planning strategies in making this assessment. We evaluated both positive and negative evidence in determining the need for a valuation allowance. Additionally, we continue to assess the realizability of DTAs and we have concluded that in each jurisdiction, we have not met the “more likely than not” threshold. As of December 31, 2021, we continue to provide a valuation allowance against the DTAs that cannot be offset by existing deferred tax liabilities. In accordance with Accounting Standards Codification 740 (“ASC 740”), this assessment has taken into consideration the jurisdictions in which these DTAs reside.

We intend to continue maintaining a full valuation allowance on these DTAs until there is sufficient evidence to support the reversal of all or some portion of these allowances. However, given our current earnings and anticipated future earnings in

the US, we believe that there is a reasonable possibility that within the next 12 months, sufficient positive evidence may become available to allow us to reach a conclusion that a significant portion or all of the valuation allowance in the U.S. federal jurisdiction will no longer be needed. Release of the valuation allowance would result in the recognition of certain DTAs and a decrease to income tax expense for the period the release is recorded. However, the exact timing and amount of the valuation allowance release are subject to change on the basis of the level of profitability that we are able to actually achieve.

The following table presents the components of our DTAs and DTLs (in thousands):

	December 31,	
	2021	2020
Deferred Tax Assets		
Net operating loss carryforwards	\$ 43,375	\$ 41,061
Amortization of intangibles	1,979	2,167
Share-based compensation expense	7,423	6,876
Other	3,503	3,000
Gross deferred tax assets	\$ 56,280	\$ 53,104
Valuation allowance	(47,857)	(53,117)
Deferred tax assets, net of valuation allowance	\$ 8,423	\$ (13)
Deferred Tax Liabilities		
Deferred gain	(8,444)	—
Depreciation of fixed assets	21	13
Gross deferred tax liabilities	(8,423)	13
Net deferred tax liability	\$ —	\$ —

Net operating losses available at December 31, 2021 to offset future taxable income in the U.S. federal, U.S. state, Hong Kong and China jurisdictions are \$181.1 million, \$32.9 million, \$1.7 million and \$11.2 million, respectively. The statutory income tax rates in Hong Kong and China are 16.5% and 25%, respectively.

The U.S. net operating losses generated prior to 2018 expire between 2021 and 2038. The US net operating losses generated in 2018 to 2021 have no expiration date and carry forward indefinitely. The net operating losses generated in Hong Kong have no expiration date and carry forward indefinitely, while the net operating losses generated in China have a five-year carryforward period.

We file income tax returns in various domestic and foreign tax jurisdictions with varying statutes of limitation. We are generally not subject to examinations in the U.S. for periods prior to 2018. However, as we utilize our net operating losses prior periods can be subject to examination. In significant foreign jurisdictions, we are generally not subject to examination for periods prior to 2018.

Under the Internal Revenue Code of 1986, as amended (the “Code”), if an ownership change (as defined for income tax purposes) occurs, §382 of the Code imposes an annual limitation on the amount of a corporation’s taxable income that can be offset by net operating loss carryforwards. During our 2014 tax year, we analyzed recent acquisitions and ownership changes and determined that certain of such transactions qualified as an ownership change under §382. As a result, we will likely not be able to use a portion of our net operating loss carryforwards.

For the years ended December 31, 2021 and 2020, we have no unrecognized tax benefits, and we have not taken any tax positions which we expect might significantly change unrecognized tax benefits during the 12 months following December 31, 2021.

In response to the COVID-19 pandemic, many governments have enacted or are contemplating measures to provide aid and economic stimulus. The Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), which was enacted on March 27, 2020 and American Rescue Plan Act, which was enacted on March 11, 2021 in the U.S., includes measures to assist

companies, including temporary changes to income and non-income-based tax laws. We will monitor additional guidance and impact that the CARES Act, American Rescue Plan Act, and other potential legislation may have on its income taxes.

NOTE 12. ACCRUED EXPENSE AND OTHER CURRENT LIABILITIES

The following table presents the components of Accrued expense and other current liabilities (in thousands):

	December 31,	
	2021	2020
Accrued compensation and benefit-related expense	\$ 821	\$ 1,151
Accrued interest	385	485
Other accrued expense	1,673	721
Other payables	2,324	3,048
Operating lease liability - current	187	382
China Cash Bonuses	439	679
Other current liabilities	134	194
Total	<u>\$ 5,963</u>	<u>\$ 6,660</u>

NOTE 13. DEBT

Short-Term Debt

The following table presents our notes payable (in thousands) as of:

	December 31,	
	2021	2020
Note payable to private lender	\$ —	\$ 1,500
Mudrick Loans	30,000	—
Principal balance of notes payable	30,000	1,500
Unamortized discount and debt issuance cost	(2,189)	—
Notes payable, net of unamortized discount and debt issuance cost	<u>\$ 27,811</u>	<u>\$ 1,500</u>

On April 12, 2017, we issued a short-term note payable in the principal amount of \$3.0 million to a private lender in exchange for cash in the same amount. The agreement, which did not have a stated interest rate, required us to repay the note plus a fee of \$115 thousand on the maturity date of June 30, 2017. The note was accruing interest at \$500 per day on the unpaid principal until we repaid the note in full. As of December 31, 2020, the remaining principal balance of \$1.5 million was past due and accrued interest thereon was \$0.4 million.

On February 10, 2021, we entered into a senior secured promissory note with Jefferson Remark Funding LLC (“JRF”), pursuant to which JRF extended credit to us consisting of a one-year term loan in the principal amount of \$5.0 million. The note bore interest at 15% per annum and was due and payable in full on February 10, 2022. During the year ended December 31, 2021, we incurred \$0.2 million original issue discount on the promissory note, as well as debt issuance cost of \$0.3 million.

On December 3, 2021, we entered into senior secured loan agreements (the “Mudrick Loan Agreements”) with certain of our subsidiaries as guarantors (the “Guarantors”) and certain institutional lenders affiliated with Mudrick Capital Management, LP (collectively “Mudrick”), pursuant to which Mudrick extended credit to us consisting of term loans in the aggregate

principal amount of \$30.0 million (the “Mudrick Loans”). The Mudrick Loans bear interest at 16.5% per annum, which shall be payable on the last business day of each month commencing on December 31, 2021. All amounts outstanding under the Mudrick Loans, including all accrued and unpaid interest, will be due and payable in full on July 31, 2022. To secure the payment and performance of the obligations under the Mudrick Loan Agreements, we, together with the Guarantors, have granted to TMI Trust Company, as the collateral agent for the benefit of Mudrick, a first priority lien on, and security interest in, all assets of Remark and the Guarantors, subject to certain customary exceptions. The Mudrick Loan Agreements contain representations, warranties, events of default, indemnifications and other provisions customary for financings of this type. The occurrence of any event of default under the Mudrick Loan Agreements may result in the principal amount outstanding and unpaid interest thereon becoming immediately due and payable. In connection with our entry into the Mudrick Loan Agreements, we paid to Mudrick an upfront fee equal to 5.0% of the amount of the Mudrick Loans, which was netted against the drawdown of the Mudrick Loans and recorded as a discount of \$1.5 million, and recorded debt issuance cost totaling \$1.1 million. We are amortizing the discount on the Mudrick Loans and the debt issuance cost over the life of the Mudrick Loans and, during the year ended December 31, 2021, we amortized \$0.4 million of such discount and debt issuance cost.

On December 6, 2021, we repaid in full the remaining outstanding principal amount of \$1.5 million, plus accrued interest of \$0.6 million on the note payable we entered into on April 12, 2017, and we also repaid in full the outstanding principal amount of \$5.0 million, plus accrued interest of \$0.6 million on the note payable we entered into with JRF.

Long-Term Debt

On April 15, 2020, we entered into a loan agreement (the “PPP Loan”) with our bank under the U.S. Small Business Administration’s Paycheck Protection Program. Under the PPP Loan, we borrowed \$0.4 million with a stated interest rate of one percent for a term of two years from the initial disbursement date of April 15, 2020.

On July 23, 2021, the lender of our PPP Loan notified us that the U.S. Small Business Administration had forgiven our \$0.4 million PPP Loan, plus a de minimis amount of accrued interest thereon, effective as of July 21, 2021.

On December 30, 2020, we executed a promissory note with a private lender (the “Private Lender Loan”) under which we borrowed \$1.0 million. The Private Lender Loan bore interest at 10% per annum.

Effective August 5, 2021, we entered into an amendment (the “Loan Amendment”) to the Private Lender Loan. The Loan Amendment provided that effective as of August 5, 2021 (the “Conversion Date”), the outstanding principal amount of the Private Lender Loan plus all accrued but unpaid interest of approximately \$0.1 million thereon through the Conversion Date was automatically converted into shares of our common stock at a conversion price of \$1.21 per share, resulting in the issuance of 876,493 shares of our common stock with a fair value of \$1.1 million and the recording of less than \$0.1 million of additional interest expense.

NOTE 14. COMMITMENTS AND CONTINGENCIES

At December 31, 2021, we had no material commitments outside the normal course of business.

Contingencies

As of December 31, 2021, we were neither a defendant in any material pending legal proceeding nor are we aware of any material threatened claims against us and, therefore, we have not accrued any contingent liabilities.

CBG Litigation

On February 21, 2018, we initiated a legal proceeding (the “CBG Litigation”) against China Branding Group Limited (“CBG”), Adam Roseman, and CBG’s Joint Official Liquidators (the “JOLs”) arising from the CBG Acquisition. The CBG Litigation was filed in the United States District Court for the District of Nevada and is captioned as *Remark Holdings, Inc., et al. v. China Branding Group, Limited (In Official Liquidation), et al.*, Case No. 2:18-cv-00322. In the CBG Litigation, we sought a declaration from the court that we are entitled to rescission of the purchase agreement relating to the CBG Acquisition and all transactions related to the CBG Acquisition, a declaration that such purchase agreement and the transactions consummated pursuant thereto be rescinded and void ab initio, a declaration that we are not required to deliver the remaining

CBG Acquisition Warrants allowing for the purchase of 5,710,000 shares of common stock at a per-share exercise price of \$10.00, an order directing release to us of any consideration held in escrow in connection with the CBG Acquisition, and disgorgement of all consideration paid by us in connection with the CBG Acquisition. We alleged that the defendants fraudulently misrepresented and concealed material information regarding the companies we acquired in the CBG Acquisition.

We entered into a settlement agreement with Mr. Roseman to settle all claims against him, and we dismissed those claims on May 13, 2019. We entered into a Stipulation for Settlement dated January 15, 2019 with CBG and the JOLs, which sets forth the binding terms of their settlement agreement (the “Stipulation for Settlement”). Pursuant to the Stipulation for Settlement, we will issue fully-transferable warrants on a non-diluted basis allowing for the purchase of 5,710,000 shares of our common stock at a per-share exercise price of \$6.00, which warrants are exercisable for a period of 5 years from the date of the Stipulation for Settlement, and which we have the right to cause the warrant holders to exercise if the closing price of our common stock is \$8.00 or greater on any 5 non-consecutive days in any consecutive 30-day trading window. The parties to the Stipulation for Settlement also agreed to negotiate anti-dilution provisions for the warrants. In exchange for the foregoing consideration, the parties to the Stipulation for Settlement agreed to release their claims against each other and enter into a written definitive settlement agreement. After entering into the Stipulation for Settlement, the JOLs demanded the warrants also include an exchange right. We rejected this request and filed a motion to enforce the Stipulation for Settlement on March 12, 2019. The Nevada court issued a report and recommendation on August 2, 2019, which was affirmed on September 24, 2019, requiring the JOLs to submit the written definitive settlement agreement (without an exchange right) to the Grand Court of the Cayman Islands overseeing CBG’s liquidation for approval. An application for sanction to enter the settlement agreement was filed with the Grand Court on December 3, 2019. One month later, on or about January 2, 2020, the Grand Court approved the application, authorizing CBG and the JOLs to enter into the settlement.

On August 31, 2021, we entered into the settlement agreement with CBG and the JOLs that is described in more detail in [Note 5](#).

Registration Rights Agreement

As described in more detail in [Note 15](#), on September 27, 2021, we entered into a securities purchase agreement (the “Armistice Purchase Agreement”) with Armistice Capital Master Fund Ltd. (“Armistice Capital”) pursuant to which we issued shares of our common stock together with warrants to purchase our common stock, subject to certain customary anti-dilution adjustments (the “Armistice Warrants”).

In connection with our entry into the Armistice Purchase Agreement, we also entered into a registration rights agreement with Armistice Capital, pursuant to which we are obligated to file one or more registration statements, as necessary, to register under the Securities Act of 1933, as amended, the resale of the shares we issued to Armistice Capital and the shares underlying the Armistice Warrants (collectively, the “Armistice Registrable Securities”) and to obtain effectiveness of such registration statement no later than 90 days following September 27, 2021. While we have filed a registration statement to register the resale of the Armistice Registrable Securities (the “Armistice Resale Registration Statement”), we are currently in a comment letter process with the SEC staff with respect to such registration statement and have not been able to achieve effectiveness of the Armistice Resale Registration Statement. As a result, we have accrued \$0.6 million, representing our best estimate of the liquidated damages we will be required to pay until the SEC declares the Armistice Resale Registration Statement effective or until our registration obligations in the Armistice Registration Rights Agreement terminate. The Armistice Registration Rights Agreement caps such liquidated damages at \$1.0 million.

NOTE 15. STOCKHOLDERS' EQUITY, SHARE-BASED COMPENSATION AND NET LOSS PER SHARE

Equity Issuances

On March 3, 2020, we entered into a common stock purchase agreement (“the 2020 Aspire Purchase Agreement”) with Aspire Capital Fund, LLC (“Aspire Capital”) which provided that, upon the terms and subject to the conditions and limitations set forth therein, we had the right to direct Aspire Capital to purchase as much as an aggregate of \$30.0 million of shares of our common stock over the 30-month term of the 2020 Aspire Purchase Agreement. The 2020 Aspire Purchase Agreement replaced a prior common stock purchase agreement we had entered into with Aspire Capital in 2019 (“the 2019 Aspire Purchase Agreement”), which terminated under the terms of the 2020 Aspire Purchase Agreement. In consideration for entering into the 2020 Aspire Purchase Agreement, we issued to Aspire Capital 2,374,545 shares of our common stock.

As of December 31, 2020, we had issued to Aspire Capital a total of 44,227,890 shares of our common stock under the 2020 Aspire Purchase Agreement. During the year ended December 31, 2020, we issued a total of 48,238,893 shares of our common stock to Aspire Capital under the 2019 Aspire Purchase Agreement and the 2020 Aspire Purchase Agreement in exchange for in exchange for \$32.0 million plus Aspire Capital's commitment to participate in the 2020 Aspire Purchase Agreement.

On September 29, 2021, we issued and sold to Armistice Capital 4,237,290 shares of our common stock at a purchase price of \$1.18 per share together with the Armistice Warrants to purchase as many as 4,237,290 shares of our common stock at an exercise price of \$1.35 per share, subject to certain customary anti-dilution adjustments, pursuant to the terms of the Armistice Purchase Agreement. We received net proceeds of \$4.6 million from such sale. Concurrently with the entry into the Purchase Agreement, we also entered into a financial advisor agreement (the "Financial Advisor Agreement") with A.G.P./Alliance Global Partners ("A.G.P."), pursuant to which we agreed to pay A.G.P. a cash fee of approximately \$0.4 million and to reimburse A.G.P. for certain legal and escrow expenses. In addition, pursuant to the terms of the Financial Advisor Agreement, on September 29, 2021, we issued to A.G.P. and its designees warrants (the "Financial Advisor Warrants" and together with the Armistice Warrants, the "Private Placement Warrants") to purchase as many as an aggregate of 127,118 shares of our common stock at an exercise price of \$1.35 per share, subject to certain customary anti-dilution adjustments. Based on the terms of the Private Placement Warrants, we recorded such warrants as equity instruments.

Warrants

The following table summarizes information related to our equity-classified stock warrant issuances as of and for the dates and periods noted:

	Shares	Weighted Average Exercise Price Per Share	Weighted-Average Remaining Contractual Term	Aggregate Intrinsic Value (in thousands)
Outstanding at December 31, 2020	40,000	\$ 10.00	2.8	\$ —
Granted ¹	10,074,408	3.99		
Exercised	—	—		
Forfeited, cancelled or expired	—	—		
Outstanding at December 31, 2021	10,114,408	\$ 4.01	4.7	\$ —

¹ Includes the 5.7 million warrants to purchase our common stock that we issued to CBG (see [Note 5](#)).

Share-Based Compensation

We are authorized to issue equity-based awards under our 2014 Incentive Plan and our 2017 Incentive Plan, each of which our stockholders have approved. We also award cash bonuses ("China Cash Bonuses") to our employees in China, which grants are not subject to a formal incentive plan and which can only be settled in cash. We grant such awards to attract, retain and motivate eligible officers, directors, employees and consultants. Under each of the plans, we have granted shares of restricted stock and options to purchase common stock to our officers and employees with exercise prices equal to or greater than the fair value of the underlying shares on the grant date.

Stock options and China Cash Bonuses generally expire 10 years from the grant date. All forms of equity awards and China Cash Bonuses vest upon the passage of time, the attainment of performance criteria, or both. When participants exercise stock options, we issue any shares of our common stock resulting from such exercise from new authorized and unallocated shares available at the time of exercise.

We estimate the fair value of our stock option awards and China Cash Bonuses using the BSM Model. During the year ended December 31, 2021 (we did not grant any stock options during the year ended December 31, 2020), we applied the following weighted-average inputs, which we classify in Level 3 of the fair value hierarchy, to the BSM Model for our stock

option awards:

Expected term in years	6.0
Expected volatility	85 %
Expected dividends	— %
Risk-free interest rate	0.40 %

During the years noted in the table, we applied the following weighted-average inputs, which we classify in Level 3 of the fair value hierarchy, to the BSM Model for our China Cash Bonuses:

	December 31,	
	2021	2020
Expected remaining term in years	4.71	4.99
Expected volatility	110.14 %	85.00 %
Expected dividends	— %	— %
Risk-free interest rate	1.06 %	0.44 %

We estimated the expected term based upon historical data. The risk-free interest rate is based on the U.S. Treasury yield curve appropriate for the expected term on the date of grant, and we estimate the expected volatility primarily using the historical volatility of our common stock. Actual compensation, if any, ultimately realized may differ significantly from the amount estimated using an option-pricing model.

The following table summarizes activity under our equity incentive plans related to equity-classified stock option grants as of and for the dates and periods noted:

	Shares	Weighted Average Exercise Price Per Share	Weighted-Average Remaining Contractual Term	Aggregate Intrinsic Value (in thousands)
Outstanding at December 31, 2019	10,359,079	\$ 4.20		
Granted	—	—		
Exercised	(150,989)	0.87		
Forfeited, cancelled or expired	(265,749)	2.77		
Outstanding at December 31, 2020	9,942,341	\$ 4.29	5.7	\$ 709
Granted	5,463,500	1.37		
Exercised	(547,945)	1.97		
Forfeited, cancelled or expired	(18,876)	1.55		
Outstanding at December 31, 2021	14,839,020	\$ 3.30	6.1	\$ 159
Exercisable at December 31, 2020	9,781,466	4.35	5.7	\$ 509
Exercisable at December 31, 2021	12,776,520	3.62	5.7	\$ 957

The following table summarizes the status of non-vested stock options as of and for the dates and periods noted:

	Shares	Weighted-Average Grant-Date Fair Value
Non-vested at December 31, 2019	610,187	\$ 241
Exercised	(399,188)	168
Forfeited, cancelled or expired	(50,124)	53
Non-vested at December 31, 2020	160,875	68
Granted	5,463,500	4,972
Exercised	(3,547,875)	3,512
Forfeited, cancelled or expired	(14,000)	17
Non-vested at December 31, 2021	2,062,500	\$ 2,063

We received proceeds from stock option exercises during the years ended December 31, 2021 and 2020 totaling approximately \$1.1 million and \$0.1 million, respectively, while the total intrinsic value on such stock option exercises was \$1.0 million and \$0.1 million, respectively.

The following table summarizes activity related to our liability-classified China Cash Bonuses as of and for the dates and periods noted:

	Shares	Weighted Average Exercise Price Per Share	Weighted-Average Remaining Contractual Term	Aggregate Intrinsic Value (in thousands)
Outstanding at December 31, 2019	1,098,750	\$ 5.20		
Granted	300,000	1.37		
Forfeited, cancelled or expired	(343,750)	5.52		
Outstanding at December 31, 2020	1,055,000	\$ 4.01	5.7	\$ 709
Forfeited, cancelled or expired	(19,000)	6.31		
Outstanding at December 31, 2021	1,036,000	\$ 3.97	6.1	\$ 159
Exercisable at December 31, 2020	775,000	4.97	5.3	\$ 51
Exercisable at December 31, 2021	886,000	4.41	4.9	\$ —

The following table presents the change in the liability associated with our China Cash Bonuses included in Accrued expense and other current liabilities (in thousands):

	Year Ended December 31,	
	2021	2020
Balance at beginning of period	\$ 679	\$ 43
Share-based compensation expense related to China Cash Bonuses	(240)	636
Balance at end of period	\$ 439	\$ 679

On July 27, 2020, the compensation committee of our board of directors approved grants to employees, directors and other service providers, excluding our CEO, of options to purchase approximately 5.4 million shares of our common stock. The

option agreements governing the grants contain a stipulation that, regardless of vesting, such options do not become exercisable unless and until stockholders approve an amendment to our Amended and Restated Certificate of Incorporation to increase in the number of authorized shares of our common stock in an amount sufficient to allow for the exercise of the options and we have filed a corresponding Certificate of Amendment to our Amended and Restated Certificate of Incorporation reflecting such increase in the number of authorized shares of our common stock.

On July 8, 2021, our stockholders approved an amendment to our Amended and Restated Certificate of Incorporation to increase the number of authorized shares of our common stock to 175,000,000, and we filed a Certificate of Amendment to our Amended and Restated Certificate of Incorporation (the “Charter Amendment”) with the Secretary of State of the State of Delaware on July 9, 2021 to reflect this amendment, which became effective immediately upon filing.

As a result of the increase in the number of authorized shares of our common stock, we determined that July 8, 2021 was the grant date for accounting purposes of the stock options we originally issued on July 27, 2020. The grant date fair value of the options granted on July 27, 2020 was approximately \$6.3 million. To estimate the fair value of the options with an accounting grant date of July 8, 2021, we used the Black-Scholes-Merton option pricing model with an expected volatility of 85%, a risk-free interest rate of 0.34%, and expected term of six years and no expected dividends.

The following table presents a breakdown of share-based compensation cost included in operating expense (in thousands):

	Year Ended December 31,	
	2021	2020
Stock options	\$ 4,300	\$ 160
China Cash Bonuses	(240)	637
Total	\$ 4,060	\$ 797

We record share-based compensation expense in the books of the subsidiary that incurs the expense, while for equity-classified stock options we record the change in additional paid-in capital on the corporate entity because the corporate entity’s equity underlies such stock options.

The following table presents information regarding unrecognized share-based compensation cost associated with stock options and China Cash Bonuses:

	December 31, 2021
Unrecognized share-based compensation cost for non-vested awards (in thousands):	
Stock options	2,062
China Cash Bonuses	103
Weighted-average years over which unrecognized share-based compensation expense will be recognized:	
Stock options	1.1
China Cash Bonuses	1.1

NOTE 16. RELATED PARTY TRANSACTIONS

On July 27, 2020, we collected approximately \$0.5 million of receivables from related parties. The receivables represented cash advances in excess of expense reimbursements to senior management. The cash received from these receivables was subsequently injected as additional capital into the VIEs in China.

NOTE 17. CHINA BUSINESS PARTNER

We and the VIEs interact with an unrelated entity (the “China Business Partner”) in more than one capacity. Firstly, since 2020, one of the VIEs has been working with the China Business Partner to earn revenue by obtaining business from some of the largest companies in China. Secondly, our artificial intelligence business in the U.S. has, to date, purchased substantially all of its inventory from a subsidiary of the China Business Partner which manufactures certain equipment to our specifications;

during the year ended December 31, 2021, such purchases totaled approximately \$1.3 million. In addition, a member of our senior leadership team maintains a role in the senior management structure of the China Business Partner.

During the year ended December 31, 2020, one of the VIEs advanced \$1.5 million to the China Business Partner pursuant to an agreement between the two entities. Under the executed agreement, the VIE had an obligation to advance as much as an aggregate amount of \$5.1 million over the loan term of five years, and the VIE could elect to convert amounts due to it under the agreement into equity of the China Business Partner upon any equity financing the China Business Partner undertook during the term of the agreement. The business purpose for the advances was to allow the China Business Partner to purchase and modify hardware to integrate with our software and market such integrated product to potential customers, including some of the largest companies in China. The VIEs did not recognize any revenue during 2020 from the relationship with the China Business Partner.

During the year ended December 31, 2021, the same VIE advanced another \$2.4 million to the China Business Partner pursuant to the agreement entered into in 2020. We initially determined that such advances by the VIE were effectively marketing costs because realizability of the advanced amounts was uncertain given the lack of a formalized business relationship with the China Business Partner and the nature of the use of funds. As a result, the VIE initially recorded the advances to our China Business Partner in Sales and marketing expense.

As of December 31, 2021, as a result of the China Business Partner's repayment of the amounts we advanced to it (see [Note 19](#)), the VIE recorded the \$3.9 million repayment received subsequent to December 31, 2021 in Other receivables, with \$2.4 million of the repayment reducing sales and marketing expense for the 2021 advances and \$1.5 million of the repayment shown as a recovery of marketing expense initially incurred during 2020 related to that year's advances.

Also, for the year ended December 31, 2021, the VIEs recognized approximately \$3.8 million of revenue from the relationship with the China Business Partner.

NOTE 18. CONSOLIDATING FINANCIAL SCHEDULES

Please see [Note 1](#) for information regarding our corporate structure and our relationship to the VIEs.

Consolidating Balance Sheets (Unaudited)
December 31, 2021
(\$ in thousands)

	Corporate & Non-VIE Entities	VIEs	Eliminating Entries	Consolidated Total
Assets				
Cash	\$ 13,947	\$ 240	\$ —	\$ 14,187
Trade accounts receivable, net	33	10,234	—	10,267
Inventory, net	1,288	58	—	1,346
Investment in marketable securities	42,349	—	—	42,349
Prepaid expense and other current assets	1,838	4,525	—	6,363
Total current assets	59,455	15,057	—	74,512
Property and equipment, net	357	—	—	357
Operating lease assets	113	81	—	194
Investment in VIEs	7,182	—	(7,182)	—
Investment in unconsolidated affiliate	—	—	—	—
Other long-term assets	416	24	—	440
Total assets	\$ 67,523	\$ 15,162	\$ (7,182)	\$ 75,503
Liabilities				
Accounts payable	\$ 3,619	\$ 6,475	\$ —	\$ 10,094
Accrued expense and other current liabilities	3,380	2,583	—	5,963
Contract liability	411	165	—	576
Notes payable, net of unamortized discount and debt issuance cost	27,811	—	—	27,811
Total current liabilities	35,221	9,223	—	44,444
Operating lease liabilities, long-term	25	—	—	25
Total liabilities	35,246	9,223	—	44,469
Stockholders' Equity (Deficit)				
Preferred stock	—	—	—	—
Common stock	105	163	(163)	105
Additional paid-in-capital	364,239	28,310	(28,310)	364,239
Accumulated other comprehensive income	973	(1,268)	25	(270)
Accumulated deficit	(333,040)	(21,266)	21,266	(333,040)
Total stockholders' equity (deficit)	32,277	5,939	(7,182)	31,034
Total liabilities and stockholders' equity (deficit)	\$ 67,523	\$ 15,162	\$ (7,182)	\$ 75,503

Consolidating Statement of Operations (Unaudited)
Year Ended December 31, 2021
(\$ in thousands)

	Corporate & Non-VIE Entities	VIEs	Eliminating Entries	Consolidated Total
Revenue	\$ 4,040	\$ 11,950	\$ —	\$ 15,990
Cost and expense				
Cost of revenue (excluding depreciation and amortization)	2,185	9,270	—	11,455
Sales and marketing	690	281	—	971
Recovery of marketing expense	—	(1,530)	—	(1,530)
Technology and development	2,918	1,774	—	4,692
General and administrative	13,323	797	—	14,120
Depreciation and amortization	143	48	—	191
Total cost and expense	19,259	10,640	—	29,899
Operating loss	(15,219)	1,310	—	(13,909)
Other income (expense)				
Interest expense	(2,298)	(10)	—	(2,308)
Other income (expense), net	(598)	6	—	(592)
Change in fair value of warrant liability	123	—	—	123
Gain on investment revaluation	43,642	—	—	43,642
Gain on debt extinguishment	425	—	—	425
Gain on lease termination	—	—	—	—
Other gain (loss), net	90	10	—	100
Share in income (loss) of VIEs	1,307	—	(1,307)	—
Total other income, net	42,691	6	(1,307)	41,390
Income (loss) from operations	\$ 27,472	\$ 1,316	\$ (1,307)	\$ 27,481
Provision for income taxes	—	(9)	—	(9)
Net income (loss)	<u>\$ 27,472</u>	<u>\$ 1,307</u>	<u>\$ (1,307)</u>	<u>\$ 27,472</u>

Consolidating Statement of Cash Flows (Unaudited)
Year Ended December 31, 2021
(\$ in thousands)

	Corporate & Non-VIE Entities	VIEs	Eliminating Entries	Consolidated Total
Cash flows from operating activities:				
Net income (loss)	\$ 27,472	\$ 1,307	\$ (1,307)	\$ 27,472
Adjustments to reconcile net loss to net cash used in operating activities:				
Change in fair value of warrant liability	(123)	—	—	(123)
Depreciation, amortization and impairments	143	48	—	191
Share-based compensation	4,060	—	—	4,060
Amortization of debt issuance costs and discount	880	—	—	880
Gain on investment revaluation	(43,642)	—	—	(43,642)
Gain on debt extinguishment	(425)	—	—	(425)
Share in net loss (income) of VIEs	(1,307)	—	1,307	—
Financing cost of converting note payable to common stock	44	—	—	44
Provision for doubtful accounts	—	297	—	297
Other	314	(284)	—	30
Changes in operating assets and liabilities:				
Accounts receivable	144	(5,877)	—	(5,733)
Inventory	(527)	54	—	(473)
Prepaid expenses and other assets	140	(4,260)	—	(4,120)
Operating lease assets	98	195	—	293
Accounts payable, accrued expense and other liabilities	(865)	1,832	—	967
Contract liability	256	21	—	277
Operating lease liabilities	(90)	(79)	—	(169)
Net cash used in operating activities	\$ (13,428)	\$ (6,746)	\$ —	\$ (20,174)
Cash flows from investing activities:				
Proceeds from investment	2,322	—	—	2,322
Purchases of property, equipment and software	(223)	—	—	(223)
Other cash outflows from VIEs, net	(6,710)	—	6,710	—
Net cash provided by (used in) investing activities	(4,611)	—	6,710	2,099
Cash flows from financing activities:				
Proceeds from issuance of common stock, net	5,692	—	—	5,692
Proceeds from debt issuance	32,216	—	—	32,216
Repayments of debt	(6,500)	—	—	(6,500)
Other cash inflows from non-VIEs, net	—	6,710	(6,710)	—
Net cash provided by financing activities	31,408	6,710	(6,710)	31,408
Net change in cash	13,369	(36)	—	13,333
Cash:				
Beginning of period	578	276	—	854
End of period	\$ 13,947	\$ 240	\$ —	\$ 14,187

NOTE 19. SUBSEQUENT EVENTS

On January 4, 2022, we repaid \$3.7 million of principal, plus \$0.4 million of accrued interest, on the Mudrick Loans.

On January 25, 2022, our China Business Partner repaid the entire \$3.9 million that had been advanced by one of the VIEs pursuant to the agreement such VIE had executed with the China Business Partner in 2020.

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SUBSIDIARIES OF REMARK HOLDINGS, INC.

- Remark AI, LLC, a Delaware Limited Liability Company
- Remark Holdings SPV, Inc., a Delaware corporation
- RAAD Productions, LLC, a California limited liability company
- KanKan Holdings, Ltd. (Cayman Islands), a Cayman Islands company
 - KanKan Limited (Hong Kong), a Hong Kong corporation
 - * KanKan Technology (Shanghai) Co., Ltd., a Chinese limited liability company
 - † Chengdu Remark Technology Co. Ltd., a Chinese limited liability company (a consolidated variable interest entity)
 - † Hangzhou Shufeng Technology Co., Ltd., a Chinese limited liability company (a consolidated variable interest entity)
 - † Remark Data Technology Co., Ltd., a Chinese limited liability company (a consolidated variable interest entity)
 - † Bonet (Beijing) Technology LLC, a Chinese limited liability company (a consolidated variable interest entity)
- HSW (HK), Inc. Limited, a Hong Kong corporation
 - Remark Entertainment (Shanghai) Co. Ltd., a Chinese limited liability company
- Bikini.com LLC, a Nevada limited liability company
- Remark AI UK, Ltd., an English private limited company

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statements on Forms S-8 (Nos. 333-226207, 333-218187, 333-147149, 333-168800, 333-200375, and 333-202027), and Forms S-3 (Nos. 333-225448, 333-180290, 333-202024, 333-207896, 333-259612 and 333-260615) of our report dated March 31, 2022 included in this Annual Report on Form 10-K of Remark Holdings, Inc. (the "Company") relating to the consolidated balance sheets of the Company as of December 31, 2021 and 2020, and the related consolidated statements of operations and comprehensive loss, stockholders' equity (deficit), and cash flows for the years then ended, and the related notes (which report expresses an unqualified opinion and contains an explanatory paragraph regarding substantial doubt about the Company's ability to continue as a going concern), for the Company as of December 31, 2021 and 2020.

/s/ Weinberg & Company

Weinberg & Company, P.A.
Los Angeles, CA
March 31, 2022

**CERTIFICATION OF PRINCIPAL EXECUTIVE OFFICER PURSUANT TO
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Kai-Shing Tao (the registrant's principal executive officer), certify that:

1. I have reviewed this Annual Report on Form 10-K of Remark Holdings, 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)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
 - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
 - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
 - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
 - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer 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 31, 2022

By: /s/ Kai-Shing Tao

Kai-Shing Tao

Chief Executive Officer and Chairman

**CERTIFICATIONS OF PRINCIPAL EXECUTIVE OFFICER AND PRINCIPAL FINANCIAL OFFICER PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

I, Kai-Shing Tao, the registrant's principal executive, financial and accounting officer, certify that, to my knowledge:

1. the accompanying Annual Report on Form 10-K for the year ended December 31, 2021 (the "Report"), fully complies with the requirements of Section 13(a) or 15(d), as applicable, 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 Remark Holdings, Inc. at the dates and for the periods indicated.

Date: March 31, 2022

/s/ Kai-Shing Tao

Kai-Shing Tao
Chief Executive Officer and Chairman